



## Complaints brought by suspect in Caruana Galizia assassination declared partly inadmissible

In its partial decision in the case of [Fenech v. Malta](#) (application no. 19090/20) the European Court of Human Rights has unanimously declared the application partly inadmissible.

The case concerns the aftermath of the applicant's arrest in 2019 on suspicion of involvement in the murder of Daphne Caruana Galizia, a noted Maltese journalist who was assassinated in 2017. In particular it involves his pre-trial detention during the Covid public-health emergency, precautions around his state of health as a detainee (he has one kidney) and the resulting proceedings before the authorities, in particular their length. The proceedings are ongoing.

The Court found that the complaints under Article 5 §§ 1, 3 and 4 (right to liberty and security) and Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights were manifestly ill-founded and had to be rejected.

The Court found that it could not, on the basis of the case file, determine the admissibility of the applicant's complaints under Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention regarding his conditions of detention and the State's alleged failure to protect his health with regard to the Covid-19 pandemic and his vulnerable status. It decided to give notice of them to the Maltese Government.

Thus, the Court, unanimously, decided to adjourn the examination of the applicant's complaints under Articles 2 and 3 and declared the remainder of the application inadmissible.

### Principal facts

The applicant, Yorgen Fenech, is a Maltese national who was born in 1981 and lives in St Julian's (Malta).

The applicant is a businessman and the former head of the Tumas Group. He was arrested on 20 November 2019 on suspicion of involvement in the murder of Maltese journalist Daphne Caruana Galizia in October 2017.

On 30 November 2019 the applicant was arraigned and charged with promoting, organising or financing an organisation with a view to committing a criminal offence, and of complicity in wilful homicide. The applicant pleaded not guilty to the charges. He was remanded in custody and since then has been detained in the Corradino Correctional Facility.

The applicant's first two bail requests – made on 18 December 2019 and 30 January 2020 – were both dismissed *inter alia* on the grounds that there was a risk that evidence might be tampered with and the course of justice disrupted, especially as there were strong suspicions that some of the wrongdoers involved in the crime had not yet been summoned. It was also feared that his release could give rise to public disorder.

From 16 March 2020 the criminal proceedings were interrupted owing to emergency measures introduced in respect to the Covid-19 public-health crisis. This led to the applicant lodging, on 1 April 2020, an application alleging unlawful detention, and a further request for bail on 6 April 2020. He argued that the decision to suspend all criminal proceedings until an unspecified date amounted to an indefinite suspension, which meant that he could not be tried within a reasonable timeframe. In his view, that, together with the absence of any certainty, specificity or foreseeability concerning

when the courts might reopen, meant that his continued detention lacked any legal basis and rendered his detention unlawful. Both applications were dismissed by the criminal court.

On 8 April 2020 the applicant lodged an application for the proceedings to be resumed. The criminal court considered that as the proceedings were still at inquiry stage strict procedural laws meant that there would be too many people in the courtroom in a confined space for a considerable length of time, and the risk of contagion, including for the applicant himself, was too great. It therefore dismissed his request.

Then, on 16 April 2020 the applicant applied for bail a fourth time, again raising the issue of the suspension of court proceedings which he considered, together with the risks of contracting Covid-19 whilst incarcerated, violated his right to life and freedom from ill-treatment. In particular, he noted that his medical condition – the previous loss of a kidney – placed him in significant danger concerning his health and chances of survival if he were to contract Covid-19. The application for bail was dismissed on 21 April 2020. Nonetheless, given his medical situation, the criminal court ordered that particular attention be paid to the applicant's medical needs.

The applicant instituted constitutional redress proceedings on 1 May 2020, seeking a declaration of breaches of Article 5 of the Convention, and asked the Civil Court (in its constitutional competence) to release him. In the meantime, on 19 May 2020, the criminal court authorised the continuation of the proceedings. In a judgment of 29 May 2020, the Civil Court found a breach of the applicant's rights under Article 5 and ordered that the suspension be lifted. In that court's opinion, it should not have been left to the courts to determine whether considerations of public health prevailed over the fundamental rights of accused persons, and whether the court environment was sufficiently safe and if not, what measures should be taken to remedy the situation. It held that since the President of Malta had not issued a proclamation under the Constitution, the public-health measures had been brought in terms of the Public Health Act, and the legal notice could not prevail over fundamental rights. Thus, the suspension of compilation of evidence proceedings for persons held in custody was in breach of Article 5 of the Convention, and its equivalent in the Constitution.

The criminal proceedings against the applicant resumed on 1 June 2020.

Following an appeal by the State Advocate, the Constitutional Court overturned the Civil Court's judgment on 23 November 2020. It held that the applicant had not been detained indefinitely. The courts had been granted discretion as to whether or not to continue proceedings and to decide on bail requests. On that basis, the bail requests presented by the applicant when the courts were closed had all been assessed individually and decided by judges. Furthermore, the criminal court had lifted the suspension on 19 May 2020 and the applicant's proceedings had been resumed with the courts still closed. Moreover, the state of public-health emergency had been legitimately issued by the Superintendent of Public Health. It was not for the Constitutional Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislature's discretion should have been exercised in another way. The measures had been put in place in exceptional circumstances and had been in place for less than three months. They were thus temporary and of a limited nature. Furthermore, the measures had been put in place on the basis of the available scientific knowledge at the time and therefore they had not been arbitrary. They were thus legitimate, necessary and proportionate, and the applicant's detention could not be considered arbitrary or indefinite, nor could it be said that he had had no remedy in respect of his detention.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 May 2020.

The applicant complained under Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights of his conditions of detention and the State's alleged failure to protect his health with regard to the Covid-19 pandemic and his vulnerable

status. He also complained, under Article 5 §§ 1, 3 and 4 (right to liberty and security) of the Convention, of the lawfulness of his detention and the inadequacy of the domestic remedies used in that connection. Lastly, relying on Article 6 § 1 (right to a fair trial) the applicant complained that he had been deprived of his right to access to court and to trial within a reasonable timeframe.

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

Ksenija **Turković** (Croatia), *President*,  
 Krzysztof **Wojtyczek** (Poland),  
 Alena **Poláčková** (Slovakia),  
 Péter **Paczolay** (Hungary),  
 Raffaele **Sabato** (Italy),  
 Lorraine **Schembri Orland** (Malta),  
 Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Articles 2 and 3

The applicant, in his submissions, described conditions of detention that he characterised as contrary to the Convention, including periods of solitary confinement, insalubrious and cramped conditions, lack of clean and warm clothing, and very limited physical exercise. He highlighted the risk to his life due to the Covid-19 pandemic and his vulnerable status.

The Court considered that it could not, on the basis of the case file, determine the admissibility of these complaints. It decided therefore to give notice of them to the Maltese Government.

### Article 5 §§ 1 (c) and 3

The Court noted at the outset that it had not been contested that the applicant's detention was based on a "reasonable suspicion" that he had committed the offences with which he was charged.

The Court considered that the fact that the proceedings had been suspended with no appointed date for resumption due to the emergency measures ordered in the light of the Covid-19 pandemic, did not mean that the prosecution had had no intention of bringing the applicant before the competent legal authority. Moreover, the Court observed that the suspension had not exceeded three months. The applicant's detention had its basis in the Criminal Code and not in the impugned legal notices.

In addition, the Court noted that a decision on each of the four applications for bail lodged by the applicant in his first four-and-a-half months of detention on suspicion of murder had been taken rapidly by the domestic courts, two of the decisions even having been taken despite the courts' closure. The courts had given detailed decisions substantiating the several grounds justifying the continuation of the applicant's detention.

As to whether the authorities had acted with due diligence, the Court noted that the applicant had not referred to any failings, delays or omissions on behalf of the authorities, apart from the time the proceedings had been suspended due to the emergency measures. That temporary suspension had been due to the exceptional circumstances surrounding a global pandemic which, as held by the Constitutional Court, justified such lawful measures in the interest of public health, as well as that of the applicant. It followed that it could not be said that the duty of special diligence had not been observed.

Accordingly, the Court held that this complaint was manifestly ill-founded and had to be rejected.

#### Article 5 § 4

The Court noted that the main argument behind the applicant's application on 1 April 2020 had been the introduction of the emergency measures which suspended the committal proceedings, a situation which, in his view, had rendered his detention unlawful. In the domestic court's view, his request had been premature, or in any event ill-founded given the access he had had to the courts, and it had decided that his detention could not be considered unlawful on that ground. The Court did not find the domestic court's decision to be arbitrary, nor that it had disregarded the applicant's argument or its factual basis.

Moreover, the criminal court had ascertained the lawfulness of his detention. The Court therefore concluded that the decision of the criminal court had dealt sufficiently with the applicant's complaint, based on the arguments in his bail application and went even further covering issues of a substantive and procedural nature not raised by the applicant.

The Court held that this complaint was manifestly ill-founded and had to be rejected.

#### Article 6 § 1

The Court noted that the proceedings had to date lasted sixteen months, a length of time which, given the complexity of the case, could not be considered unreasonable. Furthermore, the applicant had not referred to any failings, delays or omissions on behalf of the authorities, apart from when the proceedings had been suspended due to the emergency measures. There was no indication that the proceedings were not being actively pursued. Therefore, the authorities could not be reproached for their conduct. The fact that no hearings had taken place during his committal proceedings for a period of around three months – during which court work had been stalled due to a worldwide pandemic – did not alter that conclusion. Nor could it be said that as a result of the emergency measures, the essence of the applicant's right of access to a court had been impaired.

Accordingly, the Court held that this complaint was manifestly ill-founded and had to be rejected.

The Court, unanimously, decided to adjourn the examination of the applicant's complaints under Articles 2 and 3 of the Convention and declared the remainder of the application inadmissible.

*The decision is available only in English.*

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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.