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Contact: Clare Ovey
Tel: 03 88 41 36 45

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Meeting: 1310th meeting (March 2018) (DH)

Item reference: Action plan (27/02/2018)

Communication from Malta concerning the case of BORG v. Malta (Application No. 37537/13)

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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Plan d'action

Communication de Malte concernant l'affaire BORG c. Malte (Requête n° 37537/13) **(anglais uniquement)**

27 FEV. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Execution of Judgments of the European Court of Human Rights

Action Plan

Borg v. Malta (application no. 37537/13; judgment final on 12th April 2016)

Case Summary

1. Case description:

- The case concerned a lack of legal assistance during the applicant's questioning in police custody in 2003.
- The European Court found that the applicant had been denied the right to legal assistance at the pre-trial stage as a result of a systemic restriction on legal assistance during police questioning which was applicable to all accused persons in Malta until 2010.
- In its judgment, the European Court found a violation of Art 6 (3) (c) in conjunction with Article 6 (1) of the Convention.

Individual measures

2. Just satisfaction:

- The just satisfaction awarded by the European Court for non-pecuniary damages and costs has been paid. The European Court has not awarded any pecuniary damages.
- The applicant has instituted fresh constitutional redress proceedings in the names "*Mario Borg vs Attorney General*" (constitutional application number 43/2016JRM) wherein the applicant is requesting a retrial. The case is adjourned for judgment to the 22nd March 2018.

General Measures

3. Remedy for others who were denied the right to legal assistance at the pre-trial stage and in which case the criminal proceedings are still pending

As noted by the European Court at §§ 8, 33 and 34, the laws in Malta were amended in 2010 in order to provide legal assistance to suspects during pre-trial investigations.

Since the facts at issue before the European Court, the Maltese authorities have taken reasonable and appropriate measures to establish an appropriate legislative framework to provide an effective remedy to those individuals who were denied the right to legal assistance at pre-trial stage and whose criminal proceedings are still pending.

Act No. LI of 2016 amended the Criminal Code (Chapter 9 of the Laws of Malta) whereby Article 355AUI introduced a remedy giving a suspect or accused person in criminal proceedings the possibility to seek redress in the event of a breach of the right to legal assistance before the court seized of their case and the court seized with the claim shall have authority to grant such redress as it deems appropriate and without undue delay. There is also a right of appeal from a decision to grant or deny such redress to the Court of Criminal Appeal.

Moreover, the Criminal Code of Malta was amended through the implementation of EU Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. The aim of the Directive is to ensure that national laws governing access to lawyers in criminal proceedings are in line with Article 6 of the European Convention, as referenced in the first paragraph of that Directive's preamble.

Specifically, Sub-Title IX, Article 355AT of the Criminal Code now provides for lawyer access for detained, arrested, charged or accused persons, as well as persons subject to European arrest warrant proceedings. These provisions implement the above mentioned Directive. A copy of these provisions is being annexed as 'Doc. A' to this action plan.

Following the decision of the European Court of Human Rights, the Constitutional Courts have delivered a number of judgments wherein the domestic courts ordered that the statement given by a suspected or accused person without legal assistance at the pre-trial stage was expunged from the acts of the criminal proceedings (vide *Malcolm Said vs Attorney General et* – application number 74/2014 – decided on the 24th June 2016) and where a re-opening of the criminal proceedings was ordered (vide *Trevor Bonnici vs Attorney General* – application number 44/2016 – decided on the 18th July 2017). Other similar judgments included that of *Christopher Bartolo vs Attorney General* – application number 92/16 decided on the 23rd November 2017 (still pending before Constitutional Court - media coverage of the judgment can be found at:

http://www.maltatoday.com.mt/news/court_and_police/82483/after_constitutional_breach_confirmed_wrongly_convicted_man_requests_bail#.WjJXaWeWxaQ. The domestic criminal courts are also applying the findings of the Court and declared statements taken by the police without the assistance of a lawyer as inadmissible (vide *The Police vs*

Charlton Fenech decided on the 10th May 2017 by the Court of Magistrates as a Court of Criminal Judicature – media coverage of the judgment can be found at:

http://www.maltatoday.com.mt/news/court_and_police/77045/inadmissible_statement_gets_man_acquitted_of_stealing_cash_from_flatmate#.WjJXoWeWxaQ.

4. Publication and Dissemination

The judgment was disseminated to the Executive Police and the Prosecutors at the Office of the Attorney General. It was also disseminated to the judiciary and in fact the courts are taking the judgment into account when similar cases arise.

The judgment received ample media coverage.

State of execution of judgment

The Maltese authorities will, by the end of July 2018, forward an updated action plan setting out any further steps taken to fully respond to the European Court's judgment and give the estimated time table for the next steps.

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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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CAP. 9.]

CRIMINAL CODE

Intimate searches
of the person
detained.

Added by:
III.2002.74.

355AP. Where the arresting officer or the custody officer has a reasonable suspicion that the person arrested may have concealed on his person any drug the unlawful possession of which would constitute a criminal offence or any other item which a custody officer is authorised by this Code or by any other law to seize from the possession of an arrested person, the said officer may request a Magistrate to order an intimate search of the person arrested.

Experts to be
appointed.

Added by:
III.2002.74.

355AQ. (1) Upon a request for an order under article 355AP the Magistrate shall appoint an expert to carry out the search under such safeguards as he may consider necessary for the purpose of decency and to report to him on his findings. A copy of the report shall be communicated without delay to the arresting or custody officer as the case may be.

(2) A person shall not be appointed an expert for the purpose of carrying out an intimate search on a person of the opposite sex unless the expert is a medical practitioner and the person to be searched consents thereto in writing.

Seizure.

Added by:
III.2002.74.

355AR. Anything found as a result of an intimate search under the foregoing articles may be temporarily retained by the expert and may subsequently be seized by order of the Magistrate, and a receipt therefore shall be given to the detained person. The Magistrate may authorise the delivery against receipt of anything so seized to the police officer investigating the person intimately searched.

Sub-title IX

Substituted by:
LI.2016.2.

RIGHT TO LEGAL ASSISTANCE AND OTHER RIGHTS DURING DETENTION

Right to consult a
medical
practitioner.

Added by:
III.2002.74.
Substituted by:
LI.2016.3.

355AS. (1) The suspect or accused person shall, at his request, be allowed to consult a medical practitioner of his choice and, if such medical practitioner is not readily available, any other medical practitioner.

(2) Immediately upon arrest and without undue delay, the Executive Police or any other law enforcement or judicial authority shall inform the suspect or an arrested person of such a right.

(3) A record shall be kept that the suspect or accused person has been duly informed of such right by the Executive Police or by any other law enforcement or judicial authority.

(4) The words "the suspect" and "the accused person" in this article have the same meaning assigned to them by article 355AT(2).

Subject matter of
this Sub-title.

Added by:
III.2002.74.
Substituted by:
LI.2016.4.

355AT. (1) This Sub-title transposes the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and

to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union on 6 November 2013 (L 294/1).

(2) This Sub-title lays down minimum rules concerning the rights of:

- (a) the suspect (hereinafter in this Sub-title referred to as "the suspect"), that is, a person who is detained or arrested by the Executive Police or any other law enforcement or judicial authority where such person has not been charged before a court of justice of criminal jurisdiction and who is being questioned by the Executive Police or any other authority as aforesaid in relation to any criminal offence;
- (b) a person charged or accused of having committed a criminal offence (hereinafter referred to in this Sub-title as "the accused person");
- (c) a person subject to proceedings pursuant to Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) published in the Official Journal on 18 July 2002 (L 190/1), hereinafter referred to as "the European arrest warrant proceedings".

(3) The persons mentioned in sub-article (2) shall enjoy the following rights:

- (a) to have access to a lawyer;
- (b) to have a third party informed of the deprivation of their liberty; and
- (c) to communicate with third persons and with consular authorities whilst deprived of their liberty.

(4) For the purpose of this Sub-title, the expression "lawyer" means an advocate or a legal procurator who is authorised by law to exercise that respective profession in terms of law.

355AU. (1) This Sub-title applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the Executive Police or by any other law enforcement or judicial authority, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.

(2) This Sub-title applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or the accused person has committed an offence, including, where applicable, sentencing and the resolution of any appeal.

(3) This Sub-title applies also to persons subject to European arrest warrant proceedings in terms of Framework Decision 2002/584/JHA referred to in article 355AT(2)(c) (hereinafter referred to as "the requested persons") from the time of their arrest in

Scope of this
Sub-title.
Added by:
III.2002.74.
Substituted by:
LI.2016.4.

accordance with article 355AUJ.

(4) This Sub-title also applies, under the same conditions as provided for in sub-article (1), to persons other than the suspect or the accused person who, in the course of questioning by the Executive Police or by another law enforcement or judicial authority, become suspects or accused persons.

(5) Without prejudice to the right to a fair trial, in respect of minor offences -

- (a) where the law provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or
- (b) where deprivation of liberty cannot be imposed as a sanction,

this Sub-title shall only apply to the proceedings before a court having jurisdiction in criminal matters:

Provided that, in any event, this Sub-title shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

The right of access
to a lawyer in
criminal
proceedings.
Added by:
LI.2016.4.

355AUA. (1) The suspect or the accused person shall have the right of access to a lawyer in such time and in such a manner so as to allow him to exercise his rights of defence practically and effectively.

(2) The suspect or the accused person shall have access to a lawyer without undue delay. In any event, the suspect or the accused person shall have access to a lawyer from whichever of the following points in time is the earliest:

- (a) before they are questioned by the Executive Police or by another law enforcement or judicial authority in respect of the commission of a criminal offence;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with sub-article (8)(e);
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

(3) A request for legal assistance shall be recorded in the custody record together with the time when it was made unless the request is made at a time when the person who makes it is at court after being charged with an offence in which case the request need not be so recorded.

(4) Once a request for legal assistance is made, the suspect or the accused person shall be provided with a list of lawyers drawn up by the Chamber of Advocates and the Chamber of Legal

Procurators and submitted on a yearly basis to the Executive Police and to any other law enforcement and judicial authority, from which the suspect or the accused person may select a lawyer of his own choice. Alternatively, the suspect or the accused person may elect to be assisted by the Advocate for Legal Aid in which case the Advocate for Legal Aid shall assign a lawyer for this purpose.

(5) Without prejudice to the provisions of article 355AUI(3), any police officer who indicates or attempts to indicate to a person detained the advocate or legal procurator who should be engaged during the detention of such person, shall be guilty of an offence and shall be punishable with a fine (*ammenda*) and this without prejudice to any disciplinary proceedings that may be taken against him as a consequence of a finding of guilt in respect of such an offence or in lieu of prosecution for such an offence in accordance with any disciplinary regulations in force from time to time.

(6) Where the person detained chooses not to seek legal assistance the Executive Police, investigating officer or any other law enforcement or judicial investigating authority shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately. It shall not be admissible for the prosecution to comment during any proceedings before a court of justice of criminal jurisdiction on the fact that the suspect or the accused person did not avail himself of the right to legal assistance in the course of his detention under arrest.

(7) Where in any proceedings before a court of justice of criminal jurisdiction against a person for an offence, evidence is given that the suspect or the accused person -

- (a) at any time before he was charged with the offence, on being questioned by the Executive Police or by any other law enforcement or judicial authority trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
- (b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the suspect or the accused person could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, no inference may be drawn from the suspect's or the accused person's failure to mention facts which may be considered as evidence of guilt or as amounting to corroboration of any evidence of guilt of the suspect or the person accused.

(8) The right of access to a lawyer shall entail the following:

- (a) the suspect or the accused person, if he has elected to exercise his right to legal assistance, and his lawyer, shall be informed of the alleged offence about which the suspect or the accused person is to be questioned. Such information shall be provided to the suspect or the accused person prior to the commencement of

questioning, which time shall not be less than one hour before questioning starts;

- (b) the suspect or the accused person shall have the right to meet in private and communicate with the lawyer representing him, including prior to questioning by the police or by another law enforcement or judicial authority;
- (c) the suspect or the accused person shall have the right for his lawyer to be present and participate effectively when questioned. Such participation may be regulated in accordance with procedures which the Minister responsible for Justice may by regulations establish, provided that such procedures shall not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using where possible in the opinion of the interviewer audiovisual means in terms of paragraph (d):

Provided that the right of the lawyer to participate effectively shall not be interpreted as including a right of the lawyer to hinder the questioning or to suggest replies or other reactions to the questioning and any questions or other remarks by the lawyer shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall have declared that it has no further questions;

- (d) questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, shall where possible in the opinion of the interviewer be recorded by audio-visual means and in such case a copy of the recording shall be handed over to the suspect or the accused person following the conclusion of the questioning. Any such recording shall be admissible in evidence, unless the suspect or the accused person alleges and proves that the recording is not the original recording and that it has been tampered with. No transcription need be made of the recording when used in proceedings before any court of justice of criminal jurisdiction, nor need the suspect or the accused person sign any written statement made following the conclusion of the questioning once all the questions and answers, if any, are recorded on audiovisual means;
- (e) the suspect or the accused person shall have the right for his lawyer to attend the following investigative or evidence-gathering acts if the suspect or accused person is required or permitted to attend the act concerned:
 - (i) identity parades;

- (ii) confrontations;
- (iii) reconstructions of the scene of an offence.

(9) General information to facilitate the briefing of a lawyer by suspects or accused persons shall be made available in terms of sub-article (4) or such other procedure as the Minister responsible for Justice may by regulations establish.

(10) Notwithstanding the provisions of this Sub-title concerning the mandatory presence of a lawyer, the Executive Police or any other law enforcement or judicial authority shall ensure that suspects or accused persons who are deprived of liberty shall be in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with article 355AUG.

(11) In exceptional circumstances and only at the pre-trial stage, a temporary derogation may be made from the application of the right provided for in sub-article (2)(c) where the geographical remoteness of the suspect or the accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

(12) In exceptional circumstances and only at the pre-trial stage, a temporary derogation from the application of the rights provided for in sub-article (8) may be made to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

(13) For the purposes of this Sub-title, the expression "pre-trial stage" means the stage immediately prior to the filing of the bill of indictment in the Criminal Court or, as the case may be, before the Attorney General sends the record of proceedings to the Court of Magistrates as a Court of Criminal Judicature, in terms of article 370(3), for the person accused to be tried by that court.

355AUB. (1) The confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Sub-title shall be respected.

Confidentiality.
Added by:
LI.2016.4.

(2) Such communication shall include meetings, correspondence, telephone conversations and any other form of communication permitted by law.

355AUC. (1) Suspects or accused persons who are deprived of liberty shall be informed, without undue delay, by the Executive Police or by any other enforcement or judicial authority, that they have the right to have at least one person, such as a relative or an employer or any other person of their choice, nominated by them,

The right to have a third person informed of the deprivation of liberty.
Added by:
LI.2016.4.

informed of their deprivation of liberty without undue delay if they so wish, unless such other person is reasonably suspected of being involved in the offence being investigated. A record shall be kept of the manner in which the Executive Police or other law enforcement or judicial authority concerned has discharged its duty under this article.

(2) If the suspect or accused person is a child, at least one person having parental authority, tutorship, curatorship or guardianship in respect of the child shall be informed as soon as possible of the deprivation of liberty and of the reasons therefor, unless it would be contrary to the best interests of the child to do so, in which case another appropriate adult shall be informed. For the purposes of this article, a person below the age of eighteen years shall be considered to be a child.

(3) In all cases, the details of the person mentioned in sub-article (1) or of the holder of parental authority, tutorship, curatorship or guardianship over the child mentioned in sub-article (2) as well as the day and time at which the information was given to such person or holder of parental or other authority as aforesaid, shall be entered in the detention record of the suspect or in the record of the proceedings of the person accused, as the case may be.

(4) It shall be permissible to temporarily derogate from the application of the rights set out in sub-articles (1) and (2) where justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised:

Provided that in any such case, the delay shall not be later than six hours from the time when the arrest was effected.

(5) Where a derogation from the application of the right set out in sub-article (2) is made, the Executive Police or other law enforcement or judicial authority concerned shall ensure that an authority responsible for the protection or welfare of children, as designated from time to time by the Minister responsible for Justice by order in the Gazette, is informed without undue delay of the deprivation of liberty of the child.

The right to communicate, with third persons, while deprived of liberty.
Added by:
L.I. 2016.4.

355AUD. (1) The suspect or the accused person who is deprived of liberty shall have the right to communicate without undue delay with at least one third person, such as a relative, friend or other person nominated by him.

(2) A Magistrate may, following a written request from the Executive Police or any other law enforcement authority or from another authority other than a court exercising judicial functions, limit or defer the exercise of the right referred to in sub-article (1)

in view of imperative requirements or proportionate operational requirements.

355AUE. (1) The suspect or the accused person who is a non-national and who is deprived of liberty shall have the right to have the consular authorities of his State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if he so wishes. However, where the suspect or accused person has two or more nationalities, he may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with which he wishes to communicate.

The right to communicate with consular authorities.
Added by:
LI.2016.4.

(2) Suspects or accused persons shall also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned.

(3) The exercise of the rights laid down in this article may be regulated by such regulations to be made by the Minister responsible for Justice or by such procedures as may be in force from time to time, provided that such regulations or procedures enable full effect to be given to the purposes for which these rights are intended.

355AUF. (1) Any temporary derogation under article 355AUA(11) or (12) or under article 355AUC(4) shall:

General conditions for applying temporary derogations.
Added by:
LI.2016.4.

- (a) be proportionate and not go beyond what is necessary;
- (b) be strictly limited in time;
- (c) not be based exclusively on the type or the seriousness of the alleged offence; and
- (d) not prejudice the overall fairness of the proceedings.

(2) Temporary derogations under article 355AUA(11) or (12) may be authorised only by a duly reasoned decision taken on a case-by-case basis by a Magistrate, which decision may be subject to appeal to the Court of Criminal Appeal as constituted under article 418 by application to be filed within two working days from when the decision is given. The Court of Criminal Appeal shall regulate its own procedure with regard to the determination of such an appeal. The filing of an appeal shall not prevent the execution of the decision of the Magistrate unless the Court of Criminal Appeal otherwise orders. The duly reasoned decision shall be recorded in the relative acts of the proceedings.

(3) Temporary derogations under article 355AUC(4) may be authorised, only on a case-by-case basis, by a Magistrate.

355AUG. (1) Without prejudice to the provisions of this Sub-title requiring the mandatory presence or assistance of a lawyer, in relation to any waiver of a right as referred to in articles 355AUA and 355AUH:

Waiver.
Added by:
LI.2016.4.

- (a) the suspect or accused person shall be provided, orally

or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it;

(b) the waiver shall be given voluntarily and unequivocally.

(2) The waiver, which can be made in writing or orally, shall be noted as well as the circumstances under which the waiver was given, using any recording procedure permitted by law.

(3) The suspect or accused person may revoke a waiver subsequently at any point during the criminal proceedings, and shall be informed about this possibility. Such a revocation shall have effect only from the moment it is made.

The right of access to a lawyer in European arrest warrant proceedings.
Added by:
LI.2016.4.

355AUH. (1) A requested person shall have the right of access to a lawyer upon arrest in Malta pursuant to a European arrest warrant.

(2) With regard to the content of the right of access to a lawyer in Malta as the executing Member State, a requested person shall have the following rights in Malta:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested person to exercise his rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing him;

(c) the right for his lawyer to be present and, in accordance with procedures established by law, to participate during a hearing of the requested person by the competent executing judicial authority in Malta. Where a lawyer participates during the hearing, this shall be noted in the records of the proceedings of the competent judicial authority in Malta.

(3) The rights provided for in articles 355AUB, 355AUC, 355AUD, 355AUE, 355AUG. and, where a temporary derogation under article 355AUC(4) is applied, in article 355AUF, shall apply, *mutatis mutandis*, to European arrest warrant proceedings in Malta as the executing Member State.

(4) The competent authority in Malta as the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State, that is, a Member State of the European Union which has issued a European arrest warrant with a view to the arrest and surrender by Malta of a requested person. The role of that lawyer in the issuing Member State shall be to assist the lawyer in Malta, as the executing Member State, by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

(5) Where a requested person wishes to exercise the right to

appoint a lawyer in the issuing Member State and does not already have such a lawyer, the competent authority in Malta as the executing Member State shall promptly inform the competent authority in the issuing Member State.

(6) The competent authority in Malta as the issuing Member State in European arrest warrant proceedings shall, without undue delay, upon a request from a competent authority in the executing Member State, provide the requested persons with information to facilitate their appointing a lawyer in Malta.

(7) The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority in Malta to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

355AUI. (1) The suspect or accused person in criminal proceedings, and the requested persons in European arrest warrant proceedings, shall be entitled to seek redress in the event of a breach of their rights under this Sub-title before the courts of criminal jurisdiction which may be seized of their case, or before a Magistrate. Such a claim for redress shall be filed promptly and the court seized with the claim shall have authority to grant such redress as it deems appropriate, which redress shall be granted without undue delay. There shall be a right of appeal from a decision to grant or to deny such redress to the Court of Criminal Appeal as constituted under article 418. The said appeal shall be made by application to be filed within eight working days from the decision and the Court of Criminal Appeal shall regulate its own procedure with regard to the hearing of such an appeal.

Remedies.
Added by:
LI.2016.4.

(2) Without prejudice to the provisions of this Code related to the admissibility of evidence, the rights of the defence and the fairness of the proceedings shall be respected in all criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with article 355AUA(12).

355AUJ. (1) The Executive Police and any other law enforcement or judicial authority shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of the provisions of this Sub-title.

Vulnerable persons.
Added by:
LI.2016.4.

(2) The Minister responsible for Justice may make regulations to give better effect to the provisions of this article.

(3) For the purposes of this Sub-title, the expression "vulnerable person" shall have the same meaning assigned to it by article 208AC(2).

355AUK. Nothing in this Sub-title shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Constitution, the Charter of Fundamental

Non-regression clause.
Added by:
LI.2016.4.

Rights of the European Union, the European Convention on Human Rights, or other relevant provisions of international or national law which are enforceable in the courts of Malta and which provide a higher level of protection.

Sub-title X

TAKING OF SAMPLES, FINGERPRINTING AND OTHER INVESTIGATIVE PROCEDURES

Samples under authorisation.
Added by:
III.2002.74.
Amended by:
XXIV.2014.45.

355AV. The investigating officer may in person, by application or by facsimile, request a Magistrate to authorise the necessary procedure -

- (a) where he has reasonable grounds to require the taking of intimate samples from the person arrested; or
- (b) to take photographs, a film, video recording or electronic image of intimate parts of the body of the person arrested; or
- (c) where the person arrested withholds his consent for any procedure which the investigating officer may carry out according to law with the consent of the person arrested and the provisions of the proviso to article 355BB shall, *mutatis mutandis*, apply:

Provided that where the request falls under paragraph (a), the provisions of article 355AW shall apply and, if the request falls under paragraph (b), the provisions of article 355AP shall *mutatis mutandis* apply.

Intimate samples by consent.
Added by:
III.2002.74.

355AW. Subject to the provisions of articles 355AV and 355AX, an intimate sample may be taken from a person arrested only if his appropriate consent is given.

When consent for intimate sample is refused.
Added by:
III.2002.74.

355AX. (1) Upon a request under article 355AV(a), the Magistrate shall obtain all such information from the investigating officer to enable him to decide on whether the request is justified or not.

(2) Where the Magistrate decides that the request is justified he shall visit the person arrested to request his consent and before asking for his consent he shall explain to him:

- (a) the nature of the request and the reasons thereof;
- (b) the consequences of giving his consent and of refusing consent as provided in article 355AZ; and
- (c) that he is entitled to consult a lawyer or legal procurator before deciding whether or not to give his consent.

(3) Where the person arrested requests to consult a lawyer or