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

FOURTH SECTION

DECISION

Application no. 37277/24
XNT LTD
against Malta

The European Court of Human Rights (Fourth Section), sitting on 22 April 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. 37277/24) 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 6 December 2024 by Patrick O'Brien, on behalf of XNT Ltd, a company registered in St. Julians, Malta, in 2011 ("the applicant company"). It was represented by Dr J. Herrera and Dr D. Camilleri, lawyers practising Valletta;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns a complaint under Article 6 § 1 of the Convention in relation to a fine imposed on the applicant company, which offers investment services, by the Financial Intelligence Analysis Unit ("FIAU").

2. Following a compliance review undertaken by compliance officers of the financial crimes' unit of the FIAU and the applicant company's submissions in reply, on 9 June 2022 the applicant company was fined 244,679 euros (EUR) by the compliance monitoring committee of the FIAU for failure to comply with anti-money laundering regulations. On 30 June 2022 it filed an appeal against the fine, before the Court of Appeal, which appears to be still pending.

3. In the meantime, the applicant company instituted constitutional redress proceedings complaining under Article 6 § 1 of the Convention that

the fine had been imposed in the absence of a fair trial. It challenged the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) and its Subsidiary Legislation providing for this procedure.

4. By a first-instance judgment of 13 July 2023 the Civil Court (First Hall) in its constitutional competence ("FHCC"), took cognisance of the proceedings despite the pending appeal. It considered that Article 6 in its criminal limb applied to the impugned proceedings and found a breach of that provision. Thus, it quashed the FIAU decision of 9 June 2022, revoked the fine imposed, and ordered that the case against the applicant company be resumed only following legislative intervention providing for an independent and autonomous body offering fair trial guarantees.

5. By an appeal judgment of 18 November 2024, the Constitutional Court reversed the first-instance judgment and found no violation of Article 6 § 1. It noted that the Court of Appeal had suspended proceedings awaiting the outcome of these proceedings, and that the FHCC had decided to take cognisance of the case, the Constitutional Court would thus not interfere with the FHCC's discretion. It also confirmed the applicability of Article 6 in its criminal head based on the *Engel* criteria, particularly, the fine imposed on the applicant company in the present case. It further accepted that the FIAU was not an impartial body. However, the applicant company had the right, of which it availed itself of, to lodge an appeal before the Court of Appeal which had full jurisdiction to determine matters of fact and law. According to the European Court of Human Rights' case-law, that would suffice to consider the proceedings as being Article 6 compliant, especially in respect of offences which were not the "hard core of criminal law", but were of an administrative category, as in the present case. In reply to the applicant company' arguments, it noted that under the applicable law (Articles 150 (1) (b) and 208 (1) of the Code of Organisation and Civil Procedure "COCP") nothing impeded the Court of Appeal from admitting new documentary evidence or hearing new witnesses if it deemed it necessary. This was even more so where no proceedings before a court would have taken place prior to the appeal, and bearing in mind that the Court of Appeal would have to apply the law in conformity with fair trial principles. The Constitutional Court considered that it would be wrong to make presumptions about that court's use of its discretion *in abstracto*. Moreover, it was still for the prosecution to make out its case on appeal and the mere fact that under domestic law such appeal proceedings were to be terminated within six months (in the absence of an agreement of the parties or exceptional circumstances) did not necessarily impinge on the right to a fair trial. Lastly, there was no indication that there would be an issue of equality of arms, all the relevant information being already in the hands of the person subjected to the measure. Thus, it could not be said that the impugned law did not conform to Article 6 requirements.

6. The applicant company complained under Article 6 § 1 that the law empowered the FIAU to impose administrative penalties, of a criminal nature,

in breach of fair hearing principles. This in so far as the decision to fine was not taken by a court but by an investigative body, whose officials are not judges and whose procedures are not provided in the law, and without the investigated person having the possibility to make submissions. The decision is then only subject to an appeal before a court which, although empowered to examine both points of fact and law, provided only limited procedural rights particularly in relation to the production of evidence and the hearing of witnesses, and had to determine the case within six months.

THE COURT'S ASSESSMENT

7. The Court reiterates that a State's choice of a particular criminal justice system is in principle outside the scope of the supervision carried out by the Court at European level, provided that the system chosen does not contravene the principles set forth in the Convention (see *Taxquet v. Belgium* [GC], no. 926/05, § 83, ECHR 2010, and *Achour v. France* [GC], no. 67335/01, § 51, ECHR 2006-IV). Furthermore, in cases arising from individual petitions, the Court's task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they affected the applicant gave rise to a violation of the Convention (see, among many other authorities, *Gaggl v. Austria,* no. 63950/19, § 38, 8 November 2022).

8. The Court reiterates 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 (see *Dimech v. Malta*, no. 34373/13, § 43, 2 April 2015, and the references cited therein). This is even more so in circumstances such as those of the present case, bearing in mind the Court's case-law finding that in administrative proceedings, the obligation to comply with Article 6 of the Convention does not preclude a "penalty" being imposed by an administrative authority in the first instance. For this to be possible, however, decisions taken by administrative authorities which do not themselves satisfy the requirements of Article 6 § 1 of the Convention must be subject to subsequent control by a judicial body that has full jurisdiction (see *Grande Stevens and Others v. Italy*, nos. 18640/10 and 4 others, § 139, 4 March 2014). In assessing whether, in a given case, the extent of the review carried out by the domestic courts was sufficient, the Court has held that it must have regard to the powers of the judicial body in question and to such factors as: (a) the subject-matter of the dispute; (b) the procedural guarantees available in the administrative proceedings subject to the judicial control; and (c) the method of review, the judge's decision-making powers and the grounds for his or her decision, assessed, in the context of the judicial proceedings in question, in the light of the substance of the dispute, the issues it raises and the arguments put forward in this connection (see, for example, *European Air Transport Leipzig GmbH*

v. Belgium, nos. 1269/13 and 4 others, § 54, 11 July 2023, and *Espírito Santo Silva Salgado v. Portugal*, no. 30970/19, § 71, 3 December 2024).

9. The Court observes that the applicant company has not informed the Court that the proceedings before the Court of Appeal have come to an end. In such circumstances, it cannot be excluded that the applicant company be eventually relieved from paying the fine or that proceedings be discontinued, nor can it be excluded that the Court of Appeal would provide the relevant guarantees ensuring that the proceedings against the applicant company be in conformity with Article 6 of the Convention. 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). The Court finds no reason to deem otherwise in the present case (see, for illustrative purposes, *Farrugia v. Malta* (dec.) [Committee], no. 5870/24, 4 February 2025).

10. Moreover, the Court observes that the Constitutional Court, which entered into the merits of the complaint as lodged by the applicant company, made general findings in respect of the law and its possibilities in practice, but could not assess the situation in relation to the circumstances of the applicant company's individual case, as required by the Convention case-law (see the general principles at paragraph 8 *in fine* above) since the appeal proceedings had not come to an end. It follows that the applicant company would be required to institute new constitutional redress proceedings at that point, in the light of any alleged defects of the appeal procedure as occurring in its individual case, in order to exhaust domestic remedies.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 May 2025.

Simeon Petrovski Deputy Registrar	Jolien Schukking President