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

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Late notification of hearing date: applicant was unable to reply to opinion of advocate-general at Court of Cassation

In today's **Chamber** judgment[1] in the case of **Venet v. Belgium** (application no. 27703/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention) of the European Convention on Human Rights.

The case concerned proceedings in which Mr Venet unsuccessfully challenged his pre-trial detention. He complained that he had been unable to attend the Court of Cassation's hearing on his appeal against his pre-trial detention or to respond to the submissions of the advocate-general, as he had not been given sufficient advance notice.

The Court found in particular that Mr Venet and his lawyer had not been informed within a reasonable time about the scheduling of the hearing before the Court of Cassation. They had thus been unable to listen to or reply to the advocate-general's oral submissions.

The Court noted that in Belgium the advocate-general at the Court of Cassation was not a party to the proceedings. His main task was to assist the Court of Cassation and to ensure the consistency of its case-law. However, where his opinion was intended to advise and influence the Court of Cassation, the adversarial principle had to be respected and this meant that the parties had the right to be informed of and to discuss any document or observation presented to the court for the purpose of influencing its decision, even if it came from an independent legal officer, in this case the advocate-general at the Belgian Court of Cassation. The Court also reiterated that the right to adversarial proceedings necessarily entitled the detainee and his lawyer to be informed within a reasonable time about the scheduling of the hearing, without which the right would be devoid of substance.

Principal facts

The applicant, Lionel Venet, is a Belgian national who was born in 1979 and lives in Uccle (Belgium).

In 2015 Mr Venet was charged with unlawful possession of drugs and remanded in custody at Saint-Gilles prison. He challenged the lawfulness of the detention order but the Pre-Trial Division confirmed the measure. The decision was subsequently upheld by the Indictments Division of the Court of Appeal.

Mr Venet appealed on points of law. The hearing before the Court of Cassation took place on 10 November 2015 at 9.30 a.m., in the absence of both Mr Venet and his lawyer. They claimed to have been informed too late: that Mr Venet had received the notice late on 9 November and his lawyer on 10 November 2015 around noon. That same day the Court of Cassation dismissed the appeal.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Venet subsequently complained, unsuccessfully, before the national courts, that he had been unable to attend the hearing of the Court of Cassation on 10 November 2015 because of the late notification of the hearing date. He alleged that his detention was incompatible with Article 5 of the Convention.

He was released in 2016 on grounds that have not been established.

Complaints, procedure and composition of the Court

Relying in particular on Article 5 §§ 1 and 4 (right to a speedy decision on the lawfulness of detention) of the European Convention on Human Rights, Mr Venet complained that he had been unable to attend the hearing of the Court of Cassation concerning his appeal against his pre-trial detention or to respond to the submissions of the advocate-general.

The application was lodged with the European Court of Human Rights on 10 May 2016.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Paul **Lemmens** (Belgium),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Deputy Section Registrar.*

Decision of the Court

Article 5 § 4 (right to a speedy decision on the lawfulness of detention)

The Court emphasised that proceedings concerning an appeal against a measure of detention or its extension had to be adversarial and to guarantee an equality of arms between the parties.

The Court noted that in Belgium the advocate-general at the Court of Cassation was not a party to the proceedings. He belonged to the public prosecutor's office at the Court of Cassation, but unlike the prosecutors in trial courts, he did not bring prosecutions, save in very exceptional cases. Nor did he have the capacity of respondent in a case. His main task was to assist the Court of Cassation and to ensure the consistency of its case-law. His intervention was strictly objective. However, where his opinion was intended to advise and influence the Court of Cassation, the adversarial principle had to be respected. The right to adversarial proceedings meant that the parties, in principle, had the right to be informed of and to discuss any document or observation presented to the court for the purpose of influencing its decision, even if it came from an independent legal officer, in this case the advocate-general at the Belgian Court of Cassation.

In the present case, on account of his absence from the Court of Cassation's hearing, Mr Venet had not been made aware of the oral submissions of the advocate-general at the Court of Cassation. The question arising was thus whether it could be considered that Mr Venet or his counsel had been informed within a reasonable time of the scheduling of the Court of Cassation's hearing of 10 November 2015. The right to adversarial proceedings necessarily entitled the detainee and his lawyer to be notified of the hearing within a reasonable time, without which the right would be devoid of substance.

The parties were in agreement that a fax indicating the date and time of the hearing had been sent by the registry of the Court of Cassation to Saint-Gilles Prison on Friday 6 November. The prison staff did not acknowledge receipt of the fax until Monday 9 November, the day before the hearing, then forwarding it to Mr Venet at a time that was not established. The Government had not disputed the applicant's allegation that his lawyer had only been notified of the hearing after it had taken place, on 10 November.

Belgian law provided that a detainee and his lawyer had the right to attend a hearing of the Court of Cassation. However, the law did not provide for any deadline by which the parties had to be notified of the hearing time in cases heard urgently by the Court of Cassation. Nevertheless, the notice stated that Mr Venet had to indicate at least 48 hours before the hearing whether he intended to be present. Even though it had not been established precisely at what time Mr Venet had received the notification during the day of 9 November, it had been impossible for him, in any event, to express his intention by the deadline given in the notice. As to his lawyer, it had not been shown that Mr Venet could still have informed him before the hearing began.

Consequently, the Court took the view that Mr Venet and his lawyer had not been informed within a reasonable time about the scheduling of the hearing before the Court of Cassation. They had thus been unable to listen to or reply to the advocate-general's oral submissions. Accordingly there had been a violation of Article 5 § 4 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.