

C.O.N.T.A.C.T. Desktop research results Malta

Annexes 1. Definitions & 2. Legal Provisions

Definitions	Source
<p>(1) Subject to the provisions of sub-articles (4), (5) and (7) of this article, no law shall make any provision that is discriminatory either of itself or in its effect.</p> <p>(2) Subject to the provisions of sub-articles (6), (7) and (8) of this article, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.</p> <p>(3) In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.</p>	<p>Constitution of Malta <i>Article 45</i></p>
<p>(1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or racial hatred against another person or group on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion or whereby such violence or racial hatred is likely, having regard to all the</p>	<p>Maltese Criminal Code <i>Article 82</i></p>



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<p>circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.</p> <p>(2) For the purposes of the foregoing subarticle "violence or racial hatred" means violence or racial hatred against a person or against a group of persons in Malta defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion</p>	
<p>6. Whosoever, by any means mentioned in article 3, shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion, disability as defined in article 2 of the Equal Opportunities (Persons with Disability) Act, shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine (multa).</p>	The Press Act (Part II)
<p>16K. Audiovisual commercial communications provided by media service providers shall comply with the following requirements:</p> <p>(a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited; (b) audiovisual commercial communications shall not use subliminal techniques; (c) audiovisual commercial communications shall not:</p> <p>(i) prejudice respect for human dignity; (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation; (iii) encourage behaviour prejudicial to health or safety; (iv) encourage behaviour grossly prejudicial to the protection of the environment; (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited; (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages; (f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited; (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.</p>	The Broadcasting Act



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<p>"discriminatory treatment" means any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association;</p> <p>PROTECTION AGAINST DISCRIMINATION RELATED TO EMPLOYMENT</p> <p>(1) It shall not be lawful for any person - (a) when advertising or offering employment or when advertising opportunities for employment or when selecting applicants for employment, to subject any applicants for employment or any class of applicants for employment to discriminatory treatment; (b) in regard to employees already in the employment of the employer, to subject any such employees or any class of employees to discriminatory treatment, in regard to conditions of employment or dismissal.</p> <p>(2) For the purposes of this article, discriminatory treatment shall include: (a) the engaging or selection of a person who is less qualified than a person of the opposite sex, unless the employer can prove that the action was based on acceptable grounds related to the nature of the work or on grounds related to previous work performance and experience; (b) actions which apply to an employee, terms of payment or employment conditions that are less favourable than those applied to an employee in the same work or work of equal value, on the basis of discriminatory treatment; (c) actions whereby the employer knowingly manages the work, distributes tasks or otherwise arranges the working conditions so that an employee is assigned a clearly less favourable status than others on the basis of discriminatory treatment.</p> <p>(3) The provisions of subarticles (1) and (2) shall be without prejudice to the rights and obligations prescribed by the Equal Opportunities (Persons with Disability) Act, and shall not apply to any preference or exclusion which is reasonably justified taking into account the nature of the vacancy to be filled or the employment offered, or where a required characteristic constitutes a genuine and determining occupational requirement or where the requirements are established by any applicable laws or regulations. (4) For the purposes of this article, the term "offering employment" includes recruitment or training of any person with a view to engagement in employment and in regard to a person already in employment, includes also promotion to a higher grade or engagement in a different class of employment</p> <p>27. Employees in the same class of employment are entitled to the same rate of remuneration for work of equal value: Provided</p>	<p>The Employment and Industrial Relations Act</p>



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<p>that an employer and a worker or a union of workers as a result of negotiations for a collective agreement, may agree on different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specified period of time; and Provided further that any distinction between classes of employment based on discriminatory treatment otherwise than in accordance with the provisions of this Act or any other law shall be null and of no effect.</p> <p>28. It shall not be lawful to victimise any person for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged breach of the provisions of this Act, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting in the employer's name and interests.</p> <p>29. (1) It shall not be lawful for an employer or an employee to harass another employee or to harass the employer by subjecting such person to any unwelcome act, request or conduct, including spoken words, gestures or the production, display or circulation of written words, pictures or other material, which in respect of that person is based on sexual discrimination and which could reasonably be regarded as offensive, humiliating or intimidating to such person. (2) It shall not be lawful for an employer or an employee to sexually harass another employee or the employer (hereinafter in this article referred to as "the victim") by: (a) subjecting the victim to an act of physical intimacy; or (b) requesting sexual favours from the victim; or (c) subjecting the victim to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of written words, pictures or other material where - (i) the act, request or conduct is unwelcome to the victim and could reasonably be regarded as offensive, humiliating or intimidating to the victim; (ii) the victim is treated differently, or it could reasonably be anticipated that the victim could be so treated, by reason of the victim's rejection of or submission to the act, request or conduct.</p> <p>30. (1) A person who alleges that the employer is in breach of, or that the conditions of employment are in breach of articles 26, 27, 28 or 29, may within four months of the alleged breach, lodge a complaint to the Industrial Tribunal and the Industrial Tribunal shall hear such complaint and carry out any investigations as it shall deem fit. (2) If the Industrial Tribunal is satisfied that the complaint is justified, it may take such measures as it may deem fit including the cancellation of any contract of service or of any clause in a contract or in a collective agreement which is discriminatory and shall order the payment of compensation for loss and damage sustained by the aggrieved party as a consequence of the breach. (3) For the purposes of hearing and deciding cases of alleged</p>	



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<p>discrimination, breaches of the principle of work of equal value, victimisation or harassment, the Industrial Tribunal shall be composed of a chairperson alone in the manner set out in article 73(4). (4) Any action taken by a complainant in accordance with the provisions of this article shall be without prejudice to any further action that such complainant may be entitled to take under any other applicable law and shall also be without prejudice to any other action to which the respondent may be subject in accordance with any other applicable law.</p> <p>31. Subject to the foregoing, the Minister may, after consultation with the Board, prescribe regulations to give better effect to the provisions of articles 26, 27, 28 and 29 and in particular for the elimination of any discriminatory practices in the employment or in the conditions of employment of any person or class of persons, for providing equal opportunities of employment for classes of persons who are at a disadvantage and to regulate access to the Industrial Tribunal and investigation and hearing by the Industrial Tribunal of complaints of alleged discrimination, breaches of the principle of work of equal value, victimisation or harassment.</p> <p>32. Any person contravening the provisions of articles 28 and 29 shall be guilty of an offence and shall be liable on conviction to a fine (multa) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.</p>	

2b: Examples of judicial interpretations (since 2010)

Court Date – Case No. and parties	Description of event	Outcome/verdict and notes	Judicial interpretation of law
26-09-2013- 804_2010-83148	Defendant 1 was filmed giving what can be interpreted as being a racist speech, and defendant 2 assisted by filming the speech and posting it on You Tube	Both defendants were conditionally discharged (on the grounds that the video was actually filmed to make people laugh rather than to	The posting of the video on Youtube was not done to make a political or racial statement, but because it was thought that the video was humorous and fun and the defendants wanted to share the experience with the general public.



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		make a racial statement).	It is for these reasons that this speech cannot fall under the definition of Article 82A of the Maltese Criminal Code. The case also lacks an essential element in the absence of an international component. This argument, in the view of the court, can apply to the behaviour of Defendant 1, who intended the speech to be heard by a limited number of people at a specific event for entertainment purposes.
31-01-2013- 1192_2010- 79058	The defendant, a Club bouncer, refused entry to two Tunisian men and a small fight broke out.	Defendant acquitted of racist charges (on the grounds that there was no evidence that his refusal of entry was based on racial discrimination). Still, he was fined €300, as he was found guilty of 2 of the 6 charges.	The first charge brought against the defendant falls under Article 82A of chapter 9 of the Maltese Criminal Code. As the accusation stands, it has to be proven that the accused’s behaviour intended to incite racial hatred to others. It seems that the prosecution is basing this first accusation on the assumption one of the victims was not let into Havana Club because he was Tunisian, and as alleged by the victim himself, when about five bouncers surrounded him they instigated each other to hit him because he was an Arab. According to the court, the only proof to substantiate this accusation is the allegation that the accused did not give access to the victims into Havana. In this regard, the court is requested a verbatim testimony by the victim as evidence. In his testimony, the victim said the following:



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			<p><i>I showed him my ID Card, he flipped it, and told me that he cannot let me in. Perhaps as he saw that I was a foreigner. You see, the thing is, I am Tunisian, which makes me Arabic.</i></p> <p>It is clear that the victim assumed that he was not permitted to enter the nightclub because he is Tunisian. In reality, the accused never gave a reason as to why Mr Abderrazek was denied entry.</p>
09-06-2014-1076_2010-88366	The defendant, a bus driver, prevented a black couple and their baby from boarding the bus.	Defendant acquitted (on the grounds that there was no evidence that his premise was racist)	Although the behaviour of the bus driver was aggressive, insulting and abusive, it was not by its nature racist and therefore, according to the courts, was not prosecuted as a hate crime according to Article 82A of the criminal code.
24-04-2014-323_2012-88209	The defendant was charged with waving his gun and allegedly hurling racial insults at two Somalian Nationals from the balcony his home.	<p>Court issued a Protection Order to prevent the accused from approaching the victims and their residence.</p> <p>Defendant found not guilty on racist charge (on the grounds that there was no evidence of this).</p>	Although the defendant's behaviour was aggressive and violent, there was no evidence that his behaviour intended to be racist.



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Court Date – Case No. and parties	Description of event	Outcome/verdict and notes	Judicial interpretation of law
27-08-2014- 586_2014-89495	The defendant, who was also a foreign citizen, was charged with both verbally and physically attacking an African male.	Defendant found guilty (sentenced to six months in prison)	<p>In the view of the court, there was be no doubt that the words uttered by the defendant were threatening, insulting and abusive with regard to African and/or black people and there was, therefore, no doubt as to the actus reus required.</p> <p>As to the intentional element it must be pointed out that defendant started using this abusive language with regards to black persons before the victim had appeared on the street. He first started the threats and insults when he had the altercation with the elderly neighbour; the threats, insults and abusive language were then directed at a witness (whose children are African) and who was helping the victim, and also at the victim himself. Furthermore defendant continued by repeating that he <i>“will kill every f*cking negro that comes into the street”</i>.</p>
13-08-2015- 565_2015-96298	A Maltese citizen verbally attacked a coloured Hungarian male at the bus station in Valletta.	Charges dropped by both parties.	The accused apologised to the victim for her behaviour and thus all charges were dropped. In addition, the police that arrived on the scene testified that when they got there the confrontation had cleared.