

ADDRESS BY HIS HONOUR THE CHIEF JUSTICE ON THE OCCASION OF THE UNVEILING OF A PORTRAIT OF SIR GEORGE BORG – CONFERENCE ROOM, COURTS OF JUSTICE, VALLETTA – 3 OCTOBER 2005

Your Excellency, Hon. Parliamentary Secretary, colleagues, distinguished guests, ladies and gentlemen:

Having replied to the address made by the President of the Chamber of Advocates in Maltese, which is the language of the courts, allow me now to make this short address in English for the benefit of my guests the Chief Justices of Gibraltar, Bermuda, and the Isle of Man, and the Deputy Bailiff of Guernsey. I am sure that by now they must be wondering as to the ingredients of our national language – with its many words sounding of Italian origin, all linked together with the more guttural sounds of the Arabic language, and, in the words of Milton to make “confusion worse confounded”, interspersed with the occasional English word. Since English is one of the two official languages of these Islands, I will now switch to that language.

When several months ago I was approached by Mrs Rosemarie Cachia who asked me whether the Judiciary would accept a painting of her father, Sir George Borg, I was of course delighted that we would be able to display at least one other portrait of one of my predecessors in this Conference Room. As you can see, apart from the small photographs of some former Chief Justices, the only other portrait we have is that of Sir Anthony Mamo. In fact may I take this opportunity to encourage all Chief Justices Emeriti to consider actively having portraits of themselves made to be hung in this room – perhaps one day I will be able to send Grand Master Pinto and Pope Pius XI back to their rightful place in the Palace and in the Museum of Fine Arts respectively.

People of my generation do not remember Sir George Borg, since he died on the 29 August of 1954. However many of my generation and subsequent generations invariably associate him with the award of the George Cross to Malta. It was in fact on the 13 of September 1942, a couple of hundred yards away from here, in the Palace Square, that Sir George, on behalf of the people of Malta, and as the highest civil authority on the Island after the Governor – there was then no representative Government – accepted the George Cross from the hands of the Governor, Lord John Gort.

Sir George was born in this city of Valletta on the 23 April 1887. After studying in the private school of Sigismondo Savona, he attended the Royal University of Malta where he graduated as a Legal Procurator in December of 1907. He continued his studies in law at the University of Catania, in Sicily, from where he graduated in 1913 with the degree of Doctor of Jurisprudence, and later followed a post-graduate course in Rome. As was required by the provisions of the Code of Organisation and Civil Procedure then in force, he was examined in various legal disciplines by a Board of the Royal University of Malta and was

subsequently granted the warrant to practice as an advocate in the Courts of Malta.

Dr Borg's first love was for politics. He unsuccessfully contested the general elections of 1924 and 1927. In 1932 he was elected to the Senate, and seven years later, as Deputy Leader of the Constitutional Party, he was returned to the Council of Government. In that same year, that is 1939, he was appointed, together with Lord Gerald Strickland, as a member of the Executive Council by the Governor, Sir Charles Bonham Carter; and he served as chairman of several boards and commissions, including the one set up to revise the criminal and commercial codes. He also sat on the General Council of the Royal University of Malta, and for several years he was editor of the Malta Daily Herald.

In 1940 George Borg was appointed Chief Justice, and took up his office on the 1 January of the following year. He thus succeeded Sir Arturo Mercieca who had been illegally forced to resign by the then Governor, Sir William Dobbie. The beginning of the judicial career for George Borg must not have been easy, and this primarily for two reasons. He began his judicial career at a time when air raids over Malta were on the increase – and in fact kept on increasing up to the latter part of 1942. Nevertheless with dogged determination he, like the other judges and magistrates, kept holding sittings of the various courts over which he presided as best as circumstances allowed even after the law courts in Valletta (which stood exactly where we stand now) were completely demolished during a raid on the 13 May 1941 and sittings of the Superior Courts had to be temporarily held at the Archbishop's Seminary in Floriana; and he was even slightly injured in one of the raids at the sea-plane base of Kalafrana while administering the oath of office to the newly arrived Governor, Lord Gort.

But it was also difficult for George Borg because of the political controversy surrounding the forced removal of his predecessor. No doubt many considered, and still to this day consider, his appointment as having been a highly political one – a Chief Justice with allegedly pro-Italian sentiments had been removed from office to be replaced by a politician from the eminently pro-British Constitutional Party. Yet, to his credit, George Borg, following upon a tradition of which we in Malta are immensely proud, did what every lawyer appointed to the Bench does upon assuming the oath of office – he rose completely above politics, and not one single judgement which he delivered during his tenure of office can be criticised on the ground of his previous political background.

Even the judgement in the well-known case of Carmelo Borg Pisani – the only treason trial in Malta during the war – has never been criticised by anyone with regard to any one of the three judges who sat in judgement in that case – Sir George Borg, and Judges Edgar Ganado and William Harding – on the ground of the previous political background of any one of them. In a sense, to this very day all appointments to the judiciary – judges, magistrates and chief justice – in Malta are “political appointments” – they are made by the Head of State, and therefore the Head of the Executive Branch of Government, acting on the advice of the Prime Minister, and the Prime Minister is not obliged to consult anyone

(although he may, nowadays, if he so wishes, consult the Commission for the Administration of Justice, and if so requested the Commission must give its advice).

On the present bench to-day we have a magistrate who was a Minister of Government in a Nationalist Administration, one judge who was a Labour Member of Parliament, two judges who contested the elections on behalf of the Malta Labour Party, a judge whose father was a Minister of Justice in a Nationalist Administration, and others whose father or other relatives contested elections on behalf of one or other of the two political parties in Malta.

Never, however, for a single moment has anyone doubted that these previous political connections could even minimally influence the judgement of these judges or magistrates. This tradition of subjective and objective political independence may owe its remote origins to Governor Maitland's "General Constitution of the Superior Courts of Justice" of the 24 May 1814, which, for the first time in the history of these Islands, provided that judges could not be tampered with by the Executive because they would henceforth hold office "quamdiu se bene gesserint".

Incidentally, under that law, although the judges were to have security of tenure, the President of the High Court of Appeal, as the Court of Appeal was then called, was to hold his situation "durante beneplacito". In fact, when the last English Chief Justice, Sir John Stoddart, was dismissed by the expedient of the abolition of office, the President of the Court of Appeal became "primus inter pares" and consequently obtained security of tenure like the other judges, but, up till then, without the title of Chief Justice.

But laws alone do not ensure a long tradition of political independence. This tradition is in reality the result of the behaviour of judges and magistrates over a period of now close to two hundred years, who have had the vision not only to rise over their own political beliefs but also the courage to resist indirect, and sometimes even less subtle, political pressure which was exercised over them from time to time by the Executive branch of Government.

A few names of judges who stood up to be counted in difficult times, sometimes even to the detriment of their physical health, invariably come to mind: during the war years, Mr Justice Anthony Montanaro Gauci, an anglophile par excellence and a former member of Strickland's party, who ruled, on strictly legal grounds, against the proposed deportation by the Governor of the internees to Uganda, even though some historians are of the view that he may personally have liked to see them deported; and in more recent years, at a time of sustained and orchestrated interference and pressure by the Executive in the administration of justice, Mr Justice Anthony Rutter Giappone, Mr Justice Carmelo Scicluna and Mr Justice Joseph Herrera – to mention but those who are no longer with us.

At a farewell ceremony held on the occasion of Sir George's retirement, the then President of the Chamber of Advocates, Professor Victor Caruana Galizia, said this: "When Sir George came among us we were determined to hate him; but he treated us all with kid gloves, and we have all learned to love and respect him." I think that these words encapsulate the difficult start that Sir George Borg had in his judicial career, and the love and respect that he eventually earned by his behaviour on the bench.

Sir George Borg, therefore, takes his rightful place among those who have held high this tradition of political independence.

The portrait that Mrs Cachia is presenting to-day was made by Dr Carmelo Cassar, who is here present with us, and to whom I and my colleagues are very grateful.

It is therefore my great pleasure now to ask Mrs Rosemarie Cachia to unveil the portrait.

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