

AS TO THE ADMISSIBILITY OF

Application No. 16641/90
by A.G.
against Malta

The European Commission of Human Rights sitting in private on
10 December 1991, the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs.G. H. THUNE
Sir Basil HALL
MM.F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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 22 January 1990
by A.G. against Malta and registered on 31 May 1990 under file
No. 16641/90;

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, who lives in A., Malta, is a Maltese citizen born
in 1946. He is a company director. He is represented by Mr. Joseph
Brincat, an advocate practising in Valetta.

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

The applicant was charged with customs offences of making a
statement or furnishing a document or information which to his
knowledge was false in a material particular, or recklessly making a
statement which was false in a material particular, i.e. he was accused
of making under-valuations on entries presented for the calculation of
customs duties. The goods in question were confiscated.

There were two sets of proceedings. He was convicted on 29 June
1982 by the Criminal Court of Magistrates of having presented two

customs declarations signed by him personally which were false and sentenced to a fine of the equivalent of 1 million French Francs.

On the same day, the applicant was acquitted of similar charges on the ground *inter alia* that there was no proof that the applicant had signed the entries in question. The prosecutor appealed to the Court of Criminal Appeal which, on 27 April 1984, referred the matter to the First Hall of the Civil Court since the applicant had raised constitutional issues which it was not competent to deal with.

The applicant argued that Article 13 of Act VII of 1975 relied on by the prosecution was contrary to the presumption of innocence guaranteed under the Constitution.

Article 13 provides, *inter alia*, that,

"where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be corporate or unincorporate, every person who, at time of the commission of the offence, was a director ... of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence..."

Article 40 (5) of the Constitution, provides that

"... every person who is charged with a criminal offence shall be presumed innocent unless he is proved guilty or has pleaded guilty but provided that nothing contained or done under the authority of any law should be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts ...".

The Civil Court found that Article 13 only had the effect of placing the burden of proof of certain facts upon the person charged and that this did not conflict with Article 40 (5) of the Constitution. The applicant appealed to the Constitutional Court.

On 29 November 1989, the Constitutional Court dismissed the applicant's appeal. It found that Article 13 placed the burden of proving certain facts on the person charged but that the presumption created by the provision was rebuttable and not unreasonable, since otherwise it would be impossible in the majority of cases for the prosecution to prove its case against a company. It concluded therefore that Article 13 was not in conflict with the Constitution.

The case was then remitted to the Court of Criminal Appeal to be decided in accordance with law. It appears however that the court has exercised its discretion to suspend proceedings pending the application before the Convention organs.

COMPLAINTS

The applicant complains that Article 13 of Act VII of 1975 contravenes Article 6 para. 2 of the Convention in that it deprives him of the presumption of innocence. He submits that the legal defence provided for in Article 13, based on the cumulative conditions laid down in that Article, is self-contradictory. If the applicant proves lack of knowledge it is necessarily implied that he was insufficiently diligent. Given the contradiction, the applicant complains that it is impossible for him to rebut the presumption of guilt contained in Article 13.

THE LAW

The applicant complains that he has been deprived of the presumption of innocence guaranteed by Article 6 para. 2 (Art. 6-2) of the Convention, which provides:

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

The applicant submits that the defence provided for in Article 13 of Act VII of 1975 is self-contradictory and makes it impossible for him to rebut the presumption of guilt imposed by it.

The Commission recalls that presumptions of fact or of law operate in every legal system and that while the Convention does not prohibit such presumptions in principle, Article 6 para. 2 (Art. 6-2) requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence (see e.g. Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141A, pp. 15-18, paras. 28-30).

The Commission notes that in the present case the legislation provides that a director of a company is presumed guilty of an offence committed by the company unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. The applicant was therefore provided under the legislation with the possibility of exculpating himself. The Commission does not consider that the conditions, which required the applicant to prove that he had no actual knowledge of the offence and also was not negligent in his duties as an officer of a company, were self-contradictory or imposed an irrebuttable presumption. The Commission further finds that the Maltese courts enjoyed a genuine freedom of assessment in this area and that there is no indication that Article 13 of the 1975 Act was applied to the applicant in a manner incompatible with the presumption of innocence.

The Commission considers therefore that the application is 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 Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)