

In G 1/05 of 7 December 2006 (OJ 2007, 362) the Enlarged Board of Appeal stated that, for an objection under Art. 24(3), first sentence, EPC to be justified, it was not necessary that the board member concerned actually be partial. It sufficed that there was a **suspicion** (see chapters III.J.4., III.J.5. and III.J.6. below), i.e. an appearance, of partiality (called the "objective test" in the ECtHR jurisprudence since *Piersack v. Belgium* (1982) of 1 October 1982, No 8692/79, paragraph 30). There should be no risk that the courts would not ensure that justice was both done and perceived by the public to have been done. What was at stake was the confidence that the boards of appeal inspired in the public (see also R 19/12 of 25 April 2014, T 190/03 of 18 March 2005, OJ 2006, 502, ECtHR: *Puolitaival and Pirttiäho v. Finland* of 23 November 2004, No. 54857/00, paragraph 42). The Enlarged Board noted that it was, however, also commonly recognised in the jurisprudence of the boards of appeal and elsewhere that the party's "suspicion" had to be justified on an objective basis. Purely subjective impressions or vague suspicions were not enough (see also G 3/08 of 16 October 2009, R 2/12 of 26 September 2012, T 1674/12, T 1020/06 of 28 November 2008, T 985/01 of 18 March 2005 and T 190/03 of 18 March 2005, OJ 2006, 502, point 7 of the Reasons). The standpoint of the person concerned was important but not decisive (ECtHR: *Puolitaival*, paragraph 42; see also T 241/98 of 22 March 1999 and R 8/13 of 20 March 2015). The question was whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge had not or would not bring an impartial mind to bear on the adjudication of the case. It was thus necessary that a reasonable onlooker considering the circumstances of the case would conclude that the party might have good reasons to doubt the impartiality of the member objected to (see also T 954/98 of 9 December 1999, T 1257/14 of 5 February 2018).

1.6. Applicability of Article 24 EPC to first-instance proceedings

In G 5/91 (OJ 1992, 617) the Enlarged Board stated that although Art. 24 EPC applied only to members of the boards of appeal and of the Enlarged Board of Appeal, it must be considered as a general principle of law that nobody should decide a case in respect of which a party may have good reasons to assume partiality. The basic requirement of impartiality therefore applies also to the members of the EPO's departments of first instance who take part in decision-making activities affecting the rights of any party (see also T 433/93, T 95/04, T 283/03, T 1193/02, T 2475/17). The board noted, however, that Art. 24(1) EPC 1973 contained some provisions specifically aimed at safeguarding the impartiality of members of the boards of appeal and of the Enlarged Board of Appeal. For example, while no member of a board of appeal could take part in an appeal if he had participated in the decision under appeal (see in this chapter III.J.5.1.2), it was clearly permissible under Art. 19(2) EPC 1973 for one member of an opposition division to have taken part in the proceedings for grant of the patent to which the opposition related. In T 1674/12 the board observed that, whilst the rules applicable to board members were different, a member of an examining division which had granted a patent could take part in opposition proceedings concerning the same patent, provided he did not act as chairman (see Art. 19(2) EPC). In T 1647/15 the board, with reference to G 5/91 (OJ 1992, 617), stated that there was no legal basis for automatically applying Art. 24(3) and (4) EPC to an opposition division (as had been argued by the appellants).