



Applicant's police custody did not satisfy the requirements of Article 5 § 3

In today's Chamber judgment in the case [Moulin v. France](#) (application no. 37104/06), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 5 § 3 (right to liberty and security) of the European Convention on Human Rights.

The Court's ruling concerns the specific notion of "competent legal authority" for the purposes of Article 5 § 3 of the Convention only and not the notion of "judicial authority" in domestic legislation. It is not its task to adopt a position in the debate on the status of the public prosecutor in France.

Principal facts

The applicant, France Moulin, is a French national who was born in 1962 and lives in Toulouse (France). She is a lawyer.

Ms Moulin was arrested in Orléans on 13 April 2005 on the basis of instructions issued in connection with a prosecution for drug trafficking, and was placed in police custody on suspicion of breaching the confidentiality of the investigation. The following day she was taken to Toulouse, where her office was searched in the presence of two investigating judges from Orléans. The same day her police custody was extended by an investigating judge of the Toulouse *tribunal de grande instance*, who did not hear evidence from her in person.

On 15 April 2005 the two Orléans investigating judges went to the police station to check that their instructions had been carried out and examine the conditions of the applicant's custody. They did not meet the applicant.

Ms Moulin's police custody ended on 15 April 2005 when she was brought before the Toulouse deputy public prosecutor, who ordered that she be transferred to prison with a view to being brought subsequently before the investigating judges in Orléans. On 18 April 2005 she made a "first appearance" for questioning before the latter, who placed her under investigation. The applicant was remanded in custody by the liberties and detention judge.

Ms Moulin's application to have the proceedings declared null and void for failure to appoint a lawyer of her choosing during her police custody was rejected by the Orléans

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

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

Court of Appeal. She lodged an appeal on points of law, which was dismissed by the Court of Cassation.

Complaints, procedure and composition of the Court

Relying on Article 5 § 3 (right to liberty and security), the applicant complained that she had not been “brought promptly” before “a judge or other officer authorised by law to exercise judicial power”. Under Article 6 (right to a fair trial), she alleged that she had not been assisted by a lawyer of her own choosing while in police custody. Lastly, relying on several other Articles, she complained about the way both she and her office had been searched and the seizure of her personal effects when she was arrested.

The application was lodged with the European Court of Human Rights on 1 September 2006.

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

Peer **Lorenzen** (Denmark), *President*,
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), *Judges*,

and also Stephen **Phillips**, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 3

The Court had already held that a period of police custody of over four days and six hours without judicial control was in breach of Article 5 § 3². From the time she was taken into police custody on 13 April 2005 until she was brought before the Orléans investigating judges on 18 April 2005 for a “first appearance”, no evidence was heard from the applicant in person by investigating judges with a view to considering the merits of her detention. Quite apart from the fact that the Orléans investigating judges did not have territorial jurisdiction to rule on the lawfulness of a person’s detention in Toulouse, the judges in question had confined their attention to conducting the search and seizure operations at the applicant’s office, to the exclusion of all other measures, and had not met her when they visited the police station on 15 April. Furthermore, the five days which elapsed between 13 and 18 April could not be treated as several separate periods as the Government suggested, since they fell within the period immediately following the applicant’s arrest.

The Court next considered whether the applicant’s presentation before the deputy public prosecutor of the Toulouse *tribunal de grande instance* on 15 April 2005, that is, two days after her arrest, could be regarded as presentation before a competent legal authority for the purposes of Article 5 § 3. The Court observed that in France, different rules applied to judges and public prosecutors. The latter were managed and supervised by their hierarchical superiors within the prosecution service, under the authority of the Minister of Justice, *garde des sceaux*, and hence of the executive. Unlike judges, they were not irremovable and the Minister had disciplinary authority over them. They were

² See [Brogan v. the United Kingdom](#), 29 November 1988.

required to make written submissions on the basis of the instructions issued to them in accordance with the Code of Criminal Procedure, although they were free to make such oral observations as they felt appropriate in the interests of justice.

It was not for the Court to take a stance in the debate concerning the ties of dependency between the Minister of Justice and the prosecuting authorities in France, which was a matter for the domestic authorities. The Court examined the case solely in terms of Article 5 § 3 and the autonomous notion of “competent legal authority” for the purposes of that provision and its case-law. The Court took the view that, owing to their status, public prosecutors in France did not satisfy the requirement of independence from the executive; independence, like impartiality, was one of the guarantees inherent in the autonomous notion of “officer authorised by law to exercise judicial power” within the meaning of Article 5 § 3. The Court further reiterated that the characteristics that a judge or other officer must possess in order to satisfy the requirements of Article 5 precluded him or her, among other things, from intervening subsequently against the applicant in the criminal proceedings, as the prosecution did. Accordingly, the Toulouse deputy public prosecutor, a representative of the prosecuting authority, did not offer the guarantees of independence required by Article 5 § 3 in order to be described as a “judge or other officer authorised by law to exercise judicial power” within the meaning of that provision.

Ms Moulin’s police custody had therefore failed to satisfy the requirements of Article 5 § 3.

Other articles

As to the applicant’s complaint concerning the appointment of a lawyer of her own choosing, the Court noted that the assistant of the lawyer chosen by Ms Moulin had visited her in order to assist her while she was in police custody.

With regard to the search of the applicant’s office, the Court held that it had not, in the specific circumstances of the case, been disproportionate to the aim pursued, namely to gather possible evidence of the applicant’s involvement in the offences in question. Procedural guarantees had been in place and the seizures had been kept to a strict minimum.

Lastly, the frisking of the applicant during her arrest had been aimed solely at detecting any dangerous objects she might have been carrying, and the applicant’s complaint in that regard had not been sufficiently substantiated. As to the seizure of two bags during the arrest, the Court noted that the applicant had in fact kept them with her until the evening of the day on which she was arrested.

Those complaints were therefore rejected as being manifestly ill-founded.

Article 41

By way of just satisfaction, the Court held that France was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,500 for costs and expenses.

The judgment is available only in French.

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

Press contacts

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

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

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

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

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

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

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

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