AS TO THE ADMISSIBILITY OF

Application No. 18420/91
by Tonio VELLA
against Malta

The European Commission of Human Rights sitting in private on 17 February 1993, the following members being present:

MM. J.A. FROWEIN, Acting President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 7 May 1991 by Tonio Vella against Malta and registered on 26 June 1991 under file No. 18420/91;

Having regard to

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;
- the observations submitted by the respondent Government on 9 April 1992 and the observations in reply submitted by the applicant on 7 July 1992;

- the submissions of the parties at an oral hearing on 17 February 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Maltese citizen born in 1952 and resident in Birzebuggia. He is represented by Dr. Giovanni Bonello, an advocate practising in Valletta.

The facts as submitted by the parties may be summarised as follows:

On 2 December 1983, following the receipt of information from an informant alleging that weapons and other illegal objects were to be found in the applicant's residence and the garage opposite, the police entered his home without giving any reasons and conducted a search which found nothing. The applicant submits that no such information was received. The applicant was subsequently arrested and detained for questioning by the police.

The applicant was kept in detention for 46 hours although his interrogation only lasted one hour.

The applicant subsequently instituted proceedings against the police alleging that his human rights had been infringed.

On 5 December 1986, the Civil Court ruled that the applicant had been subjected to inhuman and degrading treatment and that his arrest and detention had violated his fundamental rights. It also ruled that the entry to and search of the applicant's home was not in violation of the Maltese Constitution.

Both parties appealed to the Constitutional Court which gave its judgment on 5 April 1991. It held that the arrest and detention of the applicant violated his constitutional right against arbitrary arrest and detention, as there existed no suspicion that the applicant had committed or was about to commit a criminal offence. It also found that during the investigation the applicant had been subjected to inhuman and degrading treatment.

On the issue of the entry and search of the applicant's home the Court found that although they violated the provisions of the Criminal Code (Article 352), because the police failed to inform the persons present of the reasons for the entry and search, they were not contrary to the Maltese Constitution which provides for the search of premises where reasonably required in the interests of public order (Article 38(2)a). The Court rejected the appeal by the police against the finding of a violation of the applicant's rights in respect of other matters. It ordered that the applicant be liable for a fourth of the costs.

RELEVANT DOMESTIC LAW AND PRACTICE

The Maltese Criminal Code as concerns the powers of entry and search provides, inter alia, as follows:

"Power of Executive Police to enter houses, etc.

350. (1) Saving the cases where the law provides otherwise, no officer of the Executive Police below the rank of inspector shall enter any house, building or other enclosure for the purpose of effecting any search therein or arresting any person who has committed or is suspected of having committed any offence, without an order in writing from a superior officer, unless

(a) the offence is a crime not excepted under section 347 and there is imminent danger that the said person may escape or that the corpus delicti or the means of proving the offence will be suppressed; or

(b) the person is detected in the very act of committing a crime not excepted under section 347; or

(c) the intervention of the Executive Police is necessary in order to prevent the commission of a crime not excepted under section 347; or

(d) the entry is necessary for the execution of any warrant or

order issued by any other competent authority in the cases prescribed by law.

Definition of "enclosure"

(2) The expression "enclosure" does not include any plot of land enclosed by rubble walls."

"352. The officer of the Executive Police employed in the execution of any arrest or search shall inform the person subject to such arrest or search, if present, of his authority and of the reason for the arrest or search, unless he shall have detected such person in the very act of committing the offence."

The Maltese Constitution provides:

"38. (1) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or decency, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any property in such a manner as to promote the public benefit."

COMPLAINTS

The applicant complains before the Commission only of an interference with his right to respect for his home under Article 8 of the Convention. He submits that the entry and search by the police were in violation of the Criminal Code and therefore offended against the principle of legality. In view of the courts' finding that there was no suspicion against the applicant that he had committed or was about to commit a criminal offence, he also submits that the interference cannot be justified as necessary in a democratic society for the prevention of crime.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 May 1991 and registered on 26 June 1991.

On 19 February 1992, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the application.

The Government's observations were submitted on 9 April 1992 and the applicant's observations in reply were submitted on 7 July 1992.

On 13 May 1992, the Commission decided to grant legal aid to the applicant.

On 14 October 1992, the Commission decided to hold an oral hearing.

At the hearing, on 17 February 1993, the parties were represented as follows:

For the Government:

Dr. Anthony BORG BARTHET Attorney General,
Agent for Malta
Dr. Lawrence QUINTANO Senior Counsel

For the applicant:

Dr. Giovanni BONELLO Counsel
Dr. Tonio BORG Counsel
Mr. Mario Mifsud BONNICI Solicitor.

THE LAW

The applicant complains that his home was entered and searched in violation of Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides that:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government submit that the applicant cannot be considered to be a victim of a violation of the Convention for a number of reasons. They consider that the incident should be taken as a whole and that, since the Constitutional Court found violations in respect of his more serious allegations of inhuman and degrading treatment and arbitrary arrest and detention, he will be able to obtain damages. They also submit that in any case the Constitutional Court found that the entry and search of the applicant's home were in violation of the provisions of the Criminal Code and that this constituted satisfaction of the applicant's complaints.

Article 25 (Art. 25) of the Convention provides that the Commission may only receive petitions from persons, non-governmental organisations or groups of individuals "claiming to be a victim of a violation by one of the High Contracting Parties" of the rights contained in the Convention. The Commission has therefore examined whether in the present case the applicant may claim to be a victim of a violation of his Convention rights within the meaning of Article 25 (Art. 25) of the Convention.

The case-law of the Convention organs establishes that someone who has received adequate redress at domestic level for alleged violations of the Convention cannot claim to be a victim of those said violations (Nos. 7825/77, Dec. 2.5.78, D.R. 14 p. 197, and 10888/84, Dec. 3.12.86, D.R.50 p. 90). Consequently, where domestic courts recognise expressly or in substance the alleged violation and, if necessary, afford redress, the individual is deprived of his status of victim for the purposes of applying under the Convention (see eg. Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 30, para. 66, and No. 10868/84, Dec. 21.1.87, D.R. 51 p. 62).

The Commission recalls that the Constitutional Court found that the entry and search by the police was in violation of Article 352 of the Criminal Code. The Court continued, however, to find that nonetheless the search was reasonably required in the interests of

public order and did not infringe the applicant's rights as protected under the Constitution. The Constitutional Court's finding, therefore, denied the applicant's basic complaint that the entry and search violated his constitutionally protected right to the privacy of his home enshrined in Article 38 of the Constitution of Malta. In these circumstances, the Commission finds that the applicant cannot be said to have received an acknowledgement either expressly or in substance of the alleged violation of his constitutional rights. He must therefore still be considered a "victim" within the meaning of Article 25 (Art. 25) of the Convention.

As regards the substance of the applicant's case, the Commission has taken cognizance of the parties' submissions. After a preliminary examination of the case the Commission finds that the application concerns complex issues of fact and law which must be examined on the merits. The application cannot therefore be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for inadmissibility have been established.

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION ADMISSIBLE,
without prejudging the merits of the case.

Secretary to the Commission — Acting President of the Commission

(H.C. KRÜGER) — (J.A. FROWEIN)