

Malta

1. Discrimination in the family

a) Overarching legal framework for marriage

The overarching, legal framework for marriage is codified within the Marriage Act (1975). A marriage may only be contracted between two individuals whom have each obtained at least 16 years of age (s. 3(1)). A marriage may be contracted either by means of a civil ceremony or a religious one in accordance with the traditions of that religion (s. 11). The consent of both individuals is required for the contraction of a marriage ceremony. A marriage in which the consent of the individual has been forced or has experienced a deprivation of choice is considered null and any person responsible for coercion of an individual into marriage shall be held criminally liable for a sentence of imprisonment for a minimum of 3 to 5 years (Criminal Code of Malta, s. 251G). Registration of the marriage is not required for the validity of the marriage if the requirements outlined by the Marriage Act are respected (s. 12).

b) Child marriage

The legal age of marriage for both women and men in Malta is 16 years of age (Marriage Act of Malta, s. 3(1)). If an individual between the ages of 16 and 18 would like to marry, one requires the consent of a parent or a legal guardian before he or she may proceed with a marriage contract (s. 3(2)). There are no legal exemptions to the present age requirement that would allow an individual under the age of 16 to marry with the consent of an authority such a parent, guardian, judge, or a Maltese court. Any marriage of an individual under the age of 16 years of age is considered void. There is no evidence to suggest that, despite these exceptions, child marriage is of serious concern in Malta.

Bridge kidnapping is also criminalised under article 199(1) of the Criminal Code and carries a sentence of 9 to 18 months. Any person who, by fraud or seduction, abducts a minor under the age of 18 years of age shall also be subject to the same sentence. With the most recent legislative amendments included in the Gender-Based Violence and Domestic Violence Act of 2016, the Criminal Code will be adjusted to reflect more severe sentences for abduction, particularly underage. Whomever by violence abducts a Maltese citizen shall be liable of a sentence of imprisonment of 1 to 9 years. Likewise, if the individual, engaging in fraud or seduction, abducts any individual under 18 years of age, the sentence will be increased by one to two degrees.

c) Household responsibilities

Under the subsection “Of the Mutual Rights and Duties of Spouses” of the Civil Code, Maltese law stipulates that spouses shall have equal rights and responsibilities within the household: The law explicitly provides women with the same rights as men to be recognised as the head of household (Civil Code of Malta, s. 1238(1)). As an extension of these rights, the female spouse is not required to obey her husband, and will not incur legal consequences if she disobeys him (s. 2(2)). Likewise, spouses are bound to jointly determine the location of the

matrimonial home. If the title for the matrimonial home is only held by one spouse, the law dictates that the other spouse has a joint title unless consent has been given for a transfer of property ownership (Civil Code, s. 2-3a).

In addition to the obligation to mutually support one another within marriage, both spouses are required to look after, maintain, and care for their children. In marriage, the law provides women with the same rights as men to be the legal guardians of their children (s. 3(b)). This same legal guarantee, as well as all other family and labour rights given to spouses, is also given to individuals considered to be cohabitants (Cohabitation Act, s. 15(d)). Cohabitants include persons who habitually reside with his or her cohabitant with whom he or she has an intimate relationship defined as a couple, yet whom are not legally bound by law to the other person.

In practise, the existence of stereotypical gender roles continues to exist despite efforts made by the government: Women are considered mothers or caregivers while men are typically perceived as the head of the household (CEDAW, 2010).

d) Divorce

Divorce has been made legal since the 1st of October 2011 in Malta due to Act No. XIV (2011). The act amended the former prohibition against divorce. As a result, sub-title IV “Of Divorce” now addresses the legal implications within the Civil Code. Both, heterosexual spouses may have the right to demand a divorce or a dissolution of marriage (Civil Code of Malta, s. 66A.). Both spouses may file jointly for divorce or a single spouse may choose to file. However, a condition for divorce proceedings requires upon the date of the commencement of divorce proceedings that the spouses have lived separately for a minimum of cumulatively 4 years out of the 5 preceding years. The standard for divorce requires that the judge determine that there is no reasonable prospect of reconciliation between the spouses requesting divorce (Civil Code of Malta, s. 66(b)). Following a divorce, Maltese law provides women with the same rights as men to be the legal guardians of their children and also carry the same rights and responsibilities to maintain their children (s. 66L(1-2)).

In practise, due to the historic prohibition of divorce in Malta, it appears that traditional understandings of marriage would discriminate against women’s legal right to divorce. Additionally, the present requirement of at least four years of separation before a spouse may commence divorce proceedings acts also acts to discourage divorce, which could leave women deserted in practise while still considered legally married. (CEDAW, 2010).

e) Inheritance

Inheritance of both non-land and land assets by a surviving female spouse is guaranteed under Maltese Civil Code, art. 808(1). Disinheritance of the surviving spouse is also prohibited (s. 871) Likewise, surviving daughters and sons are guaranteed the same rights to inheritance of non-land and land assets without distinction of sex (Maltese Civil Code, art. 811(1)).

All women are provided with the same rights as men to make a will (s. 596). These inheritance rights apply to all groups of women within Malta (Constitution of Malta, s. 45) and there is no evidence to suggest that women face discrimination in realising their rights to inherit.

2. Restricted Physical integrity

a) Violence against women

At present, Malta is a party to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which takes precedence over domestic legislation. The most recent legislative advances in addressing violence against women resulted in the passing of the Gender-Based Violence and Domestic Violence Act of 2016. The bill targets the violation of human rights of victims of physical, sexual, psychological, or economic harm or suffering due to the gender of the individuals targeted. Likewise, the bill addresses the problem of domestic violence. The act also functions to institute a Commission on gender-based violence and domestic violence. The Commission seeks to both address violence in both the public and private spheres through prevention, research, national monitoring campaigns, data collection, and awareness-raising campaigns. The Commission is allocated a budget in order to implement its mandate. The Bill also stipulates that the Commission will designate a partnership with at least with one civil society or public organization responsible for prevention and treatment of victims of gender-based violence (Gender-Based Violence and Domestic Violence Act of 2016).

b) Domestic violence

At present, domestic violence is not explicitly criminalized within the Criminal Code of Malta; however, the most recent act concerning gender-based violence and domestic violence (2016) will effectively serve to bolster present legislation aimed at the criminalization and stigmatization of perpetrators of the act of domestic violence against a partner or family member. Without a disposition specifically targeting domestic violence in the Criminal Code, victims are more broadly considered victims of violence in general. As such, dispositions within the Criminal Code penalising sexual violence, marital rape, stalking, and threats to physical integrity would be applied in the circumstances of domestic violence. Domestic violence is mentioned as an act, which, even without the complaint of the private party in proceedings, may proceed *ex officio* by police.

When a lawsuit for personal separation from a spouse is brought before the court, if evidence of domestic violence has been filed, the court has the authority to move for protection orders for both the spouse and children of the perpetrator of violence.

In practise, violence against women and acts of domestic violence remain a serious concern in Malta according to CEDAW Committee observations. The prevalence of such concerns is a result of sociocultural attitudes towards the treatment of women in the public and private sphere. It also appears that women are discouraged from reporting cases of domestic violence due to such attitudes (CEDAW, 2010).

c) Rape

Sexual offenses have been addressed by Maltese legislation under Sub-title II of the Criminal Code of Malta. The most recently available Criminal Code recognizes that any act of violence

which results in the carnal knowledge of a male or female shall be subject to a sentence of imprisonment from 3 to 9 years. If such acts are committed against a spouse or a family member, the aforementioned sentence is elevated by one to two degrees. As such, marital rape has been explicitly covered by the Criminal Code.

With the passage of the Gender-Based Violence and Domestic Violence Act of 2016, however, the Maltese government revised all definitions concerning rape and will amend the code to reflect such changes. The revised Criminal Code will include a definition of rape, which will provide expansive protections for both genders. The definition will indicate that whomever engages in non-consensual sexual relations vaginally, anally, or otherwise, with the penetration of a body part or an object will be considered rape. While the present Criminal Code does include criminalization of marital rape, the newest amendments resulting from the Gender-Based Violence and Domestic Violence Act (2016) have expanded the idea of marital rape to not only include present and former spouses, but also civil union partners or cohabitants.

At present, there are several inconsistencies concerning the age of consent and the age of majority to enter into marriage. While the age of majority to participate in all aspects of civil life is 18 (Civil Code of Malta, s. 188), a heterosexual couple may marry once both individuals in question have reached at least 16 years of age (Marriage Act of Malta, s. 3). This dichotomy is problematic, recognising that Maltese law indicates that a minor is any individual under the age of 18 years of age (Civil Code of Malta, s. 157) and, as such, may not engage in consensual, sexual activity. As a result, it is possible to be married and underage, resulting in the legal incapacity to engage in sexual activity. Likewise, “Romeo-and-Juliet” laws that would make an exception for two individuals engaged in underage sexual activity are inexistent. Consequently, it is possible that two, underage individuals who engage in consensual, sexual activity could also be subject to prosecution under current legislation.

d) Sexual harassment

Legal protection from sexual harassment is guaranteed under the Equality for Men and Women Act (2003) and the Employment and Industrial Relations Act (2002). Under the Equality for Men and Women Act, sexual harassment is criminalised for acts committed in the workplace, educational establishments, sporting establishments, as well as public places. It does not appear that the criminalization of cyber sexual harassment or stalking is covered by the law. Sexual harassment under the law encompasses not only acts but also conduct or any unwelcome display used to intimidate, harass, or coerce the victim. It does not appear that there is a national action plan or policy to support the implementation of the legislation on sexual harassment. A perpetrator of sexual harassment in a protected establishment may be criminally liable with a fine of up to 2,329.37 euros, imprisonment of up to 6 months, or a penalty of both fine and imprisonment, subject to the discretion of a judge.

e) Female genital mutilation

Female genital mutilation (FGM) is criminalized under disposition 251E of the Criminal Code. The disposition states that whomever inflicts damage, permanent or otherwise, upon a woman’s genitalia shall be convicted of female genital mutilation, which carries a sentence of 3 to 9 years of imprisonment. The Criminal Code also explicitly states that a woman’s consent

undergoing an operation, which includes but is not limited to acts of excision, infibulation, or mutilation of the female genitalia, does not serve to negate the criminal liability of a perpetrator under disposition 251E. Female genital mutilation also may occur with the aid of family members or relatives; therefore, the text includes a line which also makes criminally liable any individual who may have aided or abetted in any way the mutilation of the genitalia of a girl or woman.

The law largely focuses on punitive measures aimed at the sanctioning of both perpetrators of female genital mutilation and individuals, familial or otherwise, who may have abetted an act of genital mutilation against a girl or woman. As a result, the law includes little in regards to policy initiatives aimed at education and awareness concerning FGM (Criminal Code of Malta, s. 251E).

There is no evidence to suggest the practise of FGM in Malta (UNICEF, 2016).

f) Abortion

Abortion is criminalised under sub-title VII “Of Abortion, of the Administration or supplying of substances poisonous or injurious to health, and of the spreading of disease” of the Criminal Code. The four, legal dispositions specifically addressing abortion state that any individual who causes the miscarriage of any woman with a child by means of food, drink, medicine, or violence shall be convicted of a prison sentence of 18 months to 3 years. A pregnant woman who knowingly consents to the performance of a miscarriage shall also incur the same prison sentence. If an individual contributes to the miscarriage of a woman, and in doing so seriously threatens the life of the woman, the perpetrator may be charged with wilful homicide or wilful bodily harm, diminished by one to three degrees. Furthermore, a practicing physician, surgeon, obstetrician, or apothecary who knowingly prescribes or administers the means necessary to perform an abortion shall incur a sentence of 18 months to 4 years and also be banned from practising medicine when applicable. As a result, even in the case of medical emergency to save the life of the pregnant woman, an abortion is considered illegal under the present legal regime (Criminal Code of Malta, s. 241-243a.). At present, Malta remains the only country within the European Union that does not permit access to legal abortion.

More

Trafficking remains a serious concern within Malta. Observations from CEDAW (2010) underline the lack of comprehensive reporting concerning victims of trafficking or the prevalence thereof. Suggestions from the Committee have focused both on addressing effective prosecution of perpetrators of trafficking of women and girls as well as ensuring adequate resources for victims of trafficking (CEDAW, 2010).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Regarding land and non-land assets, unmarried women have the same rights to freedom of enjoyment of property as unmarried men. These guarantees are found within the Constitution of Malta, which asserts that the enjoyment of property may not be contingent upon the sex of the individual (s. 32). Likewise, Maltese legislation provides married women with the same rights as married men to own, use, make decisions, and use as collateral in property in their name. As a result, married women also have the equal right to administer joint property. The right to joint-land titling of property is codified under Sub-title III of the Civil Code, "Of the Community of Acquests". Not only does the property regime apply to married couples but also informal unions who are cohabitating (Cohabitation Act, s. 15(d)).

Following a separation or divorce, a married woman may reach an agreement for division of assets or a Court may decide the division. In the latter, article 32 regarding non-discrimination of enjoyment of property would again be applicable.

In practise, it appears that stereotypical perceptions regarding the role of women are still perpetuated and remain a serious issue. Women are still considered to play a subordinate role to the male spouse concerning decision-making. As a result, there is evidence to suggest the existence of discriminatory practices that would potentially limit a women's legal right to the enjoyment and free use of her non-land and land assets (CEDAW, 2010).

b) Secure access to formal financial resources

Concerning secure access to formal, financial resources, married and unmarried women are guaranteed the same rights to open a bank account at a formal financial institution. The law also provides women with the same rights to obtain credit and to access formal financial services. These guarantees are not explicitly mentioned in present legislation, but are guaranteed under the right to non-discrimination in the Constitution (s. 14, s. 32).

c) Workplace rights

Maltese law mandates non-discrimination on the basis of sex in employment within the Equality for Men and Women Act (2003). Advertisements related to the vacancy of an employment may not discriminate between potential applicants. Information requested by a potential, future employer including family or private life are prohibited unless specifically necessary to the fulfilment of a future position. This prohibition also criminalizes word-of-mouth advertisement that discriminates against one sex (Equality for Men and Women Act, s. 10). Likewise, article 26 and 27 of the Employment and Industrial Relations Act requires that women and men be remunerated equally for work of equal value.

Article 36(14)(d) of the Employment and Industrial Relations Act holds that a woman may not be fired due to pregnancy or an extended absence due to maternity leave. This same act requires that a pregnant woman will be guaranteed an equivalent position upon return from maternity leave. Paid maternity leave is protected under subsidiary legislation entitled Protection of Maternity Regulations (2004). 18 weeks of paid maternity leave is covered by

the employer, thereafter, any additional leave taken by the mother is covered by social security (Protection of Maternity (Employment) Regulations, s. 6-7). Both men and women are entitled to parental leave under Parental Leave Entitlement Regulations (2003). Parental leave is unpaid and may be taken from the period commencing when a child has reached 4 months of age until 8 years of age.

In practise, observations from CEDAW (2010) suggest that women still face persistent *de facto* discrimination reflected in stereotypical gender norms despite access to all professions and unrestricted work hours. Women are expected to fulfil responsibilities as mothers and caregivers and have fewer opportunities to obtain employment. Women have a disadvantaged position in the labour market, which disproportionately affect their access to professional opportunities and, thus, have created occupational segregation based upon gender. Despite high levels of education, there is persistently high female unemployment in Malta. Likewise, the CEDAW Committee suggested concerns over the wage gap between men and women despite national legislation (CEDAW, 2010).

4. Restricted Civil liberties

a) Citizenship rights

According to the Maltese Citizenship Act, the law provides with married and unmarried women with the same rights as men to acquire the Maltese nationality. Likewise, both unmarried and married women have the same rights to decide whether to retain or change their nationality. In the case of marriage to a non-Maltese citizen, married women have the same rights as married men to confer citizenship to their spouse. Of the same character, married women also have the same rights to confer citizenship to their children as married men.

In practise, there is no evidence to suggest the presence of discriminatory practices concerning women and citizenship rights in Malta.

b) Voting

The right to vote for the election of members of the House of Representatives is guaranteed by the Constitution of Malta. One may register to vote if he or she is a citizen of Malta and has attained at least 18 years of age (s. 57-58). Election for the President is indirect and it is the members of the House of Representatives who appoint the President. A person may be appointed the President of Malta if he or she is a citizen (s. 48).

There does not appear to exist discriminatory practices against women related to voting practises.

c) Political voice

The law provides women with the same rights as men to hold public and political office within the legislature, executive, and judiciary. This right is more broadly guaranteed under the Constitution, which states that women must be afforded the same guarantees to enjoy political, economic, social, cultural, and civil rights as men (s. 14). There does not appear to exist legislated quotas, which would mandate a percentage of seats given to women in either

the lower-house or at the sub-national level. At present, there are gender quotas voluntarily placed by some political parties in Malta, namely by the Labour Party known as the “Partit Laburista” (MLP): The Labour Party has a 20% quota for women on its lists (Quota Project, 2015).

In practise, women’s political participation in Malta is limited due to long-standing stereotypes concerning the role of women and girls. Women are often excluded from decision-making both in the public and private spheres (CEDAW, 2010).

d) Access to justice

As a reflection of the fundamental protections emanating from the Constitution guaranteeing non-discrimination with respect to civil and political participation, women have equal access to justice as men. Specifically, married and unmarried women alike have the right to sue and be sued in civil proceedings (Constitution of Malta, s. 14). This equal right to participation in civil suits is also strengthened by the right to free legal counsel when an individual is feasibly unable to afford an attorney (Code of Organisation and Civil Procedure, s. 912).

Likewise, during court proceedings, married and unmarried women’s testimonies carry the same evidentiary weight as a man’s for both civil and criminal cases.

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