

## MICALLEF V. MALTA

### Excerpts from “Guide on Article 6 ECHR: Right to a fair trial – civil limb”, published by the European Court of Human Rights

30. In **Micallef v. Malta** [GC], §§ 83-86, the Court established that the applicability of Article 6 to interim measures will depend on whether certain conditions are fulfilled. Firstly, the right at stake in both the main and the injunction proceedings should be “civil” within the meaning of the Convention. Secondly, the nature of the interim measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure can be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 will be applicable.

31. An interlocutory judgment can be equated to interim or provisional measures and proceedings, and the same criteria are thus relevant to determine whether Article 6 is applicable under its civil head (**Mercieca and Others v. Malta**, § 35).

#### Criteria for assessing impartiality

146. The existence of impartiality must be determined on the basis of the following (**Micallef v. Malta** [GC], §§ 93):

- a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case;
- and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.

147. However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test).

148. Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge’s subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see **Micallef v. Malta** [GC], §§ 95 and 101).

#### (i) Subjective approach

149. In applying the subjective test, the Court has consistently held that “*the personal impartiality of a judge must be presumed until there is proof to the contrary*” (Le Compte, Van Leuven and De Meyere v. Belgium, § 58, in fine; **Micallef v. Malta** [GC], §94.)

153. Therefore, it must be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (**Micallef v. Malta**, [GC], §§ 97 and 102).

154. In this respect even appearances may be of a certain importance or, in other words, “justice must not only be done, it must also be seen to be done”. What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (**Micallef v. Malta** [GC], § 98).

155. In order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor (see the specific provisions regarding the challenging of judges, **Micallef v. Malta** [GC], § 99-100).

167. Professional or personal links between a judge and a party to a case, or the party’s advocate, may also raise questions of impartiality (*Pescador Valero v. Spain*, § 27; *Tocono and Profesorii Prometeiști v. Moldova*, § 31; **Micallef v. Malta** [GC], § 102). Even indirect factors may be taken into account (*Pétur Thór Sigurðn v. Iceland*, § 45).

281. The applicability of Article 6 § 1 to preliminary proceedings will depend on whether certain conditions are fulfilled (**Micallef v. Malta** [GC], §§ 83-86).