

# **MALTA**

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# **Liability in Tort of Government and Public Authorities**

*Josef Borg v Malta Transport Authority*

Writ n° 682/2012

Court of Appeal

13 November 2017

## The Facts

- Plaintiff imported a number of vehicles for commercial use.
- He attempted to register the vehicles with the Transport Authority.
- He was advised that he had to carry out some minor modifications to the vehicles for them to be registered.
- He made the modifications in a few days.
- He again attempted to register the vehicles but his application was refused.

## The facts (2)

- The Authority had changed its policy on the registration of commercial vehicles in the meantime and it was no longer possible to register plaintiff's vehicles, notwithstanding the modifications.
- Plaintiff filed a complaint with the Commissioner for Administrative Investigations (*Ombudsman*)
- The Commissioner upheld the complaint and made a non-binding recommendation.
- The vehicles were registered two years after the initial application.

## The Case

- Plaintiff claimed that.
  - the Authority's initial refusal was illegal;
  - he could not utilise the vehicles for two years; and
  - he suffered damage as a result.
- He filed an action in tort for damages.
- The Authority replied that since its refusal was an administrative act, an action in tort was not the proper action under the circumstances.

## The Law – art. 469A, Code of Civil Procedure

469A. (1) Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

... [natural justice, procedure, improper purpose, *etc.*]

(5) In any action brought under this article, it shall be lawful for the plaintiff to include in the demands a request for the payment of damages based on the alleged responsibility of the public authority in tort or quasi tort, arising out of the administrative act. The said damages shall not be awarded by the court where notwithstanding the annulment of the administrative act the public authority has not acted in bad faith or unreasonably ...

## The Judgment

- The first instance court upheld the plea and dismissed the claim, holding that the action ought to have been filed in terms of art. 469A and not in terms of the Civil Code provisions on tort.
- Plaintiff appealed.
- The Court of Appeal upheld the appeal, revoked the judgment and referred the case back to the first instance court to be heard on the merits.

## The Appeal

- The fact that the administrative act in question (the refusal to register) had been reversed did not necessarily imply that it was wrongful.
- It is for plaintiff to prove the wrongfulness of the act for one or more of the reasons set out in art. 469A.
- Moreover plaintiff must also prove the other elements for a successful action in tort, e.g. causal link and *quantum* of damages.
- The action is still an action in tort, albeit subject also to the special provisions on administrative acts.



## Comments

- Although public authorities can still be liable in tort for administrative acts, liability arises only if the act in question can be impugned for the reasons set out in art. 469A.
- Even if the act can be successfully impugned, damages are awarded only if the authority acted in bad faith or unreasonably.
- The action must be filed within six months (the normal prescriptive period for actions in tort is two years and that period can be interrupted by filing a judicial act, not necessarily an action).