

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
*RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS
FONDAMENTAUX*

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN MALTA IN 2004

submitted to the Network by Professor **Ian REFALO**

on 3 January 2005

Reference: CFR-CDF/MT/2004



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon the request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union.

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moysse (Luxembourg), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. Verbruggen.

Les documents du Réseau peuvent être consultés via :

http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The EU Network of Independent Experts on Fundamental Rights has been set up by the European Commission (DG Justice, Freedom and Security), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moysse (Luxembourg), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.

The documents of the Network may be consulted on :

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CHAPTER I : DIGNITY

Article 1. Human Dignity

Legislative initiatives, national case law and practices of national authorities

As has already been pointed out in the previous report for the year 2003 human dignity is not entrenched or safeguarded by a specific provision of the Constitution of Malta or of Maltese law. It is still pertinent however to observe that the concept of human dignity continues to underlie the definition of human rights in the Maltese Constitution itself and the incorporation of the European Convention on Human Rights and Fundamental Freedoms in Maltese Law. It would not be, in my opinion, an exaggeration to say that the concept of human dignity is a central and basic value of the Maltese legal system. One particular amendment to Maltese legislation occurring in 2004 can be partly said to have been motivated by concerns relative to the dignity of the human person. This is the amendment¹ to the Malta Refugee Act² which among other things provides for an amelioration of the local procedures in relation to the handling of refugees.

Article 2. Right to life

Euthanasia (active and passive, assisted suicide)

Legislative initiatives, national case law and practices of national authorities

Euthanasia continues to be a crime under the Malta Criminal Code³. Section 213 of the Criminal Code provides that:

“ Whosoever shall prevail on any person to commit suicide or shall give him any assistance, shall, if the suicide takes place, be liable, on conviction, to imprisonment for a term not exceeding twelve years.”

It is therefore not only a crime, but as can be deduced from the term of punishment linked to it, considered to be a very serious crime. There has been no legislative development in Malta in this respect during the year 2004.

The fight against the trafficking in human beings (including the use of technical means to prohibit the illegal crossing of borders)

Legislative initiatives, national case law and practices of national authorities

Malta continues to have a problem with the number of illegal immigrants and refugees who cross over from North Africa by sea either seeking illegal entry into Malta or entry into Italy, as Malta lies en route on this voyage. There have been no legislative developments in relation to the powers of the police to deal with illegal immigrants and refugees found on the high seas or on Malta territorial waters, even though the Refugee law has, as has already been pointed out, been amended to provide speedier processes for dealing with these persons.

¹ Act VIII of 2004 enacted on the 26th July, 2004

² Cap 420 of the Laws of Malta

³ Cap 9 of the Laws of Malta

Reasons for concern

The practice of the Maltese forces in respect to trans border trafficking does not cause concern. The general situation, however, in the Mediterranean in relation to the transport of illegal immigrants and refugees by sea in conditions which are often sub human and in a traffic which is illegal and criminal, is such as to result in very serious hardship and often loss of life to those people attempting the illegal crossing, and is therefore a very serious cause of concern.

Domestic violence (especially as exercised against women)*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

During the year 2004 the National Council of Women of Malta adopted calls for making legal responses to incidents of domestic violence more effective. The Council commented negatively on recent sentencing instances for trafficking for prostitution and violence which, in the opinion of the Council, produced light sentences. In its 'News & Views' for November 2004 the Council states that it "has been raising awareness about violence against women and children for a number of years. It promotes zero tolerance in this regard and asks for a nationwide campaign involving government, NGOs and the media to eliminate this abhorrent crime."

Legislative initiatives, national case law and practices of national authorities

There were no legislative initiatives in relation to domestic violence during 2004. It is the practise of the Maltese authorities to prosecute the alleged offenders where there are reports of domestic violence having occurred.

Reasons for concern

Those common to other European states faced with similaire problems of domestic violence.

Article 3. Right to the integrity of the personRights of the patients*Legislative initiatives, national case law and practices of national authorities*

The medical profession in Malta and the provision of hospital services is regulated by law. The Malta Medical Council set up under the authority of Section 9 of the Health Care Professions Act, 2003⁴ oversees the medical profession. The rights of patients therefore derive from the said laws as well as from the ethical standards which doctors are bound to follow in the exercise of their profession. Such rights include the right to be duly and fully informed as to any matter touching the state of his health as well as in relation to any therapeutic exercise undertaken in his respect or medication administered to him. It is the duty of the Medical Council "to prescribe and maintain professional and ethical standards for the medical and dental professions."⁵ Remedies available for patients who may feel to have been improperly treated are various and range from the possibility of a complaint to and investigation by the Medical Council, to a report to the competent police authorities alleging criminal mal-practice. It is also possible to sue for civil damages in the ordinary Courts of Law. Ultimately if what has happened is sufficiently grave and no other remedy is available the person concerned may

⁴ Cap. 464 of the Laws of Malta

⁵ Sec. 10(1)(d) of Cap. 464 of the Laws of Malta

bring a human rights action in front of the local tribunals with an appeal to the Constitutional Court, as well as the possibility of an individual complaint to the Human Rights Court in Strasbourg. An alternative possibility is a report to the Office of the Ombudsman who has wide powers of investigation and can propose possible remedies.

Patients' rights to confidentiality are also covered by the Data Protection Act⁶. This gives wide cover to all information covering the person, but especially in respect of sensitive personal data⁷. Information concerning a patient as well as data recovered from him or from his treatment must therefore be treated as confidential, and may not be divulged or used for research purposes without the explicit informed consent of the person to whom the data relates.

As far as mental patients are concerned the area is covered by the Mental Health Act⁸. The Act envisages both voluntary and compulsory treatment of mental patients. Compulsory treatment of mental patients is strictly regulated; the patient may also be detained, where necessary to protect his own well being or that of other persons. For this to happen there must be certification by two medical practitioners who give detailed reasons explaining the necessity for such detention. The whole procedure is closely regulated by law and appropriate opportunity is given to any aggrieved individual to bring forward a complaint or a demand for his release.

Reasons for concern

There is no reason for concern under this head. The matter is properly regulated and ample opportunity for redress of any grievance is provided for.

Protection of persons in medical research.

Legislative initiatives, national case law and practices of national authorities

The position of medical research in Malta is not strictly regulated by law. A number of limits, however, both technical/practical and ethical may arise in respect of any research which is proposed to be carried out. Where the research involves medical patients then the rights of the patients as described above, and especially the necessity of obtaining fully informed consent, should lead to adequate safeguard. Moreover the practice of medicine, and medical research as well, falls within the control and supervision of the Malta Medical Council and would have to be carried out in terms of the ethical standards prevailing in the medical profession. The Government has also set up a Consultative Committee on Bio-Ethics to oversee the carrying out of research as well as to advise on all matters relating to medical research.

Reasons for concern

The position in Malta is poorly regulated. Although from the patient point of view the position of the patient is adequately and properly safeguarded under the laws relating to medical practice as well as to protection of personal data and confidentiality, from the point of view of the question of the ethics of the research undertaken per se regulation is next to non-existent. This may give rise to some concern. In defect of any regulatory framework the function of the Bio-Ethics Consultative Committee at once becomes both too wide and too narrow at the same time.

⁶ Cap. 440 of the Laws of Malta.

⁷ Sec. 12 of Cap. 440 of the Laws of Malta.

⁸ Ca. 262 of the Laws of Malta.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

Conditions of detention and external supervision of the places of detention

The position in Malta with regard to conditions of detention and external supervision of the places of detention has already been referred to in the report for the year 2003. There have not been any specific changes which warrant comment or further reporting except in so far as concerns illegal immigrants and refugees. On this last point a number of comments have been raised and issues raised which require reporting under this article.

Penal institutions

Legislative initiatives, national case law and practices of national authorities

Penal institutions are regulated in Malta by the Prisons Act⁹ and the Prisons Regulations made under the authority of the Act. There is therefore an appropriate legal framework which covers and controls detention in the prisons. Moreover detention in prison may only take place in circumstances allowed by law after due process. Any arrest pending trial is subject to verification and control by the judicial authorities. The situation in the prisons in so far as concerns detention conditions appears to be adequate and no particular concerns of any serious nature have been voiced in the media or in international reports. There have been no cases brought in front of international bodies concerning detention conditions in prisons in Malta.

Institutions for the detention of persons with a mental disability

Legislative initiatives, national case law and practices of national authorities

The detention of persons suffering mental ill health is regulated by the Mental Health Act¹⁰. Detention is only allowed where it is necessary in the interest of the patient's own health or for the safeguard of the safety of others, and always provided that it is shown that the patient is suffering from a mental disorder of a degree which warrants detention¹¹. The law provides further procedural safeguards to ensure that detention in mental hospitals is only resorted to where strictly necessary and in circumstances appropriate to justify detention. Medical certification by more than one practitioner is at the basis of the system meant to guarantee that no abuse takes place. Furthermore the system allows access to the judicial authorities to test the regularity of any committal. Moreover the law also provides for the licensing and supervision of institutions concerned with the detention of persons with a mental disability. The law is meant to enable the authorities to verify that the proper standards of care, treatment, and detention are maintained in such institutions. Section 6 of the Mental Health Act enable the Minister of Health to provide hospitals and other institutions to cater for persons suffering from a mental disability. By Section 7 the Minister is also empowered to make regulations for the licensing of institutions providing such care and treatment, as well as to regulate the standards which must be provided in such institutions. The whole issue of detention and care of patients or persons with a mental disability or infirmity is couched in a legal framework which tends to reassure persons as to the conditions of detention in such institutions. Seeing the closely regulated framework, where standards fall below what is expected or required control mechanisms are available to remedy such situations.

⁹ Cap 260 of the Law of Malta.

¹⁰ Cap. 262 of the Laws of Malta

¹¹ Sec 14 of Cap. 262 of the Laws of Malta.

Centres for the detention of juvenile offenders

Legislative initiatives, national case law and practices of national authorities

The Maltese legal system provides for the trial of persons under the age of sixteen years in separate courts. This it does through the establishment of juvenile Courts under the Juvenile Courts Act¹². It is also possible to make a care order in respect of children under the age of sixteen years providing for their control and even detention. Such orders can be made under the Children and Young Persons (Care Orders) Act¹³. The lack of appropriate facilities to house young offenders has been severely criticised in the local press. In an editorial appearing in a local newspaper¹⁴ of the 19th September, 2004, it was stated that – *“In the case of juvenile offenders the situation is much worse. When the ‘Approved Institutions’ were abolished in 1980, no new structure was created to replace them. Consequently, we have nowhere where to put our juvenile offenders for rehabilitation. Our juvenile justice system is non-existent and the Juvenile Court is a farce constituted by members appointed by the Prime Minister and helpless before a juvenile offender.*

The case of the fourteen-year old Amir whose story was reported in one of our daily newspapers is an example of the failure of the system. Amir has had behavioural problems since he was a child and has been familiar with the Juvenile Court since then. He is a boy who is constantly beating his mother and grandmother and nobody knows how to control him. Every time that he appears before the Juvenile Court, he has a good laugh because they all look so helpless to him. There is no system in Malta where Amir can be placed under the formal control of the state for purposes of rehabilitation, incapacitation or deterrence.”

On the other hand it is appropriate to point out that the Maltese authorities had stated that it is a priority to establish in the national Correctional Facility a suitable building for young offenders between the ages of sixteen and twenty four who will not be in contact with other prisoners in the remaining part of the prison complex.

Reasons for concern

It therefore appears that the Government is aware of the problems it faces in this area and the need for further improvement. On that basis the matter should not necessarily be viewed as one raising serious concern.

Centres for the detention of foreigners

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The position of refugees and illegal immigrants in Malta has attracted the attention of both foreign and local authorities. Amnesty International and the United Nations High Commissioner for Refugees have commented negatively on the treatment of refugees and illegal immigrants by Malta. In particular attention has been drawn to the inadequate facilities for detention as well as to the fact that the indefinite detention of such persons is violative of their fundamental human rights. In connection with these matters the Council of Europe’s Committee for the Prevention of Torture carried out an ad hoc visit to Malta in January 2004, stating that its main purpose was to examine “the treatment of foreign nationals detained under the immigration legislation, as well as the procedures and the means of restraint applied in the context of forcible removals by air”. In February 2004 the Council of Europe’s Commissioner for Human Rights issued a report on his October 2003 visit to Malta which

¹² Cap. 287 of the Laws of Malta.

¹³ Cap 285 of the Laws of Malta.

¹⁴ The Malta Today

confirmed concerns about the automatic detention of all people entering Malta irregularly, regardless of whether or not they have applied for refugee status, highly inadequate living conditions in some detention centres for aliens, the excessive length of refugee determination proceedings and inadequate access to education for detained migrant children.

Amnesty International also reported on the case of a number of Eritrean refugees who were returned by the Government of Malta to their country of origin. The organization claimed that Eritrea could not be regarded as a safe country to return Eritrean asylum-seekers, and that such returns could expose the returnees to serious human rights violations. After the matter figured prominently in the local Malta press. The Minister responsible for Justice has since set up a Board of Inquiry to investigate into the matter.

Legislative initiatives, national case law and practices of national authorities

The position of illegal immigrants and refugees has also come to the attention of the national Ombudsman. The Ombudsman condemned the practice of handcuffing illegal immigrants who needed to leave their detention centre and insisted these people were not criminals. The issue arose in relation to illegal immigrants who happened to be detained in a mental hospital. The Ombudsman recognized that these people did not suffer from chronic mental health problems and the main reason for their depression was being left in the dark about their status and as a result of being detained indefinitely.

The matter has now been tackled legislatively through an amendment to the Refugees Act¹⁵, that is the Refugees (Amendment) Act¹⁶, which was enacted on the 6th of August 2004. The main impact of the Act was to provide for the set up of a number of chambers to the Refugee Appeals Boards to deal with request by illegal immigrants and refugees and to determine their status under the law, to provide for accelerated procedures, to provide a re-definition of a safe country of origin, and to provide for the release of detained persons in appropriate circumstances pending the determination of their applications.

Reasons for concern

The treatment of foreigners in detention centres as well as the general treatment of illegal immigrants and refugees is on to raise a measure of concern. On the other hand it is quite evident that the local authorities are acutely aware of the problems that these issues have raised and that they have attempted to tackle same both by providing the adequate legal tools as well as by improving the infrastructural facilities available for the care of such persons.

Protection of the child against ill-treatments

Legislative initiatives, national case law and practices of national authorities

The position of the child and the welfare of children is the subject of a number of laws which impinge in a variety of manners on the welfare of children. Possible abuse of minors, either sexual or otherwise, is rendered criminal through a number of enactments. Though there is not specifically a Children's Act the Government has appointed a Commissioner for Children under Commissioner for Children Act enacted on the 5th of December, 2003¹⁷. The Commissioner for Children has the specific function of protecting and promoting the welfare of children¹⁸. He has also powers to undertake investigations and to advise on remedies to be applied.

¹⁵ Cap 420 of the Laws of Malta.

¹⁶ Act VIII of 2004

¹⁷ Cap. 462 of the Laws of Malta.

¹⁸ Sec. 9

Article 5. Prohibition of slavery and forced labour

Fight against the prostitution of others (general)

Legislative initiatives, national case law and practices of national authorities

There have been no legislative initiatives in Malta during the year 2004 in relation to this topic. The matter however is amply and well covered by existing legislation. The prostitution of others for gain or profit, and the living off immoral earnings is a crime under Maltese law. The expert has already fully reported on the situation in Malta in relation to the position at law in respect of such practices in his report for the year 2003. The position continues to be as stated in that report.

Reasons for concern

As stated in the report for 2003 the position is adequately covered by law and there are therefore no serious reasons for concern in respect of this area.

Trafficking in human beings (in particular for sexual exploitation purposes)

Legislative initiatives, national case law and practices of national authorities

Again as reported in the Report for 2003 trafficking in human beings has been established as a specific crime by Act III of 2002. The position has not changed since then.

Protection of the child (fight against child labour – especially with purposes of sexual exploitation or child pornography - and fight against the sexual tourism involving children)

Legislative initiatives, national case law and practices of national authorities

The obtaining position relative to this matter remains unchanged since the report for the year 2003. Exploitation of children for sexual purposes or for child pornography is in itself a criminal offence. The child is also protected in relation to labour and as can be seen from the report for 2003 the position, in general, is that child labour is illegal. In Malta the labour market is a highly regulated and protected market, and this also is inductive in conferring protection against the employment of children.

Exploitation of undocumented workers

Legislative initiatives, national case law and practices of national authorities

It is illegal in Malta to employ people without registering their employment and paying the relative dues. Any exploitation of undocumented workers would therefore be a criminal offence.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention

Legislative initiatives, national case law and practices of national authorities

Pre-trial detention in Malta is subject to judicial control. Not only is the personal liberty and freedom of the individual safeguarded in the Constitution as well by the application, in Maltese law, of the European Convention on Human Rights and Fundamental Freedoms, but also under the ordinary law of the land any individual who feels that he is illegally detained may force the issue to be brought in front of a Court of law so that the legality and regularity of his detention may be tested and ascertained. It is only possible to arrest and detain an individual prior to his trial on reasonable suspicion of his having committed a crime and provided that his detention is necessary in order to secure him to justice.

The position in Malta regarding pre-trial detention has already been reported at length in the report for 2003. The position remains unaltered and there have been no legislative initiatives which could in any manner diminish or render less effective the protection of the individual's liberty under the law.

Note should be taken under this heading of an important judgement of the Constitution Court of Malta on pre-trial detention decided in 2004. This is Dr. Joseph Brincat *nomine vs. l-Avukat Generali*¹⁹. The Court of Magistrates in Malta had in the course of proceedings pending in Malta against Gregory R Eyre and others issued, under section 397 of Chapter 9 of the Laws of Malta, an arrest warrant against a certain Mark Charles Stephens to answer to charges of conspiracy in the importation of drugs in terms of article 22(1)(e)(f) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and article 120(A)(1)(e)(f) of the Medical and Kindred Professions Act, Chapter 31 of the Laws of Malta. The court further ordered that such arrest be executed even by means of an international arrest warrant. Subsequent to this arrest warrant Stephens was arrested in Spain and proceedings for his extradition to Malta were commenced. Stephens through his Maltese lawyers brought an application in front of the Court of Magistrates asking that his arrest be declared unlawful. After the Court of Magistrates dismissed that application, Stephens brought an application in the First Hall of the Civil Court for a declaration that his fundamental rights under article 5 of the European Convention on Human Rights and Fundamental Freedoms had been violated in his respect and that consequently his arrest was unlawful. Stephens claimed that the Maltese Courts lacked jurisdiction to try him, and that his arrest was unlawful as section 409A of the Criminal Code²⁰ under the authority of which his arrest was ordered was in violation of the provisions of article 5(1) and (4) of the Convention. The First Hall of the Civil Court found for applicant on the basis that the provisions of section 409A(4) did not satisfy the requirements of the said article 5(4). This finding was not confirmed by the Constitutional Court on appeal, but that Court still declared the arrest unlawful as it found that the Court of Magistrates did not have jurisdiction to make such an order under section 397 of the Criminal Code.

It is to be noted that among other things the Constitutional Court stated that the state of the Maltese law satisfied the position under article 5(4) of the Convention as the law provided for the possibility of the legality of an arrest, even in the case of the issue of an international

¹⁹ Judgement of the Constitutional Court of the 23rd November, 2004

²⁰ Cap 9 of the Laws of Malta.

arrest warrant, to be tested in a Court of law. Indeed the application by Stephens in front of the Court of Magistrates to have the arrest warrant revoked was evidence of the availability of such a remedy to an aggrieved individual. The fact that the attorney general could appeal from a ruling under such application while the person arrested could not in no way diminished the guarantees which the individual enjoyed relative to the legality of his arrest.

Reasons for concern

There is no reason for concern under this head. Any person detained pending trial has ample means provided to test the legality or otherwise of his arrest. Any application regarding the unlawfulness of the arrest of an individual is speedily dealt with as there is great awareness in the Courts of Malta of the value of individual liberty.

Detention following a criminal conviction (including the alternatives to the deprivation of liberty and the conditions for the access to release on parole)

Legislative initiatives, national case law and practices of national authorities

The main alternative to a punishment which deprives the accused of his individual liberty in the case of a criminal conviction is to the award of a suspended sentences. The whole issue of suspended sentencing is regulated by the Criminal Code²¹ in Malta. Under the Criminal Code the Court has the power in appropriate circumstances to hand out a suspended sentence rather than actually sending the convicted accused to prison. In such cases the suspension of the sentence will usually be dependant on the accused not committing another crime for a specified period of years, and moreover may be accompanied by a supervision order and an order to make restitution to the victim of the crime. The Court has also the power to put the convicted individual under a probation order rather than pass a judgement of imprisonment.

Deprivation of liberty for juvenile offenders

Legislative initiatives, national case law and practices of national authorities

In the case of juveniles the Criminal Code specifically provides for a substantial diminution of any punishment awarded to them. Minors under nine years of age are exempt from criminal responsibility for any act or omission; minors under fourteen years of age are likewise exempt from criminal responsibility for any act or omission without mischievous discretion. The Court may in appropriate circumstances make an order placing a minor in an Approved School if the Court feels that that is in the best interest of the minor²². The law also specifically provides for the diminution of the punishment to be awarded where the person convicted is a minor²³. It is also possible for the Court to put the minor in an Approved School rather than award a custodial sentence, or to put the minor under probation or to award a suspended sentence. It is to be pointed out that imprisonment or depriving juveniles of their liberty is only used by the Maltese Courts as an extreme measure of last resort, preference being given to non-custodial measures such as community-based correctional methods, suspended sentences and probation orders.

Reasons for concern

The failiure to provide Approved Schools for juvenile delinquents has been criticised. On the whole however and when one takes in the whole perspective the treatment of juvenile offenders in Malta, there is here no serious cause for concern.

²¹ Cap.9 of the Laws of Malta.

²² Sec. 35 of Cap 9 of the Laws of Malta

²³ Sec 36 of Cap 9 of the Laws of Malta

Deprivation of liberty for persons with a mental disability

Legislative initiatives, national case law and practices of national authorities

The deprivation of liberty for patients with a mental disability is dealt with under the Mental Health Act²⁴. Mental patients may be detained in an appropriate hospital or institution on an application made to that effect to the superintendent or director of such institution accompanied by a certificate of two medical practitioners setting out the need of and reasons for the committal of the patient to the institution. It is possible from any decision effecting the detention of a mental patient to bring an application in front of the Mental Health Review Tribunal which can make any necessary orders in respect of the patient. The tribunal is constituted as an independent body under the law and is presided over by a retired judge or magistrate.

Deprivation of liberty for foreigners (in order to prevent their unauthorised entry on the territory with a view to their removal, including their extradition)

Legislative initiatives, national case law and practices of national authorities

The position under Maltese law is that foreigners are automatically detained to prevent their unauthorized entry on the territory with a view to their removal, including their extradition. This practice has been the subject of severe criticism and has led to changes in obtaining legislation on the detention of foreigners who have entered Malta illegally. The worst aspect of the detention has been its indefinite nature pending their removal from the country, the uncertainty of their status and the length of the proceedings to determine definitely that status, and the sub-standard conditions in which such persons were detained. The Refugees Act²⁵ has been amended, as has already been reported above in this report, in order to better the situation of refugees and to expedite proceedings in their respect. In particular with respect to the detention of foreigners it is now possible for them to apply for their release pending the determination of their status or their removal from the Islands.

Any person, other than one having the right of entry, or of entry and residence, or of movement or transit under, may be refused entry, and if he lands or is in Malta without leave from the Principal Immigration Officer, he shall be a prohibited immigrant²⁶. A prohibited immigrant is subject to detention in a place designated for this purpose by the Minister, and if detained in a correctional facility he shall be treated as a person waiting trial. The same amendment to the Refugees Act has also introduced an amendment to the Immigration Act making it possible to the Immigration Appeals Board to order the temporary release from custody of persons awaiting the determination of their asylum or refugee application²⁷. The Board shall only grant release from custody under subsection (9) of section 25A where in its opinion the continued detention of such person is taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time.

Positive aspects

The amendments to the law in this area have generally improved the conditions of persons, foreigners, detained as prohibited immigrants. This is a welcome improvement on the previously obtaining situation, even though the failure to impose strict and rigid time period beyond which detention may not be continued seems still to create a cause for concern.

²⁴ Cap 262 of the Laws of Malta.

²⁵ Cap. 420 of the Laws of Malta.

²⁶ Sec 5 of Cap.217 of the Laws of Malta.

²⁷ Sec. 25A(9) of Cap.217 of the Laws of Malta.

Reasons for concern

The fact that the detention of prohibited immigrants is for an indefinite period and the failure to introduce in the law specific time periods beyond which detention may not be continued.

Article 7. Respect for private and family life**Private life**Criminal investigations and the use of special or particular methods of inquiry or research*Legislative initiatives, national case law and practices of national authorities*

There have been no legislative developments throughout 2004 in this area. The matter can be taken jointly with the question relative to the function of intelligence and security services.

Intelligence and security services*Legislative initiatives, national case law and practices of national authorities*

In relation to developments in methods of inquiry or research and in the security control of candidates to sensitive jobs, no legislative proposals or development have taken place within the regulatory framework in the period under scrutiny, 2004. These issues remain, as already reported, to be regulated by the Security Services Act²⁸ as enacted in 1996 and subsequently amended in 1997. Under this Act, no interception or entry on or interference with property is allowed except that carried out under a warrant issued by the designated Minister. Although the law regulates framework within which the security services are to function it does not specify the methods that may be used for inquiry or research. Consequently, decisions related to the method of interception, the use of undercover officers and informers remain within the discretion of the Security Services as supervised by its Head.

Controls imposed on potential candidates in employment (in particular security checks with regard to applicants for “sensitive positions”)*Legislative initiatives, national case law and practices of national authorities*

The Security Services Act above referred to is silent on the security control of candidates to sensitive jobs. And it is not clear whether such control will be deemed to fall within the function of the Security Services for the protection of the national security, the economic well being of Malta or public safety. Reference to the Data Protection Act may here be useful in that under this Act a controller may be allowed to process sensitive data if this is necessary for him to carry out his duties under any law in relation to employment.

Right to the protection of family life and right of the public to have access to information*Legislative initiatives, national case law and practices of national authorities*

The right to the privacy of family life is protected under law. The Press Act²⁹ attempts to strike a balance between the needs of an open society to know and the protection of the privacy of an individual. In particular it is not a good defence to a libel case to plead the truth of the material published unless it can be shown that the individual in question is a public

²⁸ Cap 391 of the Laws of Malta.

²⁹ Cap 248 of the Laws of Malta.

figure and the comment is about something which affects his public profile. In particular section 12 of the Press Act provides as follows:

“In any action for a defamatory libel under article 11, the truth of the matters charged may be enquired into if the accused, in the preliminary stage of the proceedings, assumes full responsibility for the alleged libel and declares in his defence that he wishes to prove the truth of the facts attributed by him to the aggrieved party:

Provided that the truth of the matters charged may be enquired into only if the person aggrieved –

(a) is a public officer or servant and the facts attributed to him refer to the exercise of his functions; or

(b) is a candidate for a public office and the facts attributed to him refer to his honesty, ability or competency to fill that office; or

(c) habitually exercises a profession, an art or a trade, and the facts attributed to him refer to the exercise of such profession, art or trade; or

(d) takes an active part in politics and the facts attributed to him refer to his so taking part in politics; or

(e) occupies a position of trust in a matter of general public interest:

Provided further that the truth of the matters charged may not be enquired into if such matters refer to the domestic life of the aggrieved party.”

It is therefore quite clear that there is always a balancing act in the law between the interests of the individual to protect the privacy of his domestic life and the public interest to be informed. I have cited this particular section of the law as I consider it a good example as to how the balance is achieved in Maltese Law.

Reasons for concern

I would consider that a proper balance is struck in Maltese law on the point of the need of the public to know and the protection of privacy. This question is a matter which modern means of communication and the modern media have rendered acute. To say that there are no reasons for concern whatsoever would probably be an exaggeration; but whatever reasons of concern there are in this area these are common to most modern European countries.

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

The position of the law in this area remains intransigent. The voluntary termination of pregnancy remains a criminal act. Under Maltese law particular value is put on any human existence. It is true that the unborn fetus is not considered to be a person at Maltese law, still any abortion will be considered criminal.

Personal identity (including the right to gain access to the knowledge of one's origins)

Legislative initiatives, national case law and practices of national authorities

The question of personal identity continues to be a problem in Malta especially in respect to transsexuals. The right to gain access to the knowledge of one's origins is not a very serious problem in Malta. The only restriction on searches into a person's origin is where persons who have been adopted are concerned. And even here procedures are available to ascertain the origin of an individual.

With respect to transsexuals the law continues to fail to make serious provision whereby their privacy is protected. Transsexuals are forced to bring suit in Malta to have their birth records corrected in order to safeguard their privacy. This unfortunately has the concomitant effect of further forcing the individual to reveal his condition publicly in Court proceedings, exposing him to further humiliation and depriving the person of any shred of privacy. The remedy is therefore, to some extent, worse than the failure of the State to effect the necessary entries in the record of the individual to protect his privacy.

Reasons for concern

It is submitted that it is unfortunate and a reason for concern that the State continues to deny privacy to these individuals even though there is now consistent and copious case law which stigmatises the obtaining position at law as one in violation of the rights to privacy of the individual.

Family life

Protection of family life (in general, developments in family law)

Legislative initiatives, national case law and practices of national authorities

Family life is protected under Maltese law. There is no possibility of divorce provided for but only personal separation or annulment of a marriage. Divorce granted by a foreign court is recognized in Malta where either of the parties to the divorce is either a national or domiciliary of the State of the Court from whom the divorce has been obtained.

Removal of a child from the family

Legislative initiatives, national case law and practices of national authorities

The removal of a child from the family can take place only in the most exceptional of circumstances and only for the welfare of the child. Such removal is always subject to review by the Courts of Law. Such situations often arise in cases of personal separation where there is litigation between the parents. In those cases the child usually gets entrusted to one parent with rights of access to the other. Only exceptionally is access to a child by a parent or his relatives banned and this for serious considerations effecting the welfare of the child. In the case of Joseph Schembri vs. Registratur tal-Qorti Superjuri and others³⁰ the paternal grandfather was prohibited access in the course of personal separation proceedings between his son and his son's wife to the child of this marriage. He brought a complaint on the basis of a violation of his right to family life as well as his right to a fair hearing. The Court held that his application was properly made, and in the light of the Court orders made in his respect, he had no remedy but to bring forward a human rights application. The case is still pending on the merits.

Reasons for concern

The state of the law in Malta is such as to ensure both that only in the most exceptional of circumstances will parents be deprived of their children, and that where this happens they will have access to a Court of law to test the validity and legality of the decision taken.

³⁰ Decided by the Constitutional Court in parte on the 18th February, 2004.

The right to family reunification

Legislative initiatives, national case law and practices of national authorities

The position in Maltese law is that Maltese nationals and other persons having the right to reside in Malta have the right to bring to live with them their respective spouses and minor children.

Private and family life in the context of the expulsion of foreigners

Legislative initiatives, national case law and practices of national authorities

In the context of the expulsion of foreigners it is to be pointed out that where a foreigner is given the status of a refugee, then dependent members of his family, if they are in Malta at the time he is declared to be a refugee, or if they join him later, enjoy the same rights and benefits as the refugee himself.

Article 8. Protection of personal data

Independent control authority (evolution of its powers, competences)

Legislative initiatives, national case law and practices of national authorities

This area is regulated by the Data Protection Act of the 14th December, 2001³¹. The Act sets up a Data Protection Commissioner under section 36 of the Act. The Commissioner is set up as an independent authority with a separate legal personality from that of the Government³². He holds office for a period of five years subject to reappointment on the expiration of his term of office³³. He is appointed to office by the Prime Minister after consultation with the Leader of the Opposition³⁴. He may only be removed from office by the Prime Minister after an address of the House of Representatives supported by the votes of not less than two-thirds of the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office or proved misbehaviour³⁵. It is therefore quite evident that both the manner of his appointment and the terms of the tenure of his office are such as to ensure that the Commissioner exercises an independent authority from that of the Government.

The functions of the Commissioner are defined in Section 40 the Data Protection Act. In a general sense they are to ensure that all data is handled in a manner which respects the principles laid out in the Data Protection Act. These are meant to safeguard the privacy of personal data and especially sensitive personal data.

The decisions of the Commissioner are reviewable by the Data Protection Appeals Tribunal. Any person aggrieved by the decision of the Commissioner may appeal to the tribunal³⁶. The tribunal is constituted as an independent and impartial adjudicatory body. His members are appointed for a fixed term of office of a minimum of three years and may not be removed except for misbehaviour or inability to perform the functions of their office³⁷.

³¹ Act XXVI of 2001 now Cap. 440 of the Laws of Malta.

³² Sec. 38 of Cap 440 of the Laws of Malta.

³³ Sec. 39(1) of Cap 440 of the Laws of Malta.

³⁴ Sec. 36 of Cap 440 of the Laws of Malta.

³⁵ Sec. 39(2) of Cap 440 of the Laws of Malta.

³⁶ Sec. 48 of Cap 440 of the Laws of Malta.

³⁷ Sec. 49 of Cap 440 of the Laws of Malta.

Reasons for concern

There are therefore no reasons for concern under this head. It is quite clear that the authority of the Data Protection Commissioner is independent from the government and there exist the normal safeguards applicable in democratic societies to ensure impartiality and independence in all decisions taken.

Protection of personal data (in general, right of access to data, to have them rectified and right to a remedy)*Legislative initiatives, national case law and practices of national authorities*

Personal data is defined by the Data Protection Act as being either ordinary personal data or sensitive personal data. The level of protection given by law to sensitive personal data is much higher than in the case of ordinary data. Still the basic principle in relation to all data remains that it may not be used, processed or availed of for any purpose except that in relation to which it was originally collected and with the consent and knowledge of the data subject. The controller of personal data at the request of the data subject shall provide to the data subject, without excessive delay and without expense, written information as to whether personal data concerning the data subject is processed.³⁸ The controller shall be liable at the request of the data subject to immediately rectify, block or erase such personal data that has not been processed in accordance with the Act.

Protection of the private life of the worker and the prospective worker*Legislative initiatives, national case law and practices of national authorities*

The matter in relation to the private life of the worker is also protected as an employer would be considered as holding personal data, and possibly sensitive personal data, in relation to his employee. Information regarding the employee is therefore covered and protected under the Data Protection Act.

Protection of the private life of the insured person and the person seeking an insurance*Legislative initiatives, national case law and practices of national authorities*

The insurance business in Malta is supervised and controlled by the Malta Financial Services Authority. Any information available to insurance companies would fall to be regulated under the Data Protection Act. In the case of insurance business you have therefore a double control, both from the financial aspect by the competent financial regulatory bodies, and from the privacy aspect by the data protection authorities.

Reasons for concern

The position is similar to that obtaining in other European states and there is no particular aspect specific to Malta which would give rise to concern.

Protection of the private life in the processing of medical data*Legislative initiatives, national case law and practices of national authorities*

Sensitive personal data may be processed for health and hospital care purposes, provided it is necessary for:
preventive medicine and the protection of public health;

³⁸ Sec. 21 of Cap 440 of the Laws of Malta.

medical diagnosis;
 health care or treatment; or
 management of health and hospital care services:

Provided that the data is processed by a health profession or other person subject to the obligation of professional secrecy.³⁹ It is therefore quite clear that the position in respect of medical data relative to the individual falls to be protected both under the general principles of confidentiality applicable to doctors and other people employed in the medical profession as well as under the Data Protection Act. It is relevant to point out that under Maltese law the unwarranted and unauthorized communication to a third person of confidential information would be considered as criminal .

Reasons for concern

The matter seems to be adequately covered by law.

Intelligence and security services

Legislative initiatives, national case law and practices of national authorities

Intelligence and security services are regulated by the Security Services Act. There has been no legislative development in the year 2004 which in any manner impinges on the position as described in the report for 2003. There is therefore nothing else to report under this head.

Storage of information in the fields of insurance, financial credit or housing rentals (“blacklists”)

Legislative initiatives, national case law and practices of national authorities

This is not directly regulated by law. Any regulation would have to rely only indirectly on laws which impinge on this area such as the Data Protection Act. It is perhaps unfortunate that such an unregulated state of affairs exists in this area of Maltese law.

Video surveillance in public fora

Legislative initiatives, national case law and practices of national authorities

The question of video surveillance in public is not regulated under Maltese law.

Article 9. Right to marry and right to found a family

Marriage

Legislative initiatives, national case law and practices of national authorities

Marriage in Malta is regulated by the Marriage Act⁴⁰. Under Maltese law a marriage is a union for life entered into between a man and a woman. Infact the Marriage Act does not provide for the possibility of divorce, and only recognizes divorces obtained from foreign courts in situations where one of the spouses to the divorce proceedings is either a national or domiciliary of the State pronouncing the divorce. In Malta it is possible either to enter into a civil marriage which is celebrated in front of the Registrar of Marriages as well as into a religious marriage, which is a marriage celebrated according to religious rites and recognized

³⁹ Sec 15 of Cap. 440 of the Laws of Malta.

⁴⁰ Cap. 255 of the Laws of Malta.

by the State as a valid marriage⁴¹. A religious marriage shall be contracted according to the rites or usages of a church or religion which is recognised for the purposes of the Marriage Act and which either of the persons to be married belongs to or professes; but the consent of the persons to be married must, in order that the marriage may be valid, conform in substance to the consent required by section 15(2). A church or religion shall be recognised for the purposes of the Act if it is generally accepted as a church or religion or if it is recognised for the purposes of this article by the Minister; and if any question arises as to the application of this sub-article, the decision of the Minister aforesaid shall be final and conclusive.

Amendments to the Marriage Act have also been introduced which provide for the recognition of judgements of nullity relative to a marriage pronounced by the Catholic ecclesiastical tribunals. In certain situations the ecclesiastical tribunal is seen to have exclusive jurisdiction over an nullity proceedings. In such situations a measure of unfairness may be perceived to exist in relation to the spouse protesting the jurisdiction of such a tribunal. It is pertinent to point out that the Court of Appeal has ruled that unless the principles of fairness enshrined in article 6 of the European Convention of Human Rights and Fundamental Freedoms is observed by the ecclesiastical tribunal pronouncing the annulment, then such judgement will not be recognized and enforced under Maltese law.

Legal recognition of same-sex partnerships

Legislative initiatives, national case law and practices of national authorities

Same-sex partnerships are not recognized in Maltese law as a marriage. A marriage is defined as a union between a male and a female, and this is seen as a matter of public policy. For further details on this point I refer to a previous report prepared by me on this issue. The position has not changed at all since that report. It must also be pointed out that any arrangements entered into between consenting adults is perfectly legitimate, but it is not and does not bring about the consequences of a marriage. It is also to be made quite clear that homosexuality is not criminal under Maltese law and the private arrangements individuals may see fit to enter into is, from the point of view of Maltese law, their own private affair.

Recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

Again the same position regarding same sex marriages applies with slight differences to marriage of transsexuals. As I have reported in my report for the year 2003 the matter has come to the consideration of the Constitutional Court during that year but the Court has declined to give a definitive ruling on the issue. It is very difficult to envisage the ruling which the Court will arrive to in the present circumstances.

Control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

The Marriage Act⁴² provides that any person who contracts a marriage with the sole purpose of obtaining –

- (a) Maltese citizenship; or
- (b) freedom of movement in Malta; or
- (c) a work or residence permit in Malta; or

⁴¹ Sec 11 of Cap. 255 of the Laws of Malta.

⁴² Sec 38 of Cap 255 of the Laws of Malta.

- (d) the right to enter Malta; or
- (e) the right to obtain medical care in Malta,

shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years. The law further provides that any right or benefit obtained by a person convicted of such an offence on the basis of a marriage referred to above may be rescinded or annulled by the public authority from which it was obtained. Moreover any person who contracts a marriage with another person knowing that the sole purpose of such other person in contracting the marriage is one or more of the purposes referred to above shall be guilty of an offence and shall on conviction be liable for the same punishment. It is therefore quite clear that the law renders criminal so called marriages of convenience. On the other hand as the law makes of such a marriage a criminal offence the rules relating to the proof of the commission of a crime and to the presumption of innocence would operate fully in this area.

Article 10. Freedom of thought, conscience and religion

Fight against sects

Legislative initiatives, national case law and practices of national authorities

There has been no legislative development whatsoever in respect of the question of the development of the phenomena of sects. The matter is wholly unregulated and there has been no legislative provision to distinguish sects from main stream religions.

Reasonable accommodation provided in order to ensure the freedom of religion.

Legislative initiatives, national case law and practices of national authorities

The State of Malta recognizes as a fundamental value the freedom of religion to everybody. The State also recognizes in the Constitution the Roman Catholic Religion to be the religion of the state of Malta. Malta is not therefore totally a lay country as the Constitution itself proclaims the adherence of Malta to the Catholic faith. At the same time the Constitution recognizes the freedom of every individual to practise his own religion as a fundamental right. In State schools any person objecting to tuition in a particular religion will be provided with tuition in alternative subjects. The position in Malta is complex due to the fact that the population is overwhelmingly catholic. On the other hand, this has perhaps the positive aspect, that other religions are not perceived as a threat and there is a considerable attitude of tolerance to the practice by individuals of their own religious convictions or absence of any religious conviction.

The authorities attempt as far as possible to provide reasonable accommodation to ensure that every individual is at liberty to practice his own religion. As a matter of law, as freedom of religion and conscience are recognized as fundamental rights of the individual, the State is under a duty to ensure that individuals are at liberty to practice their religion effectively without any hindrance or discrimination.

Protection against harassment especially of religious minorities

Legislative initiatives, national case law and practices of national authorities

There is no harassment of religious minorities. Any religious minority is allowed to establish in Malta its own place of worship and people are free to follow their own religious convictions. It is true that the fact that the population in Malta is overwhelmingly Catholic may produce on other individuals not practising the Catholic faith forms of subtle pressure to conform to what is the main stream religion in the State. On the other hand it is clear that

there is no policy whatsoever which in any manner ostracizes or proscribes people who belong to a different faith. From the point of view of religion Malta has become a tolerant country where for the greater part religious conviction and belief is seen as the personal affair of the individual. It is perhaps, in this context, important to point out that the bringing of any spiritual pressure to bear on individuals with a view to influencing the manner in which they would vote at an election would be, under Maltese law, a corrupt practice.

Article 11. Freedom of expression and of information

Freedom of expression and information (in general)

Legislative initiatives, national case law and practices of national authorities

Freedom of expression and information is protected under the Constitution of Malta and also through enactment into Maltese law of the European Convention on Human Rights and Fundamental Freedoms. Moreover the legal system protects the position of the media in society and the pluralistic nature of those media. The Press Act regulates press freedom and in substance protects the rights of individuals to publish. The Broadcasting Act has created a situation where pluralism in broadcasting prevails in the country. Of particular note is the Broadcasting Authority which is set up under the Constitution as an independent authority whose task and function is to oversee broadcasting standards as well as fair access to the broadcasting media to all political and social forces operating within the country. The Broadcasting Authority is composed of a Chairman who is appointed by the Prime Minister after consultation with the Leader of the Opposition. Four other members sit on the authority and it is the practice in Malta that two of these members are appointed at the choice of the Prime Minister while the other two are appointed at the choice of the Leader of the Opposition. The situation is therefore a balanced situation especially in view of the fact that the popular vote is usually evenly divided between the party in government and the party in opposition with other parties scoring only very small percentages of the total popular vote.

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

Pluralism in the media is safeguarded through the Broadcasting Act. This ensures that a number of broadcasting stations compete in the Maltese environment providing an effective situation of pluralism. It is relevant to point out that the two major political parties in Malta own independent broadcasting stations, while there is a public broadcasting station which is owned through a public company by the State. There are also other radio and television broadcasting stations which are owned by different groupings or societies. This effectively creates a plurality situation in access to broadcasting. On the other hand the fact that two of the principal broadcasting stations are owned by the two larger political parties may give rise to some concern regarding the representation on the media of non-main stream views. It is proper to point out, in this context, that there is the state broadcasting station which is overseen by the Broadcasting Authority. This may serve to provide a wider access to the media than would otherwise be available if all the media was solely in control of the two main political groupings.

A further point to be made regards fair treatment of information. There is an obligation under the Broadcasting Act to treat news and other information in a fair and balanced manner. The Press Act also gives protection to individuals who may feel to have been unfairly treated. The issue has been raised in libel suits whether the prosecution of libel suits may give rise to a violation of the right of freedom of expression. It is on the other hand acknowledged that it is the right of every individual to protect his own individual reputation and the area of his

privacy. The courts in Malta have been prepared to apply in a rather generous manner the principle of fair comment in relation to libel suits especially where public figures are concerned.

Secrecy of journalistic sources

Legislative initiatives, national case law and practices of national authorities

The secrecy of journalistic sources is protected under the Press Act⁴³. Section 46 of the Press Act provides:

“No court shall require any person mentioned in article 23 to disclose, nor shall such person be guilty of contempt of court for refusing to disclose, the source of information contained in a newspaper or broadcast for which he is responsible unless it is established to the satisfaction of the court that such disclosure is necessary in the interests of national security, territorial integrity or public safety, or for the prevention of disorder or crime or for the protection of the interests of justice:

“Provided that the court shall not order such disclosure unless it is also satisfied that in the particular circumstances of the case the need for investigation by the court outweighs the need of the media to protect its sources, due regard being taken of the importance of the role of the media in a democratic society.”

It is to be noted that it is ultimately up to the Court to decide whether it will allow the journalist in question to retain the information available to him secret. In doing this it balances the interests of the media in retaining sources of information secret with the interests of justice in every individual case. The law attempts to strike a fair balance between the several interests involved, leaving it ultimately in the hands of the Court to make the appropriate decision in the light of those interests.

Reasons for concern

There is no particular reason for concern under this head. The position reflects a necessary balance between the interests of the media and those of the private individual.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Legislative initiatives, national case law and practices of national authorities

The position since the report for the year 2003 has remained unchanged. Freedom of peaceful assembly is protected both under the Constitution, through the application of the European Convention on Human Rights and Fundamental Freedoms and under the ordinary law. There have been no problems in Malta during 2004 in relation to freedom of assembly. No demonstrations have been prohibited and no political bodies have been dissolved by the Government or had their freedom of political debate restricted in any manner whatsoever. There have been no cases of persons being penalized or discriminated against as a result to their belonging to trade unions. Indeed the Employment and Industrial Relations Act⁴⁴ specifically forbids any discrimination or penalization on the grounds that a person belongs to a trade union or to any particular trade union.

⁴³ Cap. 248 of the Laws of Malta.

⁴⁴ Cap 452 of the Laws of Malta.

Freedom of civic association*Legislative initiatives, national case law and practices of national authorities*

There is full freedom in Malta to associate. There is no ban or proscription on any civic association.

Freedom of political association*Legislative initiatives, national case law and practices of national authorities*

There is also full freedom to form political associations. There is no stricture or limitation on the political associations which can be formed nor has it been the case that any political association, grouping, or organization has been banned, proscribed or prevented from undertaking in any activity it deemed necessary to the promotion of its aims. There is no basis in national legislation on which political organization could be banned or limited.

Freedom of association for trade unions*Legislative initiatives, national case law and practices of national authorities*

The freedom to associate in trade unions is not only protected under the constitution and through the implementation of the European Convention on Human Rights and Fundamental Freedoms but is also safeguarded under the Employment and Industrial Relations Act. Title II Part I of the Employment and Industrial Relations Act regulates the creation of trade unions and employers' associations. It defines the immunities and rights trade unions and employers' associations and their members enjoy in industrial disputes. It also defines the permissible restrictions which may be made on trade union membership as a result of a person being in a top managerial or executive position and the holding of which post would make membership in a trade union incompatible⁴⁵.

Reasons for concern

There is therefore no reason of concern in this area as the position regarding the freedom to organize trade unions, to participate in their activities, and to become a member of same is amply protected under Maltese law. Indeed trade unions are very powerful organizations in the field of industrial and employment relations in Malta. They are well and properly organized and function to protect the interests of their members.

Article 13. Freedom of the arts and sciencesFreedom of the arts*Legislative initiatives, national case law and practices of national authorities*

Although this right is not recognised in the Constitution or in the European Convention Act as a separate and distinct freedom, it has always been interpreted to fall within the ambit of freedom of thought and expression. The arts, scientific research and academic freedom are not in any way hindered and their exercise is not regulated. On the contrary these are encouraged through the concerned Ministries and through the system of education. In particular the Ministry for Youths and the Arts, and bodies such as the Council of the Society of Arts, Manufacturers and Commerce, the Malta Council for Culture and the Arts, and the Malta Council for Science all seek to promote the arts, scientific research and academic freedom.

⁴⁵ Sec. 67 of Cap 452 of the Laws of Malta.

Articles 8 and 19 of the Constitution must also be referred to since in the declaration of principles it states that the state shall promote the development of culture and scientific and technical research, while it should provide for the protection and development of artisan trades. these provisions of the constitution are however non-justiciable

Freedom of research

Legislative initiatives, national case law and practices of national authorities

Limitation of medical research

There are no specific regulations prohibiting any specific form of medical research, however in practice certain forms of bio-medical research are restricted by the fact that the abortion of a human embryo is a crime and that the ethics of the medical profession regulations⁴⁶ specifically provides that *'in all matters bearing on faith or morals the catholic member of the profession shall abide by the tenets of the roman catholic church.'*

Article 14. Right to education

Access to education

Legislative initiatives, national case law and practices of national authorities

The right to an education while non-justiciable under Maltese law is declared as a principle to be abided by in the Constitution of Malta. furthermore the Education Act⁴⁷ expressly provides: *'it is the duty of the state – (a) to promote education and instruction; (b) to ensure the existence of a system of schools and institutions accessible to all Maltese citizens catering for the full development of the whole personality including the ability of every person to work; and (c) to provide for such schools and institutions where these do not exist.'* The State has ratified article 2 of the first protocol to the echr into its law. It is also pertinent to point out that all Education in State schools and at University is under the Education Act stipulated to be free of any charge in respect of tuition fees.

The establishment of other educational institutes is allowed under national law and a license is given provided the applicant is *'the catholic church or any other voluntary society, religious or otherwise, of a non-profit making character, and the school conforms with the national minimum conditions...'* and where the minister deems it to be in the general interest.

Legal Notice 251 of 2004 establishes the 1st may 2004 as the date of commencement of the migrant workers (child education) regulations, 2002. These regulations extend the state's duties to providing free tuition to children of migrant workers in state schools. In particular it provides that the state must take measures to *'facilitate their initial reception in the educational environment and the school system of Malta as the host state, including, in particular, the teaching, as adapted to the specific needs of such children, of any of the official languages Malta'* and that the state should promote *'the teaching of both the mother tongue and the culture of the country of origin of such children in cooperation with such country of origin.'* These regulations will protect the children of all migrant workers, even if self-employed, however the extent of these regulations are limited in that they only apply to citizens of states with whom an agreement to this effect has actually been made. On the other hand asylum seekers have a right to be provided with a state education.⁴⁸

⁴⁶ Subsidiary Legislation 94.15

⁴⁷ Chapter 327 of the Laws of Malta

⁴⁸ Chap 420 section 11

In general the right to pursue further education is unhindered and students wanting to undertake post-secondary education are free to choose whatever topics they prefer. However Legal Notice 36 of 2004 (Regulations for the Selection of Applicants for Admission to the Bachelor of Dental Surgery - B.Ch.D. - Degree Course, 2004) limits the stated course's intake to 6 students a year.

Positive aspects

Primary education is compulsory and provided free of charge at least in state schools. Traditionally the state surpasses these requirements by providing free education through schools that are aimed at various exigencies of the society and cover academic institutions, trade schools, primary, secondary and tertiary education, vocational and continuing training. With school attendance during the compulsory school age being regulated through the monitoring of absenteeism amongst children and the institution of proceedings against parents whose children are kept away from school without a valid reason.

Education is currently provided free of charge not only for compulsory primary and secondary tuition but also for students entering various post-secondary institutions, including the university of Malta. Such students are also provided with grants to support their education. Furthermore although private schools do not offer a free education, parents are able to obtain some tax deductions on the tuition fees.⁴⁹

Reasons for concern

High failure rates in state schools at primary and secondary level raises the question whether the free education received by many citizens is actually an adequate education or not.

Currently all Maltese students undergoing post-secondary education were not only provided with a free education but also supported by the government in the form of stipends and advantageous student loans. However entry into the European Union and the recent European Court of Justice finding that the United Kingdom practice of providing United Kingdom residents with special student loans as violating ec law has meant that the government faces an untenable position. This raises the possible result that not only will stipends be removed but also that students will be charged for their university education. The actual implementation of this system and its effects are however still to be seen.

Vocational training

Legislative initiatives, national case law and practices of national authorities

The Government has made a determined drive to improve vocational training and has established as a centre for such training the Malta Centre for Arts, Science and Technology. A lot of effort is being invested by the Government in the promotion of this institution.

Article 15. Freedom to choose an occupation and right to engage in work

The right for nationals from other member States to seek an employment, to establish himself or to provide services

Legislative initiatives, national case law and practices of national authorities

Since 2003, no major changes have been made to the freedom to choose an occupation and right to engage work, however foreign workers are further protected by the coming into force

⁴⁹ Chapter 327 of the Laws of Malta, Section 14B.

of legislation and regulations ensuring the recognition of professional education and training undergone in other EU member states.

In particular a number of legal notices were issued in 2004 which established 1st May 2004 as the date for the commencement of legislation providing for the mutual Recognition of Professional Education and Training as well as for the Mutual Recognition of Professional Activities (Amendment) Regulations.

Furthermore specific regulations for the mutual Recognition of Qualifications of architects and legal professionals also entered into force as from 1st May 2004; while the Health Care Professions Act provides a unified law regulating these professions and extending their access to citizens of the other EU member states. The Psychology Profession Act similarly regulates this sector of this profession

Professional prohibitions and the conditions of access to certain professions

Legislative initiatives, national case law and practices of national authorities

In general there are few restrictions left that serve as active prohibitions to the access of certain professions. One such restriction is the requirement that any person intending to enter the legal profession must be competent in the Maltese language.

The prohibition of any form of discrimination in the access to employment

Legislative initiatives, national case law and practices of national authorities

The *Equality for Men and Women Act*⁵⁰ and *Equal Opportunities (Persons With Disability) Act*,⁵¹ prohibit discrimination on the basis of gender and disability in employment issues. Sections 26 to 32 of the *Employment and Industrial Relations Act*⁵² provide a general protection against discrimination in employment.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

Asylum seekers require the express consent of the Minister responsible for immigration in order to seek any form of employment or carry out any business.

Access to employment in public administration (including for non nationals)

Legislative initiatives, national case law and practices of national authorities

The public administration constitutes one of the largest employers in Maltese society. The Constitution, while prohibiting discrimination expressly allows the public sector to take account of a person's citizenship when processing an application for employment in the public administration. However with Malta's entry into the EU this restriction has been restricted so that all qualifying EU citizens may be employed in the public administration.

⁵⁰ The Equality for Men and Women act 2003, The Laws of Malta Chap 456.

⁵¹ The Equal Opportunities (Persons With Disability) Act 2000, The Laws of Malta Chap 413.

⁵² Chap 452

Freedom to choose an occupation*Legislative initiatives, national case law and practices of national authorities*

In general there is complete freedom to choose one's occupation. The possibility exists however in professional sectors for the State to restrict the number of persons entering a particular profession in any one year. A power that has rarely been used except in the case of medical professions.

Article 16. Freedom to conduct a businessFreedom to conduct a business*Legislative initiatives, national case law and practices of national authorities*

The principle that the State of Malta should encourage private economic enterprise is enshrined in the declaration of principles found in the Maltese Constitution. With Malta's entry into the EU this freedom to conduct business has been extended to all EU companies. However the conduct of business remains subject to compliance with National Legislation such as the Companies Act⁵³, the Business Promotion Act and the Competition Act.

The freedom to conduct business is not unlimited, and remains subject to restrictions imposed as a result of social constraints. Thus for example the number of pharmacies and petrol stations is restricted to maintain a specific ratio between potential customers and the business. However it should be noted that these restrictions are imposed without any distinction being made as to the nationality of the company.

On the other hand the Business Promotion Act does provide for specific benefits to be provided to small enterprises that have been constituted under Maltese Law, though the effect of this derogation is muted since foreign citizens can also establish a company under Maltese Law. Furthermore the provision of operating aid under this act is allowed by under a derogation from the *acquis* set to expire by the end of 2008.

Imposition of certain standards, for instance standards restricting the awardance of public contracts (ethical, social, environmental criteria)

With entry to the EU, Malta's public procurement act has been updated to be fully in line with EU regulations. Except where the value of the procurement is minimal, contracts will generally be awarded by a tendering procedure. No discrimination is allowed on the basis of nationality of the company in this procedure, however even under EU law the call for tender might specifically require that specific ethical, social and environmental criteria be met in the performance of the contract by companies submitting their proposals. Though in general the focus of the award of tenders tends to be on the economical value.

The Public Contracts Regulations⁵⁴ further requires that, in accordance to EU regulations, tenders valued above the EU thresholds are given the required EU notice.

⁵³ Chapter 386 of the Laws of Malta

⁵⁴ 174.04

Article 17. Right to property

The right to property and the restrictions to this right

Legislative initiatives, national case law and practices of national authorities

The right to property is protected both under the Constitution and through the application in law of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The matter has already been amply commented upon in the report for 2003 and there is no need for much further comment here. The position is still the same as obtained in 2003.

Public expropriations and compensation

Legislative initiatives, national case law and practices of national authorities

Cases of public expropriation still suffer from the fact that compensation in many cases is long over due. It is true that in the light of amendments to the Land Acquisition (Public Purposes) Ordinance⁵⁵ it is now no longer permissible for the Government to expropriate property without proceeding to deposit the compensation due to the owner of that property. The case of delay in the payment of compensation due therefore affects mainly expropriations which have taken place in the past and not those which may be occurring now.

A further point has to be made with respect to the control and termination of leases. Leases entered into since June 1995 are completely uncontrolled but leases entered into before that date are heavily controlled. Depending upon the category of the letting the rent in question may be either totally frozen or allowed to be incremented only in respect of the cost of living increases. Termination of the lease and repossession is extremely difficult. There are at present a number of cases pending in the Maltese law courts questioning the validity of such arrangements at law, but the matter has as yet not been definitely decided.

Reasons for concern

The position regarding old expropriations as well as the state of the rent laws in relation to properties tenanted prior to 1995 continues to be of some concern.

Article 18. Right to asylum

Asylum proceedings

Legislative initiatives, national case law and practices of national authorities

With respect to the right to asylum Malta recognizes the right to seek asylum and regulates it in the Refugees Act. The asylum seeker may apply for asylum and his application will be reviewed by independent authorities with the possibility of an appeal to the Refugees Appeals Board. It is equally possible for a person to apply for a refugee status and to appeal from any decision in that respect to the same Board. The matter has already been amply considered in an earlier part of this report and there is no need to repeat the position here.

⁵⁵ Cap. 88 of the Laws of Malta.

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

The status of refugee is recognized under Maltese law under the Refugees Act. The law provides both a procedure to seek refugee status as well as the possibility of appeal and review by the Refugees Appeals Board.

Article 19. Protection in the event of removal, expulsion or extradition

Collective expulsions

Legislative initiatives, national case law and practices of national authorities

By an amendment to the European Convention Act Malta has enacted into Maltese law article 4 to the Fourth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This provides that the collective expulsion of aliens is prohibited. Indeed each and every case of each individual prohibited immigrant must be considered separately and individually.

Prohibition of removals of foreigners to countries where they face a real and serious risk of being killed or being subjected to torture or to cruel, inhuman and degrading treatments.

Legislative initiatives, national case law and practices of national authorities

Under the Refugees Act it is prohibited to remove or return a prohibited immigrant to a country which is not a safe country. Problems had arisen in Malta in respect to the return of some Eritreans to their country of origin leading Amnesty International to comment on the matter. This has already been commented upon earlier on in this report. In terms of the Act a "safe country of origin" means a country of which an applicant is a national or citizen or, if he is not a national or citizen thereof, in

which he has a right of residence and which, in general terms, is considered as presenting no serious risk of persecution on the basis that a person seeking asylum will be treated in accordance with the following principles in that country:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular group or political opinion; and
 (b) the principle of non-*refoulement* in accordance with the Convention is respected; and
 (c) the prohibition on removal in breach of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected; and

(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;

while a "safe third country" means a country of which the applicant is not a national or citizen and where -

(a) the life or freedom of the applicant would not be threatened within the meaning of Article 33 of the Convention; and

(b) the applicant had resided for a meaningful period of time prior to his entry into Malta; and

(c) the applicant would not be exposed to torture or inhuman or degrading treatment, and would be treated in accordance with basic human rights standards; and

(d) the applicant had either already been granted protection or has had an opportunity, at the border or within the territory of that country, to make contact with that country's authorities in order to seek their protection, before applying for asylum in Malta, or where there is clear evidence of his admissibility to that country; and

(e) the applicant is afforded effective protection against *refoulement* within the meaning of the Convention.

Legal remedies and procedural guarantees regarding the removal of foreigners

Legislative initiatives, national case law and practices of national authorities

By the same amendment to the European Convention Act above mentioned Malta has also incorporated into its law Article 1 of the Seventh Protocol to the Convention. This provides procedural safeguards relating to the expulsion of aliens. His rights are that any decision in respect of his expulsion must be reached in accordance with the law, must allow him to submit his reasons against expulsion, must provide for review of his case, and must provide for legal representation. The Refugees Act and the Immigration Act provides for all this, allowing to the alien the possibility of appeals in front of duly constituted tribunals, and in the end also allowing him, in the appropriate circumstances, to bring a case for a human rights remedy if he feels that his fundamental human rights have in any manner been breached or violated.

CHAPTER III : EQUALITY

Article 20. Equality before the law

Equality before the law

Legislative initiatives, national case law and practices of national authorities

The principle of equality before the law is a constitutional principle within the national order as part of the democratic principles upon which the State is organized. As such it is recognized and protected under the Constitution in Section 45. It is also recognized through the enactment into Maltese law of Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 21. Non-discrimination

Protection against discrimination

Legislative initiatives, national case law and practices of national authorities

These matters have been fully reported upon in the report for 2003. There has, during 2004, been no development in Malta which in any manner changes the situation from that obtaining in respect of discrimination.

Fight against incitement to racial, ethnic, national or religious discrimination

Legislative initiatives, national case law and practices of national authorities

There has been no legislation in this respect during 2004. There have been in public debates an exhibition on the part of certain fringe political movements xenophobic tendencies exhibited. It is appropriate that these have garnered rather slight public support in the European elections.

Remedies available to the victims of discrimination

Legislative initiatives, national case law and practices of national authorities

Victims of discrimination would have remedies both under the ordinary law as well as under the Constitution. The particular remedy available would depend on the area in which the discrimination is perpetrated. In general and failing a specific remedy, the individual suffering the remedy would have a right to a full remedy and compensation through a human rights action in front of the First Hall of the Civil Court, subject to an appeal to the Constitutional Court.

Protection of Gypsies / Roms

Legislative initiatives, national case law and practices of national authorities

There are no gypsies/Roms in Malta and therefore there is no comment to be made in this respect.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

There have been no legislative developments since the report for 2003. Freedom of conscience and religion is protected under the law and the Constitution of Malta. There has been no interference with the practice of religion by any minority. Everybody is free to practice his own religion in Malta. Although the Roman Catholic Church is the state recognized religion in Malta, this does not in effect mean that other religions are in any manner proscribed, disadvantaged or interfered with in so far as the practice of their religion is concerned.

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

There are no linguistic minorities in Malta. People speak Maltese as the national language. There is no other distinct language which can be said to constitute a linguistic minority.

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

Discrimination on the basis of gender is prohibited both under the Constitution and under ordinary law. Women in Malta have come to actively participate in the social and political life of the country. At University the majority of students are female, and they are equally well represented across the whole spectrum of available courses. A Commissioner to ensure Gender Equality has been appointed by the Government, and the task of the Commissioner is to see that equal opportunity is available to all, irrespective of gender. Women are represented on most levels of Government, including the House of Representatives and the Cabinet.

Gender discrimination in the access to goods and services

Legislative initiatives, national case law and practices of national authorities

Again gender discrimination in the access to goods and services is prohibited.

Remedies available to the victim of gender discrimination (burden of the proof, level of penalties, standing of organisations to file suits)

Legislative initiatives, national case law and practices of national authorities

Victims of gender discrimination can resort to a number of remedies available under Maltese law. They can apply to the Commissioner responsible for these matters, or they can apply to the Ombudsman or they could even bring a human rights action in front of the First Hall of the Civil Court. In cases of employment specific remedies are available to the discriminated employee under the Employment and Industrial Relations Act.

Participation of women in political life

Legislative initiatives, national case law and practices of national authorities

Women in Malta are politically active. There are organizations of women present in both major political parties, and women participate actively in the activities of the political parties.

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

In general 2004 has seen a consolidation of the previous advances made in children's rights with few actual legal initiatives being taken.

Positive aspects

As regards the possibility of the child to be heard in person, it should be noted that in all judicial proceedings a child *may* give evidence if the Court is convinced that the child understands the gravity and the importance of being truthful when providing such evidence, and for these purposes the child may give evidence in a more comfortable location for the child. The child's rights are greater within the family court where the child has a right to be heard and an advocate specially appointed for that purpose represents his interests. Beyond family matters however the child's right of action is greatly restricted.

Possibility for the child to be heard in school disciplinary proceedings

Legislative initiatives, national case law and practices of national authorities

Although no legislation expressly provides for children to have a right to be heard in discipline matters, in as much as these tend to be equated with administrative decisions a school would have to show that its decision was reasonable, a fact that will generally only be established after the child, or his parents' view is taken into account. Furthermore under the policy guidelines on behaviour and discipline in Schools issued by the Government under the Education Act,⁵⁶ children may only be suspended from school after their parents or guardians have been informed; while they may only be expelled as a last resort, if all efforts of rehabilitation by the Pastoral Care Team have failed and with consultation of the National Board for School Behaviour.

Alternatives to the removal from the family

Legislative initiatives, national case law and practices of national authorities

No new legislation was adopted in 2004 as regards this matter. However there are a number of organisations aimed at the protection of children. In particular removal of children from the family is seen as a last resort to be taken only if all other attempts at protecting the child, such as the threat of legal action against the parents, fails or in emergency situations.

⁵⁶ Chap 327

Juvenile offenders*Legislative initiatives, national case law and practices of national authorities*

The children and young persons (Care Orders) Act⁵⁷ expressly allows for young offenders (ie under sixteen years of age) to be placed under the care of the Minister for Social Welfare. Rather than sentence the child to imprisonment or any other punishment allowed by law.

Article 25. The rights of the elderlyParticipation of the elderly to the public, social and cultural life*Legislative initiatives, national case law and practices of national authorities*

There are no specific laws regulating the rights of the elderly. However the Ministry of Social Policy carries out a number of services for the elderly. These services are enshrined by a miscellany of regulations and laws and include an age allowance, an age pension, a carer's pension, a contributory retirement pension, the operation of day centres and old people's homes, the provision of medical and health services, the provision of house help services and of meals and also the provision of financial assistance for adaptation works in their homes. Once retired from employment, all elderly persons have a right to receive a retirement pension based on the social security payments effected during their working life. An elderly person may remain in part-time employment without risk to his pension provided that he does not work for a longer period than the amount stipulated by law.

Reasons for concern

One cause for concern in the long term is that the Maltese government is following other governments in cutting its costs first by reducing the services or rights of the elderly, especially as regards the pension for future pensioners, which is slowly being reduced to an ever smaller proportion of a person's real income

The possibility for the elderly to stay in their usual life environment*Legislative initiatives, national case law and practices of national authorities*

Again no legislative initiatives, however a number of services are provided by the ministry and various social organisations, such as meal-on-wheels service providing elderly people with an inability to cook with a hot meal against the payment of a minimal fee; a special card providing for discounts and other benefits such as the ability to avoid queues in health centres; as well as both a Handyman and a Home Care Help service which aim at allowing an elderly person to live as independently as possible through the provision of various basic and essential services.

Specific measures of protection for the elderly (ill-treatment and isolation)*Legislative initiatives, national case law and practices of national authorities*

No specific legislation protects the elderly from ill-treatment and isolation in a manner differentiated from other age groups. However and yet again, various charities together with the Ministry for Family and Social Solidarity do try to protect them. The appointment of a National Council for the Elderly also aids in protecting their rights.

⁵⁷ Section 285

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

The *Equal Opportunities (Persons With Disability) Act*,⁵⁸ prohibits the discrimination against persons with a disability not only in the work place but in all aspects of social life, securing that in all matters, and so far as reasonable, persons should be treated equally regardless of whether they suffer a disability or not. This Act was already examined in the 2003 report and no amendments have been made to it in the past year.

Professional integration of persons with disabilities: positive actions and employment quotas

Legislative initiatives, national case law and practices of national authorities

The *Equal Opportunities (Persons With Disability) Act*,⁵⁹ allows for various positive actions to be taken in favour of the disabled, however it does not make any of these actions obligatory. At the same time the *Persons With Disability (Employment) Act*⁶⁰ does allow for the provision of quotas in certain situations.

Reasonable accommodations

Legislative initiatives, national case law and practices of national authorities

Similar services as are provided to the elderly are also provided to the disabled.

⁵⁸ The Equal Opportunities (Persons With Disability) Act 2000, The Laws of Malta Chap 413.

⁵⁹ The Equal Opportunities (Persons With Disability) Act 2000, The Laws of Malta Chap 413.

⁶⁰ Chap 210

CHAPTER IV : SOLIDARITY

Article 27. Workers' right to information and consultation within the undertaking

No significant development to be reported

Article 28. Right of collective bargaining and action

Social dialogue

Legislative initiatives, national case law and practices of national authorities

Under the Employment and Industrial Relations Act it is possible for employees to organize themselves into trade unions and to enter into collective bargaining agreements with their employers. The Act also regulates the recognition by the employer of the Union representing the workers. This is determined in the sense that recognition becomes automatic if a union has more than the majority of the employees at an undertaking registered with it. If this is not the case or it is impossible to determine the union representing the employees the matter will be settled through a ballot among the employees concerned. Any dispute in relation to union representation will be considered as an industrial dispute and may be referred to the Industrial Tribunal for settlement.

The right of collective action (right to strike) and the freedom of enterprise or the right to property

Legislative initiatives, national case law and practices of national authorities

The Employment and Industrial Relations Act recognizes the right to strike in the event of industrial disputes. It further more protects those resorting to industrial action by a set of immunities.

The right of collective action (right to strike) and the continuity of public services

Legislative initiatives, national case law and practices of national authorities

The law provides the Government with the necessary tools to ensure the continuity of public services in the event of strike action. Such tools however must not be tantamount to a denial of the possibility of strike action itself.

Article 29. Right of access to placement services

There is nothing further to report in addition to the report for 2003.

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

Legislative initiatives, national case law and practices of national authorities

Under the Employment and Industrial Relations Act any employee unfairly dismissed may seek a remedy in front of the Industrial Tribunal with the possibility of an appeal on a point of law to the Court of Appeal. Reasons for dismissal may not be the membership of an employee

to a trade union, or the fact that a person marries or is pregnant with child. The law does not specifically define what would be a just cause for dismissal; it leaves the definition of such matters to the prudential assessment of the competent tribunal.

Compensation due in the event of an unjustified dismissal

Legislative initiatives, national case law and practices of national authorities

In the event of unjustified dismissal the employee is entitled either to re-instatement, or. Where this is not possible or where the employee is employed in a managerial position or a position of trust, to monetary compensation for the loss suffered. This usually takes into consideration the ability of the employee to find alternative employment after dismissal.

Remedies against the decision of dismissal

Legislative initiatives, national case law and practices of national authorities

In the event of a decision of dismissal the employee would have a right to bring a case in front of the Industrial Tribunal. If the employee is a civil servant in the employment of the Government then dismissal will only take place after proceedings against him in front of the Public Service Commission.

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

The matter is regulated by the Occupational Health and Safety Authority Act of 2002⁶¹. There have been no further developments in Malta during 2004 in this area.

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

The matter is regulated by the Employment and Industrial Relations Act. There has been no further development in this area during 2004.

Working time

Legislative initiatives, national case law and practices of national authorities

Working time is regulated through several regulations made under the Employment and Industrial Relations Act. There has been no development in this respect during 2004.

Article 32. Prohibition of child labour and protection of young people at work

The position is as stated in the report for 2003. There have been no developments worthy of note during the year 2004.

⁶¹ Cap. 424 of the Laws of Malta.

Article 33. Family and professional life

Again this has been fully reported upon for the year 2003. No developments have taken place in the year 2004.

Article 34. Social security and social assistance

There is nothing further to report in addition to the report for 2003.

Article 35. Health care

There is nothing further to report in addition to the report for 2003.

Article 36. Access to services of general economic interest

There is nothing further to report in addition to the report for 2003.

Article 37. Environmental protection

There is nothing further to report in addition to the report for 2003.

Article 38. Consumer protection

There is nothing further to report in addition to the report for 2003.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

Right to vote and to stand as a candidate at elections to the European Parliament

Legislative initiatives, national case law and practices of national authorities

It has been possible during the 2004 elections for the European Parliament for non Maltese nationals to participate fully in the electoral process. The high turn-out in the European elections registered in Malta is ample evidence that the electoral process ensures a high level of participation throughout.

Article 40. Right to vote and to stand as a candidate at municipal elections

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives, national case law and practices of national authorities

EU citizens non nationals of Malta have the right to vote and to stand as candidates in Malta in the European elections if they are resident in Malta. They do not have the right to vote or stand as candidates for national elections; but they have the right to vote and stand as candidates in municipality or local councils elections if they are resident within the territory of that local council.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residenceRight to social assistance for the persons who have exercised their freedom of movement

Legislative initiatives, national case law and practices of national authorities

Citizens of the EU who are in Malta as residents after having exercised their freedom of movement have access to social assistance like other residents.

Prohibition to enter certain zones or portions of the national territory during particular events

Legislative initiatives, national case law and practices of national authorities

There is no legislation containing such prohibitions.

Article 46. Diplomatic and consular protection

There is nothing further to report in addition to the report for 2003.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

Interim judicial protection

Legislative initiatives, national case law and practices of national authorities

It is possible for an aggrieved individual to apply for the issue of a prohibitory injunction in order to protect himself against the action of the State, where it is feared such action will irretrievably prejudice his rights.

Liability of public authorities and immunities of jurisdiction or execution

Legislative initiatives, national case law and practices of national authorities

Public authority in Malta will be liability in damages like any other person. It does not enjoy at law any immunity from liability or exemption from the jurisdiction of the ordinary courts of law.

Independence and impartiality

Legislative initiatives, national case law and practices of national authorities

This has been reported upon in the report for 2003. It is relevant to point out that during 2004 the European Court of Human Rights has held in the case of the San Leonardo Band Club that where a person applies for a retrial it is a violation of that person's right to an impartial hearing if the retrial is heard in front of the same judges who had awarded the original judgement against which the complaint is made. It is pertinent to point out as well that in a subsequent case the Constitutional Court⁶² held that the hearing of a retrial by the same judges who had heard and delivered the judgement complained of was in violation of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasonable delay in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

This remains a problem under the Maltese system of law. There have been a number of cases where the Constitutional Court has held that there was an unreasonable delay in the decision of the case. The matter has already been commented upon at length for the year 2003. It is also proper to point out that the Government has enacted legislation amending the Code of Organization and Civil Procedure in an attempt to expedite proceedings. This requires great care as a speedy decision must not be obtained at all costs, even at the cost of the substantive fairness of the proceedings themselves.

⁶² Arcidiacono Limited vs Avukat Generali decided by the Constitutional Court on the 29th October 2004.

Article 48. Presumption of innocence and rights of defenceThe right to freely choose one's defence counsel

Legislative initiatives, national case law and practices of national authorities

This is fully safeguarded under Maltese law and there are no limitations on the counsel of a person's choice.

The right to an interpreter

Legislative initiatives, national case law and practices of national authorities

This is not only legally but constitutionally guaranteed.

Article 49. Principles of legality and proportionality of criminal offences and penalties

There is nothing further to report in addition to the report for 2003.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offenceRight not to be tried or punished twice

Legislative initiatives, national case law and practices of national authorities

It is perhaps relevant to point out in addition to what was stated in the report for 2003 that by an amendment to the European Convention Act article 4 of the Seventh Protocol to the Convention has now been incorporated into Maltese law. The article in question prohibits a person being tried or punished twice for the same offence.

APPENDIX: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000)

CHAPTER I: DIGNITY

Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - c) the prohibition on making the human body and its parts as such a source of financial gain,
 - d) the prohibition of the reproductive cloning of human beings.

Article 4: Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9: Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15: Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19: Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III: EQUALITY**Article 20: Equality before the law**

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views

freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV : SOLIDARITY

Article 27: Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient

resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

Article 39: Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40: Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

a) the right of every person to be heard, before any individual measure which would affect him or her

adversely is taken;

b) the right of every person to have access to his or her file, while respecting the legitimate interests of

confidentiality and of professional and business secrecy;

c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43: Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered

office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI : JUSTICE

Article 47 : Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49: Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission

which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission

which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under

the conditions and within the limits defined by those Treaties.

Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.