

APPLICATION/REQUÊTE N° 14563/89

M v/ITALY

M c/ITALIE

DECISION of 7 October 1991 on the admissibility of the application

DÉCISION du 7 octobre 1991 sur la recevabilité de la requête

Article 1, paragraph 1 of the First Protocol *Authorisation to build, in derogation from planning regulations, granted to a consulate adjoining the applicant's property and resulting in the view enjoyed by the applicant being limited and the immediate environment being impaired. In this case, the measure was provided for by law and in the general interest. Examination of the fair balance to be struck between protection of the individual's right to peaceful enjoyment of possessions and the demands of the general interest of the community. Margin of appreciation of the national authorities.*

Article 1, paragraphe 1, du Protocole additionnel *Autorisation de construire en dérogation au plan d'urbanisme, accordée à un consulat, voisin du requérant, ayant pour effet une limitation de la vue dont jouit le requérant et une atteinte à l'environnement immédiat. En l'espèce, mesure prévue par la loi et conforme à l'intérêt général. Examen d'un juste équilibre à ménager entre la sauvegarde du droit de l'individu au respect de ses biens et les exigences de l'intérêt général de la communauté. Marge d'appréciation des autorités nationales.*

(TRADUCTION)

THE FACTS

The applicant is a limited company, M S R L , with its registered office in Milan The company is acting through its administrator, G C , an Italian national resident in Milan

For the proceedings before the Commission the company is represented by Mr Giancarlo Spadea, a lawyer practising in Milan

The facts, as submitted by the applicant company, are as follows

The applicant company is the owner of a property situated in Milan which it purchased on 30 November 1961 from the S company The property consists of a detached residence surrounded by a garden and adjoins another property of the same type belonging to the Milan consulate of the USSR, which purchased it in 1979 from Mr A Mr A had bought it on 8 January 1960 from the S company

The applicant company asserts that the contracts of sale signed on 8 January 1960 and 30 November 1961, and transcribed in full in the land registers, contained the following clauses

- the site, which was classified in the category V 1 under the Milan City Council development plan (piano regolatore) of 12 July 1950, would remain subject to the then planning regulations even if the latter were later relaxed ,

- the buildings should fall within the category of high class (signorili) detached residences and private mansions ,

- the undeveloped land should be provided with means of access, laid out as gardens, planted with tall growing trees and kept in that condition ,

- the buildings were to be used for housing only ,
- the buildings should occupy no more than one fifth of the land available

The applicant company also asserts that under Rule 28 of the technical rules for the implementation of the Milan City Council development plan (norme tecniche di attuazione) the area in which its property and that of the USSR consulate is classified as type B1 RX, i.e. a residential area subject to restrictions as to the type of building authorised (vincolo tipologico), the type in question at the time when the plan was adopted being private houses and residences two storeys in height with adjoining land to be laid out as gardens only

In 1953, when the new development plan was adopted, the Regional Council decided to add to Rule 28 the following text "alterations involving new building on previously developed sites are permitted only within the limits of the perimeter and outline of the existing building, are subject to the building regulations set out above and must not, in any case, encroach on existing landscaped areas"

On 23 July 1984 the USSR consulate requested planning permission to build housing for consulate officials comprising a basement with four storeys above in the garden around the existing building

On 27 June 1985 the Milan City Council granted the USSR consulate a derogation from Rule 28 of the technical provisions for implementation of the development plan, thus authorising the construction of a basement and a four-storey building to be used as housing. This decision gave effect to vote no. 451/1 of the Milan City Council (consiglio comunale di Milano) and decree no. 1612 issued on 28 May 1985 by the regional president (Presidente della giunta della Regione). It was based on section 16 of the Town Planning Act of 6 August 1967 (No. 765) - the 1967 Act - which gave power to permit derogations from planning regulations and the technical rules for their implementation only with regard to public buildings or buildings serving the public interest. Permission is granted by the mayor after a vote in the municipal council.

The decisions of the organs mentioned above specified that authorisation was granted for a building intended for use as housing because such a building was functionally linked (collegato funzionalmente) with the building used as a consulate to which it was annexed on the undeveloped portion of the site and to which it formed an extension (ampliamento). According to the same decision, extension of the consulate satisfied the public interest requirement since it made possible a more rational exercise of administrative and consular functions, which are in the general public interest.

In January 1986, in an application to the Lombardy Regional Administrative Court, the applicant company sought to overturn the planning permission granted on 27 June 1985 by the Milan City Council to the USSR consulate, and all the preparatory decisions

In a judgment dated 10 July 1986, deposited with the registry on 13 October 1986, the Regional Administrative Court allowed the application, setting the planning permission aside on the following grounds

a the applicant company had standing, as owner of adjoining premises, to bring proceedings in order to prevent action prejudicial to the values inherent in the social environment, which were guaranteed by the town planning legislation (*documento ai valori inerenti all'ambiente di vita sociale garantita dalla disciplina urbanistica*), involving in this case limitation of the view and an increase in building density through the construction of the new building,

b in granting planning permission the City Council had exceeded its powers in two respects

In the first place, the building in question did not satisfy the public interest condition. The court held that the construction of a separate building, intended exclusively as housing for consulate officials, and in which there could be no question, *a priori*, of conducting consular business, could not serve the general interest of the State and be so important as to justify, in addition to overriding the opposing private interests of third parties, derogation from the town planning regulations, especially because such a building did not fall into the category of service accommodation and because it was not necessary for all the consulate's officials to be present on the spot, day and night, for it to be able to function

Secondly, the impugned measure was open to criticism because inadequate reasons had been given. In view of the exceptional nature of any derogation from a development plan, the reasons had to be precise as to the facts and as to the law

In the case under consideration by the court the impugned measure referred to an 'extension' of the consulate and to a functional link between that extension and the main building which should make possible a more rational exercise of consular functions and fulfil the obligations undertaken by the Italian Government in the Convention on Consular Relations signed by the USSR and Italy. The court held that the planning permission did not concern an extension of the consulate, since it authorised the construction of a building of four storeys and a basement situated 23.5 metres away from the consulate. Lastly, the building was to be used exclusively for housing and had no connection with the exercise of consular functions

The court further noted that the Convention on Consular Relations signed by Italy and the USSR clearly distinguished between the functions and legal treatment of consular offices and that of the accommodation of consular officials

Under the Vienna Convention of 24 April 1963 (ratified by Italy in Act No 804 of 9 August 1967), consular functions are exercised only in consular offices , the consul's residence and, *a fortiori*, the homes of consulate officials are excluded from consular status

On appeal by the USSR consulate, in a judgment dated 2 February 1988, deposited with the registry on 28 May 1988, the Consiglio di Stato set aside the above judgment on the following grounds

Holding that the words "construction serving the public interest" should be taken to mean any construction which, through its intrinsic characteristics or its intended use, was apt to satisfy paramount public interests, the Consiglio di Stato ruled that the considerations concerning the public interest expressed by the Regional Administrative Court were restrictive and did not take into account matters such as the objective improvement of the consulate staff's working conditions, which was also covered by the concept of public interest, the latter being taken to include the proper and honourable development of international relations on the basis of criteria of courtesy and helpfulness which required the Italian State to respect the views and needs (esigenze) of the guest State

The latter could not be assessed by the Italian State and should be left to the discretion of the foreign State whose officials required as much assistance as could be given

COMPLAINTS

The applicant company complains that the derogation from the development plan granted to the USSR consulate by Milan City Council unjustly infringed its right to peaceful enjoyment of its possessions

It alleges a violation of Article 1 of Protocol No 1 to the Convention

THE LAW

The applicant company alleges that the derogation from the development plan granted to the USSR consulate by Milan City Council constituted an infringement of its right to peaceful enjoyment of its possessions, as guaranteed by Article 1 of Protocol No 1 to the Convention That provision is worded 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 points out in the first place that the measure complained of, namely the planning permission derogating from the town planning regulations, does not concern the applicant company's property but that of a third party. Consequently, it does not amount to a deprivation of the applicant company's possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1, nor to control of the use of its property within the meaning of the second paragraph of the same Article.

The Commission notes, however, that the effect of the derogation complained of was to limit the view from the house owned by the applicant company and to impair its immediate environment. It accepts that these advantages had a real importance, to such an extent that their protection had formed the subject of express stipulations in the contracts of sale of the buildings concerned, these stipulations being inscribed in the land registers and freely accepted by the purchasers. The applicant company on the one hand and the USSR consulate on the other. Such a derogation could therefore affect the applicant company's right to peaceful enjoyment of its possessions within the meaning of the first sentence of Article 1 of Protocol No. 1.

The Commission must accordingly determine whether such a measure infringes the right set forth in the first sentence of the first paragraph.

To that end the Commission must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (cf. Eur. Court H.R. *Sporrong and Lönroth* judgment of 23 September 1982, Series A no. 52, p. 26 para. 69).

In this case the Commission notes that the derogation granted to the USSR consulate is provided for by the 1967 Act. According to the Italian Consiglio di Stato, it did serve a public interest objective in this case, namely the proper and honourable development of international relations on the basis of criteria of courtesy and helpfulness which require the Italian State to respect the views and needs of the guest State.

The Commission accepts that the public interest thus defined constitutes an objective consonant with the general interest.

It also considers that by granting the derogation in question and thus limiting the applicant company's right to protection of its environment, the city council did not exceed the margin of appreciation they had to strike the right balance between the general interest and the applicant company's particular requirements

It follows that the derogation complained of did not intringe the applicant company's right to peaceful enjoyment of its possessions, as guaranteed by Article 1 of Protocol No 1

Consequently, the Commission considers that the applicant's complaint is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

For these reasons, by a majority, the Commission

DECLARES THE APPLICATION INADMISSIBLE