

**Conference of European Constitutional Courts
XIIth Congress**

*The relations between the Constitutional Courts
and the other national courts,
including the interference in this area
of the action of the European courts*

**Report of
the Constitutional Court
of the Republic of Malta**

I. The Constitutional Courts, the other courts and the constitutionality review

A. The judicial organization of the State

1. The judicial system

1. Please, give a brief presentation, using diagrams if necessary, of the different courts that exist in your State and the organization of their powers. This concerns the ordinary courts as well as the administrative or other courts, the courts of the Federal State as well as the courts of the federated States.

The Maltese Courts:

The Constitutional Court

The Constitutional Court was established in 1964. The jurisdiction of the Constitutional Court is appellate in cases involving violations of human rights, interpretation of the Constitution and invalidity of laws. It has original jurisdiction to decide questions as to membership of the House of Representatives and any reference made to it relating to voting for election of members of the House of Representatives.

The Court of Appeal

This Court, composed of three judges, hears appeals from the First Hall of the Civil Court; the same Court composed of one judge hears appeals from the Court of Magistrates in its civil jurisdiction. An appeal also lies to the Court of Appeal from decisions of a number of special tribunals.

The Criminal Court

In this Court the judge sits with a jury of nine persons to try, on indictment, offenses exceeding the competence of the Court of Magistrates as a Court of Criminal Judicature. This court may in certain cases sit without a jury.

The Court of Criminal Appeal

This Court, consisting of three judges, hears appeals from persons convicted before the Criminal Court. A person convicted on indictment may appeal against his conviction in all cases or against the sentence passed on his conviction. An appeal can never result in a sentence of greater severity. An accused person may also appeal against a verdict of not guilty on the ground of insanity. In certain cases the Court may also order a re-trial. The Attorney General, who is the prosecutor before all the Superior Courts, cannot appeal from a verdict of

acquittal or against the sentence passed except in those cases provided by law. The Court also hears appeals, from decisions by the Criminal Court, made by the accused and/or by the Attorney General from decisions on preliminary pleas and from decisions on pleas regarding the admissibility of evidence.

This Court, when chaired by one judge, hears appeals from judgments delivered by the Court of Magistrates as a Court of Criminal Judicature. In this case the person convicted can also appeal in all cases; whether against conviction or against the sentence passed. The Attorney General's right of appeal from these judgments is limited in most cases to appeals on points of law, though increasingly, particular laws are conferring a general right of appeal to the Attorney General in connection with some offenses.

The Civil Court: First Hall and Second Hall

The First Hall takes cognizance of all causes of a civil and commercial nature beyond the jurisdiction of the Court of Magistrates. It is of particular importance that the First Hall, in the first instance, takes cognizance of all applications for redress in respect of alleged violations of constitutionally protected human rights and of fundamental freedoms protected by the European Convention of Human Rights. This convention was adopted as part of the Laws of Malta by Act XIV of 1987.

The Second Hall is a Court of voluntary jurisdiction in matters of a civil nature, such as the tutorship of minors, adoption, the interdiction and incapacitation of persons of unsound mind, the opening of successions, and the confirmation of testamentary executors.

The Courts of Magistrates

These Courts, which are always composed of a single Magistrate, exercise both civil and criminal jurisdiction.

The Court of Magistrates for Malta, in the civil field, is a court of first instance, in respect of claims which do not exceed five thousand Maltese Liri (Lm5,000). Money claims up to the value of one thousand five hundred Maltese liri (Lm1500) are dealt with by the Small Claims Tribunal

In the criminal field, the Court has a twofold jurisdiction, namely as a Court of Criminal Judicature for the trial of offenses falling within its jurisdiction, and as a Court of Inquiry in respect of offenses falling within the jurisdiction of the Criminal Court. In the first case, the Court is competent to try all offenses punishable with up to six months imprisonment. In the second case, it conducts the preliminary inquiry in respect of indictable offences and transmits the relative record to the Attorney General. If there is no objection from the accused, the Attorney General may remit for decision by the Court of Magistrates cases punishable with up to ten years imprisonment.

The Gozo Courts

The Court of Magistrates for Gozo in the civil field, has a two-fold jurisdiction, an inferior jurisdiction comparable to that exercised by its counterpart Court in Malta, and a superior jurisdiction, both civil and commercial, in respect of causes which in Malta are cognizable by the First Hall of the Civil Court.

Within the limits of its territorial jurisdiction, this Court has also the powers of a Court of voluntary jurisdiction.

Small Claims Tribunal

The Small Claims Tribunal has been set up recently. The relative Act provides for the appointment of an adjudicator who decides these cases on principles of equity and law. Proceedings are summary and there is little formality in the proceedings. The intention is to have such claims dealt with speedily. Sittings of this Tribunal are held both in Malta and in Gozo.

Commissioners of Justice

A small number of infringements, such as minor traffic offences (parking in a non-parking area, etc.), illegal disposal of litter, non-compliance with the Education Act etc., have been depenalised and are heard by Commissioners of Justice. The Commissioners are selected from among persons holding a law degree and are given a three year appointment. As the offences have been depenalized the cases may be decided even in the absence of the accused.

The Juvenile Court

The Juvenile Court Ordinance (Cap. 71) was repealed by Act XXIV of 1980. The Juvenile Court is now provided for by Act XXIV of 1980 as subsequently amended by Act XI of 1985. It consists of a Magistrate sitting in a place different from that of the ordinary Courts of criminal jurisdiction and hearing charges against, or other proceedings relating to persons under the age of sixteen years. In the proceedings before it, the Court is assisted by two persons, one of whom is a woman, whom the Court may consult in any case for its decision, such consultation to take place in open Court. The Court is not, however, bound to abide by the opinion of the assistants.

2. Constitutional Court

2. What is the place of the Constitutional Court in the judicial organization of the State? If it is part of the judiciary, what is its status within the judiciary?

B. The respective jurisdictions of the Constitutional Court and the other courts in the area of constitutionality review.

1. Review of laws and other acts

§ 1. Types of review

3. What acts (of domestic law and international law) are reviewed by the Constitutional Court in relation to the higher standards that are the Constitution, the principle of constitutional value and the provisions of international law?

4. Is this competence exclusive? If not, which are the competent courts in this area? How about the other acts and decisions?

5. Is the review carried out by the Constitutional Court a prior or subsequent review?

6. Is the review carried out by the Constitutional Court an abstract or a concrete review?

The Constitutional Court

The Constitutional Court is the highest court in the Maltese hierarchical judicial system. It is essentially part of the judiciary and is made up of three judges.

Nature of Constitutional Court

Of its nature it is an appellate court.

- It hears and decides appeals from decisions of the First Hall of the Civil Court on applications for redress in respect of alleged violations of the human rights protected by the Constitution and the European Convention on Human Rights.

- It considers appeals from decisions of any court of original jurisdiction on questions as to the interpretation of the Constitution and the validity of laws. (A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions on the protection of Fundamental Rights and Freedoms of the Individual appertains to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action.)

- It exercises an ordinary jurisdiction in determining questions as to whether a member of the House of Representatives has been validly elected, or whether any member is bound by law to cease from performing his duties as a member of the House.

- It has jurisdiction in deciding on the validity or otherwise of a general election which has been suspended by the Electoral Commission, for example where it is believed that illicit practices have occurred.

The Constitutional Court is the guardian of the Constitution.

The procedural mechanism is regulated by the Court Practice and Procedure Rules of 1993.

The Constitution provides for the automatic setting up of the Constitutional Court so that it is able to function at all times. Article 95(5) provides that if for any reason the Constitutional Court is not constituted according to law, the three most senior judges, including where possible the Chief Justice, would automatically assume the powers and jurisdiction of the Constitutional Court without the need for any further formality or appointment.

European Convention on Human Rights

In 1987 Malta adopted the European Convention on Human Rights as part of its laws and Maltese citizens have the right to have recourse to the European Court of Human Rights. The European Convention Act Chapter 319 makes provision for the substantive Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms to be enforceable as, part of the Law of Malta.

Therefore where any ordinary law is inconsistent with the Human Rights and Fundamental Freedoms, the said Human Rights and Fundamental Freedoms shall prevail, and such ordinary law, shall, to the extent of the inconsistency, be void.

The Human Rights and Fundamental Freedoms shall be enforceable subject to the Declaration and Reservations made by the Government of Malta.

The Constitutional Court shall, in addition to the jurisdiction conferred on it by section 95 of the Constitution (as a Superior Court), have jurisdiction to hear and determine all appeals under this Act and exercise all such powers as are conferred on it by this Act.

Procedure for enforcement of Human Rights and Fundamental Freedoms under the Constitution and the European Convention for Human Rights.

Any person who alleges that any of the Human Rights and Fundamental Freedoms, has been, is being or is likely to be contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.

The Civil Court, First Hall, shall have original jurisdiction to hear and determine any such application and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, of the Human Rights and Fundamental Freedoms to the enjoyment of which the person concerned is entitled:

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

The Constitution does not require that the remedies available under ordinary legislation necessarily have to be exhausted in order for the court to exercise its constitutional jurisdiction. (See "J.Arena nomine vs Commissioner of Police et" - 16.11.1998.)

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

Enforcement of the decisions of the European Court of Human Rights.

Any judgment of the European Court of Human Rights to which a declaration made by the Government of Malta in accordance with Article 46 of the Convention applies, may be enforced by the Constitutional Court in Malta, in the same manner as judgments delivered by that court and enforceable by it, upon an application filed in the Constitutional Court and served on the Attorney General containing a demand that the enforcement of such judgment be ordered.

Enforcement of certain judgments of the Constitutional Court

Article 242 of the Code of Organization and Civil Procedure (Chapter 12 of the laws of Malta), stipulates that when a court, by a judgment which has become *res judicata*, declares any provision of any law to run counter to any provisions of the Constitution of Malta or to any human right or fundamental freedom or to be *ultra vires*, the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives, who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House.

The decisions of the Constitutional Court or of the Court of First Instance declaring a legislative act or regulation as unconstitutional do not automatically suspend the same legislative act or regulation. They merely declare these as “unconstitutional” and this fact is noted in the relative official text of the same legislative act or regulation.

§ 2. Referral to the Constitutional Court

a. Types of referral

7. How can the Constitutional Court be accessed (action for annulment, preliminary question, constitutional appeal, etc.) ? How many cases there have been for each type of referral?

b. Actions for annulment

8. Does direct recourse exist to the Constitutional Court against statutes? And against other regulations and acts?

9. Who can bring such actions and within what time limit?

10. Can the Constitutional Court suspend statutes or other regulations and acts?

c. Preliminary issues – plea of unconstitutionality

11. Which courts can refer cases to the Constitutional Court? If any court can put a preliminary question, does that mean that a broad or a restrictive interpretation is given to the notion of ‘court’?

12. Are the courts obliged to put the question?

13. Is it possible to oppose, by a procedure of objection, opposition or recourse, the submission of all or part of a case to the Constitutional Court by a decision of referral? If so, who can initiate this procedure and how does it proceed? What are the consequences?

14. What is the procedure for referral to the Constitutional Court? What is the role of the parties in drawing up the preliminary question? Can the preliminary question be raised ex officio? In that case, are the discussions on the question re-opened?

15. Do the courts that put the question rule on the constitutionality or unconstitutionality of the regulation at issue?

If any proceedings in any court other than the Civil Court, First Hall, or the Constitutional Court any question arises as to the contravention of any of the Human Rights and Fundamental Freedoms, that court shall refer the question to the Civil Court, First Hall, unless in its opinion the raising of the question is merely frivolous or vexatious.

The Court would be bound to order such a referral upon the satisfaction of the following conditions:

- proceedings are pending before a court
- such proceedings are not pending before the First Hall of the Civil Court or the Constitutional Court;
- the issue must be raised during the proceedings;
- the issue must refer to an alleged breach of any one of the provisions of Articles 33 to 45 of the Constitution which regulate the fundamental freedoms and rights of individuals; and
- the raising of the issue must not be frivolous or vexatious.

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

The decision in the Constitutional proceedings will be binding on the court which referred the question, be it a court of first or second instance.

Screening

16. Is there a screening procedure, which allows the Constitutional Court to limit the number of cases or to speed the hearing of those cases (nonsuits, quick reply, demurrer, evident unfoundedness, identity or similarity of questions which the Constitutional Court has already answered? What is the proportion of case screen in this way?

Our law does not provide for a screening procedure,

Scope of referral

17. *What is the import of the considerations of unconstitutionality given by the court that puts the question (court a quo)? Must the Constitutional Court take these considerations into account or can it ignore them? Can it rise, ex officio or at the request of the parties, the arguments of unconstitutionality not envisaged by the court a quo or is it restricted by the decision of referral? Can the Constitutional Court review regulations not intended by the preliminary question yet linked thereto?*

The Constitutional Court is not bound by any considerations made by the court which is referring the question. One may say that the Constitutional Court is limited to the question which has been referred to it.

18. *Are all aspects, both in law and in fact, of the action pending before the court a quo referred to the Constitutional Court?*

Yes.

19. *Can the Constitutional Court dismiss the question on the grounds that it is not useful to the settlement of the action brought before the court a quo?*

The Constitutional Court can declare that the question raised is frivolous or vexatious.

Interpretation of the question

20. *Can the Constitutional Court, reformulate the question in order to make it clearer and to define the constitutional debate better? If so, what use is made of this option?*

In certain cases the Constitutional Court has adopted a strict interpretation and dismissed references which contained mistakes or were not clear, and in others cases it gave a wider interpretation basing itself on the fact that references to the Constitutional Court should not be too formal or too rigid.

Interpretation of the reviewed regulation

21. *Must the Constitutional Court adhere to the interpretation of the reviewed regulation given by the court a quo?*

No

Jus superveniens

22. *Which is the impact of a legislative amendment to the challenged regulation subsequent to the decision of referral?*

The Constitutional Court is bound by the new legislation as long as this is constitutional.

Parties

23. *Can the parties before the court a quo or third parties (individuals, institutions, other courts etc.) participate (voluntarily or compulsory) in the procedure before the Constitutional Court? If so, in what way? How are they informed of the procedure before the Constitutional Court? Can one intervene before the Constitutional Court on the mere grounds of being a party before a court deciding on merits in an action similar to the one that led the court a quo to put the preliminary question?*

Third party intervention is possible.

24. *Is there a counsel for the defence? If so, in what form? Is there a counsel for the prosecution with the Constitutional Court?*

The parties to the case can be assisted by counsel. Generally the Advocate General and his office are counsel to Government institutions.

Points of law in the constitutional proceedings

25. *Does the withdrawal of the suit before the court a quo or the death of a party before the same court subsequent to the decision of referral have an impact on the progress of the constitutional action?*

Once the suit is withdrawn, the Constitutional action is terminated. If a party dies pending the court action, the heirs of that party can continue the action in their own name.

d. The constitutional appeal

Object of the constitutional appeal

26. *What is the object of the constitutional appeal? Against which act can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the Constitutional Court examine the fact of the case?*

In general the Constitutional Court is an appellate court. All parties to the proceedings before the court of first instance can appeal to the Constitutional Court.

Allowability of the appeal

27. *Who can refer cases to the Constitutional Court? How?*

28. *Is appeal to the Constitutional Court only possible once all other avenues of appeal have been tried?*

No.

Screening

29. *Is there a screening procedure, which allows the Constitutional Court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundedness, etc.)? What is the proportion of cases screened in this way?*

The law does not provide a screening procedure.

Parties

30. *Does the plaintiff participate in the procedure before the Constitutional Court? If so, in what form? Can or must certain public authorities intervene in the proceeding?*

The parties to the case can be assisted by counsel. Generally the Advocate General and his office are counsel to Government institutions.

31. *Is there a counsel for the defense? If so, in what form? Is there a counsel for the prosecution with the Constitutional Court?*

All parties can be assisted by counsel.

2. Settlement of conflicts between courts

32. *Is it the task of the Constitutional Court to circumscribe the respective jurisdictions of the other courts? If so, how does it proceed?*

No such option exists.

II. The relation between the Constitutional Court and other courts

A. The organic link

33. *What are the organic links between the Constitutional Court and the other national courts (conditions of admission, appointment procedure, etc.)?*

Reference of questions relating to matters which by law are dealt with by the Constitutional law.

B. The procedural link

34. Are there procedural links between the Constitutional Court and the court referring the case to it or against which the appeal was lodged (for example, a judge-to—judge meeting in order to clarify or refine the question)? If so, what use is made of this option?

No such option

C. The functional link

§ 1. The review and its effects

35. Do the rulings of the Constitutional Court always constitute a binding precedent for other courts?

There is no precedent in the Maltese juridical system. Obviously a previous judgment by the Constitutional Court carries a lot of weight.

36. What are the review methods of the Constitutional Court (annulment, dismissal, declaration of constitutionality, declaration of unconstitutionality, interpretative decisions, interpretation reserves, annulment of a judicial decision, establishment of deficiencies, establishment of limited validity, etc.)? If necessary, distinguish for the different types of referral (action for annulment, prejudicial question, constitutional appeal).

The Constitutional Court can award any remedy it deems fit.

37. What are the legal effects of the rulings of the Constitutional Court (ex nunc, ex tunc, erga omnes, inter partes etj.), individually, on the original action and on all actions before common law courts, on other regulations, administrative acts – statutory or individual – or judicial decisions, etc. (for example, is there a re-examination procedure)? Can the Constitutional Court limit or sustain the effects in time?

The decisions of the Constitutional Court bind the parties involved - inter parties. In the case of a pronouncement on the constitutionality of a legislative act the effects are erga omnes.

38. Is the authority of the rulings of the Constitutional Court always respected? Does it sometimes meet with opposition from institutions or courts? Do the other courts sometimes experience difficulties in implementing the rulings of the Constitutional Court?

The rulings of the Constitutional Court are usually respected and the other courts implement its rulings.

§ 2. Interpretation by the Constitutional Court

a. The case law of other courts accepted by the Constitutional Court in the exercise of its own jurisdiction

39. Does the Constitutional Court consider itself bound by the interpretations of the challenged act given by the Supreme Court or other courts (theory of living law, for example)? Can the Constitutional Court, however, give another interpretation?

The Constitutional Court is the highest court in the hierarchical system in Malta.

b. The effects of the interpretation of the Constitutional Court and the acceptance of the case law of the Constitutional Court by the other courts during the exercise of their own jurisdiction

40. Is the interpretation of the constitutional rules and the legislative rules given by the Constitutional Court binding on the other courts? What happens in case of non-adherence to the interpretation of the Constitutional Court?

The decision in the Constitutional proceedings will be binding on the court which referred the question.

41. Can the Constitutional Court declare that a rule is constitutional only in the exact interpretation given by it? Can this interpretation deviate from that of “living law”? If so, what use is made of this option?

No such option.

42. What are the effects for the other courts of a purely interpretative decision?

The effects are erga omnes.

III. The interference of the European Courts

A. The Constitutional Court and the other courts vis-à-vis the European Convention on the Human Rights and the case law of the European Court of Human Rights

43. Is the Constitutional Court bound by the case law of the European Court of Human Rights? If this case law is not binding, does it influence the course of action of the Constitutional Court?

The Constitutional Court is not bound by the case law of the European Court of Human Rights, however, as the European Convention is also part of our law, it will surly influence the course of the action of the Constitutional Court.

44. *Can the court base its decision on a provision of the European Convention and, in doing so, possibly deviate from the action of the Constitutional Court?*

Yes it can.

45. *Must a lawsuit have been brought before the Constitutional Court before an appeal can be made to the European Court of Human Rights (after having tried all internal avenues of appeal)?*

Yes.

B. The Constitutional Court and the other courts vis-à-vis the Court of Justice of the European Communities

46. *Is the Constitutional Court bound by the case law of the Court of Justice of the European Communities? If this case law is not binding, does it influence the course of action of the Constitutional Court?*

Malta is not yet a member of the European Union. However, decisions of the Court of Justice have persuasive authority.

47. *Has the Constitutional Court already referred, or could it refer, cases to the Court of Justice of the European Communities? What is the role of the Constitutional Court and the other courts in case of non-application of national regulations that are incompatible with Community law?*

See answer question 46.

48. *Do national courts have a choice between referring cases to the Constitutional Court and to the Court of Justice of the European Communities?*

See answer to question 46