



## Association For Consumer Rights (Malta)

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### The Fundamental Rights and Rule of Law Situation in Malta

**Association for Consumer Rights (ACR) Malta Input to  
the European Economic and Social Committee Fundamental Rights and Rule of Law Group  
14<sup>th</sup> September 2023**

#### 1. Fundamental rights related to social partners in Malta:

In Malta, the Malta Council for Economic and Social Development (MCESD) is a pivotal national tripartite advisory council that issues opinions and recommendations to the Maltese government on matters of economic and social relevance. In recent years, the MCESD Council has succeeded to strengthen its role as catalyst between the Social Partners and the Government, and of conveying the opinions and concerns of all sectors of society. Such progress is to be commended.

However, the Association for Consumer Rights (ACR) Malta, is concerned that **civil society organisations are still not being given equal voice and weight on the MCESD as given to employer and trade union representatives**. The main cause of this imbalance stems from the fact that NGOs which represent different strata of society other than employers and trade unions are underrepresented on the MCESD Council. While trade unions and employer representatives have five representatives each, all the other strata of society are collectively represented by only one representative on the MCESD Council (By the Chairperson of the Civil Society Committee (CSC) of the MCESD). The CSC comprises a representative from twelve sectors of society, as per below table.

<b>Civil Society Sectors comprising the Civil Society Committee of the MCESD (Collectively represented on the MCESD by only one representative)</b>
1. Agriculture, Rural and Fisheries
2. Consumer Affairs
3. Education, Social and Community Advancement
4. Environmental Protection and Improvement, incl the Protection of Animals, Culture, Arts and National Heritage
5. Gender Equality
6. Health, Elderly and Pensioners
7. Local Councils (Represent all residential communities)
8. Other Voluntary Organisations
9. Persons with Disability
10. Professions
11. Sports
12. Youth and Students



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The Association for Consumer Rights, Malta, deems that **the relevant Maltese legislation should be amended so that a fair number of MCESD Council members would hail from the Civil Society Committee, thus redressing the current disparity between representation of employers and trade unions on one hand, and the different strata of society on the other.** In this way, not only employer and trade unions, but all sectors of society - including youth, consumers, pensioners, persons with disability, those in agriculture, people across the gender spectrum and communities -- would have an adequate voice on the MCESD Council.

### 2. Freedom of association and freedom of assembly

In Malta, freedom of association and freedom of assembly are legally enshrined in the Maltese Constitution<sup>1</sup>. However, **there is concern that citizens are increasingly feeling compelled to be seen associating and agreeing only with whichever political party is in power - so as not to be excluded from certain benefits - such as being considered for high-powered or lucrative jobs within the public sector.**

Successive governments in Malta have appointed a significant number of political persons of trust, numbering to at least 700 in 2018.<sup>2</sup> Additionally, senior level management positions within the public sector are often not filled through a public call but directly by the selection of the minister concerned.

Politically appointed persons of trust and senior level management positions in the public sector tend to be rewarded with remuneration packets which are on a much grander scale than similar jobs which are non-politically appointed. This raises the concern that private citizens will fear associating with NGOs or political parties that are not in government, to avoid running the risk of losing out on such political appointed or hand-picked jobs with generous remuneration.

Thus, it is deemed that **the Governments' increasing practice of rewarding lucrative jobs to those who are visible in their support of the party in government risks stifling freedom of association and of assembly.**

### 3. Freedom of expression and freedom of the media

- A. Freedom of expression and freedom of the media are enshrined in Malta's Constitution. Pluralism including of the media is another fundamental right enshrined within the Malta's Constitution.<sup>3</sup>

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<sup>1</sup> Article 42(1) of the 1964 Constitution of Malta

<sup>2</sup> In early 2018 the Malta Independent reported that there were nearly 700 persons of trust -- <https://www.independent.com.mt/articles/2018-03-04/local-news/Around-700-people-employed-on-a-trust-basis-or-as-consultants-by-government-6736185647>

<sup>3</sup> Article 41(a)(1) of the 1964 Constitution of Malta



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- A. However, **ACR Malta and various other civil society representatives in Malta are concerned that freedom of expression is being stifled because the state media TV and radio outlets often cover in an incomplete way and mostly focus on showcasing government achievements.**

While generous coverage of government achievements may be overlooked, it is deemed unacceptable that the state media news bulletins tend to give scarce or no coverage to civil society events which involve airing of public discontent.

ACR Malta is concerned by the fact that in 2023 Malta dropped six places in the World Press Freedom Index, ranking 84th out of 180 countries assessed by Reporters Without Borders. Malta ranked after Congo-Brazzaville, Malawi and Chile and placed just before Guinea, Mauritania, and Zambia.

- B. **ACR Malta also expresses its concern that Malta's broadcasting watchdog, known as the Broadcasting Authority (BA) is not undertaking its watchdog role adequately and is jeopardising the right to freedom of expression by closing a blind eye to incomplete news coverage by the state media.** This perception is further fuelled by the fact that the MPBA appears to only investigate media behaviour when a complaint is lodged.
- C. **Another issue of concern with regard to freedom of the media is that Malta has the highest number of Strategic Lawsuits Against Public Participation (SLAPPs) per capita in Europe, an analysis by the Coalition Against SLAPPs in Europe (CASE) shows.**<sup>4</sup> With 19.93 cases per 100,000 people, Malta has the highest SLAPP instituted against journalists. This score towers above Europe's second-most SLAPPED country, Slovenia, which had just 2.02 SLAPPs per 100,000 citizens in 2022.

According to this Coalition's analysis, 44 new SLAPPs were recorded in Malta in 2022. **It is of concern that most of the SLAPPs in Malta were initiated by the Maltese Government in response to forty Freedom of Information requests made by the editor of a Maltese online investigative portal.**<sup>5</sup>

**ACR Malta urges the EESC to call on the European Commission to restrict the use of SLAPP lawsuits through the adoption of the anti-SLAPP Directive, known as Daphne's Law.** ACR Malta also urges the EESC to call on EU Governments which form the Council of the EU, not to water down the directive's ambitions to safeguard journalists and media freedom during dialogue negotiations.

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<sup>4</sup> <https://newsbook.com.mt/en/malta-with-highest-number-of-slapps-in-europe/>

<sup>5</sup> <https://newsbook.com.mt/en/malta-with-highest-number-of-slapps-in-europe/>



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### **D. ACR Malta is also concerned about the apparent undermining of Malta's Freedom of Information Act.**

In May 2023, on World Press Freedom Day, the Institute of Maltese Journalists (IMJ) called on the government to address issues that are seriously undermining the media in Malta. According to the IMJ "undermining issues particularly regard the Freedom of Information Act, which is currently weak, abused by the public authorities and in dire need of a total overhaul".<sup>6</sup>

ACR Malta deems that Malta's Freedom of Information Act should be revised to stipulate that when Maltese authorities refuse to divulge the requested information, they must also give Malta's Auditor General the evidence that substantiates their decision not to release the requested information. The Auditor General should additionally be assigned the role of weighing the evidence submitted and on deciding whether to uphold or to dismiss the authority's claim.

Malta's Freedom of Information Act should also stipulate that a public entity that refuses to give requested information would automatically become liable to financial damages for every day such information is not provided - if the courts determine that such information should not have been withheld.

## **4. Non-discrimination**

Much progress has been made in the last decades in redressing discrimination based on gender or disability. However, ACR Malta deems that certain forms of discrimination still need addressing, for example the limiting of work, academic and financial opportunities to certain age brackets.

**Moreover, a new form of serious discrimination has been steadily rearing its head in Malta. The new discrimination is based on economic and business power. A prevalent public perception in Malta is that big business is increasingly holding sway over politicians and on major decision-making government entities. Consequently, various decisions of national importance are being taken to the advantage of such business interests at the expense of the Maltese majority.**

Some major examples of such instances are the following.

- A. For decades, successive governments have signed off public land to private business at costs which are well below market value and below the expected financial profit from that land. A microstate such as Malta cannot afford to have significant parcels of land, prime estate to boot, being hived off to a business oligarchy. This syphoning of public land to a private business minority has grown alarmingly in the last decade

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<sup>6</sup>[https://www.maltatoday.com.mt/news/national/122675/journalists\\_institute\\_says\\_government\\_must\\_address\\_issues\\_undermining\\_media\\_on\\_press\\_freedom\\_day](https://www.maltatoday.com.mt/news/national/122675/journalists_institute_says_government_must_address_issues_undermining_media_on_press_freedom_day)



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at severe loss to present and future generations living in Malta.<sup>7</sup> More alarm bells are set off when Maltese politicians promptly become the consultants of such private businesses when they exit politics.

- B. The bid to assign private commercial entities part of the public gardens, such as the Council of Europe at Ta' Xbiex and the Marsaskala Family Park.
- C. Granting various parts of the coastline and beaches as concessions to private businesses which are not even restrained when they do not stay within the concession conditions. Ironically, Malta has few sandy beaches. With a large part of them under private concession, families and other ordinary citizens end up having to fork out substantial money to sit on a public sandy beach.
- D. Granting of many public pavements and pedestrian streets to commercial establishments to extend their commercial premises, often leaving little access to pedestrians especially the vulnerable like those on wheelchairs and with small children in buggies. Malta has narrow pavements unlike other countries where restaurants use pavements for their business.

**Thus, increasingly, public perception in Malta is that business and commercial interest groups are more equal than the rest of society.**

### 5. The Rule of law

In the table below, ACR Malta is submitting its input on various parameters deemed crucial for the upholding of the rule of law.

<b>Constraints on Government Powers</b>		
<b><i>Are government powers effectively limited by the legislature?</i></b>	In Malta, members of the legislature are being given lucrative Government positions on government entities and ministries. This creates a potential conflict of interest which risks severely diminishing the watchdog and scrutinizing abilities of such legislature members.	<b>Of grave concern</b>
<b><i>Are Government powers effectively limited by independent auditing and review?</i></b>	The Malta National Audit Office undertakes diligent independent auditing and review of Government spending. However more accountability is deemed needed from Government to prove that NAO recommendations are meaningfully adopted.	<b>Government reports it has adopted majority of NAO recommendations.</b>

<sup>7</sup> <https://theshiftnews.com/2023/06/28/government-alters-parliamentary-resolution-to-justify-fortina-illegalities/>  
<https://timesofmalta.com/articles/view/fortina-owners-get-free-rein-over-land.720397>



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	<p>Additionally, ACR Malta expresses its concern that the Opinions issued by the Ombudsperson are often being ignored by Parliament itself.</p> <p>For example, the Ministries for Justice and of Finance have to date ignored the Opinion issued by the Ombudsperson regarding merciful consideration to victims of abuse by notaries who misappropriated money that should have gone to the Inland Revenue.<sup>8</sup></p> <p>In his comments to the Times of Malta newspaper, outgoing Ombudsman, Dr Anthony Mifsud, summed the situation in this worrying manner:          “After more than 27 years, the provisions of the Ombudsman Act (to turn to parliament for action on its investigations) remain a dead letter. There has never been the political will to discuss and even less implement them. It not only shows a lack of respect for the institution but for the very law.”</p>	<b>Ombudsperson Opinion’s</b>
<b><i>Are Ggovernment officials sanctioned for misconduct?</i></b>	<p>The setting up of the Office for Standards in Public Life has been a positive step. However, when investigations by this Office establish misconduct by a politician, to date only nominal sanctions have been given by Parliament, such as merely requesting an apology letter from the politician in question.</p> <p>Two legislative improvements are deemed needed to redress this situation:</p> <ol style="list-style-type: none"> <li>1. Setting and requiring more meaningful sanctions when such misconduct is established by the National Audit Office, Ombudsman’s Office and the Office for Standards in Public Life.</li> <li>2. Widening the definition of politically appointed persons of trust subject to scrutiny by the Commissioner for Standards in Public Life, as currently the Standards in Public Life Act only applies to MPs and to persons of trust that are members of ministers’ secretariats. Thus the SPLA definition of “persons of trust” should be widened to allow investigation requests also for all politically appointed persons of trust</li> </ol>	<b>Of grave concern</b>

<sup>8</sup> <https://timesofmalta.com/articles/view/ombudsman-decries-disrespect-parliament-ignores-reports.1007281>



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	including CEOs of public entities and members of government-appointed boards.”	
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<b>Absence of Corruption</b>		
<b><i>Do Government officials in the executive refrain from using public office for private gain?</i></b>	Unfortunately, the Maltese independent media is often exposing cases of government officials in the executive branch that are found to have used public office for private gain.	<b>Of Grave Concern</b>
<b><i>Do Government officials in the legislative branch refrain from using public office for private gain?</i></b>	<p>Unfortunately, frequent cases of such abuse are being exposed by the local media.</p> <p>Additionally, there is significant concern that elected officials are capitalizing on their political past, clout and connections by becoming consultants of business interests as soon as they exit from politics. It is of grave concern that there are no revolving doors regulatory mechanisms for elected officials when they leave public office.<sup>9</sup> A revolving doors mechanism was introduced in 2020 only for some public employees. The lack of such revolving doors mechanism for exiting elected officials is enabling such officials to take up consultancies with big businesses as soon as they leave public office.<sup>10</sup></p>	<b>Of Grave Concern</b>
<b><i>Is Regulatory Enforcement adequate?</i></b>	<p>While Maltese regulatory institutions are strong in the drawing up of plans and laws, Malta has for decades now faced difficulties in having adequate and meaningful enforcement systems in place.</p> <p>For example, when health and safety, as well as building and construction authorities appear unable to ensure that construction sites have the required competent workers and persons overseeing the works. This has resulted in increased risk of building unsafe buildings and of injuries to workers and the general public. As may be attested through media reports, various tragic accidents on construction sites - to innocent third parties - have ensued on too many occasions.</p>	

<sup>9</sup> [s/view/factcheck-taxpayers-foot-bill-revolving-door-policy.1033845#:~:text=A%20revolving%20door%20policy%20was,period%20of%20up%20to%20five](https://www.timesofmalta.com/articles/view/factcheck-taxpayers-foot-bill-revolving-door-policy.1033845#:~:text=A%20revolving%20door%20policy%20was,period%20of%20up%20to%20five)

<sup>10</sup> <https://timesofmalta.com/articles/view/revolving-doors-keep-spinning.1034981>





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<b><i>Are Government regulations effectively enforced?</i></b>	In spheres such as the construction industry, and building development, enforcement of regulations is deemed weak and not adequately protecting the workers involved and third-party rights, as well as future generations.	<b>Very weak enforcement of regulations is of grave concern for many</b>
<b><i>Are Government regulations applied and enforced without improper influence?</i></b>	Unfortunately, various scandals brought to the light by the independent media indicates that Malta has a difficulty in the application and enforcement of Government regulations without improper influence. . Two such cases reported in the media recently are:  The driving licenses scandal <sup>11</sup>  The disability benefits scandal <sup>12</sup>	<b>Of grave concern</b>
<b><i>Are administrative proceedings conducted without unreasonable delay?</i></b>	The backlog of cases at the Malta Lands Department <sup>13</sup>  Backlog of court cases in the Maltese Courts, including cases on domestic violence. <sup>14</sup>	<b>Of concern</b>  <b>Of grave concern</b>
<b><i>Is due process is respected in administrative proceedings?</i></b>	Public trust in administrative proceedings is being eroded by the media's frequent revelation of certain abuse of in these proceedings. For example, when the media recently reported that hundreds of contraventions issued to politicians, their aides, businesspeople, and former top LESA officials in the last five years were deleted from the agency's systems, according to multiple sources. <sup>15</sup>	<b>Questionable. Of increasing concern</b>
<b>Criminal and Civil Justice</b>	See attached report drawn up by the Consumer Sector Representative on the MCESD Civil Society Committee re Malta's proposed Justice Reform.	<b>Ongoing government justice reform is commendable</b>

<sup>11</sup> <https://timesofmalta.com/articles/view/200-names-probed-police-driving-licence-racket.977525>

<sup>12</sup> <https://www.independent.com.mt/articles/2023-09-10/local-news/Benefit-fraud-The-scandal-behind-it-is-vast-and-organised-Roberta-Metsola-6736254736>

<sup>13</sup> <https://www.independent.com.mt/articles/2023-01-22/local-news/Lands-Authority-plans-to-completely-digitalise-backlog-of-physical-files-minister-6736249024>

<sup>14</sup> <https://timesofmalta.com/articles/view/massive-backlog-of-domestic-violence-cases-leading-to-year-long-court.928504>

<https://timesofmalta.com/articles/view/lawyers-blame-outdated-court-systems-judicial-delays.1010088>

<sup>15</sup> <https://timesofmalta.com/articles/view/hundreds-of-fines-cancelled-from-lesa-system-official-transferred.919558>