

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

FOURTH SECTION

CASE OF SULTANA v. MALTA

(Application no. 36184/21)

JUDGMENT

STRASBOURG

17 December 2024

This judgment is final but it may be subject to editorial revision.



In the case of Sultana v. Malta,

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

Jolien Schukking*, President*,
Faris Vehabović,
Lorraine Schembri Orland*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 36184/21) 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") on 3 July 2021 by a Maltese national, Mr Rosario Sultana ("the applicant"), who was born in 1975, lives in Msida and was represented by Dr T. Azzopardi, a lawyer practising in Valletta;

the decision to give notice to the Maltese Government ("the Government") of the complaints concerning Article 5 § 3 and Article 6 § 1 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 26 November 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the excessive length of the applicant's detention on remand and of the criminal proceedings against him in breach of Articles 5 § 3 and 6 § 1 of the Convention.

2. On 4 January 2011 the applicant was arrested and remanded in custody, following complaints by his daughter that he had sexually abused her. Despite the prosecution having declared, in April 2012, that it had no further evidence, a bill of indictment was only issued in December 2013. Thereafter, the applicant unsuccessfully asked the Criminal Court to refer a number of constitutional complaints to the constitutional jurisdictions. Later, on the applicant's request, the Criminal Court suspended the proceedings *sine die* pending the outcome of separate constitutional proceedings instituted by the applicant (see below).

3. In the meantime, the applicant's eight requests for bail in the first twenty months since his arrest were all rejected, and none was lodged thereafter until 29 July 2013, which was upheld by a decree of 31 July 2013. Thus, the applicant remained in pre-trial detention for thirty-one months exceeding the "twenty-month" threshold provided for by law in circumstances such as those of the present case.

4. In 2015 the applicant instituted separate constitutional redress proceedings. On 12 January 2021, on appeal, the Constitutional Court found, *inter alia*, a violation of Articles 5 § 3 and 6 § 1 of the Convention (length of

proceedings) and awarded the applicant 3,000 euros (EUR) in compensation in that respect, noting that he had not been in gainful employment for five years before his arrest, and that if he were to be found guilty in the criminal proceedings, the time spent in pre-trial detention would be deducted from his prison sentence. Moreover, the applicant had been partly responsible for eleven months of detention due to his failure to file a bail application at the relevant time.

5. After the constitutional redress proceedings, on 13 June 2022 a trial by jury commenced at the end of which the applicant was found guilty and sentenced to fifteen years' imprisonment. He did not appeal. According to domestic law, the period of detention on remand was deducted from the final sentence imposed (Article 22 of the Criminal Code).

6. The applicant complained that he was still a victim of the violations of Article 5 § 3 and Article 6 § 1 of the Convention acknowledged by the Constitutional Court.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 3 AND ARTICLE 6 § 1 OF THE CONVENTION

7. The applicant complained that he was still a victim of the violations of Article 5 § 3 and Article 6 § 1 of the Convention upheld by the domestic court.

8. The relevant general principles regarding the status of a "victim" of an applicant when the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention, were summarized in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 181, ECHR 2006-V) and *Cocchiarella v. Italy* ([GC], no. 64886/01, § 72, ECHR 2006-V). As to the issue of redress, the Court does not exclude the possibility that in a situation like the one in the present case, adequate redress would not necessarily imply monetary compensation but might take other forms, the adequacy of such redress being assessed with regard to the particular circumstances of each case (see *Ščensnovičius v. Lithuania*, no. 62663/13, § 92, 10 July 2018). In cases such as the present one, the Court must be satisfied that the applicant has been afforded explicit and quantifiable redress for the delays in proceedings and the long duration of his detention (ibid. and, conversely, *Anatoliy Tarasov v. Russia*, no. 3950/02, § 54, 18 February 2010).

9. The Court notes that the first criterion, namely the acknowledgment of the violations, has been met in the applicant's case.

10. As to the second criterion, namely whether the redress was adequate and sufficient, the Court is not satisfied that the compensatory award of EUR 3,000 for both violations in the circumstances of the present case is

comparable to the Court's standards under Article 41 of the Convention (see, *mutatis mutandis*, *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 133, 10 April 2018, and *Galea and Pavia v. Malta*, nos. 77209/16 and 77225/16, §§ 25-34, 11 February 2020).

11. While it is true that the applicant eventually benefited of a reduction of his sentence, after having been found guilty, that is some years after the constitutional findings, and that the Constitutional Court had taken this eventual possibility into account, the Court notes that the automatic deduction of the length of the detention on remand from the length of the final sentence imposed (Article 22 of the Criminal Code, see paragraph 5 above) cannot be considered as explicit and quantifiable redress for a violation of Article 5 § 3, given that this applies to anyone irrespective of any Convention violation suffered. It therefore does not fulfil the Court's case-law requirements as set out in, for example, *Ščensnovičius* (cited above, § 92), and, albeit in the context of Article 5 § 5, *Porchet v. Switzerland* ((dec.), no. 36391/16, §§ 15 et seq., 8 October 2019, and the case-law cited therein). Moreover, the Court cannot but note that calculating compensation based on a possible eventuality of criminal guilt, not only may raise issues under other Convention provisions, but would run the risk that persons who have suffered a violation upheld by the domestic court, but are eventually acquitted years later, would remain without any compensation for the violation found, rendering the remedy ineffective.

12. In view of all the above considerations, the Court considers that the redress provided by the Constitutional Court did not offer sufficient relief to the applicant, who thus retains victim status for the purposes of these complaints. The Government's objection to this effect is therefore dismissed.

13. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

14. The general principles concerning Article 5 § 3 and Article 6 § 1 have been summarized in *Bykov v. Russia* ([GC], no. 4378/02, §§ 61-64, 10 March 2009) and *Scordino (no. 1)* (cited above, § 177).

15. Having regard to the findings of the domestic court relating to both invoked provisions, the Court considers that it is not necessary to re-examine in detail the merits of the complaints. It finds that, as established by the Constitutional Court, the applicant suffered delays in his release pending trial, as well as in the criminal proceedings against him. Moreover, as the Court has already found in the context of the objection on victim status (see paragraph 12 above), the redress provided by the Constitutional Court did not offer sufficient relief to the applicant.

16. The foregoing considerations are sufficient for the Court to find that there has been a violation of Article 5 § 3 and Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage and as to pecuniary damage considered that "the Court has sufficient facts at its disposal to be able to award the full calculated amount of the damage". He further requested the total amount of EUR 5,263.88 for costs and expenses incurred before the constitutional jurisdictions, for which he submitted two taxed bills of costs, as well as EUR 7,080 for those incurred before the Court, which the legal representative admits the applicant has been unable to pay following his incarceration.

18. The Government submitted that since the applicant was not in employment prior to his detention, no pecuniary damage was due, nor any further non-pecuniary damage other than that already awarded by the domestic court. As regards the costs and expenses claimed, they considered that he was made to pay at the domestic level only costs related to unsuccessful claims and that the Government should not be made to pay any "extra judicial cost to the lawyer".

19. The relevant general principles under this head were summarized in *Abdi Ibrahim v. Norway* ([GC], no. 15379/16, § 167, 10 December 2021); *A.D. v. Malta* (no. 12427/22, § 219, 17 October 2023); and *L.B. v. Hungary* ([GC], no. 36345/16, § 149, 9 March 2023).

20. As to pecuniary damage, the Court notes that no quantified claim has been submitted. As to non-pecuniary damage, ruling on an equitable basis and in view of the violations found, the Court awards the applicant EUR 2,000, plus any tax that may be chargeable (over the amount awarded by the Constitutional Court, see paragraph 4 above).

21. As to costs and expenses, the Court observes that, besides the implicit way in which the claim has been put forward before this Court, as argued by the Government nothing indicates that the costs of the constitutional proceedings claimed by the applicant were related to the claims with which the Court has taken issue in the present case as opposed to his rejected claims. As for the lawyer's fees before this Court, it is noted that the applicant has signed a power of attorney mandating the legal representative to bring proceedings before the Court, and thus has entered into a contractual relationship with the legal representatives who is entitled to recover relevant dues as per invoice issued, even assuming that these have not yet been paid (see, *mutatis mutandis*, *S.H. v. Malta*, no. 37241/21, § 113, 20 December 2022, and *A.D. v. Malta*, cited above, § 218). However, bearing in mind that no invoices have been provided, but given the circumstances explained, and the fact that an application and subsequent observations have been submitted, the Court considers it appropriate to award EUR 1,500 in costs and expenses for proceedings before this Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski Deputy Registrar	Jolien Schukking President