AS TO THE ADMISSIBILITY OF

Application No. 25679/94
by Lawrence BORG
against Malta

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, the following members being present:

MM. C.L. ROZAKIS, President
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 25 April 1994 by Lawrence BORG against Malta and registered on 16 November 1994 under file No. 25679/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Maltese citizen born in 1949 and residing in Zabbar, Malta. Before the Commission he is represented by Mr. Joseph Brincat, a lawyer practising in Malta.

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

The applicant is the owner of a hotel in Marsascala. In 1991 he reconstructed the existing building in accordance with the policy of the Minister of Tourism, with the approval of the Tourist Board and with the permission of the Planning Areas Permits Board.

In 1992 the applicant decided to embark on a second reconstruction project involving the erection of one additional storey. On 8 May 1992 the Planning Areas Permits Board refused the applicant's petition for a building permit as the height limitation for the area, as laid down in the Code of Police Laws and the local "planning scheme", would be exceeded. This decision was confirmed by the competent Committee of the House of Representatives.

Thereupon the applicant filed a complaint with the First Hall Civil Court alleging violations of his constitutional rights and of Article 14 and Article 1 of Protocol No. 1 to the Convention. He stated inter alia

that other hotel owners in the neighbourhood had been allowed to erect four storeys, and that therefore he had been a victim of discrimination based on his political beliefs.

On 3 June 1993 the Court dismissed the claim stating that the refusal of the competent authorities to issue him with a building permit had been based on the legal limitations concerning the height of buildings in the area, that therefore it was justified under the law and accordingly could not constitute an unlawful discrimination. For these reasons the Court found it unnecessary to examine whether there had been any difference in treatment between the applicant and other hotel owners, and if so, whether it had been based on political considerations.

Upon the applicant's appeal, the Constitutional Court confirmed the lower court's decision on 28 March 1994. In its judgment the Court referred to the evidence given by witnesses before the lower court. It had been established that the applicant's allegations about the existence of anonymous letters with political content in the file concerning his building permit were unfounded. Therefore and for the reasons given by the lower court, there was no indication of any breach of the applicant's constitutional rights.

COMPLAINTS

The applicant complains under Article 1 of Protocol No. 1 to the Convention of the alleged unlawful interference with his right to peaceful enjoyment of his property. Thus the restrictions concerning the height of buildings in the applicant's neighbourhood were not clearly spelled out in a "law" and were the subject of a discretionary administrative policy. Furthermore, tourism was a main source of income for Malta and therefore the limitations on the height of hotel buildings were not in the general interest of society.

The applicant also alleges a breach of Article 14 in conjunction with Article 1 of Protocol No. 1 of the Convention in that the refusal of his petition for a building permit had been based on his political beliefs. The applicant was well known for his affiliation with opposition political groups, which often met in his hotel. Also, the local Planning Areas Permits Board deliberately suspended the issuance of permits for other buildings in the area during the judicial proceedings in the applicant's case and immediately afterwards started issuing such permits for buildings higher than the applicant's hotel.

THE LAW

1. The applicant complains that the restrictions as regards the reconstruction of his building constituted a breach of Article 1 of Protocol No. 1 (P1-1) to the Convention.

Article 1 of Protocol No. 1 (P1-1) provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls that Article 1 of Protocol No. 1 (P1-1) guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence

of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

However, the three rules are not "distinct" in the sense of being unconnected: the second and the third rules are concerned with enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as a recent authority, Eur. Court H.R., Air Canada judgment of 5 May 1995, Series A. no. 316, paras. 29, 30).

The Commission considers that the refusal of a building permit, in the particular circumstances of the present case, may be regarded as an interference with the applicant's right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1 (P1-1). The interference falls to be examined under the second paragraph of this provision as it did not involve "deprivation" of property, but was a measure to "control the use of property".

Consequently, the Commission must consider whether the refusal of the authorities to issue a building permit was a lawful measure "necessary to control the use of property in accordance with the general interest". The task of the Convention organs in this context is to examine the lawfulness, purpose and proportionality of the decision taken by the domestic authorities (cf., for example, No. 12258/86, Dec. 9.5.88, D.R. 56, p. 215). According to the Convention organs' case law, as regards the choice of the detailed legal rules implementing a measure for the control of the use of property, the domestic legislature must have a wide margin of appreciation. In respect of the purpose of the measures, the Convention organs must respect the domestic legislature's judgment as to what is in the general interest unless that judgment was manifestly without reasonable foundation (Eur. Court H.R., Mellacher and Others judgment of 19 December 1989, Series A no. 169, p. 26, para. 45).

In the present case the Commission notes that the refusal of the applicant's petition for a building permit was based on the relevant domestic legal provisions. Furthermore, the restrictions on the height of buildings were clearly a measure in pursuance of a general interest, namely the proper organisation of populated areas, and it is not for the Commission to decide whether other aims of general interest, such as the development of tourism, should have had priority.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 14 in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention of the allegedly discriminatory treatment in that other owners had received building permits, whereas he had not because of his well known political affiliation with opposition groups.

However, according to the findings of the domestic courts the applicant's allegations in this respect were not supported by any factual evidence. Furthermore, the Commission notes that in 1991, only a year earlier, the applicant had been granted planning permission to develop the existing building. In any event, it appears that the refusal of his second petition for a building permit was not of a discretionary nature and the applicant was treated according to the law. In this situation the allegation that the law had been breached in the case of other owners, who had obtained building permits, does not appear to raise an issue under Article 14 in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention as far as the applicant's rights are concerned.

Therefore the remainder of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)