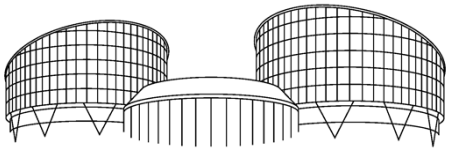

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF A AND B v. MALTA

(Application no. 4986/24)

JUDGMENT

Art 6 § 1 (civil) • Impartial tribunal • Judge's former lawyer in separation proceedings appeared before her as a representative of the applicant's opposing party in proceedings concerning the latter's contact rights in respect of their child • Lawyer's mandate had ended seven months prior to start of impugned proceedings • Sufficient time had passed to dilute professional ties and dispel any fears of partiality • Judge's choice not to raise issue of her own motion, bearing in mind the passage of time, acceptable • Recusal procedure, including the review before the constitutional jurisdictions following the judge's own decision on the challenge against her, not deficient and in compliance with Convention standards • Impugned relationship could not prompt objectively held misgivings as to the objective impartiality of the judge • In specific case-circumstances, courts of constitutional competence which examined impartiality complaint made up for failings in recusal proceedings
Art 8 • Family life • Interlocutory decisions rejecting applicant's request that opposing party's contact rights be reduced or supervised accompanied by relevant and sufficient reasons • Impugned decisions pursued the interests of all concerned on the basis of information available at the time • No indication of unfair decision-making process

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 June 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A and B v. Malta,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Faris Vehabović,
Tim Eicke,
Lorraine Schembri Orland,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 4986/24) 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") by two Maltese nationals, Mr A and B ("the applicants"), on 17 February 2024;

the decision to give notice to the Maltese Government ("the Government") of the complaint under Articles 6 (concerning the impartiality of the Family Court, and the procedure for the recusal of judges) and 8 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicants' names disclosed;

the parties' observations;

Having deliberated in private on 1 April and 27 May 2025,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The application concerns complaints under Articles 6 and 8 of the Convention in relation to the impartiality of a judge in childcare proceedings and the procedure relating to the withdrawal of a judge.

THE FACTS

2. The applicants were born in 1980 and 2012 respectively and live in Swieqi. They were represented by Dr R. Scott and Dr T. Azzopardi, lawyers practising in San Gwann and Valletta respectively. The first applicant A is the father of the second applicant B of whom at the time of lodging the application he had care and custody.

3. The Government were represented by their Agents, Dr C. Soler, State Advocate and Dr A. Falzon, Advocate at the Office of the State Advocate.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The first applicant and C, parents of the second applicant separated in 2017.

6. While the separation proceedings were in the mediation stage, in August 2018, the first applicant filed a request before the Civil Court, Family Section (hereinafter "the Family Court") (in this domestic case composed of Judge E) asking the court, *inter alia*, to order that the second applicant reside with the first applicant and have no contact with D, C's partner. This was due to the fact that D, with whom she resided, was accused of committing serious crimes related to drug hauls. As a result of this cohabitation, D was also being given access to the child and the first applicant had serious concerns regarding this matter.

7. On 8 November 2018, following the receipt of a sealed Child Advocate's report, Judge E granted the first applicant care and custody of the second applicant and ordered that C should enjoy visitation rights with the child on three specified weekdays for three and a half hours and on Sundays. D was ordered not to be present for such visits, but the judge considered that the visits need not be supervised by the relevant child agency.

8. C breached these orders by taking the second applicant to D's parents' house, where D's brother, who was known to keep firearms, also lived, on several occasions and keeping him overnight on Christmas eve. As a result, Judge E ordered that the second applicant should not be taken anywhere near the presence of D's family. It also ordered that criminal action be brought against C for contempt of court.

II. THE PROCEEDINGS COMPLAINED OF

9. Once the mediation proceedings were finalised, on 19 January 2019, C proceeded to file a lawsuit against the first applicant, before the Family Court, which was assigned to Judge F.

10. By means of an application filed in February 2019, the first applicant asked Judge F to order that all visitation rights enjoyed by C be reduced or supervised on account of the fact that the second applicant was refusing to visit his mother, crying hysterically on every occasion. Further applications were lodged by both parties thereafter, the content of which was not discussed in the proceedings before the Court.

11. On 28 October 2019 Judge F, having viewed the evidence and noted that the child was refusing visits with his mother, considered that the first applicant's concerns were justified in view of the serious accusations pending against D. She noted that it was for that reason and in view of the child's best interests that Judge E had ordered visits not to be held in the presence of D. Judge F considered that if the first applicant would pick up the child after visits, the latter's reluctance to go on the visit might diminish. She found that

insufficient grounds existed for the visits to be supervised, however, she ordered that C pick up the child from school on three specified week days for three and a half hours at which point the first applicant would collect the child at the end of the visit; that in respect of the visit to be held on Sundays, the first applicant was to take the child to C's residence and pick him up at the end of the visit; that, on the days when no physical visit was held C was to have 30 minutes of communication with the child via video call; that visits were never to be exercised in the presence of D; and she appointed a child psychologist to investigate and report to the court on the issues between the parties.

12. On 29 and 30 October 2019 respectively, the first applicant lodged a request to appeal from the above-mentioned decree and for the suspension of the latter pending a decision on leave to appeal. The latter request was reiterated on 1 and 21 November 2019.

13. Meanwhile, on 31 October 2019, having considered the decision concerning the access arrangements as lacking protection towards the second applicant and showing bias against him while favouring the mother, the first applicant, via his lawyer, asked Judge F to abstain from the proceedings due to a conflict of interest, on which he did not elaborate. His lawyer requested the court to hear his motives and evidence *in camera*. However, the first applicant withdrew the request on 15 November 2019 after Judge F informed him (in what the applicant considered "manifestly controlled anger") that his other requests (the request to appeal and urgent matters relating to visits) would be left pending if a hearing were to be held to examine the recusal request.

14. On 10 December 2019 Judge F refused the request to appeal the decree issued on 28 October 2019, considering that, given the evidence produced, this would not be in the best interests of the child. Parts of the decision (which was not submitted to the Court in full, but was partly reproduced in other documents) reads as follows:

> "The court has heard the recordings of the child filed by the defendant [A.], from which it seems to appear that not only was the defendant too busy recording the child crying hysterically to effectively try to comfort him during a substantial part of these recordings which lasted a total of approximately twenty minutes ...
>
> ... but also, that when the defendant did in fact try to comfort the child, he agreed with him that plaintiff [C] is 'the worst mother', suggested to the child that 'it's time you tell this to your mother'(with reference to the child's expressing a wish not to see his mother again) and telling the child that he (A) tries to persuade the court to stop access but that the court does not understand the needs of children. These recordings confirmed the court's opinion that what is in the best interest of the child right now is for a child psychologist to investigate the matter and report to this court what effect the behaviour of both parents is having on the child as soon as possible. An appeal procedure would stultify this investigation and is therefore clearly not in the best interest of the child."

15. The first applicant found out thereafter from his lawyer that C's lawyer (G) was Judge F's lawyer in her personal separation proceedings. This

information had been relayed to the first applicant's lawyer by Judge F herself, in confidentiality, some time before, in the context of other proceedings where she had abstained from hearing the case on the ground that G was her, then current, lawyer.

16. On the applicant's instruction, a second request for recusal was thus immediately filed on 23 December 2019 where, this time, the first applicant argued that there existed a conflict of interest due to the fact that G was Judge F's lawyer, so much so that Judge F had abstained from hearing another case on the same ground.

17. Oral submissions in this respect were heard on 11 February 2020 and a decree was issued on 17 June 2020 by the same Judge F, in line with Article 738 (1) of the Code of Organisation and Civil Procedure ("the COCP") (see paragraph 24 below). Judge F rejected the challenge against her having considered that it had not been submitted *in limine litis* (at the start of the proceedings); that a prior request for her recusal had been withdrawn, thus, the application had been pronounced as ceded; moreover, counsel to the first applicant had already appeared before the court in these proceedings and it could therefore not be said that he was unaware of the situation. She considered that following that unconditional withdrawal no further requests to that effect could legitimately be raised. Furthermore, the decree of 28 October 2019, which triggered the request, was a decree which upheld a previous decree on access arrangements given by another judge, save in respect of the modalities of the pickup of the child. It thus could not be evidence of any bias according to either the objective or subjective test expounded by the European Court of Human Rights.

18. No appeal lay against such a decision (see Article 738 (1) of the COCP at paragraph 24 below) and proceedings continued before Judge F. However, the parties have not informed the Court about any subsequent decisions which may have altered the contact arrangements put in place. For the first time in their observations of September 2024, the applicants alleged that no child psychologist ever contacted them, and no report was drawn up.

III. CONSTITUTIONAL REDRESS PROCEEDINGS

19. On 6 July 2020, pending the civil proceedings, the applicants instituted proceedings before the constitutional jurisdictions complaining about the lack of protection afforded to the second applicant, and the failure of Judge F to inform the parties of her situation with the opposing party's lawyer and/or abstain from the case of her own motion which they considered amounted to a breach of Articles 6, 8 and 13 of the Convention. They further complained that Article 738 (1) of the COCP which provided that a judge decides on his own recusal was in breach of Article 6 of the Convention.

20. Several interim requests for the proceedings before the Family Court to be suspended, or heard by another judge, were refused by the First Hall Civil Court in its constitutional competence ("the FHCC").

21. During the constitutional redress proceedings, on 20 October 2021, Judge F confirmed on oath in writing that G had been her lawyer in the proceedings concerning her consensual separation and that their professional relationship came to an end on 18 June 2018 upon the publication of her separation agreement. This testimony was the result of a specific request by the applicants, which was granted by the court limitedly to whether "G is currently [was at the time of the constitutional redress proceedings] Judge F's lawyer" and if not, when that professional relationship came to an end. The applicants' lawyer also testified about how he had learnt that G was her lawyer by Judge F herself, in confidence in the context of other proceedings.

22. On 4 April 2023 the FHCC rejected all the claims. It considered that the ground relied on by the applicants to challenge the judge was not one of the abstention grounds provided for in the law. Even though other grounds could justify a recusal these had to be serious and concrete which was not the case at hand. It could not be ignored that, from the evidence tendered in these proceedings, it transpired that the judge's professional relationship with her lawyer had come to an end six (sic.) months before the impugned proceedings. There had therefore been no issue of objective partiality, and the applicants had not claimed nor proved any subjective partiality. As to Article 8, the FHCC considered that it would not have been in the child's best interests to cut ties with his mother, and the mere fact that a decision was not in favour of the applicant could not amount to a violation of Article 8 by the Family Court who was better placed to assess the situation. As to the complaint concerning Article 738 of the COCP, it could not be said that the judge had been deciding in her own cause, as she was not a party to the proceedings. Citing domestic jurisprudence, the FHCC considered that a judge deciding on his own recusal request had to act impartially, in line with his oath and function, otherwise he could be liable to consequences.

23. On appeal, by a judgment of 25 October 2023, the Constitutional Court confirmed the first-instance judgment. It recalled that, under Article 8 of the Convention, the State had a positive obligation to safeguard family ties with both parents and the Family Court was better suited to examine the access arrangements. As to Article 6, no evidence had been submitted showing that once the professional relationship between the judge and the opposing party's lawyer had ended, there had remained any reasons (such as gratitude) to put in doubt the judge's impartiality. Moreover, the applicants' lawyer was aware of this situation earlier, yet he had not told his client. Furthermore, in a small country it would be impractical for a judge to withdraw in such cases. As to the complaint concerning Article 738 of the COCP, it considered that its examination was an academic exercise which was not necessary in the present case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

24. Articles 733-739 of the Code of Organisation and Civil Procedure ("the COCP") read as follows:

Article 733

"The judges may not be challenged, nor may they abstain from sitting in any cause brought before the court in which they are appointed to sit, except for any of the reasons hereinafter mentioned."

Article 734

"(1) A judge may be challenged or abstain from sitting in a cause –

(a) if he is related by consanguinity or affinity in a direct line to any of the parties;

(b) if he is related by consanguinity in the degree of brother, uncle or nephew, grand-uncle or grand-nephew or cousin, to any of the parties, or if he is related by affinity in the degree of brother, uncle, or nephew, to any of the parties;

(c) if he is the tutor, curator, or presumptive heir of any of the parties; if he is or has been the agent of any of the parties to the suit; if he is the administrator of any establishment or partnership involved in the suit, or if any of the parties is his presumptive heir;

(d) (i) if he had given advice, pleaded or written on the cause or on any other matter connected therewith or dependant thereon;

(ii) if he had previously taken cognizance of the cause as a judge or as an arbitrator:

Provided that this shall not apply to any decision delivered by the judge which did not definitely dispose of the merits in issue or to any judgment of non-suit of the plaintiff;

(iii) if he has made any disbursement in respect of the cause;

(iv) if he has given evidence or if any of the parties proposes to call him as a witness;

(e) if he, or his spouse, is directly or indirectly interested in the event of the suit;

(f) if the advocate or legal procurator pleading before a judge is the son or daughter, spouse or ascendant of the said judge;

(g) if the advocate or legal procurator pleading before a judge is the brother or sister of the said judge;

(h) if the judge or his spouse has a case pending against any of the parties to the suit or happens to be his creditor or debtor in such manner as may reasonably give rise to suspicion of a direct or indirect interest that may influence the outcome of the case.

(2) A judge may be challenged or abstain from sitting in a cause when he has previously taken cognizance of and expressed himself on the same merits of that cause when sitting as a judge in the court of voluntary jurisdiction."

Article 735

"(1) Any judge being aware of the existence in his respect of any of the grounds of challenge mentioned in the last preceding article, shall make a declaration to that effect previously to the trial of the cause, either verbally in open court, in which case a record of such declaration shall be entered in the proceedings of the cause, or in writing, in which case it shall be lodged in the registry before the day appointed for the trial of the cause, notice thereof being given to the parties.

(2) Nevertheless, it shall be lawful for the judge to hear and determine the cause if the parties shall expressly give their consent thereto, unless, in the particular circumstances of the case, he shall deem it proper to abstain from sitting notwithstanding such consent."

Article 737

"Any objection to a judge shall be raised by the parties in open court, and the reasons thereof shall be alleged and, where necessary, proved."

Article 738

"(1) Where the court consists only of one judge and such judge is objected to, he himself shall decide on the alleged ground of challenge, and no appeal shall lie against his decision, and he shall either abstain from sitting and rule that a surrogation of another judge is required, or else proceed with the trial, as the case may be.

(2) Where the court consists of more than one judge, all the judges, including the one objected to, shall decide on the ground of challenge, and where there is any reason to doubt as to whether an alleged ground of abstention is a good ground or otherwise, all the judges, including the judge alleging such ground, shall decide on such ground."

Article 739

"The challenge of a judge shall not be admissible where the party raising the objection, if the plaintiff, has already submitted his claim at the trial, or, if the defendant, has already set up his pleas in defence, unless the ground of challenge shall have arisen subsequently, or unless the party raising the objection, or his advocate, shall declare upon oath that he was not aware of such ground, or that it did not occur to him at the time."

25. The relevant articles of the Civil Code read as follows:

Article 47

"During the pendency of the action the court shall give such directions concerning the custody of the children as it may deem appropriate, and in so doing the paramount consideration shall be the welfare of the children:

Provided that in cases where there is evidence of domestic violence, the Court may limit or deny access to the children if such access would put the children or the other parent at risk."

Article 149

"Notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child."

II. DOMESTIC CASE-LAW

26. It is established in the domestic jurisprudence (see for example *Sandro Chetcuti v Attorney General and Others*, Constitutional Court judgment of 12 July 2005, and the case-law cited therein, and more recently *Anna Vassallo* gia *Spiteri v the State Advocate* judgment of the First Hall Civil Court in it constitutional competence of 29 May 2024) that notwithstanding the fact that Article 739 of the COCP gives the impression that the list contained in Article 734 of the COCP is exhaustive, there are instances where judges may be challenged for reasons other than those referred to in the law given that a situation may arise which contrasts with the fundamental and constitutional rights of the individual with the consequence that the latter shall prevail over the other provisions of ordinary law. Thus, even if there may be no recourse on the basis of Article 734 of the COCP, the parameters of the law shall be deemed to be broadened by the provisions of the Constitution and the European Convention guaranteeing due process. They must therefore be interpreted in their spirit and in the light of the principles enunciated in the case-law of the Court and of the European Commission.

III. COMPARATIVE LAW MATERIAL

27. In the case of *Alexandru Marian Iancu v. Romania* (no. 60858/15, 4 February 2020) the Court conducted a comparative study of the legislation of twenty-eight then member States of the Council of Europe (Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Lithuania, North Macedonia, Norway, Poland, Portugal, the Russian Federation, Serbia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom). The comparative study suggested that in the civil legal systems common grounds requiring the withdrawal of judges were:

(a) if the judge is a party;

(b) if the judge is related to one of the parties to the proceedings;

(c) if the judge has previously been involved in the case in a different capacity (for example as a prosecutor, police officer, legal representative, witness, and so on); (see *Alexandru Marian Iancu*, cited above, § 40, for the grounds relevant to the criminal context).

28. In seventeen member States, the relevant criminal or civil codes of procedure laid down a general clause which required a judge to withdraw in all other circumstances which may cast doubt on his or her impartiality.

29. In addition, in the civil context, the comparative study revealed that in Azerbaijan one of the specific grounds for recusal is when the judge has any relationship, kinship or other kind of dependence with one of the participants in the case or with a legal representative or counsel of one of the participants; In the Czech Republic one of the specific grounds for recusal is when there are reasons to doubt the judge's impartiality taking into account his or her relationship to the matter in dispute, to the participants in the case and or their representatives; In Italy a judge must also withdraw if he or she has habitual contact with one of the parties or with one of their defence lawyers, or has a financial interest in the proceedings or if any of the parties or the legal representatives is a debtor or creditor in respect of him or her, or his or her spouse or children.

30. In the United Kingdom, The Supreme Court Judicial Conduct Guidance 2009 (as well as that of 2023) provides examples of when a judge must not sit in a case, and also situations in which, depending on the circumstances, it may be appropriate for a judge to withdraw. It also articulates situations in which it is likely inappropriate for the judge to withdraw. It states that likely insufficient reasons for a judge not to sit on a case (dependent upon the circumstances) include friendship or past professional association with counsel or solicitors acting for a party.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicants complained that the Family Court in the civil proceedings (composed of Judge F) had not been impartial due to the links of the judge with the opposing party's lawyer, moreover, the judge had herself decided on the challenge lodged against her, contrary to that provided in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. The parties' submissions

(a) The Government

32. The Government submitted that Article 6 § 1 did not apply to the procedure by which the Family Court decided the partiality challenge lodged against it, relying on *Schreiber and Boetsch v. France* ((dec.), no. 58751/00, 11 December 2003).

(b) The applicants

33. The applicants submitted that in the present case the recusal challenge did not amount to separate proceedings but was an integral part of the main proceedings. The provision was thus applicable.

2. The Court's assessment

(a) Compatibility *ratione materiae*

34. The Court notes that the Government did not challenge the applicability of Article 6 in relation to the interim decisions/ interlocutory decrees on access rights delivered by the Family Court, which are also complained of and constitute for ease of reference the decisions given in the main proceedings, but only in relation to the decision concerning the recusal of the judge. Bearing in mind that the applicability of a provision relates to the Court's competence *ratione materiae* to assess a complaint, and therefore is a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see, for example, *Pasquinelli and Others v. San Marino*, no. 24622/22, § 68, 29 August 2024) the Court finds it opportune to recall the relevant general principles and their application to the present case.

35. The Court has previously held that it no longer finds it justified to automatically characterise injunction, interim or interlocutory proceedings as not determinative of civil rights or obligations. It was not convinced that a defect in such proceedings would necessarily be remedied at a later stage, namely, in proceedings on the merits governed by Article 6 since any prejudice suffered in the meantime may by then have become irreversible and with little realistic opportunity to redress the damage caused (see *Micallef v. Malta* [GC], no. 17056/06, § 80, ECHR 2009). It, however, considered that not all interim or interlocutory measures determined such rights and obligations, and the applicability of Article 6 would depend on whether certain conditions were fulfilled (ibid., § 83, and *Mercieca and Others v. Malta*, no. 21974/07, § 34, 14 June 2011).

36. In the present case it is not disputed that the subject of the main proceedings including that of the interlocutory decisions (namely, care and custody and access rights) was "civil" and that the measures ordered by the Family Court, which were immediately enforceable, can be considered to have effectively determined the civil right or obligation at stake, during the length of time they were in force, and thus, Article 6 is applicable to the main proceedings complained of (see, for general principles, *Micallef*, cited above, §§ 84-86, and compare, for an example in practice, *A.K. v. Liechtenstein*, no. 38191/12, §§ 49-54, 9 July 2015).

37. The Court accepts that in exceptional cases – where, for example, the effectiveness of the measure sought depends upon a rapid decision-making process – it may not be possible immediately to comply with all of the

requirements of Article 6 (see *Micallef*, cited above, § 86). However, the independence and impartiality of the tribunal or the judge concerned being an indispensable and inalienable safeguard in such proceedings, there is no doubt that such safeguard ought to apply to the proceedings in the present case (see, for example, *Micallef*, § 86, and *A.K. v. Liechtenstein*, §§ 48 and 55, both cited above).

38. In so far as the Government challenged the applicability of Article 6 in relation to the decision of the judge on a request for her recusal (see paragraph 32 above), the Court notes that in *Schreiber and Boetsch*, relied on by the Government, the Court noted that the sole purpose of the proceedings complained of in that case was to challenge the judge responsible for investigating the case to which the applicants had been joined as civil parties. Accordingly, it considered that the challenge procedure was an ancillary action, independent of the main proceedings which gave rise to it. Since the right to obtain a judicial decision on the composition of a court is not a civil right, but solely a procedural right, even more so where the application had not related to the composition of a trial court, but to the replacement of an investigating judge as was in that case, the Court found that the possible applicability of Article 6 § 1 to the principal proceedings would not bring the challenged procedure within the ambit of Article 6 through association. However, in the present case, the Court notes that the procedure to challenge the judge was not a separate one, but rather part of the main proceedings, the civil nature of which has already been established in the preceding paragraph. There is therefore no reason to consider that Article 6 does not apply on that basis. The Government's objection is therefore dismissed.

(b) Compatibility *ratione personae*

39. The Court further notes that the Government did not raise an objection as regards the second applicant's victim status. It notes, however, that the matter concerns the compatibility *ratione personae* of the complaint which also goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016, and *Erduran and Em Export Dış Tic A.Ş. v. Turkey*, nos. 25707/05 and 28614/06, § 58, 20 November 2018).

40. The Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is in issue and that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party (see, among other authorities, *F. Santos, Lda. and Fachadas v. Portugal* (dec.), no. 49020/99, ECHR 2000-X; *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; and *Hambálek v. the Czech Republic* (dec.), no. 38132/03, 9 May 2006).

41. In the present case the second applicant was not a party to the civil proceedings complained of (see paragraph 9 above), thus the Court cannot regard the second applicant as a "victim" of the alleged violation of Article 6

of the Convention (see, *mutatis mutandis*, *Biziuk and Biziuk v. Poland* (dec.) no. 12413/03, § 1, 12 December 2006; *Bezzina Wettinger and Others v. Malta*, no. 15091/06, § 68, 8 April 2008; and *Erduran and Em Export Dış Tic A.Ş.*, cited above, § 61). For the purposes of Article 6, this is so even if the outcome of the proceedings might have in practical terms certain consequences for him (see, *mutatis mutandis*, *Q and R v. Slovenia*, no. 19938/20, § 63, 8 February 2022).

42. Having regard to the foregoing, the Court concludes that this complaint, in so far as it was lodged by the second applicant, is *incompatible ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

43. The Court will therefore confine itself to examining the complaint brought by the first applicant.

44. The Court notes that the complaint in respect of the first applicant is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

45. The first applicant submitted that Judge F had not been impartial, given her professional ties with the other party's lawyer. He considered that the mere fact that her separation proceedings came to an end by a deed published in June 2018 was no guarantee that there was no aftermath to the personal separation, and that the professional relationship had ceased. In any event, even assuming that it had ceased, the brief passage of time was not enough to consider that there were no strong professional ties between them. As much as a patient would consult his personal medical doctor when needed and not on a continuous basis, the same applied to a legal consultant. Thus, the termination of one provided service could not imply the end of a client-lawyer relationship.

46. The first applicant also considered that Judge F's behaviour had shown bias against him. He submitted that the wording of the decrees indicated that Judge F blamed him for the issues encountered by the second applicant and wrongly attributed words not uttered by him. She ignored his requests for protection of the child from the drug underworld and chastised him for trying to do so.

47. He argued that domestic law was deficient in so far as it did not provide for an automatic obligation for the judge to abstain if impartiality could be an issue. He also rebuked Judge F's behaviour in so far as she had not abstained, as she had done in another case for the same reason, nor declared the situation asking for the parties' consent, in line with Article 735

of the COCP (see paragraph 24 above). By omitting to raise the matter, she obstructed his right to challenge her hearing the case (see Article 737 of the COCP at paragraph 24 above). Once he became aware of the situation and she was asked to withdraw she refused to do so, deciding the matter herself.

48. In this connection, he submitted that Article 738 (1) of the COCP (see paragraph 24 above), which provided for a judge to decide on a challenge against him or herself, and against which no appeal lay, amounted to a case of *nemo iudex in causa propria* (no one should be a judge in their own case) which was incompatible with Article 6 of the Convention. There being no automatic obligation for the judge to withdraw, this important issue was left to their own discretion. It was further submitted that since his lawyer had initially not informed him about the situation (because it had been brought to the lawyer's attention in confidence) it was impossible for him to raise the matter in *limine litis*, a matter ignored by the judge when rejecting his request. The situation had not been remedied by the constitutional jurisdictions which rejected his requests for interim measures and eventually his complaint *in toto*.

49. In reply to the Government's argument (see paragraph 51 below), he considered that a population size of 600,000 people did not amount to a *carte blanche* to breach fair trial principles. The first applicant also submitted a list of around a hundred lawyers who could practice family law in Malta. Moreover, Judge F could have been replaced by any of the two other judges in the Family Court, as well as by the Chief Justice had it been necessary.

(b) The Government

50. The Government submitted that the judge had been impartial according to both the subjective and objective tests. In the latter respect they noted that her working relationship with the other party's lawyer had come to an end more than six months prior to the initiation of the proceedings complained of. Thus, the situation was different to the other case relied on by the first applicant where Judge F had abstained from hearing a case at a time when she had still been a client of the said lawyer. Moreover, bearing in mind the size of Malta, that only three judges sat on the Family Court and the handful of lawyers representing clients before the Family Court, one could not expect judges to withdraw because of such remote connections. Indeed, the Court had already found that even a professional relationship as office colleagues (of two judges one having to review the conduct of the other) would not suffice to raise doubts about a judge's impartiality. As to the subjective test, the first applicant had not brought forward evidence of any bias against him, and the mere fact that a decision against him was delivered could be no indication of such bias.

51. In so far as he complained about the recusal procedure, the Government submitted that in deciding a challenge against themselves judges had to be independent and impartial. Failure to do so would result in an abuse

of power with ensuing consequences. Moreover, should a party consider the decision to have been unfair, a two-tier constitutional remedy existed which could review the matter. The Government further considered that since the judge was not a party to the proceedings she could not be considered as deciding on her own case, the principle of *nemo iudex in causa propria* thus had no place in such a situation. Indeed, in the present case the judge had nothing to gain by deciding the case, and the Government had no doubt that the judge had acted impartially when deciding on this challenge in the present case.

52. Lastly, the Government noted that the Court had already found in respect of Liechtenstein and Cyprus that "excessively strict standards in respect of motions for bias could unduly hamper the administration of justice" which should also apply to Malta given its size.

2. The Court's assessment

(a) General principles

53. The Court reiterates that impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, for example, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; *Micallef*, cited above, § 93; *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015; and *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 287, 4 December 2018).

54. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see *Kyprianou*, § 119; *Micallef*, § 94; and *Morice*, § 74, all cited above). The personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86, and *Morice*, cited above, § 74).

55. In the vast majority of cases raising impartiality issues the Court has focused on the objective test (see *Micallef*, cited above, § 95). However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test)

but may also go to the issue of his or her personal conviction (subjective test) (see *Kyprianou*, cited above, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III, and *Morice*, cited above, § 75).

56. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see *Micallef*, cited above, § 96).

57. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings. It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Morice*, cited above, § 77).

58. In this connection even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done" (see *De Cubber*, cited above, § 26). What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports of Judgments and Decisions* 1998-VIII; *Micallef*, cited above, § 98; and *Morice*, cited above, § 78).

59. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation (see *Piersack v. Belgium*, 1 October 1982, § 30 (d), Series A no. 53). The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns (see *Zahirović v. Croatia*, no. 58590/11, § 35, 25 April 2013). In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. The Court will take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see *Micallef*, cited above, § 99).

(b) Application of the general principles to the present case

60. As to the subjective test, the Court reiterates that a tribunal shall be presumed to be free of personal prejudice or partiality and that a judge must be presumed impartial until there is proof to the contrary (see paragraph 54 above). The Court observes that, despite his arguments before the Court (see paragraph 46 above), the first applicant has not indicated any specific wording or referred to any specific passages of the impugned decisions. From the extracts of the decisions in the casefile, the Court considers that there is no evidence that Judge F displayed personal bias. Her concerns about the first applicant's behaviour in a given situation (see paragraph 14 above), a factor relevant to assess the family dynamics, cannot in the context of the present case be considered as amounting to any particular hostility against him.

61. As to the objective test, the Court observes that it has already had the opportunity to rule that the existence of close family ties of a judge, or his or her judicial assistant (according to their role in the domestic system), with the legal representative of one of the parties, objectively justified the applicant's fears, thus requiring domestic law and practice to provide procedural safeguards in this respect (see for example, *Micallef*, cited above, §§ 100 and 102, and *Tsulukidze and Rusulashvili v. Georgia*, nos. 44681/21 and 17256/22, § 58, 29 August 2024). Similar considerations applied where the family ties of the judge were with an employee of the firm representing one of the parties. While the Court considered that an automatic disqualification of all judges at national level who have blood ties with the employees of legal offices representing the parties in given proceedings is not always called for (see *Ramljak v. Croatia*, no. 5856/13, § 29, 27 June 2017, and *Nicholas v. Cyprus*, no. 63246/10, § 62, 9 January 2018) it is, however, a situation or affiliation that could give rise to misgivings as to the judge's impartiality (ibid.). Whether such misgivings are objectively justified would very much depend on the circumstances of the specific case, and a number of factors should be taken into account in this regard. These should include, *inter alia*, whether the judge's relative has been involved in the case in question, the position of the judge's relative in the firm, the size of the firm, its internal organizational structure, the financial importance of the case for the law firm, and any possible financial interest or potential benefit (and the extent thereof) on the part of the relative (see *Nicholas*, cited above, § 62). For example, in the circumstances of *Ramljak*, cited above, the Court found that the fact that such a close relative (i.e., the son) of a judge adjudicating a case had such close working ties with lawyers representing the applicant's opponent and that he was in a position of subordination to them compromised the impartiality of the court and made it open to doubt (ibid., § 38; see also, for similar circumstances, *Nicholas*, cited above, § 65, and *Koulias v. Cyprus*, no. 48781/12, § 64, 26 May 2020).

62. Conversely, the Court has held that the circumstance where a judge is brought to encounter/frequent (*soit amené à côtoyer*) the legal representatives

of a party, during meetings or at events unrelated to a given case, is not such as to cause, in itself, objectively justified misgivings by the opposing party (see, for illustrative purposes, *SPRL Projet Pilote Garoube v. France* (dec.) [Committee], no. 58986/13, § 24, 10 April 2018).

63. While the circumstances complained of in the present case do not fall squarely within any scenario already examined by the Court, the established jurisprudence and examples referred to above provide guidance to assess whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality.

64. The Court considers that the relationship between clients and their freely chosen legal representatives may go beyond a casual encounter/frequentation (contrast *SPRL Projet Pilote Garoube*, cited above). As in the case of family ties of judges with legal representatives or employees of the firm representing one of the parties, while it is a situation or affiliation that could give rise to misgivings as to the judge's impartiality, the Court considers that an automatic disqualification of all judges at national level in such circumstances is not always called for. Whether such misgivings are objectively justified would very much depend on the circumstances of the specific case (see, *mutatis mutandis*, *Ramljak*, § 29, *Nicholas*, § 62, and *Koulias*, § 64, all cited above) and the domestic legal framework at issue, regard being had, in so far as relevant, also to the realities of the jurisdiction at issue.

65. In assessing whether, in the present case, the relationship between Judge F and G, her personal lawyer, acting as the legal representative of the opposing party, may arguably raise legitimate doubts about her impartiality, the Court cannot but note that Judge F herself had felt that it was appropriate to abstain from hearing a case, while the mandate she had given to her lawyer (who was representing one of the parties) had been ongoing (see paragraph 15 above).

66. The Court has previously found, where domestic law provided for such a duty, that it was the responsibility of the individual judge to identify any impediments to his or her participation and either to withdraw or, when faced with a situation in which it is arguable that he or she should be disqualified, although not unequivocally excluded by law, to bring the matter to the attention of the parties in order to allow them to challenge the participation of the judge (see *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 35, 25 February 2020, and compare *Stoimenovikj and Milosheviki v. North Macedonia*, no. 59842/14, § 40, 25 March 2021). Given the importance of appearances, when a situation which can give rise to a suggestion or appearance of bias arises, that situation should be disclosed at the outset of the proceedings and an assessment should be made, taking into account the various factors involved in order to determine whether disqualification is actually necessitated in the case. This is an important procedural safeguard which is necessary in order to provide adequate

guarantees in respect of both objective and subjective impartiality (see *Nicholas*, § 64, and *Koulias*, § 63, both cited above and *Suren Antonyan v. Armenia*, no. 20140/23, § 136, 23 January 2025).

67. It appears from the *ex post facto* information, supplied during the constitutional redress proceedings, that the lawyer's mandate had come to an end seven months prior to the start of the proceedings in the present case and nearly a year and a half before the impugned decisions. The Court rejects the first applicant's submission to the effect that such ties would persist a lifetime (see paragraph 45 above), and, in the light of the available information the Court considers, as did the constitutional jurisdictions (see paragraphs 22-23 above), that sufficient time had passed to dilute those ties and dispel any fears of partiality which could, in principle, have existed. In these circumstances the Court can accept Judge F's choice not to raise the issue of her own motion in the present case bearing in mind the passage of time since the end of the mandate, and the responsibility of the judge to hear the case in line with domestic law (Article 735 of the COCP).This is even more so when Judge F knew that the applicant's lawyer was aware of the situation (which she herself had disclosed to him in a different context at a time when the professional relationship was ongoing) and he had opted not to raise the issue (with his client or with the court) when he appeared before her.

68. It cannot be overlooked that Malta is a small country, with a smaller number of lawyers and judges than larger jurisdictions; therefore, this situation is likely to arise more often (see, *mutandis mutandis*, *Nicholas*, cited above § 63; *Biagioli v. San Marino* (dec.), no. 8162/13, § 80, 8 July 2014, and *Micallef*, cited above, § 102). The Court has observed in its case-law that complaints alleging bias should not be capable of paralysing a defendant State's legal system and that in small jurisdictions, excessively strict standards in respect of such motions could unduly hamper the administration of justice (see, for example, *A.K. v. Liechtenstein*, cited above, § 82, and *Nicholas*, cited above, § 63).

69. As regards the recusal procedure as such, in proceedings which were not subject to an effective review by a higher body, the Court has already held that where there were circumstances which could, in principle, affect the judge's impartiality, such as a conflict of interest, it was not appropriate for the judge to decide on the challenge against himself (see, for example, *Mikhail Mironov v. Russia*, no. 58138/09, § 37 *in fine*, 6 October 2020). In particular, the Court has found that, unless an application for recusal is based on general and abstract grounds, without making reference to sufficiently specific material facts and could be considered abusive, the fact that the judges concerned decided on the application for their own recusals, although in accordance with an express provision of law, raised an issue of potential conflict of interest and was not in compliance with the requirement of impartiality (see *Mikhail Mironov*, cited above, §§ 37-40; *Bosev v. Bulgaria*, no. 62199/19, § 73, 4 June 2024; and *Tsulukidze and Rusulashvili*, cited

above, § 56; see also *A.K. v. Liechtenstein*, cited above, §§ 77-79, and *A.K. v. Liechtenstein* (no. 2), no. 10722/13, §§ 66-67, 18 February 2016, concerning judges who decided upon sufficiently substantiated complaints alleging bias against each judge, in a formation composed of the other remaining judges, who had equally been challenged for bias on identical grounds and thus appeared, in substance, to have rejected the complaints concerning themselves; and contrast, *Debled v. Belgium*, § 37, 22 September 1994, Series A no. 292-B, concerning vague objections with no specific material facts, in circumstances which could have paralysed the justice system). The Court has specifically held, in the context of a recusal request, that the confusion of roles between judge and stakeholder can obviously give rise to objectively justified fears as to whether the procedure complies with the principle that no one may be judge in his own cause and, consequently, as to the impartiality of the tribunal (see *Bosev*, cited above, § 73).

70. The Court has reached similar conclusions concerning judges deciding on challenges about their own independence, a situation which gives no guarantee that the matter would be decided objectively, in breach of the fundamental principal of *nemo iudex in causa propria* (no one may be judge in his own cause) (see *Wałęsa v. Poland*, no. 50849/21, § 324, 23 November 2023). In the latter case the Court considered unacceptable, from the point of view of the fair-trial standards, that a ruling was given by the person who, by virtue of the fundamental principle *nemo judex in causa sua*, should have been prevented from dealing with the matter (ibid., § 180).

71. Indeed, in the present case, while the judge in issue may not have been a party to the civil proceedings, she was nonetheless the subject of the challenge upon which she decided. Thus, the same would appear to hold in the present case in relation to the procedure under Article 738 (1) of the COCP, where the recusal request, decided by the same judge being challenged, had been based on specific facts and could not be considered abusive (compare *Pastörs v. Germany*, no. 55225/14, § 63, 3 October 2019), and, importantly, where no appeal was available against that decision (see paragraph 24 above, and compare *Mikhail Mironov*, cited above, § 39).

72. However, whether the procedural defect was remedied by a higher court, is an element to be taken into account (see *Mikhail Mironov*, cited above, § 36, and *Bosev*, cited above, § 74). The Court notes that while such a decision was not subject to any ordinary review according to domestic law (see Article 738 (1) of the COCP at paragraph 24 above), the Government submitted that an individual aggrieved by such a decision could seek a two-tier constitutional remedy to review the matter.

73. The Court reiterates that a possibility certainly exists whereby a higher court may, in some circumstances, make reparation for defects that took place in lower-instance proceedings (see, *inter alia*, *Kyprianou*, § 134, and *Ramljak*, § 40, both cited above). While it is true that proceedings before the constitutional jurisdictions are rather of an extraordinary nature (despite

being a remedy generally required for the purposes of exhaustion of domestic remedies before this Court) and that such courts are not obliged to take cognisance of an Article 6 complaint before proceedings have come to an end, in the present case they did take cognisance of the case and thus those proceedings could be compared to an appeal procedure, required against a decision of a judge on his own challenge. It is also true that, in the present case, the review of the constitutional jurisdictions took nearly three and a half years to be determined, and that several interim requests for the proceedings before the Family Court to be suspended, or heard by another judge, were refused (see paragraph 20 above). The latter approach is not ideal particularly in the context of the present case where interim decisions which were immediately enforceable, and have effectively determined the civil rights at stake during the length of time they were in force (see paragraph 36 above), continued to be taken. However, given the outcome of the main complaint concerning the impugned relationship in the circumstances of this specific case, that course of action has not impinged on the first applicant's right to an impartial tribunal.

74. In sum, in the present case it cannot be said that the recusal procedure – in its entirety i.e., including the review before the constitutional jurisdictions which ensued following Judge F's decision on her own challenge – was deficient and not in compliance with the Convention standards (see paragraph 69 above).

75. However, the Court finds it opportune to mention that it has repeatedly noted that constitutional redress proceedings are cumbersome and lengthy proceedings (see, for example, *Mikalauskas v. Malta*, no. 4458/10, § 97, 23 July 2013 and the case-law cited therein in connection with Article 5 § 4, and *J.B. and Others v. Malta*, no. 1766/23, §§ 68-70, 22 October 2024 and the case-law cited therein in connection with Articles 3 and 13 concerning ongoing conditions of detention) and, as noted above, those courts might not always take cognisance of such complaints pending proceedings. The Court reiterates that the Contracting States are under the obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, impartiality being unquestionably one of the foremost of those requirements (see *Dorozhko and Pozharskiy v. Estonia*, nos. 14659/04 and 16855/04, § 53, 24 April 2008, and *Xhoxhaj v. Albania*, no. 15227/19, § 410, 9 February 2021, with further references). There appears to be no reason to consider that in Malta there were, or could be, any specific impediments to the functioning of a system where recusal requests, based on specific facts and which could not be considered abusive, are decided by another judge, as is the case, for example, in another small jurisdiction as San Marino (see the relevant domestic law set out in *Pasquini v. San Marino*, no. 50956/16, § 67, 2 May 2019), or, if they be decided by the same judge, that their decision be subject to an ordinary appeal before another judge or an appeal court – especially when the issue arises at first-instance as in the present case. Such

ordinary remedies are likely to benefit all parties concerned and provide for a better administration of justice.

76. Bearing in mind all the above the Court concludes that no issue of subjective impartiality arises and that the impugned relationship in the circumstances of present case could not prompt objectively held misgivings as to the objective impartiality of Judge F from the point of view of the external observer. Nevertheless, at the time when it was lodged, the challenge had been based on specific facts and could not be considered abusive, it thus required relevant procedural safeguards. While little comfort could be found in the recusal procedure in the respondent State, under Article 738 of the COCP, in the specific circumstances of the present case, the courts of constitutional competence which examined the complaint concerning the impartiality of Judge F made up for any failings which transpired in the domestic recusal proceedings.

77. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

78. The applicants complained of the decisions delivered by the Family Court which they considered were in breach of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

79. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

80. The applicants complained under Article 8 of the Convention that the decisions of the Family Court in the case assigned to Judge F had not been taken in the child's best interests. They considered that by constraining the second applicant to spend time with C. the Family Court ignored its duty to

protect him, and further alienated him from C. The mere fact that D would not be present could not safeguard the second applicant from the dangers inherent in being in D's residence or car, bearing in mind the alleged drug world connections. Those decisions had been taken in the absence of a psychologist report, which had until five years later (2024 – time of submission of the observations) not been followed up nor materialised.

(b) The Government

81. The Government submitted that examining the case holistically, the facts could not disclose a violation of the invoked provision. The decision of 28 October 2019 had been lawful and had been made after hearing both parties and based on the information available at the time. The decision had been taken with the purpose of protecting the rights and freedoms of others and with concern for the best interests of the child, namely those of the second applicant who was still young enough to improve his relationship with his mother. Moreover, this was an interlocutory decree, by means of which the Family Court also appointed an expert psychologist to carry out a holistic assessment of the minor child and his relationship with his mother and her partner together with their living conditions and to give all the necessary recommendations.

2. The Court's assessment

(a) General Principles

82. The Court reiterates that, where children are involved, their best interests must be taken into account. There is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, *Abdi Ibrahim v. Norway* [GC], no. 15379/16, § 145, 10 December 2021, and *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic v. Sweden*, no. 10592/12, § 77, 22 October 2015, and *Jansen v. Norway,* no. 2822/16, § 91, 6 September 2018).

83. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. The Court recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental

rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K. and T. v. Finland* [GC], no. 25702/94, § 155, ECHR 2001-VII).

84. In general, the child's interests dictate that the child's ties with the family must be maintained, except in cases where the family has proved particularly unfit and when contact would present a risk of harm (see, to that effect, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX, and *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 169, ECHR 2000-VIII). In other words, measures that totally deprive a parent of his or her family life with the child are inconsistent with the aim of reuniting them and should "only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for instance, *Johansen v. Norway*, 7 August 1996, § 78, *Reports* 1996-III, § 78, and *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010).

85. A parent cannot be entitled under Article 8 of the Convention to have measures taken which would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136). The obligation of the national authorities to take measures to facilitate contact by a non-custodial parent with children after divorce is therefore not absolute (see *Popadić v. Serbia*, no. 7833/12, § 83, 20 September 2022). Where contact with the parent might appear to threaten the interests, as well as the rights and freedoms, of all concerned, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention, it is for the national authorities to strike a fair balance between them (see *Fernández Cabanillas v. Spain* (dec.), no. 22731/11, § 47 *in fine*). While a parent's interests in having regular contact with his or her child remains a factor when balancing the various interests at stake and regardless of his or her feelings towards the contact arrangements, in the balancing process between the interests of the child and those of the parents primary consideration is to be attached to finding those arrangements which are in the child's best interests, which may, depending on their nature and seriousness, override those of the parents (see *Popadić*, cited above, § 83 and the references cited therein).

86. In determining whether decisions on access where "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify the measures were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. Undoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of

their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII).

87. The Court cannot satisfactorily assess whether the reasons advanced by the domestic courts were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, was fair (see *Sahin*, cited above, § 68, and *Petrov and X v. Russia*, no. 23608/16, § 101, 23 October 2018). While Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8 (ibid.).

(b) Application of the general principles to the present case

88. The Court notes that the applicants' complaint concerning the fairness of the proceedings has already been examined under Article 6 in respect of which it found no violation. In the absence of any other procedural complaint related to the procedure leading to the impugned interlocutory decisions of 2019, namely in reply to the request that the mother's contact rights be reduced or supervised and the refusal of the leave to appeal that decision, the issue before the Court remains whether the impugned decisions of the Family Court of 2019 were delivered in the light of the Article 8 standards relevant in such circumstances.

89. The Court notes that, while it is true that the domestic authorities must take into account the risks that the exercise of contact rights entails for the physical and psychological integrity of the child (compare *I.M. and Others v. Italy*, no. 25426/20, § 111 et seq., 10 November 2022) it is also imperative for the domestic courts to consider the long-term effects which a permanent separation of a child from its natural mother might have (compare *Jansen*, cited above, § 104). In the present case it would not appear that the first applicant's concerns about the second applicant's safety have been ignored, but rather the Family Court took account of those fears and balanced them against the necessity of the second applicant maintaining contact with his mother, as well as the latter's interests.

90. Indeed, the Court notes that the first applicant had custody of the second applicant and that the protective decision for C's contact rights to be held in the absence of D was maintained. However, Judge F just like Judge E before her (who had had the benefit of the sealed report of the Child Advocate) did not consider it necessary for the visits to be supervised. In this connection, the Court reiterates that the national authorities, by having the benefit of direct contact with all persons concerned, are better placed to judge what is in the best interests of the child and to take the necessary measures in this respect (see, among many others, *Fernández Cabanillas*, cited above,

§ 50), this is even more so when they have access to sealed material. The Court observes further that, while not reducing contact, Judge F adapted the contact arrangements to find a preferable solution which she considered could appease the second applicant.

91. Furthermore, she promptly appointed a child psychologist to review the family situation (contrast *Petrov and X*, cited above, § 108, and *A.S. and M.S. v. Italy*, no. 48618/22, § 157, 19 October 2023), which was certainly an appropriate measure bearing in mind the budding alienation towards the mother, admitted by the applicants themselves (see paragraph 80 above). The preparation of this report, deemed necessary to take further decisions – an approach in line with the Court's case law (see *Byčenko v. Lithuania*, no. 10477/21, § 116, 14 February 2023) – was also the reason why leave to appeal at that stage had been refused (see paragraph 14 above). While the Court takes note of the applicants' submission – uncontested by the Government who did not reply to the applicants' observations when invited to do so – that no such psychologist ever took any action, a situation which in itself is appalling given the passage of five years since that appointment, the Court considers that the subsequent delay has no bearing on the impugned decisions taken in 2019.

92. In conclusion, the Court considers that, in the circumstances of the case and given the interlocutory nature of the decision of 28 October 2019 concerning the mother's contact rights, the latter decision as well as that to reject the first applicant's leave to appeal, were accompanied by relevant and sufficient reasons, pursued the interests of all concerned, and more particularly those of the child, whose best interests are paramount, on the basis of the information available at the time. There is also no indication that the decision-making process leading to those measures of interference had not been fair.

93. There has therefore been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 6 § 1 in respect of the second applicant inadmissible and the remainder of the application admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds*, unanimously, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 24 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge L. Schembri Orland;
(b) Partly dissenting opinion of Judge L. Chanturia.

CONCURRING OPINION OF JUDGE SCHEMBRI ORLAND

1. I was among the majority in finding the application admissible and also in finding that there was no violation of Article 6 § 1 and Article 8 of the Convention in this particular case.

2. As the judge elected in respect of Malta, I feel it incumbent on me to reflect on the existing procedural safeguards provided for in domestic law for the purposes of the impartiality requirement under Article 6 § 1. The Constitutional Court of Malta has already interpreted article 734 of the COCP to be non-exhaustive (§ 26 of the judgment) and has deemed the parameters of that article to be broadened by the provisions of the Constitution and of the European Convention guaranteeing due process.

3. Article 735 of the COCP, the disclosure clause, provides a procedural guarantee which imposes a duty on the presiding judge to disclose "any of the grounds of challenge" mentioned in article 734 of the COCP. This is to be interpreted consistently with the established jurisprudence of the domestic courts which consider the last preceding article to be non-exhaustive. However, for Convention purposes, the duty of disclosure can be considered as a procedural safeguard to ensure impartiality. The onus is placed primarily on the individual judge to identify whether a legitimate doubt as to impartiality is raised as would warrant such disclosure. Even where the parties give their consent for the judge to continue to hear and determine the cause, the judge may still abstain if he or she deems it proper to do so. Impartiality is essential for the proper discharge of judicial office and a judge is in duty bound to disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially, or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

4. The sui generis nature of the facts of this case meant that the jurisprudence of the Court could only provide some guidance as to the underlying principles which would be applicable to its assessment of the impugned relationship. This case presents the particular circumstance of a past professional relationship between the presiding judge and the lawyer of one of the parties to the case, which relationship had terminated some months before the proceedings had been instituted. The outcome would conceivably have been different had this relationship been ongoing, at least as to the existence of a justifiable fear of bias. The judgment considers that this past relationship was not a circumstance that could objectively raise a justifiable fear of bias that would taint the fairness of the proceedings. From this standpoint, this circumstance would not have triggered the duty of disclosure which is applicable where a "ground of challenge" subsists.

5. I need not add anything to the reasoning articulated in the judgment. My purpose in penning this concurrent opinion is to draw attention to certain

procedural issues pertaining to the domestic jurisdiction of the respondent State, which are addressed in the judgment.

6. The first point concerns the reliance of the domestic courts on the inapplicability in such cases of the nemo iudex in causa propria argument to dismiss recusal requests (§ 22 in fine of the judgment) which this Court rejects, because a judge who decides on his or her own substantiated challenge is the subject of that particular cause although not of the causa litigandi itself.

7. The second point concerns the lack of an ordinary review of a recusal decision. Maltese law provides that a judge's refusal of a recusal request is final and not subject to appeal. Again, this places the onus on the individual judge alone to decide on his or her own impartiality. This, in itself, is not necessarily a procedural defect where the request is generic or abusive, without making reference to specific and/or material facts which could have raised reasonable doubts as to the judges' impartiality, as otherwise judges could be held to ransom by persons intent on forum shopping or who simply cannot accept the judge's ruling. However, the absence of an ordinary review of the judge's own refusal decision may conceivably raise an issue of Article 6 in respect of a well-founded challenge.

8. In the absence of an ordinary review, the question arises whether the reliance on a constitutional review is in itself an efficient avenue, both from the point of view of organisational workload as well as from the point of view of delay. In the present case, the essential purpose of a review, namely, to determine whether the presiding judge could be seen to have been objectively biased against the applicant, was achieved through a constitutional review. Yet, constitutional review is usually an extraordinary avenue of review, where the domestic court could conceivably opt to take cognisance of an Article 6 complaint only when the proceedings would have come to an end. The Constitutional review in this case, whilst serving to redress the Article 6 complaint, was not expeditious. However, the impugned decree was an interim decree which concerned access and visitation rights of a minor child in view of an arguable exposure to risk of harm whilst the primary proceedings were ongoing. It was still possible in this case, for the Family Court to continue to review access and visitation conditions, until the final determination of the case, hence the utility of an ordinary review procedure.

9. As to the small size of the jurisdiction in Malta, the judgment rightly affirmed the Court's case law that complaints alleging bias should not be capable of paralysing the respondent State's legal system. It is of course, up to the State to organise its own legal system, but the small size of the judicial complement need not exclude the addition of further safeguards which would not hamper the efficiency of the system whilst strengthening Convention compliance.

PARTLY DISSENTING OPINION OF JUDGE CHANTURIA

1. While I agree that there has been no violation of Article 8 of the Convention, I respectfully disagree with the majority's decision that there has been no violation of Article 6 § 1 of the Convention as regards Judge F's objective impartiality, for the following reasons.

I. APPEARANCE OF BIAS

2. According to the Court's established case-law, in terms of objective impartiality, appearances play an important role and any situation which can give rise to the appearance of bias should be disclosed (see *Sigríður Elín Sigfúsdóttir v. Iceland*, no. 41382/17, § 35, 25 February 2020; and compare *Stoimenovikj and Miloshevikj v. North Macedonia*, no. 59842/14, § 40, 25 March 2021). In the present case, the first applicant's fears were objectively justified by the fact that the opposing party's lawyer, G, had been Judge F's personal lawyer in her own separation proceedings. The relationship between Judge F and G, who was acting as legal representative for the opposing party in the present case, could arguably have raised legitimate doubts about the judge's impartiality. As rightly highlighted by the majority (see paragraph 65 of the judgment), even Judge F herself had admitted that possibility, and she had found it appropriate to abstain from hearing another case, but only while the mandate she had given to her lawyer had been ongoing (see paragraph 15).

3. It is also true – and here I agree with the majority – that an automatic disqualification of all judges at national level in such circumstances is not justified, and the time which elapsed between the different participations in proceedings could be taken into consideration (see *Peruš v. Slovenia*, no. 35016/05, § 37, 27 September 2012, and *Scerri v. Malta*, no. 36318/18, § 76, 7 July 2020). However, the first applicant was unaware of the details of the relationship between Judge F and the lawyer at the start of the proceedings, and later remained unaware of the fact that the mandate had since been terminated, among other relevant elements. Any appearance of partiality was thus not dispelled (compare, *mutatis mutandis*, *Nicholas v. Cyprus*, no. 63246/10, § 65, 9 January 2018, and *Koulias v. Cyprus*, no. 48781/12, § 63, 26 May 2020). The information that the mandate had concerned consensual separation proceedings, and had come to an end seven months prior to the start of the proceedings in the present case, was supplied only during the constitutional redress proceedings. It is therefore difficult to agree with the majority that, in the absence of details of the relationship in question, the passage of seven months from the end of the mandate to the start of the proceedings was sufficient to have diluted those ties to such an extent that any fears of partiality would have been dispelled (see paragraph 67). Fiduciary duties, on which the lawyer-client relationship is based, can last

longer than a few months, particularly where a judge dealing with a specific case was a client of a lawyer representing one of the parties.

4. Thus, in the circumstances of the present case, the first applicant's doubts as to the appearance of impartiality of Judge F were objectively justified, and there was no compelling reason for Judge F to sit in the case (compare *Fazlı Aslaner v. Turkey*, no. 36073/04, §§ 38-40, 4 March 2014, and the cases cited therein). Accordingly, there was a need for Judge F to disclose the conflict of interest.

II. DUTY OF DISCLOSURE

5. I also agree with the majority that in situations where there is a possible appearance of bias and where domestic law provides for a duty of disclosure, according to the Court's case-law it is the responsibility of the individual judge to bring the matter to the attention of the parties in order to allow them to challenge his or her participation (see *Sigríður Elín Sigfúsdóttir*, cited above, § 35; and compare *Stoimenovikj and Miloshevikj*, cited above, § 40). The majority rightly put emphasis on the necessity for any situation potentially giving rise to the appearance of bias to be disclosed at the outset of the proceedings (see paragraphs 66-67).

6. However, in the present case Judge F disregarded this important procedural safeguard, which was necessary in order to provide adequate guarantees in respect of both objective and subjective impartiality. The Court's case-law is clear enough on this issue (see *Nicholas*, § 55, and *Koulias*, § 63, both cited above).

7. It is true that Maltese law did not at the relevant time provide for an automatic obligation for a judge to withdraw in cases where impartiality could be an issue (see *Micallef v. Malta* [GC], no. 17056/06, § 100, ECHR 2009). However, in the present case, according to national law the judge was obliged to disclose the situation and to seek the parties' consent in line with Article 735 of the Code of Organisation and Civil Procedure ("the COCP"), allowing the matter to be addressed during the ordinary proceedings, with all the relevant details; regrettably, this did not occur (compare *Ramljak v. Croatia*, no. 5856/13, § 34, 27 June 2017). No such disclosure, enabling the situation to be assessed with the requisite detail, took place at the start of the civil proceedings or thereafter. At the time of the recusal request of 23 December 2019, the only information available to the first applicant was his lawyer's assertion that G was Judge F's lawyer, which, as noted above, could arguably have raised legitimate doubts about the judge's impartiality. The fact that the relationship had ceased prior to the institution of the civil proceedings only came to the first applicant's knowledge nearly two years later, via the limited written testimony of Judge F during the proceedings before the constitutional jurisdictions (see paragraphs 19-23).

III. RECUSAL PROCEDURE

8. When the situation came to light and Judge F was challenged for the first time on this specific ground, in line with domestic law she herself dismissed the challenge on both procedural and partly substantive grounds (see paragraph 17).

9. The majority accept, and I agree, that as regards the recusal procedure as such, the Court has already held that where there are circumstances which could, in principle, affect the judge's impartiality, such as a conflict of interest, it is not appropriate for the judge to decide on the challenge against him – or herself (see, for example, *Mikhail Mironov v. Russia*, no. 58138/09, § 37 *in fine*, 6 October 2020).

10. In the present case, Judge F was the subject of the challenge upon which she decided, a situation which gave rise to further objectively justified doubts as to the impartiality of the tribunal (see *Wałęsa v. Poland*, no. 50849/21, § 324, 23 November 2023, and *Bosev v. Bulgaria*, no. 62199/19, § 73, 4 June 2024). Moreover, Judge F did not properly respond to the first applicant's concerns about a lack of impartiality on her part in relation to the impugned situation in so far as she did not explain why her impartiality could not have been called into doubt in that applicant's case (compare *Mikhail Mironov*, cited above, § 38 *in fine*).

11. I could accept the rule of national law allowing the judge to decide on the challenge against him- or herself. I agree with the majority that there must be an opportunity to challenge the decision of the judge concerned. However, in the present case, no appeal lay against Judge F's own decision. It was not subject to any ordinary review under domestic law (see Article 738 § 1 of the COCP, quoted in paragraph 24).

IV. POSSIBILITY OF APPEAL

12. In line with the Court's case-law, it is certainly possible for a higher court, in some circumstances, to make reparation for defects that took place in lower-instance proceedings (see, *inter alia*, *Kyprianou v. Cyprus* [GC], no. 73797/01, § 134, ECHR 2005-XIII, and *Ramljak*, cited above, § 40).

13. According to the Government, the first applicant could have used a two-tier constitutional remedy to obtain a review of the matter. The majority, however, acknowledge, firstly, that proceedings before the constitutional jurisdictions are extraordinary in nature (despite being a remedy generally required for the purposes of exhaustion of domestic remedies before this Court) and, secondly, that such courts are not obliged to take cognisance of an Article 6 complaint before the initial proceedings have come to an end – although they might do so, as happened in the present case.

14. In the present case the review by the constitutional jurisdictions took nearly three and a half years to be determined. Meanwhile, the same judge

continued to take interim decisions, which were immediately enforceable and effectively determined the civil rights at stake during the time they were in force, thus impacting the first applicant's situation in a way that could not be cured (compare *Mariusz Lewandowski v. Poland*, no. 66484/09, § 49, 3 July 2012, and *Kyprianou*, cited above, § 45). Moreover, the Constitutional Court finally rejected the complaint concerning the judge's lack of impartiality and omitted to decide the issues concerning non-disclosure and the procedure for recusal of judges, despite the fact that these elements were relevant in the present case for the assessment of the impartiality of the Family Court. In such circumstances, I wonder to what extent the majority can conclude that the recusal procedure was not deficient (see paragraph 74).

15. To sum up, the situation in the present case could prompt objectively held misgivings as to objective impartiality from the point of view of the external observer. Judge F disregarded the disclosure obligation; she did not give reasons for her decision to dismiss the recusal request. Moreover, the recusal procedure was deficient and, rather than providing a relevant procedural safeguard, was in itself non-compliant with Convention standards. The constitutional jurisdictions did not cure those defects (compare, *inter alia*, *Kyprianou*, § 134, and *Ramljak*, § 40, both cited above).

16. All these misgivings are sufficient for me to disagree with the majority and to find that there has been a violation of Article 6 § 1 of the Convention as regards the objective impartiality of Judge F.