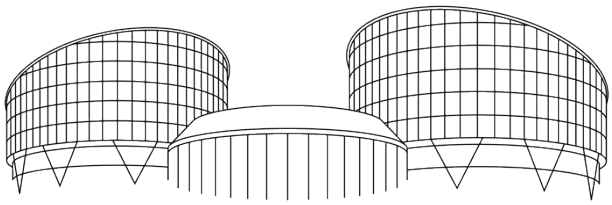

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MIKALAUSKAS v. MALTA

(Application no. 4458/10)

JUDGMENT

STRASBOURG

23 July 2013

FINAL

23/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mikalauskas v. Malta,

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

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
Lawrence Quintano, ad hoc *judge,*

and Fatoş Aracı, *Section Registrar,*

Having deliberated in private on 23 July 2013,

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

PROCEDURE

1. The case originated in an application (no. 4458/10) 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") by a Lithuanian national, Mr Tomas Mikalauskas ("the applicant"), on 13 January 2010.

2. The applicant was represented by Dr J. Brincat, a lawyer practising in Malta. The Maltese Government ("the Government") were represented by their Agent, Dr. P. Grech.

3. The applicant alleged that he had suffered a violation of Article 5 §§ 3 and 4 of the Convention.

4. On 15 May 2012 the Chamber decided to communicate the complaints to the respondent Government under Article 3 and Article 5 §§ 3 and 4. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The Government of the Republic of Lithuania, who had been notified by the Registrar of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44), did not indicate that they intended to do so.

6. Mr Vincent De Gaetano, the judge elected in respect of Malta, was unable to sit in the case (Rule 28). Accordingly, the President of the Chamber decided to appoint Mr Lawrence Quintano to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1981 and was detained in the Corradino Correctional Facility, Paola, Malta, at the time his application was lodged. He now lives in Qawra, Malta.

A. Background of the case

8. The facts of the case, as submitted by the parties, may be summarised as follows.

9. Following, the applicant's arrival in Malta on holiday, on 8 September 2009, he was arrested and questioned without the presence of a lawyer or an interpreter. On 10 September 2009, two days after his arrest, the applicant and some other Maltese and foreign suspects were charged with the possession of cannabis, not for their own exclusive use, and with conspiracy for the purposes of drug trafficking. They were brought before a magistrate and remanded in custody.

10. The applicant alleged that the conditions of detention in prison amounted to inhuman and degrading treatment. There was no access to hot water and there were no heaters. The prison had very dim lighting, which made it impossible to read. No drinking water was provided and had to be purchased by detainees themselves, and there were no facilities for washing clothes.

11. The applicant, who suffers from health problems in relation to a dilated cerebral blood vessel which he claimed can be potentially fatal, complained that while in detention he had not received the relevant treatment he had previously been prescribed. According to a Lithuanian medical certificate of 2008 that he submitted, his condition caused headaches and required annual screening. In the event of increased dilation, surgical treatment might be needed. The certificate recommended that a computerised tomography (CT) scan be carried out between November and December 2009 and that the applicant avoid emotional strain and physical activity.

12. According to the first medical report submitted by the Government, namely a prison doctor's summary dated 9 August 2011, the applicant's condition was as follows.

On admission, the applicant was not on any regular treatment save for analgesics (paracetamol and later a different type), which he took regularly. He had a history of recurring headaches and mental illness, for which he had received regular psychotherapy in the United Kingdom. Subsequent (blood and chest X-ray) tests did not reveal anything unusual. He was seen once by

a forensic psychologist who expressed concern about the level of anxiety he was exhibiting on account of his incarceration, but the applicant refused to attend any further sessions. On 13 January 2010 the applicant asked to see a doctor because of headaches connected to his medical condition. He was referred to hospital with the relevant Lithuanian medical certificate from 2008. On 14 July 2010 the applicant visited the prison clinic, complaining that he had not yet been sent to hospital. The hospital was contacted the following day and an appointment was obtained for 8 March 2011. The applicant refused to attend.

13. In his reply, the applicant contested the veracity of the medical summary. He claimed that he had only had a blood test on admission, and had never been taken to hospital for an X-ray. He had persistently requested to be seen by a prison psychologist after his first visit, but had repeatedly been told that he had to wait his turn as the prison was overcrowded. He had even attempted to go to see the psychologist in person, but the latter had given him the same reply. He claimed that he had been left suffering from headaches for days and that the prison authorities had refused to give him even simple paracetamol. At times he had been given just one tablet, which had not been enough. Any other stronger medication had to be provided by the inmates themselves. Only after a whole year of detention had he been allowed to purchase his own medication. He conceded, however, that he had refused to go to his hospital appointment on 8 March 2011. Having lost trust in the medical staff at the prison and the prison authorities over time, and expecting to be released on bail, he had thought that he would be able to seek appropriate medical assistance once released.

14. The Government later submitted further documents, through which it transpired that following admission to the Corradino Correctional Facility (on 10 September 2009) the applicant was examined by a prison doctor. The relevant medical report was completed on 1 October 2009. Another examination was held in the months that followed, and the applicant was found to be fit enough to use the gym. Blood and virology tests were also carried out. The applicant was assessed by a psychologist and a report was compiled, stating, *inter alia*, the following: [He] "appeared to be paranoid and suspicious of everyone and everything. The inmate was offered psychological treatment should he need it in the future. The inmate resisted and stated that he does not need it at the moment. It would therefore be up to the inmate to seek help if ever he needed it". From the applicant's file, it did not appear that the applicant ever sought further treatment. On 13 January 2010 he was referred to the Neurology Department of St Luke's Hospital (with the Lithuanian medical certificate attached) following complaints that he was suffering from headaches. On 1 February 2010 an appointment was fixed for him for 8 March 2011, but he refused to attend. In the meantime, on 7 February 2010 a chest X-ray was performed at Mater Dei Hospital, but no abnormalities were detected. The Government further

alleged that on 1 November 2010 the applicant had had a dental appointment at the same hospital.

B. The bail applications

15. The applicant's first application to be granted bail, dated 3 November 2009, was refused by the Court of Magistrates as a Court of Criminal Inquiry ("Court of Magistrates") on 17 December 2009. Having considered the applicant's personal circumstances (from documents showing that financial support was available from his relatives), his academic background (he was a graduate in accountancy), his character reference as supported by evidence given by the Republic of Lithuania's counsel (who was heard by the court in person), evidence that a third party was willing to rent an apartment to him if he were to be granted bail, pleadings relating to the fact that the applicant was a European Union citizen to whom the provisions of a European arrest warrant could apply, and the fact that the other co-accused had already been granted bail, the court nevertheless concluded that the applicant had no other ties with Malta capable of satisfying it that he would remain on the island.

16. A second application for bail, dated 24 December 2009 (accompanied by documentation showing that financial support was available from the applicant's relatives), was refused by the Criminal Court on 28 December 2009, on the grounds that there was a serious risk that the proceedings could be thwarted, either because the applicant would not appear for trial or would abscond or interfere with witnesses and that the case concerned a crime with international ramifications. The Criminal Court considered that he had no ties with Malta. Neither the intervention of the Lithuanian Consulate, which had offered to accommodate the applicant and employ him, nor the fact that he was an EU citizen could outweigh the other factors. However, the court acknowledged that the matter could be reviewed at a later date and specifically ordered that the proceedings be continued with speed and diligence in view of the applicant's detention.

17. A third application for bail, dated 19 January 2010, was refused by the Court of Magistrates on 26 January 2010 on the ground that the courts' position had already been made clear. The prosecution was ordered to produce further evidence by the next hearing.

18. A fourth application to be granted bail was made on 9 February 2010 when proceedings were still pending, making particular reference to the applicant's medical condition, but it was refused by a decision of the Court of Magistrates on 12 February 2010. Having heard submissions and having read the previous decisions refusing bail, the court said it had nothing further to add to the position previously adopted by the courts.

19. A fifth bail application was made on 14 April 2010. The applicant highlighted the fact that the witnesses in the case had been heard, that he

had cooperated with the police, that he was an EU national with no criminal record, that he was suffering from a medical condition (as evidenced by the relevant medical documents already submitted to the court) in relation to which he should have undergone certain medical tests, and that he had financial support and a job offer and accommodation in Malta from the Lithuanian Consulate. He also argued that the passage of time should weigh heavily on the decision whether to grant him bail, particularly given the lack of special diligence on the part of the prosecution. On 19 April 2010, the Criminal Court refused the application, considering that the grounds for refusing bail made in the previous decisions were still valid.

20. A sixth bail application was lodged on 1 July 2010, but was refused by the Court of Magistrates on 6 July 2010 on the basis of the previous decisions. The court requested the prosecution to determine the case expeditiously.

21. The Attorney General objected to all the above-mentioned bail applications on account of the applicant's lack of ties with Malta and the seriousness of the offences. The applicant claimed to have been the only suspect not to have been released on bail.

22. The applicant lodged a further application for bail on 16 July 2010. On 22 July 2010 the Criminal Court, having considered that the Attorney General's objection related to the risk of the applicant absconding and that the applicant had a job and accommodation waiting for him on his release, granted the applicant bail subject to conditions which included: (i) a declaration by the Lithuanian Consulate regarding the details of his future residence and job in Malta; (ii) an undertaking that he appear in person at every stage of the proceedings; (iii) a prohibition on him leaving the island, committing a crime while on bail, or speaking to any witnesses; (iv) a requirement that he report to the police station twice daily; (v) a curfew confining him to his residence between 6 p.m. and 7.45 a.m.; and (vi) financial guarantees by way of a deposit of 50,000 euros (EUR) and a personal guarantee of EUR 15,000 (a total of EUR 75,000 [*sic*]), which would be forfeited on breach of any of the above conditions.

23. On 6 September 2010 the applicant, who was still in detention, requested to have the financial guarantees lowered to reflect his family's income (as evidenced by supporting documents). The decision, if any, on that request has not been submitted to the Court.

24. On 15 October 2010 the applicant, who remained in detention, reiterated his request to have the financial guarantees lowered. On 23 December 2010 the Court of Magistrates, following an objection by the Attorney General, denied the request on the basis that it should not alter the decision of the Criminal Court.

25. The applicant lodged a third request while still in detention, in which he included evidence of his parents' earnings and stated that he could reside with his girlfriend, as she was moving to Malta. On 22 February 2011 the

Court of Magistrates reduced the deposit to EUR 40,000, but increased the personal guarantee to EUR 60,000.

26. On 28 April 2011 a fourth request was lodged, in which the applicant insisted on his inability to pay the required sums and stated that his girlfriend, who had now moved to Malta, was willing to stand surety for him. On 4 May 2011 the Court of Magistrates amended the financial guarantees as follows: a deposit of EUR 30,000, or a third party surety of the same amount (upon disclosure of the financial resources of the person standing surety), and EUR 15,000 as a personal guarantee.

27. The applicant was released on bail on 7 July 2011 having satisfied the said conditions. Over the months that followed, various decisions were delivered agreeing to change the police station to which he was required to report. On 5 June 2012 the applicant requested to have his bail conditions changed by withdrawing part of the deposit made in court. On 6 June 2012 the Court of Magistrates denied his request, considering that there were no legal grounds to revise the deposit imposed.

C. The criminal proceedings against the applicant

28. The relevant time-lines of the criminal proceedings against the applicant (and other co-accused), together with what happened at the hearings (excluding matters related to bail which have been mentioned above) are as follows:

The applicant was arraigned on 10 September 2009 and pleaded not guilty to the charges.

On 14 September 2009 the prosecuting officer and eight other police officers gave evidence, and documents were exhibited.

On 22 September 2009 further documents were exhibited, a pharmacist, another police officer and a third person gave evidence. An expert in communications technology and a translator were appointed.

On 3 November 2009 a copy of the inquiry was exhibited and one person gave evidence and exhibited documents.

On 13 November 2009 another two police officers and a lawyer gave evidence and exhibited documents. A fingerprints expert was appointed.

Another hearing was held on 11 December 2009 (no record).

On 16 December 2009 the communications technology expert and two other individuals gave evidence.

On 21 January 2010 the fingerprints expert gave evidence.

On 2 February 2010, three witnesses, who had already been heard, gave further evidence, together with another two individuals.

On 11 February 2010 another witness gave evidence.

On 23 March 2010 the case was adjourned as the magistrate was indisposed.

On 25 March 2010 a doctor and the prosecuting officer gave evidence; the latter declared that only three witnesses remained to be heard.

On 4 May 2010 the case was adjourned as the magistrate was indisposed.

On 5 May 2010 a police inspector and another person gave evidence and were cross-examined. The co–accused's lawyer objected to the proceedings being protracted.

On 11 May 2010 the case was adjourned due to technical problems.

On 22 June 2010 two witnesses who had already given evidence were further heard and cross-examined. The applicant's lawyer reserved the right to further cross-examination, and requested that a witness be re-heard.

On 2 July 2010 the communications technology expert was cross-examined and the applicant's lawyer requested that another witness be re-heard.

On 4 August 2010 the case was adjourned.

On 6 September 2010 one of the witnesses called by the applicant was re-heard and cross-examined. The prosecution was to summon four further witnesses.

On 15 September 2010 a lawyer from the prosecutor's office was heard.

On 27 September 2010 the case was adjourned following a request for letters rogatory by the co-accused.

On 30 September following a request for a change in the letters rogatory the case was adjourned.

On 12 October 2010 the court suspended the inquiry and the case was adjourned.

On 29 October 2010 the witness requested by the defence gave evidence, and another person whose evidence had already been tendered in writing was cross-examined. A third person refused to tender evidence. A translator was appointed.

On 10 November 2010, following a request to destroy the substances, the case was adjourned.

On 17 November 2010 another two police officers gave evidence. The prosecutor declared that he had no further evidence to produce.

On 26 November 2010 the case was adjourned as the prosecutor was indisposed.

From 3 December 2010 until 6 July 2011 the case was adjourned more than fifteen times for either unknown reasons, or because the magistrate was indisposed or because the letters rogatory were still pending.

In the meantime, on 22 February 2011 two other persons gave evidence. On 3 March 2011 defence counsel requested the summoning of witnesses. On 16 March 2011 the prosecuting officer gave evidence again. On 7 April 2011 another individual gave evidence. On 13 May 2011 a doctor who had already given evidence was re-heard. On 3 June 2011 another person gave evidence.

The applicant was effectively released from detention on 7 July 2011.

On 8 April 2013, date of the last communication with the Government, the committal proceedings were still on-going and no bill of indictment had yet been filed.

D. Other relevant information

29. The applicant acknowledged that he did not institute constitutional redress proceedings, but argued that he did not, in any event, have sufficient funds for doing so.

II. RELEVANT DOMESTIC LAW

A. The Civil Code

30. The relevant provisions of the Civil Code, Chapter 16 of the Laws of Malta, regarding actions in tort, read as follows:

Article 1031

"Every person, however, shall be liable for the damage which occurs through his fault."

Article 1032

"(1) A person shall be deemed to be in fault if, in his own acts, he does not use the prudence, diligence, and attention of a *bonus pater familias*.

(2) No person shall, in the absence of an express provision of the law, be liable for any damage caused by want of prudence, diligence, or attention in a higher degree."

Article 1033

"Any person who, with or without intent to injure, voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law, shall be liable for any damage resulting therefrom."

Article 1045

"(1) The damage which is to be made good by the person responsible in accordance with the foregoing provisions shall consist in the actual loss which the act shall have directly caused to the injured party, in the expenses which the latter may have been compelled to incur in consequence of the damage, in the loss of actual wages or other earnings, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused.

(2) The sum to be awarded in respect of such incapacity shall be assessed by the court, having regard to the circumstances of the case, and, particularly, to the nature and degree of incapacity caused, and to the condition of the injured party."

B. The Criminal Code

31. Article 401 of the Criminal Code, Chapter 9 of the Laws of Malta, regarding the terms for the conclusion of an inquiry, reads as follows:

"(1) The inquiry shall be concluded within the term of one month which may, upon good cause being shown, be extended by the President of Malta for further periods each of one month, each such extension being made upon a demand in writing by the court:

Provided that the said term shall not in the aggregate be so extended to more than three months:

Provided further that unless bail has been granted, the accused shall be brought before the court at least once every fifteen days in order that the court may decide whether he should again be remanded in custody.

(2) On the conclusion of the inquiry, the court shall decide whether there are or not sufficient grounds for committing the accused for trial on indictment. In the first case, the court shall commit the accused for trial by the Criminal Court, and, in the second case, it shall order his discharge.

(3) In either case, the court shall order the record of the inquiry, together with all the exhibits in the case, to be, within three working days, transmitted to the Attorney General.

(3A) Where the court has committed the accused for trial by the Criminal Court the court shall, besides giving the order mentioned in subarticle (3), adjourn the case to another date, being a date not earlier than one month but not later than six weeks from the date of the adjournment. The court shall also adjourn the case as aforesaid after having received back from the Attorney General the record of the inquiry and before returning the record to the Attorney General in terms of any provision of this Code."

32. Article 409A of the Criminal Code, concerning applications by persons in custody regarding unlawful detention, reads as follows:

"(1) Any person who alleges he is being unlawfully detained under the authority of the Police or of any other public authority not in connection with any offence with which he is charged or accused before a court may at any time apply to the Court of Magistrates, which shall have the same powers which that court has as a court of criminal inquiry, demanding his release from custody. Any such application shall be appointed for hearing with urgency and the application together with the date of the hearing shall be served on the same day of the application on the applicant and on the Commissioner of Police or on the public authority under whose authority the applicant is allegedly being unlawfully detained. The Commissioner of Police or public authority, as the case may be, may file a reply by not later than the day of the hearing.

(2) On the day appointed for the hearing of the application the court shall summarily hear the applicant and the respondents and any relevant evidence produced by them in support of their submissions and on the reasons and circumstances militating in favour or against the lawfulness of the continued detention of the applicant.

(3) If, having heard the evidence produced and the submissions made by the applicant and respondents, the court finds that the continued detention of the applicant is not founded on any provision of this Code or of any other law which authorises the arrest and detention of the applicant it shall allow the application. Otherwise the court shall refuse the application.

(4) Where the court decides to allow the application the record of the proceedings including a copy of the court's decision shall be transmitted to the Attorney General by not later than the next working day and the Attorney General may, within two working days from the receipt of the record and if he is of the opinion that the arrest and continued detention of the person released from custody was founded on any provision of this Code or of any other law, apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released from custody. The record of the proceedings and the court's decision transmitted to the Attorney General under the provisions of this subarticle shall be filed together with the application by the Attorney General to the Criminal Court."

33. Article 412B, concerning applications by persons in custody regarding unlawful detention pending criminal proceedings reads as follows:

"(1) Any person in custody for an offence for which he is charged or accused before the Court of Magistrates and who, at any stage other than that to which article 574A applies, alleges that his continued detention is not in accordance with the law may at any time apply to the court demanding his release from custody. Any such application shall be appointed for hearing with urgency and together with the date of the hearing shall be served on the same day of the application on the Commissioner of Police or, as the case may be, on the Commissioner of Police and the Attorney General, who may file a reply thereto by not later than the day of the hearing.

(2) The provisions of article 574A(2) and (3) shall *mutatis mutandis* apply to an application under this article.

(3) Where the application is filed in connection with proceedings pending before the Court of Magistrates as a court of criminal inquiry before a bill of indictment has been filed and the record of the inquiry is with the Attorney General in connection with any act of the proceedings the application shall be filed in the Criminal Court and the foregoing provisions of this article shall *mutatis mutandis* apply thereto.

(4) The provisions of article 409A(4) shall apply to a decision of the Court of Magistrates under this article."

34. Article 525(2A) reads as follows:

"The provisions of article 412B(1) and (2) shall also apply *mutatis mutandis* to the Criminal Court with respect to a person in custody for an offence for which a bill of indictment has been filed as well as to the Court of Criminal Appeal with respect to a person in custody who is a party to appeal proceedings before that court:

Provided that with respect to the Criminal Court the relevant decision shall in all cases be taken by the Court sitting without a jury."

35. Under domestic law, bail is regulated by the provisions of Article 574A, which in so far as relevant read as follows:

"(1) When the person charged or accused who is in custody is first brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, the Court shall have the charges read out to the person charged or accused and, after examining the person charged as provided in article 392 as the proceedings may require, shall summarily hear the prosecuting or arraigning officer and any evidence produced by that officer on the reasons supporting the charges and on the reasons and circumstances, if any, militating against the release of the person charged or accused.

(2) After hearing the prosecuting or arraigning police officer and any evidence produced as provided in subarticle (1) the court shall inform the person charged or accused that he may be temporarily released from custody on bail by the court under conditions to be determined by it and shall ask him what he has to say with respect to his arrest and his continued detention and with respect to the reasons and the circumstances militating in favour of his release.

(3) Where any of the offences charged consists in any of the offences mentioned in article 575(2) the court shall, after hearing the person charged or accused as provided in subarticle (2) of this article, ask the prosecuting or arraigning officer whether he has any submissions to make on the question of temporary release from custody on bail of the person charged or accused and the latter shall be allowed to respond.

(4) Where none of the offences charged consists in any of the offences mentioned in article 575(2) the court shall, after hearing the person charged or accused as provided in subarticle (2) of this article, ask the prosecuting or arraigning officer whether he and the Attorney General have any submissions, in writing or otherwise, to make on the question of the temporary release from custody of the person charged or accused and the latter shall be allowed to respond.

(5) At the end of submissions as provided in the preceding subarticles of this article the court shall review the circumstances militating for or against detention.

(6) If the court finds that the continued detention of the person charged or accused is not founded on any provision of this Code or of any other law which authorises the arrest and detention of the person in custody it shall unconditionally release that person from custody.

(7) If the court does not find cause to release unconditionally the person charged or accused under the provisions of subarticle (6) it may nevertheless, saving the provisions of article 575(1) and unless release is prohibited by any provision of law, release that person from custody on bail subject to such conditions as it may deem appropriate.

(8) If the court does not find cause to release unconditionally the person charged or accused and refuses to grant that person bail the court shall remand that person into custody and the provisions of article 575(11) shall apply.

(9) Where the court orders the release from custody of the person charged or accused, whether unconditionally or on bail subject to conditions, under any of the provisions of this article the decision of the court to that effect shall be served on the Attorney General by not later than the next working day and the Attorney General may apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released or to amend the conditions, including the amount of bail, that may have been determined by the Court of Magistrates."

36. Article 575, regarding crimes in respect of which bail is granted only in certain circumstances, in so far as relevant reads as follows:

"(1) Saving the provisions of article 574(2), in the case of – ...

(ii) a person accused of any crime liable to the punishment of imprisonment for life,

the court may grant bail, only if, after taking into consideration all the circumstances of the case, the nature and seriousness of the offence, the character, antecedents, associations and community ties of the accused, as well as any other matter which appears to be relevant, it is satisfied that there is no danger that the accused if released on bail -

(*a*) will not appear when ordered by the authority specified in the bail bond; or

(*b*) will abscond or leave Malta; or

(*c*) will not observe any of the conditions which the court would consider proper to impose in its decree granting bail; or

(*d*) will interfere or attempt to interfere with witnesses or otherwise obstruct or attempt to obstruct the course of justice in relation to himself or to any other person; or

(*e*) will commit any other offence."

37. Article 576, regarding security for the purposes of bail, reads as follows:

"The amount of the security shall be fixed within the limits established by law, regard being had to the condition of the accused person, the nature and quality of the offence, and the term of the punishment to which it is liable."

C. European Convention Act

38. Article 4(3) of the European Convention Act, Chapter 319 of the laws of Malta, reads as follows:

"If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under

this subarticle and, subject to the provisions of subarticle (4), the court in which the question arose shall dispose of the question in accordance with that decision."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that while in detention he had not received prompt or adequate medical care, and that the conditions in the prison, given his medical condition, constituted inhuman and degrading treatment contrary to Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

40. The applicant also cited Article 2 of the Convention; however, in the circumstances of the case, the Court considers that the complaint is to be examined solely under Article 3.

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

(a) The parties' submissions

41. The Government submitted that the applicant had not instituted any proceedings before the domestic courts relating to his Article 3 complaint, and consequently he had not exhausted domestic remedies.

42. They noted that the applicant could have instituted a civil action for damages (in tort), which could have made good any damage or loss sustained as a result of his detention conditions, if he could have shown on the basis of probabilities that he had suffered damage attributable to the Government's acts or omissions (Articles 1031 and 1033 of the Civil Code, see paragraph 30 above). The Government cited the case of *Sammut and Visa Investments Ltd v. Malta* ((dec.), no. 27023/03, 28 June 2005) and various domestic judgments where the State had been held responsible. Nevertheless, they acknowledged that the circumstances of those cases were different to those of the present case. Moreover, citing *Zavoloka v. Latvia* (no. 58447/00, § 40, 7 July 2009) the Government submitted that the Convention did not give a general right for the award of compensation for non-pecuniary damage, known as "moral damage" in the domestic context. In any event, although it was true that such damage was not expressly

provided for under Maltese law (except in limited circumstances), a civil action could cover loss of opportunity, which in their view was a type of "moral damage" i.e. non-pecuniary damage as understood by the Convention case-law.

43. Furthermore, the Government submitted that the applicant had failed to institute constitutional redress proceedings, where the relevant courts have wide ranging powers to ensure redress, including being able to award compensation for non-pecuniary damage. The applicant could have requested the proceedings to be heard with urgency (such requests were upheld where urgency was merited) in order to reduce the time span drastically. The Government cited the following cases as examples of where such requests were accepted: (i) in the context of the enforcement of a return order of a child following wrongful removal, where the case was decided by two levels of jurisdiction over approximately a month and a half (from 6 July 2012 to 24 August 2012); (ii) in a case in the same context, brought on 2 August and decided on 14 August 2012 (where no appeal was lodged); and (iii) *Kenneth Gafa v. The Attorney General* (no 22. of 2012) concerning repeated bail refusals under Article 5 § 3, which was brought on 10 April 2012 and decided on appeal on 23 November 2012. The Government submitted that such remedies could have directly remedied the state of affairs of which the applicant complained.

44. The applicant submitted that a civil action for damages could not improve material conditions of detention, which included the adequacy of medical assistance. Moreover, Article 1045 of the Civil Code limited what damages could be claimed and excluded non-pecuniary damage, and in addition, usually applied only to cases concerning private individuals.

45. Furthermore, as already held by the Court (see for example, *Kadem v. Malta* (no. 55263/00, 9 January 2003), constitutional redress proceedings were cumbersome and could not be considered expeditious. The applicant submitted that the Government's examples had referred to very specific sets of circumstances and cited another case, *Kolakovic v. The Attorney General* no. 50/11, regarding, *inter alia*, medical conditions, instituted before the constitutional jurisdictions on 12 August 2011 and concluded on appeal on 12 November 2012.

(b) The Court's assessment

46. In the context of complaints about inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention, and compensation for the damage or loss sustained on account of such conditions (see *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010, and *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007). If an applicant has been held in conditions in breach of Article 3, a domestic remedy capable of putting an end to the on-going

violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she has endured the inadequate conditions, what remains relevant is that he or she should have an enforceable right to compensation for the violation that has already occurred. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to this provision requires, in the Court's view, the States parties to establish, over and above a compensatory remedy, an effective mechanism in order to put an end to such treatment rapidly (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 98-99, 10 January 2012 and *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 50, 8 January 2013). The need, however, to have both of these remedies does not imply that they should be available in the same judicial proceedings. Further, in the context of complaints that there was a lack of adequate care for prisoners suffering from serious illnesses the Court has held that a preventive remedy ought to have the potential to bring direct and timely relief (see *Goginashvili v. Georgia*, no.47729/08, § 49, 4 October 2011, *Makharadze and Sikharulidze v. Georgia*, no.35254/07, § 52, 22 November 2011 and *Čuprakovs v. Latvia*, no. 8543/04, § 50, 18 December 2012).

47. It is incumbent on the Government claiming non-exhaustion of domestic remedies to satisfy the Court that a remedy was effective and available, both in theory and in practice at the relevant time (see *Menteş and Others v. Turkey*, 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII, § 57).

48. The Court notes that the case of *Zavoloka* (cited above) has been misinterpreted by the Government, as it is not comparable to the present case where the applicant, as a detainee, was under the responsibility of the authorities. Contrary to what was submitted by the Government, according to the Court's case-law, in the event of a breach of Articles 2 and 3, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V; *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 97-98, ECHR 2002-II). In *Keenan*, for example, the Court found that there had been significant defects in the medical care provided to a mentally-ill person known to be at risk of suicide, which amounted to a violation of Article 3.

The Court concluded that the applicant should have been able to apply under Article 13 for compensation for her non-pecuniary damage and the damage suffered by her son before his death.

49. The Court notes that, as partly acknowledged by the Government, the law of tort did not provide for compensation for non-pecuniary damage, which it notes, is different to a loss of opportunity which is considered as pecuniary damage in Convention case-law. It follows that an action in tort may not give rise to compensation for the non-pecuniary damage suffered (see, conversely, *Nocha v Poland*, (dec.) no. 21116/09, 27 September 2011). Neither is it a preventive remedy which could put an end to such treatment rapidly (see *Čuprakovs, cited above,* § 55). In consequence it cannot be considered an effective remedy under Article 3 for the purposes of a complaint of conditions of detention and lack of adequate medical treatment.

50. As to the remedy provided by the constitutional courts, the Court considers that, as appears from the cases brought before it, such an action provides a forum that guarantees due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the nature and gravity of the violation. Such courts can also make an award of compensation for non-pecuniary damage and there is no limit on the amount which can be granted to an applicant for such a violation (see, *mutatis mutandis*, *Gera de Petri Testaferrata Bonici Ghaxaq v. Malta*, no. 26771/07, § 69, 5 April 2011, in relation to Article 1 of Protocol No. 1, and *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006, in relation to Article 6). The ensuing judicial decision will be binding on the defaulting authority and enforceable against it. The Court is therefore satisfied that the existing legal framework renders this remedy capable, at least in theory, of affording appropriate redress. The question that arises is whether it can be said that the proceedings are conducted speedily (see, by implication, *Ananyev and Others*, cited above, § 109). The Court observes that the speed of the procedure for remedial action may also be relevant to whether it is practically effective in the particular circumstances of a given case for the purposes of Article 35 § 1 (see, *mutatis mutandis*, *McFarlane v. Ireland* [GC], no. 31333/06, § 123, ECHR 2010).

51. The Court notes that the two cases cited by the Government as having been treated in a timely manner both concerned return orders of children following wrongful removal. The only other case they cited concerned a complaint under Article 5 § 3 which took more than seven months to be decided. The only case regarding inadequate medical assistance was provided by the applicant. The Court observes that it took the constitutional courts exactly a year and three months to determine it. The Court considers that such a delay is of concern in the context of complaints about conditions of detention and, particularly, in respect of those

concerning inadequate medical treatment, where irreparable damage may be caused over time.

52. The Court considers that the Government should normally be able to illustrate the practical effectiveness of a remedy with examples of domestic case-law (see *Ananyev and Others*, cited above, § 109), but it is ready to accept that this may be more difficult in smaller jurisdictions where the number of cases of a specific kind may be fewer than in the larger jurisdictions. Nevertheless, it is not irrelevant that the only case comparable to the present one which has been brought to the Court's attention illustrates the ineffectiveness of this remedy, in so far as it could not put an end to the treatment complained of rapidly.

53. Thus, while the Court cannot rule out that constitutional redress proceedings dealt with as urgent, may in another case be considered an effective remedy for the purposes of complaints of conditions of detention and lack of adequate medical treatment under Article 3, the state of domestic case-law as shown in the present case does not allow the Court to find that the applicant was required to have recourse to such a remedy.

54. It follows that the Government's objection is dismissed.

55. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

(a) The parties' submissions

56. The applicant complained that he had not received prompt or adequate medical assistance while in detention. Although he acknowledged that inmates underwent examinations upon arrival at the facility, he complained that his referral to a hospital had not been without difficulty and took months, while inmates had often been required to pay for treatment themselves, as in his case. He submitted that he had been referred to hospital in January 2010 following complaints that he had been suffering from headaches, but had only obtained an appointment for 8 March 2011, more than a year later, which could not be considered prompt medical attention.

57. The applicant submitted that the reports filed by the Government were of a dubious nature. Referring to his Lithuanian medical certificate, the applicant noted that the documents submitted by the Government showed that, in any event, no attention had been given to the precarious situation of his cerebral blood vessel and that periodic screening, as had been recommended by his Lithuanian doctor, had not taken place.

58. The applicant further complained about the conditions of his detention. He alleged that he had not been provided with hot water or a heater, and that none of the inmates had been allowed to have their own heater, despite the cells being damp. The applicant acknowledged that hot water could be stored in small flasks, which had been available for purchase from the prison authorities. However, the amount of hot water they held would have been insufficient for personal hygiene purposes. Moreover, he submitted that there had been no drinking water supply to his cell, as the tap water had been of a rusty diluted colour. He stated that even the buildings of the national courts had warnings that tap water was undrinkable.

59. The Government submitted that the prison had a clinic manned by qualified nurses on fourteen-hour shifts. In-house doctors treated inmates on a daily basis. A psychiatrist and a psychologist were also available. On admission to the prison, the applicant had undergone a medical examination. During his pre-trial detention he had undergone further examinations and had been referred to Mater Dei Hospital when necessary, including for dental treatment. He had also been assessed by an in-house psychologist, but had refused to attend any follow-up sessions. Similarly, he had failed to attend one of his hospital appointments. In conclusion, they submitted that the applicant had been given adequate medical treatment for the purposes of Article 3. They made reference to the medical report dated 9 August 2011 (see paragraph 12 above) and the further documents submitted (see paragraph 14 above). The Government further noted that the applicant had not been requested to pay for any of his treatment, and that no evidence to the contrary had been submitted.

60. The Government submitted that while in custody, the applicant had been allocated a single-person cell in Division 3, measuring 3.6 x 2.5 m (9 sq.m.) equipped with its own sanitary facilities (a toilet and a handbasin). His cell had a window and electric lighting, enabling him to read. He had been provided with the necessary blankets and warm clothing during winter (when temperatures at night had been around 6ºC) and with two hot meals and breakfast daily. Only cold water had been supplied to his cell for security reasons i.e. to prevent officers being scalded with hot water, which had been purified by means of a reverse osmosis filtration system. Each division had been provided with a hot water dispenser for hot drinks, and inmates had been allowed to keep a thermos flask of hot water in their cells overnight for the same purposes. Division 3 had also been equipped with a four-cubicle hot and cold shower room, to which inmates had daily unrestricted access. Cells were unlocked at 7.30 a.m. by prison guards distributing hot drinks to prisoners and were left open until 12.30 p.m. They were unlocked again at 2 p.m. and locked at 8.30 p.m., during which time the inmates were free to move around and access the exercise yard. Other available amenities included a library, a gym, a church, a school, workshops and occasional cultural events.

61. Lastly, the Government submitted that there was no evidence to suggest that the applicant's health had been affected.

(b) The Court's assessment

62. Under Article 3, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (*Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). In examining allegations of inadequate medical care in prison, one must consider how ill the detained person is, what medical treatment he receives, and whether his condition allows detention (see *Telecki v. Poland* (dec.), no. 56552/00, 3 July 2003, and *Farbtuhs v. Latvia*, no. 4672/02, § 57, 2 December 2004).

63. On the whole, the Court takes a flexible approach in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008). The "adequacy" of medical care in this respect remains the most difficult element to determine. The mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical care provided was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must ensure that a comprehensive record is kept of the detainee's state of health and his treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII), that the diagnoses and care are prompt and accurate (see *Hummatov,* cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-106, 28 March 2006), and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116, and *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006). Failure to provide proper medical aid to a detainee would not fall under Article 3 unless there was an actual detriment to his physical or mental condition, or avoidable suffering of a

certain intensity, or an immediate risk of such detriment or suffering (see *Lebedev v. Russia* (dec.), no.13772/05, § 176, 27 May 2010).

64. More generally, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). Quite apart from the necessity of having sufficient personal space, other aspects of material conditions of detention are relevant for the assessment of whether they comply with Article 3. Such elements include access to outdoor exercise, natural light or air, the availability of ventilation, the adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see *Ananyev and Others,* cited above, § 149 et seq., and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 222, ECHR 2011). The length of time a person is detained in particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

65. In the present case, the Court has therefore to establish whether the applicant's state of health called for any specialist treatment, whether that treatment was provided, and, if not, whether that situation, alone or in combination with the general conditions of detention, caused detriment to his physical and mental condition, or avoidable suffering or risk thereof, constituting a breach of Article 3.

66. The Court firstly notes that there appears to be no reason to doubt the reports made available by the Government. It notes that the applicant had a pre-existing medical condition at the time of his arrest and would naturally have suffered from its symptoms while in detention. In fact, he repeatedly suffered from headaches, and was taking some kind of medication in the form of paracetamol and later another type of analgesic, while stronger medication was later made available to him for purchase. However, despite the applicant's condition and his recurring headaches being brought to the authorities' attention at no point were the recommended brain scans carried out. The only action taken by the authorities during the two year period was to fix an appointment at the Neurology Department for March 2011, despite the fact that the applicant started complaining of headaches as early as January 2010, that is to say more than a year earlier.

67. In so far as the applicant referred to the lack of access to a psychologist, the Court notes that documents show that he had been informed that he could seek such help if he so wished. Although the applicant claimed that when he sought such help it was not forthcoming, he was unable to provide any record of his requests or refusals. In the light of this, some relevance must be attributed to the fact that the medical reports produced by the Government show that the applicant was reluctant to

receive medical care from the prison doctors (see also *Lebedev* (dec.) cited above; contrast *Sarban*, cited above, § 90).

68. As to whether the conditions of the applicant's detention exacerbated his health condition, the Court notes that while the Government failed to provide any evidence to substantiate their description of the prison conditions, the applicant did not contest most of those statements. The parties in fact disagreed only as to the amount of light in his cell, the quality of the drinking water provided free of charge and the need for appropriate heating. The Court considers that, even assuming that the tap water was undrinkable, the applicant could have made use of the hot potable water available nearly all day long or alternatively purchased his own bottled water (to which he had access) if he so wished. Moreover, the fact that only cold water was available in each cell cannot be considered treatment contrary to Article 3 (see *Tellissi v. Italy*, (dec.) no. 15434/11, 5 March 2013). As to the amount of light, while no dimensions of the window were put forward by either of the parties, the Court notes that the applicant had free access to an external yard nearly all day long. Lastly, as to heating, the Court is uneasy about the fact that no heating whatsoever was available in the prison. Even acknowledging that Malta is graced with warm temperatures, the applicant's cell environment was very humid, as can be seen from photos submitted by him, showing rising damp on both walls adjacent to his bed. Nevertheless, while this situation was not addressed by the authorities, the Court notes that the applicant has not claimed that he was refused extra blankets or warm clothing.

69. As unfortunate as certain elements of the prison setting may have been, the Court notes that the applicant has not proved that there was an actual detriment to his physical or mental condition, or avoidable suffering of a certain degree of intensity, or an immediate risk of such detriment or suffering. The Court takes note of the Lithuanian doctor's certificate of 2008, which anticipated possible complications and recommended annual scans. However, the applicant did not produce any evidence showing that such complications had indeed occurred, or that the conditions of detention exacerbated those risks. In fact, he did not even show what course of action he had taken to seek medical treatment once he had been released on bail. Furthermore, in his application the applicant admitted that he failed to attend the appointment fixed for him at the Neurology department of the hospital, preferring to wait and seek treatment once released, indicating that he was not particularly concerned about the urgency of his condition.

70. Having regard to the above, the Court is not convinced that the overall conditions of detention, coupled with the medical treatment he received in prison and at the general hospital, subjected the applicant to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention or that, given the practical demands of imprisonment, his health and well-being were not adequately protected.

71. It follows that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

72. The applicant complained of a violation of Article 5 § 4 of the Convention, in so far as he did not have an effective remedy to contest the lawfulness of his detention arising from the repeated refusals to grant him bail and high financial guarantees eventually imposed for bail. The provision reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

73. Although the applicant invoked Article 13, the Court considers that since Article 5 § 4 constitutes a *lex specialis* in relation to the more general requirements of Article 13 (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 69, ECHR 1999-II), this complaint should be analysed exclusively under Article 5 § 4.

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

74. The Government submitted that the applicant had not exhausted domestic remedies.

75. The applicant submitted that none of the available remedies satisfied the requirements of Article 5 § 4.

76. The Court considers that this objection is closely linked to the substance of the applicant's complaint and that its examination should therefore be joined to the merits.

77. It notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

78. The applicant submitted that he did not have an effective remedy to challenge the lawfulness of his detention.

79. He noted that, although the law had changed following the judgments in *Aquilina v. Malta* ([GC], no. 25642/94, ECHR 1999-III) and *T.W. v. Malta* ([GC], no. 25644/94, 29 April 1999), the Criminal Code provided for the legality of a person's arrest to be determined in its initial stages, but that procedure was not repeated during the months and years during which the person was kept in detention. While it is true that under Article 401(1) of the Criminal Code an accused had to be brought before the court at least once every fifteen days, this has been taken to refer to the original period of one month during which the Court of Magistrates heard evidence and decided whether a person was to be committed for trial or not. In practice, it did not apply during the following periods of further extension of the inquiry provided for by Article 401 (*rinviji*).

80. The applicant further submitted that Article 409A of the Criminal Code, cited by the Government, did not apply to his case as it concerned unlawful detention not in connection with any offence with which a person is charged or accused before a court.

81. The applicant further submitted that Article 412B, also cited by the Government, and particularly its subarticle 2, referred back to bail applications. The facts of the case demonstrated that the applicant had used that remedy over and over again, but to no avail.

82. Lastly, as to constitutional proceedings, the applicant cited *Kadem v. Malta* (no. 55263/00, 9 January 2003), reiterating that the listing of such an application could take up to a month. He cited as an example a recent complaint under Article 5 § 3 (*Kenneth Gatt v. Attorney General*, no. 22 of 2012), where proceedings were instituted on 10 April 2012, listed a month later and decided another month and a half later at first-instance. They were decided on appeal on 23 November 2012, and therefore clearly could not be considered speedy for the purposes of Article 5 § 4.

83. Moreover, the applicant emphasised that none of these remedies, save for the last, which failed the test for speediness, could enter into the question of whether his detention was Convention compatible.

(b) The Government

84. The Government submitted that following the judgments of *Aquilina* and *T. W. v. Malta* (both cited above), the Criminal Code was amended to enable the Court of Magistrates to examine all the grounds of the lawfulness

of a person's detention with a prompt and automatic review which could enable release. The Government stated that this had been confirmed by the Court in *Stephens v. Malta (no. 2)* (no. 33740/06, 21 April 2009). The Government further cited Article 574A(1), (5) and (6), noting that as soon as a person in custody was arraigned, the Court of Magistrates had to examine whether the arrest was founded on a provision of Maltese law, thereby examining the lawfulness of the detention. Moreover Article 574A(7) provided a time-limit beyond which a person could not be refused bail. The Government further submitted that following arraignment and remand in custody, Article 401(1) came into play, which provided that an accused had to be brought before a court every fifteen days for the court to decide whether he or she should again be remanded in custody.

85. The Government further submitted that the applicant could have brought summary proceedings under Article 409A.

86. Another remedy available to the applicant was by virtue of Article 412B of the Criminal Code read in conjunction with Article 525(2A), where following the stage covered by Article 574A, a person could challenge the lawfulness of detention and demand release. Such an application was separate and distinct from a bail application.

87. A further remedy was available through the courts of constitutional competence by way of a request for referral. The Government noted that the case cited by the applicant had not arisen from a referral, and that an example of such a case was *The Police v. Alexei Kostin*, which was referred on 21 July 2011 and finally decided on 14 November 2011 as no appeal was lodged. The case concerned a referral to the constitutional courts to determine whether the extradition of *Kostin* to Estonia would be tantamount to a breach of Article 3 of the European Convention on account of his prison conditions.

88. The Government submitted that all the above were effective procedures through which the applicant could have challenged the lawfulness of his detention.

2. The Court's assessment

(a) General principles

89. Under Article 5 § 4, an arrested or detained person is entitled to bring proceedings for a review by a court bearing upon the procedural and substantive conditions which are essential for the "lawfulness" of his or her detention (see *Jecius v. Lithuania*, no. 34578/97, § 100, 31 July 2000, ECHR 2000). In particular, the competent court should examine not only compliance with the procedural requirements set out in domestic law, but also the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001 and *Bochev v. Bulgaria*, no. 73481/01, § 64, 13 November 2008). The

review, being intended to establish whether the deprivation of the individual's liberty is justified, must be sufficiently wide to encompass the various circumstances militating for or against detention (see *Kadem v. Malta*, no. 55263/00, § 42, 9 January 2003). The notion of "lawfulness" under Article 5 § 4 of the Convention has the same meaning as in Article 5 § 1, so that the arrested or detained person is entitled to a review of the "lawfulness" of his detention not only in the light of the requirements of domestic law, but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *E. v. Norway,* 29 August 1990, § 50, Series A no. 181 and *Louled Massoud v. Malta*, no. 24340/08, § 39, 27 July 2010).

90. According to the Court's case-law, Article 5 § 4 refers to domestic remedies that are sufficiently certain, otherwise the requirements of accessibility and effectiveness are not fulfilled. The remedies must be made available during a person's detention with a view to that person obtaining a speedy judicial review of the lawfulness of his or her detention capable of leading, where appropriate, to his or her release (see *Kadem*, cited above, § 41 and *Sadaykov v. Bulgaria*, no. 75157/01, § 32, 22 May 2008). In fact, Article 5 § 4, also proclaims the right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of that detention (see *Musial v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

(b) Application to the present case

91. The Court notes that the parties disagreed as to the effectiveness of the remedies invoked. It will therefore consider each remedy on the basis of the information available and the parties' submissions. Reiterating that the Government's objection has been linked to the merits, the Court points out that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that a remedy was effective and available, both in theory and in practice at the relevant time (see *Menteş and Others,* cited above, § 57). Nevertheless, the Court notes that, save for citing the constitutional case of *The Police v. Alexei Kostin*, the Maltese Government have not submitted a single domestic judgment in support of any of the remedies they claim to be effective for the purposes of Article 5 § 4.

92. As to Article 401 of the Criminal Code, the Court has no reason to doubt that following the legislative amendments, the relevant courts are now competent to order release. Nevertheless, no information or examples have been submitted in relation to the scope of such a review, in particular in respect of whether it could look into Convention compatibility. The Government limited their observations to noting that the Court of Magistrates could examine all the grounds of lawfulness as accepted by the Court in *Stephens (No. 2)*, cited above. However, the Court notes that in *Stephens (No. 2)* the Court solely found, in the specific circumstances of that case, namely after the Constitutional Court had already found a

violation of Article 5 § 4 (precisely because of the Court of Magistrates' failure to assess the lawfulness of the applicant's detention) and had remitted the case back to the Court of Magistrates for a fresh assessment, that the latter had speedily examined the lawfulness of the applicant's detention (based on a plea of lack of jurisdiction). Moreover, besides the uncertainty in relation to the scope of that review, the respondent Government in the present case have not denied the applicant's submission that, in practice, the bringing of an accused before a court every fifteen days pursuant to Article 401(1) applied to the initial month during which an inquiry was meant to be concluded only, and not to any subsequent monthly extensions.

In the light of this, the Court is not convinced that the remedy referred to under Article 401 of the Criminal Code could cover cases where the examination of lawfulness related to continued detention falling foul of Article 5 § 3 because of repeated refusals to grant bail or to make it accessible and effective.

93. Secondly, the Government relied on Article 574A of the Criminal Code. The Court notes that it is undisputed that the initial subarticles of the provision relate to bail applications, which cannot be considered an adequate remedy for the purposes of the present case. However, Article 574A(6) makes reference to an examination of lawfulness, failing which the person is to be unconditionally released. Nevertheless, the Court observes that, as is clear from the wording of that provision, such an assessment is limited to ascertaining whether the continued detention is founded on any provision of law. It follows that the said remedy cannot be considered to be effective for the purposes of Article 5 § 4 in relation to the complaint in the present case, where an assessment was required of the decisions regarding bail under Article 5 § 3, and where his detention was in fact founded on a provision of the law.

94. Thirdly, the Government relied on Article 409A. The Court notes that, as pointed out by the applicant, the provision provides a remedy for persons in detention "not in connection with any offence with which he is charged or accused". It follows that the remedy provided for by the said provision does not apply in the applicant's case. Moreover, the Court has already held that the remedy under Article 409A did not provide a review of the "lawfulness" of detention not only in the light of the requirements of domestic law, but also of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1 (see *Louled Massoud*, cited above, § 43).

95. As to the Government's claim that another remedy available to the applicant was afforded by Article 412B of the Criminal Code read in conjunction with Article 525(2A), there seems to be no doubt that this remedy was applicable and available to the applicant, who was a person "charged or accused before the Court of Magistrates". Moreover, it also

appears that such applications must be listed for hearing with urgency therefore it is also possible that such a remedy could satisfy the speediness requirement. However, even accepting that this remedy was separate and distinct from bail applications, it remains to be determined whether the scope of the remedy was such as to satisfy the requirements of Article 5 § 4, for only in that case could this course of action be a potentially effective remedy capable of satisfying the said requirements.

96. The Court notes that the relevant provision referred to applications for release from custody where it was claimed that continued detention was "not in accordance with the law". Reiterating that "lawfulness" of detention must be examined not only in the light of the requirements of domestic law, but also of the Convention, the Court reiterates that for the remedy invoked to be considered effective, it is crucial that the scope of the examination it provides covers also Convention compatibility. The Court observes that under Article 409A, cited by the Government as an available remedy (but which the Court found to be inapplicable to the applicant's case), the relevant courts entrusted with hearing applications under that Article had previously held that they were not competent to look into other circumstances which could render a person's detention unlawful, such as an incompatibility with the rights guaranteed by the Constitution or the Convention when there was a clear law authorising continued detention (see *Louled Massoud*, cited above, § 43).

It follows that the Court cannot ignore that the same interpretation may also have been adopted by the Court of Magistrates in relation to applications under Article 412B. Bearing in mind that the Court must assess the effectiveness of remedies not only in theory but also in practice (see *Zunic v. Slovenia*, (dec.) no. 24342/04, 18 October 2007), in the absence of any submissions in this regard by the Government, or any examples of the courts' interpretation and use of this provision to contradict the applicant's claim as to the limited scope of this remedy, the Court cannot, for the purposes of the present case, consider it a suitable course by which the lawfulness of the applicant's detention could be determined in the light of the Convention.

97. Lastly, the Government referred to constitutional redress proceedings. The Court starts by noting that it has not been proven that there is a difference in the length of such proceedings depending on whether they were made by way of a referral by another court or brought directly by an individual. Moreover, while it is clear that, unlike the above-mentioned remedies, such jurisdictions would be competent to look at the lawfulness of the applicant's detention in the light of Article 5 § 3, the Court notes that it has held on numerous occasions that constitutional proceedings in Malta are rather cumbersome for Article 5 § 4 purposes, and that lodging a constitutional application could not ensure a speedy review of the lawfulness of an applicant's detention (see *Sabeur Ben Ali v. Malta*,

no. 35892/97, § 40, 29 June 2000; *Kadem*, cited above § 53; *Stephens (No. 2)*, cited above, § 90; and *Louled Massoud*, cited above § 45). Where an individual's personal liberty is at stake, the Court has strict standards concerning the State's compliance with the requirement of a speedy review of the lawfulness of detention (see, for example, *Kadem,* cited above*,*§§ 44-45; *Rehbock v. Slovenia*, no. 29462/95, § 82-86, ECHR 2000-XII, where the Court considered periods of seventeen and twenty-six days excessive for deciding on the lawfulness of the applicant's detention; and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia,* twenty-six days, was found to be in breach of the "speediness" requirement). The Court notes that the only case submitted by the Government, quite apart from the fact that it dealt with a different subject matter, took more than three-and-a-half months to be decided. Thus, the Government have not submitted any information or case-law capable of casting a new light on the matter. In these circumstances, the Court remains of the view that pursuing a constitutional application would not have provided the applicant with a speedy review of the lawfulness of his detention.

98. The foregoing considerations are sufficient to enable the Court to conclude that it has not been shown that the applicant had at his disposal an effective and speedy remedy under domestic law for challenging the lawfulness of his detention.

99. The Government's objection of non-exhaustion of domestic remedies (see paragraph 74 above) must accordingly be rejected. The Court therefore concludes that Article 5 § 4 of the Convention has been violated.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

100. The applicant further complained under Article 5 §§ 1 and 3 that he had been arrested on reasonable suspicion of having committed the offences, but that the repeated refusals of the courts to grant him bail, coupled with the fact that there was no time-limit under domestic law for keeping him in custody, had made his detention unlawful. Moreover, when he was eventually granted bail, the financial guarantees imposed were so high that his actual release on bail had been impossible.

101. The Court notes that the applicant's complaint under Article 5 § 1 overlaps to a large extent with his complaint under Article 5 § 3 regarding*, inter alia*, the authorities' failure to adduce relevant and sufficient reasons justifying the extension of his detention pending trial. Indeed, Article 5 § 1 (c) is mostly concerned with the existence of a lawful basis for detention within criminal proceedings, whereas Article 5 § 3 deals with the possible justification for the continuation of such detention. The Court therefore considers it to be more appropriate to deal with this complaint under

Article 5 § 3 of the Convention (see *Khodorkovskiy v. Russia*, no. 5829/04, § 165, 31 May 2011) which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

(a) The parties' submissions

102. The Government submitted that the applicant had failed to exhaust domestic remedies, without submitting any details on the matter.

103. Relying on *Kadem* (cited above), the applicant submitted that constitutional redress proceedings were not an appropriate remedy for the purposes of his complaint. Moreover, with respect to his complaint regarding the high financial guarantees imposed, he noted that the Constitutional Court's practice when upholding such complaints was to remit the case to the same court which had imposed the bail conditions (*Richard Grech v. the Attorney General*, judgment of the Constitutional Court of 28 May 2010; and *Maximilian Ciantar v. the Attorney General*, judgment of the Constitutional Court of 7 January 2011).

(b) The Court's assessment

104. An action for damages cannot be seen as an effective remedy in respect of complaints under Article 5 § 3 about the excessive length of time spent on remand. Where the person concerned is still in custody, the only remedy which may be considered sufficient and adequate is one which is capable of leading to a binding decision for his or her release (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 40, 6 November 2008). In fact, the Court has already considered, at least by implication, that the remedy under Article 5 § 4 of the Convention is the remedy required for a violation of Article 5 § 3, in that where an applicant complained of having no effective remedy to challenge the lawfulness of the length of his pre-trial detention, the complaint would be examined under Article 5 § 4 (see, *inter alia*, *Cahit Demirel v. Turkey*, no. 18623/03, § 20-34, 7 July 2009, and *Ulu and Others v. Turkey*, nos. 29545/06, 15306/07, 30671/07, 31267/07, 21014/08 and 62007/08, § 8, 7 December 2010). Moreover, the Court has clearly held that where an accused remains in custody despite an order for his or her release on bail, the question as to whether or not the bail amount is justified is an issue concerning the lawfulness of the continued detention, and must be

subject to review by a court, in accordance with Article 5 § 4 (see *Staykov v. Bulgaria*, no. 49438/99, §§ 100-101, 12 October 2006).

105. In light of the above, given that the applicant was in custody at the time of the introduction of his complaint and having already found that he did not have a remedy under Article 5 § 4 (paragraph 98 above), the Government's objection is dismissed.

B. Merits

1. The parties' submissions

(a) The applicant

106. The applicant complained that he had been repeatedly refused bail by means of stereotyped decisions, as also admitted by the Government in their observations. He noted that two of the other individuals charged had been immediately granted bail, as there had been no objection on the part of the prosecution because they had admitted the offences. It followed that the granting of bail had become only a reward for helping the police.

107. The applicant further submitted that the principal witnesses in his case had been the police, as his accomplices had refused to give evidence. The risk of interfering with evidence had therefore been low.

108. Moreover, the prosecution had dragged its feet, in that proceedings before the Court of Magistrates had still been on-going and no bill of indictment had been issued. This delay had not been because key witnesses had to be heard. On the contrary, a lot of time had been wasted trying to obtain evidence, the relevance of which had been debatable. More importantly, on 26 January 2010 the Court of Magistrates had ordered the prosecution to produce the remaining evidence by the next hearing. Nevertheless, nearly four years later the prosecution was still calling witnesses who had either refused to testify or who had already testified. It followed that the authorities had not shown the required diligence. Furthermore, despite the time that had passed after the preliminary hearings, no assessment had been made as to whether reasonable suspicion had still existed.

109. Furthermore, the applicant submitted that the high financial conditions imposed had denied him the benefit of bail. He noted that after various requests, the EUR 50,000 deposit was reduced to EUR 30,000, but the personal guarantee was raised from EUR 15,000 to EUR 60,000. The applicant argued that both sums were of relevance, citing the case of *Gatt v. Malta* (no. 28221/08, ECHR 2010), in which it was held that the forfeiture of both sums would occur when a court in the exercise of its discretion considered that there was a breach of bail conditions, even if it

was not related to appearance at trial. He further submitted that although he was an accountant by profession, he had not been practising while in Malta. Lastly, he highlighted that the unreasonableness of the amounts was evident, given the length of time he had remained in detention because of his inability to pay.

(b) The Government

110. The Government submitted that Article 5 § 3 did not place an obligation on the authorities to release a detainee on account of ill-health. They submitted that whether an applicant's condition was compatible with detention was largely a matter for the domestic courts to decide. Under Maltese law, the courts were free to grant or deny bail depending on the circumstances of a case, and no presumptions existed, unlike other cases examined by the Court such as *Ilijkov v. Bulgaria* (no. 33977/96, § 77, 26 July 2001).

111. They noted that the pre-trial detention in the applicant's case lasted ten months and thereafter bail was granted, despite the fact that it had only become effective after twenty-one months of detention (following a substantial reduction of the bail deposit). The Government submitted that the decisions refusing bail had contained reasons justifying the refusals. On 17 December 2009 bail had initially been refused, on the grounds that the applicant might abscond as he had no ties with Malta. On 24 December 2009, bail had been refused on account of (i) the international ramifications of the crime; (ii) the seriousness of the offences; (iii) the applicant's lack of ties with Malta; (iv) the serious risk that the proceedings could be thwarted; and (v) that the possibility of issuing a European arrest warrant was not determinative. These same reasons were given in the subsequent decisions refusing bail.

112. The Government submitted that while the applicant was being denied bail, key witnesses, among the various individuals involved in the offences, were being heard. When there was no longer any risk that the accused would interfere with the course of justice, bail was granted subject to conditions. Those bail refusals had been given after hearing the applicant and following a meticulous examination of the circumstances of the case, including the seriousness of the offences and the fact that he had posed a flight risk. Moreover, in the conduct of the proceedings the domestic courts had displayed special diligence.

113. The Government submitted that the law relevant to the granting of bail, namely Article 576 of the Criminal Code, reflected the Court's case-law. They noted the difficulty faced by the domestic courts in assessing the actual wealth of a foreign accused and it was therefore, in their view, reasonable that the amount of bail initially fixed had not been low, to prevent the deterrent effect of such guarantees being avoided. The Government noted that the only evidence provided by the applicant to

support his bail application of 3 November 2009 had been documents showing that he had financial support from his mother, sister and a friend. Evidence from the Lithuanian counsel and a third party had been heard a month later, on 17 December 2009. More information had been provided at intervals (December 2010, January 2011 and April 2011). Thus, in the Government's view, there had been insufficient details about the applicant's financial and personal circumstances before 28 April 2011 to enable the court to assess the reasonableness of the financial assurances imposed.

114. The Government further submitted that the courts in the present case had abided by the law, as they had fixed the amount of bail after hearing and evaluating evidence. Furthermore, the courts had reviewed the situation regularly and had amended the bail conditions from time to time. The Government submitted that personal guarantees were not subject to forfeiture unless bail conditions were breached; it was only the deposit that needed to be paid, and that had been reduced from EUR 50,000 to EUR 15,000, which was an insignificant amount compared to the nature and the quality of the offences and the term of punishment to which they were liable. The sum had to be considered as low, considering that the applicant was an accountant by profession and therefore could not be regarded as being of average means. Thus, the courts had struck a fair balance between the sum established and the protection of the applicant's rights in conformity with Article 5 § 3.

2. The Court's assessment

(a) General principles

115. According to the Court's case-law, the presumption under Article 5 is in favour of release (see *Bykov v. Russia* [GC], no. 4378/02, § 61, 10 March 2009). It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

116. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the

judicial authorities continued to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Yankov v. Bulgaria*, no. 39084/97, § 55, ECHR 2003-XII (extracts), *Filipov v. Bulgaria*, no. 40495/04, § 22, 10 June 2010 and *Ilijkov*, cited above, § 77).

117. The burden of proof in these matters should not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting his release (ibid, § 85 and). Justification for any period of detention, no matter how short, must be demonstrated by the authorities convincingly (see *Sarban,* cited above §§ 95 and 97, and *Castravet v. Moldova*, no. 23393/05, §§ 32-33, 13 March 2007). Quasi-automatic prolongation of detention contravenes the guarantees set forth in Article 5 § 3 (see *Kalashnikov v. Russia*, no. 47095/99, §§ 116-118, ECHR 2002-VI and *Tase v. Romania*, no. 29761/02, § 40, 10 June 2008).

118. Where the only remaining reasons for continued detention is the fear that the accused will abscond and thereby subsequently avoid appearing for trial, his release pending trial must be ordered if it is possible to obtain from him guarantees that will ensure such appearance (see *Wemhoff v. Germany*, 27 June 1968, § 15, Series A no. 7 and *Letellier v. France*, 26 June 1991, § 46, Series A no. 207).

119. According to the Court's case-law, the guarantee provided for by Article 5 § 3 of the Convention is designed to ensure the presence of the accused at the hearing (see *Mangouras v. Spain* [GC], no. 12050/04, § 78, ECHR 2010). Therefore, the amount of bail must be set by reference to the detainees' assets, and with due regard to the extent to which the prospect of its loss will be a sufficient deterrent to dispel any wish on their part to abscond (see *Neumeister v. Austria*, 27 June 1968, § 14, Series A no. 8). Since the issue at stake is the fundamental right to liberty guaranteed by Article 5, the authorities must take as much care in fixing appropriate bail as in deciding whether or not continued detention is indispensable. Furthermore, the amount set for bail must be duly justified in the decision fixing bail and must take into account the accused's means (see *Mangouras*, cited above, § 79). The domestic courts' failure to assess the applicant's capacity to pay the sum required may lead the Court to find a violation. However, the accused whom the judicial authorities declare themselves prepared to release on bail must faithfully submit sufficient information, that can be checked if need be, about the amount of bail to be fixed (see *Toshev v. Bulgaria*, no. 56308/00, § 68, 10 August 2006).

(b) Application to the present case

120. Turning to the instant case, the Court observes that the applicant spent ten-and-a-half months in detention before he was, in theory, granted bail. During this period, the courts examined his application for release at

least six times. After the first three months of detention, the applicant's applications were refused by two decisions in December 2009 which the Court considers had given relevant and sufficient reasons justifying his detention, at least at those initial stages of the proceedings. However, despite the Criminal Court's warning of 28 December 2009 that its decision would be subject to review at a later date and its instruction that the proceedings should be continued with speed and diligence (see paragraph 16 above), the subsequent decisions over the following seven months refused the applicant's applications using the same formula. They each referred to the previous decisions refusing bail and failed to give details either of the grounds for the decision in view of the developing situation or of whether the original grounds remained valid despite the passage of time.

121. Moreover, the original decisions were based on the risk of the applicant absconding and potentially obstructing the course of justice by interfering with witnesses. The Court, however, observes that the flight risk posed by an accused necessarily decreases with the passage of time spent in detention (*Neumeister*, cited above, § 10). Similarly, the risk of pressure being brought to bear on witnesses can be accepted at the initial stages of the proceedings (see *Jarzyński v. Poland*, no. 15479/02, § 43, 4 October 2005). In the long term, however, the requirements of the investigation do not suffice to justify the detention of a suspect, as in the normal course of events the risks alleged diminish over time as inquiries are effected, statements are taken and verifications are carried out (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225.) Moreover, the risk of the accused hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*; it has to be supported by factual evidence (see *Becciev v. Moldova*, no. 9190/03, § 59, 4 October 2005). In the present case, neither the domestic courts nor the Government have substantiated any such risk. It follows that the repeated extension of the applicant's detention pending trial cannot be said to have been based on relevant and sufficient reasons.

122. Following those decisions, on 16 July 2010 the applicant was granted bail subject to conditions, including a deposit of EUR 50,000 and a personal guarantee of EUR 15,000. Following two unsuccessful requests to have these sums lowered, upon his third request, on 22 February 2011 the deposit was reduced to EUR 40,000, but the personal guarantee increased to EUR 60,000. It took another two months (April 2011) for the deposit to be reduced to EUR 30,000 and the personal guarantee to EUR 15,000. The applicant finally managed to satisfy that condition and was eventually released only on 7 July 2011. The Court considers the fact that the applicant remained in custody for another twelve months after being granted bail as a strong indication that the domestic courts had not taken the necessary care in fixing appropriate bail. The Court, moreover, observes that none of the

domestic courts' judgments refer to an inability to make a balanced decision on account of a lack of documentation.

123. Lastly, the Court finds it useful to highlight that had the applicant's pre-trial detention been based on relevant and sufficient reasons, the authorities would still have been required to display "special diligence" in the conduct of the proceedings. The Court observes that after three and a half years of inquiry, two of which he spent in detention, the bill of indictment in respect of the applicant has not yet been filed, despite the warnings by the domestic courts to the prosecution to proceed with speed and diligence (see paragraphs 16 and 17 above). This has to be seen against the background of the domestic system, which provides that an inquiry shall be concluded within a month, and that such a period can be extended for two further periods of one month, upon good cause being shown. The time-line of the proceedings (at paragraph 28 above) reveals repeated hearings where only one witness was heard and repeated adjournments. It thus transpires that in the present case the authorities also failed to conduct the proceedings with the requisite diligence.

124. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

125. The applicant further complained under Article 5 § 2 Article 6 §§ 1-3, and Articles 7, 8, 10, 14, and 17 of the Convention.

126. The Court notes that the applicant did not institute constitutional redress proceedings, an acceptable remedy under Maltese domestic law for Convention complaints generally (see, for example, *Zarb v. Malta*, no. 16631/04, 4 July 2006 in relation to Article 6; and, by implication, *Camilleri v. Malta*, no. 42931/10, 22 January 2013 in relation to Article 7; *Zammit Maempel v. Malta*, no. 24202/10, 22 November 2011 in relation to Article 8; *Aquilina and Others v. Malta*, no. 28040/08, 14 June 2011 in relation to Article 10; and *Genovese v. Malta*, no. 53124/09, 11 October 2011 in relation to Article 14).

127. Although the applicant claimed that he did not avail himself of that remedy because such proceedings are costly, he has not argued that he had not been able to apply for legal aid or that he made a request for legal aid which was refused. Consequently his complaints under Articles 6 §§ 1-3, 7, 8, 10, 14, and 17 must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

128. Moreover, in relation to his complaint under Article 5 § 2, even assuming there was no other reason for finding the complaint inadmissible, the Court notes that the applicant was questioned immediately after his arrest and arraigned in court charged with the relevant offences two days

later, in proceedings held in English, a language he is very familiar with as is clear from his application form to the Court which he completed himself.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

131. The applicant claimed 33,000 euros (EUR) in respect of pecuniary damage representing his actual loss of earnings (EUR 1,500 per month for eighteen months (*sic.*)), and EUR 10,000 in non-pecuniary damage in view of the disruption caused to his life.

132. The Government submitted that the applicant had not substantiated his claim that he had been earning EUR 1,500 a month. Moreover, there was no causal link between the violation found and the pecuniary damage requested. As to his claim for non-pecuniary damage, the Government considered it unsubstantiated. However, they submitted that a declaration of a violation would suffice as just satisfaction and that, in any event, an award for compensation for non-pecuniary damage should not exceed EUR 1,000.

133. The Court finds the applicant's claims in respect of pecuniary damage hypothetical and unsubstantiated in so far as he did not provide any documents or evidence to show that he had been employed immediately prior to his detention. Any possibility of being employed while in Malta, cannot be seen as being more than a proposal of intent in respect of employment, one that was subject to uncertainties in the light of which the Court is unable to find that there existed the necessary causal link between the violations found and the pecuniary damage alleged. It therefore rejects this claim. On the other hand, noting its finding of violations of Article 5 §§ 3 and 4 and deciding on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

134. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court, bearing in mind the various questions asked by the Court for the purposes of observations and more specifically the

complaint in relation to Article 3, which had required an examination of conditions in prison.

135. The Government submitted that the applicant had only requested the services of a lawyer for the purposes of filing his observations and therefore the sum to be awarded should not exceed EUR 1,000.

136. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, in particular the fact that the services of a lawyer were only engaged for the purposes of observations and that the Court has found a violation under Article 5 of the Convention only, it considers it reasonable to award the sum of EUR 1,000 covering costs for the proceedings before the Court.

C. Default interest

137. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the Government's preliminary objection of non-exhaustion of domestic remedies in respect of the complaint under Article 5 § 4 of the Convention and *declares* the complaints concerning Articles 3, 5 §§ 3 and 4 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention and *dismisses* in consequence the Government's above-mentioned objection;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,000 (one thousand 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;

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

Done in English, and notified in writing on 23 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President