SOCIAL POLICY

CORRUPTION AND HUMAN RIGHTS

A POLICY PAPER BY
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…and the entirety of the ELSA Malta National Board, 2023-2024.

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The ELSA Malta National Board strives to deliver the best of both the academic and social worlds to university students. From publishing academic material, hosting educational events, and organising intense legal competitions, we at ELSA Malta make it our mission to ensure that university students are given that extra nudge when it comes to developing a sharp academic skillset.

Foreword

At the heart of ELSA's mission lies a commitment to addressing pertinent societal issues, and this publication stands as a testament to our unwavering pursuit of meaningful discourse and positive change.

This year's policy paper delves into the intersection of Corruption and Human Rights, a topic of paramount importance outlined by ELSA International and echoed during our Annual Celebration of ELSA Day. Based on our steadfast commitment to upholding Human Rights, this initiative epitomises ELSA's ongoing dedication to shedding light on crucial societal concerns that resonate globally.

Through this policy paper, ELSA Malta seeks not only to explore the multifaceted dynamics between Corruption and Human Rights but also to advocate for tangible solutions and reforms. We stand committed to fostering awareness, initiating dialogue, and championing initiatives that safeguard the inherent dignity and rights of every individual.

I extend my heartfelt gratitude to Alec Carter for his exceptional coordination and dedication in producing this profound publication. Additionally, my sincere thanks to all the contributors and supporters whose unwavering commitment has shaped this endeavour.

May this paper serve as a catalyst for reflection, inspiration, and meaningful action towards a more just, equitable, and rights-respecting world.

Jack Vassallo Cesareo

President of ELSA Malta

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Preamble

By Alec Carter

Within the intricate tapestry of governance, corruption stands as an insidious force – undermining the very foundations upon which societies are founded. This sinister phenomenon, often cloaked in secrecy and perpetuated through clandestine networks, permeates all aspects of public life, leaving no facet untainted.

Amongst all the victims suffering from the plague of corruption, one notices the presence of fundamental human rights – the bedrock upon which just, equitable, and prosperous societies thrive. Thus, this paper embarks on an in-depth exploration of the profound interplay between corruption and human rights, illuminating the multifaceted ways in which corruption corrodes the fabric of civil, political, economic, social, and cultural rights.

In all its possible strains – be it bribery, embezzlement, nepotism, or cronyism – corruption distorts the very essence of governance. It diverts resources meant for the common good, widens economic disparities, and erodes the trust of citizens in their institutions. Hence why the impact of corruption on human rights is not confined a single, solitary region; it resonates across borders, thus transcending socio-cultural and political contexts.

For coherence's sake, the paper is divided into a multitude of subheadings, each tackling a different aspect related to corruption and human rights. Our lens shall zoom into topics pertaining to democracy, the Rule of Law, and holistic human rights when confronted by the devious entity of corruption.

However, this paper does not merely serve as an unearthing of corruption's malevolent influence. Rather, it seeks to unravel potential avenues of redress and mitigation, drawing upon case studies, best practices, and legal frameworks from around the world. By virtue of this publication therefore, ELSA Malta does not seek to *describe* the problem. We want to start solving it.

By examining successful anti-corruption measures and their concomitant impact on human rights, this paper shall thus strive to shed light on how societies can fortify their defences against such a pervasive threat.

This paper shall ultimately serve as a beckon for policymakers, activists, scholars, and laymen akin to grapple with the complex nexus between corruption and human rights.

Let us thus challenge ourselves to envision a future wherein transparency, accountability, and justice serve as the cornerstone of governance, and where human rights are not merely lofty ideals, but tangible realities benefitting all members of society.

Human Rights are Not Absolute... But Never in the Face of Corruption

By Jake Navarro

It is imperative to understand the intrinsic nature of human rights before delving deep into the implications of them becoming perverted by the tainting touch of corruption.

Introducing the General Statement

At the outset, it can be argued that the innate nature of a human right attests to the fact that said right is not absolute. It is this premise which ought to be deciphered first before moving on to the specifics of why, as a general statement, **rights are not absolute.**

When understanding what a human right is, and defining such, it becomes readily apparent that a *priori*, or rather as a general contention, that a great number of human rights are not absolute.

Human Rights have been defined by a myriad of postulations yet one may argue that the best way to truly grasp what a human right is, is to look at the legal framework which lists them down.

In this sense, human rights are enshrined across several different legal frameworks, namely the Constitution of Malta, the European Convention of Human Rights, the Charter of Fundamental Rights of the European Union. The hereunder analysis will seek to contextualise the arguments within the boundaries of the Maltese legal framework and, to this end, when taking a look at the definition of such rights, the above-mentioned assertion will prove to hold up.

Proving the General Statement

In continuation to the above, it is readily clear that when a legal framework lists down its respective rights, invariably, a list of exceptions to the general contention always follow. And in fact, this contention is proved through a number of Human Rights.

By way of exemplification, the Right to Assembly is a right which is ascertained by the Constitution of Malta's article 42 which lays down that:

> **42**. (1) Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interest[1].
>
> **Constitution of Malta**

Should this statement be considered in a vacuum, then one may construe that this right is an absolute one. However, this is immediately rebutted upon a reading of sub-article 2 wherein it is laid down that anything which is done pursuant to an authority, or law is not inconsistent with the said right, to the extent that the said right is "reasonably required".

This is then followed up by a number of reasons, caveats to the general right of assembly such as "*defence, public safety, public order, public morality or decency*" etc…[2] Therefore it is clear that **the Constitution of Malta itself makes reference to lawful authority, or legislative enactments which themselves permit derogations from human rights.** This right therefore can be said to prove the initial assertion, through its own definition, that it is not an absolute right.

In furtherance of this point, one can also look at the freedom of expression – an essential and integral human right once again found across an array of legal frameworks, also included in Art. 41 (1) of the *suprema lex* of this country[3]

Once again therefore, this follows the previous right wherein sub-article 1 sets out the general right *a priori.*

[1] Constitution of Malta, Art. 42

[2] *Ibid*

[3] Constitution of Malta, Art 41

However, the right is once again qualified by virtue of sub-article 2 which lays down, *inter alia,* that nothing which is done pursuant to or under the authority of a law is to be construed as inconsistent with the said constitutional protection, naturally save the extent that the said law "…*is reasonably required* …"[4].

Therefore, the same trend emerges wherein the general assertion of protecting the human right is then subject to a qualification subsequently laid down. Interestingly, sub-article 3 of the same article stipulates that:

> *"Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically:*
>
> *Provided that provision may be made by law*
>
> *a) Prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age ….*[5]

Therefore, it is clear that the Constitution of Malta itself:

1. **Admits to exceptions**.
2. **Makes reference to the possibility of other pieces of legalisation holding such exceptions** [Naturally however, this is not a carte-blanche to violate rights in a disproportionate/unreasonable manner].

Moreover, although a right may *prima facie* seem to be unalienable, there are a number of exceptions which the law itself admits to the said rights. Essentially, this assertion limits itself to positive law.

[4] *ibid*, 41(2)

[5] *ibid,* 41(3)

And is important to stress this point because it has been contended that "*Even if the form or content of human rights change, the concept of their universality remains true and universal*".[6]

Therefore, as a rule of **positive constitutional law**, it can now be safely asserted that Human Rights are not absolute. At the very least, not all of them.

This is affirmed by Prof. Aquilina who in his selected writings on Human Rights argues that:

"*Human rights and fundamental freedoms are not absolute*[7]*"*

This view is also held by Andy Darkoh, who contends that:

"There is no doubt that rights and freedoms cannot be granted in absolute terms".

Like every other rule however, the assertion that human rights are not absolute, is itself not absolute.[8]

Challenging the General Statement

It is precisely the extent to which the above statement is wrong, where academic output and debate is at its strongest. This is because it must be stressed that contemplation on which rights, if any, are absolute and which rights are not.

In turn, this means that it would be greatly imprudent to assert that by universal acceptance a right is deemed as absolute. This notwithstanding, there have been very strong assertations in this respect.

[6] Busuttil, C. (2002). The right to life (Master's dissertation)<https://www.um.edu.mt/library/oar/bitstream/123456789/72458/1/M.A.HUMAN%20RIGHTS_Busuttil_Carmel_2002.pdf> Accessed

[7] Aquilina, K. (2018). Human rights law: selected writings of Kevin Aquilina. Msida: University of Malta. Faculty of Laws. Department of Media, Communications & Technology Law < https://www.um.edu.mt/library/oar/handle/123456789/109671> Accessed

[8] Andy Darkoh, 'The Cayman Islands Constitution – An Outcry for a Bill of Rights?, Commonwealth Judicial Journal, Volume 9, No. 4, December 1992, pp. 7-13 at p. 1

By way of example, the United Nations Office on Drugs and Crime asserts that:

"Not all human rights principles enjoy the same level of protection. Instead, they can have different legal characteristics, being absolute or non-absolute in nature or having inherent limitations."[9]

This question was also incidentally dealt with by Perry who in bis book dedicates a chapter thereto. Amongst his preliminary comments lies the assertion that:

"*no one argues that every human right – every "ought and ought not" – established by the international law of human rights is or even should be absolute*". [10]

In light of some citations above presented, it is fair to concur with the outlook that when speaking about a human rights framework, it comprises an admixture of absolute and non-absolute rights. This assertion is even true with respect to international law, EU law and the ECHR.

Logistics preclude a detailed analysis of such frameworks; however, for the purposes of overview, it can be said that the main bone of contention lies in the question:

Which right is absolute? And which right is not?

[9] 'Limitations permitted by human rights law' (United Nations Office for Drugs and Crime' <https://www.unodc.org/e4j/zh/terrorism/module-7/key-issues/limitations-permitted-by-human-rights-law.html> Accessed

[10] Michael J. Perry, 'The Idea of Human Rights : Four Inquiries' (Oxford University Press) <https://ebookcentral-proquest-com.ejournals.um.edu.mt/lib/ummt/reader.action?pq-origsite=primo&ppg=96&docID=4311792> Accessed

Absolute Rights – The Argument

One of the main rights which is accredited as being absolute is the **freedom from torture**, and hence in basic denotative terms denotes the right to not be tortured.

In the Human Rights quarterly, a paper is precisely dedicated to this question wherein Cakal, *ab initio,* asserts that:

"Torture, inhumanity, and degradation are prohibited — absolutely".

The same author then delves into the notion of absoluteness, which in his own words denotes that:

"The prohibition cannot be displaced, and that it can see no interference through derogation, limitation, suspension, justification, or exception"[11]

It is fair to state at this stage that the logistics and inherent aim of this paper further preclude the analysing of the notion of absoluteness – which is a question philosophy has toggled with for centuries. In fact, it has been remarked that upon deciphering the meaning of the said term, *several facets of philosophy get entangled.*

However, it is still fair to state that any definition one opts for, inhabits the challenging quest of being applied to a human right to determine if applicable.

In the words of Cakal, when commenting on the abovementioned definition of absolute:

"These are deceptively easy observations to conceive and convey—but not always simple to apply"[12]

In terms of the Constitution of Malta, this right is protected in Article 36, wherein it is made clear that "*No person shall be subjected to inhuman or degrading punishment or treatment" in* sub-article 1.

[11] Ergün Cakal. Torture, inhumanity and degradation under article 3 of the ECHR: Absolute rights and absolute wrongs by natasa mavronicola (review). *Hum Rights Q*. 2021;43(4):827-831. https://ejournals.um.edu.mt/login?url=https://www.proquest.com/scholarly-journals/i-torture-inhumanity-degradation-under-article-3/docview/2615626154/se-2 Accessed

[12] *Ibid*

Sub-article 2 and 3(b) are a bit contentious in this regard, wherein it is stated, respectively, that:

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorises the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.[13]

&

(b) Nothing in this sub-article shall preclude the imposition of collective punishments upon the members of a disciplined force in accordance with the law regulating the discipline of that force. One can argue that these are a sign to some sort of derogation. This notwithstanding, another acceptable version of argumentation sees such articles as clarification rather than exceptions.[14]

The idea that this right is absolute is felt widespread. This is further understood when looking at how the prohibition is treated by the European Court of Human Rights.

It has been stated that:

"Crucially, it has been expounded to be an 'absolute right' by the judicial institution interpreting the ECHR, the ECtHR, over a significant length of time, producing a rich body of case law14 dealing with Article 3's application in a range of situation"[15]

To this effect, one can cite case-law such as **Ireland v United Kingdom** [16] which contended that:

"*The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment*"[17]

[13] Constitution of Malta, Article 36(2)

[14] *Ibid,* Art. 36(3)(b)

[15] Natasa Mavronicola, What is an 'absolute right'? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights, *Human Rights Law Review*, Volume 12, Issue 4, December 2012, Pages 723–758, <https://doi.org/10.1093/hrlr/ngs020> Accessed

[16] Ireland v United Kingdom (Application no 5310/71) (1978) , < https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57506%22]}> Accessed

[17] *Ibid,* para 163

However, this should not be construed as meaning that there have been no attempts to challenge such an assertion.

Steven Geer is an academic who has dealt with this right for example; and although he makes clear that "*…a cardinal axiom of international human rights law is that the prohibition against torture, cruel, inhuman and degrading treatment is absolute…"*, the same author also goes on to argue how "*for several reasons this is deeply problematic*"[18].

The point made here is that although the general assertion already mentioned holds true as a general point of departure, this has not precluded the conviction, held by many, that this particular right is absolute.

The Right to Life – Is it absolute?

The right to life is one of the human rights which attracts rich debate and literature. [19] With human life being the premise to further safeguards, it is definitely safe to assert that questions of abortion, euthanasia, and the like challenge the extent to which the right to life is an absolute one. More so, traditional literature has also engaged with the death penalty and its bearing on the said right.

The right to life is protected through Article 33(1) of the Constitution of Malta which, *inter alia,* lays down that " *No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted "* .

[18] Steven Greer, Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really 'Absolute' in International Human Rights Law?, *Human Rights Law Review*, Volume 15, Issue 1, March 2015, Pages 101–137, <https://doi.org/10.1093/hrlr/ngu035>

[19] Look at *inter alia*
Busuttil, C. (2002). The right to life (Master's dissertation).
<https://www.um.edu.mt/library/oar/bitstream/123456789/72458/1/M.A.HUMAN%20RIGHTS_Busuttil_Carmel_2002.pdf>

Naturally, the article goes on to explain how:

"...person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(a) *for the defence of any person from violence or for the defence of property.*
(b) *to effect a lawful arrest or to prevent theescape of a person lawfully detained;*
(c) *for the purpose of suppressing a riot, insurrection ormutiny; or*
(d) *in order to prevent the commission by that person of acriminal offence*
or if he dies as the result of a lawful act of war."

The insertion of the word **reasonable** naturally brings with its own case-law[20]; yet it may be argued that the mentioning of "lawful act of war", "for the purpose of suppressing a riot", amongst other terms attest to how the right is NOT absolute.

The European Convention of Human Rights allows, by virtue of article 1, the death penalty as not falling within the remit of a violation of the said right. Naturally, this can be seen as proof to the fact that the right to life is not an absolute. Moreover, sub-Article 2 then lays down:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Once again, the abovementioned citation can be said to imply that the right is not an absolute one.

[20] Vide Tonio Borg, 'Judicial Review of Administrative Action in Malta' [Malta]: Kite, 2020.

In the ECHR self-published guide on Article 2, it has in fact been remarked "*that Article 2 of the Convention cannot be interpreted as guaranteeing to every individual an absolute level of security in any activity in which the right to life may be at stake, in particular when the person concerned bears a degree of responsibility for the accident having exposed himself or herself to unjustified danger*".[21] To this effect, one can cite **Koseva v. Bulgaria**[22].

This notwithstanding, **certain writers, employing an array of arguments, opine that the right is an absolute one**. This is all-the-truer due to the fact that the right to life is intimately connected with deep-rooted questions of philosophy. **Moller**, by way of example, whilst affirming that the extent to which right are absolute is a very debated matter, claims that "*Some of the candidates which come to mind are the right not to be tortured and the right to life*"[23].

From the above it is therefore clear that the extent to which a right is absolute can at times be blurry.

Some Observations

It is fair to say therefore, that some rights, at least *prima facie,* have been termed 'absolute'. This is self-evident from a mere reading of the provisions in question. However, by way of contrast, it is also readily clear that the general statement that human rights are not absolute still holds ground.

On this line of thought, one may possibly argue that the line between a right being absolute or not of

1. The **meaning** and **understanding** of absolute [in legal terminology]
2. The extent to which a right suffers **genuine and true exceptions.**

[21]Council of Europe, European Court of Human Rights, *Guide on Article 2 of the European Convention on Human Rights - Right to Life*, 31 December 2020, available at: https://www.refworld.org/docid/6048e29c2.html Accessed

[22] Kasabova v Bulgaria (Application no. 22385/03) (19/07/2011)

[23] Möller, Kai, The Right to Life between Absolute and Proportional Protection (June 4, 2010). LSE Legal Studies Working Paper No. 13/2010, <https://ssrn.com/abstract=1620377> Accessed

Absoluteness and Corruption

The abovementioned premises must necessarily culminate into an analysis on the subject-matter of this policy paper - corruption. At the outset, and in light of the points mentioned above, one can argue that a human right is a result of a linked principle and exception, or linked principle and clarification respectively. The point being made here is that a right has a cohesive system of:

1. What it means [a definition].
2. The corollaries and extent of the right.
3. The exceptions thereto [if any].
4. Any clarifications thereto [if any].

In light of this, **corruption can be said to completely distort such a link**. The very existence of a human right can be undermined upon corrupt conduct.

The reasons why this is vary extensively, and to this end, one can attempt to highlight the different ways in which corruption links to human rights, and thus undermines them.

At the outset, it must be remarked that there is immense literature on the relationship between Corruption and Human Rights.

It is clear that a corrupt act in itself can constitute a human right violation. This is very easily conceptualized in crimes such as bribery – which are invariably criminalised in domestic law and hence the perpetrator becomes liable to his or her respective punishment.

Certain literature also goes a step forward and questions whether corruption ought to be conceptualized as a human rights violation. It has been argued that by shifting corruption as a human rights preoccupation rather than a criminal law one, "*has an added value in practical and policy terms*"[24].

[24] Anne Peters, Corruption as a Violation of International Human Rights, *European Journal of International Law*, Volume 29, Issue 4, November 2018, <https://doi.org/10.1093/ejil/chy070> Accessed p 1251–1287

Kumar in this respect argued that "…*the moment corruption is recognized as a human rights violation, it creates a type of social, political and moral response that is not generated by crime"*[25]

More specifically, the very premise of human rights denotes that they are attributable to every human being. The notion of corruption therefore implies that a person may assume heighted protection and hence attributed a form of preference, or additional rights than other equally applicable subject-persons.

It has also been argued that there is a correlation between a state which is a corrupt, and a state with a poor human right track record.[26] The exact precision and scientific backing behind this fact is not all-clear, however the perception i itself is another reason why human right protection is undermined through corruption.

Moreover, corruption can be said to worsen the position of already disadvantaged groups. Such groups and the members that comprise them, "*due to pre-existing inequalities and intersectional discrimination, suffer a disproportionate burden*"[27]. This means that such groups, instead of being afforded protection through a cohesive link of such rights, are further undermined by the plague that is corruption.

It has also been remarked that corruption has a destructive impact on the very basic tenants of a democratic system. More particularly, certain manifestations of corrupt conduct can be said to distort the decision-making process and undermine the credibility of governments.

In turn, a government, an electoral system and the other tenants of democratic societies ere in effect what safeguard and accentuate human rights. [28]

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[25] C.R. Kumar, Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance (2011), supra note 64, at 43.

[26] n24

[27] United Nations Human Rights, 'Corruption and human rights' < https://www.ohchr.org/en/good-governance/corruption-and-human-rights> Accessed

[28] Szarek-Mason, Patrycja. *The European Union's Fight Against Corruption : The Evolving Policy Towards Member States and Candidate Countries*, Cambridge University Press, 2010 *ProQuest Ebook Central*, , p 20. <https://ebookcentral-proquest-com.ejournals.um.edu.mt/lib/ummt/detail.action?docID=502531> Accessed

The reasons afforded above are merely generic observations on the extent to which corruption disseminates and dismantles human rights themselves, and their protection. The abovementioned arguments therefore yield the unequivocal conclusion that: **Whilst, not all human rights are absolute, the fight against corruption is definitely so.** It therefore cannot be disputed that every legal system should, in all manners possible, seek to restrict and penalise such conduct, to every possible extent.

Human Rights as the Bedrock of the Rule of Law

By Bernard Mallia

Recognising the importance of human rights and their role in ensuring the prolific presence of the Rule of Law within a state is of utmost importance when attempting to understand how catastrophic the taint of corruption on human rights actually is.

Introduction

The words "Rule of Law" are a mainstay, not just in Malta but all political discourse that takes place in the western hemisphere. Yet, its exact meaning, not just due to its breadth of use in multiple contexts, or its ever-increasing use as a 'buzzword', is not something easily gleaned. This is not because there is a lack of definition, or great controversy on what it is meant, but rather, that there is a great definition of its meaning, yet none are absolute in their authority, all approximating a higher ideal that goes both beyond Ruling and the Law itself.

The Maltese Constitution, which lays down the groundwork for both the Ruler and The Law, and how the two are to be made and established, provides no mention of the words "Rule of Law." and any mention in the Laws of Malta refers rather to a literal "Rule of Law"[1]

Rather, it is found in a source outside the Maltese legal corpus, yet an important source nonetheless; The European Convention on Human Rights.[2] This fact is a clear indicator of the prima face link that there is between Human Rights and Rule of Law which, once defined, shall be made manifest. Yet, the Charter does not define these words, and this nebulous quality, combined with it being before the rights are set out, eliminates it from legal enforceability, and relegates it to being a guiding element for the interpretation.

The Rule of Law

Albeit certain aspects of Rule of Law, especially those retaining to the Rules of Natural Justice, find roots in Roman Law, the constitutive elements of the modern crystallization of the concept was proposed by A.V. Dicey in his work *Introduction to the Study of the Law of the Constitution*[3] on the backdrop of the British Constitution's pillars, and presented as one of its leading principles.

The concept is presented split into three tenets.

First, ***"no man is punishable or can be lawfully made to suffer in body or deprived of their goods unless they had violated the law which has been established in an ordinary way and applied by an ordinary court."***

Secondly, ***"regardless of an individual's rank or condition is, he is subjected to the ordinary law of the realm and be bounded to the jurisdiction of the ordinary tribunals".***

Before moving on to the third, it is important to illustrate the meaning of "ordinary". It is not making reference to the technical term of "ordinary law", which is used to differentiate it from Constitutional sources; but rather, law that is passed through a recognized and accepted manner, for example, the British Parliament, and their enforcement through courts composed according to the requirements of the Law., This recognition and acceptance, from both a legal and quotidian stand-point, not only acted as a way of legitimizing a political and legal system in the eyes of a populace who was mostly ignorant of its inner workings, but discounted any arbitrary enforcement as being repugnant to this legitimacy.

These two principles and their *ratio* would be retained in subsequent definitions, and one can even posit that most modern definitions, and, certain human rights, are nothing more than the widening of these concepts, with specificity instead of generality.

On the contrary, Dicey's third point, that the British Constitution provided greater protection of human rights than any other foreign written constitution due to the discretion afforded by the Common Law Tradition, is one unique to his definition of Rule of Law.

Its merits, both past and present, are subjects of not just legal debate but also historical and political and remain a matter of uncertain controversy for British Legal Scholars.[4]

It was **Lord Thomas Bingham**, through eight principles,[5] that not only built on what Dicey had posited, but also gave a universal character to the Rule Law so it could be applied outside the British jurisdiction. Through analysis, the already mentioned connection of Human Rights and Rule of Law will be made manifest, not only by their direct mention in Bingham's fifth principle, but by the fact that they are interwoven through them.

(1) The law must be accessible and so far as possible intelligible, clear and predictable.

Albeit the order is not indicative of the principle's importance, the first one can easily be seen as a requirement for the rest to come.

Even if a jurisdiction had the fairest laws and the most just courts, who would never err in their judgement, if the citizen was not privy to its workings, what rights and obligations he has, and what are his abilities to bring a case in front of this great court, then it would be as effective, if not less, than a corrupt and inefficient court.

Albeit the law's primary intent is to regulate social behaviour, it also needs to give security and certainty when one is deciding on their conduct, and allow them to live their lives with peace of mind, not only as to their own actions but to the actions of others, which can only be born from not only an accessibility to the law, but also through its intelligible, clear and predictable quality, and is an important pillar for one to be able to enjoy the ECHR's Right to a Fair Trial[6] and the Constitutional provision of the Secure Protection of the Law.[7]

A very clear application of this quality is the fact that every change in the law is published in the government gazette.[8] In the law itself, this principle is applied through every piece of legislation having a preamble explaining the scope and intent of the law, and if necessary, have an interpretation clause, a list giving the definitions of wording used throughout the articles of that law.

It is important to note the use of "*so far as possible".* These words are indicative of a limiting quality which applies to all principles; The doctrine of necessity and function. Although the legislator tries to make use of wording understandable to the man on the street, when it is dealing with extremely technical and specific matters, it will require to make use of concepts and wording appropriate to regulate such behaviour, and the use of simple language would either be impossible, or hinder the quality of law. That is to say, that some functions of the law will require to either apply the principle in a limited manner or not at all, due to a **necessary** quality for the law to **function**.

(2) Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.

Albeit a principle on its own, one can clearly see this as an extension of the *"clear and predictable."* element of law. This principle focuses on the application, rather than the content, of the law, with both acting in tandem to support each other.

This principle is not only a continuation of Dicey's first principle, but also a crystallization of certain rules of natural justice.

The symbiotic relationship between the first and second principles finds roots in the legal history of the European Continent. Roman Law served as the Jus Commune for hundreds of years, and despite its content stemming mainly from one source, the Corpus Juris Civile, its application varied widely not just from state to state, but from region to region. Even if the law is accessible, clear and legible, it can only be predictable if applied uniformly and it would not carry any protection or weight if the discretion of their application was not universal, since one's case was determined by who adjudicated it, rather than by the laws which bound its substance.

Worth noting is an exception recognised in the law itself, though far more contained than the one above, being the acceptance of Mercantile Custom, defined as Usages of Trade in Maltese Law, as being binding. Although this finds its roots in the merchant having the political ability to impose its custom with such strength that the legislator was forced to follow,[9] it is retained today[10] due to the unique mercantile culture that exists, which facilitates commercial activity and is taken to be as binding as law to those who follow it. Yet even this exception, apart from being limited to being applied only in between merchants, and having to be proven and not presumed, is never applied if it goes contrary to the law.[11]

(3) The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

This principle is very simple in nature; all are under the law, even those who make it. Albeit an obvious assertion by today's political and legal theory, it was one that was extremely controversial, especially when it was made by Dicey, due to notions of divine right, that is to say, the legitimacy of a ruler coming from a god, rather than law. Very clearly, this principle is an obvious cousin of the Right to be Protected from Discrimination, yet, as shall be explored later in this paper, this right can come to clash with this tenet.

It is imperative to note that this principle is once more limited by the notion of necessity and function. Conditional laws, such as those that apply if a certain conduct is taken, are not considered to be contrary to it. When the Commercial Code differentiates between a 'Trader' and 'Non-Trader'[12], and applies law unevenly between them, this is not done on an arbitrary manner, but rather, because the Trader is doing acts which the non-Trader is not engaging in and most of the unevenness comes from law that regulates this behaviour, and should the non-trader engage in the same activities, he would be treated the same.[13]

Once more, this principle is bound by the doctrine of necessity and function.

(4) Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

While all principles contain a general quality that allows them to be applied in a multitude of ways, this principle is easily the one whose definition and application are the most ephemeral, as it makes use of good faith, fairness, and reasonableness, elements which even in the same jurisdiction, find their meaning to be one rather nebules by nature. But first, let us examine the most clear and concrete element of this principle.

The assertion that governmental powers should used for their purpose, and not exceed such limits set on them, can be determined objectively.

Yet the test of reasonableness, fairness and good faith requires an examination not just of the above but also of the situation, and the circumstances that surround it. The same act, done by two people with the same powers, done in the same manner, can be seen as contrary to the Rule of Law, or according to the Rule of Law, depending on why, when and on what.

Despite being complex, it is not an impossible standard. Through Juridical review, the citizen is empowered to question not simply what he sees as being contrary to law, but also what he believes to be contrary to good governance. Although this concept was defined through English Administrative Law,[14] one need not look outside our shores to see it being applied by the Judiciary; Mr Justice Joseph Herrera, in the *Blue Sisters* judgement,[15] ruled that there needed not be a legal provision requiring good faith and reasonableness, but it was a presumption that bound all powers given by parliament, an extension of the principles of natural justice from simply securing the fairness of adjudication, to also binding the acts of those in power.

(5) The law must afford adequate protection of fundamental human rights.

While this principle seems to be rather obvious, general and self-explanatory, in it one finds a rather complex scope. The first important distinction is that the principle does not posit that the government should *give rights* to the citizen; rather, those rights are immutable to the citizen itself, and do not emanate from the government. The government is the source of protection of these rights. This assertion leads to the conclusion that the government **cannot remove** rights.

Although *de jure*, this is an accepted truth, as seen by the fact that the constitution only makes a reference to "Protection" of rights,[16] while the ECHR makes mention of "obligation to respect",[17] *de facto* it is only the rights which the law decides to protect, and to the extent it chooses to protect them, that can be considered to be truly fundamental human rights, and by extension, any right which it does not give protection to means that right in reality is not that exists.

Such protection must also be *"adequate"*. It is not enough for the law to state that one cannot act against another's rights, but there must be a punishment to deter, and enforcement of such a protection.

(6) Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.

While the first principle establishes access to the law, this provision establishes access to its adjudication. It is careful not to force a 'monopoly of satisfaction', that is, to be able to resolve matters, wholly on the government, and in fact, rights and obligations can be created wholly through civil agreement without the involvement of the court, albeit with legal restrictions.[18] Rather, this principle requires the court to give an avenue to give a definite resolution to any disagreement, with enforceability based on the results.

Furthermore, this principle gives the discretion to not only deny arbitration of matters when there had been an attempt by the parties to resolve them without the intervention of the provided means, but also to require the inability of insolvability.

(7) The adjudicative procedures provided by the state should be fair.

If the first, second and third principles are the means, this principle is the aim, acting as a specific manifestation of the Right to a Fair Trial. Without a form of adherence to each one of them, this principle cannot be reached. Yet, the opposite is not true; just because those principles are adhered to, it does not automatically mean that any adjudicative procedure would in turn be fair.

As has been referred to before, Rules of Natural Justice are a key element to this goal; despite this, the words "Rules of Natural Justice" albeit found in Maltese laws, they are not strictly and wholly defined, and their mention is only expressly mentioned in respect to Administrative Law.[19]

Nonetheless, they are widespread and accepted throughout the whole legal system. This is due to the fact that this principle is arguably the least modern one, with many of its base ideals, such as *Audi alteram partem, Nulla poena sine culpa,* and *Nemo iudex in causa sua* maxims have been established far before the ideal of Rule of Law was conceptualized, and can be argued that these were the first seeds to it.

(8) The rule of law requires compliance by the state with its obligations in international law as in national law

This principle stands alone as it does not treat about the vertical relation of the state and the citizen, or even the horizontal relation between citizens, but rather one between states. Albeit International Law has moved from being nearly wholly customary to being one of 'proper law', its functions and enforcement place it in a different sphere to ordinary legislation, due to its overwhelming political element, which gives it a great element of discretion. Nonetheless, the actions of a state on the international stage can have a direct effect on the rights of its citizens.

This principle is especially important in a globalized world, where inaction from the state might lead to a reduction in the quality of life to its citizens and a disconnect from their ability to protect their rights outside their home jurisdiction.

A topical example of this would be sanctions faced by Russia due to the Russian-Ukrainian War. Although the political and even legal validity of this conflict is beyond this paper, the fact that the ordinary Russian citizen has lost the ability to bank, due to the SWIFT sanctions,[20] is a clear degradation of his right to the peaceful enjoyment of property, and it cannot be said that his right was curbed due to his action either.

Were this action be done by the Russian government itself, according to the doctrine of necessity and function, there would be exusability, yet this was done by a third party.

This situation provides a unique test to the principles; Is war a valid reason to suspend the Rule of Law? I posit that if such a war is not one of necessity, that is to say, to defend the rights of one's citizens, their public interest or is it essential to the function of the state, then it would be contrary to the Rule of Law to engage in such war if endangers the principles.

Corruption Undermining Rule of Law and Human Rights

Legislators, despite their shortcomings, come with the intent of creating a fairer and better legal system with stronger Human Rights, no matter how flawed they might be in their execution. In regard to the fourth principle of the Rule of Law, they can be assumed to have acted in *bona fede*. After all, it cannot be expected that every legislator is a Dworkinian Judge Hercules[21] or an equal to the Five Great Jurists.

Corruption not only lacks the shield of *bona fede* but is a break on every principle of the Rule of Law.

Corrupt practices mar the predictability of law, as they lead to matters being resolved outside of the ordinary process of the law, and wholly at the discretion of the corrupt official, being no longer bound by any established process.

The third and fourth principles can never be upheld in corruption, being wholly defaced. The power that officials are given comes with great trust, and each instance, not only undermines Rule of Law, but the trust in the government as a whole, undermining the democratic process – which is a core political element, and can lead to a cyclic process of one resorting to corrupt practices due to their prevalence, until it reaches a point where the corrupt practice becomes the only efficient mean for one to excise their rights.

Since these practices are outside the law, they are at best done independent of Human Rights, or a direct attack on them, while possibly making use of resources paid by the citizens' taxes. while being untampered by fairness or responsibility as the benefits are relegated to those who take part in the corruption.

Finally, any government seen as corrupt is a government which few want to associate with on an international stage and inhibits the keeping of obligations both domestic and international. Unlike an unjust or ineffective law which can be repealed, damage stemming from corrupt practices is not easily reversed and can compound already existing problems that the system is facing.

A Remedy?

The Rule of Law requires constant and uniform application. It is not a singular element, that once achieved, akin to unification or independence, becomes a constant, but one that requires constant finetuning and balancing. It is essential that from the principles, initiatives are taken to strengthen it when possible.

We have already seen an attempt in the *Re-codification and consolidation of laws* Committee,[22] yet it only lasted a single legislature and was terminated after a change in government. I believe this was the right approach, yet it is imperative that it is done with changes to ensure it has the time and capability to have an effect and execute its functions.

The scope of such a committee is to highlight dead-letter law, consolidate overlapping laws, locate lacunas and formulate how they are to be filled. On the last point, I believe it would be beneficial that they would not be simply bound by the convection of simply interposing British statute Law or Roman Law, but rather, also have the ability to draft autochthonous solutions.

I believe in setting it up in a manner *mutatis mutandis* to the Judiciary,[23] where is funded directly from the Consolidated Fund and its composition be determined not wholly by the government of the day, but cooperatively, to not only avoid the fate of the previous committee but also to guarantee their independence from political pressure.

Such a commission should be composed by jurists, chosen on the basis of their merit, and legal wisdom, rather than political affiliation. Having experts, be they judges, sitting or retried, practising lawyers and academics, from different sectors is imperative, so that even if a law outside their specialization is being discussed, they are able to still contribute, so no part of the law is analysed blind from the other.

Once its primary objectives are completed, it should remain as an ombudsman-like figure, periodically meeting to provide reports on legislative developments, offer advice, and suggest areas where future legislation is required.

Punishing Corruption's Taint on Human Rights and the Rule of Law

As for dealing with corruption, if there was a panacea, it would have been used already. While the increasing scrutiny from the public is a welcome change, there needs to be reform in how corruption is punished.

The punishment thresholds never go past double digits, and with the profitability of corruption, the deterrent is not enough. Thus, punitive measures need to be raised to truly reflect the damage the actions they punish deal to a democratic system. Moreover, the measures must be uniform in their harshness, as even the smallest amount of corruption can slowly blossom into a vine that chokes the Rule of Law.

Imperatively though, there should be greater efforts to stop corruption, rather than simply punishing. The Permanent Commission Against Corruption requires expansion, as its current composition, that of a chairman and two members,[24] limits its ability to monitor and act efficiently. Furthermore, there should be juridical mechanisms that if there is *prima face* evidence of corruption, one is divested of their powers until an investigation clears them, or they are prosecuted.

Corrupt Practice in Malta

By Sean Azzopardi

Citizenship by investment: an ongoing scandal highlighting the link between corruption and human rights.

Introduction

Although corruption is often perceived as being a modern-day plague, it has been with us since time immemorial. However, it is a notion that is more easily condemned, than it is defined.[29] As a matter of fact, there is no universal definition of corruption. Nevertheless, **Transparency International**, a global non-governmental organisation striving to battle corruption, describes the latter as '**the abuse of entrusted power for private gain**.'[30]

As stated in the beginning, corruption appears in many forms, including bribery, embezzlement, fraud, nepotism, and conflict of interest.[31] It can occur in all spheres of life, such as business, education, sport, and especially politics. As a matter of fact, we are often bombarded with news reports of corruption scandals, both on an international, as well as on a local level.

This 'cancer' of corruption is capable of eroding trust in public institutions, degrading our environment, weakening our democracy, fuelling social inequality, and, ultimately, stampeding on our fundamental human rights.[32]

[29] Berihun Adugna Gebeye, 'Corruption and Human Rights: Exploring the Relationships' (2012) Human Rights & Human Welfare Working Paper No. 70, 4 <https://ciaotest.cc.columbia.edu/wps/hrhw/0027732/f_0027732_22599.pdf> accessed 7 October 2023.

[30] Transparency International, 'What is Corruption?' (*Transparency.org*) <https://www.transparency.org/en/what-is-corruption> accessed 7 October 2023.

[31] Stephen D. Morris, 'Forms of Corruption' (2011) 9(2) CESifo DICE Report 10.

[32] Former World Bank President James Wolfensohn; Transparency International (n 2).

Thus, this segment seeks to critically examine the relationship between corruption and human rights by dissecting the shortcomings, controversies, and scandals pertaining to the Citizenship by Investment scheme. As Lord Acton once said, '*Power tends to corrupt, and absolute power corrupts absolutely*.'

Citizenship By Investment: A General Overview

Citizenship is often thought of as a sacred concept that bestows invaluable rights, as well as important responsibilities onto individuals. It is a source of national pride that our forefathers achieved on September 21st, 1964, following millennia of colonial struggle and inequality.

However, after the introduction of the **Individual Investor Programme in 2014** via an amendment to the Maltese Citizenship Act (Cap. 188) in November 2013, Maltese citizenship has been put up for sale.[33] This scheme was then replaced in 2020 via the Maltese Citizenship (Amendment No. 2) Act and the Granting of Citizenship for Exceptional Services Regulations (S.L. 188.06).[34] Nevertheless, the current 'Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment' programme continues to stir controversy, both here and abroad.

Kickbacks And Assassinations

In April 2017, a leaked FIAU report claimed that Keith Schembri, then-Prime Minister Joseph Muscat's Chief of Staff, received a €100,000 kickback via the sale of passports.[35] The report also implicated Brian Tonna, whose company Nexia BT was one of the agencies responsible for processing passport applications.

[33] Kevin Schembri Orland, 'Golden passports: It's unethical, risks security of the whole EU and it should stop – MEP' (*The Malta Independent*, 1 October 2023) <https://www.independent.com.mt/articles/2023-10-01/local-news/Golden-passports-It-s-unethical-risks-security-of-the-whole-EU-and-it-should-stop-MEP-6736255265> accessed 7 October 2023.

[34] Case C-181/23, *European Commission v Republic of Malta* [2023] OJ C 173/27.

[35] Jacob Borg, 'Passport Papers: a timeline of Malta's golden passport scheme' (*Times of Malta*, 24 April 2021) <https://timesofmalta.com/articles/view/passport-papers-a-timeline-of-maltas-golden-passport-scheme.866950> accessed 7 October 2021.

The details were first reported by Daphne Caruana Galizia on her blog 'Running Commentary', causing uproar among Malta's civil society.[36]

In fact, less than 6 months later, on the 16th October 2017, Caruana Galizia was assassinated in broad daylight after a bomb was detonated in her car.

This brutal attack on freedom of expression sent shockwaves throughout all of Malta, Europe, and beyond. In September 2020, Schembri was arrested on charges of corruption relating to the sale of passports, and he was also considered as a 'person of interest' in the murder of Caruana Galizia.

EU Pressure, Condemnation, And Infringement Proceedings

The backlash to the Citizenship by Investment scheme is not only stemming from Maltese voices, but also from the European Union. Following a number of ignored warnings and formal letters regarding the sale of citizenship, the European Commission has decided to open a case against Malta in front of the Court of Justice of the European Union.

Although the Maltese Government argues that citizenship falls under national competence, the European Commission is claiming that Malta is in breach of Article 20 of the TFEU. This provision of the law outlines the benefits of EU citizenship, including the right to vote and run for European Union elections, the right to move freely and reside anywhere within the Union, and the right to petition – just to mention a few. Thus, the Commission's argument is that since Maltese citizenship also carries with it an EU citizenship, Malta's Citizenship by Investment scheme runs contrary to the principle of sincere co-operation as dictated in Article 4(3) TEU:

'The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.'

[36] Daphne Caruana Galizia, 'BREAKING/Prime Minister's chief of staff took kickbacks from Brian Tonna on sale of Maltese citizenship' (*Running Commentary*, 24 April 2017) <https://daphnecaruanagalizia.com/2017/04/breakingprime-ministers-chief-staff-took-kickbacks-brian-tonna-sale-maltese-citizenship/> accessed 7 October 2023.

As a matter of fact, Malta is currently the only member of the EU to offer the sale of citizenship, after both Cyprus and Bulgaria suspended their own schemes in 2020 and 2021 respectively.[37] However, despite relentless pressure from civil society and European Union officials, the Maltese Government has ploughed on with this controversial system, arguing that it has injected hundreds of thousands of euro into the State's economy, as well as serving as a means of attracting talented, influential, and innovative individuals to the islands.

However, although there is some truth in the economic importance of this scheme and Malta's reliance on it, a number of loopholes were revealed in 2021 following a 4-month journalistic investigation by Malta's independent news outlets under the collective name of the Daphne Caruana Galizia Foundation.

The Passport Papers

This scandal came to be known as the 'Passport Papers'. It transpired that the requirement to have a 'genuine link' to the island was often reduced to the purchase of a luxury yacht, or a simple charity donation.[38] Moreover, despite the obligation to reside in Malta for a whole year before being eligible for citizenship, it surfaced that many applicants simply spent a few days on the islands, and in some cases, even just a few hours.[39] Moreover, the Passport Papers also revealed that Saudi prince Bander Al Saud's name was conveniently omitted from the Government Gazette following a personal meeting with former Identity Malta (now *Identità*) CEO Jonathan Cardona and then-Prime Minister Joseph Muscat[40]. Thus, all of these revelations highlight the lack of transparency and disregard for the rule of law which dominated, and arguably continues to dominate this controversial programme.

One must also note that, following Russia's invasion of Ukraine, Malta's citizenship by investment programme was once again brought back into the spotlight.

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[37] Times of Malta, 'EU takes Malta to court over passport sales' (*Times of Malta*, 29 September 2022) <https://timesofmalta.com/articles/view/european-commission-take-malta-court-passport-sales.983921> accessed 7 October 2023.

[38] BBC News, 'Malta golden passports: 'Loopholes' found in citizenship scheme' (*BBC.com*, 22 April 2021) <https://www.bbc.com/news/world-europe-56843409> accessed 7 October 2023.

[39] ibid.

[40] Jacob Borg, 'Passport Papers: Saudi prince secured secret passport after Muscat meeting' (*Times of Malta*, 22 April 2021) <https://timesofmalta.com/articles/view/passport-papers-saudi-prince-secured-secret-passport-after-muscat.866304> accessed 7 October 2023.

In March 2022, the Maltese Government banned Russian and Belarussian nationals from being eligible for this programme, following repeated calls from other European states to do so.

As a matter of fact, Russian oligarchs were among the highest percentage of people who sought Maltese citizenship prior to this ban.[41]

However, other nationalities are still capable of purchasing Maltese passports, resulting in Dutch MEP Jeroen Lenaers lambasting the notorious Golden Visas Scheme:

'Citizenship and passports aren't a commodity. They're not an instrument to enrich yourself as a government. It is unethical, it is risking the security of the whole of the EU and it should stop."[42]

Even the Justice Affairs Commissioner Didier Reynders has spoken out vociferously against citizenship by investment, stating 'European Union values are not for sale.'[43]

Understanding The Link With Human Rights

Article 15 of the Universal Declaration of Human Rights states that –

'Everyone has the right to a nationality'.

As a matter of fact, the granting of citizenship to people who have no real connection to Malta can actually be seen as a detriment to the protection and safeguarding of our human rights. By granting Maltese passports to wealthy Russian oligarchs, Chinese Communist Party officials, Middle Eastern royals, and so forth, the Maltese Government is aligning itself with countries that have very minimal respect for basic fundamental human rights.

Moreover, one can argue that the fact that one can 'buy' citizenship for a very large sum of money is a form of discrimination towards poorer individuals who cannot afford such schemes.

[41] Jacob Borg, 'What are the Passport Papers?' (*Times of Malta*, 22 April 2021) <https://timesofmalta.com/articles/view/what-are-the-passport-papers.866529> accessed 7 October 2023.

[42] Schembri Orland (n 5).

[43] Al Jazeera, 'European Commission to take Malta to court over golden passports' (*aljazeera.com*, 29 September 2022) <https://www.aljazeera.com/news/2022/9/29/european-commission-to-take-malta-to-court-over-golden-passports> accessed 7 October 2023.

Although the exhaustive article pertaining to protection from discrimination in the Constitution (Article 45) does not cover such forms of discrimination, Article 14 of the European Convention on Human Rights (ECHR) includes the terms 'property, birth, or other status.' Therefore, due to Malta's parallel protection following the incorporation of the ECHR into Maltese law via the European Convention Act (Cap. 319), the Golden Visas scheme potentially breaches this provision of the European Convention.

Additionally, citizenship also includes within it the ability to participate in elections. Therefore, these rich, foreign, and at times, dubious individuals have the right to vote in local, general, and European elections. This has various ramifications, including the potential to sway the vote towards one party or another. Moreover, there is also the risk of electing politicians that align with these investors' values, which are not necessarily those of the majority of Maltese.

Consequently, the presence of politicians and Government officials beholden to the interests of a select group of wealthy individuals may manifest itself in an assault on basic freedoms and fundamental rights.

And lastly, by selling Maltese citizenship, one is also inadvertently selling EU citizenship. The benefits and rights that come with EU membership cannot go understated, something our parents and grandparents realised in their push for Malta to join the EU. As a matter of fact, most of these wealthy individuals seek Maltese citizenship in order to become citizens of the European Union, and not really because of any desire to become Maltese.

Thus, Malta is simply a stepping stone into the EU's internal market for various oligarchs, billionaires, and potentially even fugitives. An EU Parliament delegation to Malta stated that this scheme risks **'importing criminals and money laundering into the whole EU'**.[44] As a result, our entire European security is being placed in jeopardy due to the persistent corrupt practises of a select few in the public administration.

[44] Christopher Giles, 'Malta's 'golden passports': Why do the super-rich want them?' (*BBC.com*, 4 December 2019) <https://www.bbc.com/news/world-europe-50633820> accessed 8 October 2023.

Conclusion

In conclusion, it is clear that the Golden Visas Scheme has resulted in a deterioration of a number of human rights, including **freedom of expression**, **protection from discrimination**, and potentially even the **right to free and fair elections**. Moreover, arguments of national pride, as well as EU condemnation have shrouded this initiative in extreme controversy.

The 'Passport Papers' is simply one example of a long string of recent scandals that have plagued our country's reputation on the world stage.

That being said, the problem seems to have been exacerbated over the past decade, due to an ever-growing culture of clientelism, nepotism, and cronyism.

Corruption is not a Maltese problem; however, it is our problem to fix. The immediate termination of the Citizenship by Investment scheme would be a significant step in the right direction.

Corruption & The Right to Health in Malta

By Larken Abela

Corruption in healthcare systems can lead to a lack of access to quality medical care, the spread of substandard drugs, and inadequate facilities, directly impacting the right to health.

Introduction

In the global discourse on human rights, **the right to health stands as a fundamental and indispensable pillar of contemporary legal frameworks and international conventions**. Rooted in the Universal Declaration of Human Rights and solidified through various international agreements, the right to health is a recognition of the inherent dignity of every individual and their entitlement to a standard of living adequate for their well-being, including access to quality healthcare services.

However, despite its unequivocal recognition, a grave and pervasive threat looms over this sacrosanct right—corruption within healthcare systems. Corruption in healthcare systems is a multifaceted challenge that transcends national boundaries, adversely affecting societies at large.

Thus, this paper shall delve into the intricate web of issues arising from corruption in healthcare systems, with a particular focus on its pernicious impact on the right to health.

Corruption within healthcare systems manifests in various forms, including (but not limited to) bribery, embezzlement, nepotism, kickbacks, and cronyism. It infiltrates the core of healthcare institutions, undermining the very essence of healthcare provision and threatening the well-being of individuals and communities.

The central thesis of this paper contends that **corruption in healthcare systems engenders a dire ripple effect**, directly impinging upon the right to health by precipitating a lack of access to quality medical care, the proliferation of substandard drugs, and the proliferation of inadequate healthcare facilities.

It is imperative to recognise that corruption in healthcare does not solely constitute an issue of fiscal mismanagement or ethical transgression; rather, it is an insidious impediment that make existing healthcare disparities, exacerbates vulnerabilities, and curtails the ability of individuals to exercise their right to health.

The ramifications of corruption in healthcare systems extend beyond monetary losses and eroded public trust; they entail tangible and life-altering consequences for individuals and communities.

To fully appreciate the gravity of this issue, therefore it is essential to dissect the intricate relationship between corruption and its manifold adverse effects on the right to health, as well as to explore potential legal, regulatory, and policy solutions that can mitigate the pernicious impact of corruption on healthcare systems.[45]

This segment, through an interdisciplinary lens, aims to shed light on the intricate interplay between corruption in healthcare systems and the right to health. By elucidating the mechanisms through which corruption obstructs access to quality medical care, contributes to the spread of substandard drugs, and perpetuates inadequate healthcare facilities, this topic endeavours to provide a comprehensive understanding of the multifaceted challenges posed by corruption within the healthcare sector.

Ultimately, it seeks to contribute to the ongoing discourse on safeguarding the right to health by fostering best practices within healthcare systems – worldwide.

Private Companies Handling Public Health Care

Public and private law are becoming less and less distinct from one another. This is due, at least in part, to the fact that governments mostly throughout the Western World have enlisted the aid of private and commercial interests in order to provide public services.

[45] *The Reorganized National Health Service,* Ruth Levitt and Andrew Wall (fourth edition)

The Organisation for Economic Co-operation and Development (OECD) offers the following justification for this trend:

> ***'Capital resources and key groups of highly skilled labour have become very mobile. Multinational businesses have flourished. The freedom of national governments to act individually is significantly restrained. Internationalism has also put pressure on the public sector to improve its own performance.'***[46]

The public sector is under pressure to enhance its own performance as a result of internationalism. In order to attract investors, governments must strike a balance between low tax rates and high standards of public services, particularly in the areas of education and health care. This is known as '*internationalism*,' or '*globalisation'*.

With these limitations, national governments are no longer completely free to determine what public spending and taxation levels are suitable. Inward investment will likely decrease, with obvious economic and social repercussions for national prosperity. Large capital-intensive projects, like new hospitals, provide serious problems to the national allocated budget especially in the current economic climate.

This advancement has obvious significance for our national Health Care service. The encouragement of private investors to cover the costs of such initiatives while maintaining a wholly commercial perspective on their potential has been one answer, but the government might not be able to simply enforce its own unique rules in this situation as the investors will need a substantial margin of profit due to the level of investment and commercial risk involved.

It is evident that the landscape of public spending and taxation is evolving, and national governments are increasingly constrained by various factors. The limitations imposed on them make it challenging to freely determine suitable levels of public spending and taxation. As a consequence, countries may witness a decrease in inward investment, which can lead to adverse economic and social consequences, impacting national prosperity.

Large capital-intensive projects, such as the construction of new hospitals, present formidable challenges to national budget allocations, particularly in the context of the current economic climate. And this situation bears substantial implications for the national healthcare system.

[46] *Governance in Transition* (Paris, 1995), 26.

While one potential solution is to encourage private investors to cover the costs of these initiatives, it is essential to acknowledge that such partnerships require a commercial perspective that may not align perfectly with the government's unique rules and regulations.

Investors seek a substantial margin of profit to offset the considerable investment and commercial risk involved. Therefore, governments must carefully navigate this complex landscape to ensure both economic viability and the delivery of essential public services.

Malta's Evolving Approach to Public – Private Partnerships

Malta, a small but rapidly developing country, has had to adapt its public-private partnership (PPP) strategy to a changing environment. In this segment, we aimt to examine how Malta is adjusting to the shifting dynamics of public-private partnership ventures, highlighting the opportunities and challenges it faces as it works to promote economic growth and improve the calibre of public services through cutting-edge partnerships.

A landmark case serves as the perfect example of how the interplay between crooked practices derived from a beneficial intention excel at impinging on the fundamental right being discussed:

Back in the year 2015, Projects Malta issued a request for proposals for a concessioner for the management and operation of **St Luke's**, **Gozo General Hospital**, and **Karin Grech**. The government binds chosen investors to invest at least €200 million into the project.

Three investors were eventually revealed to be competing for the bid: Vitals Global Healthcare and Bluestone Investments (a joint offer), Image Hospitals and BSP Investments Ltd.[47] A three-person evaluation committee was thus set up and tasked with assessing the privatisation deal.

The evaluation report was finished in June 2015. The report quickly dismissed two of the bidders due to a lack of bid bonds and missing documents. Meanwhile, they were full of praise for the Vitalis submission, awarding them the highly lucrative contract.

[47] https://lovinmalta.com/opinion/analysis/vitals-explained-how-an-inexperienced-company-was-given-reign-over-three-state-hospitals-and-left-a-debt-of-e36-million/

A financial assessment, carried out by Manuel Castagna, asserted that the bidder's financial plan shows profitability and sustainability throughout the 30-year concession period. Meanwhile, the report claimed that VGH has "*experience in various sizeable projects*", had "*previously invested in various portfolio projects*" and "*showed operational experience*".

Over a 30-year period, VGH was expected to receive more than €2.1 billion in compensation for the concession, with existing hospital assets, including pricey medical equipment, being distributed essentially for free.

According to the unredacted contract, the state was paying VGH approximately €188,000 per day (or €70 million annually) to supply hospital beds, €1.2 million annually for the Barts medical school, and an additional €1 million annually for a helicopter service.

In the end, Armin Ernst left his position as CEO of Vitals, claiming "*personal problems*" as the cause. Ernst took the helm of ***Steward Healthcare Group*** after his return to the country. As reported by domestic newspapers[48], Steward would go on and replace VGH in December 2017, and the agreement would have spiralled into effect a few months later. Dr Adrian Delia, the Maltese leader of the opposition at the time of all this, filed a case to scrap the deal.

Subsequently, a landmark judgment on a hospitals' deal is significant because it nullified all the agreements signed by the government, Vitals Global Healthcare and Steward Healthcare, and ordered the hospitals to be returned to the state. But the strongly worded, 136-page judgment went even further, condemning Vitals and Steward for "***fraudulent***" behaviour and slamming government officials for incompetence. Judge Francesco Depasquale said that there was fraud throughout the time Vitals and Steward ran the hospitals, but also when the deal was being negotiated and even before the tender was issued.[49]

The promised medical tourism did not take off because the company failed to follow through on its pledges to construct a new hospital, create beds, and add medical equipment. Vitals proceeded to squander millions of dollars in annual taxpayer money while remaining unpunished. Judge Depasquale stated that:

"Vitals began to break every one of the obligations and milestones that it had agreed to. Financial promises failed, other projects were not completed, and most of them did not even begin."

[48] https://lovinmalta.com/news/all-the-twists-and-turns-of-maltas-controversial-hospital-deal-as-a-new-chapter-begins/
[49] https://timesofmalta.com/articles/view/vitals-deal-hospitals-fraud-occur-comes-next.1017537

Judge Depasquale was also perplexed by the government's ongoing backing of Vitals despite abundant evidence that the company would break its promises. The government "*incredibly succumbed to and accepted a change in agreement*" instead of terminating the arrangement and reclaiming the properties.

Thus, the government agreed to give Vitals an extension of three years to deliver on its promises. If it failed to do this, the extension was to be automatically renewed by a further year-and-a-half.

The judgement remarked that despite having four and a half years to fulfil their responsibilities, Vitals and Steward, which in the meanwhile had taken over the concession, continued to default.

Ultimately, the case of public-private partnerships in Malta, as exemplified by the ill-fated agreement with Vitals Global Healthcare and Steward Healthcare Group, underscores the complex and evolving nature of such collaborations.

While public-private partnerships hold promise for economic growth and improved public services, the experience in Malta serves as a sobering reminder of the critical need for rigorous due diligence, transparency, and proactive governance.

The outcome, as revealed through a landmark legal judgment, highlights the devastating consequences of fraudulent behavior and the imperative for accountability in safeguarding the public interest.

It is a valuable case study that underscores the importance of adaptive and vigilant governance in the ever-changing landscape of public-private partnerships; as well as accurately depicting the notion of having fraudelent practices cause chaos on the underlined Right to Health.

Regulating PPP's

Public-Private Partnerships (PPPs) have become a well-liked method for governments all over the world to use the resources and expertise of the private sector to deliver public services and infrastructure projects. These partnerships have the potential to bring together the public sector's accountability and the private sector's efficiency. To protect the public interest, uphold openness, and assure accountability, PPPs must be effectively regulated due to the inherent complexity and hazards involved.

Regulation of PPPs must first and foremost create a thorough and transparent legislative framework. By clearly defining the duties and responsibilities of the public and private partners, this framework ensures that everyone is aware of their responsibilities.

In the event of unanticipated circumstances or disputes, it should also contain processes for dispute settlement and contract renegotiation.

An essential component of effective PPP regulation is transparency. To guarantee that the partnerships are carried out in the public interest, it is essential for the public to have access to information regarding the projects, contracts, and financial arrangements. Transparent procedures not only increase public confidence but also promote inspection and accountability, which lowers the risk of fraud and poor management.

Furthermore, **regulation ought to cover PPPs' financial features**. This includes assessing financial proposals from private partners, keeping an eye on financial results, and ensuring that the financial interests of the public sector are safeguarded. Strong financial regulation protects against overpriced services and hidden expenses while ensuring the best possible use of government funds.

Another crucial component of PPP regulation is risk management. Project risks are often borne to a large extent by the private sector, but the public sector should continue to exercise control to avoid undue risk transfer. In order to ensure that risk is distributed fairly, regulatory frameworks must specify the methods for risk allocation and management. Thus, PPP legislation must also incorporate social and environmental factors.

To protect the individual, communities, and the environment, projects should follow sustainability standards, and regulatory agencies should enforce adherence to environmental and social impact assessments.[50]

In order to balance the advantages and difficulties these partnerships provide, adequate regulation of PPPs is essential. PPP regulation must include a clear legal framework, transparency, financial oversight, risk management, and consideration of environmental and social issues.

[50] *Law and Medicine*, Freeman and Lewis (volume 3)

Corruption & The Right to the Enjoyment of One's Own Property

By Thomas Sciberras Herrera

Corruption undermines the sanctity of property rights, skewing access and favoring those with illicit influence. It erodes trust in legal safeguards, jeopardising the fundamental right to enjoy one's own property.

Introduction

Maltese Law does not provide for a definition of the term *corruption* however, the Criminal Code comprises many different articles which all embrace the notion of *corruption,* namely, the offences of; unlawful exaction, extortion, bribery and trading in influence. Of importance is the fact that these four (4) offences are all found under sub-title IV Of abuse of public authority. This highlights the fact that the Government must in some way be involved. Hence it can be deduced that *corruption* is the abuse of public power for private, political or material gain[51].

Albeit this definition being a very broad one, it underscores the fact that the term *'corruption'* is very wide. Corruption can easily affect the right to one's property. This will be shown by an examination of when property can be taken away and by means of two (2) very notorious cases, namely, the so-called ***Blue Sisters case***[52] and the so-called ***Gaffarena case***[53]*,* wherein there was the abuse of public power for political gain.

[51] Harvard Law School, "In-Chair Lecture: Stephenson Explores Corruption and Its Impact," (2019), available at: https://hls.harvard.edu/today/in-chair-lecture-stephenson-explores-corruption-and-its-impact/

[52] Prime Minister v Sister Luigi Dunkin (FH) [1980], Prime Minster v Sister Luigi Dunkin (CA) [1981]

[53] Prime Minister Dr Joseph Muscat in his capacity as a Member of Parliament and the Attorney General vs Mark Gaffarena, (FHCC) [2018]

Public Purpose

Firstly, one must appreciate that the right to property is the most absolute right, this especially when the right to ownership is involved as provided by *article 320* of the Civil Code[54], which states that,

> ***"Ownership is the right of enjoying and disposing of things in the most absolute manner, provided no use thereof is made which is prohibited by law."***

The only exception to this absolute right is **expropriation** – which must be solely carried out for a public purpose as per the subsequent article at law[55],

> *"No person can be compelled to give up his property or to permit any other person to make use of it, except for a public person, and upon payment of a fair compensation".*

This as reiterated by the ECHR case of ***Carmelina Micallef V. Malta[56]***,

> ***"40. The Court reiterates that a taking of property can be justified only if it is shown, inter alia, to be 'in the pubic interest' and subject to the conditions provided for by law'.***

Hence the court opines that without public purpose/interest there is no justification, therefore it must be argued that without a justification there can easily be a gateway for corruption communicated through the abuse of public power for private, political or material gain.

It can be deduced that, put simply, expropriation is the balancing act, between the State administering the country and at the same time taking into consideration the individual's right. This so called *'balancing act'* hence is the *'public purpose'.*

[54] Laws of Malta, Chapter 16
[55] Laws of Malta, Chapter 16, article 321

[56] Application (no. 23264/18) [2022] ECHR

It must be noted that in its inception, the Land Acquisition (Public Purpose) Ordinance of 1935[57], provided no definition for such a term, it simply provided that the Governor General alone was enough to prove the requirement of a public purpose.

Today, the situation has evolved (as a result of several steps taken by the legislator) and a very wide definition is catered for in the Government Lands Act[58], providing examples of what *'public purposes'* could in fact be, such as,

> ***'…the generation of employment, the furtherance of tourism, the promotion of culture, the preservation of the national or historic identity, or the economic well being of the State or any purpose connected with the defence of Malta…".***

It is worth noting that by means of *article 41* of the Government Lands Act[59], the legislator has provided 50 days for the individual to contest the public purpose. This can be seen as effort from the legislator's side to ensure that a reasonable amount of time is given to the individual to contest said public purpose.

Therefore, since the *ratio legis* of having an *ad hoc* provision for the contestation of a public purpose and another provision providing for its definition, the legislator attempted at great lengths to ensure that expropriations reach their main goal: that of serving as a balancing act between the necessities of the State and adequate compensation.

It can therefore be argued that when the courts identify that the State has not provided an adequate public purpose, then the State would have been caught playing foul, as it would be in some way abusing its public power for private, political or material gain.

Attention must be made to the fact that a scenario might be presented in which there exists an original public purpose and that public purpose no longer subsists.

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[57] Laws of Malta, Chapter 88

[58] Laws of Malta, Chapter 573

[59] Ibid

This as outlined in **Karen Reid**'s, *'A Practitioner's Guide to the European Convention on Human Rights*[60]*'* wherein she states;

> ***"While an expropriation of property may initially be justified for a public purpose, a failure to use the land, may after a certain passage of time, remove that earlier justification and impose an obligation of restoration"***

A noticeable ECHR case in which this occurred was ***Beneficio Cappella Paolini V. San Marino***[61]. In this case, the plaintiff church filed an application to reclaim ownership of a piece of land that had been expropriated by the State and left unused; hence, the church attempted and managed to re-establish the right of ownership.

With regards to the Maltese scenario, until the inception of the Government Lands Act of 2017[62], the Maltese had no local remedy to combat such a case in which the public purpose was hence lost or wherein the land was not even used. When no remedy is provided to contest a Government's decision, it must me stated that there is a vacuum in which the Government can easily abuse its power without being challenged on a local level, hence the importance of the ECHR.

The Blue Sisters Case

Jurisprudence offers numerous instances in which the Government abused its political power by means of expropriation. Most noticeably, this happened in the ***Blue Sisters case***[63]. This case is most definitely of a phenomenal character, as it did not revolve around an expropriation order, but around an unreasonable condition imposed in the licensing of a hospital – a condition which was so unreasonable that it seemed to be a *de facto* form of expropriation.

[60] 6th edition, 599

[61] Application (no. 40786/98) [2004] ECHR

[62] Laws of Malta, Chapter 573

[63] Prime Minister v Sister Luigi Dunkin (FH) [1980]

As a background to this case, Mrs Emilia Clapp had donated to the Maltese Government a hospital, however, attached to the donation was a condition which stipulated that, ***"the hospital shall be enjoyed exclusively and in perpetuity by the Nursing Sister of the Institute called 'Little Company of Mary'"***[64].

Upon request for renewal of the hospital licence, the Health Minister imposed a new rigid condition stipulating that the hospital had to make available to the Government at least fifty percent (50%) of the facilities and beds at the hospital[65].

The court, adopting the English Common Law *reasonableness test*, declared such conditions null, in effect handing over the hospital to the Little Company of Mary. In doing so the court quoted, Dugas Das Basu (an Indian jurist and lawyer who penned the 'Commentary on the Constitution of India') to the effect that,

> ***"It is obvious that the licensing power being a restriction of the freedom of trade must be reasonably exercised… the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle[66]."***

However, despite this judgement, on appeal the President of the court suggested the Government to resort to a Civil Law remedy. A suggestion which was instantly taken up by the Government as it instituted a new case based on a *usufruct* issue.

[64] Tonio Borg, Maltese Administrative Law, 185

[65] Ibid, 186

[66] Tonio Borg, the Blue Sisters Saga, 26

This argument was accepted by the Court of First Instance however, the Court of Appeal[67] pronounced that,

> ***"The philanthropic mission to make the sick healthy and to give medical assistance to the weak, was not comparable to a usufruct where one enjoys the civil fruits of immovable property[68]."***

In Prof Borg's concluding remarks[69], he states that the Blue Sister saga exposed weak oversight of Government power, and also exposed the *"pusillanimous attitude of the judiciary (with some notable exceptions)".*

Prof. Borg goes on to state that today, the right individual petition in 1987, the incorporation of the ECHR in 1987, the introduction of the Ombudsman, and a proper Juridical Review framework all provided more remedies to those aggrieved by Government.

Hence highlighting that these were all positive measures to reduce corruption through the buse of power for private, political or material gain.

The Gaffarena Case

With regards to expropriation and not a *de facto* expropriation, attention must be made to the ***Gaffarena case***[70] - which shed light on corruption and in fact led to the resignation of then Parliamentary Secretary responsible for Lands Dr Michael Falzon.

In this case the Government expropriated one fourth (1/4) of a property which belonged to Mr Gaffarena for the price of €822,500 on the 22nd of January 2015. This remuneration was provided for by receiving four properties and a sum of money to reach the total of €822,500.

[67] Prime Minster v Sister Luigi Dunkin (CA) [1981]

[68] Tonio Borg, the Blue Sisters Saga, 43

[69] Ibid, 93

[70] Prime Minister Dr Joseph Muscat in his capacity as a Member of Parliament and the Attorney General vs Mark Gaffarena, (FHCC) [2018]

About a month after, on the 26th of February 2015, Mr Gaffarena purchased another fourth (1/4) of the same property in Old Mint Street, Valletta for the price of €139,762, wherein only a few weeks after, the Government again expropriated a fourth (1/4) of said property for the said price of €822,500. In just a few weeks, Mr Gaffarena made a profit of €682,738. Subsequently the court annulled both contracts.

The corruption affecting the right to property in this case was blatant, namely because parts of the property owned by others were never expropriated and moreover the Government superseded the allowed maximum by law as per the 130% capping of the market value by exaggerated amounts. Such capping as provided by the Disposal of Government Land Act[71].

It must be emphasised that property laws in general are constantly being amended due to ECHR judgment shedding new light on ways how public authority is negatively effecting such right. It is the duty of the legislator to amend the law to ratify such wrongs. As noted, the Government Lands Act was the most recent attempt at ratifying the impossibility of local remedies with regards to injustices of expropriation.

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[71] Laws of Malta, Chapter 248

The Effect of Corruption on Political Participation

By Jake Mallia

Introduction

When analysing the political sphere of any country, it is crucial to start off by understanding which system of government is present in the country of question. A practical example would be that of the Maltese Islands. In order to properly understand the political state of the country, it is crucial to understand the fundamentals of democracy.

When analysing the term "Democracy" even from a semantic standpoint, the findings encapsulate perfectly what Democracy is meant to be in practice; "Demos" meaning people, and "kratos" meaning power.

Hence, in its most basic form, **Democracy is a system in which governing is dependent on the will of the people**.

One can come to the realisation that the notion of Democracy is twofold; on one side of the coin there is the elected government making decisions whilst on the other side of the coin are the people who have elected that government to make decisions for them.

The United Nations (UN) Charter proclaimed in the name of the people of the United Nations and the Universal Declaration of Human Rights holds as its primary notion that the main element for the authority of the government is the will of the people.[72]

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[72] (*Democracy, right to participate and the electoral process | OHCHR*) <https://www.ohchr.org/en/topic/democracy-right-participate-and-electoral-process> accessed 2 November 2023

The essential elements of democracy revolve around the respect for human rights and the holding of genuine and fair elections. **For Democracy to be effective, the notion of Political Participation has to be ever present**.[73]

This situation leaves Democracies in a very vulnerable position and only in a perfect world without any vices does Democracy perform in a perfect manner. When corrupt practices start to invade the political scene, the costs are both on a political level and on a social one.

The social costs of illicit political practices manifest themselves in the people's participation and trust.

Joseph Nye, in his journal article submitted to Harvard University defines corruption as "behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence"[74].

The world's largest organization dealing with corruption, Transparency International, uses a shorter definition of corruption: "abuse of entrusted power for private gain" (Transparency International 2019). The theoretical argument is that corruption tarnishes the relationship between the general public and the elected representatives.

Corruption weakens the voice of the citizen as, due to this, resources are transferred from the public sphere to the private one.[75]

[73] ibid

[74] (*(PDF) corruption and Political Participation: A Review - researchgate*) <https://www.researchgate.net/publication/343102409_Corruption_and_Political_Participation_A_Review> accessed 5 November 2023

[75] ibid

Effects Felt in Malta

A survey conducted by the European Union (EU) in July of 2023, found that **more than 90% of Maltese citizens believe that corruption is widespread in the country and that it is felt that this situation is only getting worse**.[76] A very worrying statistic is that 63% of the people of Malta feel as if they were personally affected by corrupt practices in their daily life.

The practical impact of this belief in corrupt political practices in the Maltese Islands may be directly linked to the fact that the 2022 General Election in Malta saw a final estimated turnout of just over 85% - the lowest in 60 years.[77] Even thought when comparing this number to western democratic standards the figure ranks in the upper percentile, locally it is the lowest voting turnout in a post-independence general election.

Effects Felt Overseas

One ought to note that the notion of corruption within the political realm does not only belong to the Maltese Islands but is a widespread notion in many European countries and non-European countries alike. The following case study deals with Italy regarding the relationship between political participation and corruption.

A study conducted by the esteemed **Persson** – a Swedish economist and Swedish Research Council Distinguished Professor at the Institute for International Economic Studies of Stockholm, and **Guido Enrico Tabellini** – an Italian economist, both hold that jurisdictions which are exposed to corrupt political practices lower levels of voting turnout.

Hence, the retrospective voting model used by Persson and Tabellini confirms that there is in fact a direct correlation between exposition to corruption and the likelihood of voting.[78]

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[76] Carabott S, 'Over 90% Believe Corruption Is Widespread in Malta – Survey' (*Times of Malta*, 7 July 2023) <https://timesofmalta.com/articles/view/over-90-believe-corruption-widespread-malta-survey.1042166#:~:text=More%20than%2090%20per%20cent,corruption%20in%20their%20daily%20lives.> accessed 2 November 2023

[77] ibid

[78] Author links open overlay panel Tommaso Giommoni and AbstractThis paper aims to study the effects of exposure to corruption on all the aspects of political participation. Focusing on Italian municipalities in

Political Participation, apart from taking the form of the vote, can also be in the form of willingness to run for a general election or any other position in local government. The study by Persson and Tabellini vis-à-vis voting turnout, also delves into political supply.

When citizens are exposed to scandals, fewer candidates contest and less electoral lists are presented.

This result is mainly driven by the reduction of freshmen.[79] That said, post-scandal, people of a higher age and older politicians have been found to be more likely to contest .[80] The results concern the Italian context, and the effects of corruption may therefore be different elsewhere.[81]

A local controversial matter dealt with the giving of cheques by the elect government of Malta exactly prior to a general election. A leaflet signed by the Maltese Prime-Minister and his Minister for Finance as well as a cheque was sent to 380,000 individuals in Malta and Gozo, 10 days before a General Election.

It is important to note that albeit electoral laws forbit candidates from influencing voters by giving them gifts, the local police did not consider this activity to be a corrupt practice under Maltese Law.

Quoting the electoral laws, a police force spokesperson said: "The police do not consider the issuing of cheques by the Government as a corrupt practice in terms of Chapter 102 and Chapter 354 of the Laws of Malta".[82]

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the period 1999–2014, 'Exposure to Corruption and Political Participation: Evidence from Italian Municipalities' (*European Journal of Political Economy*, 21 January 2021) <https://www.sciencedirect.com/science/article/pii/S017626802100001X> accessed 5 November 2023

[79] ibid

[80] Author links open overlay panelFrancesco Caselli a and others, 'Bad Politicians' (*Journal of Public Economics*, 17 May 2003) <https://www.sciencedirect.com/science/article/abs/pii/S0047272703000239> accessed 5 November 2023

[81] Author links open overlay panelTommaso Giommoni and AbstractThis paper aims to study the effects of exposure to corruption on all the aspects of political participation. Focusing on Italian municipalities in the period 1999–2014, 'Exposure to Corruption and Political Participation: Evidence from Italian Municipalities' (*European Journal of Political Economy*, 21 January 2021) <https://www.sciencedirect.com/science/article/pii/S017626802100001X> accessed 5 November 2023

[82] 'Pre-Election Cheques Not a Corrupt Practice, Say Police' (*Times of Malta*, 30 March 2022) <https://timesofmalta.com/articles/view/pre-election-cheques-not-a-corrupt-practice-say-police.944874> accessed 5 November 2023

It is very evident that a direct link between corrupt political practices and political participation in the forms of voting turnout and political supply is indeed in existence. One cannot undermine the interplay of human rights when dealing with political participation.

It should be noted that individuals have the right to free and fair elections, and hence, any corrupt practice which may cause any governmental election to not be fair gives rise to a breach of basic human rights.

Any corrupt practice which, as seen through different examples, leads to lack of political participation, shall point blank, be deemed as a breach of a fundamental human right attributed to each and every citizen of the world,

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Corruption & The Right to Freedom of Expression & Information

By Kyra Tanti

When corruption is prevalent, it can lead to censorship, intimidation of journalists, and restrictions on the flow of information, thereby impeding the right to freedom of expression and access to information.

Introduction

The Right to Freedom of Expression and Information is a fundamental human right that is enshrined and protected in multiple international and national legal instruments. Such right is a bedrock for democratic societies allowing an open society to flourish whilst encompassing extensive strategies for those seeking to express themselves[83].

The Freedom to gather information is articulated in **Article 10 of the European Convention on Human Rights** and Fundamental Freedoms (ECHR), and in **Article 41 of the Maltese Constitution**;

> "**41.** (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence."
>
> **The Constitution of Malta**

Both legal frameworks enable individuals to pursue knowledge in their areas of interest. Nevertheless, the notion that they can freely exploit anything they desire without accountability remains problematic in an age of unregulated social media usage.

[83] Cassar P, 'The Legal Limitations of the Freedom of Expression' (*OAR@UM: Home*) <https://www.um.edu.mt/library/oar/> accessed 13 October 2023

Thus, these mentioned posts are public, and users have limited control over how they are perceived, interpreted, or circulated.

The Access to Information

There is no requirement for any governing body to divulge personal information it may possess. However, individuals are at liberty to search for publicly available information. But if that information is confidential, its disclosure would be prohibited in order to protect the integrity of legal instruments. Thus, **such right is not absolute** as it becomes limited to certain boundaries. It is imperative to acknowledge the fact that users and groups making use of such rights are entitled to be protected from mistreatment, abuse, and intimidation [84].

Employing this Right

This right is principally designed for journalists and other media professionals, who must wield it with due care and circumspection. An essential element of a democratic society is the liberty afforded to these individuals to criticise the government and public institutions without apprehension of legal repercussions.

The role of journalists is not limited to merely reporting news that has already been released; it also encompasses uncovering fraudulent and corrupt activities concealed from the public eye. For an investigative journalist, sources are just as vital as the laws of public administration. In fact, this is typically where an investigation starts.

Press freedom is significantly impacted by source protection. In certain cases, journalists find it impossible to perform their jobs effectively if they are unable to communicate discreetly with their sources. If the source's name is revealed, the journalist's safety as well as the sources could be in jeopardy. The more confidently the journalist can ensure the source's safety, the more probable it is that the source will be willing to speak up.

[84] Aquilina K, 'Freedom of Information under Maltese Law' (*Freedom of Information under Rule of Law*) <https://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/malta/foi_malta.pdf> accessed 13 October 2023

In order for them to start such investigations and expose corruption, security forces must defend journalists from attacks by individuals who want to stop them from doing their duties.

And in addition to ensuring that their personal communications with the media are transparent, they ensure that journalists have access to locations and information regarding crimes and other topics of public interest[85].

Corruption Within this Domain

It is accurate to describe corruption as a deeply influential social issue. It diminishes trust in government entities, impedes economic development, and unjustly restricts the capacity of marginalised or disadvantaged individuals to exercise their human rights. In situations where institutions falter therefore, journalism assumes a crucial responsibility, as it is perceived as their obligation to inform and continually update the general public[86].

Occasionally, people in positions of authority who participate in corrupt activities employ **censorship** as a strategy. Information that would reveal their misconduct or cast doubt on their authority may be censored by dishonest officials or organisations. They may hold onto power and keep abusing their positions for personal benefit by managing the information flow.

This type of suppression keeps the dishonest away from responsibility and investigation. In the context of corruption, censorship is a complicated issue with wide-ranging effects. It can be used to **defend and justify unethical behaviour**, **silence journalists and whistle-blowers**, **sway public opinion**, and **undermine confidence in authority figures**.

Due to such complexity in the relationship between censorship and corruption, tackling this problem calls for a coordinated effort to uphold free speech, encourage transparency, and hold those in charge of censorship and corruption accountable.

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[85] (*Freedom of expression and public order - UNESCO*) <https://en.unesco.org/sites/default/files/freedomofexpressionandpublicorder_english-digital.pdf> accessed 16 October 2023

[86] Council of Europe, 'Corruption Undermines Human Rights and the Rule of Law - Commissioner for Human Rights - Www.Coe.Int' (*Commissioner for Human Rights*, 15 March 2023) <https://www.coe.int/sr-RS/web/commissioner/-/corruption-undermines-human-rights-and-the-rule-of-law> accessed 20 October 2023

In the end, preventing corruption and maintaining the values of justice and accountability in society depend on defending the freedom of speech and knowledge[87].

The Suppression of Journalists

Despite the fact that prominent EU officials and organisations have voiced their displeasure regarding the increasing threats directed towards journalists, a new evaluation on media freedom suggests that member states have been reluctant to address persistent problems that have been frequently raised with them.

Daphne Caruana Galizia, an investigative journalist from Malta, made the ultimate sacrifice in her relentless pursuit of justice and truth. A devastating incident that shook not only the nation but the entire world occurred when a car bomb tragically took her life, marking one of the darkest days in the history of journalism. Caruana Galizia's fearless pursuit of exposing corruption and holding those in power accountable made her a target – and her assassination serves as a stark reminder of the dangers faced by journalists worldwide[88]. Her work earned her numerous enemies, additionally, she was threatened with death several times and had years of police protection until it was reduced in half as a result of the government realising how critical she had been for exposing widespread corruption in the Maltese Government.

As has been mentioned earlier in this paper, Caruana Galizia discovered possible misconduct in a government initiative that sells citizenship in Malta. Her reports caused a stir in Malta's political and financial circles and led to an examination of the world's offshore banking institutions. She had received 44 libel lawsuits in total, and the authorities confiscated her bank accounts at the time of her assassination, allegedly to discourage her from continuing her research.

[87] (Internet, censorship, and corruption - göteborgs universitet) < https://www.gu.se/sites/default/files/2020-05/QoGWP_2016_17_Sorak.pdf> accessed 20 October 2023

[88] Briccetti P, 'Daphne Caruana Galizia, Revered Maltese Anti-Corruption Journalist, Posthumously Receives 2020 Allard Prize' (Whistle-blower Network News, 18 May 2021) & <lt; https://whistleblowersblog.org/global-whistleblowers/daphne-caruana-galizia-revered-maltese-anti-corruption-journalist-posthumously-receives-2020-allard-prize/>> accessed 20 October 2023

During the last years of her life, she fearlessly confronted a consistent pattern of consequences and character defamation. Nevertheless, she remained unwavering in the course of her investigative work[7].

Thus, this proves to be a firm exhibition of corruption through suppression – by force.

The murder of **Jan Kuciak**, a Slovak investigative journalist, is also amongst the most shocking murders of journalists in recent European history. He was known for investigating tax fraud for businessmen who had relations with top-level Slovak politicians, hence making him a target between government officials and criminal groups.

This case highlights the difficulties and hazards journalists confront while reporting on organised crime and corruption[89]. In keeping with the principles of press freedom and accountability, it emphasises how crucial it is to safeguard journalists and ensure their preservation for the ultimate wellbeing of society in general. Investigative journalism is still defended globally, and the murder of Kuciak remains a symbol of the continuous struggle against corruption.

The presence of aspiring journalists who represent the following generation of truth-seekers is essential for an attentive and independent press. It is a vital responsibility of these aspiring journalists to expose the wrongdoings and shed light on abuses of powerful individuals and eventually hold them accountable for their deeds.

However, the risks involved in investigative journalism may lead to young individuals becoming demotivated, especially when they entail looking into high-profile crimes and focusing on individuals of high power[90]. And this in itself, is a stratum of all the implications begotten by the taint of corruption in this sector – albeit in a premature sense.

As has been already discussed, at the core of a democratic society lies the freedom of communication and information, transparency, and accountability. However, this freedom has its constraints, especially when it comes to exposing corruption.

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[89] 'Slovak Tycoon Acquitted Again over Murder of Journalist' (*euronews*) <https://www.euronews.com/2023/05/19/slovak-tycoon-marian-kocner-acquitted-for-the-killing-of-journalist-jan-kuciak> accessed 20 October 2023

[90] Free Press Unlimited, 'Investigative Journalism: Unmasking the Truth' (*Free Press Unlimited*) <https://www.freepressunlimited.org/en/current/investigative-journalism-unmasking-truth> accessed 1 November 2023

The security of aspiring journalists, who represent the future of investigative reporting, is under serious threat. Providing physical and legal protections, whistle-blower mechanisms, and international support to emerging journalists is crucial. To ensure the continuity of democracy, it is imperative that we nurture the next generation of truth-seekers.

As a result, safeguarding the wellbeing of journalists assumes a position of utmost significance, and as a society, we should maintain and deeply value the sacrifices these journalists endure. They are the ones bearing the ultimate cost for their unflinching commitment to uncover nothing but the truth, all in the pursuit of ensuring our collective ability to thrive in an equitable and liberated society.

The European Union v. Corruption

By Miguel Curmi

The European Union is not impervious to corruption. However, EU aims and instruments aid in the battle against such a malady.

Introduction

Corruption is a never-ending battle. For centuries society has attempted to eradicate and minimise the possibility of corruption. Unfortunately history has taught us that this is an issue which will always be present in one way or another. Till this day, corruption is present in different degrees, and different ways in almost all states, including EU Member States. This section will begin by providing a working definition of corruption, and how it will be referred to hereafter. Furthermore, this section provides and in-depth account of corruption scandals in two EU Member States – Malta and Poland.

There is no universal definition of corruption. It is such a contentious issue that the *'United Nations Convention against Corruption'* has not even attempted to define it in specificity.

Carl J. Friedrich defines corruption as a kind of **deviant behaviour which is associated with a motivation, particularly a private gain at public expense**[91]. From the research conducting during the writing stage of this paper, this definition has proven to be the best and most relevant definition to the topic at hand, and is thus the definition this paper shall employ when discussing corruption. It is crucial to note that any kind of corruption goes against human rights, as not every person will be treated equally in the eyes of the law. Through this, certain individuals or authoritarian organisations would abuse the power they hold in order to make a private gain at public expense.

It would be a mistake to consider corruption as being a new phenomena – because it has been in existence since time immemorial.

[91] Carl Friedrich, Corruption Concepts in Historical Perspective (Arnold J Heidenheimer and Michael Johnston eds, Transaction Publishers 1989) 15 15–24 <https://search.proquest.com/docview/56456245>.

In fact, a two thousand year old book written by Kautilya, the ruler of an Indian kingdom, as well as Dante Alighieri's 'Inferno' in the 14th century, both position bribers in the deepest parts of hell – thus lucidly portraying the revulsion towards corrupt behaviour[92].

Today, corruption is still one of the biggest headaches for legislators and governments as they have to adopt effective anti-corruption legislation and mechanisms and abide by the rules and regulations of multilateral organisations.

When discussing corruption in Europe, one cannot elude the topic of the European Union (EU). As a supranational organisation, this is a remarkable achievement to consider when analysing the issue of corruption. The EU is a unique experiment which is considered a success, even when considering the implications of Brexit.

The EU has amalgamated twenty-seven Member States from all of Europe through political and economic integration. These states have transferred parts of their sovereignty to the supranational institutions which have been established and developed though successive Treaties. Therefore, Member States do not hold the sovereignty they once did and are bound by the rules and principles of the EU.

The Union is founded upon the rule of law, and all actions undertaken by the EU are based upon Treaties that have been willingly and democratically concurred on by all its Member States. And in order for a state to become a member of the EU there are certain requirements that it must satisfy – the so-called '**Copenhagen Criteria**'.

At the core of these requirements dwells the rule of law. It ensures that the judiciary of aspiring member state is independent and impartial, that political leaders and decision-makers take a strong stand against corruption, that governments and their representatives are held accountable for their actions, and that the legislation process by which laws are enacted is transparent and efficient[93].

[92] Vito Tanzi, 'Corruption Around the World: Causes, Consequences, Scope, and Cures' (1998) 45 559, 559–594 <https://www.jstor.org/stable/3867585>.

[93] Danijela Dudley, 'European Union Membership Conditionality: The Copenhagen Criteria and the Quality of Democracy' (2020) 20 525, 525–545 <https://www.tandfonline.com/doi/abs/10.1080/14683857.2020.1805889>.

Furthermore, the 'Copenhagen Criteria' ensures that fundamental rights are protected and observed at all times. Nevertheless, even after states become members of the Union, there have still been instances of corruption which have affected the fundamental human rights of citizens, both directly and indirectly.

The Rule of Law

As states above, the rule of law is considered as one of the core values of the EU, and is incorporated in **Article 2 of the Treaty on the European Union**:

*"**The Union is founded on the values of respect for human dignity**, **freedom**, **democracy**, **equality**, **the rule of law** and **respect for human rights**, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*

However, despite the EU's unwavering commitment to protect the rule of law, it has encountered obstacles in upholding these ideals throughout the bloc, as the rule of law is facing growing threats in many Member States.

Since 2014, the Union has implemented various measures to uphold the principle of the rule of law in all Member States, including, the establishment of the '**Rule of Law Framework**', the incorporation of **Article 7 of the Treaty on European Union** (TEU), the initiation of **infringement procedures**, and the implementation of the **conditionality mechanism**.

Malta

Malta has been a member of the EU since 2004 and has thus passed the 'Copenhagen Criteria' – making it subject to the rules and instruments of the Union. Nevertheless, allegations and cases of corruption have still made headlines, particularly in the last decade.

Most of the cases relating to corruption in Malta were closely monitored and reported by Daphne Caruana Galizia, who was a well-known journalist who used to investigate and report on high profile corruption in the country. Daphne Caruana Galizia was assasinated in 2017. Her death brought into the limelight the problems with the rule of law in Malta, particularly in relation to corruption from the highest level of Government.

In 2021, a public inquiry committee stated that the Maltese government had created a 'culture of impunity', and that the Government did not take the appropriate measures in order to ensure the safety of the aforementioned journalist[94]. The death of Daphie Caruana Galizia shed the spotlight on corruption problems in Malta.

Furthermore, through a resolution in 2021, the European Parliament issued a plea for justice and changes in response to the perceived endangerment of the rule of law in Malta[95].

Nonetheless, it is worth noting that Malta worked on these issues and in the 2021 State of the European Union address, Ursula von der Leyen, the President of the European Commission, complimented Malta for its commendable efforts in implementing rule of law reforms, particularly in relation to judicial reforms, whilst safeguarding journalists and democratic principles[96].

Another case that raised eyebrows was the so-called golden passport investor scheme. The Maltese Citizenship Act underwent amendments in November 2013, leading to the initiation of Malta's inaugural investor citizenship programme in 2014. In 2020, the '**Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment**' programme replaced the 2014 Scheme. This scheme has been heavily criticised by the Union's institutions, particularly due to the fact that Malta is indirectly selling EU citizenship.

In September 2022, the European Commission announced that it would refer the case to the European Court of Justice for Malta's refusal to terminate this scheme. However, according to the Commission, the mentioned scheme is not in line with the EU's founding Treaties as there is no 'genuine link' to Malta[97].

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[94] Neil Camilleri and Orland Kevin Schembri, 'FULL REPORT: Public Inquiry Holds the State Responsible for Daphne Caruana Galizia's Murder' (29 July 2021) <https://www.independent.com.mt/articles/2021-07-29/local-news/Public-Inquiry-holds-state-responsible-for-Caruana-Galizia-s-death-6736235558>.

[95] European Parliament, 'Rule of Law in Malta: Parliament Calls for Justice and Reforms' <https://www.europarl.europa.eu/news/en/press-room/20210422IPR02620/rule-of-law-in-malta-parliament-calls-for-justice-and-reforms>.

[96] Matthew Vella and Laura Calleja, 'State of the EU: Von Der Leyen Praises Malta's Rule of Law Reforms' (15 September 2021) <https://www.maltatoday.com.mt/news/ewropej/112053/live_state_of_the_eu_ursula_von_der_leyen_addresses_europe>.

[97] European Commission, 'Investor Citizenship Scheme: Commission Refers MALTA to the Court of Justice' (2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5422>.

The latter has insisted that this is an issue in which the EU lacks competence, and thus it is the competence of the member state, however, the issue is that a Maltese passport is a European passport, and thus the Commission's argument is that this endangers all the EU bloc.

Another reason why the EU wishes Malta to withdraw the scheme is over fears of money laundering, and citizenship being granted to high-risk individuals. As a matter of fact, investigations have resulted that this citizenship has been acquired by certain individuals who have been under investigation for financial crimes. Daphne Caruana Galizia was one of the journalists who reported on the scheme and was later threatened with several lawsuits.

One should note that Cyprus and Bulgaria had introduced similar schemes, however following pressure from the Union, and national scandals these have removed them[98]. The case is currently pending; however, this is a perfect case scenario to illustrate how the Union puts pressure on the Member State if there is something that goes against the EU's values or linked with corruption.

Furthermore, provided that Malta did not budge in front of the European Commission, the latter has referred the case to the ECJ for it to give a verdict.

Poland

Since 2020, the European Commission has consistently released an annual report on the condition of the rule of law in member states. Upon careful examination of the 2023 report, it is evident that Poland emerges as the most resistant, with Hungary trailing closely behind[99].

The ECJ delivered a judgement in June, determining that Poland's judicial reform implemented in 2019 was in violation of the law and so should be repealed[100]. The decision to not adhere to the suggestion of separating the position of the attorney general from that of the minister of justice was not implemented. Furthermore, judges who have been wrongfully dismissed have not been returned to their positions.

[98] Alice Taylor, 'EU Takes Malta to Court over "Golden Passports"' (Washington, 29 September 2022) <https://search.proquest.com/docview/2718835415>.

[99] European Commission, '2023 Rule of Law Report - Communication and Country Chapters' (2023) <https://commission.europa.eu/publications/2023-rule-law-report-communication-and-country-chapters_en>.

[100] Court of Justice, 'Commission v Poland' <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-204/21&jur=C>.

Moreover, the 2020 report highlighted that there were serious issues regarding the independence and impartiality of the Polish judiciary.

In addition, there have been instances where the supreme court of Poland did not give precedence to EU law, even though they have an obligation to do so, which is duly stipulated in the Treaties. As a result, a series of legal actions have been initiated by the European Commission against Poland, resulting in the payment of €360 million in penalties due to its failure to adhere to the judgements issued by the ECJ since 2021[101].

In addition, the 2023 rule of law report noted its disapproval at a recently implemented legislation in Poland that grants an administrative panel the authority to exclude lawmakers with dissenting views from holding political positions[102].

The European Commission has initiated proceedings against Poland in this regard. One must note that this law was passed with the specific intention of silencing Donald Tusk, who was a forerunner to become Prime Minister.

The essence of the recommendations of the rule of law report have been the same as the year before, and thus evident that the situation in Poland is not improving.

In view of the above, the European Commission has blocked €35 billion of the Covid-19 pandemic recovery plan allocated to Poland. Moving forward, the funds will be given upon fulfilment of many conditions, thus encompassing the reinstatement of judicial autonomy. Nonetheless, Poland has shown a lack of response to the financial implications resulting from its refusal to engage in cooperation.

Therefore, this corrupt endeavour to taint the judicial bodies of Poland directly affects persons' **right to access to justice**, and the **right to be heard in front of a fair and impartial court of law**.

Poland held their elections on 15th October, 2023 and the Law and Justice party (PiS) emerged as the leading party.

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[101] Bernd Riegert, 'Rule of Law: EU Reprimands Poland and Hungary' (7 September 2023) <https://www.dw.com/en/rule-of-law-eu-reprimands-poland-and-hungary/a-66165982>.

[102] European Commission, '2023 Rule of Law Report - Communication and Country Chapters' (2023) <https://commission.europa.eu/publications/2023-rule-law-report-communication-and-country-chapters_en>.

However, Tusk's Civic Platform (KO), in alliance with two other opposition parties, garnered over 54% of the votes, thereby obtaining a majority of 248 members in the Sejm, the lower chamber of the Parliament, which consists of 460 seats[103]. Tusk is a previous incumbent of the European Council presidency, and is currently being widely speculated as the potential successor to the position of Poland's prime minister. This anticipated shift in leadership is expected to foster a significant enhancement in the diplomatic ties between the EU and Poland.[104]

The EU's Measures to Combat Corruption

The EU has certain tools in order to combat corruption in an effective manner provided that this poses a serious threat to the security and financial interests of the Union. **And one of its most effective tool is through legislation**.

The Union has legislation which is specifically focused on corruption, and legislation which includes anti-corruption provisions in other legislation. Nevertheless, **the current framework is still insufficient to comabt corruption efficiently**, and in fact it is one of the Union's priorities to update its legislative framework on anti-corruption. In view of this, the Commission presented a proposal in May 2023 to combat corruption through criminal law.

Should this proposal be adopted, the EU would be modernising its framework on corruption and would thus be implementing its obligations under the 'United Nations Convention Against Corruption'.

Nonetheless, the adoption of legislation in the Union is not a simple procedure; therefore, the current main legislative framework through which the EU combats corruption is the '**1997 Convention on fighting corruption involving officials of the EU or officials of EU countries**', the '**2003 Council Framework Decision on combatting corruption in the private sector**', and the '**2008 Council 2008/852/JHA**' which is based on a contact point network agaisnt corruption[105].

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[103] Jorge Liboreiro, 'Donald Tusk Vows to Bring Poland Back to the "European Stage" and Unlock COVID-19 Recovery Funds' (25 October 2023) <https://www.euronews.com/my-europe/2023/10/25/donald-tusk-vows-to-bring-poland-back-to-the-european-stage-and-unlock-covid-19-recovery-f>.

[104] Judy Dempse, 'A New Start for Poland' <https://carnegieeurope.eu/strategiceurope/90786>.

[105] European Commission, 'EU Legislation on Anti-Corruption' <https://home-affairs.ec.europa.eu/policies/internal-security/corruption/eu-legislation-anti-corruption_en>.

One should note that there are other provisions which tackle anti-corruption which are included in sectoral legisaltion.

The European Commission is the guardian of the Treaties, and thus it is responsible to ensure that EU law is applied in all member states. Through this role, this institution is able to initiate infringement proceedings under Art.258 TFEU if it sees that a particular state has infringed EU law. The purpose of this procedure is for a member state in breach of EU law to stop that breach of law and comply with its obligations under the Treaties. Therefore, in cases where the Commission considers that a member state is breaching EU law, including the rule of law, it would initiate infringement proceedings by referring the issue to the ECJ, which can also impose financial santions.

There are certain EU bodies which are entasked with tackling corruption, such as the **European Anti-Fraud Office** (OLAF). This is tasked with the responsibility of identifying instances of fraud and corruption that impact the financial interests of the Union. In accordance with this approach, it carries out administrative inquiries and notifies the appropriate national entities if it deems it necessary to commence a criminal inquiry[106].

In addition, in 2012, the European Parliament established the '**Special Committee on Organised Crime, Corruption and Money Laundering'**[107]. Throughout its existence, this committee has put pressure upon the Commission to increase its work and mechanisms when it comes to corruption. Furthermore, it has evaluated rule of law deficencies in Member States, particulalrly in the case of Malta in the assasaiantion of Daphnie Caruana Galizia.

[106] European Parliament, 'Combating Corruption in the European Union' <https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739241/EPRS_BRI(2022)739241_EN.pdf>.

[107] Ibid.

Conclusion

Corruption is a significant obstacle for the EU, impacting all of its Member States to varying degrees. The measurement of its scale poses a significant challenge, however one of the EU's best instruments is the '**EU Justice Scoreboard**' – which provides insights into the fight agaisnt corruption[108].

This section has made it evident, that although there is the Copenhagen Criteria which must be fulfilled in order for a country to be a member state, all the problems and dangers of corruption do not end with accession.

The risk of corruption still blooms upon member states, as seen in this section from the cases of Malta and Poland. To this end, the EU has several mechanisms in order to ensure that member states observe the rule of law, combat corruption in the most effective manner, and ensure that fundamental rights are observed.

The Union is not perfect, and certain competences still remain in the hands of states, however the EU through legislation, establishment of bodies, infringment proceedings, the possibility of withholding funds, inflicting financial penalities, and acting as a 'watchdog' on member states, one can conclude that the EU is effectivly tackling corruption in the most effective manner.

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[108] European Commission, 'The 2023 EU Justice Scoreboard' <https://commission.europa.eu/system/files/2023-06/Justice%20Scoreboard%202023_0.pdf>.

The Light at The End of The Tunnel

By Alec Carter

Recovering from the pervasive problem of corruption and its deleterious effects on human rights is a complex and multifaceted endeavour that requires a coordinated effort at various levels of society – especially from homogenous communities to international institutions. Such a target demands a combination of legal, institutional, cultural, and educational reforms for it to be attained, accompanied by a commitment to transparency, accountability, and ethical leadership.

This paper's limb will delve into a comprehensive array of strategies and approaches that can be employed to combat corruption and restore the integrity of frameworks implemented to uphold one's fundamental human rights.

Legal Mechanisms

One crucial avenue for combating corruption is through robust legal frameworks and enforcement mechanisms. Strengthening anti-corruption laws and regulations is paramount, with a particular focus on enacting and enforcing stringent penalties for corrupt practices.

This does not solely involve the prosecution of individuals endeavouring in corrupt activities, but also encompasses the meticulous examination of institutions and organizations accountable for their role in facilitating (or tolerating) corruption.

For instance, Malta's promulgation of the 2013 Protection of the Whisteblower Act[109] is a great stride towards the light shining ever so brightly at the end of the dreary tunnel – because it serves as a legal mechanism that guarantees the protection of any persons coming forward to report certain undesirable behaviour exercised in both the private sector and the public administration.

Parallel to legal reforms, institutional strengthening (or occasional restructuring) is crucial. This includes creating independent and impartial anti-corruption bodies with the authority to investigate and prosecute corruption cases.

[109] Cap. 527, Laws of Malta

These bodies must be adequately resourced and insulated from political interference to ensure their effectiveness. Furthermore, promoting transparency in public administration, procurement processes, and financial transactions is pivotal.

However, one must stress the impartiality of such suggested authorities. It would be counterintuitive to appoint an authority capable of imposing punitive measures if said authority is not also subject to judicial review. Thus, one must always keep such a notion in mind before acting with any impetuousness.

An Ethical Perspective

In tandem with legal and institutional reforms, fostering a culture of integrity and ethics is fundamental. This involves comprehensive anti-corruption education and awareness campaigns aimed at various segments of society – from school children to public officials.

By instilling ethical values and a strong sense of accountability from an early age, societies can cultivate a generation that is inherently averse to corrupt practices. Furthermore, promoting ethical leadership within institutions and organizations is crucial. This can be achieved through the development of codes of conduct, ethics training, and mentorship programs that emphasise the importance of integrity in leadership roles.

International Cooperation

International cooperation and collaboration represent another indispensable dimension in the nigh perennial fight against corruption. Sharing best practices, intelligence, and resources across borders is essential for combating transnational corruption networks.

Additionally, promoting global initiatives such as the United Nations Convention against Corruption (UNCAC) and other regional anti-corruption agreements can foster a unified front against corrupt practices that transcend national boundaries.

Economic Strategies

Economic reforms also play a pivotal role in addressing corruption. Implementing transparent and accountable fiscal policies, as well as effective management of public resources, can significantly reduce opportunities for embezzlement and misappropriation.

Additionally, promoting a competitive and fair business environment, coupled with stringent anti-money laundering regulations, can deter illicit financial flows and create a more equitable economic landscape.

All The Help We Can Get…

Civil society engagement and empowerment are vital components of any anti-corruption strategy. Advocacy groups, non-governmental organizations, and community-based organizations all play a critical role in raising awareness, monitoring government activities, and holding public officials accountable. Empowering these entities with the necessary resources, information, and legal protections enables them to act as effective watchdogs and catalysts for change.

Final Remarks

By Alec Carter

In conclusion, recovering from the scourge of corruption that has tainted human rights necessitates a comprehensive and integrated approach.

Legal reforms, institutional strengthening, cultural change, international cooperation, economic policies, and civil society engagement must work in concert to root out corruption and restore faith in the integrity of human rights frameworks.

This endeavour requires sustained commitment, dedication, and a collective belief in the transformative power of transparency, accountability, and ethical governance. Only through such rigorous efforts can we ever hope to build societies that uphold and protect the dignity and rights of every individual.

However, being realistic is as important as establishing all countermeasures capable of combatting corruption.

Some notions are stronger on paper than they are in practice. And that is the truth of it. However, it would connote irrationality were one to remain complacent and ever so comfortable within the confines of a piece of paper.

We must detach ourselves from the cosiness of our writings, start trudging in the mud – and start making a difference.

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