



Council of the
European Union

027183/EU XXVI. GP
Eingelangt am 19/06/18

Brussels, 19 June 2018
(OR. en)

13454/02
DCL 1

EVAL 41
ELARG 336

DECLASSIFICATION

of document: ST 13454/02 RESTREINT UE
dated: 24 October 2002
new status: Public
Subject: Analysis of information on justice in Malta

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 October 2002

13454/02

RESTREINT UE

**EVAL 41
ELARG 336**

REPORT

From : the General Secretariat
To : the Collective Evaluation Working Party
No. prev. doc. : 8683/3/00 EVAL 23 ELARG 69 REV 3
Subject : Analysis of information on justice in Malta

A. The Judicial System

The Court System

The system is composed as follows: the Constitutional Court, the Court of Appeal, the Criminal Court, the Court of Criminal Appeal, the Civil Court (divided into First and Second Halls), the Courts of Magistrates, the Gozo (other island) Court, the Small Claims Tribunal and the Juvenile Court. Furthermore, there are Commissioners of Justice (small infringements), a Rent Regulation Board, the Rural Leases Control Board and the Land Arbitration Board. There is no administrative court but recourse and judicial review of administrative actions is possible.

The courts have been divided into Superior and Inferior Courts (Superior and Inferior indicate the extent of jurisdiction). In criminal matters, the Inferior Courts have jurisdiction to try offences which are contraventions, e.g. (really minor matters as well as) crimes (which are) punishable by relatively short terms of imprisonment. They also conduct the preliminary enquiry in all indictable offences.

RESTREINT UE

There has been further progress in reforming the judicial system in that there has been a shift from the Civil and Magistrates' Court to the Small Claims Tribunal. The Tribunal's remit has been extended, particularly in the financial field¹.

Public Prosecution

The office of the Attorney General is a public office provided for in the Constitution as part of the executive, but is independent thereof. His salary and allowances are borne by the Consolidated Fund. In the exercise of his authority to institute, undertake and discontinue criminal proceedings, and within his other powers conferred on him by law, in his individual judgement, he is not subject to the direction or control of any authority. He is appointed by the President acting in accordance with the advice of the Prime Minister and has to be qualified for appointment as a judge of the Superior Courts; he shall vacate his office at the age of sixty. The Constitution prescribes the conditions for his removal from office.

Shortcomings in practice

There are a number of problems in the field of Justice. However, the situation has been aggravated by recent events which created an unprecedented institutional crisis.

*The Institutional Crisis Case*²

On 1 August 2002, the Prime Minister announced that the Chief Justice and another senior judge were being investigated by police over claims that the two judges accepted bribes in return for reducing a drug trafficker's sentence on appeal. The convicted person was originally sentenced to 16 years imprisonment. On 5 July 2002, his sentence was reduced to 12 years. The appeal was heard by the two judges and a third judge (not involved in the bribery case). The Police Commissioner was informed some days prior to the appeal -by the Secret Service- that contact was made between people representing the accused and the two judges. The police continued to investigate and discovered that money had been relayed to the two judges. The Police Commissioner informed the Prime Minister and presented the evidence. The Government instituted impeachment proceedings but the two judges resigned. According to Section 97 of the Maltese Constitution, should the case

¹ The Legal Procedures Act, which was adopted in February 2001, provides for the extension of the jurisdiction of the Small Claims Tribunal which can now review cases up to a value of Lm 1.500 whilst the jurisdiction of the Court of Magistrates has been increased to Lm 5.000.

² Answers from the Member States to the questionnaire, October 2002

RESTREINT UE

be deemed as one of "proved misbehaviour", it would be referred to the Commission for the Administration of Justice and then to Parliament where a two-thirds majority vote is required for a judge to be removed from his post.

The judges were arraigned in court and charged with accepting bribes and with revealing official information in relation to a sentence handed down by the Court of Criminal Appeal. The charges were aggravated by the fact that the two were public officers duty bound to prevent such a crime. The judges pleaded not guilty and the case continues.

The scandal led to loss of public trust in the judiciary. In a survey carried out in September 2002, 46.7% of the respondents said that their trust in judges and magistrates had decreased considerably and 68.7% were not satisfied with the way justice is administered in the local courts. The judiciary is facing an arduous task to regain the trust of the Maltese people. Trust needs to be regained through a well-planned systematic approach that addresses both minor complaints and major structural deficiencies. Meanwhile, in August this year, a new Chief Justice has been appointed.

Other problems that the judiciary face are the heavy workload of judges, the backlog of civil and criminal cases and the lack of sufficiently trained support staff.

Members of the Maltese judiciary are not assigned just a few cases which they can hear over a short period of time. This procedure only applies to urgent cases. Once a judge is appointed, the judge is assigned some 1.600 cases. One major reason behind the huge number of cases is that by nature, the Maltese people are too litigious and use the Court too often to settle disputes which could be resolved amicably.

In any case, the backlog is not manageable for the eighteen judges who can not work in an organised manner. The backlog of criminal legal actions in Court has increased from 7.793 in December 2000 to a total of 8.282 in December 2001. There was a drop of 15% in the number of pending civil cases with a total of 13.627 cases pending at December 2001.

RESTREINT UE

According to statistics from Malta in May 2002¹, the Civil Court (First Hall) and the Magistrates Court have continued to dispose more cases than the number of new cases being introduced. This results in a constant decline of cases pending before these courts. Compared to the end of 2001, the Civil Court has reduced its number of pending cases by 3% and the Magistrates Court has registered a decrease of 12%. However, the various Appeal Courts and the Constitutional Court have registered slight increases and the trend since January 2002 has been that the number of new appeals exceeds that of disposed appeals. This may have been influenced by the change in Chief Justices and the consequent re-distribution of judicial duties.

The Small Claims Tribunal has registered an increase in backlog and in April more cases were introduced than disposed of. The Tribunal has become more popular since the introduction of the reforms and new cases in the first 4 months of 2002 registered a four-fold increase compared to the same period in 2001.

The number of new cases introduced in all Civil Courts and Tribunals in the first 4 months of 2002 was 1307 compared to 979 in 2001.

B. Independence, appointment and remuneration

Independence and appointment

Guarantees on independence of judges vis-à-vis the executive power

Members of the judiciary are wholly independent of the executive and the principle of the separation of powers is fully applied. However, the procedure for challenging judges and magistrates provided for by Article 738 of the Code of Organisation and Civil Procedure remains to be examined to check whether it complies with the principle of an impartial tribunal enshrined in the ECHR. *(In this respect, the Council Secretariat would be grateful to receive a copy of this Article - which so far could not be found on Internet).*

¹ Source: Malta Media, 13 May 2002

RESTREINT UE

The criteria for the recruitment of new judges are not declared. The only requirement is that the person nominated must have at least 12 years experience as an advocate or 7 years as a magistrate. In October 2002, the Prime Minister announced that three new judges have been appointed. The procedure to nominate a judge is that the Prime Minister consults with the Commission for the Administration of Justice. The Commission's advice is not binding. The Prime Minister consults with the President of Malta who is also the chairman of the Commission for the Administration of Justice. The President invites the nominees to take up the post as judge. New judges are appointed by invitation and not on a merit basis.

This time the Commission in fact expressed concern about one of the newly appointed judges with regard to the judge's legal credentials.

Code of Ethics

Members of the Maltese judiciary are bound by a Code of Ethics. Prosecutors are bound by the Code of Advocates. However, the Parliament is currently discussing a Courts and Tribunals Procedures Bill which will not allow any judge or magistrate to exercise any other profession, business or trade or to hold any other office or position, even of a temporary or voluntary nature.

Confidence of the public

Viz. The Institutional Crisis Case

Remuneration

One of the major problems the Minister for Justice encounters when seeking to appoint new judges is the fact that there are very few lawyers who are willing to take up the post. The main problem is that lawyers are not willing to give up their vested interests in other organisations/committees which would lead to a substantial decrease in their income. Members of the judiciary preside committees or private organisations and are also lecturers at the University of Malta. A Chief Justice earns Lm 20,000 plus the use of a car and driver, Lm 1,000 in petrol, office allowances and all telecom expenses paid. A judge has the same perks plus a salary of Lm 18,000 and a magistrate has a salary of Lm 16,000.

RESTREINT UE

C. Resources and Training

Institutional and administrative settings

Numbers: (there are no numbers available)

- judges
- Court staff
- prosecutors
- notaries
- bailiffs
- lawyers

In February 2001, the Government approved the Law Courts Administrative Reorganisation Process, which provides for the establishment of support teams of professional and administrative assistants for each member of the judiciary. The teams should consist of a lawyer, a deputy registrar, a clerical assistant and administrative staff. Recruitment of various staff for these teams has started in 2001. Yet, at present, there is reportedly a lack of specialised support staff at the courts. Further, the main problem regarding the administrative capacity of the Maltese judiciary is that judicial efficiency is hindered by the backlog. Most members of the judiciary, if not all, complain that due to the number of cases that have accumulated over the years, judges cannot work in an efficient manner; a judge has to preside over too many cases simultaneously.

Training *(with special emphasis on a satisfactory system of training and recruitment for judges, prosecutors, as well as other categories of personnel working within the legal system)*

A newly appointed judge is not given any form of training¹. Also, the training programme currently being set for the judiciary is prepared by the Government civil services and members of the judiciary complain that they should be consulted to identify the training requirements for the judiciary. Despite the fact that a training course was organised to train court assistants assigned to the judiciary members², the former Minister of Justice, in a recent article, complained that the

¹ Answers from the Member States to the questionnaire, October 2002

² Source: draft Common Position on Chapter 24, December 2001

RESTREINT UE

administrative set-up of the courts is extremely weak. Clerks, court ushers, new marshals and deputy registrars have "to learn their job through practice by trial and error, without any prior preparation and training". There is no information on training of the judiciary on EC/EU Law/international judicial co-operation apart from the fact that the Commission, in its Regular Report 2002 states that 'Malta would benefit from an efficient system of training in EC legislation for members of the relevant legal professions'.

A satisfactory statute for judges and prosecutors and favourable working conditions, in particular with regard to the (objective) distribution of tasks, wages, and access to case law

Members of the judiciary claim that they are satisfied with the available space and the supporting facilities made available. More information, i.e. on the -objective- distribution of tasks and access to case law is needed, as well as information on the statute for judges and prosecutors. Regarding wages, viz. Remuneration.

Equipment of the courts

Viz. above.

A high level of transparency within the court system, including access to previous judgements

Prior to the afore-mentioned bribery case, the general perception was that there was a satisfactory level of transparency, particularly in recent years. However, the bribery case may have changed this perception. Regarding access to previous judgements, one can order a copy of judgements which are also readily available on the Government's website. A collection of judgements is also published over a number of years.

D. Criminal Law and Procedure, Conventions

Criminal Law and Procedure

The amendments to the Criminal Code which were adopted in April 2002 will enable Malta to ratify the Additional Protocol on Mutual Assistance in Criminal Matters (1978) and make provision for the simplified extradition procedure. They further bring Maltese legislation in line with the EU provisions on trafficking in human beings, extradition and participation in a criminal organisation. The Maltese criminal judicial procedure is based on the British procedures.

RESTREINT UE

The courts' handling of criminal cases

More information needed.

Effective access for all citizens to justice including the right to defence and the existence of an effective system of legal aid

The Code of Organisation and Civil procedures (Section 912) states that no demand for free legal aid shall be granted unless there are reasonable grounds for taking or defending proceedings; one must not possess property of any sort (excluding one's principal residence), the net value whereof amounts to or exceeds Lm3,000 or any sum established by the Minister for Justice and published in the Government Gazette. Further, one's yearly income must not exceed the annual minimum wage. However, as the court fees have recently increased, legal aid might have to be extended.

The respect of 'reasonable delays' (ECHR Article 6) for judicial procedures (incl. pre-trial detention, particularly as concerns minors)

The present judicial administrative system has problems with respecting Article 6 of the European Convention on Human Rights and Fundamental Freedoms since there are frequent delays in finalising cases. However, as a result of these delays, only few constitutional cases are filed for redress.

A satisfactory policy, with sufficient means, as regards dealing with minors

No information available except that 'Maltese legislation addressing the policy of minors is based on Western European standards.'

Exchange of magistrates/ European Judicial Network

The only information available dates from last year's CEWG report: Malta considers that manpower difficulties may restrict the number of liaison magistrates that Malta could have. Updated information is needed. With regard to the European Judicial Network (EJN), the Maltese judicial authorities maintain direct communication with their counterparts in the Member States and in third countries within the EJN framework.

RESTREINT UE

Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation

Amendments to the Criminal Code adopted in April 2002 aligned Malta's legislation with the provisions on participation in a criminal organisation.

Trafficking in human beings and sexual exploitation of children

An amendment to the Criminal Code to make provision for the offence of trafficking in human beings was adopted in April 2002.

Racism and Xenophobia

Malta has amended its Criminal Code and introduced the crime of incitement to racial hatred and racist behaviour as well as new rights for victims of racist behaviour. However, Malta still needs to ensure full transposition and implementation of the *acquis* on anti-discrimination based on Article 13 of the EC Treaty.

Effective system of witness protection

To date there is no system for the protection of witnesses. However, the Government has discussed the need to set up an effective system and a bill should be presented. This issue needs to be monitored.

Extradition and Mutual Assistance in criminal matters¹

Malta has ratified the European Convention on Extradition and its two Additional Protocols and the European Convention on Mutual Assistance in Criminal Matters. Malta has signed but not yet ratified its two Additional Protocols.

¹ Council of Europe Website: Main Framework Conventions (Status on 19/03/02)

RESTREINT UE

The Criminal Code was amended in April 2002 thus enabling Malta to ratify the Additional Protocol on Mutual Assistance in Criminal Matters (1978) and the Council of Europe Criminal Law Convention on Corruption (1999). The amendments also make provisions for the simplified extradition procedure and bring legislation in line with the *acquis* on extradition. However, Malta still needs to ratify the Council of Europe Convention on Cybercrime and should take further measures to ensure implementation of the Community instruments in the area of judicial co-operation in civil matters, namely mutual recognition and enforcement of judicial decisions.

In its Position Paper, Malta has stated that its legislation will be in line with all EU judicial co-operation requirements by the day of accession. Updated information on Malta's current state of play with regard to the European Arrest Warrant and other new EU initiatives, i.e. the setting up of Eurojust, on combating terrorism, on execution in the EU of orders freezing assets or evidence as well as on the adoption of the Protocol to the Convention on Mutual Assistance in Criminal Matters between the EU Member States is desirable.

Malta has ratified the Convention on the Transfer of Sentenced Persons (1983). It has signed but not yet ratified its Additional Protocol. Malta has not yet signed the European Conventions on the International Validity of Criminal Judgements and on the Transfer of Proceedings in Criminal Matters.

Practical experience

No information available.

Efficient international judicial co-operation bodies, with sufficient human and material resources

No information available.

Bilateral agreements

No information available.

RESTREINT UE

Judicial cooperation in criminal law matters

According to the Member States, the criminal judicial co-operation mechanisms are in place and follow procedures required by international conventions on criminal judicial co-operation. Most of the criminal co-operation procedures are in line with EU requirements. However, procedures need to be better implemented in order to have a more efficient structure.

Judicial co-operation in the framework of Schengen

Malta has stated that its judicial authorities maintain direct communication with their counterparts in the Member States and in third countries within the framework of the European Judicial Network (EJN). Malta further has close relations with various Member States on a bilateral basis.

Drugs

Malta has signed but not yet ratified the 1995 Council of Europe Agreement on Illicit Traffic by Sea, implementing Art. 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Terrorism

Malta has ratified the 1977 European Convention for Suppression of Terrorism. On 11 November 2001, Malta deposited the instruments for ratifying the UN International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the UN on 9 December 1999.

E. Civil Law and Procedure, Conventions

The Civil Code/of Civil Procedure

In 1995, in an attempt to ensure justice within a reasonable time, there was a major overhaul of the Code of Civil procedure. The aim of these amendments was to establish efficient procedures. The Maltese Courts Advisory Committee was set up with the task to examine the effectiveness of the 1995 amendments in the different halls. The Committee also advised that there should be a simplification of the procedure.

RESTREINT UE

Length of court proceedings, procedural delays, the quality of decisions

Information needed.

Practical, effective enforcement of court decisions, in particular in civil matters (which implies the existence of qualified professionals)

The general feedback from members of the judiciary with practical enforcement of court decisions is that there are no major problems and that court decisions are generally respected. However, in civil matters such as child custody and maintenance payments, there have been cases where court decisions were not enforced and there was very little assistance offered by the competent authorities to enforce the orders. Enforcement of court orders by police and other authorities remains somewhat patchy. The Legal Procedures Ratification of Conventions Act was enacted in February 2002 with the aim to enable Malta to ratify the International Conventions on the enforcement of judgements in civil matters. The Courts are in principle operating within the spirits of those conventions signed but not yet in force. However, enforcement of e.g. The Hague Convention on Child Abduction is reported to be patchy at best mainly because Child Abduction in Malta is treated as a civil matter (not a criminal matter). In this respect, the police or other authorities have no enforcement powers.

Alternative methods of dispute solving¹

Alternative means of redress offered in Malta are the Alternative Dispute Resolution (ADR), the Malta Arbitration Centre and the Court and Next Mediation Programme which is currently being discussed. However, these means of redress have contributed very little to decrease the backlog of cases pending in Court. A culture change is needed to make people better use alternative means of redress rather than referring a case directly to the Courts.

Conventions/bilateral agreements

Malta has ratified the 1980 European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and is party to the Convention on the Civil Aspects of International Child Abduction (1980).

¹ Answers from the Member States to the questionnaire, October 2002

RESTREINT UE

Malta does not intend to accede to the 1954 Convention on Civil Procedure. It is not yet a party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Convention on the Taking of Evidence Abroad (The Hague, 1970) or the Convention on International Access to Justice. In order to ratify these three Conventions, amendments to the Legal Procedure Act have been made. The Legal Procedures Ratification of Conventions Act was enacted in February 2002

Malta has not signed the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996).

Practical experience

Viz. Practical, effective enforcement of court decisions.

F) Data Protection *(with special emphasis on the effective protection of personal data)*

Malta has not yet signed the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data nor the Additional Protocol regarding supervisory authorities and transborder data flows.

¹A new Data Protection Act entered into force in March 2002 and regulations were adopted to set up an independent national supervisory authority and a Data Protection Appeals Tribunal Board. It must be monitored that the latter is well established and that attention is paid to the risk of conflicts of interest. A Data Protection Commissioner has been appointed. It should be monitored that the Commissioner operates independently and without external political interference. The provisions of the Data Protection Directive are foreseen to come into force upon accession. Malta needs to implement legislation to regulate the use of personal data by Police, Security Service and Customs.

¹ Answers from the Member States to the questionnaire, October 2002

RESTREINT UE

Sources:

- ◆ European Commission Regular Report 2002 on Malta' progress towards accession
- ◆ The Council of Europe Website, Main Framework Conventions (21/10/02)
- ◆ Hague Conference on Private International Law Website (21/10/02)
- ◆ Accession Negotiations with Malta - Chapter 24: Co-operation in the Fields of Justice and Home Affairs (14831/01 LIMITE ELARG 354) 3 December 2001
- ◆ Accession Negotiations with Malta - Chapter 24: Co-operation in the Fields of Justice and Home Affairs (6631/02 LIMITE ELARG 40) 28 February 2001
- ◆ Answers from the Member States to the Council Secretariat Questionnaire, October 2002
- ◆ Malta Media, Newsletter May 2002
- ◆ CEWG Country Report on Malta 2001

DECLASSIFIED