



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

FOURTH SECTION

CASE OF GATT v. MALTA

(Application no. 28221/08)

JUDGMENT

(Just satisfaction – Striking out)

STRASBOURG

14 June 2011

FINAL

14/09/2011

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

In the case of Gatt v. Malta,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

David Scicluna, *ad hoc judge*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 28221/08) against Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Maltese national, Mr Lawrence Gatt (“the applicant”), on 10 June 2008.

2. In a judgment delivered on 27 July 2010 (“the principal judgment”), the Court held that there had been a violation of Article 5 § 1 of the Convention (*Gatt v. Malta*, no. 28221/08, § 52, ECHR 2010-...).

3. Under Article 41 of the Convention the applicant did not formulate a detailed just satisfaction claim, confining himself to indicating what might be an acceptable disposal of the case, namely the deduction of the time already spent in detention from any sentence of imprisonment which might be imposed if he were ultimately convicted of the criminal charges pending against him or, in the event of his acquittal of those charges, the award of compensation for the period of his unlawful detention.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within one month, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 59, and point 4 of the operative provisions). It further considered that the respondent State should in any event give consideration to securing the applicant’s immediate release from detention in so far as the legal basis for his period of detention was the Criminal Court’s decision of 28 July 2006 applying Articles 585 and 586 of the Criminal Code.

5. The applicant and the Government each filed observations.

6. Mr V. De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber accordingly appointed Mr David Scicluna to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

7. The applicant, born in 1947 and in detention at the time of the application, was facing proceedings before the Magistrates' Court, sitting as a court of criminal judicature, for drug trafficking.

8. On 13 August 2001 the applicant was granted bail under certain conditions, including a personal guarantee of approximately 23,300 euros ("EUR"). One of these conditions required the applicant to leave his residence only accompanied by his son, between 6 a.m. and 9 a.m. and 3 p.m. and 6 p.m., in order to accompany his son to and from school. On 14 August 2001 the applicant signed a declaration stating that he agreed to comply with the above-mentioned obligation and to pay the above-mentioned amount in the event that any of the set conditions were breached. He further deposited the sum of EUR 1,165.

9. Following a complaint that the applicant had been seen on an unspecified date in Valletta between 6 p.m. and 8 p.m., the Criminal Court, by a decision of 6 June 2006, held that the applicant had breached one of his bail conditions, namely being home by the established curfew. The Criminal Court therefore revoked his bail, ordered his re-arrest and decreed that the EUR 1,165 deposit as well as the EUR 23,300 in guarantee were to be paid to the Government.

10. As he was unable to pay the guarantee, proceedings were initiated by the Registrar of Courts under Article 585 of the Criminal Code ("the CC") to convert the sum into imprisonment as stipulated in Article 586 of the CC (not more than one day per EUR 11.65).

11. On 28 July 2006 the Criminal Court ordered the sum in guarantee to be converted into a period of detention at the rate of one day per EUR 11.50, namely two thousand days (more than five years and six months) of imprisonment, and the applicant was placed in detention.

12. On 12 June 2007 the applicant instituted constitutional proceedings, claiming that Article 586 of the CC and the Criminal Court decision of 28 July 2006 constituted a breach of Article 3 of the Convention in that it provided for an excessive and disproportionate punishment. Unlike other similar provisions of the law, Article 586 did not apply a ceiling on the length of the imprisonment to which a sum could be converted and therefore constituted degrading punishment.

13. On 19 October 2007 the Civil Court (First Hall) dismissed the applicant's complaint. It noted that the applicant did not complain under Articles 5 or 6 of the Convention that the conditions imposed – which he had freely accepted, knowing the consequences they could entail – had been excessive, but solely under Article 3 on the ground that the length of his penalty had been “excessive” and disproportionate. It held that the length of imprisonment had been clear as soon as the amount of the guarantee had been fixed; accordingly, after knowingly accepting these conditions the applicant could not now complain that the penalty was excessive, since it was related and linked to the amount of the guarantee. Furthermore, the Convention did not afford a right to call into question the length of a sentence imposed by a competent court and in no way had the penalty imposed on the applicant been shown to have reached the threshold required under Article 3.

14. On 12 February 2008 the Constitutional Court rejected an appeal lodged by the applicant. It held, however, that the first court had erred in considering his detention as falling under Article 5 § 1 (a), namely, following a conviction. His detention had its basis in Article 5 § 1 (b), namely, in order to secure the fulfilment of an obligation prescribed by law. It followed that, according to Strasbourg case-law, there had to be proportionality between the deprivation of liberty and the fulfilment of the obligation. In the present case the applicant had undertaken an obligation knowing the unambiguous and non-arbitrary consequences it entailed, according to a pre-established rate which remained valid up to the date of payment. The fact that no ceiling applied to the provision in question did not affect the proportionality between the obligation and the consequences it entailed. Absolving a person of such an obligation when it had not been fulfilled would render the notion of guarantees against detention futile. This reasoning applied to both Article 5 and Article 3 of the Convention. Indeed, the applicant had neither contested the proportionality of the amount specified in the guarantee imposed nor stated that it was beyond his means. It followed that it could not amount to inhuman or degrading treatment or punishment. Notwithstanding that elements of shocking disproportionality could raise an issue under Article 3 (*Leger v France*, and *Price v the United Kingdom*), this was not so in the present case.

15. On 27 July 2010 the Court examined the merits of the present case and found that there had been a violation of Article 5 § 1 of the Convention.

16. Following the Court's judgment the Attorney General filed an application with the Constitutional Court, to be determined with urgency, declaring that for the purposes of Article 44 § 2 of the Convention the Government undertook not to request a rehearing of the case before the Grand Chamber. He requested the Constitutional Court to order the execution of the Court's judgment of 27 July 2010 by ordering the release of the applicant in so far as the legal basis for his detention was the Criminal

Court's decision of 28 July 2006 applying Articles 585 and 586 of the Criminal Code, and to place the applicant in the position he was in immediately prior to that decision, namely a detainee awaiting trial.

17. On 16 August 2010 the Constitutional Court granted the request.

18. In the meantime on 13 August 2010 the applicant had requested bail before the Criminal Court. By means of a reply of 16 August 2010 the Attorney General did not oppose the request.

19. By a decision of 17 August 2010 the Criminal Court granted the applicant bail subject to certain conditions. He was released on the same day.

20. By a decision of 25 August 2010 the Criminal Court relaxed the curfew conditions imposed when granting bail.

THE LAW

21. The Government submitted that following the Constitutional Court judgment of 16 August 2010 it was clear that the applicant's detention between 28 July 2006 and 17 August 2010 would qualify for remission of any prison sentence which may eventually be imposed on the applicant if found guilty. This coupled with the applicant's release entailed that the applicant had received full and just satisfaction in respect of his claim.

22. By a letter of 17 December 2010 the applicant submitted that he was satisfied with the outcome of his case. However, noting that the relevant law had not yet been amended, he invited the Court to provide guidelines in this respect.

23. Having been invited by the Registry to state whether he wished to discontinue the outstanding Article 41 issue before the Court, by a letter of 3 March 2011, the applicant reiterated that in view of the developments subsequent to the Court's principal judgment, he was satisfied with the outcome of his case.

24. Having regard to Article 37 § 1 (a) and (b) of the Convention, the Court finds that the applicant does not intend to pursue the remainder of the application since the matter before it has been resolved. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the remainder of the application to be continued.

25. Accordingly, the remainder of the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the remainder of the application out of its list of cases.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President