

The 2018 Constitutional Amendments

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In this article, Ethan Brincat discusses two pieces of legislation, Act IV of 2018 and Act XXII of 2018. Brincat discusses both the immediate changes brought by these legal acts, as well as the consequential aspect, and the context in which these changes were brought.

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1. Introduction

The Republic of Malta currently operates within the framework of the 1964 independence Constitution. Both major political parties have expressed interest in calling a constitutional convention for the eventual promulgation of a new constitution and therefore, of a ‘Second Republic’. However, until then, the current constitution remains in force. Amendments continue to be made to it for as long as the Constitution continues to serve us the people. This paper shall discuss the two amendments made to the Constitution during the year 2018, by means of Act IV of 2018 and Act XXII of 2018. All Acts enacted by Parliament are assented to by the President ‘by and with the advice and consent of the House of Representatives’^{1 2}.

2. Act IV of 2018

Act IV of 2018 consists of three parts. The first part amended the Constitution³, the second part amended the General Elections Act⁴, and the third part amended the European Parliament Elections Act⁵. Only the first part of the Act, consisting of the constitutional amendments, falls within the scope of this paper.

The first amendment made was to article 53, and this was amended to read ‘...a person shall be qualified to be elected as a member of the House of Representatives if,

1 Act No. IV of 2018, Preamble;

2 Act No. XXII of 2018, Preamble;

3 Act No. IV of 2018, Part I;

4 Ibid., Part II;

5 Ibid., Part III;

and shall not be qualified to be so elected unless, that person has attained the age of eighteen years and...’⁶. This affirms the rule that only persons who have reached the age of majority, that is that of eighteen years, may become members of Parliament. Minors under eighteen, and even minors aged sixteen or seventeen who have been emancipated to trade⁷, may not stand for elections as they are not qualified to be elected⁸.

The second amendment was made to article 54, where the eighteen-years rule was reaffirmed⁹; a person is disqualified for membership in the House ‘if he has not yet attained the age of eighteen years.’¹⁰.

The third and final amendment that this Act effected to the Constitution, and probably the one most publicised, was made to article 57¹¹. This amendment effectively lowered the age that qualifies one to vote to ‘sixteen years.’¹². The so-called ‘Vote 16’ campaign by the Labour Party in government generated public debate as various arguments were made for and against sixteen- and seventeen-year-old youths having the right to vote in general and European

6 Act No. IV of 2018, Part I ‘Amendments to the Constitution of Malta.’, Article 3 ‘Amendment of article 53 of the Constitution.’;

7 Commercial Code, Part I ‘Of Trade in General’, Title I ‘Of Traders and Acts of Trade’, Article 9 ‘Minors.’;

8 Constitution of Malta, Chapter VI ‘Parliament’, Part 1 ‘Composition of Parliament’, Article 53 ‘Qualifications for membership of House of Representatives. Amended by IV.2018.3.’;

9 Act No. IV of 2018, Part I ‘Amendments to the Constitution of Malta’, Article 4 ‘Amendment of article 54 of the Constitution.’;

10 Constitutional of Malta, Chapter VI ‘Parliament’, Part 1 ‘Composition of Parliament’, Article 54 ‘Disqualifications for membership of House of Representatives. Amended by LVIII.1974.21; XXXVIII.1976.2; XXI.2007.5; IV.2018.4.’, Sub-article 1, Paragraph (i);

11 Act No. IV of 2018, Part I ‘Amendments to the Constitution of Malta’, Article 5 ‘Amendment of article 57 of the Constitution.’;

12 Constitution of Malta, Chapter VI ‘Parliament’, Part 1 ‘Composition of Parliament’, Article 57 ‘Qualification of voters. Amended by LVIII.1974.23; IV.2018.5.’;

Parliament elections. Such youths could already vote in Local Council elections and therefore, the natural progression of this was to qualify them as voters in elections that were formerly off-limits to them. This amendment was reflected in the General Elections Act¹³ (Chapter 354 of the Laws of Malta¹⁴) and in the European Parliament Elections Act¹⁵ (Cap. 467¹⁶).

3. Act XXII of 2018

Act XXII of 2018 is shorter as it only added one sub-article to the existing article 9 of the Constitution, without amending any other law. However, the importance of this amendment is not to be overlooked. Its importance can be derived from the long title of the Act: ‘An Act to amend the Constitution of Malta, to ensure that the environment is given recognition in the Constitution.’¹⁷ Article 9 falls under Chapter II of the Constitution entitled ‘Declaration of Principles’¹⁸. This means that this Act not only granted constitutional recognition to the environment, but enshrined it as a declared principle by which the Republic is to operate. The new sub-article (2) under article 9 reads as follows¹⁹:

The State shall protect and conserve the environment

13 Act No. IV of 2018, Part II ‘Amendments to the General Elections Act’, Article 7 ‘Amendment of article 20 of the principal Act [the General Elections Act].’, & Article 8 ‘Amendment of article 33 of the principal Act.’;

14 General Elections Act, Chapter 354 of the Laws of Malta;

15 Act No. IV of 2018, Part III ‘Amendment to the European Parliament Elections Act’, Article 9 ‘Amendment of article 19 of the principal Act [the European Parliament Elections Act].’;

16 European Parliament Elections Act, Chapter 467 of the Laws of Malta;

17 Act No. XXII of 2018, Long Title;

18 Constitution of Malta, Chapter II ‘Declaration of Principles’;

19 Act No. XXII of 2018, Article 2 ‘Amendment of article 9 of the Constitution.’

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 environment²⁰.

Previously, article 9 only read ‘The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.’. This principle, still encapsulated in sub-article (1)²¹, was somewhat ambiguous. Although it was declared, there was neither a consensus on how the State’s obligation to ‘safeguard’ is to be honoured, nor were the terms ‘landscape’ and ‘historical’, ‘artistic’, and ‘patrimony’ defined in the same Constitution. The latter terms were eventually defined in a number of special laws that are inferior to the Constitution and are therefore, not within the scope of this paper²². In light of this, the new sub-article (2) can be seen as a development of this principle.

The State’s obligation to ‘safeguard’ now entails the protection and conservation of ‘the environment and its resources’. The notion of posterity was also introduced as the State’s obligation is not only aimed at ‘the benefit of the present...’ but also of ‘future generations’.

The State also has an obligation to ‘take measures to address any form of environmental degradation in Malta’.

What constitute ‘measures’ is not expressly outlined,

20 Constitution of Malta, Chapter II ‘Declaration of Principles’, Article 9 ‘Safeguarding of landscape and historical and artistic patrimony. Amended by: XXII.2018.2.’, Sub-article (2);

21 Ibid., Sub-article (1);

22 Ibid., Chapter I ‘The Republic of Malta’, Article 6 ‘Constitution to be supreme law. Substituted by: LVII.1974.2; LVIII.1974.69.’.

but it can be presumed that the State is to ‘take measures’ through its three organs: the legislative, executive, and judiciary. The legislature, that is Parliament, is to legislate rules, that must be followed by natural and legal persons in Malta in favour of the environment, and provide a legal base by which various enforcement entities within the executive, that is government, may exercise jurisdiction. Courts and tribunals must also adjudicate and hand down judgments in environmental cases brought before them.

From sub-article (2), ‘environmental degradation’ can be construed to mean degradation to the ‘air, water and land’ of Malta and ‘any sort of pollution problem’ affecting them. This is a great step forward from what article 9 formerly read as it develops the term ‘landscape’, now in sub-article (1).

Lastly, the State is obliged ‘to promote, nurture and support the right of action in favour of the environment.’. This means that the State must ‘promote’ the right of its citizens to bring an action before Maltese courts whenever they feel that their environment is being degraded; perhaps further to the State’s duty to ‘take measures’ through its judicial organ? Nurturing the ‘right of action’ may mean that at some point, there shall be a *locus standi*, that is a legal base from which citizens may not only open an environmental lawsuit against fellow citizens allegedly degrading the environment, but also against the State for failing to abide by this declared principle and allowing ‘environmental declaration’. To ‘support’ the ‘right of action’ may mean that the State must take the side of the citizens that exercise it, not the side of the affluent lobby groups that may seek to stifle it.

4. Conclusion

All in all, the Constitution went through two very important amendments in 2018 that are not only interesting on the scholarly constitutional law level, but also in pragmatic terms. On the one hand, Act IV of 2018 adds a new dimension to the sovereign people by qualifying a previously marginated stratum of the electorate as voters. And on the other hand, Act XXII of 2018 develops what was a rather ambiguous declared principle into a set of more detailed obligations of the State vis-à-vis the all-precious environment and the resources it harbours.