

AQUILINA v. MALTA

Right to be brought promptly before judicial officer with power to release – violation Article 5, Section 3

Article 5, Section 3 was aimed at ensuring prompt and automatic judicial control of police detention ordered in accordance with the provisions of paragraph 1 (c) of Article 5. The judicial officer who exercised this control must actually hear the detained person and take the appropriate decision. Article 5, Section 3 required the judicial officer to consider the merits of the detention. The judicial control under Article 5, Section 3 could not be made to depend on a previous application by the detained person. The automatic review required under Article 5, Section 3 must be sufficiently wide to encompass the various circumstances militating in favour and against detention.

In a judgment delivered at Strasbourg on 29 April 1999 in the case of *Aquilina v. Malta*, the European Court of Human Rights held unanimously that there had been a violation of Article 5, Section 3 of the European Convention on Human Rights. Under Article 41 of the Convention, the Court awarded the applicant a specified sum for legal costs and expenses.

1. Principal facts

The applicant, Mr Joseph Aquilina, a Maltese national, was born in 1974 and lives in Qormi, Malta.

He was arrested on suspicion of having committed an offence involving sexual acts. He was brought within forty-eight hours before a magistrate and applied for bail. His application was communicated to the Attorney General who opposed it. The bail application was then examined by a different magistrate from the one before whom the applicant had appeared initially. It was allowed and Mr Aquilina was released twelve days after his arrest.

2. Procedure of the Court

The application was lodged with the European Commission of Human Rights on 7 July 1994. Having declared the application admissible, the Commission adopted a report on 4 March 1998 in which it established the facts and expressed the unanimous opinion that there had been a violation of Article 5, Section 3. The case

was brought before the Court by the Maltese Government.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was transmitted to the Grand Chamber of the new European Court of Human Rights on the entry into force of the Protocol, on 1 November 1998.

3. Summary of the judgment

Complaints

The applicant complains of a breach of his right to be brought promptly before a judicial officer with power to release him, a right guaranteed under Article 5, Section 3 of the European Convention on Human Rights.

Decision of the Court

The Government's preliminary objection

The Court decided to join to the merits the Government's preliminary objection that the applicant had not exhausted domestic remedies in so far as he had failed to rely on section 137 of the Criminal Code, which constituted along with section 353 the legal basis of Malta's version of the writ of habeas corpus.

Article 5, Section 3

The Court reiterated its case-law to the effect that Article 5, Section 3 was aimed at ensuring prompt and automatic judicial control of police detention ordered in accordance with the provisions of paragraph 1 (c) of Article 5. The judicial officer who exercised this control must actually hear the detained person and take the appropriate decision.

The Court stressed that Article 5, Section 3 required the judicial officer to consider the merits of the detention. It also considered that the judicial control under Article 5, Section 3 could not be made to depend on a previous application by the detained person. Such a requirement would not only change the nature of the safeguard provided for under Article 5, Section 3, a safeguard distinct from that in Article 5, Section 4, which guaranteed the right to institute proceedings to have the lawfulness of detention reviewed by a court. It might even defeat the purpose of the safeguard under Article 5, Section 3 which was to protect the individual from arbitrary detention by ensuring that the act of deprivation of liberty was subject to independent judicial scrutiny. Prompt judicial review of detention was also an important safeguard against ill-treatment of the individual taken into custody. Arrested persons who had been subjected to such treatment might be incapable of lodging an application asking the judge to review their detention. The same could

hold true for other vulnerable categories of arrested persons, such as the mentally weak or those who did not speak the language of the judicial officer.

The Court shared the parties' view that the applicant's appearance before a Magistrate two days after his arrest could be regarded as "prompt" for the purposes of Article 5, Section 3. According to the Government, the Magistrate in question had the power to order the applicant's release of his own motion if the applicant was facing charges that, under domestic law, did not allow for his detention. However, the automatic review required under Article 5, Section 3 went beyond the one ground of lawfulness cited by the Government. The Court considered that it must be sufficiently wide to encompass the various circumstances militating in favour and against detention.

The Government argued that the applicant could have obtained a wider review of the lawfulness of his detention, going beyond the issue of whether the charges allowed for such detention, by lodging an application under section 137 of the Criminal Code. However, the Court considered that compliance with Article 5, Section 3 could not be ensured by making an Article 5, Section 4 remedy available. In any event, it was not established that the scope of the review exercised by the Maltese courts under section 137 of the Criminal Code was sufficiently wide to encompass a review of the merits of the detention. As a result, the Court rejected the Government's preliminary objection.

Moreover, the Court considered that the applicant's appearance before the Magistrate two days after his arrest was not capable of ensuring compliance with Article 5, Section 3 since the Magistrate had no power to order his release. Accordingly, there was a violation of Article 5, Section 3. However, in reaching this conclusion the Court agreed with the Government that the question of bail was a distinct and separate issue that only came into play when the arrest and detention were lawful. As a result, it did not have to address this issue under Article 5, Section 3.

Article 41

The Court considered that, in the special circumstances of the case, the finding of violation of Article 5, Section 3 constituted in itself just satisfaction for any non-pecuniary damage suffered by the applicant. It awarded the applicant 3,000 Maltese liri for costs and expenses.

Judgment was given by a Grand Chamber of 17 judges, composed as follows:

Luzius Wildhaber (Swiss), President, Elisabeth Palm (Swedish), Antonio Pastor Ridruejo (Spanish), Luigi Ferrari Bravo (Italian), Giovanni Bonello (Maltese), Jerzy Makarczyk (Polish), Pranas Kuris (Lithuanian), Riza Türmen (Turkish), Jean-Paul

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Costa (French), Françoise Tulkens (Belgian), Viera Stráznická (Slovakian), Marc Fischbach (Luxemburger), Volodymyr Butkevych (Ukrainian), Josep Casadevall (Andorran), Hanne Sophie Greve (Norwegian), András Baka (Hungarian), and Snejana Botoucharova (Bulgarian), Judges.

Judges Bonello, Fischbach and Greve expressed partly dissenting opinions and Judges Tulkens and Casadevall a joint partly dissenting opinion.