

The Maltese Language in Court - Its Development...And Future? by Jean Noel Cutajar

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It seemed obvious to me that upon being shuffled around in a crowded courtroom some years ago, as an insignificant third year law student doing prattika with a lawyer, the language used in that stuffy room would be Maltese, even if I was pretty sure that I was not going to understand a thing out of all those strange, legal words used during the proceedings I was attending. However, the use of language in court, is not that obvious, and indeed, such an issue is surrounded by a very interesting history which takes us back some two hundred years.

It is true to say that the present Constitution of Malta declares that Maltese is one of the official languages of the State. Article 5(3) clearly points out the language of the Courts of Malta is Maltese. This has been the result of a very long struggle, which has taken years to be resolved. At the beginning of the British rule in Malta, the language used by our law courts was Italian, which was deemed to be the language of culture, the language of the nobility and the learned.

The British did not want to interfere with the language used in official writings and court proceedings. The same applies when it comes to the Maltese, which was used by the common man in the street, and commonly referred to as the language of the kitchen at that time. The conflict with regards to the use of language in court started becoming evident once the British started to mix with the Maltese, when being employed with the Government Services, including the naval base, out of which the British wanted to construct a world class naval facility on

these shores. However, it would be interesting to note that Act XVI of 1929, "**The Use of Maltese language in Legal Proceedings Act, 1929**," introduced the Maltese language into legal proceedings, both in Civil and Criminal cases.

When we come to look at the Criminal Law field, one can say that the main change brought was the introduction of a new procedure regarding language under Article 409 of the Criminal Laws. In a nutshell, the introduction of such procedure is still felt today in criminal procedure. As a rule, the language of the court is Maltese and proceedings are carried out in the Maltese language. Cap.189 of the Laws of Malta, being the "**Judicial Proceedings (Use of English Language) Act, 1965**", has been designed to deal with exceptional cases. If a person declares that he is English speaking in terms of Article 7 of Cap.189, the court may order in terms of Article 3 of the aforementioned Act for proceedings to be carried out in English.

If the accused declares he is not Maltese nor English speaking, proceedings are carried in Maltese. An interpreter is appointed to follow all proceedings and documents proffered against him. One has to ensure that proceedings are instituted in Maltese and they can be turned into the English language. In the Civil Law field, it was clearly stated, in Article 30 of the Laws of Organization and Civil Procedure that "on the application of any party involved in any cause, the Court shall order that the proceedings in the cause shall be conducted in the Maltese language".

Therefore, it is true to say that although the Maltese language has been introduced as a language to be used during court proceedings, the use of such language is not compulsory and it depends upon the parties involved, so that they would request the court to change the language which is understood by them, during proceedings. Yet one is to note, that through such changes, Maltese succeeded to be the main language used in our courts. The use of other languages today has become the exception.

This particular issue gains importance when it comes to arbitral proceedings. One would note that when the parties are of different nationalities, it is of essence to decide on what language to use if the need for arbitration arises. This issue however, can easily be neglected by the parties because of its seemingly irrelevant thing to the agreement at hand. This can be simply decided when determining the seat of arbitration, leading to an implicit agreement that the language used is going to be the language which is used in that particular jurisdiction in which arbitral proceedings are to be carried out. Otherwise, the arbitral tribunal normally determines the language (or languages) of the arbitration. In so determining, the arbitral tribunal shall see all the relevant circumstances of the case and it normally gives

the parties an opportunity to submit comments.

Such monumental recognition for the Maltese language in our law courts has been the result of a long period of debate during the first years of the 19th century. It is not my scope to delve into the language question, which became a political struggle. Writing about such matter would be the subject of well studied researches, which is beyond my scope.

However, I truly believe that, from a student point of view, our law courts need to continue to uphold this choice in language, which has been made in the past. Therefore, the law courts must continue to recognise this important choice resulting from such language struggle. What I am referring to here, is the need of using Maltese grammar, phrases and sentence structure properly. As an aside here, my appeal also extends to all those esteemed lecturers who teach within the Law Faculty – I believe that, proper exposure to Maltese terms and legal 'jargon' used in law courts between lecture and students, is going to help the law student in becoming familiar to the proper tackling of legal issues, once becoming lawyers, legal procurators and notaries.

It is quite a sad to obtain a copy of a court judgment, even from the Government of Malta website, and see some horrific spelling mistakes accompanied with a lack of proper Maltese fonts. I believe that the use of correct language is inherent in the court's duty in divulging the correct legal principle both to the parties involved in the case and to society at large, especially when taking into consideration that most individuals in our society are not versed in law. Once this has been achieved, one can then safely state that our legal system has taken a step forward towards its development in the right way.