

Public Emergency Law under the Maltese Constitution

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This article by **Leighton John De Micoli** was previously submitted as part of PBL3022 and is being published with the author's permission. This article examines the provisions of the Constitution of Malta regarding public emergency law, focusing on the conditions and procedures for declaring and maintaining a state of emergency. It outlines the powers granted to the government during emergencies under the Emergency Powers Act and discusses the role of the Armed Forces, highlighting the limits of military authority in both public emergency and martial law. The article also touches on Malta's neutrality policy and its implications for foreign military involvement during emergencies, ensuring that emergency powers are exercised in accordance with democratic principles and international human rights standards.

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Introduction

The Constitution of Malta stands as the cornerstone of the nation's governance, recognising and safeguarding the fundamental rights of its citizens while clearly defining the powers and responsibilities of the state. Among its provisions are those relating to public emergency law, which empowers the government to take extraordinary measures during national crises. Such measures are strictly regulated to ensure they remain temporary, necessary, and proportionate, adhering to the democratic values enshrined in the Constitution.

This article further explores the legal mechanisms regulating the role of the armed forces, the distinction between public emergency law and martial law and the influence of Malta's constitutional commitment to neutrality on its approach to emergency governance.

Conditions and Procedures for Declaring a State of Public Emergency under the Maltese Constitution

The Constitution of Malta provides a comprehensive legal framework for managing public emergencies, recognising that in times of national crisis, extraordinary actions may be necessary to protect the country and maintain public order. Under the Constitution of Malta, a 'period of public emergency' is defined in Article 47(2) and can be declared under three distinct circumstances: (a) when Malta is engaged in war; (b) when the President proclaims a state of public emergency; and (c) when the House of Representatives, by a resolution supported by a two-thirds majority, declares that Malta's democratic institutions are under threat from subversion.¹ Each of these scenarios represents a different level of crisis, with the legal response tailored accordingly.

The State of War as an Automatic Trigger for Emergency Powers

In the first scenario, no formal proclamation of emergency by the President is required, as a state of war itself constitutes a public emergency *ipso jure* through the Constitution, enabling an immediate government response without delay. This automatic activation ensures that the state can act swiftly to safeguard national security and public order without procedural hindrances.

¹ Constitution, Article 47(2)(a)-(c).

Proclamation by the President

In the second scenario, such an emergency is declared through a formal proclamation by the President, acting on the advice of the Prime Minister. Under Article 47(2)(b) of the Constitution, the Emergency Powers Act applies, complementing the constitutional framework by detailing the government's specific powers during a state of public emergency.² These powers include the ability to issue emergency regulations deemed 'necessary or expedient for securing public safety.'³ Examples of these powers include deploying military forces, imposing curfews, detaining individuals, requisitioning property and authorising entry and search of premises. Moreover, the regulations may allow for the temporary suspension of certain laws as necessary.⁴

The Emergency Powers Act also provides safeguards for those affected by the regulations, including compensation for requisitioned property or other losses payable from the Consolidated Fund.⁵ Additionally, it allows for the maintenance of essential supplies and services critical to the community's well-being.⁶

Whilst the Act provides the legal foundation for swift government action during a national crisis, important checks and balances are in place to prevent overreach and abuse, aligning these measures with constitutional safeguards. When a proclamation of emergency is made, it must be communicated to the House of Representatives as soon as practicable. If the House is adjourned or prorogued for more than ten days, the President must summon it to meet within five days.⁷ The proclamation remains valid for 14 days from issuance, 'but without prejudice to the making of another proclamation of emergency at or before the end of that period.'⁸ Furthermore, the proclamation may be extended through a resolution passed by the House, for a period 'not exceeding three months', starting from the date it would otherwise expire.⁹

² Emergency Powers Act, Chapter 178 of the Laws of Malta.

³ *ibid.* Article 4(1).

⁴ *ibid.* Article 4(2)(a)-(h).

⁵ *ibid.* Article 4(3).

⁶ *ibid.* Article 4(2)(h).

⁷ Constitution (n 1) Article 47(3)(a).

⁸ *ibid.* Article 47(3)(b).

⁹ *ibid.* Article 47(3)(c).

Legislative Oversight and Proportionality

A key provision of the Emergency Powers Act is that all ‘orders and rules’ must be submitted for parliamentary approval.¹⁰ Specifically, ‘every regulation made... shall cease to have effect’ unless approved by the House of Representatives within two months.¹¹

Additionally, the Act ensures that emergency measures declared under a public emergency ‘apply only to such part or parts of Malta’ as deemed necessary.¹² In this context, the introduction of ‘public health’ in the Act, particularly through Act X of 2020, expands the scope to include health crises such as pandemics within the emergency framework.¹³ This provision ensures a tailored and proportional response, minimising unnecessary disruption to unaffected areas and maintaining a balance between necessary state intervention and the protection of individual rights.

Limitations and Prohibitions within the Emergency Powers Act

A significant limitation within the Emergency Powers Act is the prohibition against any regulation permitting the trial of civilians by military courts.¹⁴ This establishes a clear distinction between public emergency law and martial law. While martial law may apply when civilian institutions have collapsed, the Emergency Powers Act assumes that civilian governance and judicial mechanisms remain operational.

Other notable restrictions include the prohibition of regulations authorising ‘the deportation or exclusion of persons from Malta’ or the imposition of the death penalty.¹⁵ Despite the broad powers conferred under the Emergency Powers Act, the ‘inconsistency clause’ ensures that regulations, while being capable of overriding conflicting laws, cannot contravene the Constitution.¹⁶ This reinforces the supremacy of the Constitution, guaranteeing that even in times of crises, fundamental rights remain safeguarded.

In contrast to international frameworks such as Article 15 of the European Convention on Human Rights (ECHR), which permits for broader derogations

¹⁰ Emergency Powers Act (n 2) Article 5.

¹¹ *ibid.* Article 6(1).

¹² *ibid.* Article 2A(2).

¹³ *ibid.* Article 4(1); Act X of 2020, Public Health (Amendment) Act.

¹⁴ Emergency Powers Act (n 2) Article 4(2)(h).

¹⁵ *ibid.* Article 4(2)(h)(i)-(ii).

¹⁶ *ibid.* Article 7.

during emergencies,¹⁷ Malta's legal system maintains stricter limitations on emergency powers. This reflects a constitutional commitment to balancing state security with the protection of democratic values and human dignity.

Constitutional Safeguards and Potential Contradictions

The Constitution allows for derogation from certain fundamental rights during periods of public emergency. However, these derogations are subject to strict constitutional safeguards. For instance, the protection against arbitrary arrest may be curtailed in instances of war or subversion.¹⁸ Yet, a contradiction arises under the Emergency Powers Act, which permits the President to issue regulations for the detention of persons, whilst the Constitution specifically excludes such curtailment in cases of public emergency proclamations made by the President.¹⁹ This highlights the need for all emergency regulations to strictly align with the Constitution's provisions on lawful arrest.

Although the Emergency Powers Act grants extensive powers to manage crises, these powers remain subject to important constitutional safeguards. Chapter IV of the Constitution ensures that certain rights, such as the 'right to life,' 'freedom from torture,' and protection from inhuman or degrading treatment, remain non-derogable, irrespective of the nature of the emergency.²⁰

Additionally, some rights may be curtailed under specific provisions of the Constitution. For example, Article 35(2)(d) permits restrictions on freedom from forced labour in cases of national crises that threaten the life or wellbeing of the community.²¹ Similarly, Article 45 allows for limited derogations from protections against discrimination during public emergencies when the state faces existential threats.²² These exceptions must be interpreted narrowly and in accordance with the scenarios envisaged in Article 47(2), ensuring consistency between the Constitution and the Emergency Powers Act.

¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 15.

¹⁸ Constitution (n 1) Article 34(2).

¹⁹ *ibid.* Article 47(2).

²⁰ *ibid.* Chapter IV.

²¹ *ibid.* Article 35(2)(d).

²² *ibid.* Article 45.

Declaration by the House of Representatives

The third scenario allows the House of Representatives to declare a state of emergency by passing a resolution with a two-thirds majority.²³ This provision underscores the seriousness of declaring a state of emergency, as it requires broad bipartisan agreement. By requiring a two-thirds majority, the Constitution ensures that such a declaration is not made arbitrarily and has the support of a significant portion of the elected representatives. This safeguard helps protect democratic institutions, preventing the concentration of power in a single branch of government or political party.

Termination of Public Emergency

The termination of a public emergency is essential to prevent the indefinite extension of emergency powers. In the case of war, the emergency concludes once hostilities cease, while in instances of subversion, it ends when the threat to democratic institutions is neutralised. Furthermore, Article 47(4) of the Constitution stipulates that if the House of Representatives does not approve the emergency regulations within the prescribed period, the emergency will 'cease to be in force'.²⁴ This provision reinforces legislative oversight, ensuring that emergency powers are not exercised beyond necessity and that they are subject to democratic accountability.

The constitutional framework for the termination of a public emergency is designed to balance the need for effective crisis management with the protection of democratic principles. By requiring parliamentary review and approval, the Constitution safeguards against the indefinite exercise of emergency powers and ensures that the government remains accountable to the people throughout the crisis.

²³ *ibid.* Article 47(2)(c).

²⁴ *ibid.* Article 47(4).

Constitutional and Legal Framework Governing the Armed Forces During Public Emergencies and Martial Law in Malta

The legal framework governing the Armed Forces of Malta (AFM) during public emergencies is based on public emergency law, military law, and martial law,²⁵ ensuring that the military operates within strict legal boundaries while remaining under civilian control. These legal frameworks play distinct roles in regulating the AFM's actions during crises.

Military law, codified in Chapter 220 of the Laws of Malta, governs the AFM's structure, conduct, and discipline.²⁶ The Act is divided into two branches: the administrative branch, ensuring that the AFM adheres to good governance principles, and the penal branch, addressing military offences through disciplinary procedures such as courts-martial.²⁷ Notably, military law is not an isolated body of law but is integrated into the larger Maltese legal framework. Decisions rendered by military courts can be appealed before the civilian Court of Criminal Appeal, ensuring that constitutional protections, including human rights safeguards, are upheld.²⁸

Martial law, in contrast, is a non-statutory and extreme measure invoked only in situations where civilian authorities are unable to maintain public order. Although martial law is not explicitly outlined in the Constitution, it exists as a last-resort practice, temporarily suspending certain legal rights such as habeas corpus, until civilian governance can be restored.

Finally, Malta's legal framework prohibits conscription, ensuring that military service remains voluntary, even during emergencies. The provisions of Chapter 220 regarding voluntary enlistment reflect Malta's strong commitment to civil liberties, preventing the military from infringing upon individual freedoms during times of national crisis.

²⁵ Paul E. Micallef, '*Criminal Courts and Courts-Martial: A Comparative Study Relating to Jurisdiction and Procedure, with Particular Reference to the Malta Armed Forces Act, 1970*' (L.L.D thesis, University of Malta, 1983), Chapter I, Part III.

²⁶ Malta Armed Forces Act, Chapter 220 of the Laws of Malta.

²⁷ *ibid.* Part II, Title I.

²⁸ European Convention of Human Rights (n 17) Article 6; Constitution (n 1), Article 39(1).

Malta's Neutrality and its Impact on Emergency Regulations

The Constitution of Malta not only provides a framework for managing public emergencies but also establishes Malta's status as a neutral state under Article 1(3). This constitutional commitment to neutrality significantly influences Malta's approach to emergencies, particularly when it comes to foreign military involvement. Malta's neutrality policy explicitly prohibits the establishment of foreign military bases or facilities on Maltese soil, directly affecting the nation's ability to engage with foreign military forces during emergencies.²⁹

Unless explicitly requested by the government in specific circumstances, such as self-defence or actions authorised by the United Nations Security Council, Malta remains committed to a policy of non-alignment. Any foreign military presence requires both legislative and executive approval, ensuring that Malta retains full control over its sovereignty, even during emergencies.

Malta's neutrality defines the operational limits of the AFM during emergencies. The AFM's primary focus remains internal, focused on domestic public order and national security, rather than participating in international military operations.³⁰ This ensures that, during periods of crisis, the AFM is constrained to defending Malta's sovereignty and maintaining internal stability, in alignment with the constitutional commitment to neutrality.

Conclusion

The provisions of the Constitution form the backbone of the country's public emergency law, providing a structured legal framework that allows for swift crises management while safeguarding fundamental rights. The Constitution ensures that emergency powers are exercised only when absolutely necessary and are subject to strict time limits and conditions. Legal safeguards, such as parliamentary oversight and judicial review, play a crucial role in preventing the abuse of emergency powers and ensuring government accountability.

The distinction between public emergency law and martial law ensures that military authority remains under civilian control, preventing overreach during national crises. Malta's neutrality policy, enshrined in the Constitution, further limits foreign military involvement and preserves the nation's

²⁹ Constitution (n 1) Article 1(3).

³⁰ Malta Armed Forces Act (n 26).

sovereignty.

This comprehensive framework enables the government to respond swiftly and effectively to emergencies, balancing national security with human rights protections. By aligning constitutional safeguards and international human rights standards, Malta ensures that its public emergency laws protect both the security of the state and the dignity of its people.



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