



Sentence reduction was appropriate form of compensation for detention in breach of Convention

In its decision in the case of [Porchet v. Switzerland](#) (application no. 36391/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's pre-trial detention in a 48-hour police custody facility and his compensation claim.

By way of compensation for having unduly spent 16 days in an unsuitable facility, the applicant was granted a reduction of eight days in his prison sentence on conviction. The Federal Court took the view that this form of redress, rather than a monetary award, was fully consistent with Swiss law. The Court found that the type of compensation complied with Article 5 § 5 (right to liberty and security / right to compensation) of the European Convention on Human Rights and therefore that the applicant could no longer claim to be a victim of a violation of that Article.

Principal facts

The applicant, Mathieu Porchet, is a Swiss national born in 1993. He lives in the canton of Vaud (Switzerland). In 2013 he was remanded in custody. In 2015 he was sentenced to 35 months' imprisonment, partly suspended, for endangering the lives of others and for driving a vehicle without a licence.

In this case Mr Porchet complained that he had been remanded in custody for 18 days in a police custody facility instead of the 48 hours allowed by law. To compensate for the 16 days of detention in the cell reserved for police custody, the Criminal Court granted him an eight-day reduction in his prison sentence when he was convicted. Mr Porchet challenged this decision, claiming financial compensation rather than a reduction in sentence. His appeal was rejected.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 June 2016.

Relying on Article 5 § 5 (right to liberty and security / right to compensation), Mr Porchet alleged that this provision created a direct and enforceable right to financial compensation. He complained that the Swiss courts had not granted him such compensation. He added that Swiss law provided for a right to receive a monetary award.

The decision was given by a Chamber of seven judges, composed as follows:

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),

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

Decision of the Court

Mr Porchet had challenged the decision of the Swiss authorities to give him a reduction in sentence rather than financial compensation for a period of pre-trial detention in breach of the Convention.

The Court reiterated that the right to compensation under paragraph 5 of Article 5 had to stem from a violation of one of the other paragraphs of that Article. In addition, it was engaged only where compensation for such violation could not be claimed in the domestic courts.

In the present case, the Court noted that on 11 December 2013 the court supervising pre-trial restrictive measures had acknowledged that the conditions in which Mr Porchet spent 16 days of his pre-trial detention did not comply with the law. The criminal court had subsequently reduced Mr Porchet's prison sentence by eight days to compensate for the non-pecuniary damage he had sustained as a result of being wrongly held in a police custody cell. That decision had been upheld by the Federal Court, which had expressly analysed the matter under Article 5 of the Convention.

The Court had previously found that national authorities were entitled to grant compensation in the form of a reduction in sentence, if this was done in an express and measurable manner, under Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 § 3 (right to liberty and security) and 6 (right to a fair trial) of the Convention.

By analogy with the above, the Court noted that Mr Porchet's reduction in sentence of eight days corresponded to compensation for his 16 days of pre-trial detention in an unsuitable facility. The illegality thus related solely to the nature of the premises in which he was held. It was precisely on account of the illegality of part of his pre-trial detention that the Criminal Court had reduced the sentence. In the Court's view, the compensatory intention of that court's decision and the proportionality of that reduction in sentence had been clearly established.

The Federal Court had taken the view that this form of redress, a reduction in sentence rather than a monetary award, was fully consistent with Swiss law.

Since the national authorities had acknowledged the violation in question and had then provided reparation for the damage caused – comparable to just satisfaction under Article 41 of the Convention – the Court found that the applicant could no longer claim to be a victim of a violation of Article 5 § 5 of the Convention.

The application was thus declared inadmissible.

The decision is available only in French.

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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.