QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

S.T.O. PRIM IMHALLEF MARK CHETCUTI

Illum L-Erbgha, 28 ta' Mejju, 2025

Numru 12

Appell Nru. 4/2025

C&V Polymers Limited
vs

L-Awtorita' ghall-Ambjent u r-Rizorsi

Il-Qorti,

Rat ir-rikors tas-socjeta appellanti tal-25 ta' April 2025 fejn talbet li issir referenza kostituzzjonali b'referenza ghal-multa imposta fuqha mill-Awtorita appellata billi skontha l-multi jaqghu fid-definizzjoni ta' reat kriminali skont l-artikolu 39(1) tal-Kostituzzjoni u l-artikolu 6 tal-Konvenzjoni Ewropea. Il-proceduri amministrattivi mehuda kontra s-socjeta appellanta huma ta' natura kriminali sa fejn iridu jinghataw is-salvagwardji moghtija skont l-artikoli fuq citati, liema salvagwardji ma gewx imharsa billi r-rikorrenti ma nghatawx d-drittijiet stabbiliti fl-artikoli msemmija. It-Tribunal ta' Revizjoni tal-Ambjent u Ippjanar ma ghandux kompetenza jiddeciedi fuq il-kostituzzjonalita tal-ligijiet li imponew il-multa u ghalhekk kellha issir it-talba ghal referenza f'dan l-istadju;

Rat ir-risposta tal-Awtorita li ssottomettiet li t-talba kellha tigi michuda ghar-ragunijiet minnha msemmija;

Konsiderazzjonijiet tal-Qorti

Il-Qorti tirreferi ghal dak li intqal recentement fil-kawza **Anthony Farrugia vs Malta** (App. 5870/24) deciza fil-25 ta' Frar 2025 mill-Qorti Ewropea tad-Drittijiet tal-Bniedem li kienet ukoll dwar impozizzjoni ta' multa amministrattiva minn regolatur, u t-talba saret fuq allegat ksur tal-artikolu 6(1) tal-Konvenzjoni, f'cirkostanzi simili bhal dawk quddiem din il-Qorti. Il-Qorti qalet hekk:

> 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).

Ma hemmx x'jizdied ma' dak li ntqal f'din is-sentenza u billi l-proceduri fl-appell ghadhom mhux konkuzi kull ilment kostituzzjonali hu prematur.

Decide

Ghal il-Qorti taqta' u tiddeciedi billi tichad it-talba tal-appellant ghar-referenza kostituzzjonali. Spejjez ta' dan il-provediment a karigu tal-appellant.

Mark Chetcuti
Prim Imhallef

Anne Xuereb
Deputat Registratur