



Conférence des Cours constitutionnelles européennes
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CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES

*National report prepared for the XVth Congress
of the Conference of European Constitutional Courts by
The Constitutional Court of Malta*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

In terms of Article 96 of the Maltese Constitution, The President of Malta appoints all members of the Judiciary on the advice of the Prime Minister.

In terms of Section 11 (1) of the Code of Organization and Civil Procedure, the President of Malta shall assign to each member of the Judges his duties by assigning him the court or the chamber or section of the court he is to sit in ordinarily, The President of Malta also has to power to transfer a Judge from one Court, section or Chamber to another.

Nevertheless, in terms of 11(3) of the same Code, when one or more judges are assigned to the same Court, Section or Chamber, it is the prerogative of the Chief Justice to distribute amongst them the duties to the various members of the Judiciary.

Judges, including judges sitting in the Constitutional Court, remain in office until the age of 65 years. They may not be removed from office except by the President upon an address by the House of Representatives (Parliament) supported by the votes of not less than two-thirds of all its members. They may only be removed on grounds of proved inability to perform the functions of their office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

- 2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?**

The Constitutional Court, as it forms part of the Courts of Justice, enjoys the same budget provided to the Courts by Parliament, on an annual basis, which budget is set by the Executive and approved by the Legislature as part of the Annual Budget set by the Government.

- 3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

Whilst it is not customary for the Executive and Legislative powers to amend such laws without previously consulting with the Courts, it is legally possible as the drafting and amending of laws are the sole prerogative of the Legislature.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

The Constitutional Court, in its First Hall of the Civil Court jurisdiction, has the competence to review the constitutionality of all legislation – both principal and subsidiary.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

In terms of section 95 (2), The Constitutional Court has the jurisdiction to hear and determine:-

- i. Any questions whether:-
 - any person has been validly elected as a member of the House of Representatives
 - any member of the House has vacated his seat therein or, if there are circumstances which lead to such member being disqualified for election, is required to vacate the seat
 - any person has been validly elected as Speaker of the House of, having been so elected, has vacated the office of Speaker.
- ii. Any reference relating to voting in elections and the process of the elections.
- iii. Appeals from the Civil Court, First Hall on decisions relating to the enforcement of the Fundamental Rights and Freedoms of the Individual.
- iv. Appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of the Constitution.
- v. Appeals from decision of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under item iii above.
- vi. Any questions decided by a court of original jurisdiction in Malta together with any of the questions referred to above on which an appeal has been made to the Constitutional Court.

6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.

Once a decision has been delivered by the Constitutional Court declaring a law or part of it as violating provisions of the Constitution, the Registrar of the Court proceeds forthwith to forward a copy of the decision of the Court to the Clerk of the House, who will then table it to the House of Representatives for its consideration.

6. b) Parliament can invalidate the constitutional court's decision: specify conditions.

No it cannot. It can however amend legislation as it deems fit but such new amendments would themselves fall to be scrutinised by the Constitutional Court for constitutionality.

7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?

No, there are not.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

- 1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

Constitutional litigation is, more often than not, between a private citizen and a public authority.

No instances of litigation between two public authorities ever arose before the Constitutional Court.

- 2. Specify whether the Constitutional Court is competent to resolve such litigation.**

The Constitutional Court would be competent, should the case arise.

- 3. Which public authorities may be involved in such disputes?**

In theory any public authority may be so involved.

- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

Such disputes have never arisen.

- 5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

As a rule, it is the aggrieved party who is entitled to submit proceedings before the Constitutional Court.

- 6. What procedure is applicable for the adjudication of such dispute?**

The same procedure adopted for any reference to the Constitutional Court, namely by means of an application, would be adopted.

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

The Constitutional Court has wide parameters within which to act but it all depends on the nature of the dispute. The most common remedy is to condemn the defaulting party to pay compensation but the Court may also annul legislative, administrative or executive acts.

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

Public authorities invariably comply with the decisions and orders of the Constitutional Court.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

All decisions of the Constitutional Court are final and binding *inter partes litigantes*.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
 - a) repealed;
 - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
 - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
 - d) other instances.

The Constitutional Court will not repeal or suspend the effects of any law or legal text but will state that a particular law or text is unconstitutional. Once this is done, the legislature will have to take the necessary steps to repeal or amend the provision declared to be unconstitutional.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

Though not directly stated in any law, all courts follow the decisions of the Constitutional Court, as a result of which, the decision of the Constitutional Court will be followed by all other Courts. The Constitution provides for a reference procedure from other Courts when a constitutional issue arises. In such cases the referring court is bound to dispose of the issue in the manner decided by the Constitutional Court.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?

The legislature will always take steps to repeal or change the legal text declared unconstitutional. Neither the Constitution nor the Constitutional Court specifies any deadline within which such steps are to be taken.

- 5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

The Constitution does not provide for any deadlines. What usually happens is that the Courts stop enforcing the law or legal provision declared unconstitutional and the legislature, in due time, would make the necessary amendments to rectify the situation.

- 6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

Though the Constitution does not prohibit the legislature from doing so, it would be very unusual for the legislature to enact a provision once again in the same format as that which has been declared unconstitutional.

- 7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

The Constitutional Court does have such a possibility but it has at times required the assistance of the Police for the purpose of avoiding threats to public order. As to the enforcement of the decision, this lies with the party who sought the redress, and not with the Constitutional Court.