

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

GRAND CHAMBER HEARING MICALLEF v. MALTA

The European Court of Human Rights is holding a Grand Chamber¹ hearing today **Wednesday 22 October 2008 at 9.15 a.m.**, in the case of *Micallef v. Malta* (application no. 17056/06).

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (<http://www.echr.coe.int>).

The applicant

The case concerns an application brought by a Maltese national, Joseph Micallef, who lives in Vittoriosa (Malta).

Summary of the facts

He complains about the proceedings which had to decide on the fairness of a prohibitory injunction issued against his sister in a dispute with her neighbour.

The applicant's sister, Mrs M., was a party to civil proceedings brought in 1985 by her neighbour, Mr F., who claimed that Mrs M.'s habit of hanging her washing out above his yard interfered with his right of property. The president of the relevant court issued an injunction in favour of Mr F. and in the absence of Mrs M., who had not been informed of the date of the hearing. In 1992 the court, having examined the merits of the civil case brought by Mr F., found against Mrs M. and issued a permanent injunction ordering her to refrain from interfering with Mr F.'s right of property.

In the meantime Mrs M. brought proceedings before the Civil Court in its ordinary jurisdiction, alleging that the injunction had been issued in her absence and without her being given the opportunity to testify. In October 1990 the Civil Court held that the interim injunction had been issued in breach of the adversarial principle and declared it null and void.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In February 1993 the Court of Appeal, presided over by the Chief Justice who sat with two other judges, decided an appeal lodged by Mr F. and set aside the judgment of the Civil Court.

Mrs M. lodged a constitutional application with the Civil Court in its constitutional jurisdiction alleging that the Chief Justice lacked impartiality by reason of his family ties with the other party's lawyers since he was the brother and uncle of the lawyers who had successively represented Mr F..

As Mrs M. died before her constitutional claim could be determined, the applicant intervened in the proceedings in his capacity as the appellant's brother. The claim was dismissed in January 2004 and a further appeal to the Constitutional Court was dismissed in October 2005.

Complaint

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, the applicant complains that the Court of Appeal lacked impartiality by reason of the president of that court's family ties with the other party's lawyers and that this resulted in an infringement of the principle of equality of arms.

Procedure

The application was lodged before the European Court of Human Rights on 15 April 2006.

In a judgment of 15 January 2008 the Court held, by four votes to three, that there had been a violation of Article 6 § 1 of the Convention on account of the lack of objective impartiality of the Court of Appeal. It also held that it was not necessary to examine separately the complaint in relation to a breach of the equality-of-arms principle. It held, further, that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Micallef and awarded him 2,000 euros (EUR) for costs and expenses.

On 11 April 2008 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 7 July 2008 the panel of the Grand Chamber accepted that request.

On 25 August 2008 the President of the Court gave the Czech Republic Government leave to intervene as a third party in the Court's proceedings under Article 36 § 2 of the Convention (third party intervention) and Rule 44 § 2 of the Rules of Court.

Composition of the Court

The case will be heard by the Grand Chamber composed as follows:

Jean-Paul **Costa** (French), *President*,
Christos **Rozakis** (Greek),
Françoise **Tulkens** (Belgian),
Giovanni **Bonello** (Maltese),
Corneliu **Bîrsan** (Romanian),
Karel **Jungwiert** (Czech),

Anatoly **Kovler** (Russian),
Vladimiro **Zagrebel'sky** (Italian),
Elisabet **Fura-Sandström** (Swedish),
Khanlar **Hajiyev** (Azerbaijani),
Egbert **Myjer** (Dutch),
David Thór **Björgvinsson** (Icelandic),
Dragoljub **Popović** (Serbian),
Giorgio **Malinverni** (Swiss),
András **Sajó** (Hungarian),
Zdravka **Kalaydjieva** (Bulgarian),
Mihai **Poalelungi** (Moldovan), *judges*,
Ledi **Bianku** (Albanian),
Elisabeth **Steiner** (Austrian),
Isabelle **Berro-Lefèvre** (Monegasque), *substitute judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

Representatives of the parties

Government: Silvio **Camilleri**, *Attorney General, Agent*,
Peter **Grech**, *Deputy Attorney General Adviser*;

Applicant: Tonio **Azzopardi**, *Counsel*.

After the hearing the Court will begin its deliberations, which are held in private. A decision on admissibility, followed if appropriate by a judgment, will be delivered at a later date².

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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.

² This summary by the Registry does not bind the Court.