



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

FIRST SECTION

**CASE OF CALLEJA v. MALTA**

*(Application no. 75274/01)*

JUDGMENT

STRASBOURG

7 April 2005

**FINAL**

***07/07/2005***

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Calleja v. Malta,**

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr A. KOVLER, *judges*

Mr G.M. BONNICI, *ad hoc judge*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 17 March 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 75274/01) against the Republic of 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 Meinrad Calleja (“the applicant”), on 16 July 2001.

2. The applicant was represented by Mr I.R. Refalo and Mrs T. Cachia, lawyers practising in Valletta. The respondent Government were represented by their Agent, Mr S. Camilleri, Attorney General.

3. The applicant alleged that his detention on remand and the criminal proceedings against him and were excessively long (Articles 5 § 3 and 6 § 1 of the Convention).

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr G. Bonello, the judge elected in respect of Malta, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr M. Bonnici to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a decision of 18 March 2004, the Court declared the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

## THE FACTS

7. The applicant was born in 1961 and is currently detained in Corradino Prison (Malta).

### **A. The applicant's deprivation of liberty and the proceedings before the Court of Magistrates as a court of criminal inquiry**

8. In November 1995 the applicant was arrested and charged with trafficking in dangerous drugs. On 15 May 1996, while he was in pre-trial detention, a fresh charge of complicity in attempted wilful homicide was brought against him. The applicant was accused of having tried, by means of an instruction issued to third parties, to kill Mr Richard Cachia Caruana, the personal assistant to the Prime Minister, on account of Mr Caruana's role in the separate proceedings on the charge of trafficking in dangerous drugs. The events in issue allegedly occurred before and on 18 December 1994. Expert forensic reports were submitted in January and February 1995.

9. The applicant was subsequently placed in detention on remand in connection with this new criminal charge also.

10. From the date of the applicant's arraignment (15 May 1996) until 13 August 1996, twenty-three hearings took place before the Court of Magistrates, acting as a court of criminal inquiry. A number of police officers, experts and witnesses, including Mr Joseph Fenech, an accomplice who had made a confession and had been granted a pardon, were cross - examined by the parties. A number of objections were raised by the prosecution and the defence about the questions put by the other party. The court issued a ban on the publication of reports and articles about the proceedings before it.

11. On 13 August 1996 the Court of Magistrates appointed a graphologist and concluded that there were sufficient grounds for the filing of a bill of indictment against the applicant.

12. However, on 16 September 1996 the Attorney General asked the Court of Magistrates to re-open the proceedings in order to hear four witnesses, namely two other accomplices of the applicant, a doctor who had been on duty on the day the victim was admitted to hospital, and the graphologist appointed on 13 August 1996. On 30 September 1996 the court heard the first three witnesses. The two accomplices refused to give evidence in order not to incriminate themselves. The court revoked the appointment of the expert and asked the registrar to provide it with a new list of experts.

13. On 1 November 1996 the Attorney General again asked the court to re-open the proceedings and to explain the reasons for revoking the appointment of the expert; to identify handwriting experts, including foreign ones; and to hear all the evidence the police could adduce.

14. On 13 November 1996 the Court of Magistrates appointed a new graphologist, Mr Manfred Hecker.

15. On 12 December 1996 the Attorney General requested once again that the inquiry be re-opened. He asked that Mr Hecker and Mr Fenech be heard, the latter being requested to give explanations about the record of his interrogation by the police. Moreover, he asked that some documents previously exhibited be listed in detail, while other documents not already exhibited should be produced by the registrar. A hearing, during which Mr Fenech was examined, took place on 8 January 1997.

16. On 28 February 1997 the Attorney General requested that the inquiry be re-opened for the following matters: to correct a mistake in the records; to hear Mr Hecker; to produce various newspapers; to complete the appointment of another expert and have him produce some photographs; and to hear two new witnesses.

17. On 11 March 1997, after the examination of five witnesses, the hearing was adjourned as Mr Hecker was not in Malta. He gave evidence on 24 March 1997.

18. On 25 March 1997 the registrar informed the court that the evidence produced on 11 March 1997 had not been properly recorded and that the witnesses heard during that sitting should be summoned again.

19. On 30 April 1997 the Attorney General requested the re-opening of the inquiry in order to hear Mr Hecker and other witnesses, as well as the witnesses examined on 11 March 1997. With the exception of Mrs Lilian Zahra, who was abroad, the witnesses concerned were examined by the prosecution on 21 May 1997. Counsel for the defence, who was attending another trial, was not present and reserved his right to cross-examine the witnesses. At the Attorney General's request, on 30 July 1997 Mrs Zahra was examined. At the end of the sitting, the court returned the documents relating to the proceedings to the Attorney General.

20. The bill of indictment against the applicant for the charge of complicity in attempted wilful homicide was filed on 6 August 1997.

21. On 7 August 1997 the applicant was provisionally released on bail in relation to the charge of trafficking in dangerous drugs. However, the applicant could not leave the prison as he was still required to remain in pre-trial detention on the charge of complicity in attempted murder.

## **B. The proceedings on the preliminary pleas before the Criminal Court and the Court of Criminal Appeal**

22. In two separate notes of 1 September 1997 the applicant filed several preliminary pleas, challenging the validity of the bill of indictment and the admissibility of a number of documents and prosecution witnesses. The applicant also requested that 146 witnesses be heard on his behalf.

23. On 5 September 1997 the Attorney General contested the admissibility of certain documents and witnesses referred to by the defence.

24. A number of hearings on the preliminary pleas took place before the Criminal Court. In particular, the applicant's case was discussed on 22 and 27 October 1997. On 30 October 1997, the case was adjourned until the following day because counsel for the applicant failed to appear. The case was further discussed on 31 October and 1 December 1997, then postponed until 15 December 1997, on which date the applicant informed the court that his counsel had fallen ill. The case was adjourned first until 7 January, then until 6 February 1998. On that date and on 13 February 1998 the Criminal Court heard oral submissions from the parties.

25. The following hearing, initially scheduled for 2 March 1998, was postponed until 30 April 1998 on the ground that the court needed more time to deliberate. On 30 April 1998 the Criminal Court delivered its judgment on all the preliminary pleas. Both the defence and the prosecution declared that they intended to appeal. The case was adjourned pending the decision on the parties' appeals.

26. On 6 May 1998 the applicant appealed against the Criminal Court's judgment of 30 April 1998. The prosecution did not appeal.

27. On 9 August 1999 the Court of Criminal Appeal set the appeal down for hearing on 7 October 1999. The hearing was then adjourned until 25 October 1999 on the ground that one of the sitting judges was ill. On 25 October 1999 the parties made their oral submissions. The next hearing, initially scheduled for 4 November 1999, was postponed first until 9 November 1999, then until 25 November, and finally until 11 January 2000 at the request of the defence, on the ground that the accused had appeared in court unassisted. The Court of Criminal Appeal heard further oral submissions by the parties on 11 January and 7, 9 and 20 March 2000.

28. On 3 May 2000 the Court of Criminal Appeal partly quashed the Criminal Court's judgment of 30 April 1998.

### **C. The continuation of the main criminal proceedings before the Criminal Court and the applicant's challenge**

29. The case concerning the charge of complicity in attempted wilful homicide was resumed before the Criminal Court. A hearing was scheduled for 26 May 2000 in order to agree on a date for the trial. However, the proceedings were adjourned at the defence's request.

30. On 2 June 2000 one of the applicant's counsel withdrew from the defence team. The Criminal Court observed that all that needed to be done was to appoint a date for the trial by jury. However, the applicant's remaining lawyer requested an adjournment in order to check his other professional commitments and to consult with his client. On 4 and 28 July 2000 the proceedings were postponed on the ground that the applicant's counsel was ill.

31. On 31 July 2000 the defence challenged the President of the Criminal Court – Mr Justice Vincent Degaetano – on the ground that he had participated in the trial of Mr Ian Farrugia, one of the applicant's co-accused. The parties made oral submissions on this plea, and the court ordered the applicant to submit, before 31 August 2000, a note indicating the legal provisions on which he was relying and the decisions taken by the judge in question during the trial of Mr Farrugia. The court proposed to adjourn the case until 11 September 2000, on which date a decision on the challenge should have been taken. However, the applicant's counsel objected that he would be away from Malta during the whole month of September. The proceedings were therefore postponed until 2 October 2000, on which date the Criminal Court rejected the challenge.

32. The applicant declared his intention to appeal. Observing that there was no right to appeal against its ruling, the Criminal Court provisionally fixed the date of the trial by jury for 2 May 2001. The applicant's counsel observed that in view of the declaration made by the defence, the date of the trial should not have been fixed and the proceedings should rather have been adjourned *sine die*.

33. On 5 October 2000 the applicant appealed against the decision of 2 October 2000.

34. The hearing, initially scheduled for 11 January 2001, was held on 27 December 2000, on which date the Court of Criminal Appeal adjourned the proceedings until 23 January 2001 in view of the absence of the applicant's counsel. The latter subsequently informed the court that he had not been notified of the new date of the hearing. The Court of Criminal Appeal also observed that the Attorney General had not submitted a reply in writing to the applicant's appeal. The Government, with whom the applicant disagreed, emphasised that submissions were normally made orally and that the Attorney General was in no way obliged to file a written reply.

35. On 23 January 2001 the accused, who had fallen ill, did not appear. In the presence of his legal counsel, the court heard evidence from a doctor as to the applicant's state of health. A medical certificate was exhibited.

36. By decision of 25 January 2001 the Court of Criminal Appeal dismissed the applicant's appeal. It observed that the accused's allegations were based only on suppositions and unproven gratuitous assertions which were devoid of legal value.

37. On 4 April 2001 the applicant was convicted and sentenced to fifteen years' imprisonment and to a fine of 30,000 Maltese liras (approximately 72 273 Euros) in respect of the charge of trafficking in dangerous drugs. He then started to serve his sentence for that offence. The earliest date of the applicant's release was fixed at 19 November 2006. This calculation was made by deducting from the final sentence the period that the accused had spent in pre-trial detention.

38. After having heard in camera the views of the defence and the prosecution, on 16 April 2001 the Criminal Court decided to adjourn the trial by jury on the charge of complicity in attempted murder until 5 November 2001. It considered, in particular, that it was not wise to commence the new trial at a date too close to the termination of the other proceedings against the same accused. The witnesses to be heard on behalf of the prosecution were summoned to appear on 5 November 2001.

39. However, on 22 October 2001 the applicant instituted proceedings before the First Hall of the Civil Court exercising its constitutional jurisdiction, relying on a violation of Article 6 of the Convention and Article 39 of the Constitution of Malta. He submitted, in particular, that he could not be judged by the same magistrate – Mr Justice Degaetano – who had participated in his previous trial for trafficking in dangerous drugs and in the trial of two persons accused of complicity in the offence with which he was charged. He also complained about the extensive media coverage of his trial and about the negative opinions expressed about him and his innocence by the Prime Minister, by the Attorney General and by certain police officers.

40. On 25 October 2001 the applicant requested the Criminal Court to stay the proceedings pending the decision on his constitutional application. The Attorney General replied that that request should be rejected as constituting an abuse of process.

41. In an order of 1 November 2001 the Criminal Court noted that the date of the jury trial had been known to the applicant by 16 April 2001. However, it was only two weeks before the trial was scheduled to commence that the accused had filed his constitutional application. The Criminal Court noted, moreover, that the fact that the constitutional application was pending did not *stricto jure* oblige it to adjourn the trial. However, if the trial were to be continued, the Civil Court and, in the event of an appeal, the Constitutional Court might have felt in some way pressed

to give a ruling on the applicant's complaint in an unreasonably short time (that is, before the end of the trial). Such a situation should, if possible, be avoided and it would have been unnecessarily costly to have the trial by jury held more than once. The Criminal Court therefore decided to adjourn the hearing until 11 February 2002. Further sittings were held before the Criminal Court on 10 June and 4 November 2002 and on 7 January and 1 April 2003; they were all adjourned pending the outcome of the applicant's constitutional application. The next hearing was fixed for 7 July 2003.

42. The date of the first hearing before the First Hall of the Civil Court was fixed for 30 October 2001, on which date the applicant produced several documents. The proceedings were adjourned in order to examine those documents. In a note of 21 November 2001 the applicant stated that one of his counsels had been required to go abroad on a university assignment and would not be present at the hearing on 23 November 2001. The Civil Court reserved its decision on this matter.

43. On 23 November 2001 the applicant appeared, assisted by his other counsel. He declared that he needed to produce in evidence copies of articles which had appeared in local newspapers. The case was adjourned until 9 January 2002, on which date the court requested further information from the applicant. The hearing of 1 February 2002 was postponed at the Attorney General's request. On 15 February 2002 the court adjourned the case in order that the applicant could conduct inquiries to verify the facts concerning a video recording exhibited by him.

44. In a note of 1 March 2002 the applicant pointed out that the recording in issue did not concern a political debate, as he had initially stated, but a press conference. On 15 March 2002 he exhibited an audio recording of the political debate in question and declared that he had no further evidence to produce. The Attorney General requested the authentication of the document exhibited.

45. On 26 April 2002 a witness on behalf of the applicant appeared in order to authenticate the relevant documents. The case was adjourned first until 31 May 2002, then until 5 July 2002 for final oral submissions by the parties. The hearings of 11 October, 15 November, 6 and 16 December 2002 and 10 January 2003 were adjourned as the court required more time for deliberation.

46. On 20 January 2003 the First Hall of the Civil Court dismissed the applicant's application.

47. On 29 January 2003 the applicant appealed against that judgment to the Constitutional Court.

48. On 12 February 2003, the date of the first hearing, Mr Justice Degaetano, who presided over the Constitutional Court, withdrew from the case. A substitute judge was appointed and the case was adjourned until 12 March 2003 for oral submissions by the parties.

49. On 18 June 2003 the Constitutional Court dismissed the applicant's appeal.

50. On 7 July 2003 the Criminal Court set 5 January 2004 as the date for the trial on the merits of the charge of complicity in attempted murder. The applicant declared that he intended to bring before the European Court of Human Rights the issues raised in his constitutional complaint.

51. On 1 February 2004, the jury delivered a verdict of not guilty with respect to the charge of complicity in attempted murder.

#### **D. The applicant's requests for provisional release**

52. In the course of the proceedings against him, the applicant applied for provisional release on bail on several occasions (3 October 1997, 3 February, 18 June and 27 October 1998, 27 August 1999, 14 and 15 December 2000). His requests were rejected by the Criminal Court and by the Court of Criminal Appeal on 24 October 1997, 16 February, 14 July and 11 November 1998, 27 September 1999 and 21 December 2000, after having held hearings at which the parties were able to make their oral submissions.

53. The Criminal Court was not persuaded that there was no danger that, once released, the applicant would not try to interfere with evidence or in any other way try to obstruct the course of justice with regard to his case. It referred, in particular, to the extraordinary gravity of the charges, which showed the manifest social danger posed by the applicant, who might commit further offences against the person, including offences of bodily harm. In this connection, it was observed that the identity of the witnesses had become known to the applicant. There was, moreover, a danger that the latter might try to abscond, making use of the contacts he had abroad, in order to avoid the heavy punishment which was likely to be inflicted on him in the event of his conviction.

54. The Court of Criminal Appeal considered that the applicant's situation had not significantly changed and that no new element justifying a departure from the previous findings had been submitted. In particular, it considered that the time that had elapsed since the beginning of the applicant's detention was not substantial enough to conclude that the length of the deprivation of liberty in issue was unreasonable.

#### **E. The applicant's constitutional application relating to the "reasonable time" issue before the First Hall of the Civil Court**

55. In the meantime, on 30 March 1999, the applicant, alleging that his lengthy detention and the continued refusal of bail had infringed his rights under Articles 5 and 6 of the Convention, introduced a constitutional complaint before the First Hall of the Civil Court. He observed, in

particular, that his deprivation of liberty was based, *inter alia*, on the risk of his tampering with evidence, a risk which, in the Attorney General's submission, had become even more serious because his accomplices were free and the identity and nature of the prosecution evidence and witnesses had become known to the accused. In the applicant's opinion, however, those fears were unfounded and the danger referred to by the authorities could in any case have been avoided by adopting the necessary precautionary measures, such as adequate surveillance by the police, with the possibility of house arrest. Moreover, the evidence of the prosecution had become known to the applicant by right in order to enable him to prepare his defence; that fact could therefore not be used against him to justify a violation of his other fundamental rights.

56. The Attorney General and the Commissioner of Police filed a memorandum in which they applied for the applicant's complaints to be dismissed. They pointed out that the offence attributed to the applicant was punishable by up to twenty years' imprisonment, and that this element created an incentive for the accused to try to tamper with evidence and also to abscond, possibly making use of the foreign contacts which he manifestly had. Moreover, the nature of the offence showed that the applicant was a danger to society and that there was a risk that he might commit other offences. Finally, the danger of his interfering with evidence was real, as was shown by the fact that after he had given evidence, a witness in his case had been attacked by two unknown persons.

57. Four hearings took place before the First Hall of the Civil Court on 9 and 14 April and 3 and 12 May 1999. On the last-mentioned date, the Civil Court authorised the applicant to file submissions concerning a non-exhaustion plea raised by the respondents. This note was filed on 27 May 1999.

58. On 22 June 1999 the First Hall of the Civil Court dismissed the applicant's application. With reference to the case-law of the European Court of Human Rights, the Civil Court noted that the prolonged detention of a person who was presumed innocent but was suspected of having committed an offence should be justified in the public interest and that an accused deprived of his liberty had the right to have the investigations and trial conducted within a reasonable time. In the applicant's case, the Court of Criminal Appeal had taken into account the period of time spent by the applicant in detention in view of all the relevant circumstances, notably the nature and gravity of the charges, the danger of his tampering with evidence and the risk of his absconding. Moreover, the applicant's case was particularly complex, regard being had to the number of witnesses and experts involved in the investigations and to the pleas submitted by the parties, and it could not be said that the prosecution had failed to show diligence in the conduct of the investigations. The time that had elapsed from the beginning of the investigations could not, therefore, be considered

unreasonable. Finally, the fact that the applicant had been denied bail was not prejudicial to the presumption of innocence, as the decisions in this regard did not reflect an opinion as to his guilt.

#### **F. The applicant's appeal before the Constitutional Court**

59. On 2 July 1999 the applicant appealed against the judgment of 22 June 1999 before the Constitutional Court.

60. The first hearing took place on 16 July 1999. On 29 July 1999 the applicant challenged two of the three sitting judges. A judgment on this issue was given on 4 August 1999. The two judges in question withdrew from hearing the case, which was adjourned until 2 September 1999, on which date the parties made oral submissions. On 15 October 1999 the applicant requested leave to produce a decision given by the Court of Criminal Appeal on his application for bail. This request was subsequently served on the respondents, who on 19 October 1999 declared that they did not oppose bail. The hearings of 20 October and 22 November 1999 and of 12 January and 14 February 2000 were adjourned because the Constitutional Court needed more time for deliberation. On 22 February 2000 the court observed that the members of the family of one of the sitting judges had fallen seriously ill and that this fact prevented it from taking a decision immediately; however, the case had been given the priority that it deserved.

61. On 8 March 2000, at the Constitutional Court's request, the parties made submissions on the point as to whether a decision on the issue under Article 5 of the Convention was required.

62. On 29 March 2000 the Constitutional Court upheld the decision of the First Hall of the Civil Court in so far as it concerned the length of the criminal proceedings against the applicant (Article 6 § 1 of the Convention). However, the Constitutional Court pointed out that the applicant had also complained under Article 5 of the Convention, alleging that the grounds for his detention had weakened with the passing of time. Even if the accused had not explicitly quoted this latter Article in his final submissions, thus misleading the first-instance court, his complaint constituted a separate grievance on which the Civil Court should have made a specific ruling. Therefore, the Constitutional Court remitted the facts of the case to the Civil Court, instructing the latter to examine this complaint.

### **G. The rehearing of the case by the First Hall of the Civil Court**

63. Proceedings were resumed before the First Hall of the Civil Court, and a hearing was scheduled for 17 April 2000. On 3 May 2000 five witnesses appeared on behalf of the respondents. They testified about incidents experienced by a witness who had testified against the applicant in the pre-trial investigation proceedings and by the daughter of that witness.

64. On 5 May 2000 the President of the Civil Court withdrew from the case. A substitute judge was appointed on 16 May 2000, but he also had to withdraw as he was one of the judges who had denied one of the applicant's applications for bail. Another substitute judge was appointed on 25 May 2000, and a new hearing was set down for 14 June 2000. Other witnesses were heard on 3 and 24 July 2000. On 24 August 2000 the applicant waived the right to cross-examine those witnesses, but requested leave to file written observations. The latter were filed on 3 October 2000, seven days after the expiry of the time allowed by the Civil Court. The respondents filed their written reply at the hearing of 31 October 2000. On 8 November 2000 the case was adjourned for judgment.

65. On 14 December 2000 the First Hall of the Civil Court declared that the overall duration of the applicant's pre-trial detention had infringed Article 5 § 3 of the Convention and that the applicant was entitled provisionally to be released under conditions guaranteeing his appearance at the trial. The determination of these conditions was left to the discretion of the Criminal Court.

66. The Civil Court first underlined that a period of time held to be reasonable under Article 6 § 1 of the Convention could be considered excessive under Article 5 § 3, as the criteria laid down in the latter provision, which concerned personal liberty, were more rigorous. Moreover, it was clear that the passing of time could not but aggravate the prejudicial effects that the pre-trial detention had had on the applicant's situation.

67. The Civil Court further noted that the proceedings had not been conducted in a vacuum. In fact, the inquiry had been closed, the bill of indictment had been issued and the preliminary pleas had been decided. On the other hand, it should be kept in mind that the applicant had a right to institute all the proceedings and to lodge all the complaints he deemed necessary for the defence of his interests, even if this might prolong the criminal proceedings.

68. As to the grounds justifying the applicant's continuing detention, the Civil Court observed that the risk of his tampering with evidence appeared to subsist regardless of whether or not he remained under arrest. In fact, the Attorney General himself had mentioned that certain witnesses had already started to alter the evidence which they had given during the inquiry. Moreover, all the evidence against the applicant had already been gathered and heard on various occasions by the national courts, and the danger of

interference with the course of justice was likely to be reduced as the investigations progressed.

69. As to the risk of committing new offences, the Civil Court noted that the prosecution had not proved that the applicant was responsible for certain incidents in which a witness and his relatives had been involved. Furthermore, as the crimes of which the applicant was accused had been allegedly committed on the basis of instructions, it could be argued that the applicant constituted a threat to society even if he remained in prison. In any case, it appeared that the prosecution was inferring the applicant's dangerousness more from the gravity of the case than from any other evidence.

70. Finally, it was true that the applicant risked a heavy sentence and that he had been abroad several times in 1994 and 1995. However, it had not been proved that the applicant had tangible connections outside Malta which might facilitate his escape. He had, on the contrary, strong family ties in Malta. Keeping in mind that the applicant had already spent four and a half years in detention, and that this period would in any case have been deducted from his final sentence, the Civil Court concluded that the risk of his absconding could be counterbalanced by adequate guarantees ensuring the appearance of the accused at the trial.

#### **H. The Attorney General's appeal to the Constitutional Court**

71. On 18 December 2000 the Attorney General of Malta and the Commissioner of Police appealed to the Constitutional Court against the judgment of 14 December 2000.

72. The first hearing took place on 27 December 2000. On that date all three judges composing the court withdrew from the case on account of their involvement in prior proceedings concerning the question of the applicant's release on bail. On the following day three new judges were appointed. The applicant then requested that the next hearing, scheduled for 12 January 2001, be fixed for an earlier date. A hearing was scheduled for 9 January 2001, on which date the parties made their oral submissions on the appeal.

73. On 23 January 2001 the Constitutional Court quashed the impugned judgment. It observed that the applicant's prolonged detention had been based on four grounds, notably the risk of contamination of evidence, the danger of his committing a new offence, the fact that he was a threat to society, and the danger that he might abscond or hide. In the Constitutional Court's view, each of these reasons was serious enough potentially to create an obstacle to the applicant's release.

74. The Constitutional Court noted that the prosecution had produced evidence demonstrating that the applicant had put pressure on individuals for the purpose of committing homicide on the basis of instructions. The

risk of tampering with evidence was therefore a concrete one, especially at a stage where the applicant was aware of the content of the evidence and of the names of the witnesses. As to the risk of committing a new offence, the prosecution relied mainly on two incidents concerning a witness and his daughter. However, there was nothing to show that the applicant was responsible for those acts. On the other hand, evidence had been produced against the applicant in a separate set of criminal proceedings concerning a serious accusation of drug trafficking.

75. As to the possibility that the applicant might abscond, it was true that the longer his detention lasted, the more remote this possibility was. The fact that the applicant's family lived in Malta equally militated against the danger of flight. However, the seriousness of the charges brought against the applicant and the fact that he was about to face a trial by jury on charges of drug trafficking militated in the opposite direction.

76. It remained to be considered whether the time that had elapsed since the date of the arrest could neutralise all the other relevant factors justifying the applicant's deprivation of liberty. In this connection, it was noted that far from trying to speed up the proceedings, the applicant had caused a number of delays. For instance, when the Criminal Court had been ready to fix the date of the trial by jury, the applicant had challenged the judge, and from 13 September 1999 until 23 January 2001 his lawyers had demanded at least ten adjournments of the hearings, thus unnecessarily lengthening the proceedings. In particular, on 2 October 2000 the Criminal Court had provisionally scheduled the date of the trial by jury for 2 May 2001. Instead of objecting to this lengthy delay, counsel for the defence had asked why the Criminal Court was setting a provisional date for the trial instead of adjourning it *sine die*. In the Constitutional Court's opinion, this behaviour was difficult to reconcile with the applicant's declared wish to have his case heard within a reasonable time.

77. Even if it was preoccupied about the length of time that the applicant's trial was taking, the Constitutional Court concluded that in the special circumstances of the case, the national authorities had displayed special diligence in the conduct of the proceedings, and that the obstacles which had unduly delayed the latter were mainly attributable to the lawyers representing the applicant. It was true that the burden of special diligence rested on the authorities and not the accused. However, the indulgence shown by the Criminal Court in granting the adjournments was due to the demands made by the applicant. The Constitutional Court underlined that an accused person had every right to choose the best line of defence, but he did not have the right to lengthen the proceedings, under one pretext or another, or to employ such grounds in favour of his provisional release pending trial.

78. In the light of the above, the Constitutional Court found that the period of time spent by the applicant in pre-trial detention had not yet violated Article 5 § 3 of the Convention. It considered, however, that the

applicant's application for bail should be allowed if a definitive date for the hearing of the trial was not fixed in due time after the Court of Criminal Appeal had ruled on the challenge to the judge presiding over the Criminal Court.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

79. The applicant considered that the length of his pre-trial detention exceeded the “reasonable time” requirement set forth in Article 5 § 3 of the Convention. In so far as relevant, Article 5 reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial...”

80. The Government contested that submission.

#### A. The submissions of the parties

##### *1. The Government*

81. The Government alleged that the applicant's pre-trial detention had been justified for its whole duration and that the national authorities had exercised special diligence in the conduct of the proceedings.

82. As to the reasons justifying the applicant's detention on remand, the Government referred to the risks of his absconding, committing a new offence and tampering with evidence, as had been emphasised by the domestic courts and accepted as relevant by the Constitutional Court. The latter had pointed out that the danger posed by the applicant could not but

increase in the event of his release. The Government also observed that the applicant, who spent much more time abroad than in Malta, could have made use of his foreign contacts in order to evade justice. Had this happened, nothing would have prevented his family from following him.

83. In the Government's view, the domestic proceedings had been prolonged by the conduct of the applicant, who at the last minute had repeatedly created obstacles to the commencement of the trial, thus justifying the authorities' concerns about the danger that, once released, he might try to abscond or to tamper with the evidence. According to the Government, the applicant's real goal was not to have a trial within a reasonable time, but to be released before the trial, as was demonstrated by his strategy of systematic obstruction after having been served with the bill of indictment.

84. In this connection, the Government made reference to the following facts.

85. In July 2000 the applicant had challenged the President of the Criminal Court on the basis of facts which had been known to him at least since 1998 or 1999. In fact, the trial of Mr Farrugia had ended on 7 October 1998, and the retrial of the case had been finally determined on 13 June 1999. Both trials had been presided over by Mr Justice Degaetano, the judge eventually challenged by the applicant. The latter could, therefore, have made his challenge at any stage of the proceedings against him after 7 October 1998 – or, at the latest, after 13 June 1999. However, he had not done so until 31 July 2000, when the Criminal Court had been about to fix a date for the trial.

86. Moreover, the applicant had waited until a few days before the hearing of 5 November 2001 to file a constitutional complaint against the decision of 25 January 2001 to dismiss his challenge, and on 25 October 2001 he had requested a stay of the proceedings pending the outcome of his application before the First Hall of the Civil Court.

87. The Government further noted that the applicant had invariably challenged every decision which was subject to appeal, thus inevitably delaying the proceedings. They referred, on this point, to his appeal against the Criminal Court's judgment of 30 April 1998 on preliminary pleas and against the decision of 2 October 2000 dismissing his challenge, as well as to the constitutional applications he had filed.

88. The Government observed that in his final submissions of 30 March 1999 before the First Hall of the Civil Court, the applicant had failed to rely on Article 5 § 3 of the Convention, thus delaying, to some extent, the processing of his constitutional application. The Civil Court had been misled by this fact, and had ruled only on the reasonableness of the length of the applicant's trial. As a consequence, on 29 March 2000 the Constitutional Court had referred the case back to the Civil Court,

instructing the latter to give a ruling also on the duration of the applicant's pre-trial detention.

## *2. The applicant*

89. The applicant observed that he had officially been charged with complicity in attempted wilful homicide on 15 May 1996 and that he had been held in detention on remand at least until 4 April 2001, the date on which he had been convicted of trafficking in dangerous drugs. He argued that a period of almost five years could not be considered reasonable and could hardly be reconciled with the principle of the presumption of innocence.

90. The applicant emphasised that it was up to the Government to demonstrate that the authorities involved had shown special diligence in the conduct of the proceedings. He considered that the preliminary pleas and the challenge against the presiding judge had not been the reasons for the delays in the proceedings. He observed that he had confined himself to making use of remedies allowed by national law in order to guarantee that a trial was conducted in accordance with the fundamental rights of the accused. In the applicant's view, his challenge had been made without undue delay and as soon as the grounds justifying it had become known to the defence.

91. The applicant emphasised the importance of the proceedings before the court of criminal inquiry, a stage during which it was decided whether there were sufficient grounds for issuing a bill of indictment and during which the defence became aware of the prosecution's evidence and arguments. It was also the stage when the lawfulness of the arrest was examined and applications for bail were considered. It was therefore the court of criminal inquiry which was mostly responsible for ensuring that the principles enshrined in Article 5 of the Convention were complied with.

92. The applicant noted in particular that under the Criminal Code the inquiry should be concluded within one month; however, that time-limit had been extended twice in his case in order to hear all the evidence produced by the prosecution. Moreover, after 13 August 1996, the date on which the court of criminal inquiry had declared that it had found enough grounds to indict the accused, the prosecution had asked to hear new witnesses, to re-examine witnesses who had already been heard and to file more documents. The applicant underlined that all this evidence had been known to the prosecution long before August 1996 and that the requests in issue had delayed the proceedings for an additional period of eleven months, until 7 July 1997.

93. The applicant further alleged that significant delays had occurred in scheduling the first hearing of his appeal against the Criminal Court's ruling on the preliminary pleas. He observed that, although the appeal had been lodged on 6 May 1998, the first hearing had not taken place until 25 October 1999. Those delays had been attributable solely to the domestic

authorities. In order to assert his right to be released pending trial he had only been able to submit periodic applications for bail. The proceedings relating to those applications had been conducted separately and had not therefore caused any delay in the commencement of the trial.

94. In respect of the constitutional application relating to the “reasonable time” issue, the applicant observed that that remedy had not in any way affected the overall length of the main criminal proceedings, which had not been stayed pending the outcome of the proceedings instituted before the Civil Court on 30 March 1999 and before the Constitutional Court on 2 July 1999. The applicant further alleged that, in its judgment of 23 January 2001, the Constitutional Court had confined itself to examining the records of certain hearings and had failed to take proper account of the time which had elapsed after the commission of the offence, and of the delays which had occurred during the inquiry and in the scheduling of the hearing of his appeal against the Criminal Court's judgment on the preliminary pleas.

95. As to the fact, underlined both by the Government and the Constitutional Court, that, when on 2 October 2000 the Criminal Court had fixed the date of the trial by jury for 2 May 2001 the defence had asked why the proceedings had not been adjourned *sine die*, the applicant observed that he had declared his intention to appeal and that this could have justified staying the proceedings. When the impartiality of a tribunal was being seriously questioned, the trial should be suspended until that focal issue has been resolved. Moreover, the decision to stay the proceedings had been taken by the Criminal Court after he had lodged his application with the European Court in Strasbourg.

## **B. The Court's assessment**

### *1. The period to be taken into consideration*

96. The Court notes that the applicant complained about his detention on remand in respect of the charge of complicity in attempted wilful homicide. The detention started on 15 May 1996. The applicant was subsequently deprived of his liberty within the meaning of Article 5 § 1 (c) of the Convention until 4 April 2001, when he was convicted of trafficking in dangerous drugs and started to serve his sentence for that offence.

97. The period to be taken into consideration for the purposes of Article 5 § 3 of the Convention is therefore four years, ten months and twenty days.

## 2. Principles established under the Court's case-law

98. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Pantano v. Italy*, no. 60851/00, § 66, 6 November 2003).

99. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Kudla v. Poland* [GC], no. 30210/96, § 110, CEDH 2000-XI, and *Labita v. Italy* [GC], no. 26772/95, § 152, CEDH 2000-IV).

100. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001; *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, pp. 2978-79, § 102; *Contrada v. Italy*, judgment of 24 August 1998, *Reports* 1998-V, p. 2185, § 54).

## 3. Application of those principles in the instant case

101. The Court observes that the relevant authorities examined whether the applicant should remain in detention following his applications for release on six occasions: 24 October 1997, 16 February, 14 July and 11 November 1998, 27 September 1999 and 21 December 2000 (see paragraph 52 above). In addition, the Civil Court (First Hall) and the Constitutional Court examined the question whether the time spent in detention on remand by the applicant was unreasonably long in their

judgments of 14 December 2000 and 23 January 2001 (see paragraphs 65-70 and 73-78 above).

102. In deciding to keep the applicant in custody, the authorities relied simultaneously on the existence of serious evidence of his guilt and on the risks of his re-offending and absconding. It was also pointed out that there was a significant danger of evidence being tampered with.

**(a) Whether reasonable grounds for suspecting the applicant remained**

103. As regards “reasonable suspicion”, the Court reiterates that the fact that an applicant has not been convicted does not necessarily mean that the purpose of his detention was not in accordance with Article 5 § 1 (c). The existence of such a purpose must be considered independently of its achievement and sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence for a verdict of guilt, either at the point of arrest or while the applicant was in custody (see, *mutatis mutandis*, *Erdagöz v. Turkey*, judgment of 22 October 1997, *Reports* 1997-VI, p. 2314, § 51, and *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 29-30, § 53).

104. However, for there to be reasonable suspicion there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see the *Erdagöz* judgment cited above, p. 2314, § 51 *in fine*, and *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32). In the present case, the domestic authorities relied on expert forensic reports and on the declarations of a number of witnesses, including an accomplice who had made a confession (see paragraphs 8 and 10 above).

105. In these circumstances, the Court is satisfied that sufficient evidence of suspicion had been brought against the applicant, and that the domestic courts could reasonably suspect that he was involved in an attempted wilful homicide. However, the existence of a strong suspicion of the involvement of a person in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 35, § 89, and *Scott v. Spain*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2401, § 78).

**(b) The “other reasons” for the continued detention**

106. The national courts referred to the risk of evidence being tampered with, to the fact that the accused was dangerous and that he could try to abscond.

107. The Court considers that the grounds stated in the relevant decisions were reasonable, at least initially.

108. As to the risk of absconding, the Court notes that it was inferred from the sentence which could have been inflicted and from the fact that the

applicant was likely to have connections outside Malta. However, it had not been proved that these connections might have facilitated his escape (see paragraph 70 above) and, as the Constitutional Court rightly pointed out, the circumstance that the applicant's family lived in Malta militated against the danger of flight. The latter was moreover diminishing with the lasting of the pre-trial detention (see paragraph 75 above).

109. As regards the fear of further offences being committed, it is apparent from the decisions refusing the applications for release and from the Constitutional Court's judgment of 23 January 2003 that the relevant authorities considered there to be a real danger that the applicant might repeat the acts of which he was accused. However, this risk was inferred almost exclusively from the gravity of the charges and from the fact that the applicant was accused of drug-trafficking in another set of proceedings.

110. Finally, the risk of tampering with evidence significantly diminished with the progress of the investigation, and the Constitutional Court itself acknowledged that nothing could prove that the applicant was responsible for the incidents concerning a witness and his daughter on which the prosecution was relying (see paragraph 74 above).

#### 4. Conclusion

111. In view of the above, the Court considers that the grounds stated in the impugned decisions were not sufficient to justify the applicant's being kept in detention for more than four years and ten months (see, *mutatis mutandis*, the Labita judgment, cited above, § 164). Moreover, having regard to the overall duration of the criminal proceedings for complicity in attempted wilful homicide and to the delays which occurred until 4 April 2001 (see *infra*, under “the alleged violation of Article 6 § 1 of the Convention”), the Court is not convinced that the duty of “special diligence” enshrined in Article 5 § 3 has been observed.

112. In conclusion, the detention in issue infringed Article 5 § 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

113. The applicant also alleged that the length of the proceedings brought against him for complicity in attempted wilful homicide had been excessive. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ....”

114. The Government contested that submission.

## A. The submissions of the parties

### 1. *The Government*

115. The Government pointed out that it had only been in May 1996 that, in the light of his accomplices' statements to the police, the applicant had become a suspect and had been arrested and charged. Only then had his position been substantially affected by the proceedings against him. Moreover, in respect of the inquiry twenty-three sittings, during which several witnesses and experts had been heard and lengthy submissions had been made by the defence, had taken place before the Court of Magistrates between 15 May 1996, the date of the arraignment, and 13 August 1996. There had been no significant period of inactivity during this stage.

116. As to the subsequent period, the Government observed that it was up to the Attorney General to decide whether the examination or re-examination of witnesses was required in order to reach the high level of proof to bring an accusation before a jury. During the first stage of the inquiry, the State had been represented by the police, while after 13 August 1996 the case had fallen within the competence of the Attorney General, who was obliged to fill any gaps in the evidence. During the seven hearings from 30 September 1996 until 30 July 1997 a number of important witnesses had been heard and evidence had been properly gathered. Moreover, there had been no unreasonable periods of inactivity. In any case, if he had felt that the Attorney General was not acting diligently, the applicant could have immediately lodged a constitutional complaint to the effect that the proceedings against him were being unreasonably delayed.

117. As to the period after the filing of the bill of indictment (on 6 August 1997), the Government considered that the applicant's complaint lacked any foundation. They mainly referred to their argument, already set out under Article 5 § 3, concerning the strategy of obstruction pursued by the defence. According to the Government, the course of the proceedings showed the absurdity of the applicant's allegations that his case was not particularly complex and that he had not abused his rights or caused any undue delays.

118. The Government also noted that the fact that the trial against the other participants in the offence had taken place before that of the applicant had not been due to the prosecution's choice, but had depended on the fact that the accomplices in question had not made use of any of the delaying tactics to which the applicant had had recourse. The trial had always been held when it was ready to be held.

119. Lastly, the Government challenged the applicant's submission that the prosecution had deliberately not started the trial for complicity in attempted murder until he had been convicted of drug trafficking. In the Government's view, the reason for the different duration of the two sets of

proceedings was that in the drug-trafficking case the applicant had not created procedural obstacles to the commencement of the trial.

## *2. The applicant*

120. The applicant submitted that the length of the proceedings on the charge of complicity in attempted murder had been due to the strategy adopted by the prosecution, which had chosen to initiate the trial against his accomplices prior to the proceedings in which he was accused. Moreover, the prosecution had wished to commence the trial for complicity in attempted murder after the applicant had been tried for, and convicted of, drug trafficking, thus basing its submissions in the complicity case on the guilty verdict in the first trial and on the assumption that the two crimes were related.

121. The applicant observed that he had been accused of offences which had occurred before and on 18 December 1994. Despite the fact that forensic evidence had been obtained in early 1995, and that an accomplice had made a confession, it was only on 15 May 1996, almost one and a half years after the commission of the offence, that he had been brought before the Court of Magistrates as a court of criminal inquiry. The applicant alleged that during that period he had been interviewed by police officers in connection with the charge of complicity in attempted murder and that he had been given sufficient information to understand that he was under suspicion.

122. In referring to the arguments already set out under Article 5 § 3 of the Convention, the applicant observed that even if one were to concede that some of the delays mentioned by the Constitutional Court had been caused by the defence, their length would amount only to a few days.

## **B. The Court's assessment**

### *1. The period to be taken into consideration*

123. The Court reiterates that in criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. “Charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 33, § 73, and *Reinhardt and*

*Slimane-Kaïd v. France*, judgment of 3 March 1998, *Reports* 1998-II, p. 660, § 93).

124. In the present case, the applicant asserted that during the period between the commission of the offence (18 December 1994) and the date of his arraignment (15 May 1996), he had been interviewed by police officers in connection with the charge of complicity in attempted murder. During these interviews, he was allegedly given sufficient information to understand that he was under suspicion.

125. The Court observes that the applicant failed to produce any documents concerning the interviews by the police and that he did not submit any evidence to suggest that his position had been substantially affected prior to the date of the official notification of the charge. In these circumstances, the starting point of the period to be taken into consideration for assessing the reasonableness of the length of the criminal proceedings brought against the applicant should be taken to be 15 May 1996, the date on which the accused was arraigned.

126. The criminal proceedings for complicity in attempted wilful homicide ended on 1 February 2004, when the jury delivered a verdict of not guilty (see paragraph 51 above). They therefore lasted seven years, eight months and seventeen days for the determination of the charge in the first instance.

## 2. Principles established under the Court's case-law

127. Under the Court's case-law, the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Kemmache v. France (Nos 1 and 2)*, judgment of 27 November 1991, Series A no. 218, p. 27, § 60; *Philis v. Greece (No. 2)*, judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35; *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, CEDH 1999-II). Moreover, an overall length which is *prima facie* excessive calls for an explanation from the State and might be accepted only under exceptional circumstances.

## 3. Application of those principles in the instant case

### (a) The complexity of the case

128. The Court observes that, having regard to the nature of the charges, the applicant's case was undoubtedly a complex one. Moreover, it involved the examination of a number of witnesses and experts. It is not for the Court to decide whether all these acts were needed in order to ascertain the truth or whether the prosecution's requests for the re-opening of the inquiry were

justified. In this respect, the Court is satisfied that the authorities did all what seemed necessary to them in order to establish the relevant facts. In any case, the Court considers that in view of the number of acts of investigations which were performed and of the number of hearings which were held, the overall length of the inquiry (from 15 May 1996 until 6 August 1997, date of the filing of the bill of indictment) cannot be regarded as excessive.

**(b) The applicant's conduct**

129. As far as the applicant's conduct is at stake, the Court notes that on 1 September 1997 the accused filed a number of preliminary pleas and requested the examination of 146 witnesses on his behalf (see paragraph 22 above). The Criminal Court's judgment on these pleas was delivered on 30 April 1998, which is eight months later. The applicant subsequently appealed against this judgment, and in the ambit of the appellate proceedings he requested on three occasions (4, 9 and 25 November 1999) an adjournment of the hearings, thus provoking a delay of two months and seven days (see paragraph 27 above). The final judgment of the Court of Criminal Appeal was given on 3 May 2000, almost two years after the introduction of the applicant's appeal.

130. On 31 July 2000, the applicant also challenged the President of the Criminal Court and appealed against the rejection of his plea. As the final decision on this issue was adopted by the Court of Criminal Appeal on 25 January 2001, the beginning of the applicant's trial was delayed five months and twenty-five days (see paragraphs 31-36 above). Moreover, on 22 October 2001 the applicant, relying on arguments similar to those raised in the ambit of the plea of recusation, instituted proceedings before the Civil Court (First Hall) in its constitutional jurisdiction and requested the Criminal Court to stay the proceedings. The Civil Court gave its judgment on 20 January 2003, which is one year, two months and twenty-nine days later (see paragraphs 39-46 above). On 29 January 2003, the applicant appealed against this judgment before the Constitutional Court, which gave a final ruling on the matter four months and twenty days later, on 18 June 2003 (see paragraphs 47-49 above).

131. The Court also notes that the hearings of 26 May, 2 June, 4 and 28 July 2000 were postponed at the request of the defence or because the applicant's counsel was ill (see paragraphs 29-30 above).

132. The Court is of the opinion that the applicant's behaviour contributed to a certain extent to slowing down of the proceedings. However, the Court recalls that Article 6 does not require accused persons actively to co-operate with the judicial authorities. Neither can any reproach be levelled against them for making full use of the remedies available under domestic law. Nonetheless, such conduct constitutes an objective fact, not capable of being attributed to the respondent State, which is to be taken into

account when determining whether or not the proceedings exceeded a “reasonable time” (see *Ledonne v. Italy (No. 1)*, no. 35742/97, § 25, 12 May 1999, *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, pp. 2984-2985, § 121, and the *Eckle* judgment cited above, p. 36, § 82). In the present case, even if the applicant may be considered on that account to be responsible for some of the delays, this cannot justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings (see, *mutatis mutandis*, *Portington v. Greece*, judgment of 23 September 1998, *Reports*, 1998-VI, p. 2632, § 29, and *Zana v. Turkey*, judgment of 25 November 1997, *Reports* 1997-VII, p. 2552, § 79).

**(c) The conduct of the competent authorities**

133. The Court notes that there were two periods of inactivity imputable to the State's authorities: between 16 April 2001 (date of a hearing held in camera by the Criminal Court) and 5 November 2001 (date initially fixed for the commencement of the trial by jury – see paragraph 38 above); between 7 July 2003 (date of the first meeting of the Criminal Court after the Constitutional Court's judgment) and 5 January 2004 (date scheduled for the trial on the merits – see paragraph 50 above). These two periods amount to a total of more than one year. It also to be noted that the Criminal Court and the Civil Court (first Hall) postponed the case on six occasions (2 March 1998, 11 October, 15 November, 6 and 16 December 2002 and 10 January 2003 – see paragraphs 25 and 45 above) because they needed more time to deliberate. This fact retarded the proceedings of more than five months.

134. Even if the retards imputable to the authorities are not, in themselves, excessive, the Court is of the opinion that a period of more than seven years and eight months to determine a criminal charge in the first instance is *a priori* unreasonable and calls for a global assessment (see, *mutatis mutandis*, *Boudier v. France*, no. 41857/98, §§ 34-35, 21 March 2000 and *Achleitner v. Austria*, no. 53911/00, § 47, 23 October 2003). The overall length of the proceedings in the present case could be justified only under exceptional circumstances. In the Court's view, the Government's arguments concerning the complexity of the case and the conduct of the applicant do not constitute elements providing a convincing explanation for such a substantial delay.

*4. Conclusion*

135. In these circumstances, the Court finds that the period of more than seven years and eight months taken to determine the charge in the first instance fails to satisfy the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

#### A. Damage

137. The applicant alleged that he had suffered pecuniary damage by way of loss of income for the period between 7 August 1997 and 4 April 2001, during which he had been detained only for the charge of complicity in attempted murder (see paragraphs 21 and 37 above). Before being imprisoned, he was working as a commission-trading agent involved in an import/export business and had an average yearly income of 25,000 Maltese liras (Lm – approximately 57,816 Euros (EUR)). However, all official papers related to this business had been seized by the police and the applicant was unable to produce them. In the light of the foregoing, the applicant was ready to accept to calculate his loss of income on the basis of the national minimum weekly wage, which is Lm 53,88 (approximately EUR 126). For the overall above-mentioned period, the applicant therefore requested Lm 4,310.4 (approximately EUR 9,968).

138. The applicant noted that his continued detention procured to him a considerable distress and suffering. In particular, he had been separated from his wife and from his two children, born in 1991 and 1995. In the detention centre in which he was being kept the applicant was often unable to receive visits from his family, and when his mother was declared to be terminally ill he was refused leave to spend time with her before her death. The applicant sought Lm 5,000 (approximately EUR 11,563) for the moral damage suffered in this respect.

139. The applicant furthermore observed that he was imposed degrading punishments during his detention, as he was detained in solitary confinement. Details of such distress and suffering are given in the Ombudsman's report and in the comments made in relation to his detention by the Committee for the Prevention of Torture and by Amnesty International. The applicant requested the award of Lm 15,000 (approximately EUR 34,690) on this account.

140. The applicant finally alleged that since the beginning of the investigation, several authorities had made public statements about his case, often including statements of his guilt, which were reported in the local media. This nullified his potential to take up employment or recommence business activities. Taking into account the fact that he had been eventually declared innocent of the charge of complicity in attempted murder, the

applicant sought Lm 20,000 (approximately EUR 46,253) with regard to these facts.

141. The Government argued that the applicant's claim for pecuniary damage should be rejected. They noted that the seizure of the applicant's papers is irrelevant. The applicant could in fact have proved his income before detention by requesting the Commissioner of Inland Revenue to produce his income tax returns. In the light of the foregoing, the Government considered that the average yearly income of Lm 25,000 from lawful activities is unsubstantiated and clearly fictitious. As to the alleged loss of earnings of the lower sum of Lm 4,310.4, there was no proof that the applicant was in lawful business or employment immediately before his detention. In any case, any pecuniary damage suffered by the applicant had been adequately redressed by the fact that the entire period of his pre-trial detention was deducted from his sentence in the drug trafficking case (see paragraph 37 above).

142. As to the moral prejudice, the Government considered that the finding of a violation would constitute in itself a sufficient redress. They recalled that the applicant's detention had been lawful and that the applicant failed to prove the reasons supporting his claim for non-pecuniary damage. No statement of guilt had been made against the applicant. The restrictions in the contacts with his family were inherent in the fact of detention and the applicant was allowed access to his mother and could attend her funeral.

143. Furthermore, the applicant had not shown that during his detention he had been submitted to "degrading punishments". The measures taken were held to be justified and lawful by the Ombudsman. Nor was he kept in solitary confinement. His visitation rights were affected but not abolished. The Committee for the Prevention of Torture and Amnesty International had simply confined themselves in repeating and reporting the applicant's allegations, but did not make any findings in favour of him. In any case, no links could be disclosed between the conditions of detention or the statements made by the authorities and in the media and the finding of a violation of Articles 5 § 3 and 6 § 1 of the Convention.

144. The Court dismisses the claim relating to material damage as it is not based on proof that the alleged loss had actually been sustained.

145. As to the prejudice alleged by the applicant in respect of the treatments administered in custody and of the statements made by the national authorities and reported by the press, the Court recalls that it can make an award under Article 41 of the Convention only when the loss or the damages claimed have been provoked by the violations which were found, the State not being liable for damages which might not be imputed to them (*Perote Pellon v. Spain*, no. 45238/99, § 57, 25 July 2002, and *Sejdovic v. Italy*, no. 56581/00, § 51, 10 November 2004). The present judgment only dealt with the issue of the excessive length of the applicant's trial and detention on remand, and it has not been established that the applicant has been a victim of other violations of the Convention provisions for facts

which have not been examined by the Court. Therefore, no award should be made under this head.

146. On the other hand, the Court recognises that the violations found must have caused the applicant some degree of moral suffering. Having regard to the circumstances of the case and ruling on an equitable basis as required by Article 41 of the Convention, it decides to award him EUR 5,000.

## **B. Costs and expenses**

147. The applicant sought the reimbursement of costs sustained at the domestic level in order to obtain redress of his rights. He had requested a taxed bill of costs for the domestic constitutional proceedings, but had been unable to obtain it since the court's file had been misplaced. Comparing his case with a similar one, the applicant alleged that the costs in issue should be fixed at Lm 1,008.48 (approximately EUR 2,332).

148. The applicant furthermore sought Lm 2,712.30 (approximately EUR 6,271) for the costs incurred before the Court.

149. While confirming the applicant's statement that the domestic court's file could not be found, the Government observed that it should be possible, with the co-operation of the applicant, to reconstruct the record which would enable the court's registrar to issue the relevant taxed bill of costs. In this event, the Government would make further comments on the applicant's request for reimbursement of the costs and expenses relating to the domestic proceedings.

150. As concerns the costs for the proceedings before the Court, the Government considered that the amount claimed by the applicant is manifestly excessive. They noted that for several items the applicant's lawyer applied a fee of Lm 250 (approximately EUR 578) or of Lm 125 (approximately EUR 289), while the domestic legal fee would be of Lm 40 (approximately EUR 92).

151. According to the Court's established case-law, an award can be made in respect of costs and expenses incurred by the applicant only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, *inter alia*, *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49, and *Craxi v. Italy*, no. 34896/97, § 115, 5 December 2002).

152. In the present case, the Court observes that the applicant undoubtedly incurred some expenses in the ambit of the domestic constitutional proceedings. Although not based on an official bill, the sum claimed in this respect (EUR 2,332) seems reasonable as to quantum. The Court therefore decides to grant it.

153. As to the costs incurred at the European level, the Court considers the amount claimed to be excessive. It is therefore appropriate to reimburse

only in part the costs and expenses alleged by the applicant (see, *mutatis mutandis*, *Nikolova v. Bulgaria*, no. 31195/96, § 79, ECHR 1999-II; *Sakkopoulos v. Greece*, no. 61828/00, § 59, 15 January 2004; *Cianetti v. Italy*, no. 55634/00, § 56, 22 April 2004). Having regard to the elements at its disposal and on the basis of an equitable assessment, the Court awards the applicant EUR 2,500 under this head (see, *mutatis mutandis*, *Santoro v. Italy*, no. 36681/97, § 68, 1 July 2004).

154. It follows that the applicant is entitled, for costs and expenses, to the global sum of EUR 4,832 plus any tax that may be chargeable on that amount.

### C. Default interest

155. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Maltese liras at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 4,832 (four thousand eight hundred and thirty-two euros) in respect of costs and expenses;
    - (iii) any tax that may be chargeable on the above amounts;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA  
Deputy Registrar

Christos ROZAKIS  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Mr L. Loucaides is annexed to this judgment.

C.L.\*.

S.Q.\*.

## SEPARATE OPINION OF JUDGE L. LOUCAIDES

I agree that there has been a violation of Article 5 § 3 in this case but I confine my reasoning for such a finding only to the breach of the duty of “special diligence” enshrined in Article 5 § 3 of the Convention.

As rightly observed in the judgement of the Court in the case of I.A. v. France (judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, pp. 2978-79, § 102):

“It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty ...”.

To the delays referred to in paragraph 111 of the judgment (see also § 133) I would also add the delay caused by the judgement of the Criminal Court of 30 April 1998, which was quashed by the Court of Criminal Appeal on 3 May 2000. I believe that the annulment of this judgment means that the period between its adoption and its quashing (2 years) was caused by a wrong judgment for which the judicial authorities, and not the applicant, were responsible.

A person in detention under Article 5 § 1 (c) of the Convention, like the applicant, is presumed innocent and may eventually be acquitted. Therefore, any pre-trial detention depriving him of his liberty is an exceptional measure which must be applied only when it is absolutely necessary and should be limited in time as much as possible. This did not happen in the present case and therefore I find a violation of Article 5 § 3.

However, I do not agree with the majority that certain grounds invoked in support of the applicant's detention ceased to be valid. In particular, the majority found that the risk of absconding diminished with the lasting of the pre-trial detention. In this respect, reference was made to the Constitutional Court's argument that the circumstance that the applicant's family lived in Malta militated against the danger of flight. However, the Constitutional Court did at the same time point out that

“...the seriousness of the charges brought against the applicant and the fact that he was about to face a trial by jury on charges of drug trafficking militated in the opposite direction”.

I also give particular weight to this point.

Furthermore, I disagree with the view that the longer a pre-trial detention lasts, the more remote the possibility of the suspect absconding is. On the contrary, I believe that the passage of time during a pre-trial detention increases the feelings of fear and oppression of a suspect and the threat of him being found eventually guilty, especially in serious cases like the

present one, in which the evidence is collected by the prosecution by progressing in the investigations.

Even if sufficient reasons for detaining the applicant continued to exist, the authorities were not absolved from their duty to conduct the investigations and the relevant proceedings connected with the pre-trial detention with special diligence. In my opinion, they failed to discharge this duty.