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

FIRST SECTION

DECISION

Application no. 16101/18
Emanuel CAMILLERI
against Malta

The European Court of Human Rights (First Section), sitting on 19 October 2021 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 20 April 2018,

Having deliberated, decides as follows:

# THE FACTS

1. The applicant, Mr Emanuel Camilleri, is a Maltese national, who was born in 1972 and lives in Valletta. At the time of the lodging of the application he was represented before the Court by Dr T. Azzopardi a lawyer practising in Valletta. In July 2021 the applicant informed the Court that he would thereafter be represented by Dr A. Abela, a lawyer practising in San Gwann.

## A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

### *1. Background*

3. The applicant separated from his wife with whom he had a tumultuous relationship.

*2. Criminal proceedings*

4. By a judgment of the Court of Magistrates of 29 September 2012, confirmed by the Court of Appeal on 2 May 2013, the applicant was found guilty of indecent assault and defiling his daughter (in around 2002 when she was a minor) and sentenced to twenty-four months imprisonment. The court ordered that his name be inserted in the register of paedophiles.

5. In these criminal proceedings during which the applicant claimed his innocence, the main witness was his daughter, the alleged victim. While her testimony before the court was consistent, on one occasion she had told the Child Advocate (appointed to speak to the child) that she had made it all up under pressure from her mother. As a result, the Child Advocate reported the matter to the court.

6. After hearing the Child Advocate, the court dismissed the statements by the alleged victim which had not been given under oath before the court, but ordered the rehearing of the Child Advocate, the alleged victim and her brother. When heard, the alleged victim reiterated her accusations against the applicant, also in cross-examination, and testified that the version she gave the Child Advocate was false and that she had said so because she was bored of going to court and because her grandparents promised her a present.

*3. Other proceedings*

7. In July 2013 the applicant lodged constitutional redress proceedings (see paragraph 13 *et sequi.* below). During those proceedings the alleged victim (the applicant's daughter who had by then reached the age of majority) admitted to having lied during the criminal proceedings against the applicant.

8. Following her admission, she was charged before the criminal courts and on 18 September 2014 she was found guilty of perjury. Similar proceedings against her mother were instituted and were, at the time of the introduction of the application, still pending.

9. In consequence, on 30 May 2014 the applicant asked the Court of Criminal Appeal to order his release.

10. On the same day the Court of Criminal Appeal refused to take cognisance of the case.

11. On 12 June 2014 the applicant asked the Court of Criminal Appeal to reopen his proceedings.

12. On 20 June 2014 the Court of Criminal Appeal held that it had no competence to reopen such proceedings.

*4. Constitutional redress proceedings*

13. In the meantime on 11 July 2013 the applicant had lodged constitutional redress proceedings complaining under Article 6 [and 8] of the Convention in so far as:

- Inspector C. (who carried out the investigation and the prosecution) had carried out the prosecution in a dishonest way. The applicant claimed that she had: failed to believe in his innocence, despite the alleged victim being a virgin; failed to inform the court of relevant matters, such as the fact that the alleged victim had suicidal tendencies; ignored the fact that the child had withdrawn her testimony before the Child Advocate; and while having doubts as to the credibility of the alleged victim she had challenged official documents.

- The courts of criminal jurisdiction had expunged the testimony of the alleged victim's brother who had passed away and they had ignored relevant witness testimony in their consideration of the evidence. They had also ignored the principle of the presumption of innocence and of *in dubio pro reo*, as well as permitted the victim's sole evidence to be enough for the finding of guilt (despite the Court of Appeal not having heard her). The applicant also argued that there had been other deficiencies in the process.

14. He asked the court to award him compensation.

**(a) First instance**

15. By a judgment of 29 September 2016, the Civil Court (First Hall) in its constitutional competence rejected his complaints. As to Article 6, having examined the criminal case file, it found that Inspector C. had acted correctly and with the care needed in such a sensitive case. She could not be reproached for having believed the victim. The same could be said of the Court of Magistrates, which had heard various testimonies, also in cross-examination, and considered reports from relevant agencies and social workers. That court arrived at its own conclusions as to the credibility of the witnesses and their testimonies. It had also been aware that at one point the alleged victim had changed her version. However, the applicant had been present and legally assisted all throughout and thus he could defend himself in that respect. Further, the fact that the Court of Appeal had not reheard the witnesses was a matter of discretion and could not lead to a violation of the applicant's Article 6 rights.

16. Nevertheless, given the circumstances of the case (see paragraph 7 above) the Civil Court (First Hall) in its constitutional competence annulled the criminal judgments against the applicant, them having been based on false evidence, and ordered that his name be removed from the register of paedophiles. It rejected the applicant's claim for compensation given that there had been no fault on the part of the defendants (Inspector C., the Police and the Attorney General), without prejudice to any compensation

which could be due from third parties in separate proceedings. Each party was to bear their own costs of the proceedings.

**(b) Appeal**

17. On 18 October 2016 the applicant appealed, noting that once his daughter had been found guilty of perjury it was clear that he was innocent. He argued mainly that the use of false evidence sufficed to render the trial unfair. He also asked for compensation in terms of Article 3 of Protocol No. 7 to the Convention.

18. By a judgment of 9 October 2017 the Constitutional Court confirmed the first-instance judgment. It noted that there had been nothing arbitrary in the assessment of the courts of criminal jurisdiction and that the applicant had benefited from all the rights of defence throughout his criminal proceedings. The fact that it later transpired that a witness had lied did not mean that the applicant had had an unfair trial. As to the actions of Inspector C., the Constitutional Court found to be "ridiculous" the claim that a failure to believe an accused was a failing of the prosecution. Indeed Inspector C. had duly followed procedures: - The fact that she had not informed the court of the child's attempted suicide was not relevant to the case; and, her failure to stop the prosecution because of a sudden retraction was not an arbitrary decision but one according to her assessment, where moreover it was for the court of criminal jurisdiction to decide on the applicant's guilt or innocence.

19. As to redress, the Constitutional Court noted that under the Constitution the courts of constitutional jurisdiction also had the duty to prevent violations. Thus, the first court's decision to annul the criminal judgment and release the applicant served to prevent a violation of Articles 5 and 8 of the Convention. Admittedly, it would have been better had it ordered a retrial where the applicant's guilt or innocence would have been determined, instead of assuming that he was automatically innocent. However, in the present case there existed two conflicting final decisions which were not compatible, and the first-instance court of constitutional competence had correctly favoured the applicant's release, despite the fairness of his trail. Nevertheless, this did not mean that the applicant's innocence had been established. Further, a retrial fifteen years after the alleged crime would neither be in the interests of the party nor of justice - that remedy had thus to be confirmed.

20. As to the applicant's request for compensation under the relevant Protocol, the Constitutional Court considered that it could accept to examine the complaint despite the fact that the applicant had failed to raise the issue at first instance, when the perjury judgment had already become final. However, the Constitutional Court did not take cognisance of the merits of the request since even assuming the relevant requirements had been fulfilled, the law stipulated a specific ordinary remedy in this respect, under Article 4 A of Chapter 319 of the Laws of Malta.

*5. Compensation proceedings*

21. In the meantime, on 24 March 2017 the applicant instituted proceedings under Article 4 A of Chapter 319 of the Laws of Malta before the Civil Court (First Hall), requesting compensation for his wrongful conviction, which had been based on false testimony.

22. By means of an interlocutory judgment of 26 June 2018 the court rejected, *inter alia*, the Attorney General's plea that the provision was not applicable.

**(a) First instance**

23. By a judgment of 5 November 2019, the Civil Court (First Hall) confirmed that the provision was applicable but rejected the applicant's claim for compensation. It considered that Article 4 A of Chapter 319 required the fulfilment of certain criteria. Firstly, the person had to have a final conviction for a criminal offence – a criterion fulfilled in the applicant's case. Secondly, the conviction had to have been reversed or the individual pardoned, on the ground that newly discovered facts showed conclusively that there had been a miscarriage of justice. In the present case this criterion was also fulfilled since i) it had been established, after his criminal conviction, that the applicant's daughter had lied, thus this was certainly a new fact, and ii) the Constitutional Court's finding amounted to a reversal of his conviction irrespective of the fact that no new criminal proceedings had been undertaken. Further, the non-disclosure had not been due to the applicant who had persistently claimed his innocence and insisted that his daughter was being pushed to lie by the mother.

24. However, Article 3 of Protocol No. 7 to the Convention also provided that the newly discovered fact showed conclusively that there had been a miscarriage of justice "that is some serious failure in the judicial process involving grave prejudice to the convicted person". The Explanatory Report to Protocol No. 7 showed that the provision did not lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice, and that this was a matter for domestic law and practice of the State concerned. In the present case, the Constitutional Court had already found that there had been no serious failings in the criminal proceedings against the applicant. Moreover, nowhere had the Constitutional Court held that the applicant was innocent – a necessary criterion for the payment of compensation according to the Explanatory Report. The Constitutional Court had stated that the repercussions suffered by the applicant were the result of a private person (his daughter – who could not be responsible for human rights' breaches) and not the competent organs (the criminal courts and the prosecution) who had proceeded in accordance with the law.

25. Thus, the Civil Court (First Hall) considered that this criterion had not been fulfilled as there had been no serious failings in the criminal proceedings. It thus rejected the applicant's claim for compensation.

**(b) Appeal**

26. In November 2019 the applicant appealed.

27. By a judgment of 25 March 2021, the Court of Appeal held that the applicant's complaints about the fairness of his criminal trial and the ensuing constitutional redress proceedings fell outside of the scope of the proceedings under Article 4 A of Chapter 319. As to his claim for compensation under Article 3 of Protocol No. 7 to the Convention the Court of Appeal found in favour of the applicant and awarded EUR 23,293.73.

28. Referring to the Court's case-law, it considered that the term miscarriage of justice did not refer solely to an error on behalf of the courts themselves. It sufficed if, as in the present case, following the conviction it became known that the principal evidence leading to that conviction was false, or that new evidence exculpating the accused was brought to light. It referred to paragraphs 22 and 25 of the Explanatory Report to Protocol No. 7 (see paragraph 32 below) and considered that entitlement to compensation was not linked to the rehearing of criminal proceedings – the important criterion being that the finding of guilt had been reversed, by a judgment or pardon. This was so in the present case, by means of the judgment of the first-instance constitutional jurisdiction of 29 September 2016, following the discovery of a new fact. Contrary to the findings of the first court in these proceedings, the Court of Appeal considered that the mere fact that what had happened in the present case was the fault of the applicant's daughter - a private individual - did not entail that the applicant had no right to compensation.

29. According to the Court of Appeal a miscarriage of justice consisted in the fact that a person was found guilty and sentenced to a punishment, and that subsequently that verdict was annulled as a result of a new fact which conclusively demonstrated a miscarriage of justice. In the present case the judgment of 18 September 2014, where the applicant's daughter was found guilty of perjury, constituted that new fact. As a result, the constitutional jurisdictions had annulled (*tħassar*) the criminal court judgments finding against the applicant on the basis of her false evidence - which constituted the entire prosecution case - and ordered the removal of the applicant's name from the register of paedophiles. The Court of Appeal confirmed that, without that evidence the applicant would never have been found guilty, and thus that the applicant must be considered innocent.

30. Moreover, the non-disclosure of the unknown fact in time was not wholly or partly attributable to the applicant. He was therefore due compensation which it established at the maximum in terms of Maltese law.

## B. Relevant domestic law

31. Article 4 A of the European Convention Act, Chapter 319 of the laws of Malta reads as follows:

> "(1) The provisions of paragraphs 22 to 25 (inclusive) of the Explanatory Report on the Seventh Protocol to the Convention reproduced in the Third Schedule to this Act shall apply to the interpretation of the provisions of the following provisions of this article and of article 3 of the Seventh Protocol to the Convention.
>
> (2) The maximum compensation payable under Article 3 of the Seventh Protocol to the Convention shall be twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73). Such compensation shall be fixed by agreement between the party claiming such compensation or failing such agreement by the Civil Court, First Hall, upon an application by the person claiming compensation made within six months of the date when the person's conviction has been reversed or such person has been pardoned.
>
> (3) An appeal from the determination of the compensation by the Civil Court, First Hall, shall lie to the Court of Appeal by application filed within twenty days from the determination of the application by the Civil Court, First Hall."

## C. Relevant European law

32. Paragraphs 22 to 25 of the Explanatory Report to the Seventh Protocol to the Convention, read as follows:

> "22. This article provides that compensation shall be paid to a victim of a miscarriage of justice, on certain conditions.
>
> First, the person concerned has to have been convicted of a criminal offence by a final decision and to have suffered punishment as a result of such conviction. According to the definition contained in the Explanatory Report of the European Convention on the International Validity of Criminal Judgements, a decision is final "if, according to the traditional expression, it has acquired the force of res judicata. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them". It follows therefore that a judgement by default is not considered as final as long as the domestic law allows the proceedings to be taken up again. Likewise, this article does not apply in cases where the charge is dismissed or the accused person is acquitted either by the court of first instance or, on appeal, by a higher tribunal. If, however, in one of the States in which such a possibility is provided for the person has been granted leave to appeal after the normal time of appealing has expired, and his conviction is then reversed on appeal, then subject to the other conditions of the article, in particular the conditions described in paragraph 24 below, the article may apply.
>
> 23. Secondly, the article applies only where the person's conviction has been reversed or he has been pardoned, in either case on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice - that is, some serious failure in the judicial process involving grave prejudice to the convicted person. Therefore, there is no requirement under the article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the article seek to lay down any rules as to the nature of

the procedure to be applied to establish a miscarriage of justice. This is a matter for the domestic law or practice of the state concerned. The words "or he has been pardoned" have been included because under some systems of law pardon, rather than legal proceedings leading to the reversal of a conviction, may in certain cases be the appropriate remedy after there has been a final decision.

24. Finally, there is no right to compensation under this provision if it can be shown that the non-disclosure of the unknown fact in time was wholly or partly attributable to the person convicted.

25. In all cases in which these preconditions are satisfied, compensation is payable "according to the law or the practice of the state concerned." This does not mean that no compensation is payable if the law or practice makes no provision for such compensation. It means that the law or practice of the state should provide for the payment of compensation in all cases to which the article applies. The intention is that states would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned was clearly innocent. The article is not intended to give a right of compensation where all the preconditions are not satisfied, for example, where an appellate, court has quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge."

# COMPLAINTS

33. The applicant complained that he had a right to compensation for the wrongful conviction under Article 3 of Protocol No. 7 to the Convention, and that he had no effective remedy under Article 13 of the Convention. He also complained under Article 6 about the fairness of his criminal proceedings and that the Constitutional Court's judgment amounted to an appraisal of guilt requiring the applicant to prove his innocence before he is awarded compensation.

# THE LAW

## A. Article 3 of Protocol No. 7 to the Convention, alone and in conjunction with Article 13 of the Convention

34. In his application, introduced in 2018, before the compensation proceedings came to an end, the applicant complained that he had a right to compensation for the wrongful conviction under Article 3 of Protocol No. 7, and that he had no effective remedy under Article 13 as the Constitutional Court failed to award him compensation for his wrongful conviction and the 397 days he had spent in prison. The provisions read as follows:

**Article 3 of Protocol No. 7**

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a

miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

**Article 13**

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

35. The Court refers to its general principles concerning the application of Article 3 of Protocol No. 7 as set out and put in practice in its case-law (see, *inter alia*, *Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06, §§ 49 -52, ECHR 2012 and *Matveyev v. Russia*, no. 26601/02, §§ 39-45, 3 July 2008; as well as *Soyupova v. Russia*, (dec.), no. 37957/15, 19 April 2016; *Bachowski v. Poland*, (dec.), no. 32463/06, 2 November 2010; *Jeronovics v. Latvia*, (dec.), no. 547/02, § 77, 10 February 2009, and *Georgiou v. Greece*, (dec.), no. 45138/98). In particular, in relation to the Explanatory Report referred to by the domestic courts, it is recalled that the Report itself provides that, although intended to facilitate the understanding of the provisions contained in the Protocol, it does not constitute an authoritative interpretation of the text (...). Its references to the need to demonstrate innocence must now be considered to have been overtaken by the Court's intervening case-law on Article 6 § 2 (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 133, ECHR 2013).

36. The Court reiterates in particular that Article 3 of Protocol No. 7 provides for a right to compensation for miscarriages of justice, when an applicant has been convicted of a criminal offence by a final decision and suffered consequential punishment (see, for example, *Nakov v. Macedonia* (dec.), no. 68286/01, 24 October 2002). The provision refers back to domestic law and practice as regards the manner and scope of compensation to be granted (see *Bzdusek v. Slovakia* (dec.,) no. 48817/99, 16 October 2004) and it does not prohibit the Contracting States from making the award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach, nor does it actually refer to any specific amounts (see *Shilyayev v. Russia*, no. 9647/02, § 20, 6 October 2005).

37. The Court notes that following the introduction of the application, the further proceedings lodged by the applicant (whereby he asked for compensation for the miscarriage of justice he claimed to have suffered) came to an end by a judgment of the Court of Appeal of 25 March 2021. In that judgment the Court of Appeal acknowledged that the applicant, who had to be considered innocent, had been the victim of a miscarriage of justice and awarded him EUR 23,293.73 in compensation (see paragraph 27 above). Prior to that judgment the constitutional jurisdictions had annulled

his criminal conviction and ordered the removal of the applicant's name from the list of paedophiles (see paragraphs 16 and 19 above).

38. The Court notes that the financial award does not appear arbitrary or unreasonable. It represented the maximum sum provided by Maltese law in cases of a miscarriage of justice (see paragraph 31 above) and it was awarded with the Court of Appeal being aware of all relevant circumstances. The applicant was fully able to take part in this procedure and, bearing in mind that the applicant was imprisoned for a little more than a year, the amount of the award does not appear disproportionate even in domestic terms (compare *Shilyayev*, cited above, § 21, and *Morgenthaler v. Luxembourg* (Committee decision) no. 3883/14, § 22, 4 November 2014). Thus, the applicant obtained appropriate financial redress for the miscarriage of justice he suffered (see, *a contrario*, *Poghosyan and Baghdasaryan*, cited above, § 51).

39. Having regard to the above, the Court considers that the complaint under Article 3 of Protocol No. 7 is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

40. According to the Court's case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court has found above that the applicant's complaint under the Protocol was manifestly ill-founded and Article 13 is therefore inapplicable in respect of this complaint.

41. It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## B. Remaining complaints

42. The applicant complained under Article 6 of the fairness of his criminal proceedings, in relation to which domestic remedies came to an end on 9 October 2017 by means of a judgment of the Constitutional Court (see paragraph 18 above). He further complained, presumably under Article 6 § 2, in relation to the Constitutional Court judgment of the same date.

43. The Court reiterates that the six-month period generally runs from the final decision in the process of exhaustion of domestic remedies and is interrupted on the date of introduction of an application. From 1 January 2014 the amended Rule 47 applied stricter conditions for an application to the Court. In particular, for the period of six months to be interrupted, the application has to fulfil all the conditions set out in Rule 47. Accordingly, a duly completed application form accompanied by copies of the relevant supporting documents must be sent to the Court within the time-limit laid down by the Convention. Incomplete applications are no longer taken into

consideration for the purpose of interrupting the running of the six-month period (see *Malyish and Ivanin v. Ukraine* (dec.), nos. 40139/19 and 41418/14, 9 September 2014, with reference to Rule 47 § 6 (a) and paragraph 1 of the Practice Direction on the Institution on Proceedings, therein cited).

44. The Court observes that the application lodged by the applicant's legal representative on 3 April 2016 (within the six months' time-limit) was not signed by the applicant, contrary to Rule 47 § 1 (c) of the Rules of Court. The former explained that the applicant was in hospital and that an authority form and the relevant certification would be sent as soon as the applicant was discharged. By means of correspondence dated 20 April 2018 (after the six months' time-limit expired) the completed and signed form dated 18 April 2018 was lodged with the Court together with certification showing that the applicant was hospitalised for medical care between 30 March 2018 and 6 April 2018 for gastroenteritis. The lawyer submitted that he received such documentation, on his return from abroad, on 15 April 2018.

45. According to Rule 47 § 6 (b), where it finds it justified, the Court may decide that a different date shall be considered to be the date of introduction. However, in the present case, the Court is not satisfied with the justification put forward by the applicant in relation to his condition in the last few days before the expiry of the six months' limit during which he was hospitalised. Nor can it accept that applicant's signature was obtained only on 18 April 2018, nearly two weeks after his discharge from hospital, and was sent to the Court even later.

46. It follows that these complaints which, in the particular circumstances of the present case, were introduced on 20 April 2018 at the earliest, that is to say, more than six months after the Constitutional Court judgment of 9 October 2017, are out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 18 November 2021.

{signature_p_2}

Attila Teplán
Acting Deputy Registrar

Krzysztof Wojtyczek
President