CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 6569/04
by Noel ARRIGO and Patrick VELLA
against Malta

The European Court of Human Rights (Fourth Section), sitting on 10 may 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 28 January 2004,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Noel Arrigo and Mr Patrick Vella, are Maltese nationals and live in Siggiewi and Naxxar (Malta). The first applicant is represented before the Court by Mr G. Abela, a lawyer practising in Valletta, while the second applicant is represented by Mr T. Abela and Mrs T. Cachia, two lawyers practising respectively in Attard and Valletta.

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The criminal charges brought against the applicants and the press conference of 1 August 2002

The applicants were two judges of the Court of Criminal Appeal. They had been suspected*, inter alia*, of having accepted a sum of money in order to neglect their duties as public officials.

On 1 August 2002, while the applicants were being interrogated by the police, the Prime Minister of Malta called a press conference at his office and issued a press release in Maltese. The translation into English of this document read as follows:

> "I have convened this Press Conference on a matter of importance which I feel that the public should be informed of officially.
>
> The courts of our land have always enjoyed, and still do, the trust of our people.
>
> I regret that I have to inform the public that today two judges are being investigated by the police in connection with serious offences.
>
> On 5 July, judgment was delivered by the Court of Criminal Appeal presided over by Chief Justice Noel Arrigo, Judge Patrick Vella and Judge Joseph Filletti, in the case of "the Republic of Malta vs. Mario Camilleri".
>
> Before the Court of First Instance, the accused was found guilty, after he had filed a guilty plea, of offences regarding drug trafficking and other related offences, and was condemned to sixteen years imprisonment.
>
> Days before the judgment of the Appeal Court, it became known that contacts were being made on behalf of the accused with Judge Patrick Vella and the Chief Justice so that the prison term to which he had been condemned be reduced by four years, from sixteen to twelve years, and that these two judges were promised amounts of thousands of Liri each.
>
> Judgment was given as allegedly had been agreed.
>
> The Police continued to follow subsequent events. After the judgment it resulted that monies were paid to the said two judges.
>
> The investigations together with interrogations of witnesses began after Judge Patrick Vella returned from abroad on 27 July.

> The investigations are continuing today as the two judges were separately asked to go to the Commissioner of Police.
>
> On the Government's side, I want to assure everyone that this case will continue to be investigated to the end and that steps will be taken according to law.
>
> This morning I informed the President of Malta about this all. Afterwards I also informed the Leader of the Opposition. We agreed that the matter is of national importance and that in no way should it be treated as a matter of partisan politics. I thank the Leader of the Opposition for this who like me understands the seriousness of the situation.
>
> Afterwards I called a Cabinet meeting and it was decided to call this Press Conference.
>
> I appeal to the public to wait for the results of the investigations according to law and to consider that what is happening is a confirmation that the institutions of our land apply to everyone. Therefore, the public must still maintain its whole trust in them".

During the press conference, the Prime Minister was accompanied by his assistant, by the Minister of Interior and by the Minister of Justice. The press conference was shown live on the national television and several articles about it were published in the national newspapers.

On 4 August 2002 the applicants were charged before the Court of Magistrates as a Court of Criminal Inquiry.

Considering that the press conference and the publicity given to it had prejudiced their rights to a fair trial and to the presumption of innocence (Article 6 §§ 1 and 2 of the Convention and Article 39 §§ 1 and 5 of the Constitution of Malta), at the first hearing before the Court of Criminal Inquiry, the applicants requested that the criminal proceedings be stayed and that their complaint be brought before the Civil Court (First Hall) in its constitutional jurisdiction.

In an order of 26 August 2002 the Court of Criminal Inquiry considered that the applicants' claim was not frivolous or vexatious as far as it concerned the press conference and referred the case to the Civil Court. The Court of Criminal Inquiry rejected the applicants' allegations regarding the alleged prejudice suffered because of the publicity given to the statements of the Prime Minister.

2. The constitutional proceedings before the Civil Court (First Hall)

Before the Civil Court, the applicants produced several newspaper articles which allegedly treated them as guilty. They also referred to a motion for their removal from duty which was pending before the House of Representatives. They alleged that, as there had been a breach of the presumption of innocence, no fair hearing was possible in their case.

In a judgment of 4 December 2002 the Civil Court held that the declarations made in the press conference could not be considered as statements of guilt and therefore declared that the applicants' fundamental rights had not been breached. The Civil Court directed the Court of Criminal Inquiry to continue the criminal proceedings instituted before it.

The Civil Court first observed that the facts of the case were extraordinary and rather unique for Malta and that it was justified for the Prime Minister to call the press conference in order to inform the public and to avoid an institutional crisis. After having explained the background of the case, the Prime Minister gave assurances that the matter would have to be investigated according to law and requested the public to await the results of these investigations. Answering questions from the media, he reiterated that no conclusion could be drawn at that stage of the proceedings and that the applicants, like any other person, should enjoy the rights set forth in the law. In the Civil Court's opinion, these statements were not clear indications of guilt. The terms employed were those which were generally used on occasions in which reference was made to an ongoing investigation and to the results achieved by the police.

The Civil Court recalled that according to the case-law of the European Court of Human Rights, the presumption of innocence could not prevent the authorities from informing the public about the investigations in criminal matters.

3. The applicants' appeal to the Constitutional Court

The applicants appealed to the Constitutional Court against the judgment of 4 December 2002.

In a judgment of 29 October 2003 the Constitutional Court revoked the impugned decision and declared that there had been a violation of the applicants' rights to a fair trial and to be presumed innocent. It further ordered that a copy of its judgment be placed in the records of the criminal proceedings pending against the applicants.

The Constitutional Court noted that the Civil Court should have addressed also the applicants' complaint concerning the alleged lack of objective impartiality of the tribunal called upon to decide their case. However, this claim was unfounded, as even assuming that the presumption of innocence had been violated, this would not imply that the criminal proceedings could not be determined by an objectively independent and impartial court. The domestic legal system provided effective safeguards and guarantees in this respect.

The Constitutional Court further observed that the authorities should impart information about pending criminal cases with the necessary caution and circumspection and that it could not be held that this requirement was satisfied simply because some reservations as to the need to await the result of the trial had been made. According to the case-law of the European Court

of Human Rights, the presumption of innocence was violated if a statement of a public official concerning a person charged with a criminal offence reflected an opinion that he was guilty before he had been proved so according to law. Even in the absence of a formal finding, it was sufficient that there was some reasoning suggesting that the official regarded the accused as guilty. The choice of words by the public official was of paramount importance but the existence of a breach of Article 6 § 2 of the Convention had to be determined in the context of the particular circumstances in which the impugned statement had been made.

In the present case, the Prime Minister had used the words "it became known" and "it resulted", which were incompatible with the required caution. It was, in fact, a clear declaration that the facts of which the applicants were accused had actually taken place, thus suggesting that the Prime Minister was considering the applicants guilty. This also resulted from some extracts of the press articles produced by the applicants, which showed that the reservations made at the end of the press conference did not have much effect on public opinion, which was *de facto* encouraged to believe that the accused had committed a criminal offence.

As the presumption of innocence was one of the elements of a fair criminal trial, the violation of paragraph 2 of Article 6 of the Convention also and necessarily entailed a breach of the first paragraph of this provision and of Article 39 § 1 of the Constitution of Malta.

In the light of its finding that there was no lack of objective impartiality on the part of the national tribunals, the Constitutional Court considered that there was no room for ordering the suspension of the criminal proceedings against the applicants. However, it held that in order to provide a remedy for the violations found, and also with the ultimate aim of providing scrupulously and applying all safeguards contemplated and contained in the Criminal Code, its judgment should be brought to the attention of the court which would eventually be called upon to determine the criminal proceedings initiated against the applicants.

4. The applicants' request to stay the criminal proceedings

On 17 March 2004 the applicants requested the Court of Criminal Inquiry to suspend the trial pending a decision from the European Court of Human Rights.

In an order of 7 September 2004 the Court of Criminal Inquiry rejected the applicants' claim and decided to continue with the collection of evidence. It observed that considerations of public order militated against the requests of the defence and that in its judgment of 29 October 2003 the Constitutional Court had explicitly excluded the need to stop the criminal proceedings against the applicants.

COMPLAINTS

1. The applicants complained under Article 6 § 1 of the Convention about a violation of their right to be tried by an impartial and independent tribunal.

2. The applicants considered that in their case the presumption of innocence guaranteed by Article 6 § 2 of the Convention had not been respected.

3. Invoking Article 13 of the Convention, the applicants complained that the violations of Article 6 found in their case were not redressed in an effective manner.

THE LAW

1. The applicants considered that their criminal trial would not take place before an independent and impartial tribunal. The invoked Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

The applicants observed that the declarations of the Prime Minister were given a wide publicity in the media and were made or sustained by persons who had a great influence in Malta not only on the ordinary citizens but also on national institutions. In the applicants' opinion, it was clear from the press release that the Prime Minister considered them guilty of having unlawfully reduced a punishment in exchange for the payments they were believed to have received. As the statements of 1 August 2002 came from the highest authority in the country, no guarantee would be sufficient to exclude legitimate doubts as to the impartiality and independence of the tribunals called upon to decide on the merits of the charges.

The Court first notes that on 7 September 2004 the Court of Criminal Inquiry rejected the applicants' request for a stay of the proceedings and decided to continue with the collection of evidence. It has not been alleged by the applicants that the gathering of evidence has been completed or that a judgment on their guilt or innocence has been given. Therefore, according to the information available to the Court, the proceedings are currently still pending at first instance.

The Court recalls that the question whether or not court proceedings satisfy the requirements of Article 6 § 1 of the Convention can only be determined by examining the proceedings as a whole, i.e. once they have been concluded. However, it is not impossible that a particular procedural element could be so decisive that the fairness of the proceedings could be determined at an earlier stage (see *R.D. v. Spain*, no. 15921/89, Commission

decision of 1 July 1991, Decisions and Reports (DR) 71, pp. 236, 243-244). The Court, noting that the criminal proceedings in question have not yet been completed, finds that the applicants' submissions do not disclose any such circumstances (see *Putz v. Austria*, no. 18892/91, Commission decision of 3 December 1993, DR 76-A, pp. 51, 64).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. In so far as the applicants' allegations might be interpreted as raising a separate complaint concerning a violation of principle of the presumption of innocence, the Court considers that the matter should be examined under Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court recalls that this provision cannot prevent the authorities from informing the public about criminal investigations in progress (*Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, p. 17, § 38). Moreover, the Court considers that in a democratic society it is inevitable that information is imparted when a serious charge of misconduct in office is brought, as in the present case, against two high-ranked magistrates (see, *mutatis mutandis*, *Craxi v. Italy*, no. 34896/97, § 103, 5 December 2002). The fact that the applicants had important duties in the national judicial system at the time of the alleged offence required the highest State officials, including the Prime Minister, to keep the public informed of the alleged offence and the ensuing criminal proceedings (see, *mutatis mutandis*, *Butkevičius v. Lithuania*, no. 48297/99, § 50, ECHR 2002-II). Otherwise, the gravity of the accusations could have undermined the confidence which the courts in a democratic society must inspire in the public.

However, respect for the presumption of innocence requires that the authorities use all the necessary discretion and circumspection (see *Allenet de Ribemont*, judgment quoted above, *ibidem*). Article 6 § 2 will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. In this respect, the Court has emphasised the importance of the choice of words by public officials in their statements to the press before a person has been tried and found guilty of an offence (*Daktaras v. Lithuania,* no. 42095/98, §§ 41 and 44, ECHR 2000-X, and *Butkevičius v. Lithuania*, judgment quoted above, §§ 49-50).

In the present case, the Constitutional Court declared that, by reason of the expressions used by the Prime Minister, the required caution had not been observed and that it had been suggested to the public that the applicants were to be considered guilty. This led the highest jurisdiction in Malta to find a breach of the principle of the presumption of innocence as enshrined in Article 6 § 2 of the Convention.

The Constitutional Court also ordered that its judgment be brought to the attention of the tribunal called upon to determine the criminal charges pending against the applicants. This measure was aimed at providing redress for the violations found and at ensuring that all the safeguards contained in the Criminal Code were scrupulously applied. In the Court's view, the highest court in Malta had thus made clear that the applicants' guilt or innocence should be established by the Criminal Court only on the basis of the evidence produced during the trail, and that the declarations of the Prime Minister should not have any influence on the outcome of the criminal proceedings. The Court has thus sought to place the applicants, as far as possible, in the position they would have been in had the requirements of Article 6 not been disregarded (see, *mutatis mutadis* and in the ambit of former Article 50 of the Convention, *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12).

The Court recalls that an individual is in principle deprived of his status as a victim within the meaning of Article 34 of the Convention when the national authorities have acknowledged in a sufficiently clear way the failure to observe the requirements of the Convention and have afforded a sufficient redress (see, *mutatis mutandis*, *Jensen v. Denmark* (Dec.), no. 48470/99, ECHR 2001-X). In view of the above, the Court considers that this has been done in the applicants' case with regard to the alleged violation of the principle of the presumption of innocence.

It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. The applicants complained that they were not provided with an effective domestic remedy for the violations of their rights to a fair trial and to be presumed innocent. They invoked Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The applicants observed that the Constitutional Court sought to redress the violations by simply ordering that a copy of its judgment of 29 October 2003 be inserted in the file of the pending criminal proceedings. However, this could not be considered an appropriate and sufficient relief. In the applicants' view, in order to be in conformity with Article 13, a

measure should be capable of nullifying the consequences of the infringement of the fundamental rights of the accused. In the circumstances of the present case, the prejudice suffered could be rectified and redressed only by an order to stay the criminal proceedings against the applicants. These proceedings were in fact vitiated *ab initio* and should therefore be considered null and void.

The Court recalls that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicants' complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent State (*Aydin v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, p. 1895, § 103, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-330, § 106).

In the present case, the applicants had the possibility of introducing before the Civil Court a constitutional complaint concerning the alleged violation of their rights to a fair trial and to be presumed innocent. Their arguments, as well as the wording of the declarations made by the Prime Minister, had been examined in detail by the Civil Court, which had the power to declare, if need be, that the applicants' fundamental rights had been infringed. Moreover, an appeal against the judgment of the Civil Court was available to the applicants and at its outset the Constitutional Court indeed found a breach of the rights guaranteed by Article 6 §§ 1 and 2 of the Convention.

It is true that the applicants' request for a stay of the criminal proceedings had been rejected; however, the effectiveness of a remedy does not depend on the certainty of a favourable outcome (*Pine Valley Developments Ltd and others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 27, § 66).

The Court furthermore observes that, as noted above under Article 6 § 2 of the Convention, the Constitutional Court adopted measures aimed at providing redress for the violations of the presumption of innocence and of the right to a fair trial. It also sought to place the applicants, as far as possible, in the position they would have been in had the requirements of Article 6 not been disregarded.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President