Chapter 16

Malta

SCENERY

The Maltese people live on the islands of Malta (390 sq. km.) and Gozo (65 sq. km.). The total number of inhabitants of these islands is 350,000. Comino, the other island of the island group belonging to the Republic of Malta, is uninhabited.¹

The islands had seen many conquerors, all of whom left their mark on the islands. As a result the islanders owe their faith to the Apostle Paul who was shipwrecked on Malta in AD 60; their language mainly to the Arabs, who ruled for 220 years; their culture to the Knights of St. John who stayed for 268 years; and their deep sense of democracy to 164 years of British rule. The islands gained independence in 1964, and the Maltese Republic was established in 1974. Despite the long and chequered history of foreign domination, the Maltese people are a proud nation distinct from any other with its own language. Even though many Maltese faces still reflect the powerful nations that conquered the islands, like the Phoenicians, the Normans and the Arabs, there is a strong feeling of identity born out of a mixture of self-preservation and stubbornness.

The small islands of Malta and Gozo have given shelter to people for a very long time. At Ghar Dalam remains of human habitations were found that date back to 4,000 BC. Malta entered recorded history in the power struggle between the Phoenicians, Greeks and Persians. Also the Maltese language, il-Malti, is a Semitic language with roots that go back to Phoenician and Carthaginian times. When the Arabs arrived in 870 A.D., they brought their own language and because of its Semitic roots many of the words were assimilated. Then when the European nations began imposing their influence on the islands, words were borrowed from the Roman languages and later from English. It is thought that the first attempts to commit il-Malti to paper were made by the Maltese knights of the Order of St. John after their arrival in 1530.

The Maltese Knights (Knights Hospitallers of the Order of St. John of Jerusalem, of Rhodes and Malta) are still remembered for another historical event with respect to the islands, namely their victory over the Turks who sailed onto Malta in May 1565. It took the knights and the local Maltese people, under the guidance of Grand Master Jean Parisott deLa Vallette, four months to end the siege with great loss of life on both sides. Finally on September 8 of the same year, the knights’ cross flew again over the small fortress of St. Elmo. The fortification of St. Elmo, embellished and extended in the years subsequent to the Great Siege of 1565, can still be admired in the present capital Valletta, named after the brave La Vallette. The anniversary of the ending of the siege has since been the most important date on the calendar. And until the second great siege of 1940, it was felt that no other event could equal the 16th century siege’s hardship, nor the glory of its victorious ending. On 10 June 1940, however, Italy’s dictator Mussolini joined forces with Hitler. The following morning, Mussolini made his move against Malta. To face the enemy aircraft, the Royal Air Force had at first only three old planes, which came to be known as Faith, Hope and Charity. Folklore has it that only the last plane was lost during the first raid, because ‘Malta never lost Hope nor Faith in the final victory’. One month later, more than 200 Italian air raids had been logged on the small island of Malta.

¹ Cominio is virtually uninhabited, only one family lives on the island and there is one hotel.
was convinced of the strategic importance of Malta and insisted it should be held, whatever the cost. But also the Germans soon realised the benefits of capturing the island since its aircraft and ships were a constant threat to the supply lines of Hitler’s Afrika Korps. The Germans could not allow this outpost to remain in allied hands. With the growing German involvement, the battle for Malta became grimmer by the day. To crush the population’s will to fight on, Malta suffered 154 days of continuous day and night raids (London had 57), and 6,700 tons of bombs were dropped on the Grand Harbor area. Furthermore, the blockade was complete: nothing could reach the islands. ‘Victory kitchens’ were set up to feed the starving population. Food and ammunition were rationed. On the 15th of April 1942, King George VI awarded the islands the George Cross for bravery.

Only on this day, the feast day of the Assumption of the Virgin Mary, did allied ships manage to get to Malta and its strength revived. The islands became the springboard for the allied invasion of Sicily. On 8 September of the following year the Italian fleet surrendered in Malta ‘under the guns of the fortress of Malta’ to quote Admiral Cunningham. By coincidence, that day was not only the feast day of Virgin Mary, it was also the anniversary of the victory of Malta over the Turks in 1565.

After having been under Britain’s protection as a Crown Colony since 1800, independence was granted to the Maltese islands on the 21st of September 1964. The Malta Independence Constitution established that the islands would be within the Commonwealth as a liberal parliamentary democracy that guarded the fundamental rights of its citizens and guaranteed the separation of the executive, judicial and legislative powers. Until 1974, the islands were a Constitutional Monarchy with Queen Elizabeth II as Queen of Malta, represented by a Governor-General. In 1974, however, Parliament voted by a two-thirds majority to turn the islands into a Republic with a President as head of state.

It is no secret that politics play an important part in current daily life. All Maltese are politically aware and party allegiance is rewarded. As the two more predominant parties change hands – the Nationalist and the Labour party – so do the persons in key positions in the civil service and government-run organizations. Like in all Latin countries, it is who you know that matters if you want things done. Another power in Maltese life is the Catholic Church, and although its influence is not as far reaching as it used to be, it is still omnipresent. Churches are well attended on a daily basis. The Church has played and still plays a key role in the social field, such as establishing popular housing, taking care of the disabled, supporting all sorts of groups, and sheltering victims of domestic violence. On the other side, the Church strongly opposes the introduction of divorce on the islands and battles with those groups which are in favour of its introduction. The women’s movement is, however, gaining political ground. An important achievement of the movement is that a secretariat for the promotion of women’s rights has been established as a department within the general framework of the Executive set up. The women's rights movement also plays a key role in establishing protective measures for women and children within the Maltese society and legal system.

The Maltese legal system is a curious mix of continental and common law. Also the position of the victim within criminal law and procedure is greatly influenced by this hybrid nature: before the lower courts the victim has a certain status that reflects the continental influence, but in the superior courts the victim has no standing, similar to the position of the victim in common law systems. In practice, this means that only during the preliminary inquiry before the magistrate’s court as a court of criminal inquiry, and during the trial of offences before the

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2 By comparison, the worst night of destruction in Coventry was achieved with 260 tons.
3 The citation reads: ‘To honor her brave people I award the George Cross to the island fortress of Malta to bear witness to a heroism and devotion that will long be famous in history.’ (The citation with George Cross can be seen in Valletta, on the wall of the Palace in Republic Street.)
4 The two main political parties are the Nationalist and the Labour party. For the past two elections another party, the Alternative Demokratika (a Green party) has been contesting the elections, though with not much success.
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magistrate’s court as a court of criminal judicature, does the victim have the rights of an injured party, such as the right to a lawyer and to contribute to the compilation of evidence. In the superior courts, where the stakes are much higher because these courts try the most serious offences, the victim has no position and no voice.
PART I:
THE MALTESE CRIMINAL JUSTICE SYSTEM

1 INTRODUCTION

The Maltese criminal justice system is the result of a blending of continental and common law systems. The Italian legal tradition has been the most influential of the continental legal systems, since it is the European jurisdiction which lies closest to Malta. British rule explains the strong influence of the English common law system. Substantive criminal law is mainly inspired by the Italian legal system, whereas the rules of procedure, especially the rules of evidence and the rules of procedure in trials by jury, are influenced by English common law. The rules of procedure in the magistrates' courts are, apart from the adversarial nature of the trials, more influenced by continental law.

Students of the University of Malta are still referred to Italian textbooks and digesta's to study legal doctrine, whereas they have to study English textbooks for procedural law and general legal principles. Recently, however, Maltese lecturers have shown an increasing interest in the Scottish legal tradition because, as it is based on the continental legal system, it is considered closer to the Maltese than the English.

There are no textbooks on Maltese criminal law and procedure. Not surprisingly, much importance is attached to lectures which are transcribed and used by students. The most famous notes are those by professor Mamo (see § 4). His notes, even though they are old and need updating, are still being used today at the university. In the absence of textbooks, they are even quoted by the courts. Given the fact that neither textbooks nor any research was available, data is either a result of studying the Laws of Malta, or of interviewing legal practitioners.

Finally, it is important to note that crime rates on Malta are relatively low. As a result, the large majority of the Maltese feel safe to very safe at night (72%), while 86% feel secure during the daytime. Furthermore, 80% of the public are quite satisfied with the performance of the police (see § 3.1).

2 GENERAL REMARKS AND BASIC PRINCIPLES

The Maltese criminal justice system is a curious mixture of continental and common law. Criminal substantial law is inspired mostly by Italian law and legal doctrine. Criminal procedure and especially the law on evidence, on the other hand, are influenced by English common law. Insofar as criminal procedure is concerned there is still some influence from the continental system reflected in the powers and functions of the magistrate who has a strong investigative role in criminal proceedings. However, a criminal justice system based on case law, a distinct feature of common law countries, does not exist, as such, in Malta. Maltese laws were codified early on following the European continental tradition.

The dichotomy is also reflected in court practice. The lower courts have maintained some continental features; the most important is that the victim as an injured or civil party can participate in the proceedings, by making submissions, bringing evidence, examining and cross-
examining evidence, even in those cases which are prosecuted by the police *ex officio* (see § 3.3 and § 5.3), whereas the proceedings in the superior courts take place in accordance with the English common law tradition. Despite the differences between the proceedings in the lower and superior courts, the adversarial nature of criminal proceedings is a characteristic common to all trial proceedings. Typical adversarial features in all Maltese criminal proceedings are the principles of orality and immediateness, the right of the parties to examine and cross-examine witnesses, the concept of an impartial judge who does not easily intervene with the parties’ line of questioning, and the involvement before the superior courts of the public as a jury. In principle, the prosecution and the defence counsel contest each other in court before an impartial judge.

Another characteristic shared with the English legal system is that in practice most cases are dealt with in the magistrate’s court, which is a single judge court and functions without a jury. Another typical English legacy is that the (executive) police⁹ act as prosecutors in the magistrate’s court.¹⁰ In the criminal court which deals with the more serious offences, the Attorney General’s office prosecutes in the name of the Republic of Malta. Unlike in England, there is no strong tendency toward trial avoidance (see 7.1, B.5).

### 2.1 Basic Principles

The pre-trial stage is governed by secrecy principle and the legality principle. According to the former, the preliminary investigation is conducted in secrecy. The latter stipulates that if there is a *prima facie* case against the accused, i.e. the evidence gathered in a particular case has every appearance of proving the fact though it may not constitute certain proof, the prosecuting authorities should start public action (see § 7.1). The trial proceedings are governed by the principles of immediacy and orality which require the direct testimony of the witness in court and the trial to be held orally, and not by means of the legal file and records of pre-trial witness’ statements (see § 3.3.1). The principle of publicity dictates that trials should be open to the public. However, the court can order that a trial is held behind closed doors, with no public present (see § 8.2).

### 3 Criminal Justice Authorities and Partners

#### 3.1 Investigating Authorities

The Malta police force consists of one single force operating in the entire territory of the Maltese islands. It employs 1800 policemen of which 200 are women.¹¹ The police force today is under the direction of the Commissioner of Police, who is assisted by a Deputy and several

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⁹ There is a historic reason for calling them ‘executive police’. Originally, the courts of magistrates in their criminal jurisdiction were called ‘courts of magistrates of judicial police’, the idea being that they had a policing function. The police force as such was the executive police, and, in fact, even today police officers are bound by law to execute all orders of the courts of magistrates (orders by the superior courts are executed by court ushers and marshals).

¹⁰ Originally, the court of magistrates were designated as the ‘court of magistrates of judicial police’. This was due to the strong investigative powers which the magistrates had and still have when they act as examining magistrates, with the function of collecting and preserving evidence when an offence has been committed. They also have similar investigative powers during the course of committal proceedings when a person is brought before them charged with a criminal offence triable on indictment, because it is liable to a punishment that exceeds that of the court of magistrates as a court of criminal adjudicature. The term ‘executive police’ was therefore used to distinguish the functions of the police corps from the judicial police functions exercised by magistrates.

¹¹ The first female members of the police entered the force in 1988.
Assistant Commissioners. Politically, the police are answerable to the Minister for Home Affairs (until recently they were answerable to the Prime Minister). The police are easily accessible to the public. Every town and village traditionally has a police station. The police would, in some cases, prefer a mobile squad but the people are very attached to their local stations. There are 52 police stations in Malta and 23 stations in Gozo.12

Under section 346 (Cap. 9)13 it is the duty of the executive police to preserve public order and peace, to prevent offences, to discover and investigate committed offences, to collect evidence and to bring the authors and accomplices before the judicial authorities. As a result, police officers not only investigate crimes but also prosecute many of them before the magistrate’s court (see § 3.3). In practice, the members of the rank of inspectors act as prosecutors in the magistrate’s court. The police do not have a formal relationship with the Attorney General’s office (prosecution service acting in the criminal court), but they do seek the legal advice of the Attorney Generals and discuss cases. The contacts take place frequently and are informal.14

In family matters and regarding sexual offences, the police are under instruction to contact either a social worker or the victim support unit, situated at the police Headquarters. This instruction was issued because the police realize that not every constable is capable of handling such precarious cases in a constructive manner. The dark number in such cases is thought to be still rather high, for various reasons. Malta is a small island and some victims may refuse to go to the police because they do not want it to be known. Moreover, the people are very Latin in the sense that great importance is attached to the honour and good name of the family. Many women refuse to report abuse and sex offences, not because they are afraid of the police, but because they fear for their family’s good name and reputation. It is suggested that this is changing and women are less inclined to keep silent to protect the family’s honour. Victims are also said not to report a crime or to withdraw their complaint because they are not willing to go to court and give evidence in public or undergo cross-examination. This is particularly true with respect to sex offences and in those cases in which the victim is still a minor (see § 8.2).

Recently, the police initiated a modernisation programme. In this context, a community and media relations unit (CMRU) was created in August 1997, with the mandate to improve relations between the police force and the community at large. One of the core objectives of the modernisation programme is high visibility community policing. The unit periodically assesses public perceptions of the police services (see § 6.1, A.2).

3.2 Prosecuting Authorities

In Malta, the functions of public prosecution are exercised both by the executive police and by the members of the Attorney General’s office. Police inspectors prosecute cases in the magistrate’s court. The Attorneys General’s office prosecutes in the superior courts. Pursuant to the Constitution, the Attorney General is appointed by the President in accordance with the advice of the Prime Minister. He must be qualified as a judge of the superior courts. In the exercise of his powers to institute, undertake and discontinue criminal proceedings, the Attorney General is not subjected to the direction or control of any other person or authority (s. 91 Const.). The office of the Attorney General is a public office, the members of which act as

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12 Information supplied by Police Commissioner Grech, Assistant Commissioner Rizzo, and inspector Muscat, Police HQ, Floriana, 5 May 1998.
13 Chapter 9 of the Laws of Malta contains all the rules of Criminal Law and Procedure. Where only ‘s. x’ is mentioned in this Chapter, without further reference, it is a section of Cap. 9.
14 The police have easy access to the legal officers at the Attorney General’s and simply come the Attorney General’s office, situated opposite the Valletta court. The police even have a habit of coming in at any time, expecting to discuss a case with legal counsel although the Attorney General would prefer them to make an appointment, it is very hard to change this custom. During an interview conducted with Dr. S. Camilleri of the Attorney General’s office, we were interrupted twice by police officers wanting to discuss a case or seeking advice.
prosecutors before the criminal court (s. 430). The functions of the Attorney General start from the day on which he receives the record of the inquiry made by the magistrate’s court (s. 431). The Attorney General is the only person with the power to discharge the person accused. If the Attorney General is of the opinion that there are not sufficient grounds for filing an indictment against the accused, he may order his discharge and file a declaration to that effect in the criminal court. He may furthermore withdraw an indictment which was already filed (s. 433). When the Attorney General takes such a discretionary decision, he must make a report to the President of Malta and state the reasons for his action (s. 433-4). The latter requirement is clearly included as a double check against any abuse of power vested in the Attorney General to discharge an accused or discontinue criminal proceedings. However, the margins of appreciation are already relatively small. The Attorney General can take the decision not to prosecute if there is sufficient evidence, however such a step is rarely taken (see § 7.1, B.5).

The police and Attorney General’s office are independent of each other, not only in their function as prosecuting public officers but also regarding their other duties, such as the investigation of crimes and the collection of evidence. The Attorney General’s office is not empowered to supervise or direct the police. Nonetheless, the police often consult the Attorney General’s office on legal matters in a case. The contacts between the police and the Attorney General are quite informal and cordial. The police usually have to be in court anyway as prosecuting officers and so they frequently stop by the Attorney General’s office which is opposite the court building.15 (see § 7.1, B.5 and B.7; for training, see § 8.1)

3.3 Judiciary

Members of the judiciary – magistrates and judges – are appointed by the President. The denomination ‘magistrate’ is used for those members of the judiciary who work in the lower criminal court or magistrate’s court. ‘Judges’ are those members of the judiciary who sit in the superior courts (for training see § 8.1).

The courts of criminal jurisdiction are divided into two separate tiers: the inferior and the superior courts. All the courts of criminal judicature are established by Cap. 9 of the Laws of Malta. The inferior courts are the two courts of magistrates of Malta and Gozo. The superior courts are the court of criminal appeal, and the criminal court. The superior courts are all situated in the capital Valletta, on the island of Malta. The Constitutional Court is not a court of criminal jurisdiction; it is regarded as a civil court.

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<th>superior courts:</th>
<th>inferior courts:</th>
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<td>court of criminal appeal</td>
<td>courts of magistrates (court of judicial police)</td>
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<td>criminal court (or jury court)</td>
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<td>tries serious offences as a court of first instance</td>
<td>b) trial of summary offences: as a court of criminal judicature</td>
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The magistrate’s court is composed of one magistrate. It has a twofold jurisdiction, as a court of

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15 This is on the island of Malta. With respect to the island of Gozo, contacts with the Attorney General’s office are mostly conducted by telephone or fax, although occasionally the police officer in question may have to personally visit the office for consultation.
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criminal judicature and a court of criminal inquiry. As a court of preliminary inquiry, the magistrate’s court is responsible for the compilation of evidence for cases punishable with more than six months’ imprisonment (s.370 and s. 389). During preliminary hearings, it will collect and conserve evidence which may eventually serve as the basis for a trial. On the conclusion of the inquiry, the magistrate’s court will decide whether there are sufficient grounds to commit the accused to trial on indictment (s. 401-2). If the answer to that question is affirmative, it is referred to as a prima facie case. This means that if the evidence is considered at its face value, there is enough evidence to bring charges against the suspect. If there is not enough evidence, the court will either discharge the accused or acquit him as the case may be. The latter decision can only be taken if it is not a complainant offence, and if the offence falls within its competence, i.e. as a rule, offences subject to the punishment of not more than six months.

In all cases, the court is bound to send the record of the inquiry to the Attorney General within three working days. If the court finds that there is not enough evidence it has to discharge the accused. If, in addition to the indictable offences, there are summary offences with the competence of the court as court of criminal judicature, then the court will examine the merits of those offences and will pronounce judgement convicting or acquitting the person charged. In pronouncing judgement in the latter case, the court functions as a court of first instance, and an appeal can be lodged with the superior court. With respect to the decision to discharge the suspect, on grounds of lack of evidence, from the charge of an indictable offence the Attorney General may, within one month from the date in which he receives a record of the inquiry, issue a warrant to arrest the person discharged if the Attorney General and a judge not ordinarily sitting in the criminal court or in the court of criminal appeal concur that there are sufficient reasons to commit the person charged to stand trial on indictment (s. 433-3). If there is not enough evidence, the case of the discharged person is not closed and the police have to continue the investigation and search for more evidence. If fresh evidence is produced new proceedings may be instituted against the person who has been discharged (s. 434).

As a court of criminal judicature in first instance, the magistrate’s court has competence over all contraventions and crimes punishable with a fine or imprisonment not exceeding six months. The competence of the magistrate’s court can be expanded by some of the crimes which fall into the large category of offences ‘triable either way’(between six months and 10 years of imprisonment). These crimes can, although formally they have to be tried in the criminal court, be tried in the magistrate’s court if the Attorney General and the accused agree to it. If the accused objects, the case will be tried by a jury in the criminal court (s. 370-3d). In practice, this category of crimes is usually tried by the court of magistrates, where the public prosecutor is a police officer, and not a prosecutor from the Attorney General’s office (see §§ 3.1 and 3.2).

During the pre-trial stages leading to an indictment and during the trial stage of summary offences in the magistrate’s court, the victim who reported the crime to the authorities (the complainant, see § 5.2) can appear with a lawyer and submit evidence to the court of preliminary inquiry. He can cross-examine witnesses of the defence and bring his own witnesses as well (see § 5.3).

The criminal court has the authority to try all offences liable to a prison term longer than six months. Offences liable to imprisonment between six months and 10 years, however, are triable either way, i.e., by the court of magistrates (subject to agreement between the Attorney General and the person charged) or by the criminal court should the Attorney General insist on a trial by jury or should the accused opt for a trial by his peers.
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Jurisdiction of the courts of criminal jurisdiction:

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<th>Contraventions and crimes punishable by a fine or imprisonment no longer than six months:</th>
<th>Court of magistrates</th>
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<td>Crimes punishable by a prison term between six months and ten years:</td>
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<td>Crimes punishable by more than ten years’ imprisonment:</td>
<td>Criminal court</td>
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The criminal court is composed of one of the judges of the superior courts and sits with a jury of nine persons. The jurors decide on the issue of guilt (s. 436-2). The judge has to instruct the jury on the rules of law and justice by which the evidence is weighed (s. 465) and is competent to determine the sentence of the perpetrator, if he is found guilty. The criminal court may also sit with three judges, without a jury, in the case of certain offences under the Official Secrets Act.

There is also the possibility for the accused to opt to be tried by the criminal court without a jury in which case even the question of guilt would be determined by the single judge sitting on his own (s. 436-6). Such a request must be made by the accused not later than ten days after the date of service upon him of indictment by the Attorney General in the criminal court. Since this amendment was introduced in 1987, only three accused persons have opted to be tried by the criminal court without a jury.16

The court of appeal is composed of the Chief Justice, who is the president of the court, and two other judges. The court of appeal hears appeals from decisions of the criminal court and the court of magistrates. However, in the latter case, the court is presided by only one judge. Judges who are competent to sit as members of the court of appeal, can also sit in the Constitutional Court. The Constitutional Court has to be composed of three such judges (s. 95 Const.). The jurisdiction of the Constitutional Court is appellate in cases involving violations of human rights, interpretation of the Constitution and invalidity of laws.17

With respect to crimes committed by juveniles, a special court has been set up.18 It consists of a magistrate sitting in a place different from that of the ordinary courts of criminal jurisdiction19 and hears cases relating to persons under the age of 16. During its criminal proceedings, the juvenile court is assisted by two experts (psychologists or social workers), one of whom has to be a woman. The court consults the experts but is not bound by their opinion.

Finally, the small claims tribunal is worth mentioning even though it is not a court of criminal jurisdiction. However, this tribunal is important for those victims of crime who have a claim of less than 100 Liri Maltese (EUR 244) against the offender. The small claims tribunal has been set up recently by an Act of Parliament. It provides for the appointment of an adjudicator who decides these cases on principles of equity and the law. The adjudicator may be a lawyer with at least one year experience or a legal procurator with three years’ experience. The proceedings before this court are summary and there is little formality. The intention is to deal with claims in one or two court sessions.20

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16 Information supplied by Mr. De Gaetano, senior lecturer at Malta University and judge at the superior courts, when correcting this chapter.

17 For more information on the judiciary see K. Aquilina, P.E. Micallef, A profile of the Maltese courts of justice, Department of Information, Valletta, Malta, March 1992, p. 18-24. See also the official website of the Maltese government (http://www.magnet.mt/info/state/court01.htm)

18 The Juvenile Court Ordinance was repealed by Act XXIV of 1980. The juvenile court is now provided for by this 1980 Juvenile Court Act (Cap. 287) as subsequently amended by Act XI of 1985.

19 Sittings are currently held at the social center, ‘Centru Hidma Socjali’, in Santa Venera.

20 In addition to this initiative to deal more quickly with crime, a small number of infringements of the law, such as minor traffic offences, illegal disposal of litter, non-compliance with the Education Act, etc., have been depenalised and are heard by commissioners of justice. The
3.3.1 Criminal Proceedings

Trial proceedings before the magistrate’s court are usually said to be completed within one year after the report. However, some cases are finished within a day. Others take not one year but many. Cases before the criminal court may take approximately three to six years, mainly because of the obligatory preliminary inquiry. If after the preliminary inquiry the case is referred to the criminal court, the victim no longer holds a formal position. He is merely a witness for the prosecution. During the court proceedings, the victim does not need the services of a lawyer because as a rule the lawyer will not be allowed to speak on behalf of the victim or intervene in the proceedings.21

3.4 Enforcement Authorities

The enforcement authorities have no obligation to the victim to assist him with the enforcement of his civil claim for damages.

3.5 Probation Services

If compensation is ordered by the court in combination with a probation order or discharge, the victim may be assisted by the probation service in the collection of the money. The probation service, however, is very small-scale, with only four probation officers to cover the area of Malta and Gozo. Understandably, it is difficult for so few officers to deal with offenders and victims at the same time. The courts do not make use of the probation orders as much as they would like to, because they know the limitations of the probation service. Currently, more probation officers are being trained to be able to broaden the scope of their activities.

3.6 Victim Services

There is no national victim service in Malta. However, there are some services available for victims of crime. Firstly, police headquarters houses a victim support unit staffed by one male and four female police officers. The victim support unit handles mostly sex offences, including prostitution, and cases of domestic violence. Given the workload, the unit is rather understaffed, especially since within the Maltese criminal justice system, police officers -and thus also those of the victim support unit- are responsible for the prosecution of their cases. Hence, the victim support police officers have to go to court to prosecute the perpetrators of sexual crimes.22 The victim support unit of the police works in close co-operation with other services and refers victims to them for social, legal and psychological assistance.

Another victim service is provided by the Social Welfare Development Programme, situated near the capital in Blata-l’Bajda. It is an agency set up by the Ministry of Social Development in 1994. It specializes in social work and service development.23 It consists, inter alia, of a domestic violence unit, a child protection unit and a Butterfly centre. The purpose of the Butterfly centre

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21 Information supplied by Mr. De Gaetano, senior lecturer of Criminal Law at Malta University and judge of the superior criminal court, 9 May 1998.

22 It proved to be quite difficult to get an appointment with one of the police officers of the victim support unit because they were absent from the office to prosecute cases in court. During my stay there was a court case in Gozo against a teacher who had allegedly abused several of his pupils. The case lasted several days during which the unit was virtually impossible to reach for me and all victims seeking help.

23 Among the services created by the service development unit are: the health social officers, family therapy service, butterfly center (a child crises center), central functions support program, Gozo social task forces, ability social work unit for the disabled and others.
Since the establishment of the center, the domestic violence unit has provided assistance to 1,010 clients, of which 22 were men. The unit consists of 5 social workers.

Domestic violence is a serious problem and is increasingly recognized as such. However, in many layers of society domestic violence is still considered 'normal', though this attitude is starting to change. In particular young women do not accept it anymore. In spite of these developments, many policemen prefer to treat domestic violence as a private matter in which they do not want to interfere. It is not uncommon that women are advised to go home and make up 'under the sheets'. Also magistrates and judges suffer from lack of knowledge about and understanding of the concept of domestic violence and its effects on women. Information supplied by social workers of the domestic violence unit, Blata l-Bajda, 6 May 1998; and Sister Farrugia of the shelter for victims of domestic violence in Balzan, 6 May 1998.

Crossing the sea between Malta and Gozo takes about forty minutes and another half an hour to reach the unit by bus. By car it takes less time. However, a domestic violence unit and a child protection unit on the island and Gozo would be welcome. According to most people I spoke with, the situation on Gozo is considered much worse than on the island of Malta. Men on Gozo are said to treat their family as their possession. In May 1998, the month of my visit, several cases of abuse and violence were brought to court in Gozo. The fact that women and children were willing to involve the authorities in cases of violence in the family was said to be a new development.

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its effects. Finally, they should include a possible solution to remedy the wrongful action.28

4 SOURCES OF LAW

4.1 General Sources of Law

The most important sources of law are the Constitution and the Laws of Malta, which is one Code, subdivided into different Chapters (Cap. x), each representing a separate Code or Act.

The Constitution of 1964 is inspired by Constitutions of other former colonies, such as India and Nigeria, and by the European Convention of Human Rights. Chapter Eight of the Constitution contains provisions relating to the judiciary, and establishes the superior and inferior courts (s. 95-101A Const.). The Maltese legal system has always had Codes. In spite of British rule, the Statutory law maintained its relevance and case law is a source of law, but not of the same order as in other common law systems. The courts do, almost routinely and as a matter of course, quote previous judgments of the same court or of superior courts in authoritative support of statements about the law. Previous court decisions as a matter of law are not binding on the courts, although it is very rare that previous decisions are disturbed. Whether or not English case law is quoted, depends on the subject matter or the competence of the particular court. Thus, English case law is very commonly quoted in the courts of criminal jurisdiction, in public law cases and therefore by the Constitutional Court or by the civil courts when taking cognizance of matters of public law. On the other hand, in private law English law is rarely quoted. Legal doctrine is not a source of law, but has persuasive force (see § 1).

4.2 Sources of Criminal Law and Procedure

The most important source of criminal law and procedure is Chapter 9 (Cap. 9) of the Laws of Malta (1854). It contains both the substantive and procedural rules of criminal proceedings.29 Other sources of law worth mentioning are, for instance, the Code of Police laws (Cap. 10), the Probation of Offenders Act (Cap. 152), the Inferior Courts (Re-designation) Act (Cap. 340), the Judicial Proceedings Act (Cap. 189) concerning the use of the English language, and the Children and Young Persons Act (Cap. 285). The latter Act contains inter alia care orders for juvenile delinquents.

4.3 Specific Victim-Oriented Sources of Law and Guidelines

Within the Maltese justice system, there are no specific Acts, nor guidelines or directives concerning victims. There is no Legal Aid Act but the Laws of Malta contain some provision enabling both defendants and victims to get free legal aid in civil proceedings (s. 119-125, Cap. 12). The only problem is that in the case of civil proceedings the income limit is extremely low. In practice, however, the rules are applied somewhat less strictly. The victim is not entitled to legal aid in criminal proceedings.

With respect to State Compensation, the Cabinet (1987) has decided to approve ex gratia payments to certain restricted categories of victims who suffered bodily harm resulting from (a) the breakdown of law and order; (b) police officers, being in breach of law, who cause wilful harm; (c) members of the security forces in the courts of their duties, as result of criminal offences.

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28 See the government’s official website: http://www.magnet.mt/info/state/ombudsmn.htm
29 Because of the absence of separated Codes, the relevant provisions of Chapter 9 of the Laws of Malta (the Code of Criminal Law and Procedure) will be noted as follows: (s. x). Other Chapters are quoted according to their respective numbers.
CHAPTER 16

The quantum of damages is determined on the basis of advice given by the Attorney General’s office.

Recently, a commission has been set up to work on a draft of an Act on Domestic Violence, and another commission will be set up to evaluate how to facilitate giving evidence in court (see §§ 8.2 and 8.3).

5 ROLES OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM

The roles and the position of the victim in the criminal justice system are to a great extent influenced by the court before which the case is pending. Only in the magistrate’s court, can the victim who reported a crime act as an injured party. In the criminal court, however, the victim can play no other role than that of a witness for the prosecution (see Scenery).

5.1 Reporting the Offence

According to the wording of the Laws of Malta, reporting the offence refers to the act whereby a public officer, who, in the enforcement of his duties, becomes aware of an offence that can be prosecuted *ex officio*, is bound to give notice to the competent authority. The term ‘information’ (*denunzjia*) is used to refer to the act of an individual who spontaneously gives notice to the police of an offence which can be prosecuted ex officio. Citizens can lay an information with any officer of the police (s. 535). If a victim reports a crime, it is officially called a complaint. Accordingly, the term ‘complainant’ is, therefore, used to refer to a victim who reports a crime (and should be distinguished from the terminology used in § 5.2).

Pursuant to the law, every person who feels himself aggrieved by any offence and wants the offender punished may lay an information or file a complaint to any police officer, even by letter (s. 538). The difference between the information and the complaint is that an information may be laid by any person, but a complaint must be made by the person who has a direct interest in the punishment of the offender, or the wish to obtain redress at the hands of the court. The complaint may be made to any police officer. Complainants may be victims, their spouses or other family members or legal representatives (s. 542). The complainant holds a special position in the lower courts. He may act as an injured party and has, as such, several rights within the proceedings in the magistrate’s court (see § 5.3).

Under Maltese law there is no general obligation imposed on private citizens to lay an information with the police. However, it may constitute an offence not to inform the police of crimes against the state (s. 61). If is also a contravention for a person who is present at any attempt against the life or property of another person to fail to report it to the police (s. 338-e). Likewise, certain special laws oblige certain persons or professions to lay information of crimes or the suspicion that an offence was committed. For instance, the Medical and Kindred Professions Ordinance (Cap. 51) obliges medical doctors to report crimes such as bodily harm, poisoning or violent death of which they have become aware in the practice of their profession. Social workers and other victim support workers are not obliged to report crimes which have come to their knowledge through their clients.

Crimes can be reported verbally or in writing. If it is reported verbally, it should be reduced to writing and signed by the informer to ensure its authenticity (s. 537). The police cannot act upon an anonymous information, except in the case of an offender caught red handed, or an ongoing offence (s. 535). The reporter of a crime, the person laying an information or the complainant, shall clearly state the facts and shall, as far as possible, furnish all such particulars as may be requisite to ascertain the offence, to establish its nature as well as to make the
principals and the accomplices known (s. 536). Upon receipt of any information or complaint which require proceedings to be taken, the executive police shall inform the magistrate’s court as soon as possible in order to receive the necessary directions for such proceedings (s. 540). If the police refuse to take action, the person who laid the information, or made the complaint, can submit an application to the magistrate’s court and request it to order the police to take action. If, after hearing the evidence by the applicant and the Commissioner of Police, the court is satisfied that the information or complaint is **prima facie** justified, it notifies the Commissioner and order the police to take action (s. 541). In practice, this is referred to as ‘challenging the police’. The police do not like being challenged in this way, so this is rarely used. (see § 7.1, B.5).

### 5.2 Complainant

For certain crimes, a complaint is necessary in order to start criminal proceedings. In these cases, the use of the term complaint equals the term normally used in this paragraph.

The police is not allowed to institute proceedings without a formal complaint of the victim or his representative in case of (a) carnal knowledge accompanied by violence; (b) abduction; (c) violent indecent assault, except in those cases where these crimes are committed with public violence, or are accompanied by any other offence affecting public order. In other words, if these crimes have occurred outside the home, in a public place, the offences can be prosecuted without a complaint (s. 544). There are some other crimes, and a number of contraventions, where proceedings may not be instituted in court without the complaint of the injured party, such as defamation and libel (s. 255 and 256, see § 5.4).

There are two main reasons why the legislature has introduced the prerequisite of the complaint. First, it does not want to perpetuate hatred among family members. Therefore, for certain minor offences against the person and some property crimes, the law makes criminal action dependant on the will of the victim. Second, in certain offences affecting the honour or reputation of a person or his family, it is felt that criminal proceedings may increase the damages suffered by giving publicity to the crime and to the private life of the victim and/or his family.31

The complaint can be made verbally or in writing, but it should, except in cases which allow no delay, be put in writing and have a signature (s. 539). The victim who acted as a complainant but regrets this later on can still stop the criminal proceedings. The institution and continuance of criminal action are fully dependant on the will of the complainant up to the verdict. Until that final moment, the complainant can waive the complaint and stop the proceedings (s. 545). The accused, however, may object to the waiver and insist the proceedings will continue. If the waiver is made after the opening of the trial and it appears to the court that the complaint was frivolous or vexatious, or made with the object of extorting money or making any other gain, the court may direct that the proceedings are instituted against the complainant for calumnious accusation or false evidence (s. 545).32 The complainant has the right to act as an injured party (see § 5.3) before the court of magistrates.

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31 Original Mamo Notes on Criminal Procedure, p. 18-19. The Mamo Notes, distributed to students by Prof. Mamo of the (then) Royal University of Malta during the late forties or early fifties, were never officially published, but they are still used by legal practitioners and even quoted by the courts. For instance in Appeal nr. 138/95D, The Police ([Sharon Tanti vs. Thomas Wiffen](#)). Some parts of the Notes on Criminal Procedure have been revised by senior lecturer and judge De Gaetano. Some parts of the Notes on Criminal Law have been revised by senior lecturer De Camilleri (Deputy Attorney General).

32 Revised Mamo Notes, Chapter 3, p. 21.
5.3 Injured Party

Under current Maltese law, the civil claimant within criminal proceedings is unknown. The only way in which a victim can seek redress for sustained injuries and damages is through the civil courts. The criminal justice system is understood as the concern of the state and puts an emphasis on the relation between the state and defendant. As a result the position of the victim is marginal to non-existent. The victim is usually just a reporter of the crime and a witness for the prosecution (see § 5.5), without having the right to pursue his need for compensation and present his claim for damages to the court.

Nonetheless, in proceedings before the magistrate’s court, the victim in his capacity of complainant can act as an injured party, a role which is similar to that of the civil claimant. According to s. 410 (3), the injured party has the right to engage an advocate or legal procurator to assist him. The advocate or legal procurator may examine and cross-examine witnesses, produce evidence or make, in support of the charge, any other submission which the court may consider admissible. However, the injured party does not have the right to claim damages. Therefore, the injured party is not a real equivalent of the civil claimant, even though in many ways the rights of the injured party are similar to the role of a civil claimant in other jurisdictions.

5.4 Private Prosecutor

In the typical accusatorial system, the right of instituting and carrying on the criminal action is vested in every private citizen. However, in practice, the great majority of prosecutions are instigated and carried out by the police, and to a lesser degree by the Attorney General’s office. In the Maltese criminal justice system, the criminal action is essentially public, and private prosecutions are rare. It is only in cases within the jurisdiction of the magistrate’s court that the proceedings can be carried out by private persons employing their own counsel, and this only in respect of those offences which, according to the law, cannot be prosecuted except on the complaint of the injured party (s. 373).

Private prosecution, therefore, is performed only by the complainant (the term as used in § 5.2). If a complaint is the conditio sine qua non of prosecution, the responsibility for it lies with the injured party (or his representative, s. 373). The complainant and the defendant are then summoned to appear in person before the court (s. 374-f). The court may however, if it is dealing with a contravention, exempt the parties from appearing in person and allow a representative to appear (s. 374-b). The complainant and the defendant can both be assisted by an advocate or legal procurator (374-a).

5.5 Witness

The general rule common to criminal and civil law is that every person of sound mind is admissible as a witness, unless there are objections to his competency (s. 629). Even though all witnesses have to take an oath, they can be of any age; even a very young person can be a witness as long as the court is convinced that he understands that it is wrong to give false testimony (s. 630). The fact that the witness is the same person who laid the information, or filed the complaint is not grounds to object to his competence as a witness. Nor can objections...
be made on the grounds that he is related or connected with these parties or with the accused (s. 633). The court, however, may decide that the witness may be excused from giving evidence against a family member. This is up to the discretion of the court (Reg vs Aquilina, 1953).

The police inspector who handles the case is usually also the prosecuting officer in the magistrate’s court. Therefore, the victim knows the police officer and the police officer can explain the necessity of his testimony in court. The police have no obligation to inform the victim of what it entails to be a witness and that he will be cross-examined by the defence, but many police officers will talk about this. This is especially true of the police prosecutors of the victim support unit, who handle the sexual crimes and cases of domestic violence and talk with their witnesses to reassure them. Also, the prosecutors of the Attorney General’s office may see the victim-witness before the trial, although it is not possible to speak each one. In very serious cases, the victim will often be asked to come to the Attorney General’s office, where the prosecutor will explain the proceedings and try to reassure the witness. The primary objective of this meeting is not to assess the credibility of the victim-witness, but to reassure the witness and prepare him for what he should expect when the witness takes the stand. The prosecuting authorities are not allowed to instruct the witness on what to testify in court but they may inform the witness on the kind of questions that the prosecution or the defence is likely to ask. Most prosecutors from the Attorney General’s office, however, prefer to avoid this kind of contact with witnesses in order not to give occasion for the defence to later suggest some form of improper conduct by the prosecution. (see § 8.2).

PART II: 
THE IMPLEMENTATION OF RECOMMENDATION (85) 11

6 THE VICTIM AND INFORMATION

6.1 Informing the Victim

(A. 2) The police should inform the victim about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation.

The police are not obliged by law or directive to inform victims. However, the police force has established a victim support unit (see § 3.6). According to internal protocols, the police should call in the victim support unit when dealing with victims of violent and sexual crime and in cases of domestic violence. The unit provides legal and practical information to victims, and cooperates with other services. Certain types of information may be given to victims. In practice, social services and welfare programmes (such as the domestic violence and child protection unit, see § 3.6) are well-known by the police and they may inform victims of these services. However, this depends largely on the attitude of the individual police officer handling the case. But even when the police are willing to inform victims of services which provide assistance, not every victim is eligible for help. Therefore, the police usually try to involve the family or neighbours in supporting the victim. Family ties are still very strong and support from members of the family are more easily organized than official help.

34 Information supplied by inspector Mrs. S. Tanti of the victim support unit, 14 May 1998.
35 Information supplied by Dr. Camilleri, Deputy Attorney General, 12 May 1998.
36 Inspector Muscat remembers a case in which fire destroyed the house of an old lady without any relatives. She tried to arrange help and housing through the official channels. This proved to be very difficult and too slow a process. The only thing that could be done to give the victim some new clothes and a roof over her head was to involve the neighbours.
For legal advice, the police will usually advise a victim to contact a lawyer. If a victim is considering presenting a civil claim for damages, he will be told that compensation is dealt with in the civil courts (see § 7) and that he is obliged to have a lawyer to initiate civil proceedings. The police will also tell him to prepare a list of the damages and present it to the court as part of the evidence. If goods have been found or confiscated, the procedure on how possessions can be returned is explained to the victims.\textsuperscript{37} No state compensation scheme for victims of violent crime has been set up, although state compensation exists for certain victims of public disorder (see § 4.3).

In March and April 1998, a survey was carried out on behalf of the CMRU to assess public perceptions of the police services.\textsuperscript{38} Pursuant to this survey of the general Maltese population, the vast majority of the respondents were satisfied (61\%) to very satisfied (19\%) with the Maltese police. They mentioned that the police were helpful (83\%); 73\% and 72\% respectively considered the police to be well mannered and friendly, and 79\% said that the police were prepared to listen. And the vast majority of them considered the police to be efficient (70\%), well educated (78\%) and good at their job (76\%).\textsuperscript{39} The survey showed that people with a higher level of education tend to be less satisfied with the police than those with lower levels of education. Also, women have a significantly higher opinion of the police than men and are more positive regarding their efficiency.\textsuperscript{40} The high scores in public satisfaction surprised even the police, although they expected to do well in the survey.

This favourable outcome notwithstanding, the survey also revealed criticism of the police. Of the respondents, 17\% were not so satisfied and 3\% not at all satisfied.\textsuperscript{41} The respondents could indicate more than one reason for dissatisfaction.\textsuperscript{42} The reasons can be grouped into two categories: attitude and behaviour of the police. Concerning the attitude of the police, the following reasons for dissatisfaction were given: the police were unhelpful (27\%), threatening (17.1\%), arrogant (36\%), or rude (25.8\%). Others indicated police behaviour as a source of dissatisfaction: the police did not listen to them or believe them (26.9\%), did not keep them informed (6.2\%) or did not respond immediately (19\%). Finally, 36.3\% of the respondents were dissatisfied with the follow-up.\textsuperscript{43} It is interesting to note here that only 6.2\% claimed to be dissatisfied for not being kept informed by the police. This is a small percentage, in view of the fact that the police have no formal or legal obligation to keep victims informed. The fact that so few people complain can perhaps best be explained by local realities, such as the fact that the Maltese do not yet seem to expect to be given basic information on their rights and opportunities. They do, however, wish to be informed of what has happened in their case. Dissatisfaction with the police for not being kept informed are most likely related to the fact that the police did not tell them whether a suspects was apprehended.

Apart from the criticism of the respondents, social services are also critical of the police, especially the domestic violence unit. According to the social workers, it is quite common in small villages for the police to minimize the incidents and try to reconcile the couple. Moreover, they claim that many police stations are not victim-friendly. The victims who want to report a crime are not given any privacy. This is an additional burden for victims in such a small community. Often they have to report while others are queuing behind them. Also, police

\begin{itemize}
  \item \textsuperscript{37} If the goods are needed as proof during the trial, the victim has to file a request after the trial or ask the court orally to return the goods.
  \item \textsuperscript{38} Survey of the General Population, Malta Police Force modernisation programme, May 1998. The survey is based on face-to-face interviews by trained interviewers with one thousand people. Respondents were selected on the basis of a quota representative of the age and gender of the Maltese population aged 18 and over (pp. 2 and 5 of the Survey).
  \item \textsuperscript{40} Survey of the General Population (1998), p. 10.
  \item \textsuperscript{42} The reasons are indicated as first and second answers. For instance, 14\% indicated as a first reason for dissatisfaction that the police were threatening and 3.1\% as a second reason.
  \item \textsuperscript{43} Survey of the general population (1998), p. 28.
\end{itemize}
women are often not available late at night.\textsuperscript{44}

\textit{(A. 3) The victim should be able to obtain information on the outcome of the police investigation.}

According to the police commissioner, no official procedure has been developed regarding information on the outcome of the police investigation. However, victims usually are informed by the police if a suspect has been apprehended. And victims can contact the police at any time during the investigation to ask for information. The victim is always told the police officer’s name and telephone number to facilitate contact between the police and the reporter of crime. This is very important to the victim, especially in a community like Malta where it is quite easy to contact the authorities and obtain information concerning the case. The victim does not need the file number to get basic information on developments in their case, or to find out the results of the police investigation.\textsuperscript{45}

The 1998 survey shows that only 6.2\% of the respondents complained about not being informed by the police (see A.2). But the survey fails to indicate what kind of information these victims would have liked to receive. From a legal perspective, it is quite possible that the police are not to blame for not keeping victims informed. Due to the principle of secrecy, the police are not at liberty to provide victims with detailed information about an ongoing investigation.\textsuperscript{45}

\textit{(B. 6) The victim should be informed of the final decision concerning prosecution, unless he indicates that he does not want this information.}

The final decision concerning prosecution may be taken either by the police or by the Attorney General with respect to offences liable to a punishment not exceeding six months’ imprisonment. The decision to prosecute usually is decision taken by the police. However, they have to prosecute if there is a \textit{prima facie} case.\textsuperscript{46} There is one exception to this rule: if the case can only be prosecuted after a complainant by the victim, the latter has the right to waive the complaint thereby stopping the prosecution. If the case is prosecuted by the police, the victim is notified because he is required to give evidence in court. Usually, the victim is informed by means of the summons, which may be served a long time after the decision to prosecute.

The police have no duty to inform victims about the decision not to prosecute. In offences liable to punishment between six months and four years’ imprisonment, the preliminary inquiry may be waived if the Attorney General so directs, and the person charged does not object. In such circumstances, the case is dealt with by the court of magistrates as a court of criminal judicature. The final decision concerning prosecution in inquiry proceedings is taken by the Attorney General. The court of magistrates is the first to take a decision on whether the person is charged for a trial on indictment. If it, however, discharges the accused, the Attorney General may still order the arrest of that person if a judge agrees with the Attorney General. Conversely, if the magistrate’s court does commit the person charged to stand trial on indictment, the Attorney General is still free to issue a \textit{nolle prosequi} if he is of that opinion.

The victim’s lawyer is notified of the final decision on prosecution taken by the magistrate’s court, but only in the sense that he has the right to be present when this decision is announced in public; if he is present, he receives notice. If the victim has no lawyer to represent him, and not many victims do, he may not know the decision unless he takes the trouble to ask the police

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\textsuperscript{44} Seminar on Secondary Victimization, 15 May 1998. The seminar was organized by the domestic violence and child protection unit, on the occasion of my visit, to demand more attention for the position of victims within criminal proceedings. The seminar was well attended by members of the police, the victim unit, the Attorney General’s office, judges and magistrates, as well as by others interested in this topic.

\textsuperscript{45} Information supplied by Police Commissioner Grech, Assistant Police Commissioner Rizzo and inspector Muscat, Police HQ, Floriana, 5 May 1998.

\textsuperscript{46} A case is considered \textit{prima facie}, if the police gathered sufficient evidence against the accused to start criminal proceedings.
prosecuting officer or makes enquiries with the court registry.\textsuperscript{47} In practice, it is very rare for victims without a lawyer to be present at the hearing to learn the decision. If the crime is prosecuted by the Attorney General’s office, the victim has to contact the office to find out the final decision concerning prosecution, positive or negative. The Attorney General’s office does not take the initiative to notify the victim. Again, the summons to appear as a witness will serve the purpose of relaying the information about the decision to prosecute.\textsuperscript{48}

\textbf{(D. 9) The victim should be informed of:}

- the date and the place of a hearing;
- his opportunities of obtaining restitution and compensation within the criminal justice process, legal assistance and advice;
- how he can find out the outcome of the case.

As a rule the victim has to appear in court and give evidence. As a witness, the victim has to be summoned and is thus informed of the date and place of the criminal proceedings. However, he is not automatically informed of the outcome of the case.

Before the magistrate’s court, the victim, as an injured party, has a formal status (s. 410, see § 5.3) and has the right to be informed of the date and place of any hearing, as well as of the outcome of the case.\textsuperscript{49}

Before the criminal court and the court of criminal appeal, the victim has no formal status. His only right and duty is to act as a witness for the prosecution and to give evidence during the trial. As a witness, he will be summoned to appear in court. The summons contains the date and place of the trial. He is, however, not informed of the outcome of the case.

Information about the victim’s opportunities to obtain restitution or compensation is not provided. This is not considered a matter of criminal law or procedure and the victim cannot make an application to receive damages from the offender (see § 7). If the victim wants to obtain restitution or compensation, he has to consult a lawyer and file a civil suit for damages in civil court. There is only one exception to this rule: the victim, personally or through his lawyer, may prevail upon the prosecuting officer to persuade the court to award compensation in combination with a probation order or suspended sentence in appropriate cases. Clearly, this option is not open in the majority of cases.\textsuperscript{50}

\section*{6.2 Information About the Victim}

\textbf{(A. 4) In any report to the prosecuting authorities, the police should give as clear and complete a statement as possible of the injuries and losses suffered by the victim.}

A statement on the losses and injuries suffered by the victim is, as a rule, included in the police report. The damages are considered a part of the evidence that the crime has been committed. The amount of the material losses is written down in the report. This is relevant to the punishment of the defendant, and subsequently to the competence of the court. For instance, theft can be aggravated by the amount, the value of the things stolen, and is subsequently threatened by a more severe punishment (s. 261). In the police report, the value will be established according to the statement of the victim because usually victims do not have all the receipts to prove it. The material losses are evaluated and examined in court and can be contested by the defence counsel. The question of compensation, however, is not settled within

\begin{itemize}
\item \textsuperscript{47} Information supplied by Mr. De Gaetano, judge of the criminal court and senior lecturer of the criminal law department of the Malta University, when correcting this chapter.
\item \textsuperscript{48} Information supplied by Dr. Camilleri, Deputy Attorney General, 12 May 1998.
\item \textsuperscript{49} The victim has to pay for his own lawyer. No legal aid is available.
\item \textsuperscript{50} Information supplied by Dr. S. Camilleri.
\end{itemize}

\textbf{VICTIMS OF CRIME IN 22 EUROPEAN CRIMINAL JUSTICE SYSTEMS; PAGES 605-640}
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criminal proceedings (see § 7).  

(D. 12) All relevant information concerning the injuries and losses suffered by the victim should be made available to the court in order that it may, when deciding upon the form and the quantum of the sentence, take into account:
- the victim’s need for compensation;
- any compensation or restitution made by the offender or any genuine effort to that end.

The court is informed of the injuries and losses of the victim as part of the evidence. As stated before, the victim has a certain status before the lower courts, i.e., the court of magistrates, as their rules of procedure are influenced by the continental tradition, contrary to the proceedings in the superior courts. In proceedings before the court of magistrates, the victim may, therefore, as an injured party, produce evidence, as related to his material losses and injuries. The court, however, has limited means of compensating victims (see § 7.2).

The question of compensation or restitution made by the offender or any genuine effort to pay for damages is, however, dealt with at the sentencing stage. The courts are increasingly willing to use sentencing policies as an inducement to indemnify victims. To avoid a more severe punishment, the defence counsel informs the court of any compensation or restitution made by the offender to the victim, or of any intention of the offender to do so.

7 THE VICTIM AND COMPENSATION

In criminal proceedings, compensation plays a very marginal role both in theory and in practice. Apart from compensation attached to a suspended sentence, a probation order or a (conditional) discharge, compensation is dealt with in the civil courts. But even there, moral damages are an exception, the rule being that only actual damages – damnum emergens and lucrum cessans – can be recovered. The exceptions refer to libel, breach of promise to marry, and illegal arrest. Unlike other common law countries, the compensation order does not exist. Likewise, no legal ways exist to make the offender compensate the victim prior to the criminal trial. Mediation programmes are not yet available, although there are some initiatives to create such programmes. In practice, there are a limited number of cases in which the offender agrees to pay compensation prior to the trial. However, even the payment of full compensation to the victim during the pre-trial stages will not lead to a waiver of prosecution. This is due to the legality principle. Consequently, there is no real incentive for the offender to compensate the victim, other than the court practice that he will get a more lenient sentence if he pays or offers to pay compensation to the victim (see § 6.2, D. 12.). Hence, it is most likely that victims will actually get some compensation from the offender at the sentencing stage, after he has been found guilty by the court or jury. During the sentencing, the defence counsel may encourage the offender to compensate the victim.

7.1 The Expediency Principle and Compensation

(B. 5) A discretionary decision whether to prosecute the offender should not be taken without due consideration of the question of compensation of the victim, including any serious effort made to that end by the offender.

Concerning the decision whether to prosecute or not, a distinction should be made regarding crimes prosecuted by the police and those by the Attorney General’s office. If the police are the

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Information supplied by Police Commissioner Grech, Assistant Police Commissioner Rizzo and inspector Muscat, 5 May 1998.
prosecuting authority, the inquiry, i.e., committal proceedings, takes place. At the end of the inquiry the court has to decide, on a *prima facie* basis, whether there is sufficient ground for an indictment to be filed. If it is of the opinion that there are sufficient grounds, it will send the record of the case to the Attorney General. At this point the Attorney General, strictly speaking, is engaged in the case. It is then up to him to decide (1) whether to file an indictment before the criminal court (trial by jury), (2) whether there even is a case for trial; and if not a *nolle prosequi* is issued (which is a rare occurrence), or (3) whether, if the offence is liable to punishment not exceeding ten years’ imprisonment, to send the case back to the court of magistrates to be tried there, provided that the accused agrees to be tried before the lower court. In practice, most cases end up this way. If the court of magistrates as a court of criminal inquiry is of the opinion that there are insufficient grounds for an indictment to be filed, it will discharge (not acquit) the accused. A person discharged can be prosecuted again, if new evidence is discovered. Moreover, the Attorney General may not agree with the discharge, and may think that there are sufficient grounds to indict. In that case the Attorney General, if he obtains the concurrence of a judge not ordinarily sitting in the criminal court or in the court of appeal, may issue a warrant for the re-arrest of the person discharged, and the proceedings continue against him. The bottom line is that even in the most serious cases, e.g. homicide, the first decision is to arraign the court (court of magistrates as a court of criminal inquiry) is technically taken by the police, not by the Attorney General. In practice, the police consult the Attorney General before arraigning but they are not obliged to do so. The Attorney General has only moral, not legal, authority over the police and over the proceedings at this stage.52

If the case is prosecuted by the Attorney General’s office, the legal file is already at the disposal of the Attorney General, and the same safeguards apply. He takes the decision on prosecution. As a result of this practice, there is little to no margin of discretion for the prosecuting authorities not to prosecute if there is a *prima facie* case.

(B. 7) *The victim should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to instigate private proceedings.*

Offences which are tried within the jurisdiction of the court of magistrates as a court of criminal judicature (see § 3.3), are prosecuted by the police *ex officio*, except where the law states that proceedings cannot be instituted except on the complaint of the injured party (s. 430). In the latter case, the prosecutor is the victim acting as an injured party (see § 5.3). In practice, however, even in the case of private prosecution, that is, with the injured party or his advocate conducting prosecution, the police often take over. If, as often happens, neither the complainant nor the accused raise any objections before the magistrate, the court will allow the police to prosecute. In the case of offences which are within the jurisdiction of the criminal court (punishment exceeds six months’ imprisonment, see § 3.3), even if the complaint of the injured party is required to set the action in motion, the prosecution is always conducted by the executive police. In this event, the case is brought before the court of magistrates as a court of criminal inquiry.

In addition, with respect to cases prosecuted by the police before the court of magistrates and cases triable before the criminal court, the victim has the right to challenge the decision not to initiate criminal action against the suspect. The victim can go to a magistrate and ask him to review the case and weigh the evidence.

In practice this virtually never happens in cases prosecuted by the police for they, as a rule, start prosecution if there is any evidence, however minor. The police do not like the idea of

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52 Information supplied by Dr. S. Camilleri, Deputy Attorney General and Mr. V. De Gaetano, judge at the superior court. Dr. Camilleri and Mr. De Gaetano are also senior lecturers in Criminal Law and Procedure at Malta University.
being challenged and being reprimanded by a magistrate (see § 5.1). Finally, it is possible to institute private proceedings regarding certain crimes, such as defamation, insults and libel cases (see § 5.4).

7.2 The Court and Compensation

Section 3 of the Preliminaries to Cap. 9 of the Laws of Malta provides that:
1. Every offence gives rise to a criminal action and a civil action.
2. The criminal action is prosecuted before the courts of criminal jurisdiction, and the punishment of the offender is thereby demanded.
3. The civil action is prosecuted before the courts of civil jurisdiction, and compensation for the damage caused by the offense is thereby demanded.

Consequently, compensation is completely separated from the criminal proceedings, although recently some minor changes in this rule have been introduced (see § 7.2, D13). Criminal action does not take precedence over civil action (s. 6). However, the victim’s lawyer usually prefers to wait for the outcome of the criminal action before commencing civil litigation, because from the criminal proceedings he will know more or less what evidence is available for the civil action. There is criticism in the literature about this. According to Caruana, the fact that civil action has to be pursued before a different court, with its own rules and procedures may cause several problems. It may be years before a civil suit can be presented and even longer before the victim is actually awarded compensation for the damages inflicted upon him. The backlogs and delays are much worse than in criminal proceedings because there are motions, hearings, depositions and appeals which are frequently used as tactical instruments to cause delays. Meanwhile, all expenses must be borne by the victim himself. First if he wants a lawyer during the criminal process in the magistrate’s court, and later as the litigant in civil proceedings. In the civil court, the litigation costs can be quite high since he must be represented by counsel. In practice, therefore, civil lawsuits are relatively uncommon because most victims conclude that the benefits are not worth the (financial) risks. Furthermore, the independence of the two proceedings means that the entire case has to be tried all over again. This can be quite hard on some victims.

Due to the separation of the civil and criminal action, compensation plays but a marginal role in criminal proceedings (see D.13). Prior to the criminal process, there are no judicial or official extrajudicial ways to make the offender pay damages to the victim. The payment of compensation to the victim prior to or during the trial also implies that the accused admits guilt. The situation must be beyond salvage before the defence counsel will advise his client to pay up. The defence would rather advise his client to offer compensation after he is found guilty, i.e., during the sentencing hearing, in order to get a more lenient sentence (see § 6.1, B.5).

(D. 10) It should be possible for a criminal court to order compensation by the offender to the victim. To that end, existing limitations, restrictions or technical impediments which prevent such a possibility from being generally realised should be abolished.

The law does not allow the court to order compensation by the offender to the victim. The legislature has not yet removed the general legal impediment which prevents the criminal court from ordering compensation of its own accord, or awarding civil damages upon the request of the victim. Nevertheless, some improvement has been made in recent years. The legislature has introduced the opportunity to attach compensation as a condition to the suspended sentence, the probation order or a conditional discharge (see D. 13.).
In general, the victim has to pursue his claim for compensation for damages caused by a criminal offence in civil court (s. 6). Civil and criminal action may be initiated at the same time or at different times. In civil proceedings arising from a criminal offence, the hearing of the case will take its course *ex integro* and independently of the criminal process. The parties may agree, however, that reference will be made to the evidence collected before the criminal court. A judgement of the civil court discharging the defendant from liability for civil damages does not prevent initiating public action. Conversely, the acquittal of the accused by the criminal court does not prevent continuing the civil action for compensation. The verdict of the criminal court shall be deemed to be pronounced without prejudice to the right to institute civil action (s. 26). Apart from the financial condition accompanying the suspended sentence, the probation order or the conditional discharge, victims cannot obtain moral damages in criminal or civil court.

(D. 11) Legislation should provide that compensation may either be a penal sanction, or a substitute for a penal sanction or be awarded in addition to a penal sanction.

The legislature has not provided for compensation to be a penal sanction, nor a substitute for one. The court can award a very small indemnity to the victim in addition to a penal sanction for only three cases (traffic violations: ss. 51, 69, 82 Code of Police Laws). However, the courts never apply these sections because of the trifling amount mentioned in the law as a maximum indemnity.

(D. 13) In cases where the possibilities open to a court include attaching financial conditions to the award of a deferred or suspended sentence, of a probation order or any other measure, great importance should be given – among these conditions – to compensation by the offender to the victim.

The possibility of a probation order, a conditional or even an unconditional discharge coupled with an order for payment of damages or compensation has been available to the courts since 1941. Only recently was the maximum amount that the court could order was raised to LM 500 (EUR 1218). Previously, the maximum was LM 200 (EUR 488). The probation order, and the order for conditional or absolute discharge, may be made in respect of any offence which does not carry a punishment exceeding ten years imprisonment. The court, on making a probation order or an order for discharge, may order the offender to pay such damages for injury or compensation for the loss as the court may think reasonable provided that it does not exceed the maximum of LM 500 (s. 11 Probation of Offenders Act, Cap. 152). If the claim for

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35 Law reports, vol. VIII, p. 322.
36 Information supplied by inspector S. Tanti of the victim support unit, and by Dr. Agius, criminal lawyer.
37 These sections deal with traffic violations. The magistrate court may not only sentence the offender to the appropriate punishment, but may also order him, or the owner of the vehicle, to pay damages to the victim to the amount of ‘not exceeding two or five liri’ (depending on the violation). This is nowadays merely a symbolic sum. According to judge De Gaetano, in all his years at the bar, as a prosecutor and on the bench, he has never come across a case in which these sections were applied. The reason for this court practice is quite simple, nobody will be interested in a so low an indemnity. He feels these provisions might have made some sense at the turn of century but are useless today, unless the legislature decides to raise the amount the court may award to the victim by way of compensation of expenses. (Personal communication concerning these sections, letter of 9 June 1998).
38 Information supplied by Mr. De Gaetano, judge at the superior courts and senior lecturer in Criminal Law and Procedure at Malta University.
39 An absolute or conditional discharge may be ordered when the court is of the opinion that it is inexpedient to inflict punishment (s. 9-1, Cap. 152). A probation order, on the other hand, is made when the court is of the opinion that it is expedient to give such an order in stead of sentencing the person convicted (s. 5-1, Cap. 152). A suspended sentence is deemed to be a sentence awarding punishment (s. 28A – 5, Cap. 9).
damages exceeds this amount, the victim may seek redress in civil court for the rest of the damages. The order to pay compensation is without prejudice to the court’s power to award costs (s. 380 and 533).60

Furthermore, the legislature has introduced the suspended sentence together with the option of attaching financial conditions to these measures, such as damages for injury or compensation for losses. The suspended sentence is applicable when a court awards a sentence not exceeding two years (s. 28A). It is immaterial what the maximum punishment of the offence is; if the court decides not to award a punishment not exceeding two years’ imprisonment it may suspend its enforcement for an operational period of not more than four years. If, during the operational period the person in question does not commit an offence punishable with imprisonment, the suspended sentence of imprisonment will never take effect. If, however, he commits such an offence, he must, after he is found guilty of this further offence, also serve the sentence that was originally suspended. When making an order for a suspended sentence, the court may include a direction obliging the offender to make restitution to the injured party of anything stolen or knowingly received by unlawful gain to the detriment of the victim. In addition, the court may order the offender to pay compensation for any such loss, or for any damages or other injury or harm caused to the victim by or through the offence. Moral damages, however, do not come into the picture at all. Any order for a suspended sentence may include both a direction to make restitution and, in default, to pay compensation (s. 28H). The court is not bound by a legal maximum.61 If the direction of the court is not followed, the victim should make an application to the court upon which the court may either extend the period of time in which the payment has to be made, or activate the sentence (s. 28H-(4) and (5) and s. 29).

Today, the suspended sentence and probation order are widely applied by the courts. However, there have been relatively few cases in which an order for compensation or restitution has been made together with the suspended sentence.62 One of the reasons is that there are only four probation officers on the islands (1998). It is understandable that judges and magistrates take this into account before deciding on a suspended sentence or a probation order (see § 3.5). In practice, the defence counsel may try to get the public prosecutor or the court to make a deal in chambers. He will then offer a guilty plea in return for a suspended sentence or a probation order with the condition to pay compensation to the victim. Most judges object to such practices and will not allow it. Compensation offered before the trial does not lead to a waiver, but does influence the sentence. Nowadays, the prosecuting authorities occasionally make a submission to the court to mitigate the sentence, if the offender has compensated the victim. But usually, the defence will bring the matter up. Also, the court, in its sentencing decision, increasingly makes mention of the offender’s willingness to pay compensation.63

7.3 Enforcement of Compensation

(E. 14) If compensation is a penal sanction, it should be collected in the same way as fines and take priority over any other financial sanction imposed on the offender. In all other cases, the victim should be assisted in the collection of the money as much as possible.

As said above (§ 7.2), compensation is essentially a civil matter which means that the law does not mention any rule regarding the priority of compensation, and also that the victim himself is

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60 Revised Mamo Notes, chapter 3: The criminal action, p. 4.
61 Appeal nr. 317/93, Police v. Duncan.
62 Information supplied by judge De Gaetano and Dr. S. Camilleri, Deputy Attorney General, Valletta. According to Mr. De Gaetano, a more effective use could be made of the payment of compensation combined with the suspended sentence if a little bit more attention would be given to this option by the police prosecuting officers and the court.
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64 In 1998, there were 15 magistrates on the island of Malta and one on Gozo. There are approximately the same number of judges at the superior courts.

responsible for the enforcement of compensation granted to him by the court. The only assistance available is from his lawyer and the bailiff, whom the victim will have to pay for their services. In those cases in which the offender has been sentenced by the criminal court to serve time in prison, in theory, a problem could arise. Pursuant to the law, ‘the persons sentenced to detention shall be detained at their own expense in the prison [...], according to the regulations which may be made by the Minister responsible for Justice [...], but they shall not be compelled to work’ (s. 12-1). If a detainee has no means of his own to maintain himself, he shall be maintained by the government; but in such cases he may be forced to work (s. 12-2). In practice, however, the prison authorities do not enforce this rule.

Concerning compensation ordered as part of the probation order or discharge, probation officers may encourage the offenders to pay the money to the victim. However, if the victim does not receive the amount awarded to him by the court, it is up to him to make an application to the court of criminal or civil jurisdiction to take action. However, if compensation was granted as a condition of a suspended sentence, there usually is no supervision attached to it. If the offender does not pay, the victim has to take the case back to court. The court can choose between two options: revoke the suspension or allow the offender some time to pay compensation. The court fixes a time limit of no longer than six months, within which the offender has to pay. If the offender fails to do so in the time allowed, the victim must file his application to the court within three months from the expiration date of the time limit (s. 28H-6). In practice, the problem is that the victim has to react within a certain time. If the victim forgets to notify the court in time, it cannot undertake any action. And most victims are not informed of this requirement and thus fail to take legal action within the designated period of time. If this period lapses, or if the offender fails to pay, the victim can only turn to civil court to try to claim compensation.

8 TREATMENT AND PROTECTION

8.1 Victim-Awareness Training

Training of the Judiciary
In order to qualify for the bench, a magistrate must have at least seven years of practice, and twelve years are needed to qualify for appointment as a judge (s. 100-2 respectively s. 96-2 Const.). As a result, all judges have worked either as lawyers or as public prosecutors.64 Magistrates and judges are not trained in victim-related topics.

Training of Members of the Attorney General’s office
The qualification requirements for the Attorney General’s office and its members are fixed in public calls for applications to fill vacant posts with the office. They may vary from one application to the other. The minimum qualification is certainly an LL.D. degree and a warrant from the President to practice as advocate in Malta. The legal posts at the Attorney General’s office are the following: junior legal officer, legal officer, counsel, senior counsel, assistant to the Attorney General, deputy Attorney General, and finally Attorney General. At present, for an applicant to qualify for the post of counsel, he must have practised for 8 years as a lawyer. Members of the Attorney General’s office are not given victim-awareness training.

Training of the Police
At the police academy, officially referred to by the name of Academy for Criminal Justice, training is provided for cadets, both of the rank of constables and officers, and to incumbent

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64 In 1998, there were 15 magistrates on the island of Malta and one on Gozo. There are approximately the same number of judges at the superior courts.
personnel since 1978. Training of the latter group consists of in-service courses. The system of
recruitment of policemen and women was established in 1978. The lower rank policemen are
given six months’ training after which an exam has to be passed. The basic training course of
constables is divided into socio-cultural studies; human studies (e.g. police ethics); law studies
with an emphasis on human rights, criminal law and court proceedings; police work and
general duties; skills and physical education.

The higher ranking police officers can be selected from within and outside of the force.
Outsiders have to be university graduates. The officers’ training consists of one year at the
university, where they study *inter alia* law, psychology and sociology, followed by one semester at
the police academy. At the academy Maltese and foreign lecturers are invited to speak on
various subjects. Cadets usually spend one month abroad, for instance in the United Kingdom,
where they can follow special seminars on e.g. questioning and community service. At the
police academy, the training of officer cadets consists of law studies (criminal law and
procedure, evidence, human rights, juvenile and family law and criminology); crime
investigation with special attention to sexual offences and interrogation techniques; forensic
science; enforcement operations (crime prevention and community relations, amongst other
things); general police duties; management (ethics, behavioural science, sociology and victim
support).

*(A. 1)* Police should be trained to deal with victims in a sympathetic, constructive and reassuring
manner.

During the police basic training programmes, no special attention is given to the treatment of
victims. However, recently a number of incidental programmes have been initiated to train
policemen how to deal with victims. Social workers of the Blata l-Bajda domestic violence unit
are giving lectures to the police on how to treat victims of violence in the family in an
understanding and constructive manner. By May 1998, about 50% of all the members of the
police would have been attending the lectures. In July 1997, two British police officers gave
lectures to the Maltese police on police victim policy. These lectures had a great impact,
according to the aforementioned domestic violence unit and the Good Shepard Sisters of the
shelter for battered women in Balzan. According to legal practitioners, the lower rank personnel
lack proper training for the job. The main reason for this is that the police force is based on the
concept that all the important duties are performed by police inspectors. However, the first
policemen on the spot after an offence has been reported are the police constables and
sergeants, who clearly lack training in how to deal with victims.

Contrary to the basic courses for the lower personnel, during the training of higher ranking
officers some attention is focussed on the position of victims in criminal proceedings and their
treatment. In 1997, the subject Victim Support was taught by an inspector of the police victim
support unit (28 – 31 July 1997).65

The in-service training for policemen who are going to work in the (small) victim support
unit which handles sexual offences, prostitution, domestic violence and child abuse or neglect
cases, deals with how to treat this particular group of victims. The unit is considered the
specialist group within the police and consists of four female police officers and one male CID
officer. According to regulations, policemen and officers have to refer eligible victims to the unit
for questioning and assistance. All the cases that are solved by the unit are also prosecuted by
them. As a rule, a social worker is present during questioning of the victims (see § 8.2). However,
in practice there are still instances in which the police do not involve social workers.

65 The police inspector in question, Mrs. S. Tanti, claims that she never gave any further lectures.
presence of a social worker. As a result, the child was forced to speak again about the traumatizing events to the social workers from the child protection services unit. However, the cooperation between social workers and the police is steadily improving.  

8.2 Questioning the Victim

(C. 8) At all stages of the procedure, the victim should be questioned in a manner which gives due consideration to his personal situation, his rights and his dignity. Whenever possible and appropriate, children and the mentally ill or handicapped should be questioned in the presence of their parents or guardians qualified to assist them.

At the police level, victims are questioned when they report the crime or file a complaint with the request to prosecute (see §§ 5.1 and 5.2). According to the police, the questioning takes place in private in one of the offices at the station unless the report is made at the scene of the crime. However, according to social workers and other victim support workers it is not uncommon that the victim has to tell his story in the hallway at the general desk, where usually quite a few people are waiting and listening in. Victims are usually questioned once, but if additional evidence is required the victim is called again to the police station. In cases of violent crime, the police will see the victim at home or at the hospital. Children are, as a rule, questioned by the police in the presence of a family member or guardian. This is standard police practice and not comprised in a law or regulation. There are no police officers who specialize in questioning children.

During the pre-trial questioning, the victim does not see the suspect, unless he consents to it. If the Attorney General’s office is handling the prosecution, it may happen that the prosecutor will see the witness before the trial, however this is not the rule (see § 5.5). The members of the Attorney General’s office do not receive training in questioning victims before or during the trial.

In court, the magistrate or judge has the role of an impartial arbiter who has to ensure the proper administration of justice. As such, he has the power to stop irrelevant, repetitive or misleading questions. Questions by the defence counsel concerning the character of the victim-witness can be ruled inadmissible, unless the prosecutor has introduced the character of the witness in his line of prosecution. In Malta, some judges are surprisingly active given the common law tradition of non-interference. It is not uncommon that judges interfere during the cross-examination, and generally harsh questioning of the victim-witness is not appreciated. Nonetheless, the general rule of common law systems still largely applies in the sense that most judges will interfere as little as possible to retain their impartiality. Another difference with English court practice is that in Maltese court history, rarely, if ever, has a rape victim been subjected to several days of examination.

According to the law, there is no difference between child-witnesses, other vulnerable victims and ‘ordinary’ witnesses who have to testify in court. Just like adult witnesses, they are sometimes subjected to hostile questioning. However, some judges have taken the initiative to assist the child-witness during the examination. These judges try to protect him, for instance, by not making him take the stand but letting the child sit next to them. Furthermore, some judges

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67 Information supplied by Police Commissioner Grech, Assistant Commissioner Rizzo, and inspector Muscat, Floriana, Police Head quarters, 5 May 1998.
68 Information supplied by social workers and lawyers of the domestic violence unit in Blata l-Bajda.
69 Information supplied by Police Commissioner Grech, Assistant Commissioner Rizzo, and inspector Muscat, Floriana, Police Head quarters, 5 May 1998.
70 For instance, I witnessed that judge of the superior courts De Gaetano is a rather active judge, very much involved with every thing that happens in his court room. According to his (former) colleagues this may be explained by his prosecution background.
do not allow direct questioning by the defence; the judge himself asks the questions. Unfortunately, this is not standard procedure despite the fact that at the appellate level this line of action by the bench has never been attacked or otherwise declared improper. Nor are there any guidelines or standards which allow children to be assisted by a parent or a guardian during the questioning or cross-examination. It is, therefore, of the utmost importance that the child-witness is familiarised with the surroundings of the court and that he be told what is expected of him to both improve the quality of his testimony and reduce his anxiety and stress. Some judges will see the child before in chambers to put him at ease. However, no child-interviewing studios, or witness-to-court programmes have been set up. Nor is there any other way to facilitate the testimony of children in court, such as hearing him without the accused being present in the court room, or through a closed circuit television-link.

In practice, in order to prove emotional abuse or violent episodes within the family, children are often called to give evidence in court. For instance, in domestic violence or abuse cases, the child may be called to testify in front of his father, without the supporting presence of the mother because she is also a witness, and often also without his social worker. According to the domestic violence unit and the child protection services unit, their requests to talk to the child and prepare him for the trial are generally turned down because this might influence him. Furthermore, the social workers are not always allowed to be in court to support the child during testimony. They are much opposed to the fact that children have to give evidence in the presence of the accused and would welcome national procedures. Moreover, they recommend the introduction of questioning by means of video-linkage or closed circuit television.

Given the fact that many children are required to give evidence against abusive or violent family member, for instance their father, it would be advisable for the legislature to introduce these procedures and protective measures to prevent vulnerable children from experiencing such examinations in the future. It is advisable that such protective rules are extended to include other groups of vulnerable victims, such as persons with learning disabilities and victims of sexual crimes. Perhaps this can be achieved through the Committee established in June 1998 to study manners to facilitate testifying in court and how to prevent secondary victimization as much as possible. Video recorded interviews and closed circuit television questioning of vulnerable victims and witness support programmes will be studied.

Another problem that has to be tackled by the Committee is the long waiting times in court for witnesses. It is common for witnesses to have to wait several hours before giving testimony and being questioned. It also occurs that, after waiting a long time in the hallway (together with the others, such as the accused, his friends and family), they are told to come back the next day because the trial has been delayed, or the proceedings have taken longer than expected. It frequently happens that victims have to come back twice to court before they can give evidence. Not surprisingly, many victims do not want to come to court anymore. However, if they do not appear, they can be fined. Clearly, something has to be done to facilitate the questioning in court. Today, the police complain about the problems they have finding witnesses. They prefer to pretend they did not see anything, or have forgotten vital information. This situation is
detrimental to the functioning of the criminal justice system. However, the authorities are unsure how to reform an adversarial system in which evidence has to be orally presented to the court (and jury), the duration of the examinations, and the number of cross-examinations can be difficult to predict.

8.3 Protecting the Victim

Information and public relations policies in connection with the investigation and trial of offences should give due consideration to the need to protect the victim from any publicity which will unduly affect his private life or dignity. If the type of offence or particular status or personal situation and safety of the victim make such special attention necessary, either the trial before the judgement should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate.

In order to protect the victim from publicity which may unduly affect his private life, trials can be held in camera. Criminal law provides for all court sittings to be held behind closed doors if the court thinks that conducting proceedings in open court may be offensive to modesty or cause scandal (s. 531). If sittings are held in camera, no one may publish any reports of the trial proceedings. Any publication is considered a contempt of court, and sanctioned as such. The court of magistrates as a court of criminal inquiry can order the proceedings to be conducted behind closed doors, if the ends of justice would be prejudiced by an inquiry in open court. According to the wording of the law, the court has a wide margin of discretion. During a trial in camera, all persons and participants taking part in the inquiry are bound not to disclose the proceedings, under penalty of a maximum of two years’ imprisonment, or a fine not exceeding 20,000 Maltese Liri (EUR 48,736, s. 409-2). However, if the evidence given by the witness could have been given in open court without prejudice to modesty or causing scandal, he will be rebuked by the court.

In practice, however, the courts tend to be more lenient. They also allow a trial behind closed doors when a witness requests this, for instance, because he does not want his wife or family to know that he was involved, or because he was a police informer. Furthermore, trials concerning sexual crimes and/or involving child-witnesses are held (partly) behind closed doors, although there have been some exceptions. According to legal practitioners, a trial in camera is the only protection available to victims.

If a trial is held in camera, the press is not allowed in the courtroom. The court can also order the media not to make anything public concerning the trial. In all other cases, the court can only recommend that the media leave the courtroom or that they not quote names in their coverage or publications. The court cannot order journalists to leave the court. Only in the juvenile court, is the press not allowed access and no information about the trials can be made public. Nevertheless, practice shows that conducting proceedings in camera does not prevent press coverage of the trial. Some cases tried in camera have received full press coverage. The articles in the press included enough detailed information for anyone in the vicinity of the victim and the offender to allow their identification. Especially, if a case is tried by jury, it will be discussed at length in all the newspapers and other media. The coverage usually consists of an assessment of the proceedings and the actions taken by the Attorney General and the

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75 Information supplied by Mr. De Gaetano, judge at the superior court and senior lecturer at the University of Malta.
77 There are a surprising number of newspapers on Malta: 2 weekly and 4 daily newspapers, 6 Sunday newspapers and 1 business newspaper.
78 Information supplied by the Director of the Police Academy and Inspector Muscat, St. Elmo, 5 May 1998.
defence lawyers. The full identity (name and surname) of all parties and persons involved are mentioned and are accompanied by clear pictures, even of the alleged offender(s). Also pictures of victims are quite common in the press, although they are usually printed with the consent of the victims.80

(G. 16) Whenever it appears necessary, and especially when organised crime is involved, the victim and his family should be given protection against intimidation and the risk of retaliation by the offender.

In Malta, there is said to be little organized crimes, so the courts rarely deal with it. However, whenever protection of victims of any crime is needed, the only measure that can be taken is to offer police protection before and after the trial. Obviously, this can be rather problematic in practice and can only be offered for a limited period of time.

9 CONCLUSIONS

It is surprising that a jurisdiction, which is highly influenced by English common law, and recently shows an increasing interest in the Scottish system, has not taken note of any of the victim-oriented reforms evident in those criminal justice systems. Recommendation (85) 11 is barely known and generally poorly implemented. In Malta, the only steps taken to improve the position of victims in criminal law and procedure are the creation of a victim unit at the police, however small in size, the possibility for the courts to impose the payment of compensation as a condition for a suspended sentence, and the protection of victims.

Victims are generally deprived of information unless they contact the authorities themselves. If Malta were not so small, and the authorities so well known, victims would not be able to find out about relevant decisions in their case.

Concerning compensation, the Maltese jurisdiction’s performance is particularly substandard and represents worst practice. The courts cannot order compensation by the offender to the victim because legal impediments and technical restrictions prevent this from being generally realized. For example, neither the criminal courts, nor the civil courts can order the payment of compensation for moral damages.

The criminal justice authorities are not trained to deal with victims. As a result, there is little awareness of how victims, and in particular children and other vulnerable groups, should be questioned in order to reduce the risk of secondary victimization. Also, there is hardly any knowledge of what kind of facilities may be created to make questioning a less traumatic experience for vulnerable victims. Protective measures are largely lacking, apart from the option of holding a trial in camera, and prohibiting the publication of trial proceedings by the media.

Summarizing, the victim’s interests are inadequately safeguarded by the criminal justice system. The legislature should abolish the limitations which prevent the courts from ordering offenders to pay compensation for both moral and material damages to all victims whose case is tried before the courts of criminal jurisdiction. It should introduce either the English compensation order model or the continental adhesion model. The legislature should take additional steps to protect the victim against publicity which unduly affects his private life or dignity. Such measures are particularly relevant in a small country like Malta. The protection of the victim against intimidation or retaliation by the offender should also be upgraded. It is furthermore advisable that the government, in cooperation with the criminal justice authorities, set up training programmes focusing on the needs and interests of victims of crime. Finally, it is of the utmost importance that services and facilities for victims are set up. Particularly urgent

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80 Most people interviewed are convinced that the media normally asks the victim or his family for permission to publish photographs because the editors fear libel. Families are frequently asked to provide pictures of the victim.
facilities are, for instance, a child interviewing studio, a rape suite, reception desks at the courts, a witness-to-court programme, and short circuit television links at the courts in Malta and Gozo.
Supplements

ABBREVIATIONS:

Cap. - Chapter of the Laws of Malta
CID - Criminal Investigations Department (police)
CMRU - Community and Media Relations Unit
Const. - Constitution
LM - Liri Maltese

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