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

FOURTH SECTION

DECISION

Application no. 5870/24
Anthony FARRUGIA
against Malta

The European Court of Human Rights (Fourth Section), sitting on 4 February 2025 as a Committee composed of:

Jolien Schukking*, President*,
Faris Vehabović,
Lorraine Schembri Orland*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 5870/24) 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") on 23 February 2024 by a Maltese national, Mr Anthony Farrugia, who was born in 1959 and lives in Sliema ("the applicant") and was represented by Dr E. Borg Costanzi, a lawyer practising in Valletta;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns complaints under Article 6 §§ 1 and 2 and Article 13 of the Convention in relation to proceedings brought against the applicant for failure to comply with anti-money laundering regulations, and his request for referral to the constitutional jurisdictions of certain matters.

2. The applicant was issued a fine of 8,000 euros by the Financial Intelligence Analysis Unit ("the FIAU") for failing to submit certain documentation on time. He appealed the decision before the Court of Appeal.

3. During the appeal proceedings he complained that the FIAU was not an impartial and independent tribunal and that Article 13 and 13B of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) and Rule 21 of Subsidiary Legislation 373.01 were in breach of Article 6 of the Convention. He asked the Court of Appeal to refer the matter to the constitutional jurisdictions (Article 46 (3) of the Constitution). While those

provisions did not concern the appeal procedure, in his oral argumentation the applicant also argued that the appeal was part of the impugned procedure.

4. By a decision of 4 March 2021, the Court of Appeal considered his referral request to be frivolous and vexatious, in so far as it was premature, given that the fine imposed could still be annulled on appeal. It noted that the applicant could file separate constitutional redress proceedings once the appeal came to an end.

5. Without waiting for the end of the appeal proceedings, on 28 May 2021 the applicant instituted separate constitutional redress proceedings raising the same complaint under Article 6. Meanwhile the Court of Appeal suspended the proceedings before it, pending the constitutional redress proceedings.

6. Before the first-instance court of constitutional competence ("the FHCC"), the FIAU pleaded that the application was null as the Court of Appeal had already considered the issue as being frivolous and vexatious. They relied on jurisprudence which had held that if an applicant considered that his rights were being breached during ordinary procedures, he could either raise the constitutional issue before the ordinary courts requesting a referral to the constitutional jurisdiction or alternatively lodge the complaints in a separate procedure before the constitutional jurisdictions. However, once the former was undertaken it would not be open to him to undertake the latter course of action too, if the claim was connected to those same merits. The State argued that the application was premature as the criminal proceedings were still pending.

7. By a judgment of 17 October 2022, the FHCC upheld the FIAU's preliminary plea and considered that the application was null since the Court of Appeal had already decided the matter and found it to be premature, thus, frivolous and vexatious.

8. The applicant appealed arguing that the findings of the FHCC had been based on outdated jurisprudence. In its decision of 4 March 2021 the Court of Appeal had considered the complaint premature, and thus it had not entered into the merits of the case. The defendants argued that the applicants had to choose between one of the two alternative courses of action. Having chosen to make a referral request which was rejected as being frivolous and vexatious, it was not open to the applicant to subsequently open separate constitutional redress proceedings on the same matter.

9. By a judgment of 25 October 2023 the Constitutional Court rejected the applicant's appeal. The Constitutional Court noted that the legislator did not give a right to appeal a decision finding a constitutional referral request to be frivolous and vexatious. It was thus inappropriate to lodge identical complaints in separate constitutional proceedings. In the present case the Court of Appeal had already decided that the referral request had been frivolous and vexatious. It noted that this course of reasoning was being taken because the Court of Appeal had considered the claim as premature and thus it had not examined the merits of the case, which could be assessed only once

the criminal proceedings came to an end. While the applicant had relied on domestic examples where the constitutional jurisdictions had taken cognisance of a case after the ordinary courts had considered the referral requests as being frivolous and vexatious, none had concerned a situation where the FHCC had given a decision on a preliminary objection identical to the present case. The mere fact that the Court of Appeal eventually suspended the proceedings pending the outcome of the constitutional proceedings had no bearing on the matter.

10. The applicant complained under Article 6 §§ 1 and 2 and Article 13 of the Convention under various aspects.

11. Firstly, he complained that the FIAU which imposed a penalty upon him was not an independent and impartial tribunal and that the Court of Appeal could not cure such defect as it did not have full jurisdiction as required by the Court's case-law, because of procedural limitations. The latter situation, he claimed, also amounted to a breach of his right of access to court. Under Article 6 § 2 he complained of a breach of his presumption of innocence, in so far as the FIAU imposed a fine even before he had made any submissions or had even been "tried". Lastly, he complained of a breach of his right of access to court, as well as a lack of an effective remedy under Article 6 and under Article 13 of the Convention, respectively, in so far as his requests for constitutional assessment were dismissed.

THE COURT'S ASSESSMENT

12. As to the applicant's first complaint, the Court notes that according to its constant case-law the question whether or not court proceedings satisfy the requirements of Article 6 § 1 of the Convention can only be determined by examining the proceedings as a whole, that is, once they have been concluded. However, the Convention organs have also held that it is not impossible that a particular procedural element could be so decisive that the fairness of the proceedings could be determined at an earlier stage. At the same time, the Convention organs have also consistently held that such an issue can only be determined by examining the proceedings as a whole, save where an event or particular aspect may have been so significant or important that it amounts to a decisive factor for the overall assessment of the proceedings as a whole – pointing out, however, that even in those cases it is on the basis of the proceedings as a whole that a ruling should be made as to whether there has been a fair hearing of the case (see *Dimech v. Malta*, no. 34373/13, § 43, 2 April 2015, and the references cited therein).

13. The Court observes that the applicant has not informed the Court that the proceedings before the Court of Appeal have come to an end. Even assuming that the Court of Appeal would be unable to cure any alleged defects, as argued by the applicant, it cannot be excluded that the applicant be eventually relieved from paying the fine or that proceedings be

discontinued. The Court observes that applications are rejected as being premature when proceedings are still pending (see, *mutatis mutandis*, *Dimech*, cited above, § 48, and *Fenech and Agius v. Malta* (dec.), nos. 23243/13 and 23343/13, 5 January 2016 in a criminal context). The Court finds no reason to deem otherwise in the present case (compare, in a civil context, *Muscat v. Malta* (dec.), no. 69119/10, 6 September 2011). Moreover, once the proceedings come to an end the applicant would be required to institute new constitutional redress proceedings at that point (particularly since his previous requests had been rejected as premature, and not on the merits) in order to exhaust domestic remedies.

14. Consequently, this complaint must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

15. Secondly, the Court notes that the applicant's complaint under Article 6 § 2 (see paragraph 10 above) has not even been raised in the above-mentioned proceedings before the domestic courts. It is therefore clear that even assuming it is not inadmissible for any other reason, it must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

16. Thirdly, as concerns his complaints regarding his request for constitutional assessment, the applicant argued that the Court of Appeal could only hold that the issue was frivolous and vexatious if the issue would not impinge on the outcome of those proceedings (i.e., was irrelevant). He further argued that the constitutional jurisdictions (in separate proceedings) could not dismiss his claims on the basis that a decision had already been rendered on the matter by the Court of Appeal, given that the latter had not assessed the merits of his claim.

17. The Court reiterates that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by those of Article 6 § 1 (see for instance *Baka v. Hungary* [GC], no. 20261/12, § 181, 23 June 2016, and *Bellizzi v. Malta*, no. 46575/09, § 85, 21 June 2011). Article 6 provides for the "right to a court", of which the right of access is one aspect (ibid.).

18. The Court notes that the applicant's request for referral to the constitutional jurisdictions was rejected by the Court of Appeal only because the complaint was at that stage premature (an approach which was in line with other domestic examples, see for example, *Scerri v. Malta*, no. 36318/18, § 11, 7 July 2020). The refusal of the constitutional jurisdictions to examine that complaint, albeit on procedural grounds, was also related to that specific circumstance. It follows that in the absence of a decision on the merits of the applicant's complaints, it is still open to him to lodge a fresh set of constitutional proceedings once the proceedings come to an end (ibid. and compare *Desira and Eltarhuni v. Malta*, (dec.), no. 30623/13, § 39, 6 December 2016). The same had been explicitly stated by the Court of Appeal. It follows that the essence of his right to access to court has not been

impaired (see, *mutatis mutandis*, *Fabbri and Others v. San Marino* [GC], nos. 6319/21 and 2 others, § 150, 24 September 2024).

19. The Court further observes that while Article 46 of the Constitution provides that an applicant may raise such an issue when his right "has been, is being or is likely to be contravened", its proviso also states that the court can decline its jurisdiction if "it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned". The latter was the *ratio* behind the Court of Appeal's decision not to refer the case to the constitutional jurisdictions deeming the request frivolous and vexatious at that stage, and the basis of the preliminary objection of non-exhaustion of ordinary remedies by the defendants during the separate constitutional proceedings. The Court reiterates that there is a difference between effective ordinary remedies which can prevent the occurrence of a violation (as in this case, if for example, the applicant's fine was annulled) and effective ordinary remedies which can only redress an alleged violation which has already occurred and can no longer be prevented (see, for example, *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, §§ 62-69, 24 July 2014). Failure to undertake remedies of the former category (i.e. pre-emptive remedies) may render a Convention complaint premature and have an impact on the applicant's victim status (see *Testa and Others v. Malta* (dec.) no. 58910/19, 7 September 2021, and for examples in practice, *Muscat*, cited above; *Dimech*, cited above, §§ 45-48 ; *Desira and Eltarhuni*, cited above, §§ 36-39, and *Magri v. Malta* (dec.), no. 22515/16, §§ 45-49, 2 May 2017). In the present case, the applicant's proceedings had not been concluded. In that light, the domestic decisions on his constitutional claims cannot be considered arbitrary or manifestly unreasonable, nor can it be considered that the domestic courts have applied a restrictive interpretation of the law.

In conclusion, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 March 2025.

Simeon Petrovski Deputy Registrar	Jolien Schukking President