

REPORT OF THE LEGAL AFFAIRS COMMITTEE FOR 2006

During 2006 the Legal Affairs Committee, chaired by the undersigned, had to tackle several important issues of a legal nature. During the first few months various meetings were held, together with other members of the Executive Committee, with Ministers and Government officials on (a) the right of access of the public to the foreshore, (b) the definition and identification of public land and pathways, and (c) the procedure to be followed by the Police whenever disputes arise on these subjects, particularly when members of the Association are forcibly stopped from continuing to make use of established pathways in the countryside.

During a very cordial meeting with Minister of Justice and Home Affairs Dr. Tonio Borg, attended also by the Commissioner of Police and the Director-General of the Lands Department, we were given to understand that we would henceforth be afforded all the help we require in order to find a solution to the ever-increasing disputes over right of passage through allegedly private land and access to the foreshore or other public land. The attention of the Minister was drawn to the important legal presumption which arises out of section 327 of the Civil Code which lays down that "*Vacant property belongs to the Government of Malta*". The Maltese version of this section (the official one whenever a question of interpretation crops up) makes the presumption even more clear-cut. It states that "Il-beni bla sid huma tal-Gvern ta' Malta", literally "Property without an owner belongs to the Government of Malta". In my opinion, this section puts the onus on whoever claims to be the owner of any property to prove his right thereto and, in the absence of such legal proof, the property would be presumed to belong to the State. This is the opposite of what has been the situation to date, namely that whenever someone arrogantly claims a right to a piece of land or right of passage, he has been afforded protection by the Police without asking for any proof of such claimed right.

Another issue which was considered by the committee is the White Paper and subsequent Bill (presently before Parliament) proposing changes to the Civil Code and introducing new legislation to control and register NGOs and give them legal recognition and access to EU and local public funds. Unfortunately, on close scrutiny one comes to the conclusion that the proposed legislation, in its present version, contains sections which will create a lot of paternalistic and bureaucratic controls over NGOs and do away with their independence and freedom of action, particularly to oppose, where necessary, Government policy or legislation. It is perhaps enough to consider that whoever occupies the post of Commissioner under the new legislation will have the right, not only to monitor the day to day affairs of an NGO, but even to remove and replace, at his discretion, the majority of the elected members of its administration. In an article, drafted by the Committee and published in the Times of the 8th December, entitled "Independence: The Lifeblood of NGOs", special emphasis was placed on the very serious threat which such legislation posed to the independence and freedom of action of NGOs and all this just to be able to have access to funding and other privileges. In the opinion of my committee the all important independence which we presently enjoy is too precious to be traded for any short term pecuniary interest, particularly when we can still acquire legal status and personality through the registration of our association by public deed.

In fact, the question of such registration by public deed has been under consideration for the last few months and a draft deed for the formation and registration of a foundation was prepared by the undersigned. Although, the matter is still under study, a decision will be taken, possibly in the coming weeks, one way or the other, depending in particular on what amendments are made to the above-mentioned legislation concerning NGOs when the bill reaches its final stages.

Incidentally, a meeting was recently held with Dr. Joanna Drake, the local representative of the EU Commission, on the question of EU funding, particularly on whether registration under the proposed

legislation is really a pre-condition for access to such funding. Unfortunately the meeting, although very cordial, was not particularly illuminating and the RAM delegation was disappointed with the response it got to its questions, notwithstanding the fact that Dr. Drake was provided in advance with a detailed agenda for the meeting. Still the committee intends to continue with its efforts to arrive at a true picture of the situation concerning such EU funding and other related matters.

In the coming months the committee promises to do its utmost to put our Association on a strong legal footing, to provide it with a legal personality and above all to safeguard its independence and that of other NGOs. With the help and backing of our loyal members and kindred NGOs, the fight will go on and intensify as regards the right of the public to have access to public land wherever it is situated. In a small country like Malta, with its ever diminishing countryside, we must be continuously on the alert to insist on our right to freely ramble at least on public land and to ensure that sites of ecological or archaeological importance or of unique natural beauty be given the protection they deserve.

Louis Vella
Chairman
Legal Affairs Committee