

Public Emergency

A state of public emergency is a situation of exceptional and imminent danger or crisis which affects the whole nation and constitutes a threat to the organised life of the community. However, the concept of a state of public emergency is in some measure a flexible one. Indeed, the crux of the problem of defining a state of emergency is not really the basic notion of what a state of emergency is, but rather the extent to which a government may tolerate a potentially dangerous situation before declaring a state of emergency. In more concrete terms this refers to the margin of appreciation of what amounts to a state of emergency and what does not. In this respect a survey of what constitutes a state of public emergency in the United Kingdom, Malta and in the European Convention on Human Rights seems opportune.

In the United Kingdom emergency powers aim at maintaining law and order both in wartime and in peacetime. In the first case, as soon as a state of hostilities is declared — incidentally the ordinary courts have jurisdiction to pronounce on whether it existed or not — Martial Law supercedes common law in the affected areas.

The Defence of the Realm Acts conferred extraordinary powers to the military authorities and the U.K. Government. The Emergency Powers (Defence) Act, 1939 likewise bestowed exceptional powers upon the Government. Indeed, S(1) (1) stated that H.M. could make by Order in Council any regulations "as appear to him to be necessary or expedient for serving the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which H.M. may be engaged, and for maintaining supplies and services es-

sential to the life of the community".

On the other hand, the most important peacetime statute in the United Kingdom covering a state of public emergency is the Emergency Powers Act, 1920 as subsequently amended. By means of this Act H.M. may by proclamation declare a state of emergency: "If at any time it appears to H.M. that there have occurred or are about to occur, events of such a nature as to be calculated, by interfering with the sup-

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ply and distribution of food, water, fuel, light or with the means of locomotion, to deprive the community or any substantial portion of the community, of the essentials of life." Besides, H.M. in Council may by Order issue regulations: "for securing the essentials of life to the community".

Therefore, it appears that in the United Kingdom emergency powers come into play normally in four main instances. A state of public emergency is declared firstly in time of war, secondly, in case of internal agitation or calamity, thirdly, for the preservation of essential commodities and finally for the continued operation of transport facilities.

The Malta Constitution, 1964 deals with what a period of public emergency means in Section 42(2). There is a state of public emergency — subject to the approval by Parliament of the action of the Executive within a reasonably short time — when:—

- (a) Malta is engaged in any war;
- (b) there is in force a proclamation by the Governor-General declaring that a state of public emer-

gency exists;

or

- (c) there is in force a resolution of the House of Representatives supported by the votes of not less than two-thirds of all Members of the House declaring that democratic institutions in Malta are threatened by subversion."

Provisions (a) and (c) are explicit and do not give rise to any serious problem. However, provision (b) is a very general one and it seems to give the Governor-General, usually on the advice of the Prime Minister, great discretion on what constitutes a state of public emergency. In this regard, it appears that the Malta Government is guided by the precedents which occurred in Malta when a state of public emergency was declared and also by emergency regulations enacted when Malta was still under British rule. To some extent these are similar to those prevailing at present in the United Kingdom. However, these regulations are now superseded by the Malta Constitution, 1964. Still, in so far as it is not inconsistent with the provisions of the Malta Constitution, the Public Emergency Act VIII of 1963 is applicable especially in the case of provision (b) of Sec. 42(2) of the Malta Constitution. Sec. 4(1) of the Public Emergency Act, 1963 is as follows: "The Governor (-General), acting in accordance with the advice of the Prime Minister may, subject to the provisions of the Malta (Constitution) Order in Council, 1961, or any other constitutional instrument amending or replacing same, make such regulations as appear to him acting as aforesaid to be necessary or expedient for securing the public safety, the defence of Malta, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the com-

munity".

It appears, consequently, that the Malta Government is empowered to declare a state of public emergency in the following cases: (1) In the case of war for securing public safety and the defence of Malta; (2) for the maintenance of public order; (3) to suppress mutiny, rebellion and riot; (4) to maintain essential supplies and services, and finally (5) to safeguard from subversion Malta's democratic institutions.

A most important unifying factor in Europe on what constitutes a state of public emergency is the European Convention on Human Rights. Article 15(1) of the convention runs as follows: "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this convention to the extent strictly required by the exigencies of the situation . . .". A "public emergency threatening the life of the nation" has been defined by the European Court of Human Rights in the *Lawless Case* (1st July, 1961) as: "un situation de crise ou de danger exceptionnel et imminent que effecte l'ensemble de la population et constitue une menace pour la vie organisée de la communauté composant l'Etat" (in the English text: 'an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the state is composed'). It will be noticed that the notion of "imminent" danger, which is represented in the French but not directly in the English text of the judgement, must be given weight because it is the French text which is authentic.

Such a public emergency may then be seen to have, in particular, the following characteristics:—

- (1) It must be actual or imminent;
- (2) Its effects must involve the whole

nation;

- (3) The continuation of the organised life of the community must be threatened;
- (4) The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the convention for the maintenance of public safety, health and order, are plainly inadequate.

When a state of public emergency is declared the rights of the citizens are,

to a considerable extent, curtailed as in case of detention of persons; or entry and search of any premises. Consequently, it is extremely important to have as far as possible an accurate definition of what amounts to a state of emergency. Bearing this in mind, the European Convention on Human Rights should be looked upon as a unifying European model for a correct interpretation of what a public emergency is in democratic countries.