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EUROPEAN SOCIAL CHARTER

Addendum to the 12th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF MALTA

Article 17

for the period 01/01/2014 - 31/12/2017

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CYCLE 2019



REVISED EUROPEAN SOCIAL CHARTER

Addendum to the
12th National Report on the
implementation of the Revised
European Social Charter
submitted by

THE GOVERNMENT OF MALTA

(Article 17 for the period
01/01/2014 – 31/12/2017)

Conclusions

Article 17 - Right of children and young persons to social, legal and economic protection

Paragraph 1 - Assistance, education and training

Young offenders

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the age of criminal responsibility was too low.

The Committee notes from the report that the age of criminal responsibility has been raised to the age of 14. The relevant provisions of the law have been changed (Article 35 of the Criminal Code) and now a child under the age of 14 shall be exempt from criminal responsibility for any act or omission. Hence the Article in the Criminal Code relating to mischievous discretion between the ages of 9 to 14 has been removed.

The Committee considers that with this legislative amendment the situation has been brought into conformity.

According to the report, the Juvenile Court is the responsibility of the Justice Unit and the Court Services, while the management the juvenile section of the correctional facilities, now having a male and female section, and the implementation of policies and programmes relating thereto, falls within the responsibility of the broader Correctional Services.

The Committee asks what is the maximum permissible length of pre-trial detention and a prison sentence that can be imposed on a young offender.

Reply by Malta

Through Act 3 of 2014 (An Act to further amend the Criminal Code), enacted on 14 February 2014, the age of criminal responsibility in Malta has been raised from 12 to 14 years. In line with Article 35(1) of the Criminal Code a minor under fourteen years of age shall now be exempt from criminal responsibility for any act or omission (and is thus now considered to be a *doli incapax*). Minors under sixteen years of age shall also be exempt from criminal responsibility for any act or omission done without any mischievous discretion according to Article 37(1) of Chapter 9 of the Laws of Malta. Apart from this, in line with Article 37(2) of the Criminal Code, in the case where the act or omission is committed by a minor who is aged between fourteen to sixteen years of age with mischievous discretion and in the case where the minor is aged between sixteen and eighteen years, the applicable penalty shall be decreased by one or two degrees.

On 28 November 2016, the Government enacted Act 51 of 2016, entitled Criminal Code (Amendment No. 2) Act, which passed through Parliament on the 23 November 2016. Building on the recommendations of the Bonello Commission Report - a report commissioned by Government on the holistic reform of the national justice system of 30 November 2013 - and transposing the Access to a Lawyer Directive (Directive 2013/48/EU), this Act provides

for the rights of suspects and accused persons, including minors (as detailed above), in criminal proceedings to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Apart from this it is also worth noting that through Legal Notice 414 of 2014 (entitled the Legal Aid Agency (Establishment) Order) which was enacted on 28 November 2014, Government established for the first time a Legal Aid Agency (Legal Aid Malta) to be responsible for and to administer the provision of the service of legal aid in all areas where this is required. This aid is also given to minors all throughout judicial proceedings. During 2016, the office of the Advocate for Legal Aid was transferred from the Family Court building to the Agency's premises, allowing also for a visual separation of the Legal Aid Agency from the Law Courts.

It is also worth mentioning that through Act 3 of 2014, Government has amended Article 339 of the Criminal Code in such a way as to prohibit corporeal punishment without reservations. Article 339(1)(h) now reads: "Every person is guilty of a contravention against the person who being authorized to correct any other person, exceeds the bounds of moderation...provided that, for the avoidance of any doubt, corporal punishment of any kind shall always be deemed to exceed the bounds of moderation."

Finally, Government is in the process of transposing EU Directive 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Through this transposition, minors will inter alia be granted the right to medical examination and to an individual assessment ensuring that the specific needs of the minor concerning protection, education, training and social integration are taken into account in the course of criminal proceedings.