

# The Right to a Healthy Environment in the Constitution of Malta

Abstract of ‘The Second Republic: A Green One’

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In this article, **Ethan Brincat** makes the case for an enforceable human right to a healthy environment within Malta’s constitutional framework to complement the increased environmental awareness within contemporary society. The rest of the article can be found in Id-Dritt XXX.

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In the years following independence and continuing until the present day, the first Maltese republic has aged steadily and it is generally being felt that it no longer caters for some of the new political, legal, and social challenges that the Maltese State is currently facing at the local, European, and world levels. Chief among these challenges that the country is facing, and one which the Constitution contemplates only superficially, is the environment. One hopes that an eventually reconstituted Republic of Malta places the environment, specifically the right to a healthy environment, as a top priority.

Act No. XXII of 2018 developed a declared constitutional principle that had sat unchanged since the original promulgation of the Constitution.<sup>1</sup> Article 9 of the Constitution entitled ‘Safeguarding of landscape and historical and artistic patrimony’ falls under Chapter II, entitled ‘Declaration of Principles’. Before being amended by Act No. XXII of 2018, said article was very brief, and only read as follows:

*9. The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.*<sup>2</sup>

This means that the legislator, way back in 1964, already thought that the ‘safeguarding of landscape and historical and artistic patrimony’ is a principle by which the State, eventually a Republic, is to operate. One would be disappointed to read that not only did Article 9 of the Constitution not formerly make express reference to the ‘environment’, but that the term ‘environment’ was not found anywhere else throughout the Constitution, including in the miscellaneous provisions of the Constitution under Chapter XI. The phenomenon of environmental awareness is perfectly captured by Raymond Mangion in his article entitled ‘Constitution and green rights’ for the 13 June 2015 issue of the Times of Malta, where he states that:

*The protection of the environment in Malta has, over the past months, been at the epicentre of discussion without precedent. It has never mobilised and brought together so many diverse groups of society with the object of inducing institutions and politicians to take environment protection more seriously. Also, public opinion is now wholeheartedly and strongly pleading for real enforcement.*<sup>3</sup>

In the absence of the term ‘environment’, the Constitution referred to the ‘landscape’. The word ‘landscape’ was considered at that time to be the

<sup>1</sup> Parliament of Malta, Act No. XXII of 2018 ‘Constitution of Malta (Amendment) Act, 2018’.

<sup>2</sup> Constitution of Malta, Chapter II ‘Declaration of Principles’, Article 9 ‘Safeguarding of landscape and historical and artistic patrimony.’

<sup>3</sup> Raymond Mangion, ‘Constitution and green rights’ Times of Malta (Valletta, 13 June 2015)

<<https://timesofmalta.com/articles/view/Constitution-and-green-rights.572253> > accessed 18 April 2020.

appropriate term to refer to the natural environment. ‘Landscape’ is usually a term used to refer to the environment in its entirety, that is the environment that surrounds the people and that is vital for them to survive and thrive. From this perspective, it evokes a sense of environmental wellbeing. One should also appreciate the fact that at the time of Malta’s independence, society might have conceived the term ‘environment’ as consisting mainly of the landscape. Over time, society came to realise that there is more to the environment than just the landscape for its existence. Thankfully, society’s environmental outlook today has widened to include ideas such as air, water, and light and noise pollution and therefore, it is no longer enough for the supreme law of a country to vaguely refer to the landscape alone and forsake other issues which are just as pressing, though perhaps less visual. It had to be Act No. XXII of 2018 to enshrine, for the first time, the term ‘environment’ in the Constitution. The legislator declared that Act No. XXII of 2018 was ‘An Act to amend the Constitution of Malta, to ensure that the environment is given recognition in the Constitution.’ The new Article 9 of the Constitution with the added sub-article (2) reads as follows:

*9. (1) The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.*

*(2) The State shall protect the environment and its resources for the benefit of the present and future generations and shall take measures to address any form of environmental degradation in Malta, including that of air, water and land, and any sort of pollution problem and to promote, nurture and support the right of action in favour of the environment.<sup>4</sup>*

Another important issue that Act No. XXII of 2018 did not extinguish was the issue of definition of the State’s obligation to ‘safeguard’. Fortunately, the term itself is inclusive of State measures rather than prohibitionist of the same. Before the amendment, there was absolutely no indication in the Constitution of how the State was to honour such a crucial obligation as per this principle. After the amendment, the State’s obligation to safeguard was widened to not only entail the landscape, and the historical as well as artistic patrimony, but also to include the protection and conservation of ‘the environment and its resources’. Interestingly, the notions of posterity and intergenerational equity were also introduced for the first time as the State’s obligation is now clearly aimed for ‘the benefit of the present of the present and future generations’. Once again, such a statement raises the question of how the State is to follow through with this now-wider obligation, for the sake of the Republic, under the declared principle. With the amendment, this question is now partially, albeit vaguely, answered. Sub-article (2) states that besides safeguarding and protecting, the State also has an obligation to ‘take measures to address any

<sup>4</sup> Constitution of Malta, Article 9.

form of environmental degradation in Malta’.

It can be presumed that the State is to ‘take measures’ through its three organs: the legislature, executive, and judiciary. The legislature, that is Parliament, composed of the Office of the President of Malta and the House of Representatives, is to continue to legislate rules, that must be followed by natural and legal persons alike in Malta in favour of the environment. The Laws of Malta contain hundreds of environmental laws and regulations arising either out of domestic legislation enacted by the Maltese Parliament, or through the transposition of European Union law directives, or through the ratification of public international law instruments. Each of these are meant to provide a legal basis by which the various enforcement entities within the executive, that is government, may exercise jurisdiction over. The various courts and tribunals constituted by the Constitution and other special laws are to be given the jurisdiction and the competence to interpret the rules created by the legislator and adjudicate cases of an environmental, administrative, or constitutional nature.

The new sub-article (2) to Article 9 of the Constitution inserted term ‘environmental degradation’. Such term can be construed to ‘include’ degradation to the ‘air, water and land’ of Malta and ‘any sort of pollution problem’ affecting them. The legislator’s use of the word ‘include’ implies that the Maltese legal drafters did not want to close the constitutional door on the scientific study of environmental degradation. This can be compared back to how the 1964 legal drafters opted for the nowadays-vague term ‘landscape’, which is still present in sub-article (1), because the mindset in regard to environmental degradation at the time was restricted to that. Since the term ‘landscape’ has been left in, it is to be considered in a different perspective namely as to what landscape means today, thereby giving way to the ‘environment’. Another thing the legal drafters in 2018 wanted in their amendment was for the newly introduced sub-article (2) to be an indicative, rather than an exhaustive, provision. This is why they inserted the term ‘including’ so that not only do they manage to capture the contemporary mindset of environmental degradation of the ‘air’, ‘water’, and ‘land’, but to leave it open-ended so that future legal drafters or the participants of a future constitutional convention will be able to add to it as the circumstances of the time may necessitate.

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