



27 July 1999

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**REPORT SUBMITTED BY MALTA
PURSUANT TO ARTICLE 25, PARAGRAPH 1
OF THE FRAMEWORK CONVENTION FOR
THE PROTECTION OF NATIONAL MINORITIES**

(Received on 27 July 1999)

Introduction

The State of International Law in the domestic legal order.

Treaties are regulated by the Ratification of Treaties Act (Act V of 1983) Chapter 304 of the Laws of Malta. For the purposes of this Act, the word "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. Any reference to the ratification of a treaty shall include a reference to accession to such treaty and to any other act or manner in which such treaty may be brought into force.

Some treaties can only enter into force by An Art of Parliament. These are treaties which affect or concern the status of Malta under international law or the maintenance or support of such status or the security of Malta, its sovereignty, independence, unity or territorial integrity.

Treaties regulating the relationship of Malta with any multinational organisation, agency, association or similar body have to be approved by a resolution of the House of Representatives.

No provision of treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament.

The instrument of ratification shall be issued under the signature of the Minister responsible for foreign affairs.

The House of Representatives is to be informed of the denunciation of certain treaties i.e. those which are connected with the status of Malta under international law or the security of Malta or membership of multinational organisations.

However, according to section 5 of this Act, nothing shall be construed as in any way affecting the powers of the Government with respect to treaties to which questions about the status of Malta, the security of Malta, or the relationship of Malta with any multinational organisation do not apply.

Unitary or Federal.

Malta is a unitary state.

Declaration

It should be recalled that when ratifying the Convention Malta made the following Declaration:

Malta declares that no national minorities in the sense of the Framework Convention for the Protection of National Minorities exist on its territory. Malta considers its ratification of the Framework Convention as an act of solidarity in view of the objectives of the Convention.

This declaration has to be kept in mind in any evaluation of this report.

Article 1.

Malta has ratified the Framework Convention on National Minorities. It has not concluded any bilateral treaties with neighbouring countries about the matter as there are no minorities (national, religious, or otherwise) living in Malta.

If any minority were to develop, access to justice is cheap and expeditious. Tills is possible under:

(1) The Constitution. Section 45 prohibits discrimination on the basis of colour, creed, place or origin, political opinions, race or sex. This section can only be amended by a two-thirds majority in the House.

All one has to do is to file an application in the Constitutional Court asking for redress. This may include the annulment of a law, a legal notice, a decision, or an administrative act.

(2) Under Chapter 319 of the Laws of Malta. This is the European Convention Act which is part of the Law of Malta. One can rely on any of the Articles of the European Convention combined with article 14 (which protects minorities). The same procedure as under 1 should be followed and in the same procedure one may allege breaches of both the Constitution and the European Convention on Human Rights.

(3) Under section 469A of the Code of Organisation and Civil Procedure where and administrative act may be reviewed by the Court to see whether it is ultra vires on the following grounds:

(I) when such act emanates from a public authority that is not authorised to perform it, or

(II) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act, or in its prior deliberations thereon, or

(III) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or

(IV) when the administrative act is otherwise contrary to law.

An "administrative act" includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant.

Article 2.

There are no legal submissions on this view.

Article 3.

The notion of national minority is not defined under Maltese Law. There are no groups which are recognised as national minorities.

Article 4.

Paragraph 1. Legal.

As has already been shown above, discrimination against any national minority is not legally possible in Malta because of the relevant Constitutional provision and the incorporation of the European Convention on Human Rights as part of Maltese Law.

Paragraphs 2 and 3. Legal.

No specific legal enactments have been made because the need for specific legislation on this point does not arise.

Article 5.

Paragraph 1. Legal.

Official Religion.

According to section 2 of the Constitution of Malta, the Religion of Malta is the Roman Catholic Apostolic Religion. The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong. Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.

There is no law enumerating recognised religions. According to the Constitution of Malta, (section 40):

All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship. No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto.

National Language.

According to section 5 of the Constitution of Malta:

The National Language of Malta is the Maltese Language. The Maltese and the English languages and such other languages as may be prescribed by Parliament (by a law passed by no less than two-thirds of all the Members of the House of Representatives) shall be the official languages of Malta and the Administration may for all official purposes use any of such languages: Provided that any person may address the Administration in any of the official languages and the reply of the Administration thereto shall be in such language. The language of the Courts shall be the Maltese language: Provided that Parliament may make such provision for the use of the English language in such cases and under such conditions as it may prescribe. The House of Representatives may, in regulating its own procedure, determine the language or languages that shall be used in Parliamentary proceedings and records.

Paragraphs 2. Legal.

There is no legislation to assimilate national minorities or giving rise to a general integration policy.

Article 6. Legal.

Paragraph 1.

No specific law has been enacted.

Paragraph 2.

The provisions of this paragraph are catered for by section 45 of the Constitution of Malta and the European Convention Act. These have always been interpreted as creating positive obligations on the State to ensure that persons with a different cultural identity are adequately protected. In other words, the State itself may have taken no administrative measure which violates the rights of these minorities but it would still have to show what measures it has taken to prevent any embarrassing situations for ethnic, cultural, linguistic or religious minorities.

Case Law: There have been no criminal, constitutional, civil or administrative cases brought before the local courts in connection with the violation of any ethnic, cultural, linguistic or religious identity rights.

Article 7.

Freedom of assembly and freedom of association are first of all both guaranteed by the Constitution of Malta. According to section 42:

"Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interests.

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

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(a) that is reasonably required -

(I) in the interests of defence, public safety, public order, public morality or decency, or public health, or

(II) for the purpose of protecting the rights or freedoms of other persons; or

(b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

For the purposes of this section, any provision in any law prohibiting the holding of public meetings or demonstrations in any one or more particular cities, towns, suburbs or villages shall be held to be a provision which is not reasonably justifiable in a democratic society.

The rights of freedom of assembly and of association are also incorporated in the European Convention on Human Rights and appear in the Schedule of Chapter 319 of the Laws of Malta.

Article 8. Legal.

Freedom of Conscience and Religion.

As has already been shown, this is guaranteed to any person, whether alone or with others, by section 40 of the Constitution of Malta.

Tills is also guaranteed by Article 9 of the European Convention.

Article 9.

Paragraph 1. Legal.

Protection of freedom of expression is guaranteed by Article 41 of the Constitution of Malta.

"(1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinion without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication to be the public generally or any person or class of persons) and freedom of interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision -

(a) that is reasonably required -

(I) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(II) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament. or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(b) that imposes restrictions on public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) Anyone who is resident in Malta may easily edit or print a newspaper or journal published daily or periodically:

Provided that provision may be made by law -

(a) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty one years of age, and

(b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty four hours of the seizure bring the seizure to the notice of the Court and if the court is not satisfied that there is a prima fade case of such offence, that edition shall be returned to the person from whom it was seized.

(5) No person shall be deprived of his citizenship under any provisions made under section 30(1)(b) of the Constitution or of his juridical capacity by reason only of his political opinions."

The same right is protected by Article 10 of the European Convention on Human Rights.

Paragraph 2.

Licensing is covered by the Broadcasting Act (Act XII of 1991). According to section 10 (4):

"A licence for any broadcasting service may only be awarded to a partnership regularly constituted in Malta in accordance with the law relating to commercial partnerships for the time being in force in Malta, which, in the case of a licence for community radio services is wholly owned by citizens of Malta ordinarily resident in Malta, and in all other cases, has a majority of its voting shares controlled by such citizens:

Provided that licences for community radio services may also be awarded to individuals who are citizens of Malta and ordinarily resident in Malta."

Broadcasting has been liberalised this Act was enacted and access to the media is possible as long as one complies with the conditions of the licence.

Paragraphs 3 and 4. Legal.

Reference is made to paragraph 1 above.

Article 10.

Paragraph 1.

There are no minority languages in Malta.

Paragraph 2.

There are no areas traditionally inhabited by minorities in substantial numbers.

Paragraph 4.

This right is protected by section 34 of the Constitution of Malta.

"34(2) Any person who is arrested and detained shall be informed, at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest and detention:

Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this subsection at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable."

The same right is protected by Article 5(2) of the European Convention.

As to the defence in his own language or with the assistance of an interpreter, this is protected by section 39 (6) of the Constitution:

" Every person who is charged with a criminal offence:

(e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge."

This right is also protected by Article 6(3) of the European Convention on Human Rights.

Article 11.

At present, Maltese legislation does not permit any changes in one's Christian Names or Surnames. Article 4 of the Civil Code lays down:

(1) The spouses shall on marriage adopt the surname of the husband after which the wife may add her maiden surname.

(2) The wife may, instead, choose to retain her maiden surname after which she may add her husband's surname.

(3) The children of the marriage shall take the surname of their father, after which they add the maiden surname of the mother.

There are no problems about surnames as long as they are spelt in the Latin alphabet.

Paragraph 2.

There is complete linguistic liberty as to how one displays shop names, inscriptions and other information of a private nature. One or two Russian signs have recently appeared. Chemists are sometimes indicated in three or four languages particularly if they are situated in tourist areas.

Paragraph 3.

Inapplicable to Malta.

Article 12.

No specific legislation on paragraphs 1 and 2.

As to equal opportunities for access to education, the principle is not only protected by Article 45 of the Constitution of Malta, but also by sections 10 and 11 of the Constitution.

Primary education shall be compulsory and in State schools shall be free of charge.

Capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.

The State shall give effect to this principle by means of scholarships, of contributions to the families of students and other provisions on the basis of competitive examinations.

Article 13.

The setting up of any private schools is regulated by the Education Act of 1988 (Chapter 327 of the Laws of Malta. According to Article 8 (1)

"Any person shall have the right to apply to the Minister for the grant of a licence to establish a school."

There are no financial obligations for opening a school.

Article 14.

Paragraph 1. Legal.

While there is no law granting this specific right, there is complete freedom to learn any language. We follow the principle that as long as the law does not prohibit an activity, then you are free to do it. Moreover, any hindrance would be a breach of Article 41 of the Constitution of Malta and of Article 10 of the European Convention on Human Rights.

Paragraph 2. Legal.

This is inapplicable to the circumstances obtaining in Malta.

Paragraph 3. Legal.

There are no comments to make about this paragraph.

Article 15.

In the absence of national minorities of any sort, Article 15 is inapplicable to Malta. As to voting arrangements, barring provisions in the Local Councils' Act, these are regulated by section 57 of the Constitution according to which:

"57. Subject to the provisions of section 58 of the Constitution, a person shall be qualified to be registered as a voter for the election of members of the House of Representatives if, and shall not be qualified to be so registered unless -

(a) he is a citizen of Malta;

(b) he has attained the age of eighteen years, and

(c) he is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months."

It is obvious that as there are no minorities of any kind in Malta there are no special consultative councils, parliamentary arrangements and territorial or cultural autonomy.

Article 16.

No laws exist which are meant to alter the proportions of the populations in areas inhabited by persons belonging to national minorities.

Article 17.

Like Article 16, this is inapplicable to Malta.

Article 18.

No such agreements have been made.

Article 19.

As has already been explained above Malta has incorporated the European Convention of Human Rights as part of its Statutes. This Convention enjoys supremacy over any other law except the Constitution.

Moreover, there are certain Constitutional provisions which are stronger than those of the European Convention. Reference is made in particular to section 37 which protects the right to private property. This is a very strong article indeed and, in any challenging expropriation measures taken, it may prove a more useful tool.

Article 20.

No relevant information is available.

Article 21.

No relevant information is available.

Article 22.

No relevant information is available.

Article 23.

No relevant information is available.

Article 30.

Declaration.

Malta declares that no national minorities in the sense of the Framework Convention for the Protection of National Minorities exist on its territory. Malta considers its ratification of the Framework Convention as an act of solidarity in view of the objectives of the Convention.

Reservation.

Malta is not bound by the provisions of Article 15 in so far as these entail the right to vote or to stand for election either for the House of Representatives or for Local Councils.