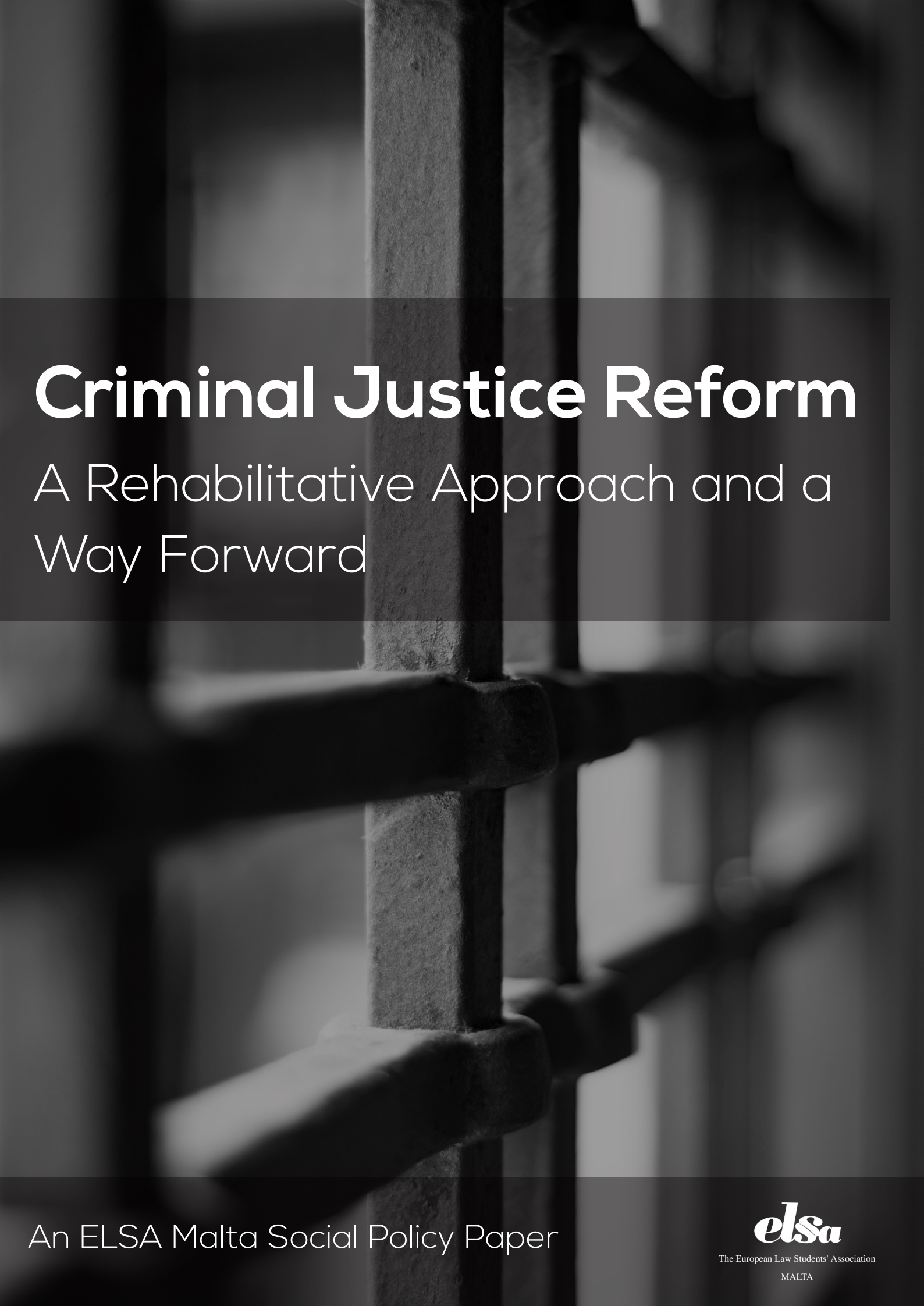

Criminal Justice Reform

A Rehabilitative Approach and a Way Forward

An ELSA Malta Social Policy Paper

The European Law Students' Association
MALTA

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Foreword

ELSA, the European Law Students' Association, aside from being a human rights organisation also seeks to be at the fore font of all legal discussions especially when it comes to controversial topics with contrasting opinions. In fact, ELSA' main purpose is "to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers.

ELSA Malta strives to promote this vision of ELSA in all its projects. This is done through initiatives like the publishing of a number of research and policy papers. These papers are done with the aim to promote the vision of ELSA but also in order to be an active part of the discussion on certain pressing legal and human rights issues. One such issue that ELSA Malta feels is of utmost importance currently, is that of Prison Reform in Malta. This has been sparked by a number of incidents, as will be seen in the policy paper, as the culmination of years of reinforcement to the idea present within Malta's correctional facility. This idea being that of seeing the prisoner as someone to punish rather than reform. In the Policy Paper 'Criminal Justice Reform – a rehabilitative approach and a way forward' all the steps prior, during and after incarceration will be delved into where key problems shall be highlighted and proposals put forward. This is done with the aim of raising awareness of the issue to change the stigma which is held by society at large and to contribute to a positive change where Human Rights may truly be considered to be respected.

A project such as this would not have been possible without the many hours of work and commitment, of the highly dedicate group of people to whom I would like to express my personal gratitude. First and foremost, I would like to especially thank Ms. Elisa Micallef Peplow, ELSA Malta's current Director for Social Policy, for taking on such bold project from its inception to its publication with unending dedication and Mr Luca Camilleri, ELSA Malta's current Director for the International Focus Programme and Human rights for his unwavering contribution to see that the paper reaches its completion. I would also like to thank the writers for the invaluable assistance in the research and writing of such a policy paper. I would also like to extend my gratitude to Dr. Sandra Scicluna for taking the time to carefully review the research, giving feedback and guidance accordingly. Lastly, I would like to thank Ms Katrina Cini and Ms Amy Saliba, ELSA Malta's Vice President for Marketing and Director for Public Relations respectively for the design of the paper.

On behalf of ELSA Malta, I hope that you, dear reader, may take substance out of our Policy paper, not only to expand your knowledge on the given topic but to also take the time to reflect about what has been written on the matter and lastly to follow us and support the aim which we hold dear – to always be proactive!

Contents

Introduction

The criminal justice system is comprised of a complex network of interrelated pillars and institutions ranging from law enforcement to the judicial branch of the state, to the prison structure and administration. Its aim is "to apply the rule of law as a means of providing social stability"[1]. In its quest to achieve such an aim, pursued through the maintenance of a delicate equilibrium between individual rights and the rights owed to mankind at large, there is often a dissonance between the realities of society before individuals come into contact with the criminal justice system and the criminal justice system itself. This is because it isn't often that the sociological factors having highly influential and determinate effects on the lives of many of those who enter into this system are considered and analysed. Much less are the results of such examinations understood contextually and implemented in order to enable systemic change before such individuals actively dealing with these factors encounter criminal justice system.

When regarding this issue, it is firstly prudent to ascertain why people commit crimes and fall into criminality. This is a question replete with political, philosophical and moral deliberations[2] that ultimately translate into legal consequences. It is regarded to be a fundamental consideration which ought to be studied and scrutinised in order to garner a more authentic and genuine understanding of the entirety of the criminal justice system at large. Over the years, especially as the field of criminology began to develop and cement its importance in the interdisciplinary realms of behavioural and social sciences as well as in relation to the legal field, many theories have been propagated in an attempt to formulate a response to this problem.

One of the most famous notions which was put forward is the theory developed by Lombroso in the 1870s[3] through his publication 'L'uomo delinquente'. He claimed that he was able to distinguish between a criminal and normal recruit as an army doctor on the basis of "gross morphological characteristics" and continued to elaborate upon his findings till he developed the concept of the 'born criminal' established through exploration carried out into the evolutionary heritage of mankind. Lombroso therefore believed that criminality was something a person inherited at birth, rejecting the ideas of his predecessors who claimed crime was simply a characteristic of human nature[4]; he spent much of his career attempting to find physiological factors which would serve to discern criminals from others.[5] While this theory has long since been disproved, as the evidence to substantiate the fact that criminals had greater physical defects than others was not sufficient[6], the question as to whether criminals are born or made became highly debated. This saw other professionals weighing in and proposing different ideas in favour of either position as yet another facet of the 'Nature v. Nurture' debate was explored. It can be argued that many were eager to contribute to this discord as the crystallisation of the origin of criminality, be it inherent from birth within a person or be it something which arises and develops due to external factors, would enable a clearer response to the aforementioned question: why do people fall into criminality?

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[1] Ronald Hunter, and Thomas Barker, Police Community Relations And The Administration Of Justice (8th edn, Pearson 2011).
[2] Rob Canton, Why do people commit crimes? (2016).
[3] David Garland, 'BRITISH CRIMINOLOGY BEFORE 1935' (1988) 28 The British Journal of Criminology.
[4] Robert A Nye, 'Heredity Or Milieu: The Foundations Of Modern European Criminological Theory' (1976) 67 Isis.
[5] Canton (n 2).
[6] GT Morice, 'Are Criminals Born Or Made' (1926) 43 The South African Law Journal.

Another theory which favoured the understanding that criminals are born and not made is the belief put forward by Dr Goring who argued in his work 'The English Convict' that "the one vital mental constitutional fact in the ethology of crime is defective intelligence."[7] Through this observation, Dr Goring suggests that a "defect in intelligence" is a necessary component of criminality and therefore, that criminals, like "feeble-minded" individuals, are born and not made.[8] While the merits and technicalities of Dr Goring's work today have been to an extent disregarded, there are certain studies which have been conducted in a modern environment that build on his thinking. They, however, must be considered from a similar standpoint to Dr Goring vis-a-vis his belief that a person's intellectual abilities are innate. These studies were undertaken in order to comprehend the link between "intellectual functioning and criminal offending". While the existence of such a link and its potential strength is still the subject of controversy, several studies demonstrate that individuals with below average levels of cognitive functioning are "disproportionately represented within prison populations."[9]

Furthermore, owing to advent of newer technologies and means of investigation, researchers have begun to delve into correlations between genes and criminal activity to prove that criminality is inherent. This was evaluated especially in relation to aggression which is understood as arising owing to the interaction between neurological and genetic sequencing and specific environmental conditions. Through these studies it has been proposed that while environmental considerations ought to be contemplated, especially during periods of neural development, genetic testing and the identification of genetically vulnerable individuals to crime could lead to a reduction in criminal activity. These findings perpetuate the notion that criminal behaviour is, for the most part, determined at birth and exacerbated by certain environmental proclivities.[10]

It is important that when comprehending the depth and complexities of such factors that the effects of rapid and significant societal changes which have occurred over the last few decades that stand to challenge and impact beliefs we may once have considered as peremptory are kept in mind.[11] These include the development of various forms of technologies, including the internet which has come to dictate how we communicate, receive news and entertain ourselves, a waning of religious attachment and the decentralisation of importance given to the nuclear family.

When regarding the education system as an institution which may impact criminality in individuals, various studies, including ones conducted in the Maltese context, demonstrate that a dissatisfaction with the educational experience of youth, combined with other factors, can have an impact on criminality. This link is one which is highly complex and not universally accepted, yet it remains imperative to understand when analysing patterns of juvenile delinquency and when considering why people fall into crime.[12] Moreover, it is essential that this link is duly understood seeing as it could enable the comprehension of the true "social return of education". This questions whether a well-managed education system can successfully lower the social cost of criminal activity by limiting the number of

[7]Charles Goring, Abridged Edition Of The English Convict (HM Stationery Off 1919)
[8] Morice (n 6).
[9] James Freeman, 'The Relationship Between Lower Intelligence, Crime And Custodial Outcomes: A Brief Literary Review Of A Vulnerable Group' (2012) 3 Vulnerable Groups & Inclusion.
[10]Rahul Jagadeesan, and VS Ramachandran, 'Nature Versus Nurture: Are Criminals Born Or Raised? - A Comprehensive Analysis' (2021) 2 International Journal of Research Publication and Reviews.
[11] David Garland, and Richard Sparks, 'Criminology, Social Theory And The Challenge Of Our Times' (2000) 40 British Journal of Criminology.
[12] Marilyn Clark, and Carmel Cefai, 'School Careers And Delinquent Involvement : A Retrospective Investigation Into The Schooling Experiences Of Habitual Offenders' (University of Malta - Faculty of Education 2014).

individuals engaging in crime.[13] Findings emerging from these studies indicate that systemic as wells interactional factors, including the relevance of the curriculum to the students and the manner in which authority is exercised under the former category, and the relationships formed by students with teachers and peers another the latter, can contribute to the development of delinquent and later criminal behaviour, both within and beyond a school environment.[14] However, as mentioned, in reference to this subject matter, it is difficult to demonstrate more than a causal link between certain criteria and, despite the effects the education system may have on certain individuals regarding their disposition towards crime, it is evident that in general "schooling significantly reduces criminal activity".[15]

The analysis provided above introduces but some of these influential sociological factors which have an effect on a person's inclination to commit a crime. Amongst the criteria mentioned, there are countless other studies conducted with the *forma mentis* that criminals are made and not born that explore more factors which may lead a person to engage in illicit undertakings. The fundamental ethos of this school of thought is that criminals are the product of the environment in which they develop and are thus as capable of reformation as they were capable of corruption.[16] Owing to this, there is an emphasis placed on recognising the factors that lead to 'corruption', understanding their effects and presenting solutions to the issues which they cause. This is because the cause-and-effect relationship in relation to such elements can be more acutely established and thus can be engaged with more efficiently and effectively than considerations arising out of the opposing argument that criminals are born.

Many theories have been proposed as to the origin of criminality and in response to question 'why people commit crimes?' however, this is still shrouded in controversy; there has yet to be a conclusive interpretation reached in this regard and therefore, the ultimate motivator and instigator behind criminality has yet to be ascertained. Despite this, decades of research into this field has undoubtedly indicated that there are many considerations which we are aware of that do play a role in this motivation, considerations which we have the capacity to further explore and take action upon in an attempt to reduce individuals coming into contact with the criminal justice system.

[13] Lance Lochner, and Enrico Moretti, 'The Effect Of Education On Crime: Evidence From Prison Inmates, Arrests, And Self-Reports' (2004) 94 American Economic Review
[14] Audrey Zammit, 'Schooling And Delinquency: The Impact Of Schooling On Delinquent Behaviour' (University of Malta - Faculty for Social Wellbeing - Department of Youth and Community Studies 2014).
[15] Lochner and Moretti (n 13).
[16] Morice (n 6).

The weight of sociological factors cannot and ought not be underestimated. In order to truly improve our criminal justice system it is imperative that reform occurs holistically. This includes acting in a preventative manner taking into account the elements outlined above and regarding that which can be done substantively in order to deter them from fostering criminality in constituents. For this to be addressed concretely and effectively, we cannot allow the various institutions constituting our criminal justice system to remain reactionary mechanisms but they must become proactive in identifying causes of concern within society leading to criminality and must address the root of the issue, either legislatively, through schemes or monetarily. The United Nations Office on Drugs and Crime regards "prevention" as "the first imperative of justice" and encourages the multi-sectoral and multi-disciplinary integration of crime prevention mechanisms within relevant social and economic policies[17] underpinned by the basic principles determined through the Economic and Social Council Resolution 'Guidelines for the Prevention of Crime'. Such a preventative approach will overall enable less people to come into contact with the prison system and will promote a safer and more sustainable society.

[17] 'Crime Prevention' (*United Nations:Office on Drugs and Crime*, 2021) <https://www.unodc.org/unodc/en/justice-and-prison-reform/CrimePrevention.html> accessed 18 November 2021..

The Presumption of Innocence in the Media Age

The presumption of innocence is a fundamental right accorded in international law to anyone who has been charged with an offence. Under this right, the accused person is to not be declared guilty until a court has established their guilt and until a fair trial has taken place. In the age of mass media, this long-standing principle has been challenged by the way in which mass media coverage presents criminal cases, shaping the public's perspectives on the case.

Being enthralled by criminal cases is not something that has sprouted up in the past few decades, from public beheadings to trials by the public, it is evident that the general public has always had a fascination with the idea of justice and their involvement in mantaining a just society. However, what has happened is a drastic economic shift that has connected people worldwide via the media. So how has this era changed the way we approach criminal trials, and what has been done to adapt to it? Information has become more accessible to a point where unprecedented hordes of data are constantly uploaded and made available to anyone with access to the internet. This has meant that the scope of the presumption of innocence in itself has also had to evolve to cater to the media's effect on the case concerned.

This fundamental right found in Article 12 of the Universal Declaration of Human Rights reads: *"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*[18]

The right to maintain one's private life was first identified in *Costello-Roberts v the United Kingdom*[19] as a comprehensive concept and of which an exhuastive definition cannot be given. In this case, article 8[20] of the European Convention of Human Rights (ECHR), which states *"everyone has the right to respect for his private and family life, his home and his correspondence",* was also cited. Since, the ECHR's rules are still unclear with regards to this article, its interpretation is taken on a case-by-case basis. According to the Report on the Situation of Fundamental Rights in Malta in 2003, Malta has not yet had a case challenging a breach of those rights under article 8 in relation to personal information.

Now, upon looking at the issue of media sharing and the negative effects that it can have on the person's presumption of innocence, one would not be faulted if they constructed the media to be on the 'bad side', so to speak, acting as the looming threat to one's fundamental right to being presumed innocent. But there exists another fundamental right, that is, to freedom of speech and of expression. So, the question then becomes, how can there be any active protection of the presumption of innocence, without effectively curtailing one's right to information and speech, and vice versa?

On one hand, the detriment that media trials have on the judicial system is immensely real and evident in several cases. The Indian Supreme Court even defines media trials as *'the impact of the television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law'*. With the addition of social media, it becomes clear that

United Nations, 'Universal Declaration Of Human Rights | United Nations' (*United Nations*) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 15 November 2021

[19] Costello-Roberts v. The United Kingdom , 89/1991/341/414 , Council of Europe: European Court of Human Rights, 23 February 1993, available at: <https://www.refworld.org/cases,ECHR,3ae6b6f08.html> accessed 15 November 2021.

[20] (*Echr.coe.int*, 2021) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 15 November 2021.

even if the effects propagated by the media does not lead to any direct impact on a court's verdicts, but simply manages to create a perception of guilt, then it would have done its damage. A myriad of examples can be found to depict cases where media trials had a whirlwind effect on the parties involved – one recent source of such cases stems from the well-known '#MeToo' movement. This surrounded several allegations on various individuals that lived entirely off of social media. One would be insensitive to direct this negative example towards to movement as a whole of course, but certain offshoots of it gave us an example of what a systematic bypassing of conventional court settings in order to facilitate whisper networks and political furor to use sexual misconduct allegations in this case, that inflicted immense damage on hundreds of victims, without ever having been charged with any offence whatsoever.

Another case that took the media by storm is what is considered by many to be the trial of the century – the O.J. Simpson case[21]. This case was heavily publicized having cable-news networks dedicate long stretches of time to speculation about the case and to public opinion of it. This led to a high number of criticisms to the result of the judgement.

The case of the Nurse Death case in Czechia is another example on how trial publicity affects the decision of not only the case but also the aftermath after the judgement. Vera Maresova faced a lot of tabloid press containing what is now known to have been exaggerations and lies during her trial. The no. 30 Cdo 1413/2012 judgment of the Supreme Court of Czech Republic says that, until the accused is not finally convicted, media cannot call them guilty or label them as criminals, which the majority of news outlets do not respect. The broken principle had a detrimental effect on both her personal life as well as her reputation. Under Czech law, this is considered defamation and as this led to her being unable to find a job even after the court found her innocent[22].

So how can this be remedied? Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services issued in 2014: *"For the purely administrative act of recording a crime, what the complainant said should be assumed to be correct. The crime would be recorded, and that would trigger the obligation to investigate. Immediately after the crime has been recorded, investigators must proceed with an entirely open mind. Those who are victims of crime, and those who say they are victims, are entitled to have their complaints taken seriously, and to have them properly investigated. In all cases, once the investigation has begun, the police must proceed promptly and find and evaluate the evidence. What matters is that the police must proceed professionally and objectively, without bias, fear or favour. During an investigation, there is, and should be, no presumption of guilt on the part of the accused. Police officers have not been told to believe the complainant throughout the investigation. They have only been required to record crime on an assumption of truth – an assumption which ends immediately after the crime record has been made and before the investigation has begun."*[23]

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[21] 'O.J. Simpson Trial | Summary, Lawyers, Judge, Dates, Verdict, & Facts' (*Encyclopedia Britannica*, 2021) https://www.britannica.com/event/O-J-Simpson-trial accessed 16th November 2021.

[22] 'Violation Of Presumption Of Innocence In Case Of "Nurse Death". Czech Tabloid Media Found Guilty Of Defamation And Media Prosecution' (*CzechDefamationLaw*, 2021) https://czechdefamationlaw.wordpress.com/2019/03/03/violation-of-presumption-of-innocence-in-case-of-nurse-death-czech-tabloid-media-found-guilty-of-defamation-and-media-prosecution/ accessed 16th November 2021.

[23] (*Justiceinitiative.org*, 2021) <https://www.justiceinitiative.org/uploads/de4c18f8-ccc1-4eba-9374-e5c850a07efd/presumption-guilt-09032014.pdf > accessed 16th November 2021.

In Malta, the case of *Emmanuel Formosa v Commissioner of Police*, decided by the Constitutional Court in 1973, was one of the first times that media played a significant role during a trial. The Commissioner of Police had announced that the case was solved, and the offender apprehended. Formosa raised the argument that the Commissioner's remarks infringed his right to a fair hearing as a human right which led to the court ruling that *"the assessment has to refer to the proceeding in its entirety"*. Article 46 of the Constitution was referred to during the case, however, the court declared that in order for a plea to be raised under this article, it has to be related to the kind of juridical interest one needs to prove to start an action, a violation is either committed or not committed.[24]

In *Dr Lawrence Pullicino vs Onor Prim Ministru u l-Avukat Ġenerali tar-Repubblika*[25], the accused argued that the adverse publicity being given to the case would lead to a breach of the presumption of his innocence[26]. The Constitutional Court in 1988 replied that in this case, if the verdict of the jury gets appealed before professional judges, the media throughout the trial would not lead to a breach of the presumption of innocence. This was not the direction taken in the *Il-Pulizija vs Arrigo Dr Noel LL.D. et* [27] where two senior judges were arrested in relation to bribery and the Prime Minister had held a press conference informing the media in order to avoid the sensitive information being leaked unofficially. Whilst in the Formosa case, it was stated that the final decision was in the hands of the court, here, the court quoting *Butkevicius v Lithuania*[28] stated that '*if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before it so proven in a court of law*' The General Prosecutor in Butkevicious v Lithuania had stated that there was enough evidence against the accused which in the Arrigo Case was not declared.

In *Repubblika vs Joseph Vella,* the court stated*: "Jekk pre-trial publicity jkollha l-potenzjal li tkun ta' pregudizzju ghall-akkuzati, b 'ebda tigbid tal-ligi ma jista 'jwassal biex il-guri ma jsirx. 11-procedura tal-Qorti bit-twissijiet u l-indirizz ta' l-Imhallefli jkun qed jikkonduci l-guri, ghandha tkun bizzejjed biex tinnewtralizza kwalsiasi prejudizzju kontra l-ligi li jista 'jkun hemm.* "

From the cases mentioned, it's easy to come up with the conclusion that whilst the presumption of innocence which exists to guarantee the individual's innocence if and until they proven guilty beyond reasonable doubt, the Maltese courts have treated these adversely public cases inconsistently. The principle of *quod non est in actis non est in mundo* was upheld in all directions of the courts reiterating the meaning that anything that is said out of the jury trial is to be ignored.

[24] Ibid.

[25] *Dr Lawrence Pullicino vs Onor Prim Ministru u L-Avukat Ġenerali Tar-Repubblika*, Constitutional Court [1998] Kollezz. Vol. LXXXII.I.158.

[26] Dr Tonio Borg, (*Lawjournal.ghsl.org*, 2021) https://lawjournal.ghsl.org/viewer/361/download.pdf.

[27] *Il-Pulizija vs Arrigo Dr Noel LL.D. et*, Civil Court (First Hall) (Constitutional Jurisdiction) [2003] 22/2002.

[28] *Butkevicius v Lithuania* App no 48297/99 (ECtHR, 26 March 2002).

On the flip side, media has proven to be an essential element in informing the public of the intricacies of the cases being dealt in court. Under Directive 2016/343 Article 18, public authorities are encouraged to disseminate information on criminal proceedings as long as the reason behind this logic is to aid the investigation or for safety reasons on behalf of public interest. It is also important to mention that this article points out that if this happens, the information given is not creating the impression that the person is guilty before he or she has been proved guilty according to law[29].

It is unconstitutional to prohibit the effect on media in a democratic society. The freedom of press is a fundamental freedom which is only to be limited in the most serious of cases. Whilst it is possible in some cases that a warning by the judge is sufficiently enough to reduce the bias from the jury, in other cases where the adverse publicity affects the case significantly, the case should be postponed until the media reduces its pressure. As such, the issue of presumption of innocence in the media age, is not as much an avoidable phenomenon as it is an anthropological observation on the equation made up of persons and principles. The question that remains then is, which half of the equation will remain static, and will face the timely neccesity to adapt?

[29] (*Eur-lex.europa.eu*, 2021) https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX%3A32016L0343&from=EN.

The Process of Prosecution

The judiciary

The Maltese Criminal Code sets out the primary substantive and procedural rules in penal law. It builds up the division of offences into crimes and contraventions and proceeds to classify offences by type. The Criminal Code demonstrates several offences and their relative punishments, dispensed with a classified structure establishing life imprisonment for the most heinous down to non-custodial sentences for minor infringements.[30]

Current sentencing guidelines

> *The sentencing decision is the symbolic keystone of the criminal justice system: in it, the conflicts between the goals of equal justice under the law and individualized justice with punishment tailored to the offender are played out, and society's moral principles and highest values—life and liberty—are interpreted and applied.*[31]

The Maltese Criminal Procedure can be found in Book Second of the Criminal Code, and its basis is the English model. It is important to note that despite frequent amendments to penal law, there are currently no uniform sentencing guidelines. In Malta, the approach towards sentencing requires the adjudicator to balance the rights to the protection of the general public with those of the offender. The lack of sentencing guidelines leads to the law treating individuals differently, despite the right of equality under the law.

Since there is no definition of consistency in sentencing, the general approach is that similar offences should receive a similar sentencing outcome.[32] The adjudicator considers various elements that represent the purpose of sentencing: retribution by inflicting punishment, reduction of crime, rehabilitation of offenders, public protection, and reparation to victims. When allotting punishment, the adjudicator encounters broadly defined offences, which frees judicial discretion further and encourages inconsistency.

Consequently, the judicature face conflict because they ought to base their decision on their personal, moral capacity and experience, with no adequate guidance whatsoever, leading to inconsistency. The absence of sentencing guidelines is the most noticeable *lacunae* in the Maltese justice system, leading to the broad sentencing inconsistencies. Foreign jurisdictions have overcome this inconsistency problem by introducing Sentencing Guidelines, which cater to certain classes of offences.[33]

[30] Stefano Filletti, *Towards a European Criminal Law System*, (Kite Group 2017) 19.
[31] Alfred Blumstein and others, *Research on Sentencing: The Search for Reform,* (National Research Council 1983).
[32] UK Sentencing Council, The Resource Effects of increased Consistency in Sentencing (2011).
[33] Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge 2005).

Involuntary Homicide

Sentencing inconsistencies concerning involuntary homicide are a case in point. The punishment imposed for involuntary homicide mainly depends on the presiding magistrate, reflecting the great discretion they have. They are left to decide without any structural form of uniformity and stability. In *Il-Pulizija v Kevin Ellul*[34], the defendant was accused of causing death under Article 255 of the Criminal Code. The Court held that even though it could not find him guilty of driving under the influence, the driver was nevertheless negligent due to lack of ordinary diligence. The nominated court expert's report held that the driver was not driving excessively. The accused was found guilty under Article 255(1) and sentenced to three years imprisonment suspended for three years. His licence was also suspended for one year from date of ruling.

In contrast *Il-Pulizija v Peter Mamo*[35] where the victims suffered from grievous injuries. The Court found the accused guilty under Article 255 and imposed a fine multa of €700. However, the Court did not want to impose imprisonment as in the Court's opinion, a prison sentence is ideal for a person's rehabilitation after any type of delict, such as drugs of theft and not to prevent him from getting involved in a traffic accident again.

A case which truly brings out the dire need of sentencing guidelines in our judicial system is *Il-Pulizija v Matthew Barbara*[36] where the accused was found guilty of negligence on all counts. He was driving with a minimum velocity of 105km/hr, resulting in the immediate death of a mother whose infant child was in the back seat, but remained unhurt. Although, the Court held that despite the grave and irreparable circumstances, the accused was sentenced to community service as in the Court's opinion, an effective prison sentence is inadequate. Had there been effective sentencing guidelines, they would have controlled the Court's discretion. In addition, sentencing guidelines would afford non-exhaustive lists of what mitigating or aggravating factors should be considered. [37]

Sentencing guidelines would not only help remove the discrepancies in sentencing, but it would also help in appeals. In *Ir-Repubblika ta' Malta v Marco Vella*[38], Judge Quintano held that due to this disorganisation in our judicial system, the Court has to knowingly deviate from consistency and uniformity in judgements. This is to balance out the excessive burden that such delays would cost the defendant, which is a recurring issue. In *Alfred Degiorgio v Attorney General*[39], Judge Abela held that the applicant's human rights were breached after it took eighteen years for the case to be decided. He was awarded €7,000 and an annual five per cent interest for 11 years as compensation of the unnecessary lengthy court proceedings.

[34] Court of Magistrates, 29th September 2010.
[35] Court of Magistrates, 10th March 2014.
[36] Court of Magistrates, 1st March 2017.
[37] Darren Zammit, The Implementation of Sentencing Guidelines in Maltese Criminal Procedure: An Analysis (Undergraduate, University of Malta 2017) 26.
[38] Criminal Court of Appeal, 21st January 2011.
[39] Constitutional Court, 28th February 2019.

Proposals for reform

The Maltese Judicial system owes part of its inefficiency to the lack of clear and structured sentencing guidelines. A Sentencing Commission should be established by law where its primary aim is to enact sentencing guidelines, which will make way for a better procedural law. The Sentencing Commission would be the body that decides if there should an amendment and if so, it would be responsible with its implementation, instead of the legislative. The amendments of 2016 are based on Anglo-Saxon common law and statute, therefore, it is fitting to follow a similar approach to the UK Sentencing Guidelines which will help to form consistency and uniformity.[40]

Trial by Jury

Thomas Jefferson once said, 'a trial by jury is the only anchor ever yet invented by man, by which a government can be held to the principles of its constitution.' Indeed, the jury system encourages a healthy criminal justice system and promotes a society where political leaders are prevented from taking advantage of the justice system to silence their opponents.

In Malta, the Criminal Court is the only court that allows the public to directly partake in the administration of justice through trials by jury. In these criminal trials, the criminal offences exceed the original competence of the Court of Magistrates. The Attorney General is the prosecutor in the Criminal Court, and he writes the bill of indictment. The jury panel consists of nine jurors, one of which would be the foreman. Although non-unanimous verdicts are allowed, a verdict of at least 6-3 needs to be achieved to be a lawful verdict. A 5-4 verdict is a hung verdict, and therefore, the court will ask the jurors to decide among themselves and reach a legal verdict. If this is not possible, the jury is dismissed, and a re-trial is held.

The accused can choose to be tried without a jury and to do so, one must file a note in the court registry as per Article 436(6)[41] of the Criminal Code. However, the accused cannot opt to be tried without a jury if the punishment stipulated in the indictment is that of imprisonment for life.

Jury Selection and Jury Summoning

The qualifications necessary to serve as a juror are regulated in Article 603 of the Criminal Code[42]. Persons who are interdicted or incapacitated, undischarged bankrupts, those who due to any notorious physical or mental defect are reputed to be unfit to serve as jurors and persons who are under trial for any crime until the trial has terminated shall not be competent to serve as jurors. In addition, to serve as foremen, one has to have previously served as a juror in the Criminal Court.

Article 605 of the Criminal Code lays down the process of jury selection. Two lists of potential jurors are drawn up by the Director of the Criminal Courts and Tribunals, with the help of the Commissioner of police, the Senior Magistrate, the Attorney General, the President of the Chamber of Advocates, and the President of the Chamber of Legal Procurators. One list contains persons fit to serve as jurors for the trials conducted in Maltese, and the other contains English speaking persons to serve as jurors in trials held in English. These lists are examined during meetings held by the Director of the Criminal Courts and Tribunals. Usually, persons of sixty-five years and over are excluded from the lists. The final lists are published in the Government Gazette annually in August. Persons who are not included in the list and who possess the requirements necessary by law to serve as jurors and wish to be registered

[40] Stefano Filletti, *Towards a European Criminal Law System*, (Kite Group 2017).
[41] Chapter 9 of the Laws of Malta.
[42] Ibid.

may do so by filing an application in the Criminal Court. The same applies to those who wish to be struck off the list as they do not possess the qualifications the law requires. The amended list of jurors is published in the Government Gazette in the first fifteen days of November.

Depending on the number of trials by jury appointed for a particular month, names are randomly drawn up through a computerised system. These will be summoned by a writ to serve as common jurors. Any wish to be exempted due to a particular reason shall notify the Court by filing an application within four days of receiving such writ. Should a person fail to appear in court on the date and time stipulated in the writ without just cause, one may be found guilty of contempt of court and fined.[43]

The foreman is the first to be chosen, then the ordinary jurors and finally the supplementary jurors. The jury has several restrictions imposed upon them when they are empanelled. The judge will decide whether the jury is sequestered or not.

Judicial Discretion

The judge is required under paragraph (c) of Article 436(3) to do anything necessary to discover the truth as long as it is lawful. This was seen in *Repubblika ta' Malta v David Zerafa*[44], where the prosecution requested the court, before the summing up of the jury, to re-hear the testimony of two defence witnesses and ask them additional questions. The Criminal Court accepted the request quoting Article 436(3)(c) of the Criminal Code, even though the defence counsel objected.

It is of utmost importance that the jury are not influenced which is achieved through certain constraints. The law does not cater for instances when the juror is biased however, if the accused or the registrar learns of juror bias, misconduct, or prejudice, he/she can flag their concern to the Court. It is the Court's discretion to choose to substitute that juror or not.

It is permissible for certain documents to be handed to the jurors and this falls under the Court's discretion which has the power whether to allow this or not. In *Repubblika ta' Malta v Jason Calleja*[45], the documents that were handed to the jury included the conclusions of the inquiring magistrate. These documents held in them that the accused might be guilty of the offence, and subsequently, the jury found the accused guilty of wilful homicide. Upon appeal, the verdict was defeated; one of the causes was that that document should have never been passed to the jurors because it compromised their impartiality.

Another principle that ties with the influence of the jury is that previous convictions of the accused are not to be disclosed to the jury, especially if the accused is a recidivist. The jurors will only know of the charge of recidivism if the accused is found guilty and if asked to deliver a verdict relating to recidivism. Witnesses must be cautious not to mention the accused's criminal record. If this happens, the jury will be dismissed, and the court orders a re-trial. In *Repubblika ta' Malta v Domenic Briffa*[46], the judge was faced with the discretion to decide whether or not to discharge the jury. Here the Court held: *'Hu f'dan is-sens għalhekk li tali irregolarita' ma tistax titħalla għaddejja minn din il-Qorti għaliex altrimenti tkun qed tiġi mminata r-retta amministrazzjoni tal-ġustizzja billi l-prezunzjoni tal-innoċenza tal-*

[43] Vanessa Grech, 'The Trial by Jury: A Comparative Study' (Undergraduate, University of Malta 2017).
[44] Court of Criminal Appeal, 15th September 2016.
[45] Court of Criminal Appeal, 3rd July 1997.
[46] Criminal Court decree, 28th May 1999.

akkuzat u d-drittijiet fondamentali oħra tiegħu ma jkunx qed jiġu salvagwardati kif trid il-liġi w dan matul kull stadju tal-proċess'[47]

If the jury is sequestered, they are sent to a hotel after the court session, accompanied by the registrar and court bailiffs. The court will order the jury to strictly not discuss the matter of the case with anyone. Although there is nothing in the law that prohibits the use of technology by jurors during their service, mobile phones usually are prohibited once a person is chosen as a juror. Media is a play a significant role in the court's battle against jury bias. In fact, jurors are prohibited from following Maltese media and newspapers while the trial is ongoing for the precise reason that it could affect their impartiality. In *Repubblika ta' Malta v Melchior Spiteri*[48], a local newspaper published an article mentioning the accused's previous convictions. The Court had to discharge the jurors and postpone the trial as this article could have influenced the jurors.

Ineffectiveness of the Courts

The jury system cannot be effective if the court system is not. Recent studies[49] have shown that there are eighty-seven pending trials by jury in the Maltese courts, with over a hundred people arranged for these trials. The majority of these are drug-related cases, followed by homicides, money laundering offences and sexual offences. Four cases have been pending for twelve years, with two of them being delayed as they are still awaiting the outcome of preliminary pleas. One drug case in particular even dates back to more than 13 years. The bill of indictment for this case was issued in 2007. Today for the trial to proceed is still awaiting a decision by the Constitutional Court. In addition, several pending cases are awaiting a decision by a superior court for a criminal case to continue. Another portion of these cases are awaiting trial due to being postponed indefinitely because the accused has fled the island, which is no fault of our judicial system. However, in one specific case regarding money laundering, the accused has escaped custody, resulting in the case to be left pending for twelve years.

The COVID-19 pandemic certainly has not helped the situation. From the beginning of this year up until July, only eight trials have been decided, and the Attorney General has filed eleven bills of indictment. Additionally, four cases awaiting trials involving drugs were sent back to the Magistrate's Court under the instructions of the Attorney General. Hence, the case will be decided by a magistrate rather than a judge with a sentence carrying up to twelve years of imprisonment.

[47] Translation: 'It is therefore in this sense that such irregularity cannot be allowed by the Court because otherwise the administration of justice would be jeopardized, since the presumption of innocence of the accused and his other fundamental rights would not be safeguarded as envisaged in the law throughout every stage of the proceedings'.

[48] Criminal Court decree 22nd June 2015.

[49] Matthew Xuereb, 'Just over 100 suspects are awaiting 87 pending trials' (*Times of Malta,* 2021) <https://timesofmalta.com/articles/view/just-over-100-suspects-are-awaiting-87-pending-trials.884284> accessed 18th November 2021.

Trial by jury in the UK

In the UK, juries are regulated the Juries Act of 1974. Four courts make use of trial by jury. These are the Crown Court which has a jury panel composed of twelve members. In this court, criminal cases relating to heinous offences are heard[50]. The High Court is a court which hears cases relating to defamation, false imprisonment, malicious prosecution, and cases alleging fraud, or cases against the police and a jury panel is composed of twelve members. Similar to the latter court, the County Court also hears cases of defamation, false imprisonment, malicious prosecution, and cases alleging fraud, however the jury panel is composed of eight members. The Coroner's Court concerns itself with death in prison, death as a result of an industrial accident, circumstances where a death has occurred and the health and safety of the public is questions, and death of a person while in police custody or death as a result of an injury caused by a police officer in the execution of his duty. The jury panel varies between seven and eleven. [51]

In the UK, there is the possibility of challenges done by the parties to a particular juror or all jurors.[52] These challenges aim to assess if a juror is biased or not. These challenges would only be done once it is proven that it is essential. If a juror is found to be biased, the Judge has the power to remove him from a juror. Moreover, the Juries act makes it a criminal offence to be corrupt or biased.[53]

Proposals for reform

For the jury system in Malta to be reformed, it needs to be analysed. It is evident that when it comes to regulating jurors, the UK is more structured than Malta, mainly due to having the Juries Act of 1974. In Malta, we only have a handful of provisions regulating jury conduct. In order to eliminate the possibility of bias, the UK vests the right in the parties to challenge the jurors. Similarly, in Malta, the accused or the registrar are the ones that can flag any signs of juror bias; however, in the UK, prejudice is a criminal offence, while in Malta, it is not.

Regarding jury selection, an *ad hoc* committee should be established where legislation similar to the Juries Act could be drafted to structure the juries' roles better. The people chosen for jury service are often not knowledgeable about the law and the way court procedures work. Moreover, people are afraid to serve as jurors because they do not know what to expect. It is up to the judiciary to supplement straightforward guidelines for the community to understand what is expected of them. Ultimately, it saves the court workers' time from explaining matters that could be considered basic. The *ad* hoc committee would be tasked with an extensive examination of jurors. Similar to what happens in the UK, jurors should be questioned to verify their impartiality. Additionally, the concept of informative sessions to familiarise people with jury service should be considered.

Furthermore, it is inevitable to keep the jury from accessing news before or during the trial. Media is an easy way to confuse the public. Therefore, one must stay informed and be cautious in choosing which media stations he follows because some stations aim to blurt fiction rather than the truth.

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[50] 'Criminal Courts' (UK Government) <https://www.gov.uk/courts/crown-court> accessed 18th November 2021.

[51] 'Coroners' (Crown Prosecution Service 2021) <https://www.cps.gov.uk/legal-guidance/coroners> accessed 18th November 2021.

[52] Article 12 of the Juries Act 1974.

[53] 'Jury Vetting' (Crown Prosecution Service 2021). <https://www.cps.gov.uk/legal-guidance/jury-vetting> accessed 18th November 2021.

Despite its defects, the jury system in Malta is an effective one, but there is always room for improvement, especially since it lacks change. The area concerning jury service in the Criminal Code has not changed much throughout history. New infringements of the law show up constantly, and for this, the law is not static, which is why amendments must occur frequently. The same must apply to the jury system - it needs to continue the process of gradual evolution. The jury system must be up to the highest standards because it is of utmost importance to a free society. If political freedom and a stable society are to be sustained, there must be a justice system that the society is willing to trust.

Reformation of justice

With regards to reformation of justice, we have barely scratched the surface in Malta. The enactment of the Reformative Justice Act and of the Commission for the Holistic Reform of Justice System were the first steps towards a reform. However, alternatives to imprisonment present in the Restorative Justice Act, in the Probation Act and in the Criminal Code are not being implemented and utilised to their full potential.

With the rate of incarceration in Malta ever increasing, it has become evident that the handing out of custodial sanctions in sentencing has become ineffective. The total deprivation of liberty of prisoners is not always the answer, the punishment has to be commensurate to the crime to be effective. Community based sanctions offer an alternative to total deprivation of liberty and have been proven to lead to less recidivism.[54] The Restorative Justice Act introduced the possibility of parole and offender victim mediation, programs like RISe are geared towards reintegrating prisoners in society by offering offenders support and access to work among other things, when these entities work together the risk of recidivism is lowered. While offenders are offered educational and vocational programs in prison, prisoners that have short sentences would not be enrolled, and while Jobsplus does offer visits to prison, youth that are held in Young Persons Offenders Unit (YOURS) do not have access to this benefit. Since currently in Malta employers do not welcome former prisoners, we should be making these benefits more accessible and not creating bureaucratic obstacles that seem to permeate the Maltese criminal justice system[55] .

Since in Malta there is no policy to guide judges regarding sentencing, penalties are being awarded disproportionately. The Commission for the Holistic Reform of Justice System in its Final Report of 2013 gave measures to rectify this situation. The Commission recommended a Commission for the preparation of a Sentencing Policy to help judges, and it suggested that its members would be from different spheres such as social workers, criminologists and the like.[56] In measure 399 recommended in the Final Report of the Commission for the Holistic Reform of Justice System, we are given a scenario wherein a person that was an offender that paid their dues to society by completing their sentence and moved on to become a contributing member of society, has lapsed into crime again and may end up imprisoned. The Commission here is recommending that the judge be given the ability to choose to award a suspended sentence instead of imprisonment, essentially highlighting that even though it was recommended by the same report that a sentencing policy was needed, discretion to award punishment according to circumstances should belong the judge.[57]

Shifting the position on the Maltese penal code from incarceration to community-based sanctions is not an easy task. The blueprints are provided for in the aforementioned laws however, there needs to be more incentive to apply the alternative methods of sanctioning. There need to be more resources made available to the parole board, probation services and judges in guiding them to award community sanctions. Imprisonment should not the end of the Maltese criminal justice system. We have to move past custodial imprisonment and adopt more restorative justice principles. By appointing professionals

[54] Dr. Janice Formose Pace, Crime Prevention Strategy for the Maltese Islands 2017-2021 (2016) https://homeaffairs.gov.mt/en/media/PoliciesDocuments/Documents/Crime%20Prevention%20Strategy%20for%20the%20Maltese%20Islands%20-%202017-2021-%20Online.pdf accessed 13 November 2021.
[55] Ibid.
[56] Final Report of the Commission for the Holistic Reform of Justice System 2013
[57] Ibid.

from a multitude of fields and creating a collaborative environment between agencies we can start creating a functioning holistic reform of the Maltese criminal justice system.

The process following arrest

In Malta if one is arrested for a crime, the person will likely be detained by the Court, and later on be informed of one's bail conditions. Unless the person is arraigned under arrest, they are informed of the charges they are facing and when the date of the first hearing is to be. Proceedings are then brought before the Court of Magistrates as a court of Criminal Judicature, if the offence falls within its jurisdiction, or before the Court of Magistrates as a Court of Criminal Inquiry, in the case that the offence does not fall within the jurisdiction of the Court of Magistrates as a Court of Criminal Judicature, relative to the seriousness of the charges one faces.

Following the conclusion of the inquiry, the relevant court then decides whether the offence is to be tried by the Court of Magistrates as a Court of Criminal Judicature or by the Criminal Court, before a Trial by Jury. For every case, there is a judgment which either sentences the person found guilty to the relevant punishment or discharges them. [58]

The Right to a Fair Trial

At the heart of adequate administrative justice is the notion of the right to a fair trial, which under Maltese law is protected both under Article 39 of the Constitution of Malta as well as under Article 6 of the European Convention of Human Rights. These provide a number of procedural guarantees which the defendant is entitled to. Article 39 states that "Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law." The notion of a reasonable time is explained in Article 6 of the ECHR.

Justice delayed is justice denied is a sentiment which anyone who has ever had to deal with the Maltese courts can empathise with. Court delays have consistently plagued the news and social media in Malta, having characterised Maltese litigation since the colonial times, in spite of several attempts of reform.

Case law

When examining if a case was undertaken within a reasonable time, one makes a distinction between civil and criminal proceedings, as in the case of criminal proceedings, there may be a loss of liberty. This was confirmed in a judgement delivered by the First Hall of the Civil Court on the 13th of April, 2021, presided by Madam Justice Anna Felice in 'Noel Xuereb V Avukat Generali u Kummissarju tal-Pulizija'. The case regarded Xuereb who had filed a constitutional application wherein he explained that he was charged in January 2007 for crimes of corruption. He was held under preventative arrest for a few days and then given bail wit the requirement to sign at police station twice a week. The prosecution closed their evidence in February of 2012, and the defence was only allowed to present its evidence in May of 2017. The case was then finally decided on the 1st of April, 2019, where the defendant was found not guilty of these charges. It took a total of 12 years for the case to be decided, and by that time he had felt as though his fundamental rights, as protected by the constitution and the ECHR, had been breached. The Commissioner of Police along with the Attorney General contended that one must take

[58] 'Things to Know About Justice in Malta', https://justice.gov.mt/en/justice/Pages/Things-to-Know-About-Justice-in-Malta.aspx accessed 15th November 2021

the complexities of the case into question when analysing a case had taken too long. At the time there was also no specific time limit for the courts to adhere to.

The Court quoted 'Joseph Camilleri vs Avukat Generali', decided on the 27th May 2016 wherein it was held that the "complexity" of a case ought to be measured in light of what was at stake for the applicant of the case. Unfortunately, there exists no set of criteria guiding the courts on what constitutes an unfair hearing because of delays. Thus, the courts needed to take all the factors into consideration. In the European Court judgment Der Grune Punkt – Duales System Deutschland vs Commission, the Court held that: *"The Court has held in that regard that the list of relevant criteria is not exhaustive and that the assessment of the reasonableness of a period does not require a systematic examination of the circumstances of the case in the light of each of them, where the duration of the proceedings appears justified in the light of one of them. Thus, the complexity of the case or the dilatory conduct of the applicant may be deemed to justify a duration which is prima facie too long"*.

In other cases the Maltese Court did indeed address what constituted a reasonable time, and it was declared that the judge is awarded some discretion when measuring the time it took for a case to be decided. The Court may express the opinion that a case took too long or if it is acceptable for such a case to take so long. Another case of relevance is 'David Marinelli vs Avukat Generali' decided by the First Hall of the Civil Courts in its constitutional jurisdiction decided on 3 July 2008, wherein it was held that there should be distinction between criminal and civil proceedings, as in the case of the former the freedom of the person is at issue. It is thus imperative that criminal proceedings do not take longer than necessary to be decided, whereas in civil cases some delay is acceptable. The Court held that Xuereb's fundamental human rights had thus been breached. Interestingly, as regards the remedy issued, the court stated that a simple declaration that there had been a breach could be deemed sufficient in certain cases, however, the Court also gave compensation for a breach of human rights of such gravity. The compensation awarded does not equate to what is calculated for civil cases.

The Constitutional Court in 'Raymond Urry et vs Avukat Generali' decided on the 27th February 2015, identified several elements the court ought to consider, such as the nature of the proceedings, excessive delay as well as the uncertainty and frustration generated. As such, the Court saw that Xuereb had been an employee of MITTS and he handled large projects, forming part of the Evaluation Committee of the IT tender of Mater Dei Hospital. His job had been terminated as a consequence of his arraignment. He then fell into a depression, affecting him to a point where he was unable to have children. Hence, the Court stated that he was due compensation given that the proceeding had been the cause of such anguish for an extensive period of time not to mention the gravity of what was at stake. Thus, the Court then accorded Xuereb €100,000 in damages for the breach of his human rights.[59]

[59] Mifsud Malcom, 'Reasonable time in criminal Proceedings is without delay', 18th April 2021, https://www.maltatoday.com.mt/business/law_report/109064/reasonable_time_in_criminal_proceedings_is_without_d elay#.YZfi6NDMI2w accessed 16 November 2021.

The Council of Europe's European Commission for the Efficiency of Justice, refer to 2016 statistics, and paint "a dismal picture, particularly with regard to the length of time it takes to dispose of cases on appeal, both civil and criminal[60]". The European median for civil cases in the appeal stage stood at 122 days. Whilst in Malta that figure rises to 783 days. The situation is even worse in the case of criminal appeals, for which the European Median stands at 77 days whereas this rises to a baffling 1025 days for cases before Malta's Court of Criminal Appeal. In an interview by the Sunday Times in 2020, Chief Justice Emeritus Vincent De Gaetano listed some of the problems he believes have contributed to prolonged court proceedings, among which are unnecessary litigation, committal proceedings which drag on, a severe lack of resources and staff at the Attorney General's Office and insufficient court halls. In a statement on behalf of the Association for Judges and Magistrates, Magistrate Francesco Depasquale quotes the European Commission report and indicates that "Malta has half the number of Judges required per 100,000 of its population when compared to the rest of the bloc4 ." Depasquale also explains that every member of the judiciary ought to have an adequate number of staff members handling the "shortcomings inside the court registry4" and "to assist the new members of the Bench4". Thus, "A long-term plan is needed for the investment in, and attraction of, trained and competent individuals who assist the judiciary[61] ."

A way forward

The Maltese Criminal system is characterised by the rebuttable presumption; *semper praesumitur pro negante*, meaning one is presumed innocent until proven guilty. This presumption, rests on "the right which every man has to his character, the value of that character to himself and to his family, and the evil consequences that would result to society if charges of guilt were lightly entertained or readily established in courts of justice[62]" is what protects the accused throughout criminal proceedings,- from the instance of arrest up to the conviction or acquittal. Sadly, in practice it is rather difficult to say the Maltese court system adheres to this indispensable when cases in cases such as Noel Xuereb vs Avukat Generali u Kummissarju tal-Pulizija have proven that grossly prolonged proceedings inflict what feels like premature punishment for a crime one is yet to be convicted of, if at all. We must do better. For reform to be truly effective, all dimensions of procedural law must be taken into consideration. This calls for written rules and unwritten practices, not to mention the attitudes and perceptions of the legal professionals involved in the implementation of such rules must be reconciled. True reform can only be achieved when redundant rules are amended and the perception and practices of the court body is repaired.

[60] 'Justice within a Reasonable Time', (Times of Malta, 2020), https://timesofmalta.com/articles/view/justice-within-a-reasonable-time.814548 accessed 17 November 2021

[61] Vassallo Raphael, 'If we want faster justice we have to invest in it a little too', 16th February, 2021, https://www.maltatoday.com.mt/comment/blogs/107718/if_we_want_faster_justice_we_have_to_invest_in_it_a_little_t oo#.YZfKvNDMI2w accessed 17 November 2021

[62] Hugh w. Harding, 'The Accused in Maltese law' (page 214)

Recidivism

Recidivism has been defined as a person's relapse into a previous type of behaviour, more specifically a relapse into criminal behaviour.[63] In terms of Article 49 of Chapter 9 of the Laws of Malta, the Criminal Code, a person is considered as a recidivist if upon completing their sentence, they commit another offence.[64]

Presently, there is no official and recently recorded figure of recidivism in Malta, however, in 2013 the former Minister of Home Affairs and National Security confirmed that out of 440 prisoners, 295 of them were recidivists, which amounted to around 75% of the prison population at the time.[65] Moreover, a study (Axiak, 2016) on the possibility that drug rehabilitation programs reduce recidivism amongst drug inmates, interestingly concluded that those offenders who attended a program have a recidivism rate of 55.2% and a rate of 44.8% for those offenders who did not attend a programme.[66]

Maltz (1984) established several causes which result in a previous offender to offend again, such as the individual's incapability to relate and re-integrate with the community, especially since they face a psychological war due to stigmas. Along with these causes, an individual would have to face broken relationships, poor education, barely any employment opportunities, and inadequate accommodation which can all result from poor re-integration programmes and interventions from inside the prison and also no aftercare and re-entry assistance.[67]

Punishing Recidivism

Article 50 of the Criminal Code establishes the effects of a previous conviction whilst stating the following; *"Where a person sentenced for a crime shall, within ten years from the date of the expiration or remission of the punishment, if the term of such punishment be over five years, or within five years, in all other cases, commit another crime, he maybe sentenced to a punishment higher by one degree than the punishment established for such other crime"*.[68]

Although some might consider the fact that if an offender upon their release, falls back into their previous life of criminal activity and ultimately re-offends, they would deserve a punishment which is more severe than their first conviction. The criminal law jurist, Pessina, believed that a recidivist does not deserve to be given a harsher punishment simply due to the fact that he has already served a prison sentence and the effect of it could have worn out. Whilst on the other hand Carrara believed that recidivism is an aggravating circumstance and results in an eviler disposition since the rehabilitative effect of the first sentence did not deter him from committing a second offence.[69]

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[63] 'What Is Recidivism?' (*Rehabilitation Enables Dreams RED*) https://stoprecidivism.org/what-is-recidivism/ accessed 17 November 2021.
[64] Criminal Code, Chapter 9 of the Laws of Malta, 1845.
[65] Jessica Grech Parnis, 'Habitual Reoffending: A Study Establishing The Rate Of Recidivism, Salient Risk Factors And Vulnerabilities Amongst A Sample Of Community Based Offenders In Malta.' (Undergraduate, University of Malta 2018).
[66] Claire Axiak, 'The Effect Of Community-Based Drug Rehabilitation Programs On Recidivism In Malta' (2016) 28 Malta Medical Journal.
[67] Michael D. Maltz, *Recidivism* (Academic Press 1984).
[68] Criminal Code, Chapter 9 of the Laws of Malta, 1845
[69] Jacob Magri, 'Recidivism' (*Azzopardi Borg & Associates Advocates*, 2019) <https://abalegal.eu/recidivism/> accessed 17 November 2021.

In terms of punishment, we should need to seek out the scope of punishment and why we punish offenders. The 2008 judgement of **'Ir- Repubblika ta' Malta vs Rene Sive Nazzareno Micallef'** defined well the scope of punishment by stating as follows; *"The penalty has several purposes. One of them is to restore the social fabric that has been damaged by the criminal act. Under this aspect they assume importance, among other things, both compensation for the damage by the offender as well as the reformation of the same offender. Another scope of punishment is to protect society. This is done both in the cases of people who show that they are a threat to society and should remain incarcerated and therefore out from circulation, as well as by in the case of serious offences, by sentencing a clear message that serves as a general deterrant. The Courts of Justice of Criminal Judicature must always try to find a just balance between these and other several purposes of punishment."* (Unofficial translation).[70]

When it comes to recidivism some have considered that there are different types of recidivists, for example David Thomas in his book, the Principles of Sentencing mentions the term 'inadequate recidivist' whilst stating the following; *"the term inadequate recidivist is used to describe an offender, middle aged or older, who has over a long period of years committed numerous offences, not in themselves in the first rank of seriousness, and has served many terms of imprisonment as well as experience an extensive selection of other penal measures. Faced with such an offender, the Court will usually grasp any chance of breaking the cycle of offence and sentence, even if the chances of success are obviously limited."*[71] However he continues by mentioning that in the case of an intermediate recidivist there must be an ounce of success, regardless of how remote, when it comes to the breaking of the cycle of repeat offending.

Moving Forward

We must ask ourselves the question of why a previously interdicted offender who was confined within the prison walls for a period of time felt that upon release, had to participate in criminal activity once again. Therefore, can we truly say that our prison creates a rehabilitative environment, which equips the inmates with the necessary skills and knowledge in order to be fully capable of surviving in a community in which they felt emarginated and will feel even more emarginated once they face the labels and stigmas produced by society? Along the lines of this paper, the topic of social reintegration programmes shall be introduced as to disseminate the approaches that our prison needs to implement in order to truly prevent recidivism and provide prisoners with a new chance to learn and grow in order to prosper in the life of the community.

Another aspect to be analysed here is that of 'desistance'. This is the process of abstention from crime by those who would have committed an offence, or a series of offences. This should in fact be the ultimate goal which a prison system have, and which a true reformative system will aim to achieve via various incentives, programs, and a prioritization of rehabilitation as will be discussed in the following chapters.

<u>Social Reintegration and Public Safety</u>

Social reintegration has been interpreted as the support which is provided to offenders during the transition and re-entry period into society following their term of imprisonment. Therefore, effective efforts must be brought about in order to divert recidivism and put an end to the cycle of failed adaptation by repeat offenders. The ability of offenders to become law-abiding citizens must come from

[70] Ir-Repubblika Ta' Malta vs Rene Sive Nazzareno Micallef [Criminal Appeal Superior] [2006] 18/2002
[71] David Thomas, *Principles Of Sentencing* (Heinemann 1979).

inside the prison walls' itself through the undertaking of various interventions which facilitate an adequate environment for social reintegration.[72]

As studies have shown above, the criminal recidivism rate is ever-increasing since offenders are failing to successfully re-integrate back into the community with every crime having its costs on society. The failed re-integration of offenders adds to the costs of investigating and prosecuting crimes, as well as to the costs of imprisonment, which ultimately create a further financial burden on a country's economy. Prison overcrowding has been established as one of the factors which affects the capability for a prison to offer an effective social reintegration programme.[73] It is not an unknown fact that Malta's only prison is functioning at a limited capacity. According to statistical data obtained from the World Prison Brief, as of February 2021 the official prison population at Corradino Correctional Facility was at 927 inmates, with an occupancy level of 88.6%, therefore almost at full capacity.[74]

Most criminal offenders serve short prison sentences for relatively minor crimes, such as small property crimes and drug related offences, however they still have their impact on a community's public safety. Due to serving short prison sentences, their access to treatment might be highly limited, which results in repeat offending, therefore repeat offenders must have priority access to social reintegration programmes. Decision makers ought to keep in mind that the ability for a prisoner to successfully reintegrate back into society is not only for the sake of the prisoner but also for the sake of public safety and for a country to develop both socially and economically.[75] For short sentenced prisoners, a prison sentence is 'useless' as the prison cannot do much to help them. One would benefit much more from an alternative to incarceration such as Probation. For example, in Germany the courts are prohibited to give prison sentences of less than 6 months – this could only be done with justification. There are alternatives which in practice would be mch more effective and beneficial.

Social Reintegration Programmes

Rule 4(1) of The United Nations Standard Minimum Rules for the Treatment of Prisoners, or the Nelson Mandela Rules states the following: "*The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life*".[76] As is clearly stated, an effective rehabilitation programme is the most crucial factor in reducing recidivism and improving public safety which ought to be offered by the prison administration or any other competent authorities. Rule 4(2), continues by listing down examples of educational activities and initiatives which must be present and continuous in a prison environment.[77]

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[72] Curt T. Griffiths, Yvon Dandurand and Danielle Murdoch, 'The Social Reintegration Of Offenders And Crime Prevention' (National Crime Prevention Centre (NCPC) Public Safety Canada 2007) https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/scl-rntgrtn/index-en.aspx accessed 17 November 2021.

[73] Vivienne Chin and Yvon Dandurand, *Introductory Handbook On The Prevention Of Recidivism And The Social Reintegration Of Offenders* (2nd edn, United Nations Office on Drugs and Crime 2018) https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf accessed 17 November 2021.

[74] 'World Prison Brief Data' (*Prison Studies*) <https://www.prisonstudies.org/country/malta> accessed 17 November 2021.

[75] Ibid. [6]

[76] UNODC 'The United Nations Standard Minimum Rules for the Treatment of Prisoners' Res 70/175 (17 December 2005).

[77] Ibid. [9]

As has been previously established, the objective of a social reintegration programme is to assist offenders to desist them from taking part in criminal activity, all whilst successfully reintegrating them back into society. There are 3 main categories for effective social reintegration programmes; (1) non-custodial community-based programmes, (2) prison-based rehabilitation programmes, (3) reintegration and aftercare programmes which are delivered upon the release of an offender. Such interventions and programmes can be implemented during the different stages of the criminal justice reformative and restorative process. However, these interventions must be catered and delivered accordingly as they must pertain to an individual offender's specific needs and difficulties. Treatment must consist of a continuity of care with preparations for re-entry before an offender is released, along with interventions after their release, facilitating a full and smooth transition from prison to community.

Prison-based rehabilitation programmes are deemed to be the most effective when they are based off a holistic diagnosis of an offender's situation, which lead to a specialised focus on the risks and challenges which an offender faces. One must keep in mind that specialised social reintegrative programmes must address the needs of all cultures, genders and special needs of any other specific categories of prisoners.[78]

Educational Programmes in Prison

Most prisons are likely to contain offenders with a variety of educational levels of attainment. Some might lack the basic skills, whilst some might have managed to complete a secondary level of education or even a tertiary level of education. Upon admission to prison, an appropriate assessment ought to be conducted in order to evaluate the educational level of each prisoner in order to develop the adequate rehabilitation programme with suitable activities. A prison environment needs to foster the desire to learn so as to motivate the prisoners to volunteer and participate in education. Whilst some prisoners might prefer to work so as to have a form of salary, it is crucial for prison staff to continuously promote education.[79] Due to this, education itself should have some sort of remuneration as undoubtedly, prisoners also need money hence why many opt for work rather than education if no money is earnt with the latter.

Whilst Rule 104 of the Nelson Mandela Rules[80], makes education for illiterate prisoners' compulsory, prisoners with low knowledge of basic skills cannot be ignored as they could easily return to their previous life of crime rather than successfully rehabilitating and reintegrating into society. When developing a rehabilitative education program, attention needs to be paid to prisoners with short or long prison sentences. Those prisoners who serve a shorter sentence can partake in short modular courses which can be stimulative and provide a positive experience. Whilst those prisoners who are serving longer sentences might face difficulties in progressing during a sentence for a few years, therefore a positive attitude must be maintained amongst long-term prisoners. Moreover, long-term prisoners are more likely to experience some psychological problems upon their release which would be an added challenge for them to apply the education and labour skills which they had acquired, therefore psychological assistance needs to be arranged upon re-entry into society.[81]

[78] Ibid. [6]
[79] Rob Allen, Philipp Meissner and Muriel Jourdan-Ethvignot, 'Roadmap For The Development Of Prison-Based Rehabilitation Programmes' (United Nations Office on Drugs and Crime 2017) https://www.un-ilibrary.org/content/books/9789213630952/read accessed 17 November 2021.
[80] UNODC 'The United Nations Standard Minimum Rules for the Treatment of Prisoners' Res 70/175 (17 December 2005).
[81] Ibid. [12].

The Way Forward

Education in prisons is mentioned quite briefly under Article 46 of the Prisons Regulations, however there is much more that needs to be done in relation to education which would serve the goals of rehabilitation and reintegration.[82] As was stated above, education programmes need to firstly be mindful of all the needs of a prisoner including; their culture, religious views, gender conformity, their special needs, and the length of their sentence. When it comes to adequate education programmes, individuals who have received the proper training, have the right mindset and also having the necessary skills should be coordinating such programmes. France offers specialised training for teachers who wish to take on the role of education in prison which consists in 3 weeks of training during their first year of placement. This special training is offered jointly by the Prison Administration Department and the School Education Department with the aim of helping teachers adapt to working in prison, whilst offering quality learning to prisoners.[83]

In order to motivate prisoners to participate in such programmes, a mechanism can be implemented for prisoners to receive a form of renumeration or other benefits such as the possibility of an early release. Brazil and Saudi Arabia applied such mechanisms - for every specific amount of time they spend doing educational activities, their sentence would be reduced by a certain amount. In actual fact, this is how our remission system should work but unfortunately remission has become automatic and is not earned. Some countries even celebrate the successful completion of an educational programme with a graduation ceremony in which prisoners' family members are invited. There needs to be the possibility for prisoners to continue their learning upon serving their sentence and re-integrating into society, such as having programmes in which prisoners can learn alongside university students and can commence with attending a regular university course upon release. Panama's Ministry of Interior Affairs partnered up with the University of Panama which created a university extension in the Women's Rehabilitation Centre.[84]

Vocational Training Programmes in Prison

Rule 98(2) of the Nelson Mandela Rules states the following; *"Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners."*[85] Prisoners firstly ought to have the opportunity to learn skills as part of the prisons' rehabilitative programme, and secondly prisoners should be able to choose which skills they would like to learn rather than a one size fits all approach.

Where vocational training is provided in prisons, traditional skills such as woodwork, metalwork and agricultural skills are more likely to be provided. While these are all noble skills especially in rural communities, the new society calls for a wider range of skills. The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, or the Bangkok Rules, specifically focus on an adequate programme of activities for female prisoners which takes into account their appropriate needs.[86] Under such rules, one can find a list of activities

[82] Prison Regulations, Subsidiary Legislation 260.03, 1995.
[83] Jo Hawley, Ilona Murphy and Manuel Saouto-Otero, 'Prison Education And Training In Europe Current State-Of-Play And Challenges' (European Commission 2013) http://www.antoniocasella.eu/nume/Hawley_UE_education_may13.pdf accessed 17 November 2021.
[84] Ibid. [12].
[85] UNODC 'The United Nations Standard Minimum Rules for the Treatment of Prisoners' Res 70/175 (17 December 2005).
[86] UNODC, 'The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders' Res 65/229 (16 March 2011).

which may assist women in leading an independent life such as administrative and computer skills, whilst also including more traditional skills which used to be considered as appropriate for women such as hairdressing, dressmaking and childcare to name a few.

Programmes ought to be offered with the goal of improving their employment prospects upon their re-entry into society. Such programmes need to be recognized by employers with the right qualifications, as prisoners who receive vocational training but upon re-entry are unable to find a suitable job, will lead to them partaking in criminal activity once again. A linking factor with this is the change in mentality for employers to employ people with a criminal history as this is crucial for the prevention of recidivism and for successful employment. Some prisoners will face barriers with vocational learning such as learning disabilities or simply suffering from a low self-esteem. Therefore, vocational training must be delivered according to competency as some might find it challenging more than others and would require support during the learning process and also after release.[87]

The Way Forward

Prisoners need to have the opportunity to choose from an array of skills which interests them and would provide them with job prospects once they are released. Prisons in Georgia offer a wide range of courses which would offer prisoners various employment prospects upon their re-entry such as bricklaying, how to be a tour guide, how to run a small business and they can also learn foreign languages such as German.[88] Whilst in South Sudan, a vocational training unit was established inside the prison itself, and started offering short courses on carpentry, electrics and masonry. This vocational training unit has been fully registered as a commercial company and markets the products, creating a self-sufficient workshop, and such crafts were put on display at the graduation of the first 226 prisoners.[89] Apart from offering training on specific skills, some might wish to work for themselves upon release therefore, something similar to what Georgia has accomplished by providing inmates with information on how to run a small business, the same could be done in Malta by offering training in entrepreneurial skills, to put their plans into practice upon their release.[90]

Through incorporation and co-ordination with various trade unions, employers, and local stakeholders, our prison could finally give the opportunity for prisoners to learn meaningful skills which they never had the opportunity to learn whilst providing them with means to rehabilitate, and re-integrate peacefully into society. The prison authority could consider holding open days or career fairs to showcase the work that awaits them outside the prison walls, whilst being able to showcase any of the work or crafting that they have managed to accomplish. The prison could also have a shop from where the goods produced by the prisoners could be sold to the public. For example, prisoners sometimes produce and sell bead they would have made themselves from scratch. This could give the prisoners a sense of normality, and a sense of accomplishment.

[87] Ibid. [12].
[88] RAND Corporation, 'How Effective Is Correctional Education, And Where Do We Go From Here?' (Bureau of Justice 2014) https://www.rand.org/pubs/research_reports/RR564.html accessed 17 November 2021.
[89] Reliefweb, 'First Cohort Of 226 Inmates And Prison Staff Graduate From The Vocational Training Centre In Juba Central Prison' (2021) https://reliefweb.int/report/south-sudan/first-cohort-226-inmates-and-prison-staff-graduate-vocational-training-centre accessed 17 November 2021.
[90] Ibid. [20]

Transitional Programmes

As of Article 62(1) of the Prisons Regulations, special care and attention needs to be given to provide after-care to prisoners upon their release, therefore effective pre-release and after-care programmes are highly important.[91] The transitioning period from living in custody to living in a community is especially difficult for offenders, as they face numerous anxieties such as finding employment and fixing broken relationships along with the social stigmas which would be associated to them. Queensland, Australia conducted a study in 2006 where about half of the sample of study were reported to have at least a moderate level of psychological distress prior to their release.[92] Upon their release they will face various challenges such as finding lodging with very limited means or managing financially to find access to their basic everyday needs and services. Therefore, offenders who do not receive adequate support in terms of material needs and psychological and social support, they are in risk of being caught up in the vicious cycle of release and rearrest.

The Nelson Mandela Rules[93] outline the international standards and norms which must be attained during these post-release services, including; the delivery of aftercare services to former prisoners, the early release and proper community supervision of the offenders, and the crucial role of the community which should be accepting and allows for the social reintegration of former offenders. Moreover, the legislators also went on to include an important provision (Rule 90) as a reminder that; *"the duty of society does not end with a prisoner's release"*[94], emphasising the importance of aftercare being delivered by both governmental and non-governmental bodies.

Aftercare and Re-Entry Assistance

Countries can rely on various specialized agencies which offer aftercare assistance and supervision to recently released offenders. Malta's own aftercare organisation is known as 'Rehabilitation in Society Malta Foundation (RISe)' who are a non-governmental association which aim to provide offenders with the assistance and supervision which they require upon their release, in order to desist from taking part in criminal activity, and successfully reintegrate back into the community. RISe have managed to establish a unique service which enhances the wellbeing and safety of the community, in which through their rehabilitation programmes, offenders are supported and encouraged in changing their behaviour and attitude.[95]

There are 4 key factors which positively impact the social reintegration of offenders back into the community and these are; job market re-entry assistance, lodging and financial aid, easy access to health care and social security, and familial support. As has been established, employment is a crucial factor in the successful re-entry and reintegration of any prisoner, as employment is more than just a source of income for them, but a beacon for structure, routing and social contact opportunities. Moreover, it helps prisoners to embrace the community spirit and enhances their self-confidence and

[91] Prison Regulations, Subsidiary Legislation 260.03, 1995.
[92] Stuart Kinner and Megan Williams, *Post-Release Experience Of Prisoners In Queensland: Implications For Community And Policy* (Queensland Alcohol and Drug Research Centre QADREC 2006)<https://www.researchgate.net/publication/27467547_Post release_experience_of_prisoners_in_Queensland_implications_for_community_and_policy> accessed 18 November 2021.
[93] UNODC 'The United Nations Standard Minimum Rules for the Treatment of Prisoners' Res 70/175 (17 December 2005).
[94] Ibid [26].
[95] 'Rehabilitation In Society Malta Foundation Rise' (*Malta Council for the Voluntary Sector*) https://maltacvs.org/voluntary/rehabilitation-in-society-2/ accessed 18 November 2021.

self-esteem. Very often, offenders are re-convicted due to their inability to find adequate housing, therefore accommodation is key to the successful re-integration. Prisoners ought to be given the opportunity to secure a source of accommodation prior to their release, in order to reduce the risk of social isolation and homelessness. According to Article 63(3) of the Prison Regulations[96], offenders who were receiving a form of medical treatment or care inside the prison, they shall continue to receive such medical care after their release. This provision is of crucial importance as many prisoners' face barriers in accessing health care services. It also might be difficult for a released prisoner to present themselves at a hospital and recall their previous histories and experiences. The final factor aftercare assistance includes the families of offenders since they are a source of support for them upon their re-entry into the community. Unfortunately, many offenders face an absence of familial support especially with women prisoners who face a higher stigmatisation than male prisoners. Aftercare programmes should start their interventions whilst the prisoner is still in custody in order to adequately prepare for the transition. Through such programmes, family members can support the person coming home, or at least aid in resolving family issues, especially for offenders with a parental responsibility face a level of distress since they will be reuniting and caring for their children.[97]

[96] Prison Regulations, Subsidiary Legislation 260.03, 1995.
[97] Ibid. [12]

Life after prison

As the Maltese population drastically increases over the years, so does the number of prisoners that are admitted at the Corradino Correctional Facility every year. It has been reported that the percentage increase of prisoners between the year 2020 till the year 2021 was that of 15% most of which being foreign inmates. Various arguments have been made regarding this fluctuation in numbers making one question what life in prison is really like and if what is being done is actually a matter of reversal to better or worse. The risen matter in this paper is that of whether prison is serving as a punishment or as a reform journey preparing those who have committed wrongful acts that have entirely scarred someone else's life, understanding truly the dept of their grievance, and prepare to naturally face the natural world and integrate with the rest of society as principled and disciplined citizens truly motivated to turn their life around. However recent news bulletins have given an antithesis of such as more of the same contraventions are being committed often by the same people or relatives of so that return back to prison after their previous sentence was completed.

A number of the inmates currently habituated in the Correctional Facility in Malta are facing a long sentence thereby meaning they are cut out from their family and relatives, their colleagues and friends, their personal daily routine, and their careers. This shift on its own is already an arduous one, not forgetting the trauma they are put in knowing that they will no longer be free to roam around like they used to. Having been under this rigid regime the prisoners are expected to behave accordingly however it would be an inhuman assumption as they themselves are not living what is presumed to be a 'normal life', the life that the citizens out in the streets are living. Although it is a not a topic of conversation to be discussed regularly, the reintegration of these individuals back into everyday life is not one to be taken for granted.

This can be a well reminder of Plato's allegory of the cave, the three prisoners tied up to a rock since birth, seeing the shadows that they presumed to be real life objects as they had never in fact seen these shadows in tangible form themselves before. It is therefore an example of what prison should not be like. The cave representing people that base their understanding on empirical evidence are those stuck in their own misunderstandings, the guessing game represents the ridiculousness of believing that one person can be the master of everything overpowering the ones that do not reach the same theories or conclusions as the other, the escape from the cave representing to will to discover and experience this intangible knowledge and get to complete their journey to the truth and profundity and those who return back to the cave show that the days spent tied up to that rock instilled no good but fear to verge out to the world and accept reality. These scenarios all are representing the different characters and personalities which are molded in these prisoners during the completion of their sentence[98].

The prison-system ruling in Malta is by far one of the most controversial subjects that can be discussed as there have been several comments stating that the prison is serving only as a means of punishment, a daily reminder to the inmates that society does not accept them and their behavior, rather to reshape the minds and lives of every single individual personally and getting to adapt to the way they were all brought up and the values they have entrenched within them. Professor Andrew Azzopardi bravely asks the general public *"Do the people employed in prison have what it takes to deal with such a challenging*

[98] Amy Trumpeter, 'The Allegory of The Cave' by Plato, (21.09.2012) (https://www.philosophyzer.com/the-allegory-of-the-cave-by-plato-summary-and-meaning/ accessed on 18 November 2021

environment?"[99]. Numerous amounts of deaths have been reported throughout a period of a year representing an extensive fault in the system, the failings of education and discipline and compassion with the lost individuals who were uprooted suddenly from the lives they were ordinarily living to that of full loss of expression and identity. In there they are seen as just a number, so how can reform be achieved if every individual isn't well adhered to? The scope of this institution is firstly to distinguish those people who have failed to obey the criminal system in Malta and have committed act going against any provision enlisted in the law to those who have not done so. Secondly, before they are sentenced and took to the facility both the inmate himself and the authorities which are in charge of them in prison must be aware that entering this institution is not another way of pausing life or putting life on hold but putting the needs and wants of the person who has committed wrong aside and properly get the help and support they need in order to not to be a threat for themselves and society as a whole. However, it is important to firstly disregard the myths that these people do not get a second chance in life or are incapable of doing so. The aim of the prison is to deprive persons who have committed a crime from liberty. One hopes that this deprivation of liberty would result in deterring the person from future crimes and deter that general public from commiting crimes. With deterrence one should have a strong element of rehabilitation. NGOs such as RISe Foundation works to achieve all the above mentioned and more, helping to safe- guard the life of these individuals which was taken away from them effectively and teaching them the necessary credentials to be considered as responsible citizens.

The chairperson of the RISE Foundation, Mr. Charles Mifsud holds that *"The process of reintegration affects ex-convicts in different ways, mentally, physically and emotionally. The programme prepares individuals for the many challenges and changes they will face once they serve their sentence, so as a Foundation we believe it is important that such a programme takes place outside the prison cell."* He emphasizes that one of the foundation's principal aims is to provide a safe space for those prisoners who do not have a life to go back to, a career or even family so that none of them go back to old habits and reunite with groups that eventually commit crime. This foundation is currently situated in Valletta whereby they provide them with all the necessary skills and knowledge they need in order to face everyday life on their own again. These skills are in relationship to behavior and communication, things that unfortunately cannot be well - taught when they are forcefully locked up with the same individuals going through the same struggle however with those that have been living their lives integrated with society, what for them is 'normal'. He continues to state that *"Every day, the eight o'clock news has a specific slot about the latest Court case and crime, shedding a bad light on the individual even before the final verdict.[100]"*. He mentions the struggles these prisoners go through on the search of finding a job after their sentence as all government institutions fail to accept employers that have a mark on their criminal record thus they end up having to work under paid jobs that will take the process of getting back to their own independent life a little long than they expect it too and considering, most inmates are not of a young age and have been admitted to prison more than once in their life thus end up with no financial background for them to lean on. He concludes by saying that the real reform does not only depend on the prison itself or the inmates but society on the whole. The way they treat them and the way they welcome them back works part and parcel with the reformation of the individual's behavior, leading to a positive or negative trigger. Society over the years has proved itself to be closed- minded

[99] Andrew Azzopardi, 'A sick criminal justice system', (Times of Malta) (19.09.2021) (https://timesofmalta.com/articles/view/a-sick-criminal-justice-system-andrew-azzopardi.901307) accessed 18 November 2021.

[100] Giulia Magri 'Rising above prisoners' past and reintegrating them into society' (The Independent) (https://www.independent.com.mt/articles/2019-03-24/local-news/Rising-above-prisoners-past-and-reintegrating-into-society-6736205556) accessed 18 November 2021.

in the way they accept and treat these people due to the decades-old stigma that unfortunately will be around forever. However, a second chance at life for these people can only be complete if first and foremost this distinction is slowly dismantled.

"Prison was run on a culture of fear and oppression", Azzopardi well states, as the concept of rehabilitation was not at all looked into[101]. Section 11 of the Prison Regulation Acts speaks about the right of accessibility to education in prison such that programmes to be provided *"for the instruction of prisoners in such subjects and trades as may be within the resources of the prison and for their physical education according to their age, personality and general background"*[102] thus adapting firmly for each individual to be given a chance to start their reformation journey from the minute they step into this institution. No prisoners shall be barred from taking part in educational opportunities. In 2015, a course under the name of 'Exploring Diversity, Living Together[103]' was offered to the youth correctional facility unit whereby they were enlightened on the matters regarding issues of race, diversity, the use of non- abusive language and communication between people of different race and the understanding and accepting of the ethnicity difference we get to meet each day of our lives. As Malta becomes a more pluralistic country day by day, it is important that these individuals more in particular, being that they are not free to the exposure of this mix of races and sexualities, are to be taught to embrace and accept this life evolvement as part of their reform. Apart from educational courses in relation to studies, the prison is to offer hands on courses for those which do not have much exposure to core subjects and an academic background. This can also serve as an escape to their everyday struggle, having to slowly prepare for the day their reunite with their family and friends as a well- transformed citizen. Azzopardi's argument well grounds the fact that instead of giving these people the encouragement and the ability to improve their well- being and giving them the desire to work on themselves, the prison acts as unsupportive and inconsiderate failing to make good use of their available resources to well - nourish the lives of every inmate into that of a responsible civilian[104].

[101] Andrew Azzopardi 'The State of affairs in prison', (Times of Malta) (20.11.2021) (https://timesofmalta.com/articles/view/the-state-of-affairs-in-prison-andrew-azzopardi.915825) accessed on 18 November 2021

[102] Prison Regulations, Subsidiary Legislation 260.03 article 11(2) (https://legislation.mt/eli/sl/260.3/eng/pdf)

[103] Dr Sandra Scicluna, 'Corradino Correctional Facility - The Maltese Civil prison' (https://eurocides.eu/SERA/upload/maltese-presentation.pdf)

[104] Prison Regulations, Subsidiary Legislation 260.03 article 11(2) (https://legislation.mt/eli/sl/260.3/eng/pdf)

Eligibility of Inmates Seeking Parole: The Barriers they encounter and the Legal Avenues in their stride.

Parole in Malta is a relatively new phenomenon when taken within a much broader European context. It was introduced back in 2012, by means of ACT XXI of 2011 which served as the basis for the Maltese Restorative Justice Act.

At the time when this piece of legislation was introduced into the Maltese Criminal Justice system, Home Affairs Minister Mifsud Bonnici specifically clarified that the Government of the day wanted to give prisoners residing at the Corradino Correctional Facility ('CCF') a real shot at reformation and rehabilitation.[105]

Prior to this change in law, a third of a prisoner's sentence could still be deducted. This is known as 'remission' and was exclusively dependent on the premise that the inmate has had good behavior throughout the first two thirds of his/her sentence. Remissioon still exists side by side with parole and is given automatically which is why one of the reasons why parole is not taken by many prisoners. With the introduction of the Maltese Restorative Justice Act however, an overhaul to the entire criminal justice system took place. Or did it?

This paper seeks to answer several questions based on the law in the books (The Restorative Justice Act) and others deriving from this particular law in practice. Questions such as:

- Is Remission still a possibility in our Criminal Justice System?
- How does Remission differ from Parole?
- What makes a prisoner eligible for parole? And is this, ok?
- What barriers does a prisoner need to overcome in order to actually be granted parole?
- On which grounds can parole be rejected? And how are inmates seeking parole helped to achieve parole the next time round?
- What challenges can an inmate seeking parole bring if his/her application is rejected?
- And finally, is the system in place striving for real rehabilitation as is or should we be expecting more?

[105] Times of Malta Opinion, "Parole and Restorative Justice" *Times of Malta* (2012) https://timesofmalta.com/articles/view/Parole-and-restorative-justice.442249 accessed November 11, 2021

In 2021, the possibility of being released early by means separate from the parole system still exists. The Maltese Restorative Justice Act (RJA) caters for a system of Remission which grants inmates of a *"general overall good conduct"*[106] the ability to serve 2/3 of their sentence if their behavioral record is intact by the end of those 2/3. Under such circumstances, he/she is deemed to have served his sentence of imprisonment and is therefore released from prison. The problem is that remission is given automatically. The RJA gives an outline of the elements to be considered when granting remission – but these are just ignored in practice.

Prima facie, Remission and Parole may be deemed to be somewhat the same. This is not without good reason since they are both forms of early release for inmates serving a sentence of imprisonment after having been convicted of a crime by the Courts of Malta. Generally speaking, they are also both dependent on the behavior and conduct of the inmate himself/herself whilst residing in prison.

In theory however, these two differ quite greatly particularly in terms of duration.

The date on which an inmate becomes eligible to apply for Parole varies depending on the length of his/her sentence. Figure 1 clarifies the time periods established in Article 11 of Cap. 516.[107]

1 Sentence of 1 year – 2 years	1 Sentence of 2 years+ – 7 years	1 Sentence of 7 years+	2 Sentences or More
Eligible after serving 33% of full sentence	Eligible after serving 50% of full sentence	Eligible after serving 58% of full sentence	Eligible after serving 50% of full sentence

Figure 1: Eligibility Dates for Parole Applications

Therefore, by way of example, should inmate X be serving a twenty-two-year sentence of imprisonment, he/she would be eligible to apply for parole after twelve years and seven months and for remission after fourteen years and seven months. That is, unless the inmate has any pending, unpaid Court fines. In which case, that fine will be converted into a duration of imprisonment as per Article 11(3) of the Maltese Criminal Code.[108] What this means therefore, is that if an inmate has served 33%, 50% or 58% of his/her sentence, they are not eligible for parole before the additional term of imprisonment as converted under Art. 11(3) lapses. In fact, Article 11(10) of Cap. 516 specifically obliges the Offender Assessment Board, the Parole Board, and the Remission Board to take into consideration the payment or lack thereof of any Court fines imposed on the inmate in question, when deciding on the latter's early release.

An exception to this rule has at times been acceded to by our Courts whereby it accepted that court fines are repaid by means of interim payments once out on parole. For this possibility to be considered, the individual seeking parole is to file an application in Court requesting so. If accepted, parole is granted upon the lapse of 33%, 50% or 58% of the sentence, and the fine is not converted into an additional term of imprisonment. The Courts acceded to such a request several times, for example in the cases of Antonio Barbara, Mario Borg, and Sage Gauci. At other times, the Court denied such requests. At any stage of the supervision you can be called back and if Parole is revoked you will have to serve all the prison sentence that was converted in Parole supervision It is my humble opinion that this consideration

[106] Chapter 516 of the Laws of Malta, Restorative Justice Act, Article 21.
[107] Ibid. [11]
[108] Chapter 9 of the Laws of Malta, Criminal Code, Article 11(3).

should be part and parcel of the entire parole board prerogative, particularly to avoid excessive court applications and to allow those who closely supervise an inmate to determine their actual eligibility.

As a side note, it was only in recent times that this conversion of fines into imprisonment was challenged before the First Hall Civil Court in its Constitutional Jurisdiction.[109] The appellant, Micallef, argued that it is almost close to impossible to pay such high fines while still unemployed and imprisoned. Micallef argued that post-release it is already difficult to pay due to difficulty to find employment and so the question naturally arises as to what chances inmates seeking parole have? (If any). In principle, however, the Court in its judgement stayed true to the law and determined that as the latter currently stands, no breach of the European Convention on Human Rights nor of the Maltese Constitution results.

The starting point is that in order for one to be eligible for parole, he/she must be serving a sentence or an aggregation of sentences which exceed one year imprisonment in total. The law also exhaustively lists those inmates who are not eligible for parole. The law as it stands is indeed controversial and very much up for debate. It is also pretty much outdated in respect to life imprisonment and parole. The Maltese Constitutional Court has in fact instructed Maltese legislators to amend this part of the Restorative Justice Act to include lifers into the parole eligibility equation back in 2017.[110] Ever since then however, the law remains unchanged, despite the irregularities explicitly outlined by the Constitutional Court on the basis of arguments derived from case law of the European Court of Human Rights. Bill 199 of 2017[111] has been halted at its 2nd reading ever since the 12th of April 2017 and that was the last we heard of any legislative efforts vis-à-vis parole for lifers. To the contrary however, Judges have been giving the matter the attention that it is due. For instance, in the **Republic of Malta vs. John Attard**[112], the Court specified in its final judgement that after serving 22 years of his life sentence, Attard would be eligible to apply for parole.

Ultimately however, the hope that the option of parole instills in an inmate is far gone for individuals serving life sentences. The US Court of Appeal perfectly described what life without parole is, in practice. It is *"condemn[ing] [the inmate] to die in a living tomb, there to linger out what may be a long life ... without any of its alleviation or rewards—debarred from all pleasant sights and sounds and cut off from all earthly hope".*[113]

In the case of **Republic of Malta Vs David Norbert Schembri**[114] The Court of Criminal Appeal held that in order for a sentence of imprisonment to be compatible with Article 3 of the Convention on Human Rights and Article 36 of the Maltese Constitution, there needs to be a prospect for release and also the possibility for a revision of that same sentence.

[109] GM Gordon Micallef vs State Advocate, FHCC [2021] 70/2020.
[110] Ben Hassine Ben Ali Wahid vs Hon. Prime Minister et, [2016] 2 60/13.
[111] https://parlament.mt/en/12th-leg/bills-12th/bill-no-199/.
[112] Republic of Malta vs. John Attard Court of Criminal Appeal, [2018]
[113] Norris v Morgan, (2010) 622 F.3d 1276, 1291 (9th Cir.).
[114] Republic of Malta Vs David Norbert Schembri, Court of Criminal Appeal [2017]

A similar argument can be brought in the instances mentioned under Article 10(3)(a) - (f) of Cap. 516. Individuals convicted of any of the crimes mentioned under these articles, are prohibited from ever being eligible for parole. Yet, when it comes to the early release permitted under our Remission system, the only ineligible inmates are lifers. Hence, the former individuals, have at the very least, a chance at what the Schembri judgement identifies as basic Human Rights – prospect for release and possibility for revision in sentence.

What naturally follows in my mind is a very simple question: if early release is reserved for the 'better criminals' under our parole laws, yet is much more comprehensive and lenient under our remission laws, are we truly seeking to have rehabilitation as grounds for Early Release in general? Or is it merely our distinction on the basis of which crimes are better and which are worse (upon which scientific grounds, I am not aware), that determines who qualifies for Parole or not? The situation as it currently stands for inmates who fall under sub-articles (3)(a) – (f) is what in Maltese we refer to as: *"Jekk ma tidholx mill-bieb, tidhol mit-tieqa".*

It is also common knowledge that whilst on paper, the black letter lays out almost identical procedures in terms of our Parole and Remission systems, what happens in practice differs greatly. The common denominator of good conduct holds strong for both, yet the formalities that a Parolee has to undergo are not at all experienced by a person being released on Remission. The discourse surrounding Remission indicates that this is an almost automatic 'given' benefit for most inmates, as opposed to the intricate and tedious process leading to Parole.

And so, whilst I am glad to see that individuals excluded under Article 10(3) have a backdoor to resort to under our Remission system, it is my understanding that the two systems cannot co-exist unless they are harmonized in practice. The distinction between the two cannot be solely based on who we think is the better criminal. What this distinction is truly doing is creating a classification of inmates who are 'less than' both on paper and in practice. Even though that same Chapter 516, goes on to tacitly allow for their early release under a separate article; a paradox I can never entirely see the relevance of.

The granting or the rejection of parole may be for an array of reasons. Many of which are not crystallized in the law. The law does lay down a procedure which the Board has to abide by, and it also lists the considerations which the Board has to take into account, such as the Parole *dossier* and the Offender Assessments Board's report on that specific inmate. It is also asked to make reference to any risks of further crime being committed and also to what the victim of the crime in question has to say in response to the parole application itself. By contrast, the law does not explicitly specify on which grounds the Parole Board may reject an application for parole. Thus, we are to implicitly assume that the lack of coherence to the considerations enlisted, is what could potentially lead to a refusal. In itself, this already raises an eyebrow or two. Yet, what is most definitely concerning, is the lack of transparency with the inmate himself/herself once a refusal is issued. Article 13(5)(c) states that the prisoner who initially submitted the request should be informed of such a decision, whatever it may be, within a certain period of time. What the law does not cater for however, is the obligation to include, in that decision, the grounds on which such decision was made. Nor does it specify any points of improvement to the inmate. Now - I understand that readers may be thinking: *'but this is not a school! Why should the parole board be obliged to give corrections after reviewing what that inmate has 'submitted'?"* Well, precisely because it is indeed called the Corradino Correctional Facility. More so, because if it is not those responsible for granting parole (i.e., the shot at rehabilitation which was politically emphasized back in 2012) who should be providing that inmate with feedback, then who will? The situation as it has stood

ever since the introduction of a Parole system, lacks the basic decency to let an inmate know where and how he/she has failed and how to improve for the next time.

This brings me to my next point - The Next Time. Legally, unless otherwise decided by the Board of Parole, the inmate, upon refusal, can only re-apply for parole within six months from that decision.[115] Therefore, in a few words, an inmate is not legally represented before the Parole Board, is not given reasons for refusal, cannot appeal a decision by this same Board, and has no option but to wait six months after another six months, in order to have another shot at his/her freedom. In my view, this is concerning. Primarily due to the lack of clarity that the inmate is left with but also due to the lack of remedies that he/she may avail him/herself of. This lack of review was also challenged before the First Hall Civil Court by the aforementioned Ben Ali who argued that the rejection issued against him should be reviewed.[116] Here, the Court decided that the decisions of the Parole Board could not be deemed to be reviewable as administrative acts as per Article 469A of Chapter 12 of the Laws of Malta.[117] Thus, confirming that not even through the Courts, is there the potential for review of Parole Board decisions.

In view of the above, it is my view that looking ahead, the system is to be revamped entirely. The hearts of legislators who sought rehabilitation were in the right place, but the law as implemented, is not. As a proposed way forward:

- Let us re-evaluate the relevance of the 33, 50 and 58 percentages: What effects are these having on the true rehabilitation of inmates in practice? It is also useless to have short sentence prisoners undergoing the parole process

- Let us rethink the period of time in which court fines are to be paid: Are we currently encouraging more crime and inhibiting rehabilitative release?

- Let us give an inmate whose parole request has been rejected the corrections they require: What can be improved? What do we as a system expect that the inmate does for him/her to be society worthy? Do inmates deserve to be represented before Parole boards? And should we be allowing a Right of Appeal? With regards to the last question this is an administrative procedure as appeal is given up on sentencing. What is being discussed here is the decision of an early release or not

I look forward to a brighter, more rehabilitative, and reformative future for both the Maltese society as a whole and also for all those inmates who are deserving of a second chance.

[115] Chapter 516 of the Laws of Malta, Restorative Justice Act, Article 13(6).
[116] Ben Ali Wahid Ben Hassine vs Parole Board et. FHCC [2018] 509/17.
[117] Chapter 12 of the Laws of Malta, Code of Organization and Civil Procedure (COCP), Article 469A

Drug rehabilitation programmes

Males and females who are currently serving a custodial sentence within the Corradino Correctional Facility and are experiencing challenges due to substance abuse can directly benefit in view of the prison inmate's programme. Said programme evolved in view of the St. Blas programme, which initiated its services in 1998. This specifically caters for individuals serving a prison sentence and who earnestly desire to emerge from their addictions. A management system has been designed whereby prisoners are granted leave so as to pursue the New Hopes Approved Rehabilitation programmes. This does not take place within the premises of the prison, but instead within a motivating environment where the individual is empowered and motivated to counter the addiction. Additionally, female prisoners are also granted the option to pursue PIP at Iris. Caritas Malta has, throughout the years, provided its facilities for PIP within a friendly environment at Baħar iċ-Cagħaq. This retreat is equipped with state-of-the-art facilities and managed by dedicated professionals so as to ensure that clients - in this case being the prisoners challenged by addictions - can be presented with customised programmes and monitored on a 24/7 basis.[118]

It is envisaged that the initial rehabilitation centre at the Corradino Correctional Facility (CCF) will be implemented in 2022 after the necessary budgets have been allocated. The advantage of the approach is that the inmates - both male and female - will not need to commute outside the boundaries of the prison. Further within the CCF, a more ongoing, direct, and personalised treatment will be granted to the inmates without experiencing any social stigma. It is expected that approximately 140 inmates will directly benefit from this in-house service. Moreover, an underlying advantage of those programmes offered within the CCF is that medical, psychiatric, and social workers can provide their professional services in a manner more customised to the inmates. This holds irrespective of the degree and duration of the addiction.

A line to the above is evident in the fact that at the time of publication the CCF has no fully fledged in-house service addressing inmates challenged by substance abuse. The policy of liaising with institutions specialising in rehabilitation, such as Caritas, may be beneficial to the inmates, but this does not detract from the fact that the in-house service is expected to capitalise on a resource optimisation strategy. The resources in this context range from human skills and expertise to infrastructural amenities. Lately, scandals have been disseminated regarding suicides carried out by inmates in prison, some of which invariably challenged by substance abuse. The inhouse rehabilitation service can effectively address the situation.

The correctional facility of Malta has, on multiple occasions, requested co-operation as regard to substance abuse with local specialised organisations such as Caritas. This approach has been deemed a healthy one since Caritas can share the skills and expertise of their professional staff with the inmates so that constructive outcomes in the interests of the latter will be attained.

[118] Caritas, Prison Inmates Programme (PIP), https://www.caritasmalta.org/new-hope-project/prison-inmates programme-pip/ accessed 14 November 2021

The aforementioned situation represents a healthy approach, taking into consideration that although the correctional facility is independent from Caritas, the latter is able to offer a team of, *inter alia,* sociologists, psychologists, and criminal lawyers so that the constraint of substance abuse can be discussed at length, capitalising on the unique skills of said contributors. However, in all respects it is essential that the correctional facilities retain a prudent distance from the public whilst tackling the cases of substance abuse on step-by-step basis and in view of the exigencies of each case presented.

Invariably, in the conduct of their professional duties both magistrates and judges can approve participation by inmates within reformative programmes, despite the fact that they have their hands tied by some of the strictest drug laws in Europe. However, they need to venture a step further by comparing the current trends in reformative justice with the goals of the government of the day. Governments, irrespective of their political advocacies, need also assess the policies of the European Union and the way in which the politics and social realities of the particular State they represent have been seriously accounted. The position of the magistrate and the legal procurator is a highly delicate nature and there are conflicts of interest at stake. For instance, governments may be willing to undertake criminal actions against inmates of substance abuse, however the goal is somewhat meaningless taking into consideration that inmates have specific priorities and interest which need to be accounted.

At best, decisions undertaken by the inmate must never be implemented at random. It Is important that the inmate acquires feedback from those personnel engaged in moderating the prison so as to identify the rightly causes of action.

Rehabilitation needs to occur either inside or outside the prison, depending on the particular condition of the inmate and those policies regarding incarceration in Malta. Malta has adopted a progressive approach in this regard as inmates can undergo a rehabilitation programme with Caritas following the guidelines and procedures of Malta's correctional facilities. As from 2022 the CCF will begin undertaking in-house rehabilitation programmes for its inmates.

This approach is deemed as a positive one since the inmates can decide whether they wish to undergo the drug treatment programme either on an in-house or external basis. These two approaches need to be assessed in terms of their respective benefits and drawbacks. It is advocated by some scholars that rehabilitation should never proceed when the inmate is in prison. This is because one has to distinguish between carrying out the sentence in prison as part of the rehabilitation process as well as using rehabilitation as a means to gain freedom and likewise the sympathy from superiors.

It is vital to assess in this context the gravity of the inmate who has been addicted to substances, and for how long this addiction has been in place. Not all inmates have the best intentions so as to rehabilitate to the same degree. Some inmates may even view rehabilitation as something which is out of their control and see themselves as not ready to put in this effort since they view it as being counterproductive. Whenever the inmates have a lack of trust to their guardians in correctional facilities it is pointless to assess or force upon them a particular form of rehabilitation.

It is essential to highlight that the successful outcomes of rehabilitation depend on a broad range of factors. Correctional facilities in Malta favour rehabilitation at any stage of the inmate's incarceration. Thus, the health authorities in Malta are adopting a rather liberal regime as regards the exact point when the rehabilitation programme is to initiate. A host of factors need to be accounted for, foremost of which the degree of trust the inmates have - not only as regard to their trust in the service providers along the journey of rehabilitation but likewise in the type and quality of rehabilitation processes to be undertaken.

If we truly want our present to be rehabilitative then rehabilitation has to start from within. Benson (2003) states that incarceration on an international level has been shaped lately by strict sentencing guidelines, one's constraints in budget, and the adoption of a punitive - rather than reformative - philosophy. These trends are also apparent within the local context. Thus, one needs to question in a prudent and in an open manner whether rehabilitation should start from within the correctional facility itself or, alternatively, from within society. This issue is open to debate, taking into account the fact that there are ethical and social factors at stake. Whenever there is a drug addict, whether he is serving a sentence in prison or whether he is enjoying his personal freedom within society, engaging in a program at a rehabilitation centre is a must.

Building on the above, it is more meaningful to tackle the substance abuse issue at an early stage rather than allowing the problem to become more complex and of alarming proportions. However, this perspective tends to be contested also according to one's perception of correctional facilities – whether these are perceived as being punitive or reformative. In the case of the former, the adoption of rehabilitation programs within prison are viewed with scepticism. Probably there is a narrow and traditional mentality involved whether help should be forthcoming or restricted to the inmate. On the other hand, supporters of restorative approaches linked to incarceration advocate that whenever there are cases of inmates having substance abuse, urgent rehabilitation is a must.

Cullen (2013) indicated that it is very challenging to identify the exact point when the appeal favouring rehabilitation need be adopted. He stated that one has to take into account the desistance-based treatment models and the opportunities provided by the adoption of recovery programs. Other factors which need to be accounted for include the integration of early intervention with correctional intervention. This entails that the inmate, during the correctional intervention, undergoes a rehabilitation programme. The precise point when this programme initiates is when the inmate is diagnosed with a substance addiction. This is usually at the very stage when the inmate is in prison.

The adoption of financial incentives so as to fund effective rehabilitation programmes focused more on the quality of the programmes and the prospects of successful outcomes rather than the identification of the point where the programmes are applied. Inmates in many western countries have experienced rehabilitation programmes both within and outside correctional facilities. However, in countries such as Canada and the US speciality courts have been established which target treatment to particular categories of offenders.

A Comparative Approach to the Prison System in Malta vs Other Prisons Abroad

Within Portugal, the Decree No. 9/2020, enacted on April 10th, authorised an extraordinary regime for easing sentence execution during the Covid-19 epidemic. The statute, amongst other things, allows for amnesty for offences with a term of imprisonment of not greater than two years, or no greater than two years left if the sentenced individual has previously completed at least half of the sentence.[119]

Various opposing parties criticised the restrictions incorporated by the government within this legal decree labelling them disproportionate and susceptible to harmful social alarmism, premised on the idea that releasing sentenced convicts would jeopardise the population's safety. As per information supplied by the Directorate General for Reinsertion and Prison Services, roughly four months following the law's implementation, the rate of crime of those discharged, owing to the epidemic, was practically negative. 'Only 24 out of the 1314 individuals released from prison under an amnesty measure […] committed new crimes and returned to the prison system', held the Jornal de Notícias.[120] These data contradict the often-ominous assumption of a major increase in crime as a result of the introduction of such relaxing measures. Nevertheless, while the implementation of the aforesaid measures does not appear to have resulted in unfavourable recidivism consequences, the equivalent cannot be true for social reintegration, another important criterion for determining the effectiveness of a prison system. Truth be told, these new measures have revealed a long-hidden reality, that is, the considerable challenges of social reintegration for individuals who have served a prison sentence. People who favoured isolation to freedom have been reported by means of statistics. Moreover, five individuals voluntarily retreated to a prison institution, and eleven did not submit the required approval for an extension of their release.[121]

One of the primary objectives of a sentence is to assist the convicted individual to reintegrate into society. This is the first of the goals specified within Article 2 of the Code of Enforcement of Sentences, which states that 'the execution of sentences and security measures involving deprivation of liberty aims at the reinsertion of the agent in society'. Nevertheless, how can the prison system equip a person for reintegration into society if their loss of liberty is spent within isolation from start to finish? Is it possible for an individual's long-term isolation to teach them how to function as part of the general public? Such a breach might be challenging to repair within a number of circumstances. This seclusion is so severe that when the occasion came to be released, several individuals chose to return to prison voluntarily. This outcome is plainly the complete antithesis of what a prison system is supposed to accomplish. Numerous individuals had no other alternatives when they were released due to the pandemic. Certain individuals went to health facilities, others sought a room to rest at charitable organisations, whilst others winded up on the streets.[122]

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[119] A particular list of offences was exempted from the amnesty, including homicide, rape, criminal affiliation, corruption, human trafficking, laundering, drug trafficking, domestic violence and ill-treatment. The state amnesty is assessed by a penalty enforcement judge and provided 'under the condition that the beneficiary does not commit any wilful offence in the following year, in which case the penalty applied to the supervening offence accrues to the pardoned penalty' within the rules of this law.

[120] 'Taxa De Crime Dos Presos Libertados Devido À Pandemia Foi Quase Nula' (*Jornal de Notícias*, 2020) https://www.jn.pt/justica/taxa-de-crime-dos-presos-libertados-devido-a-pandemia-foi-quase-nula-12545806.html accessed 3 November 2021.

[121] 'Taxa De Crime Dos Presos Libertados Foi Quase Nula' (*Esquerda*, 2020) https://www.esquerda.net/artigo/taxa-de-crime-dos-presos-libertados-foi-quase-nula/69837 accessed 3 November 2021.

[122] Regard 'Os Ex-Reclusos Têm De Poder Voar!' (*PÚBLICO*, 2020) https://www.publico.pt/2020/08/29/opiniao/opiniao/exreclusos-voar-1929472 accessed 3 November 2021.

What, therefore, may and should be different? What are some ways that a prison system could be greater effective in attaining its objectives? The normalisation principle, which is officially established within the European Prison Rules of the Council of Europe as the fifth basic principle, states that 'life in prison shall approximate as closely as possible the positive aspects of life in the community'.[123] Making use of a relatively simple narrative regarding the aim of a sentence, it is reasonable to imply that those who have harmed society, by violating the law, are deprived of their liberty, and that the period of imprisonment comes to be a true chance to obtain a better comprehension of the degree of the harm generated, or to obtain a better insight of the behaviour that would have been required from the offender. In terms of practicality, it is essential that of a community as much as possible.

All through the European Union, novel detention approaches are being developed. This comprises both 'detention houses' and 'transition houses', the latter being specialised to executing a prison sentence's last sentence. By contrast, to the sizeable prisons of the nineteenth century, which tended to oversee masses of individuals within infrastructures which were standardised and kept separate from local communities. These houses, which have been incorporated, with context-specific adaptations, across multiple Member States, akin to Malta, France, Belgium, and Italy, are small-scaled, incorporated into the community, and offer distinguishable treatment to each individual, three pillars which, though not an end in themselves, are vital precisely since they allocate resources to those who need them. Small houses enable residents to be known as distinct and irreplaceable individuals, personal connections to be formed, and tailored reintegration routes to be created. Houses that are incorporated into a local community enable for the building and development of relationships amongst residents and the community, although not instantaneously, though through time. This allows expound a certain alarmism of danger, to progressively reinstate the damage done to society, notably via services or works performed by inhabitants for the advantage of the community, as well as to ascertain professional or personal relationships which may lead to lasting change.

Furthermore, these approaches have been shown to be greater effective in promoting reintegration, lowering recidivism and, as a consequence, creating a safer society. Reverting back to the aforementioned, new data reveals that the crime of rate within Portugal has not increased as a result of the amnesty granted to penalties of not greater than two years. If such is so, compelling the last two years of a term of imprisonment within a transition home is unlikely to represent a threat to public safety.[124]

Prison Systems Across States

Italy

The Italian prison system is governed by a 1975 statute that has been amended several times ever since, evolving more or less rigorous in response to changing circumstances and distinct actual or alleged emergencies. The law is founded on the notion of rehabilitative prison treatment. As a result, each prisoner will be subjected to a 'scientific observation of the personality'[125] in order to determine the best individual route to reintegration into society. Sentences have a 'flexible' penalty, meaning that it can be lowered provided the offender follows the rules of the prison and rehabilitation. Treatment and

[123] Council of Europe, (*Search.coe.int*) https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8d25 accessed 3 November 2021.
[124] 'The 'New Normal' In the Prison System?' (*RESCALED*, 2020) https://www.rescaled.nl/2020/10/13/the-new-normal-in-the-prison-system/#_ftn1 accessed 3 November 2021.
[125] Susanna Marietti, 'Prison Conditions in Italy' [2013] European Prison Observatory. Detention conditions in the European Union, Pg. 14.

security are at the system's opposing ends. The prison staff is in control of either one or the other. The director, who has completed a civilian course of study, is at the top of the overall system, and is in charge of security, treatment, and the budget. The warden is meant to function similarly to a manager in terms of locating funding outside of the prison system. The prison police, who are recruited by the Ministry of Justice and are uniformed, are in charge of the inside security. They are also in charge of prisoner transports outside of the facility. The section heads must account to the warden for their actions and decisions. Educators and social aides, who make up the so-called 'pedagogical area' and operate within the prison, are in charge of social issues and rehabilitation. Outside, social aides are responsible for the ties amongst inmates and their families, as well as the entire territorial community.

Within February 2021, Italy's prison population was 53,700. Despite this, Italian prisons had a capacity of around 50,600 prisoners. Overcrowding in prisons is a severe problem across the state, with certain establishments reporting overcrowding rates of over 180 percent. For example, in 2021, a prison within southern town of Taranto, in the Apulia region, was filled at 196.4 percent of its capacity, making it Italy's most overcrowded penal institution. In 2020 and 2021, nevertheless, the number of detainees declined.[126] Due to the coronavirus outbreak, several inmates were released under observation to relieve overcrowding and lessen the risk of transmission.

Drug offences, assault, and theft are the most prevalent offences perpetrated by both male and female convicts within Italy. According to demographic statistics on the Italian prison population, those aged 50 to 59 years old constitute the greatest group of inmates, accounting for 9,500 people. In terms of educational attainment, the majority of inmates have a lower secondary school diploma. Inmates with a professional school diploma or a university diploma, by contrast, make up the smallest percentage of the imprisoned population. Despite the fact that women make up a small percentage of all inmates, there are many mothers who are incarcerated with their children. In fact, in Italy children can be kept with their mothers upon until the age of three.

Aside from overpopulation, there are a number of issues that afflict Italian prisons. The high rate of suicides amongst inmates has drawn attention to their mental health. Spanning between 2000 and 2020, the number of convicts who committed suicide surged in 2009, at 72. Throughout 2018 and 2020, the rate of suicide grew, notwithstanding a minor reduction in the following years. Indeed, during the last few years, the percentage of attempted suicides has increased.[127]

United Kingdom

Her Majesty's Prison Service (HMPS) is part of Her Majesty's Prison and Probation Service, previously the National Offender Management Service, which is the department of Her Majesty's Government in charge of overseeing the majority of England and Wales' prisons. The administrator of the penitentiary service is regarded as the CEO of HMPS, whereby it interacts closely with the Prisons Minister, a subordinate ministerial position under the Ministry of Justice, and reports to the Secretary of State for Justice. According to Her Majesty's Prison Service's mission statement, 'Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. [Their] duty is to look after them with humanity and help them lead law abiding and useful lives in custody and after release'. According

[126] 'Topic: Prisons in Italy' (*Statista*, 2021) https://www.statista.com/topics/7628/prisons-in-italy/#dossierKeyfigures accessed 17 November 2021.
[127] Ibid.

to the Ministry of Justice's aim, a prison pursues 'effective execution of the sentences of the courts so as to reduce re-offending and protect the public'.[128]

Until 1776, prisoner transportation to the colonies was an alternative to the death sentence in the 18th century. Solitary confinement, religious education, and hard work were all adopted by John Howard's Penitentiary Act of 1779. The Gaols Act of 1823, enacted by Robert Peel, aimed to provide consistency to the country's prisons. The British correctional system experienced a shift from severe punishment to reform, education, and rehabilitation for post-prison livelihoods between the 1860s and 1914. A Prison Commission was established in 1877 by the Home Office to nationalise prisons. Following 1908, the Borstal system was developed to retrieve minor criminals, and the Children Act of 1908 forbade incarceration of minors under the age of 14, and strictly restricted that of 14 and 16.

During 1906-14, the Liberal Party government advocated major changes. Winston Churchill, who was the Liberal Home Secretary from 1910 to 1911, was a major figure.[129] The reforms had a long-term effect on the British correctional system, making prison life more bearable and rehabilitation more possible.[130] During the years 1894-5, Herbert Gladstone's Committee on Prisons constructed a new sort of reformatory known as Borstal, following the Kent town where the first one was located. Borstal features, such as open prisons and housemasters, worked their way into the general prison system, and several Borstal-trained prison officials exploited their expertise in the broader service. Generally, nevertheless, the prison system in the twentieth century persisted within Victorian facilities, which gradually came to be increasingly overcrowded, with unavoidable consequences.

England and Wales have the highest incarceration rate within Western Europe,[131] and are roughly in the 'center' of the globe.[132] Throughout August 2018, the prison population was 83,165. According to the Ministry of Justice, by March 2023, this number will have grown to 86,400.[133] The government intends to lengthen the period that some inmates serve in prison.[134] Overcrowding, reduced personnel, and the rising accessibility of synthetic cannabinoids[135] and drones for smuggling are also contemporary challenges impacting the prison system. Notwithstanding a drop in crime rates during 2010 and 2016,

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[128] Michael Spurr, 'Her Majesty's Prison Service of England and Wales' International Training Course Visiting Experts' Papers, Pg. 1 https://www.unafei.or.jp/publications/pdf/RS_No67/No67_07VE_Spurr.pdf accessed 18 November 2021.

[129] Jamie Bennet, 'The Man, The Machine and The Myths: Reconsidering Winston Churchill'S Prison Reforms' [2008] Punishment and Control in Historical Perspective, Pg. 95-114.

[130] Paul Addison, *Churchill: The Unexpected Hero* (Oxford University Press 2005), Pg. 51.

[131] 'England And Wales Have Highest Imprisonment Rate in Western Europe' (*the Guardian*, 2017) https://www.theguardian.com/society/2017/mar/14/england-and-wales-has-highest-imprisonment-rate-in-western-europe accessed 18 November 2021.

[132] 'BBC NEWS | In Depth' (*News.bbc.co.uk*, 2018) http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/nn2page1.stm accessed 18 November 2021.

[133] 'Prison Population Set to Rise Despite Overcrowding Crisis' (*the Guardian*, 2018) https://www.theguardian.com/society/2018/aug/23/prison-population-set-to-rise-despite-overcrowding-crisis accessed 18 November 2021.

[134] 'Lynch Mob Politics': Experts Denounce Plans for Longer Jail Terms' (*the Guardian*, 2019) https://www.theguardian.com/society/2019/oct/14/lynch-mob-politics-experts-denounce-plans-for-longer-jail-terms accessed 18 November 2021.

[135] ByRosie Taylor, 'Prison Nurses Are Ending Up in Hospital Because Of Levels Of 'Spice' Fumes' (*The Telegraph*, 2018) https://www.telegraph.co.uk/news/2018/05/14/prison-nurses-ending-hospital-levels-spice-fumes/ accessed 18 November 2021.

the prison population grew as staff numbers shrank,[136] with the number of prison officers dropping from 25,000 in 2010 to around 18,000 in 2015.[137]

United States of America

Incarceration is a type of punishment used within the United States to punish criminals. The United States' prison system is designed to rehabilitate offenders by means of several types of incarceration available, including jail, imprisonment, and solitary confinement. Prisons house criminals who are facing trial or have been condemned of a lesser offence, whilst hose convicted of a crime are sentenced to jail. Solitary confinement is used for prisoners who are regarded possibly dangerous or aggressive, whereby an individual is isolated within a solitary cell. Upon an inmate's release from prison, he or she may be subjected to community supervision, which may include parole, probation, or recidivism.

The United States has the world's highest incarceration rate. Mass incarceration is the term for such high rates of imprisonment. 'The American criminal justice system holds almost 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails, as well as military prisons, civil commitment centres, state psychiatric hospitals, and prisons in the U.S. territories,' as per Prisonpolicy.org.[138] Inmates undergoing trial account for a large portion of the imprisonment.

The prison system in the United States is based on structural concerns. The criminal justice system is discriminatory on a structural level, and it segregates against those who are disadvantaged. 'It's no surprise ethnic minorities who face much greater rates of poverty, are dramatically overrepresented in the nation's prisons and jails', according to Prisonpolicy.org.[139] Regions with a large concentration of black individuals are frequently over-policed, resulting in higher arrests of minorities. Underprivileged individuals are frequently punished by the criminal justice system. 'Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroy wealth, create debt, and decimate job opportunities', according to Prisonpolicy.org.[140] The American prison system is a complex system to escape. Within criminal justice system, it is all too common for convicts to be freed just to be detained again. The financial cost of being sent to prison is one explanation for this. The majority of criminals who are released from prison have no money and are not able to obtain employment because of their criminal records. Instead of emphasising on rehabilitation, the system operates against individuals and prepares them for failure. 'At least 1 in 4 people who go to jail will be arrested again within a year—often those who dealing with poverty, mental illness, or substance use disorders, whose problems will only worsen with incarceration'.[141]

[136] 'Surge In Jail Population Adds to Strain on Overstretched Prison Service' (*the Guardian*, 2018) https://www.theguardian.com/society/2017/aug/30/surge-in-jail-population-adds-to-strain-on-overstretched-prison-service accessed 18 November 2021.

[137] 'Prisons To Get 'Biggest Overhaul in A Generation' (*BBC News*, 2016) https://www.bbc.com/news/uk-37854358 accessed 18 November 2021.

[138] Prison Initiative and Wendy Wagner, 'Mass Incarceration: The Whole Pie 2020' (*Prisonpolicy.org*, 2020) https://www.prisonpolicy.org/reports/pie2020.html accessed 19 November 2021.

[139] Ibid.

[140] Ibid.

[141] Ibid.

The Rights of the Accused: A Local and Comparative Analysis

Judicial detention is a multi-layered process that encompasses a number of procedural elements. The criminal legal system provides for safeguards to protect an individual's rights from the moment of arrest to their judicial proceedings till their sentencing and detention. These protections are the basic rights of any individual, regardless of conviction; yet individuals' rights are not always respected as instructed by law. Through this article, we shall dive into the procedural elements that make up the Maltese criminal system vis-a-vis individuals who are accused of a crime. We shall examine the rights an individual has throughout their reprimanding and what rights are taken away. Finally, this analysis will be compared with other EU Member States and the involvement international law has in relation to this topic.

The process of arresting an individual falls within the powers and duties of a police officer that are highlighted under article 346 and 348 of the Criminal Code (Chapter 9 of the Laws of Malta). Arrest on lawful grounds infers the taking of an individual into custody through a court issued warrant, which falls under article 355V of the Criminal Code. The action of arrest may and oftentimes is done without the issuing of a warrant. This as a result is still lawful provided that the individual in question is suspected to be about to commit or having committed a crime (Art. 355X). The conditions that warrant an arrest may be characterised as the inability of proving identity of oneself, the items that are in the possession of an individual as well as the address in which the individual resides in (Art. 355Z (a-c)). Over and above this, the arrest of an individual meets the conditions set out in the Criminal Code provides that it is necessary to prevent them from causing physical harm to themselves or others, the suffering of physical injury, causing loss or damage to property, being publicly indecent, awful obstruction of a public road or even the reason for a police officer to believe that the life of a child is in danger (Art. 355Z (d-e)).

Throughout the procedure of detaining an individual, the police must conduct themselves appropriately, to avoid the overuse of force when reprimanding an individual (Art 355AB). Here, the detainee has to be informed of the reasons for their arrest. As stipulated in article 355AC, "*When a person is arrested, the arrest is not lawful unless the person arrested is informed that he is under arrest, even though the arrest may be obvious*". For people who do not speak either Maltese or English will be provided an interpreter to explain the reasons as to why they have been arrested. This is an integral part of arrest as the detainee has the right to be informed.

Following the arrest, individuals in custody have a number of legal rights that are at their disposal. Each person has the right to consult a medical practitioner. In the event that the person was injured that requires serious medical attention, they will be escorted to the general hospital and attended to. Similar to the duties of the custody officer to make available any medical assistance, it is the duty of a medical practitioner, through their Hippocratic oath which does not allow them to discriminate against their patients, to provide medical assistance to the individual in custody. This right is highlighted in it being a fundamental human right under article 33 of the Constitution which promotes the protection of the right to life which is seen in article 2 of the European Convention on Human Rights (ECHR). Similarly, to medical rights, people who are deemed to be vulnerable under article 355AUJ are required to be looked after and attended to.

An important right for any detainee is their right to access to a lawyer for criminal proceedings. It is important to note that the law makes a clear reference to the timeliness that a lawyer is contacted and present with the individual. The law continues to mention that a lawyer must be present either before the accused is questioned by the police, the carrying out of an investigation for evidence, without the undue delay after deprivation of liberty or before a court summons; this is all dependent on which situation occurs first. Any individual is granted a lawyer with the assistance of the Chamber of Advocates and The Chamber of Legal Procurators provided that they are unable to provide one themselves. The Maltese law allows for individuals to choose their own council to represent them in any criminal proceedings. Irrespective of the legal counsel, both a private or an appointed lawyer are bound to the confidentiality of what is said between them and the accused as per article 355AUB. Additionally, whilst a lawyer can be brought in and informed of the situation that an accused individual finds themselves in, said individual may also be able to contact a third party to inform them of their current situation.

In certain circumstances, provided there are no other lawful grounds for detention, individuals in custody are allowed the right to release. The same applies if not enough evidence was submitted forty-eight hours after the arrest, the policy officers must grant the release of the individual, until new incriminating evidence is shown and therefore the detaining process may start over.

The rights of the accused do not end at the moment they have been sentenced by a lawful court. During judicial proceedings, the accused has the right to a fair trial and access to Justice in a timely and prompt manner; a fundamental human right that is enshrined in article 6 of the ECHR. This is coupled with other rights that were previously discuss, namely the right to legal counsel, and additional to that one must note the individual is to be presumed innocent at all times until a formal sentence is given by a court.

Following any proceedings and sentencing, the detainee is still bound to the same fundamental human rights as signified in the Maltese Constitution, ECHR and other binding international laws. Whilst in prison, prisoners must be allowed access to information of their rights and obligations, including disciplinary requirements and prison timetables as soon as they are admitted. Prisoner's may file complaints against other prisoners in the event of abuse or other infringement of rights. Such complaints must be taken up by the facility's administration and

The exceptions to the fundamental rights and freedoms that a detainee possesses come in the form of deprivation of liberty in order to fulfil the sentence they are carrying out. The abolition of the death penalty in 1971 has created a system of awarding life imprisonment as the heftiest penalty to a crime. This form of punishment has been seen to be a violation of the fundamental human right that no one is subject to torture and degrading punishment. This point was reaffirmed by two local judgements: Ben Ali Wahid Hassine v. L-Onorevoli Prim Ministru et (Constitutional Court, 28/04/17) and in Brian Vella v. L-Onorevoli Prim Ministru et (First Hall of the Civil Court, Constitutional Jurisdiction, 22/03/18). The court had ruled that there was in fact a violation of Article 3 of the ECHR in both cases.

The harmonisation of European directives in relation to fundamental rights and judicial proceedings has set standards of fairness and proper procedure that should be upheld. Europe as a whole has shown that there is a lot of mistreatment of accused individuals as exemplified through the vast number of cases that seem to go askew from the conventions that are in place. However, it is case law that is shaping the manner in which trials of the accused are carried out, and the way in which prisoners should be properly respected on a fundamental human level in spite of their crimes.

The right to privacy is another that becomes a less accessible right. As per article 6 of the Prisons Regulation, a prisoner may be searched upon admission into the corrections facility and throughout their prison sentence provided that there is reason to believe that they are concealing any article that is deemed illegal to possess within the confinements of the facility. Sub-article 3 adds that prisoners may be asked to disrobe if ordered to by the Director for any searches similar in scope as previously mentioned. Such searches may consist of inspections of body cavities with the intention of finding prohibited articles. Other more invasive searches, especially those that require a digital or instrumental inspection of the prisoner's anal and vaginal cavities may be done by means a writing order.

Malta has adopted a lot of its basic and fundamental principles of human rights as enshrined in the ECHR. The rights of individuals in the reprimanding process were taken from EU directives which have been transposed into local law. The rights in question refer to the right to information, right to a lawyer and the right to an interpreter. The European Council outlined these points and more in the attempt to provide adequate legal safeguards for individuals that are in the process of criminal proceedings. This all falls part of the Article 6 of the ECHR, that provided fairness to the accused parties. The presumption of innocence is another principle that derives from this article, as it continues to reaffirm the fundamental rights of individuals. This right extends to any form of offence committed, as seen in Buliga v. Romania which saw the plaintiff being charged with theft of a metal offence, who was not allowed to properly put forth evidence to clear their name. Irrespective of the gravity of the offence, whether it is minor or grievous, the right to a fair trial is a fundamental right to all people.

The general principles that are highlighted by the Council of Europe in relation to prisoners are seen in articles 3, 5, and 8 of the ECHR. International case law has gone on to show that even though one may find themselves deprived of their liberty, their fundamental freedoms still remain, and would remain to be guaranteed under the Convention. Khodorkovskiy and Lebedev v. Russia and Klibisz v. Poland are two cases that exemplify the rights that prisoners retain despite their incarceration.

The treatment that is expected whilst in prison fall under the definition of preservation of human dignity and proper treatment. Whilst in prison, prisoners should expect to be provided basic necessities such as proper accommodation, hygiene, clothing and bedding, nutrition, and exercise. We see situations of violations of these rights in cases such as Kadiķis v. Latvia (no. 2) where prisoners were only being provided with one meal per day, therefore being given inadequate nutrition. In Muršić v. Croatia showcased the minimum personal space in multi-occupancy accommodation should never fall below 3 square metres as doing so would be in violation of Article 3 of the ECHR. Other conditions that are expected to be met is the access to healthcare, as well as contact with the outside world as it is deemed to be an essential element to retain access to one's family and private life.

Proposals

1. Reform must be approached holistically starting from the educational system.

2. Call on the criminal justice system to become proactive in identifying causes of concern within society leading to criminality and must address the root of the issue, either legislatively, through schemes or monetarily (as opposed to being a reactionary mechanism)

3. Implement sentencing guideline to encourage consistency - Sentencing guidelines would not only help remove the discrepancies in sentencing, but it would also help in appeals. . A Sentencing Commission should be established by law where its primary aim is to enact sentencing guidelines, which will make way for a better procedural law. The Sentencing Commission would be the body that decides if there should an amendment and if so, it would be responsible with its implementation, instead of the legislative. The amendments of 2016 are based on Anglo-Saxon common law and statute, therefore, it is fitting to follow a similar approach to the UK Sentencing Guidelines which will help to form consistency and uniformity

4. Regarding jury selection, an ad hoc committee should be established where legislation similar to the Juries Act could be drafted to structure the juries' roles better. The people chosen for jury service are often not knowledgeable about the law and the way court procedures work. Moreover, people are afraid to serve as jurors because they do not know what to expect. It is up to the judiciary to supplement straightforward guidelines for the community to understand what is expected of them. Ultimately, it saves the court workers' time from explaining matters that could be considered basic. The ad hoc committee would be tasked with an extensive examination of jurors. Similar to what happens in the UK, jurors should be questioned to verify their impartiality. Additionally, the concept of informative sessions to familiarise people with jury service should be considered.

5. We have to move past custodial imprisonment and adopt more restorative justice principles. The inclusion of diversion stratagies will make the work of the courts and correctional agencies lighter and more efficient. By appointing professionals from a multitude of fields and creating a collaborative environment between agencies we can start creating a functioning holistic reform of the Maltese criminal justice system.

6. Grossly prolonged proceedings inflict what feels like premature punishment for a crime one is yet to be convicted of, if at all. We must do better. For reform to be truly effective, all dimensions of procedural law must be taken into consideration. This calls for written rules and unwritten practices, not to mention the attitudes and perceptions of the legal professionals involved in the implementation of such rules must be reconciled. True reform can only be achieved when redundant rules are amended and the perception and practices of the court body is repaired.

7. Introduction of social integration programmes - As has been previously established, the objective of a social reintegration programme is to assist offenders from taking part in criminal activity, all whilst successfully reintegrating them back into society. Prison-based rehabilitation programmes are deemed to be the most effective when they are based off a holistic diagnosis on an offender's situation, which lead to a specialised focus on the risks and challenges which an offender faces. One must keep in mind that specialised social reintegrative programmes must address the needs of all cultures, genders and special needs of any other specific categories of prisoners.

8. Educational/work programmes - Upon admission to prison, an appropriate assessment ought to be conducted in order to evaluate the educational level of each prisoner in order to develop the adequate rehabilitation programme with suitable activities. A prison environment needs to foster the desire to learn so as to motivate the prisoners to volunteer and participate in education and work programmes.

9. Programmes ought to be offered with the goal of improving employment prospects upon re-entry into society. Such programmes need to be recognized by employers with the right qualifications, as prisoners who receive vocational training but upon re-entry are unable to find a suitable job, will lead to them partaking in criminal activity once again. Prisoners need to have the opportunity to choose from an array of skills which interests them and would provide them with job prospects once they are released. The prison authority could consider holding open days or career fairs to showcase the work that awaits them outside the prison walls, whilst being able to showcase any of the work or crafting that they have managed to accomplish

10. Proposes for drug rehabilitation programmes inside the prison itself rather than rely on independent organisations – if we want out prison to truly be rehabilitative, rehabilitation has to come from within.

11. Such rehabilitative model should be one modelled on NGOs such as RISe whose aim is truly to reform and rehabilitate prisoners. However one must also keep in mind not to rely too much on NGOs but rather prison needs to shift its focus to appropriate rehabilitation programmes.

12. Prison is set to be the most effective remedy in the criminal justice system yet it is failing - brings to the forefront do question as to whether prison is actually being used as a last resort, as it should.

13. The facility must be revamped and modernised as it is it is a pitiful sight which has not been renovated in many years – prisoners deserve humane living conditions.

14. There must be efforts for prison to not be the only option we have – there are a multitude of alternative modes of incarceration which should be the first choice of punishment

15. A re-evaluation of the relevance of the 33, 50 and 58 percentages for the parole eligibility date as aforementioned is needed.

16. The parole board should give feedback on what the inmate needs to address before he reapplies for parole.

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