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## **Excerpts from the constitution of Malta**

*{ Adopted in: 1964 }*

### **Chapter IV Fundamental Rights and Freedoms of the Individual**

#### **Section 32 [General Provision]**

Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely --

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### **Section 33 [Life]**

(1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted. (2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case --

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

#### **Section 34 [Personal Liberty]**

(1) No person shall be deprived of his personal liberty save as may be authorised by law in the following cases, that is to say.

- (a) in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;
- (c) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;
- (d) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by Law;
- (e) for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;
- (f) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (g) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
- (h) for the purpose of preventing the spread of an infectious or contagious disease;
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or

(j) for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

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

(3) Any person who is arrested or detained --

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought not later than forty-eight hours before a court; and if any person arrested or detained in such a case as is mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that person.

(5) 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 authorises the taking during such a period of public emergency as is referred to in paragraph (a) or (e) of subsection (2) of section 47 of this Constitution of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

(6) If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta.

(7) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

### **Section 35 [No Forced Labour]**

(1) No person shall be required to perform forced labour.

(2) For the purposes of this section, the expression "forced labour" does not include --

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained by sentence or order of a court that, though not required in consequence of such sentence or order, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained or, if he is detained for the purpose of his care, treatment, education or welfare, is reasonably required for that purpose;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community.

### **Section 36 [No Inhuman or Degrading Treatment]**

(1) No person shall be subjected to inhuman or degrading punishment or treatment.

(2) 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 authorises the

infliction of any description of punishment which was lawful in Malta immediately before the appointed day.

(3) (a) No law shall provide for the imposition of collective punishments.

(b) Nothing in this subsection shall preclude the imposition of collective punishments upon the members of a disciplined force in accordance with the law regulating the discipline of that force.

### **Section 37 [Property]**

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition.

(a) for the payment of adequate compensation;

(b) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

(c) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta:

Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property --

(a) in satisfaction of any tax, rate or due;

(b) by way of penalty for, or as a consequence of, breach of the law, whether under civil process or after conviction of a criminal offence;

(c) upon the attempted removal of the property out of or into Malta in contravention of any law;

(d) by way of the taking of a sample for the purposes of any law;

(e) where the property consists of an animal upon its being found trespassing or straying;

(f) as an incident of a lease, tenancy, licence, privilege or hypothec, mortgage, charge, bill of sale, pledge or other contract;

(g) by way of the vesting or administration of property on behalf and for the benefit of the person entitled to the beneficial interest therein, trust property, enemy property or the property of persons adjudged bankrupt or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up or liquidated;

(h) in the execution of judgements or orders of courts:

(i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

(j) in consequence of any law with respect to the limitation of actions, acquisitive prescription, derelict land, treasure trove, mortmain of the rights of succession competent to the Government of Malta; or

(k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon --

(i) of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; or

(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities.

(4) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law

and in which no monies have been invested other than monies provided by any legislature in Malta.

### **Section 38 [Search, Seizure]**

(1) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) 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 --  
(a) that is reasonably required in the interest of defence, public safety, public order, public morality or decency, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any property in such a manner as to promote the public benefit;

(b) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) that authorises a department of the Government of Malta or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property or installation which is lawfully on those premises and which belongs to that Government, that authority, or that body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing a judgment or order of a court, the search of any person or property by order of a court or entry upon any premises by such order or that is necessary for the purpose of preventing or detecting criminal offence, 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.

### **Section 39 [Arrest]**

(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other adjudicating authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and, where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(3) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives --

(a) in proceedings before a court of voluntary jurisdiction and other proceedings which, in the practice of the Courts in Malta are, or are of the same nature as those which are, disposed of in chambers;

(b) in proceedings under any law relating to income tax; or

(c) to such extent as the court or other authority.

(i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or

(ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public morality or decency, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

(6) Every person who is charged with a criminal offence --

(a) shall be informed in writing, in a language which he understands and in detail, of the nature of the offence charged;

(b) shall be given adequate time and facilities for the preparation of his defence;

(c) shall be permitted to defend himself in person or by a legal representative and a person who cannot afford to pay for such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense;

(d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses subject to the payment of their reasonable expenses, and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(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,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(7) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so however that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at his trial.

(11) In this section "legal representative" means a person entitled to practice in Malta as an advocate or, except in relation to proceedings before a court where a legal procurator has no right of audience, a legal procurator.

#### **Section 40 [Religion, Belief]**

(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.

(2) 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:

Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.

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

that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, 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.

#### **Section 41 [Expression]**

(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 be to the public generally or to any person or class of persons) and freedom from 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 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.

(3) Anyone who is resident in Malta may 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 competent court and if the court is not satisfied that there is a prima facie 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 301(1) (b) of this Constitution or of his juridical capacity by reason only of his political opinions.

#### **Section 42 [Assembly, Association]**

(1) 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.

(2) 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 --

(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.

(3) 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.

### **Section 43 [Extradition]**

(1) Extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law.

(2) No person shall be extradited for an offence of a political character.

(3) No citizen of Malta shall be removed from Malta except as a result of extradition proceedings or under any such law as is referred to in section 44(3) (b) of this Constitution.

(4) The provisions made by or under the Extradition Act, 1978, as for the time being in force, for the removal of persons from Malta to another Commonwealth country to undergo trial or punishment in that country in respect of an offence committed in that country and any general arrangements for the extradition of persons between Commonwealth countries to which Malta for the time being adheres shall be deemed, for the purposes of subsection (1) of this section, to be arrangements made by treaty, and subsection (2) shall not apply in relation to the removal or extradition of a person under such provisions or arrangements.

### **Section 44 [Movement]**

(1) No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta.

(2) Any restriction on a citizen's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) 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 --

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health 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;

(b) for the imposition of restrictions on the freedom of movement of any citizen of Malta who is not a citizen by virtue of section 22(1) or 25(1) of this Constitution;

(c) for the imposition of restrictions upon the movement or residence, within Malta of public officers; or

(d) for the imposition of restrictions on the right of any person to leave Malta that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law 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.

(4) For the purposes of this section any person --

(a) who has emigrated from Malta (whether before on or after the appointed day) and, having been a citizen of Malta by virtue of section 22(1) or 25(1) of this Constitution, has ceased to be such a citizen; or

(b) who emigrated from Malta before the appointed day and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of section 22(1) of this Constitution; or

(c) who is the wife of a person mentioned in paragraph (a) or (b) of this subsection or of a person who is a citizen of Malta by virtue of section 22(1) or 25(1) of this Constitution and is living with that person or is the child under twenty-one years of age of such a person,

shall be deemed to be a citizen of Malta by virtue of section 22(1) or 25(1) of this Constitution.

(5) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(a) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a



request under this subsection unless he has first obtained the consent of the Civil Court, First Hall.

(6) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

#### **Section 45 [Discrimination]**

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision --

(a) for the appropriation of public revenues or other public funds; or

(b) with respect to persons who are not citizens of Malta; or

(c) with respect to adoption, marriage, dissolution of marriage, burial, devolution of property on death or any matters of personal law not herein before specified; or

(d) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description and to any other provision of this Constitution, is reasonably justifiable in a democratic society; or

(e) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency;

Provided that paragraph (c) of this subsection shall not apply to any law which makes any provision that is discriminatory, either of itself or in its effect by affording different treatment to different persons attributable wholly or mainly to their respective description by sex.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision:

(a) with respect to qualifications for service or conditions of service in any disciplined force; or

(b) with respect to qualifications (not being qualifications specifically relating to sex) for service as a public officer or for service of a local government authority or a body corporate established for public purposes by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) 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 (not being provisions specifically relating to sex), whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 38, 40, 41, 42 and 44 of this Constitution, being such a restriction as is authorised by section 38(2), 40(2), 41(2), 42(2) or 44(3).

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) A requirement, however made, that the Roman Catholic Apostolic Religion shall be taught by a person professing that religion shall not be held to be inconsistent with or in contravention of

this section.

(10) Until the expiration of a period of two years commencing on the 1st July, 1991, nothing contained in any law made before the 1st July, 1991, shall be held to be inconsistent with the provisions of this section, in so far as that law provides for different treatment to different persons attributable wholly or mainly to their respective description by sex.

(11) Nothing in the provisions of this section shall apply to any law or anything done under the authority of a law, or to any procedure or arrangement, in so far as such law, thing done, procedure or arrangement provides for the taking of special measures aimed at accelerating de facto equality between men and women, and in so far only as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society.

#### **Section 46 [Recourse to the Courts]**

(1) Subject to the provisions of subsections (6) and (7) of this section, any person who alleges that any of the provisions of sections 33 to 45 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

(2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 33 to 45 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the provisions of the said sections 33 to 45 (inclusive), that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious; and that court shall give its decision on any question referred to it under this subsection and, subject to the provisions of subsection (4) of this section, the court in which the question arose shall dispose of the question in accordance with that decision.

(4) Any party to proceedings brought in the Civil Court, First Hall, in pursuance of this section shall have a right of appeal to the Constitutional Court.

(5) No appeal shall lie from any determination under this section that any application or the raising of any question is merely frivolous or vexatious.

(6) Provision may be made by or under an Act of Parliament for conferring upon the Civil Court, First Hall, such powers in addition to those conferred by this section as are necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Rules of Court making provision with respect to the practice and procedure of the Courts of Malta for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of those Courts, and shall be designed to secure that the procedure shall be by application and that the hearing shall be as expeditious as possible.

#### **Section 47 [Definitions]**

(1) In this Chapter, save where the context otherwise requires, the following expressions shall have the following meanings respectively, that is to say -

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in Malta other than a court constituted by or under a disciplinary law and in sections 33 and 35 of this Constitution includes, in relation to an offence against a disciplinary law, a court so constituted;

"disciplinary law" means a law regulating the discipline --

- (a) of any disciplined force; or
  - (b) of persons serving prison sentences;
- "disciplined force" means --

- (a) a naval, military or air force of the Government of Malta;
- (b) the Malta Police Force;
- (c) any other police force established by law in Malta.
- (d) the Malta prison service;

"member", in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter "period of public emergency" means any period during which --

- (a) Malta is engaged in any war; or
- (b) there is in force a proclamation by the President declaring that a state of public emergency 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 the Members of the House declaring that democratic institutions in Malta are threatened by subversion.

(3) (a) Where any proclamation of emergency has been made, the occasion therefor shall forthwith be communicated to the House of Representatives and, if the House is then separated by such adjournment or prorogation as will not expire within ten days the President shall by proclamation summon it to meet within five days and it shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if it had stood adjourned or prorogued to that day.

(b) A proclamation of emergency shall, unless it is sooner revoked by the President, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under the next following paragraph, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(c) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this paragraph) a resolution is passed by the House of Representatives approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(4) A resolution such as is referred to in paragraph (c) of subsection (2) of this section shall, unless it is sooner revoked by the House of Representatives, cease to be in force at the expiration of twelve months beginning on the date on which it was passed or such shorter period as may be specified therein, but without prejudice to the passing of another resolution by the House of Representatives in the manner prescribed by that paragraph at or before the end of that period.

(5) In relation to any person who is a member of a disciplined force raised under any law in force in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 33, 35 and 36.

(6) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Malta, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(7) Until the expiration of a period ending on the 30th June, 1993, nothing contained in any such law as is specified in the First Schedule to this Constitution and, until the expiration of a period of three years commencing with the appointed day, nothing contained in any other law made before the appointed day shall be held to be inconsistent with the provisions of sections 33 to 45 (inclusive) of this Chapter and, subject as aforesaid, nothing done under the authority of any such law shall be held to be done in contravention of those sections.

(8) Where any provision of law enacted before the appointed day is held to be inconsistent with any of the provisions of sections 33 to 45 (inclusive) of this Chapter, no person shall be entitled to compensation in respect of anything done under the authority of that provision before it was so held to be inconsistent.

(9) Nothing in section 37 of this Constitution shall affect the operation of any law in force

immediately before 3rd March 1962 or any law made on or after that date that amends or replaces any law in force immediately before that date (or such a law as from time to time amended or replaced in the manner described in this subsection) and that does not --

- (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- (b) add to the purposes for which or circumstances in which such property may be taken possession of or acquired;
- (c) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or interested in the property; or
- (d) deprive any person of any right such as is mentioned in paragraph (b) or paragraph (c) of section 37(1) of this Constitution.