



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

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FOURTH SECTION

Application no. 4489/26
C.S.
against Malta
lodged on 30 January 2026
communicated on 3 September 2026

SUBJECT MATTER OF THE CASE

The application concerns the applicant's separation from her son.

The applicant (mother) is undergoing separation proceedings before the Family Court and originally had care and custody of the couple's child, K. The Child Protection Directorate (AA) was monitoring the situation as of 2019 as K was reluctant to see his father for supervised visits. However, on 18 July 2022 AA submitted that they should step aside from the case which had become highly conflictual.

On 23 January 2023 a request for a protection order (consisting of the immediate removal of the child, and his care and custody, from the applicant), under Article 19 of Chapter 602 of the Laws of Malta, was lodged by AA, who considered that K was suffering emotional harm due to the applicant alienating him, and due to the applicant's mental health. By an interim decree of 24 January 2023, without hearing the applicant or the child and in the absence of their submissions, the Juvenile Court ordered provisionally that the mother no longer have care and custody, and that the child be placed with the father; that the mother have no contact with the child for a month; and thereafter that she would have an hour per week of supervised visits, the continuation or variation of which would be seen to by AA. The order was immediately executed by the Police at the child's school.

The applicant's several requests to the Juvenile Court for the revocation of the decree were unsuccessful, the court noting that it will only decide the

matter with a final decree. A request to the Family Court to intervene was also unsuccessful. The proceedings have not been finally determined, and the applicant has thereafter had one hour supervised visits a week.

In the meantime, on 14 June 2023, the applicant had instituted constitutional redress proceedings complaining under Article 6 of the Convention of the decision of 24 January 2023 which was delivered without her, or the child, being heard, thus in breach of the equality of arms principle, and challenging the law applied to her.

By an appeal judgment of 20 October 2025 the Constitutional Court, confirmed a first-instance judgment, finding that the law which provided for a decision to be taken within 48 hours did not require the parties to make submissions, which could then be made at a later stage. Chapter 602 had given a wide discretion to AA to cover various situations which could require urgent measures, and its Article 18 was intended to ensure the protection and best interests of the child, which prevailed temporarily over certain Article 6 guarantees such as equality of arms and *audi altera parte*. It was of relevance that the measure was temporary and could be revoked had the Juvenile Court deemed it so fit, based on any evidence brought forward. While the applicant had argued that the father had strong connections to the management of AA, in the absence of concrete proof, the Constitutional Court was not ready to believe that the well-being of the minor would have been put at risk. Thus, neither the law nor its application in the present case were in breach of the applicant's Article 6 rights.

As to the applicant's reference to the delay in the proceedings, it noted that the applicant had not raised this complaint under Article 6, in any event she had not tried to speed up the proceedings, rather had asked for an extension for the submission of evidence.

The applicant complains under Article 6 that she was not heard before the decision was taken and enforced and that no reasons were given for that decision, which had not even assessed the veracity of the claims made against the applicant. She further complains of the length of the proceedings arguing that she should not have to lodge new constitutional proceedings about the matter.

QUESTIONS TO THE PARTIES

1. Has there been a breach of Article 6 and/or 8 of the Convention given that the decision of the Juvenile Court of 24 January 2023 was delivered without hearing the applicant or allowing her to make submissions (see *Micallef v. Malta* [GC], no. 17056/06, § 86, ECHR 2009) and that the right

to be heard is an important procedural safeguard which must be implemented in accordance with the nature and purpose of the measure to be adopted (see for example *Giuliano Germano v. Italy*, no. 10794/12, § 125, 22 June 2023)?

2. Furthermore, in the circumstances of the present case did the Juvenile Court abide by its obligation under Article 6 to give reasons (see *Carmel Saliba v. Malta*, no. 24221/13, §§ 66-67, 29 November 2016) and, for the purposes of Article 8, was its decision based on “relevant and sufficient” reasons and on an acceptable assessment of the relevant facts (see *Giuliano Germano*, cited above, § 132 *in fine*) particularly bearing in mind that it remained in place for at least three years during which time no further decision was taken?