



## **CONSTITUTIONAL COURT**

### **JUDGES**

**THE HON. CHIEF JUSTICE MARK CHETCUTI  
THE HON. MR JUSTICE GIANNINO CARUANA DEMAJO  
THE HON. MR JUSTICE ANTHONY ELLUL**

**Sitting of Monday, 8<sup>th</sup> April, 2024.**

**Number: 24**

**Application number: 368/23/1 AJD**

**Carmelo Turu Spiteri**

**v.**

**The Honorable Mister Justice Giovanni M. Grixti and State  
Advocate**

1. Plaintiff appealed the decision delivered by the Civil Court, First Hall on the 19th September 2023 whereby his request for a provisional order was refused.

2. In brief:

i. On the 20th February 2023 plaintiff filed a lawsuit in the Civil Court, First Hall (Carmelo Turu Spiteri vs The Hon. Robert Abela et,

Application no. 80/2023) contesting art. 19 of the Citizenship Act (Chapter 188).

ii. The case was appointed for hearing for the sitting of the 22nd March 2023. The plaintiff is not represented by a lawyer during the sittings.

iii. On the 16th April 2023 plaintiff filed a note with an account of events that he claims occurred during the sitting held on the 22nd March 2023. *Inter alia* he claimed that during that sitting the judge's behaviour was "*discriminatory, oppressive and violated not only the essence but spirit of Code of Ethics for Members of the Judiciary*". He also declared that the note was filed to preserve the record as the process verbal of that sitting omits what happened. On the 20th April 2023 the court *inter alia* said that the judicial act filed by the plaintiff is based on "*.... insinwazzjonijiet għal kollox inveritieri dwar il-mod u manjieri li bihom aġixxa s-sottofirmat (ħaġa li qatt ma għamel matul l-uffiċċju tiegħu mill-1996 sal-lum). Tordna li kopja tan-nota tintbagħat lill-President tar-Repubblika u lill-Prim'Imħallef*".

iv. On the 20th April 2023 plaintiff filed another application requesting the recusal of the judge. By decree dated 20th April 2023 the court ordered that a copy of the application is notified to

respondents, who replied on the 27th April 2023 and objected to plaintiff's request.

v. During the sitting of the 16th May 2023 the court heard submissions by defendants on the preliminary pleas they raised with regards to the lawsuit filed by the plaintiff, and the case was adjourned for judgement for the 26th September 2023.

vi. On the 17th July 2023 plaintiff filed a constitutional case (app. 368/2023) claiming a breach of his fundamental human right to a fair hearing, and seeking the removal of the judge presiding case 80/2023. The judge presiding case 80/2023 was included as defendant, and on the 11<sup>th</sup> August 2023 replied to plaintiff's claims. With regards to the merits, the judge replied that the allegations made by the respondent *"5.... are false and intended as a baseless and unjust attack on a member of the judiciary who has the duty and obligation to decide on matters in a suit in which applicant is a party, with the aim of eliminating, or rather neutralizing, respondent"*.

vii. On the 28th July 2023 plaintiff filed a request for the granting of an *interim* measure. He requested the court to order the temporary suspension of case 368/2023.

- viii. During the sitting held on the 21st August 2023 it was minuted in the process verbal that, *“The plaintiff is hererby declaring that he is withdrawing the case against Judge Giovanni Grixti in his personal capacity”*.
- ix. On the 19th September 2023 the Civil Court, First Hall delivered a decision refusing plaintiff’s request for an *interim* measure. The Court granted permission to the plaintiff to appeal.
- x. In the case 80/2023 the court adjourned all sittings since plaintiff’s appeal is still pending.
3. The Civil Court, First Hall after referring to jurisprudence on the matter, said that *interim* measures, other than those provided in articles 2 and 3 of the Convention, are by far the exception and not the rule even though every case has to be decided on its merits. The court held:

*“19. In the local sphere the Court refers to what was said in thr judgement given in the case **HSBC Bank (Malta) p.l.c. vs L-Avukat tal-Istat et<sup>1</sup>**, that is that the principles laid down by the European Court of Human Rights were also applied by the Maltese Courts and in some instances the Maltese Courts gave remedies in situations where the European Court had denied the request for an ad interim measure. In this judgement reference was made to a series of judgements of the Maltese Courts on the matter and five elements were identified to be considered as guidelines in the process of deciding whether to iuphold or reject a request for the issue of an interim measure which are the following:*

1. *“Ir-rimedju jingħata biss meta **ma jkun hemm l-ebda rimedju ordinarju a disposizzjoni tar-rikorrent**”;*

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<sup>1</sup> App. No. 227/2019, First Hall of the Civil Court ,16 ta’ Ġunju 2020.

2. “Biex ikun jista’ jingħata rimedju provviżorju, jeħtieġ li min jitolbu juri li hemm każ **prima facie ta’ ksur ta’ jedd fundamentali**. Mhux biżżejjed li wieħed joqgħod biss fuq xi **sitwazzjoni ipotetika** jew li **mhix ċerta li sseħħ**”;

3. “Tkun sejra sseħħ **ħsara li ma tkunx tista’ titregġa’ lura għall-interessi vitali** tal-parti kkonċernata jew għall-perkors tal-eżami li l-Qorti jkun jinħtiġilha tagħmel. Ingħad f’dan il-kuntest li l-għoti tal-interim order jingħata biss **eċċezzjonalment f’każijiet ta’ “urġenza estrema”**.”;

4. “L-eżistenza ta’ **riskju imminenti**, li għalhekk jimmerita t-teħid ta’ miżuri urġenti. Sabiex ikun hemm lok għat-teħid ta’ interim measure il-ħsara mhedda jeħtieġ li tkun **mhux biss irreparabbli iżda wkoll imminenti** għaliex altrimenti ma jistax jingħad li hemm dik l-urġenza li tiskatta l-ħtieġa għat-teħid tal-miżura eċċezzjonali msemmija”;

5. “**Fil-każ li jkun hemm ġudikat, xorta jista’ jingħata r-rimedju provviżorju, iżda biss f’każijiet verament eċċezzjonali**”;

20. *The ad interim measure being requested in this case is an order for the stay of proceedings in another case (application number 8/2023) pending before this Court in its constitutional jurisdiction filed by the applicant Carmelo Turu Spiteri in terms of Article 116 of the Constitution whereby he is attacking the validity of Article 19 of Chapter 188 of the Laws of Malta (The Citizenship Act) and an order for the non-deliverance of the judgement relating to preliminary pleas made by the defendants in that case and scheduled for the 26th September 2023 and this because he is alleging a violation of his right to a fair hearing during these same proceedings for the reasons already indicated in paragraph 12 of this judgement.*

21. *When applying the aforementioned legal principles to the facts of the present case this Court deems that the applicant’s request for the issue of an ad interim measure is unjustified and without any legal basis because none of the elements indicated above subsist:*

(i) “**Ir-rimedju jingħata biss meta ma jkun hemm l-ebda rimedju ordinarju a disposizzjoni tar-rikorrent**”: It certainly cannot be held that the applicant has no other ordinary remedy at his disposal in the eventuality that his request for an ad interim measure is denied. This Court in fact could not fail to note that in the proceedings whereby he is alleging that there was a violation of his rights (application number 80/2023GMG) no formal request was ever made in conformity with the dictates of law for any of the various complaints brought forward by the applicant in this coinstitutional application. Moreover it must be emphasized that the applicant will have a right to lodge an appeal in front of the Constitutional Court both in relation to the preliminary judgement scheduled for the 26th September 2023 as well as from the eventual judgement on the merits;

(ii) “**Biex ikun jista’ jingħata rimedju provviżorju, jeħtieġ li min jitolbu juri li hemm każ prima facie ta’ ksur ta’ jedd fundamentali**. Mhux biżżejjed li wieħed joqgħod biss fuq xi **sitwazzjoni ipotetika** jew li

**mhix ċerta li sseħħ**: After reviewing the acts of these proceedings this Court is of the opinion that the applicant did not manage to prove on a prima facie basis that there was a breach of his right to a fair hearing and that the presiding judge in that case committed shortcomings that deserve for him to be challenged. As pointed out above no formal request appears to have been made according to the dictates of the law for any of the complaints raised by the applicant. Moreover without entering into the merits of the complaints raised by the defendant this Court could not fail to note that whilst the applicant asserts that he was not notified and did not have access to the decrees given by the Court in the 'First Case', he submitted copies of these same decrees as evidence in the present proceedings which goes to show that he was in fact given access to the records of the proceedings and to all decrees issued by the Court in that case. This Court cannot therefore retain on a prima facie basis that there has been a breach of the applicant's fundamental human rights. As pointed out by The State Advocate in his Reply the applicant's complaints regarding the conduct of the proceedings in the 'First Case' seem to be a result of the fact that he does not seem to be well versed in the Maltese juridical system in matters of procedure and not because the said proceedings are not being conducted according to law.

At this point this Court re-iterates and makes it very clear that these observations are being made only for the purpose of ascertaining whether there is a prima facie case of breach of the applicant's rights and cannot and should not be interpreted as being the Court's opinion or decision on the merits. This Court will in fact decide on the merits only after having heard all evidence brought forward by the parties in support of their claims/pleas;

(iii) **"Tkun sejra sseħħ ħsara li ma tkunx tista' titreġġa' lura qħall-interessi vitali tal-parti kkonċernata jew qħall-perkors tal-eżami li l-Qorti jkun jinħtiqilha taqħmel. Inqad f'dan il-kuntest li l-qħoti tal-interim order jingħata biss eċċezzjonalment f'każijiet ta' "urġenza estrema"**: This Court is not of the opinion that it has been shown that in the event that the request for the issue of an ad interim measure is denied the applicant will suffer irreparable damage which can in no way be remedied. As already pointed out in fact the applicant has a right of appeal both from the preliminary judgement and the eventual judgement on the merits in the proceedings whereby he is requesting a stay order. He will also have the remedy to resort to the European Court of Human Rights in Strasbourg if after all this itinerary he is still of the opinion that there has been a violation of his right to a fair hearing. This Court therefore cannot conclude that the circumstances of this case can be deemed to be exceptional due to irreparable prejudice which may be caused.

(iv) **"L-eżistenza ta' riskju imminenti, li qħalhekk jimmerita t-teħid ta' miżuri urġenti. Sabiex ikun hemm lok qħat-teħid ta' interim measure il-ħsara mhedda jeħtieġ li tkun mhux biss irreparabbli iżda wkoll imminenti qħaliex altrimenti ma jistax jingħad li hemm dik medl-urġenza li tiskatta l-ħtieġa qħat-teħid tal-miżura eċċezzjonali msemmija"**: As pointed out above the applicant still has various remedies at his disposal and therefore it cannot be said that there is an imminent risk or danger that irreparable prejudice can be caused to

*the extent that it could convince this Court to uphold the applicant's request for the issue of an ad interim measure;*

(v) **"Fil-każ li jkun hemm ġudikat, xorta jista' jingħata r-rimedju proviżorju, iżda biss f'każijiet verament eċċezzjonali"**:

*This requisite is not applicable to the case in question because there has so far been no final judgement or decision;*

22. *In conclusion therefore this Court is of the opinion that since none of the requisites laid down by the Maltese Courts and the European Court of Human Rights subsist it cannot uphold the applicant's request for the issue of an ad interim measure ordering a stay of the proceedings pending before this Court as presided by The Honourable Mister Justice Giovanni M. Grixti (Case number 80/2023GMG) and a stay of the judgement relating to preliminary pleas raised by the defendants in that case and scheduled for the 26th. September 2023 and this until this constitutional application (application number 368/2023) is heard and decided".*

4. Plaintiff appealed and complained that the judge presiding the court in the case 80/2023:-

i. Knew that plaintiff did not read and write Maltese. Therefore it was incorrect to allow pleadings and issue orders in Maltese. This in breach of article 2(a) of the Judicial Proceedings (Use of English Language) Act;

ii. Uttered statements during the sittings whereby he deprived the plaintiff of the principle of equality of arms;

iii. Did not permit plaintiff to reply *viva voce* to submissions made by his opponent;

iv. Refused plaintiff's request to file written submissions;

v. Refused to allow plaintiff's witness to testify, notwithstanding that he travelled to Malta from Spain;

5. The plaintiff went on to criticise the reasoning of the first court.

6. The State Advocate filed a reply and gave reasons why the court should reject plaintiff's appeal.

Considerations by this court.

7. It seems that in case 80/2003 the court has not issued a final decree concerning plaintiff's request for the recusal of the presiding judge.

8. According to law it is the presiding magistrate or judge in a case that decides a request for his recusal. The law does not grant a right of appeal from such a decision.

9. It is a fact that when during a constitutional case the plaintiff requests a provisional measure, local courts refer to decisions of the European Court of Human Rights. Interim measures are issued by that



court on the basis of Rule 39 of the Rules of Court<sup>2</sup>. Rules that are not directly applicable to national courts.

10. This court in the case Rosario Sultana vs Avukat Ġenerali et, 27th February 2017.

*“26.....li f'materja tal-hekk imsejja interim measures huwa car l-insenjament ta' din il-Qorti li tali mizuri ghandhom jittiehdu biss f'kazijiet ta' urgenza u sahsitra f'kazijiet ta' “urgenza estrema” fejn in-nuqqas ta' tehid ta' tali mizuri jirrizulta, jew jazzarda li jirrizulta, fi hsara irreparabbli ghall-interessi vitali tal-parti koncernata jew ghall-perkors tal-ezami li l-Qorti jkun jehtigilha taghmel [Ara Q. Kost. Joseph Camilleri v. Avukat Generali, 1/7/2013, li ccitat b'approvazzjoni mill-ktieb “Theory and Practice of the European Convention on Human Rights” ta' Van Dijk et (4 ediz. 2006, pagina 113].*

*“Din il-Qorti rriteniet ukoll li mizuri ad interim huma indikati f'kazijiet ecezzjonali [Ara Q. Kost. Joseph Ruggier et v. Joseph Olivier Ruggier et, 22/8/2005 #7, #11] . [Q.Kost. Federation of Estate Agents v. Direttur Generali Kompetizzjoni, deciza 25 ta' Settembru 2014]”<sup>3</sup>.*

*“17. Ghalhekk il-punt li ghandu jigi rizolt f'dan l-istadju, m'huwiex jekk l-allegazzjonijiet tar-rikorrent kif maghmula fir-rikors promotur humiex gustifikati, jew jekk ic-cahda tat-talba ghar-referenza maghmula lill-Qorti Kriminali kinitx gusta jew le, dawk huma materji li ghad iridu jigu decizi mill-ewwel Qorti; izda dak li jrid jigi deciz minn din il-Qorti f'din l-istanza huwa jekk jezistux cirkostanzi li jissodisfaw l-estremi, identifikati mill-kazistika kemm lokali kif ukoll ewropeja, sabiex tinghata mizura provvizorja.*

.....

*19. Din il-Qorti tosserva li l-ebda wahda mill-allegazzjonijiet maghmula mir-rikorrenti dwar ksur tad-drittijiet fundamentali tieghu indikati fir-rikors promotur ma tirreferi ghal xi dritt fundamentali li qed jinkiser jew li x'aktarx jinkiser bazat fuq cirkostanzi ta' “extreme urgency” li n-nuqqas li tinghata l-mizura provvizorja rikjesta minnu “result[s] or threaten to result in irreparable injury to certain vital interests..” tar-rikorrent.””.*

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<sup>2</sup> “The Court may, in exceptional circumstances, whether at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted. Such measures, applicable in cases of imminent risk of irreparable harm to a Convention right, which, on account of its nature, would not be susceptible to reparation, restoration or adequate compensation, may be adopted where necessary in the interests of the parties or the proper conduct of the proceedings”.

<sup>3</sup> Q. Kos. 45/2016 Angelo Frank Paul Spiteri v L-Avukat Ġenerali.

11. The first court referred to requisites for the issue of an *interim* measure based on local and foreign judgements, and gave clear reasons why none of them were satisfied in plaintiff's case.

12. To date no witnesses have yet been heard in the constitutional case dealing with plaintiff's complaint that his fundamental right to a fair hearing has been breached in case 80/2023. All allegations made by the plaintiff are contested by respondent.

13. In the note filed on the 16th April 2023 in the case 80/2023 the plaintiff mentioned facts which allegedly took place during the first sitting, although not recorded in the *process verbal*, and which led him to contest *inter alia* the ethical behaviour of the judge towards him and claim that the presiding judge is biased. He contends that the judge:

- i. Knew or should have known that he was illiterate in the reading and writing of the Maltese language, as in appeal proceedings involving the plaintiff he had ordered that all pleadings written in Maltese are to be translated into English. This notwithstanding, his decrees are in Maltese. The court notes that from the documentation presented in the constitutional case 368/2023, there is no evidence that in case 80/2023 plaintiff made a formal request to have proceedings in English;

- ii. Shouted at him when he proceeded to sit at the table that is in the middle area of the hall where the sitting was held;
  - iii. Threatened him with arrest if he did not remove himself from that area;
  - iv. Told him to stand next to the witness stand where there was no table where he could place his file and sit;
  - v. Said that he was not listening when the plaintiff made a request for the recusal of the judge;
  - vi. Repeated that he was ignoring the plaintiff when he made another request for the recusal of the judge. Furthermore, in the *process verbal* of the sitting no mention was made to plaintiff's request for recusal.
14. The plaintiff also *inter alia* claims that during the sitting held on the 16th May, 2023 he requested the court to decide on his request for the recusal of the judge. He alleges that the judge replied that he is ignoring him, notwithstanding that he claims that he made a written request for his recusal.

15. Contrary to what plaintiff claims, there is no clear *prima facie* evidence that in case 80/2023 plaintiff's fundamental right to a fair hearing has been breached, is being breached or is likely to be breached.

16. However, considering the allegations made by the plaintiff, the court concludes that in these particular circumstances it is in the interest of all concerned that until the constitutional case 368/2023 is finalized, the hearing of case 80/2023 is suspended.

17. In his appeal the plaintiff requested the court to order that case 80/2023 is forthwith transferred to another judge. The request for the removal of the presiding judge in case 80/2023 is certainly premature as it concerns the merits of the constitutional case 368/2023, and it is the remedy that the plaintiff is seeking in the case he filed. Furthermore, the removal of the presiding judge and assignment of the case to another judge, would not be a provisional measure but a permanent one when to date no witnesses have been heard.

#### Decision.

For these reasons the court revokes the decision delivered by the Civil Court, First Hall on the 19th September 2023, and orders the temporary suspension of case 80/2023 (Carmelo Turu Spiteri vs The Hon. Robert

Appeal Number:368/23/1

Abela et) until a final judgement is delivered in the constitutional case 368/2023.

The Court recommends to the Civil Court, First Hall hearing the case 368/2023 to give it priority, since the hearing of case 80/2023 has now been suspended.

Costs are at the charge of the State Advocate.

An authenticated copy of this decision is to be sent to the Civil Court, First Hall hearing the cases 80/2023 GMG and 368/2023 AJD.

Mark Chetcuti  
Chief Justice

Giannino Caruana Demajo  
Judge

Anthony Ellul  
Judge

Deputy Registrar  
da