

Legal Research and Interpretation Methodology

Lecture Title: Collection of Data, Analysis and
Interpretation, Writing

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Diploma in Law (Malta)



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ADVOCATES

Recap

- Cont'd stages of research process
- Sampling – probability vs non-probability sampling

| Probability Sampling | Non-Probability Sampling |
|---|--|
| Every member of the population has a chance of being selected | Selection is based on a non-random criteria. Not every member has a chance of being selected |
| Mainly used in quantitative research | Mainly used in qualitative research |
| Produces results that are representative | High risk of sampling bias |
| 4 types: simple/random, systematic, stratified, cluster | 4 types: convenience, purposive, snowball, quota |
| Aim is to test hypothesis | Aim is to develop an understanding |

Recap

- Probability – simple random, systematic, stratified, cluster
- Non-probability – convenience, purposive, snowball, quota
- Sampling Error I – wrongly selected sample
- Sampling Error II – external factors
- How to avoid errors? Determine universe, ascertain the qualities, decide the sample method and sample size
- Collection of data – bridge between the research Q/hypothesis and the result of the research
- Doctrinal (what does the law say) vs Empirical research collection (observation, interviews, questionnaires, case study, survey)
- More than 1 tool/ method can be applied
- Observational research – participant vs non-participant
- Types of participant observation – passive, active, covert vs overt, covert and active (gang leader for a day), covert and passive, open and active, open and passive
- Interviews – face to face interaction, different types – email, web, personal, telephonic
- Interviews – unstructured, semi-structures and structured
- Harvard tips for interviews, questions and skills for an interviewer (professional and make interviewee comfortable)



5. Collection of Data – Writing Interview Questions (Harvard)

1. Write down the larger research questions of the study. Outline the broad areas of knowledge that are relevant to answering these questions.
2. Develop questions within each of these major areas, shaping them to fit particular kinds of respondents. The goal here is to tap into their experiences and expertise.
3. Adjust the language of the interview according to the respondent (child, professional, etc.).
4. Take care to word questions so that respondents are motivated to answer as completely and honestly as possible.
5. Ask “how” questions rather than “why” questions to get stories of process rather than acceptable “accounts” of behavior. “How did you come to join this group . . .?”
6. Develop probes that will elicit more detailed and elaborate responses to key questions. The more detail, the better!
7. Begin the interview with a “warm-up” question—something that the respondent can answer easily and at some length (though not too long). It doesn’t have to pertain directly to what you are trying to find out (although it might), but this initial rapport-building will put you more at ease with one another and thus will make the rest of the interview flow more smoothly.
8. Think about the logical flow of the interview. What topics should come first? What follows more or less “naturally”? This may take some adjustment after several interviews.
9. Difficult or potentially embarrassing questions should be asked toward the end of the interview, when rapport has been established. 10. The last question should provide some closure for the interview, and leave the respondent feeling empowered, listened to, or otherwise glad that they talked to you



5. Collection of Data – Questionnaires

- Most popular method of data collection for empirical legal research
- Consists of a set of questions
- Useful when observation and interviews are not possible
- Objective
- Language should be easy to understand and not ambiguous
- Responses are not usually made in the presence of the researcher so guidance cannot be provided if the questions are not clear
- Not useful if respondents are illiterate or they don't understand the terms being used → the questionnaire must be tailor made to the characteristics of the targeted universe
- May be supplied personally, by mail or internet
- Information from distant places can be easily accessed by the researcher economically

Questionnaire

Instructions: Please put a tick in the box next to the answer of your choice or write in the space provided as the case may be.

Sex

Male Female

Age

13-14 15-16 17-19

Religion

Christianity Islam

Rastafarian Other

1. What type of family are you from?

Nuclear Sibling house hold

Single parent Extended

2. Do you use drugs

Yes No

3. Do you know of least one teenager in your community that uses drugs?

Yes No

4. If your answer is yes to question 2 (two), how often do you use drugs?

Every day Every 2-3 days Once a week

Every fortnight Once a month every 2 months

5. Are drugs easily available to teenagers in your community?

Yes No

6. What types of drugs are used by teenagers in your community?

Alcohol Marijuana Cocaine Heroine Others

If others please specify: _____

5. Collection of Data – Drafting a Questionnaire – Stages

| Phase 1: Early stages of questionnaire development | Phase 2: Structured field piloting | Phase 3: Field implementation practice |
|---|---|--|
| <ul style="list-style-type: none"> • Understand the purpose of the questionnaire • Test and develop new questions • Adapt questions to context • Build familiarity, get a sense of time • Find best way to ask questions through focus group discussions • Re-work, share, and re-test | <ul style="list-style-type: none"> • Questionnaire is close to being finalized • Test for question options, skips, and translation • Test whether respondents interpret the questions properly • Simulate the environment of the actual survey | <ul style="list-style-type: none"> • Final questionnaire is ready • Implementation practice to focus on surveyors • Test to see time taken, improving efficiency in coordination • Feedback and continued practice to improve implementation |

5. Collection of Data – Questionnaire Design Tips

Consider these best practice tips every time you create a survey to ensure you collect high quality, meaningful data.



5. Collection of Data – Questionnaires

- Pitfall –subjects may not interested in answering questionnaires due to lack of motivation, attitude, cumbersome etc
- Tip: Enhance questionnaire response rate. How?
 1. Sponsorship – a reputable and legitimate sponsor is likely to get a higher response rate e.g. students are more likely to respond to a questionnaire administered by their school authorities than those administered by unknown individuals or organisations
 2. Covering letter - questionnaires should be accompanied by persuasive covering letters or notes to respondents explaining the nature, purpose and importance of the research project, and soliciting their cooperation
 3. Questionnaire Format - namely typing, length, font, spacing etc., could also affect the response rate. Understandably, people are more likely to respond to short questionnaires than to long ones, and to neatly typed, legible and well–spaced questions than rough, illegible ones. The researcher should also limit the questions to the necessary minimum
 4. Ease of completion - avoid ambiguity, provide detailed instructions, include stamped addressed envelopes
 5. Rewards – payment



5. Collection of Data – Questionnaires vs Interviews

- In questionnaires there is no personal contact unlike
- A questionnaire does not allow respondent to qualify ambiguous questions whereas interview makes such possible
- Questionnaire provides an opportunity for respondents to give anonymous answers
- In an interview the respondents may be biased
- Questionnaire facilitates the collection of huge amount of data in a short period of time which is not possible in Interview.
- In Interview, people may refuse to furnish information because they were approached at the wrong time, whereas, questionnaire can be completed at the leisure of respondents.



5. Collection of Data – Case Study

- A case study is an in depth study of any unit from the beginning to end
- Any person, family, institution, group, cast, community or nation may be the unit for the purpose of study
- Intended when the research is narrow i.e. focus
- All facts and information relating to such unit from the origin to last are collected
- Sources used for data collection may be internal or external. Internal data gather from such unit or within the unit is internal and any information taken from outer sources are external one
- E.g. Of uses in legal research: -> study on legal history of Malta, Constitutional history of Malta and judicial contribution of any Judge
- Video: Types of Case Studies: <https://www.youtube.com/watch?v=3illimOCXyk>



5. Collection of Data – Surveys

- Survey is a process of collecting quantity of facts in systematic and organized manner to report any social problem or status of facts in certain area of society. Where the object of study is to search the information through real public experience, their opinion or feelings as to any of social importance



5. Collection of Data – Surveys vs Questionnaires

- A questionnaire is any written set of questions, while a survey is both the set of questions and the process of collecting, aggregating, and analyzing the responses from those questions

| Surveys | Questionnaires |
|--|--|
| Process of collecting and analyzing data | Instrument of data collection |
| Research process | Research tool |
| Time consuming process | Fairly quick process |
| Is conducted | Is delivered |
| Answers are subjective or objective | Answers are objective |
| Open ended and close ended questions | Close-ended questions only |
| Conducted for research or studies | Used to collect information on a topic |

5. Collection of Data – Survey

| OPEN QUESTIONS VERSUS CLOSED QUESTIONS | |
|---|---|
| Questions that should be answered with long responses | Questions that should be answered with short responses |
| Answers are often descriptive and explanatory | Answers are often short and factual |
| Questions begin with words like how, why, explain, describe, etc. | Questions begin with words like is, would, do, what, etc. |
| Essay questions | Multiple choice questions |
| Take a long time to answer | Can usually be answered quickly |

Pediac.com

| Open | Closed |
|---|--|
| How do you get to work? | Do you get to work by driving, busing, or walking? |
| Tell me about your relationship with your boss. | Do you get on well with your boss? |
| What did you manage to accomplish on the trip? | Was your trip successful? |
| What happened at the meeting? | Did you have a good meeting? |



6. Analysis & Interpretation of Data – Data Analysis

- Data Analysis (DA) – one of the most crucial tasks
- Definition: summarizing the collected data and organizing these in such a manner that they will yield answers to the research questions or suggest hypothesis
- Legal Interpretation is the skill of bringing out or explaining the meaning of the law



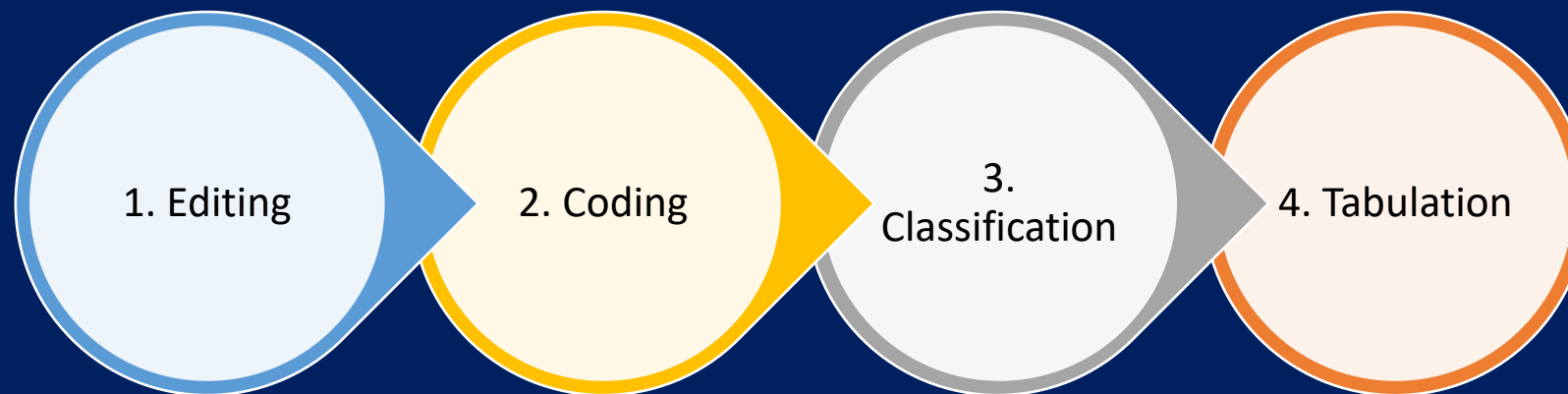
6. Analysis & Interpretation of Data – Data Analysis vs Processing vs Interpretation

- The general understanding is that data analysis and processing are one and the same. However a number of researchers and authors are of the opinion that both of them are 2 very distinct steps in the research process where data processing leads to data analysis.
- Prof. John Gauing – processing of data refers to concentrating, recasting and dealing with the data so that they are as responsive to analysis, while analysis of data refers to seeing the data in the light of hypothesis of research questions and the prevailing theories and drawing conclusions that are as amenable to theory formation as possible
- Francis Rummel – the analysis and interpretation of data involve the objective material in the possession of the researcher and his subjective reaction and desires to derive from the data the inherent meaning in their relation to the problem. To avoid making conclusions or interpretations from insufficient or invalid data, the final analysis must be anticipated in detail when plans are being made for collecting information.



6. Analysis & Interpretation of Data – Data Processing

- Once the data is collected, the following steps are taken to process the data into more measurable and concise manner:



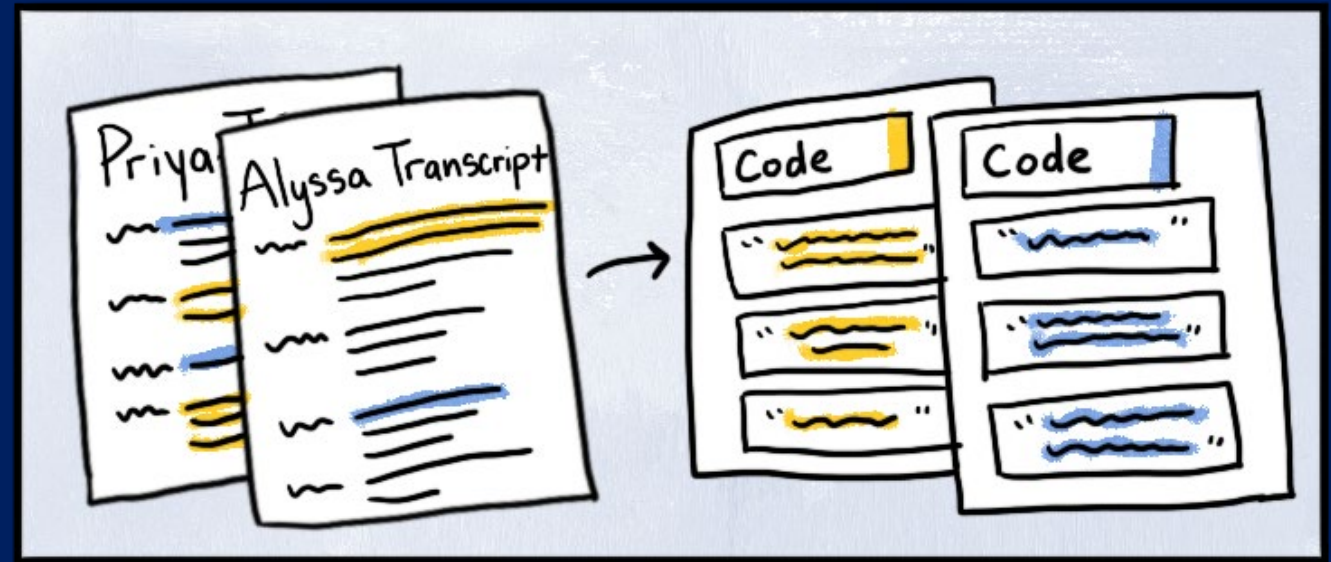
6. Analysis & Interpretation of Data – Data Processing

1. Editing - In the stage of editing all the raw data that is collected is checked for errors, omissions sometimes legibility and consistency as well. This ensures basic standard in the data collected and facilitates further processing
2. Coding - Coding refers to the process of identifying themes or codes of the data you have and assigning numerals or other symbols to answers so that responses can be put into a limited number of categories or classes. Categories/ classes must also be exhaustive (i.e., there must be a class for every data item). Coding differs for qualitative and quantitative research
3. Classification - Once the data is collected it is to be divided into homogeneous groups for further analysis on the basis of common characteristics
4. Tabulation - the process of summarizing raw data and displaying the data in compact form e.g statistical tables for further analysis. Tabulation can be defined as an orderly arrangement of data in columns and rows



6. Analysis & Interpretation of Data – Coding and Classification

- For coding you don't need a specific software. You can code by hand e.g. scribbling on the paper, highlighting similar categories by the same colour or using coloured sticky notes. If the volume of data is large a software e.g. excel sheet will be more time effective
- If coding is done by hand, margins need to be available for writing on the sides → type of coding needs to be set at drafting stage of questionnaires, survey, interview etc so that the format/ layout allows for coding
- Manual coding usually involves a 2 step process i.e. to turn codes into categories of codes:-
 - i. Take notes
 - ii. Take notes of your notes
- Coding has to be clear. To achieve the aim of the research it might be the case that the coding process has to be carried out multiple times to build a connection between the data collected e.g. you might notice a pattern in the 5th interview and may need to go back to the previous interviews
- Coding process need to be explained in your research



Jane looked at Elizabeth with surprise and concern. She knew but little of their meeting in Derbyshire, and therefore felt for the awkwardness which must attend her sister, in seeing him almost for the first time after receiving his explanatory letter. Both sisters were uncomfortable enough. Each felt for the other, and of course for themselves; and their mother talked on, of her dislike of Mr. Darcy, and her resolution to be civil to him only as Mr. Bingley's friend, without being heard by either of them.

siblings
socially awkward
regret

But Elizabeth had sources of uneasiness which could not be suspected by Jane, to whom she had never yet had courage to show Mrs. Gardiner's letter, or to relate her own change of sentiment towards him. To Jane, he could be only a man whose proposals she had refused, and whose merit she had undervalued; but to her own more extensive information, he was the person to whom the whole family were indebted for the first of benefits, and whom she regarded

marriage
finances
maturity

6. Analysis & Interpretation of Data – Coding Qualitative vs Quantitative Data

- Quantitative Data Coding – simpler than qualitative coding. It is data that can either be counted or compared on a numeric scale
- Qualitative Data Coding – Qualitative data may be difficult to precisely measure and analyze. The data may be in the form of descriptive words that can be examined for patterns or meaning, sometimes through the use of coding. Coding allows the researcher to categorize qualitative data to identify themes that correspond with the research questions and to perform quantitative analysis.

How does it work?

Video: Qualitative analysis of interview data: A step-by-step guide for coding/indexing

<https://www.youtube.com/watch?v=DRL4PF2u9XA>

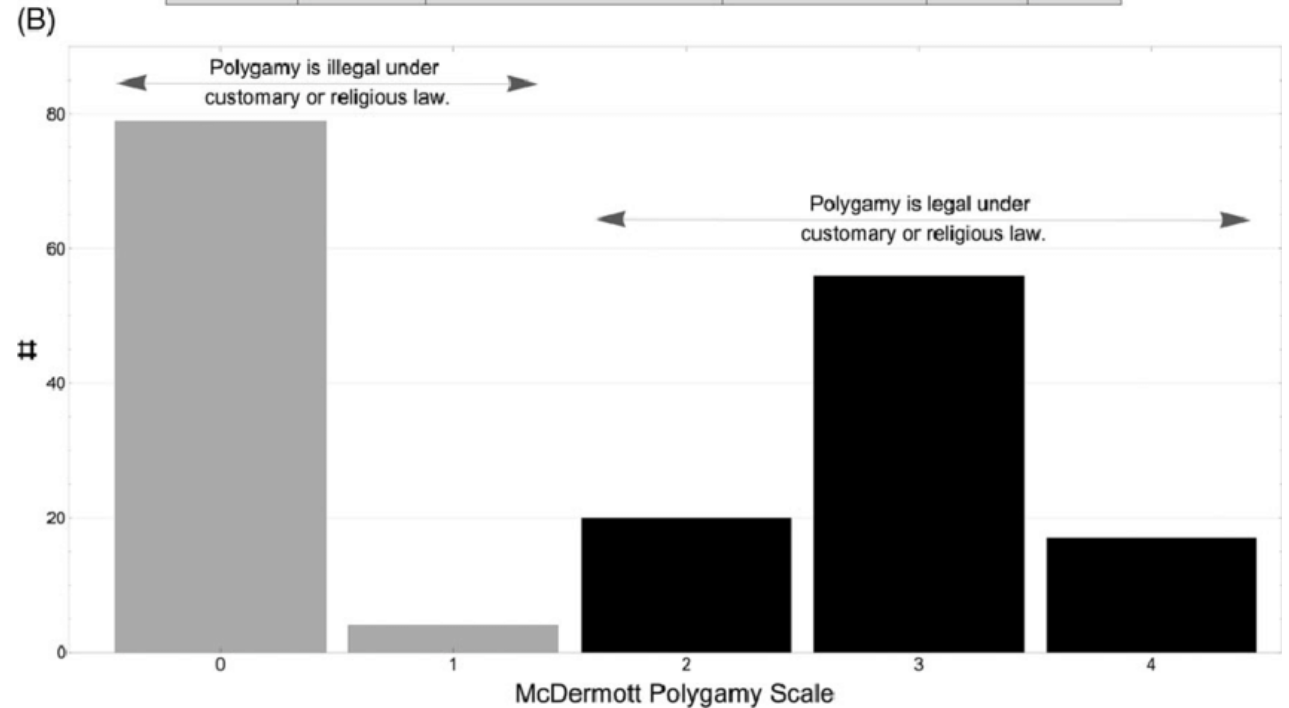


6. Analysis & Interpretation of Data – Data Processing – Benefits of Tabulation

- Benefits of tabulation:-
 1. It conserves space and reduces explanatory and descriptive statement to a minimum.
 2. It facilitates the process of comparison
 3. It facilitates the summary of items and the detection of errors and omissions
 4. It provides the basis for various statistical computations

(A)

| Coding | N | Customary/Religious Law | National Law | w^d | $\mathcal{P}/n\mathcal{P}$ |
|--------|----|-------------------------|--------------|-----------------|----------------------------|
| 0 | 79 | Illegal ^a | Illegal | <2 ^e | $n\mathcal{P}$ |
| 1 | 4 | Illegal ^b | Illegal | >2 | $n\mathcal{P}$ |
| 2 | 20 | Legal ^c | Illegal | <5 | \mathcal{P} |
| 3 | 56 | Legal | Unenforced | <25 | \mathcal{P} |
| 4 | 17 | Legal | Unenforced | >25 | \mathcal{P} |



6. Analysis & Interpretation of Data – Interpretation

- Once the data has been processed and analyzed, the final step required in the research process is interpretation of the data.
- Through interpretation one understands what the given research findings really mean and what is the underlying generalization which is manifested through the data collected.
- The data is interpreted from the point of the research questions and hypothesis is tested
- *Properly collected data + properly analyzed data + wrong interpretation = Failed research (inaccurate & misleading conclusions)*

Video:- Analysing, interpreting and presenting data tips
<https://www.youtube.com/watch?v=e1hqXq0JyK0>



6. Analysis & Interpretation of Data – Diploma in Law (Malta)

Legal Interpretation – Interpreting Legislation

- Law is stated in general terms since it is intended to apply to various situations. The law cannot be amended everytime someone thinks of a new possibility
- Legislators provide the law in generic terms. Courts/tribunals decide whether particular situations are covered by the law i.e. Match facts with legal rules
- Meaning of the law is explained in judgments (sometimes even in parliamentary debates)
- Depending on the provision of the law, interpretation may be literal or flexible

E.g. of generic law Art. 535 of Cap. 16 (Spoliation/ pretended rights):-

535.(1) Where any person is by violence or clandestinely despoiled of the possession of whatever kind, or of the detention of a movable or an immovable thing, he may, within two months from the spoliation bring an action against the author thereof demanding that he be reinstated in his possession or retention, as provided in article 791 of the Code of Organization and Civil Procedure.

(2) Such reinstatement shall be ordered by the court even though the defendant be the owner of the thing of which the plaintiff has been despoiled

Criminal action counterpart – Ragion Fattasi Art. 85 of Cap. 9:-

85.(1) Whosoever, without intent to steal or to cause any wrongful damage but only in the exercise of a pretended right shall, of his own authority, compel another person to pay a debt or to fulfil any obligation whatsoever, or shall disturb the possession of a nything enjoyed by a nother person, or demolish buildings, or divert or take possession of a ny water-course, or in any other manner unlawfully interfere with the property of a nother person shall, on conviction, be liable to imprisonment for a term from one to three months

Provided that the court may, at its discretion, in lieu of the above punishment, award a fine (multa):

Provided further that it shall be a defence for the person accused of this offence to prove that such disturbance was done as a temporary measure imposed by actual necessity either in lawful self-defence or in the lawful defence of another person:

Provided further that in cases of arbitrary or forced evictions of an occupant from the property which he occupies as his primary residence, including any unpermitted entry into the property, removal of furniture, appliances or personal belongings from the property, or the suspension or interruption of water and electricity services, in whichever manner, including the installation of devices which enable the owner to suspend the direct supply of water and electricity services to the property, the fine (multa) shall not be less than one thousand five hundred euro (€1,500) and not more than four thousand euro (€4,000).

(2) The provisions of article 377(5) shall apply in the case of any conviction under sub-article (1) and when the conduct of the offender has resulted in a person being despoiled the Court shall apply the sub-article in order to ensure that the person despoiled is fully re-vested in the position before he was despoiled.



6. Analysis & Interpretation of Data – Diploma in Law (Malta)

Legal Interpretation – Interpreting Legislation

E.g. of spoliation cases:-

- i. Landlord cuts electrical supply to the premises rented to the lessee
- ii. Spouse changes locks without giving a copy to the other spouse
- iii. Passing of conduits on neighbours' property
- iv. Construction on neighbours' property
- v. Putting water tank on neighbour's roof



6. Analysis & Interpretation of Data – Diploma in Law (Malta)

Legal Interpretation – Interpreting Legislation

- Court interpretation of the law may be flexible or rigid
- Criminal law of procedure interpretation in relation to summons is **rigid** since it may affect the accused's right of defence. Errors are in favour of the accused – *Il-Pulizija vs Jason Azzopardi et* – Court of Magistrates (Malta) – Mag. Joseph Mifsud 25/02/2020:-
 - *Din hija Qorti ta' Gudikatura Kriminali. Quddiemha persuna jew persuni jigu mixlija li wettqu reati kriminali. Il-Qorti hija adita bl-imputazzjonijiet li jingiebu quddiemha u li jkunu maghmula mill-prosekuzzjoni. Hemm limitu kemm il-Qorti tista' tkun flessibbli fir-rigward tal-interpretazzjoni tal-imputazzjonijiet li jingiebu quddiemha.*
 - *Għalkemm verament li l-komparixxi li fuqha hemm l-imputazzjonijiet hija ritenuta bħala un avviso a comparire, l-imputazzjonijiet huma dejjem ta' indoli penali. Ir-regoli tal-procedura ma jistghux jigu interpretati b'mod wiesa' tali li l-parametri tal-azzjoni penali jigu spustati jew mibdula. Altrimenti d-difiza ma tkunx tista' tiddefendi ruħha kif jixraq.*

6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation

- Civil procedure – Flexible in certain cases- 1990's nullity is accepted if the defect is prejudicial to the other party. Before, application was rigid e.g. nullity of a sworn application (before First Hall Civil Court) was accorded even in cases where claims were not numbered
- Admissability of new witnesses/proof –case by case basis

Għaldaqstant, ir-rikorrenti jitlob bir-rispett illi din l-Onorabbli Qorti, prevja d-dikjarazzjonijiet neccessarji u mogħtija l-provvedimenti opportuni, joghħobha:

1. Tiddikjara illi għar-raġunijiet premissi, il-konvenuti jew min minnhom ikkommettew spoll riċenti, vjolenti u klandestin fil-konfront tal-attur u dan meta dahlu u żerġhu fil-parti li kienet tintuża esklussivament mill-esponenti u wliedu mill-għalqa magħrufa bhala “Habel It-Twil” tal-kejl ta’ *circa* 8,198m² fl-inħawi ta’ Fuq Għar Dalam f’tax-Xerriek fil-limiti ta’ Birżebbugia;
2. Tordna lill-konvenuti jew min minnhom sabiex fi zmien qasir u perentorju li jigi lilhom prefiss, joħorġu mill-imsemmija raba’ u jnehħu minn hemm kwalsiasi haġa appartenenti lilhom u dan sabiex l-istanti jerga’ jigi mqiegħed fil-pussess jew detenzjoni tal-imsemmija parti mill-għalqa magħrufa bhala “Habel It-Twil” tal-kejl ta’ *circa* 8,198m² fl-inħawi ta’ Fuq Għar Dalam f’tax-Xerriek fil-limiti ta’ Birżebbugia;
3. Fin-nuqqas, tawtorizza lill-istanti jagħmel dak kollu meħtieġ a spejjez tal-konvenuti, jew min minnhom, sabiex l-istanti jerga’ jigi mqiegħed fil-pussess jew detenzjoni tal-imsemmija parti mill-għalqa magħrufa bhala “Habel It-Twil” tal-kejl ta’ *circa* 8,198m² fl-inħawi ta’ Fuq Għar Dalam f’tax-Xerriek fil-limiti ta’ Birżebbugia u dan *occorrendo* taht is-supervizjoni ta’ periti nominandi;

Bl-ispejjeż inkluż dawk tal-mandat ta’ inibizzjoni preżentat kontestwalment, kontra l-konvenuti, jew min minnhom, minn issa ingunti in subizzjoni u b’riserva għal kull azzjoni oħra spettanti lill-istanti.

6. Analysis & Interpretation of Data – Diploma in Law (Malta)

Legal Interpretation – Interpreting Legislation

- Substantive law – depends on the case at hand
- E.g. Interpretation of contracts – rigid. If the meaning is clear there is no room for interpretation
- Nullity of will due to insanity – rigid
- Possession of property cases – wide and flexible



6. Analysis & Interpretation of Data – Diploma in Law (Malta)

Legal Interpretation – Interpreting Legislation

- Warning: When searching for case law pay attention to wrong application of the law vs wrong interpretation of the law
- Wrong application of the law – Objectively the wrong law/act/article was applied to the facts e.g. Apply Art. 85 of Cap. 9 to a civil suit – appealable and basis for re-trial
- Wrong interpretation of the law – court provides a wrong interpretation of the article in relation to the facts/proof of the case. It is not a point of law matter – not appealable.
- Tip: Search several judgments to ascertain correct interpretation of the law



6. Analysis & Interpretation of Data – Legal Interpretation – Interpreting Legislation - Tips

- Read the law (both Maltese and English version)
- Read the whole article
- Read the articles about the definitions, if provided in the law
- Read judgments (for interpretation) and parliamentary debates (for contexts and interpretation)
- Read more than one judgment on the same matter from different periods
- Read journals, dissertations and authors, if any



7. Writing

- Last phase of research
- Research remains incomplete until report is written
- The writing is an account of the problem, methodology, analysis and inferences of investigation and their implications
- Contents and style depend on the audience. Format is subjective



7. Writing – Report's Objective

- Report needs to be presented in the appropriate manner so that the targeted readers may be able to understand and utilize the same
- The objectives of a research report are:
 1. Conveying of knowledge to the concerned people in the field of research
 2. Proper presentation of the findings for further utilization of the recommendations.
 3. Give impetus to research in the concerned knowledge area
 4. To re-examine the validity of generalizations drawn by the researcher after the report has been submitted.



7. Writing – Types of Report

- Reports are of different types depending upon its area, purpose and the approach
- Most common types:-
 1. Business Report
 2. Project Report
 3. Dissertation
 4. Enquiry report of a commission
 5. Thesis
- A legal research report deals specifically with a legal problem



7. Writing – Guidelines for Report Writing

1. Knowledge of the research material
2. Organize the research material
3. Continuous report reflective thinking
4. Rough drafts
5. Rewrite and polish the rough drafts
6. Preparation of the final bibliography
7. Footnotes and head notes



7. Writing – General Structure

- Structure depends on the type of report being written
- General structure:-
 1. Introduction - Clear cut statements as to the nature of the study, Aims, Sources of information, Scope of study, Brief statement of the working hypothesis which guided the study.
 2. Explicit definitions of the units of study
 3. Brief statements of techniques used in study - Types of observations used and conditions under which observations were made, conditions under which the data was obtained, types of case history data secured, their sources, manner of presentation, and preliminary analysis made, Sampling procedures and conditions of selection and testing for appropriateness, representativeness, Statistical procedures, sources of statistical data conditions under which they were obtained;
 4. Major findings
 5. Conclusions reached – may include special remarks such as Problems encountered in gathering the data, classifying them, analyzing them, possible discrepancies in the data collected, suggestions to subsequent investigators on same topics in same context.
 6. Bibliography
 7. Appendix



7. Writing – Organization (Dissertations/ Long Essays)

No hard and fast rule about the pattern however most common organization of research is as follows:-

1. Preliminary Pages

- i. Title Page - the cover of the report and the first thing that the targeted reader come in contact with. It indicates the main theme or the title of the study. The title should be appropriate and attractive. The title page may also contain the name of the researcher and date.
- ii. Abstract/ Preface – Can be inserted after dedication section - importance of the content.
- iii. Dedication
- iv. Table of Contents
- v. Table of Cases
- vi. Table of Statutes
- vii. List of tables, figures
- viii. Abbreviations
- ix. Acknowledgements – Can be included in dedication page

2. Main Text

- i. Chapters with appropriate captions – chapter ideally chapter will have headings and sub-headings
- ii. First chapter labelled as “Introduction” – should include methodology i.e. the research design and method used in carrying out the research. It should give exact meaning of measurements or terms or variables used, selection of sampling, universe selected, tools of data collection , hypothesis etc.
- iii. End Chapter “Conclusion”/ “Conclusion and Recommendations”

3. End Pages

- i. Bibliography
- ii. Annexes - Interviews/questionnaires conducted



7. Writing – Article

- Simpler and shorter

THE NEED FOR STRONGER AWARENESS OF HOUSING RIGHTS IN MALTA

KURT XERRI¹

Abstract

Housing rights have undergone a very significant evolution both under the ECHR as well as under other international statutes such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter. On the contrary, they remain a rather vague concept under the Maltese legal order. The best justification is perhaps offered by Mifsud Bonnici (2003) who suggests that the notion of the right to housing reached Malta at a moment when public opinion was convinced that local administrative structures had already seen effectively to this need. A rapidly changing housing scenario seems, however, to be warranting a stronger rights-based approach capable of ensuring the respect of every individual's right to adequate.

1. Introduction

The notion of housing as a right has hardly taken root in Malta. Although the absence of any formal provision within the domestic legal order which seeks to guarantee adequate housing conditions for those living in Malta is conspicuous, housing matters have constantly been treated with importance, at varying degrees, by successive governments. The figure of up to 62% of owner-occupied households without a mortgage and 5% in social housing (see Figure 1 below) do bear testament to the continued effort of the Maltese government in promoting home ownership amongst the generality of citizens and whilst seeing to the need of the most vulnerable. The picture illustrated by the most recent Census (2011) was, in fact, one of steady equilibrium where up to three-fourths of the Maltese owned their household, 9% rented their properties at significantly below-market rents, 6% relied on the liberalised i.e. post-1995 private rented sector and as mentioned above, 5% lived in government-owned units. This state of affairs led government to take a softer approach on housing by, inter alia, halting its home ownership-facilitation schemes as well as the construction of social housing units.

This situation was a lull before the storm. In 2016, Malta recorded the second-highest growth rate in the EU (5%) thus establishing itself as the strongest growing EU Member State in the 2006-2016 period (average growth of 3.7% per annum)². The skills-gap present amongst local workers as well as the numerical shortage inevitably attracted a considerable foreign workforce which rose up to 37,000 in 2017 (in 2010 this figure was less than 10,000)³ which, in turn, had a drastic effect

¹ Kurt Xerri graduated with an LL.D from the University of Malta in 2013. He followed to obtain a Master of Arts (Law) from the same University prior to undertaking a doctoral programme of study at the Housing Chair of the Universitat Rovira i Virgili (Tarragona, Spain). The Ph.D. was conferred to him in 2017. He has been involved in a number of European research projects including the European TENLaw Project co-ordinated by the European University Institute (Bremen) and the EU Pilot Project on Preventing Evictions and Homelessness (HEC, FEANTSA & National University of Galway). He is also an advisor to the Maltese Parliamentary Secretary for Social Accommodation.

² Eurostat, *National Accounts and GDP*. Accessed online on 14 December 2017 on: http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP.

³ J. Bonnici, '37,000 foreign workers in Malta: a necessary figure to sustain country's economic growth', *The Independent*, 7 November 2017. Accessed online on 14 December 2017 on: <http://www.independent.com.mt/articles/2017-11-07/local-news/37-000-foreign-workers-in-Malta-a-necessary-figure-to-sustain-country-s-economic-growth-6736181151>.

on both rental and property prices³. This affordability crisis, to which the government did not have any sudden measures of response, highlighted the insufficiency of administrative structures to respond to housing needs in such a quickly-changing economic environment. Moreover, the emergence of new housing distress is gradually bringing out the concept that rather than a mere political concession, the protection of housing rights should constitute a duty to which the State is formally bound.

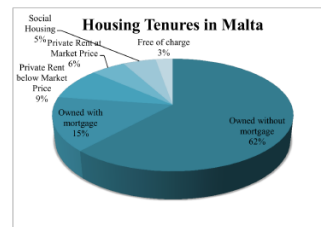


Figure 0.1: Proportion of Housing Tenures in Malta (Source: National Statistics Office)

2. The assessment of Maltese Housing Policy

The aim of this paper is to establish whether there exists the need for a formally protected right to housing in Malta. In order to do this one must first of all understand the implications of such a right in order to eventually assess what new remedies it might present. The justification for which there exists no Right to Housing in Malta was provided by Mifsud Bonnici who proffers the view that despite not being bound by the Constitution, the State had still effectively seen to the needs of the population:

Given the history of housing laws in Malta, [the notion of a Constitutional right to housing] has not arrived in a period of denial or of challenge of these rights, but at a moment when public opinion is convinced and not entirely as a result of complacency, that there already exist adequate legal and administrative structures to satisfy this need⁴.

At the beginning of the 2000s this statement was certainly a valid one. Property prices were instead stable and affordable whilst government was still active in promoting access to home

⁴ <http://www.independent.com.mt/articles/2015-04-15/local-news/Malta-s-property-prices-among-the-highest-in-the-EU-6736133854>. In the second quarter of 2016, the index of advertised prices for residential property went up by 8.7% compared with the corresponding quarter of 2015 (Central Bank of Malta, *Quarterly Review 2016-2*); H. Grech, 'Malta average rental prices increase by 47% between 2013-2016, signs of overheating', *The Independent*, 30 November 2017. Accessed online on 14 December 2017 on: <http://www.independent.com.mt/articles/2017-11-30/local-news/Malta-average-rental-prices-increase-by-47-between-2013-2016-signs-of-overheating-6736182097>.

⁵ U. Mifsud Bonnici, 'Housing Rights in Malta', in *National Perspectives on Human Rights*, edited by S. Leckie, The Hague: Nijhoff, 2003, p. 256.

ownership especially for young couples, whilst maintaining its efforts in the construction of new social housing units. Malta's accession into the European Union did, send ripple effects down the housing market, particularly through the government's decision to allow Maltese citizens to repatriate undeclared funds held overseas at a nominal penalty rate which were, in turn, reinvested in property⁵. The sudden property price boost created an artificial demand which challenged prospective home buyers by no insignificant measure. Foreign analysts who assessed the conditions of the Maltese housing market were, therefore, far less impressed with Malta's housing policy. Vakkil-Zad was amongst the earliest to underline how housing policy in Malta was always driven by the political considerations of the two dominant political parties together with the influence of the Catholic Church rather than by any logic of industrialization or economic laws. This, in turn, explains how whilst in the 1990s countries were rethinking their housing policies, Malta:

... merely revised rent regulation, yet left the majority of privately-rented accommodations trapped in outdated rent regulation, kept building dwellings and sold them at a discount and left the management of social housing in the hands of central government bureaucrats and professionals⁶.

This less optimistic outlook revealed amongst some of the deepest-lying problems in the Maltese system. First of all the absence of a properly regulated private rented sector which either leaned disproportionately in favour of the tenant (pre-1995)⁷ or else left the tenant without the least guarantee regarding minimum contractual duration or stability of rents (post-1995). Secondly, the significant degree of bureaucracy and clientelism present in the allocation procedures of social accommodation.

It is mostly these latter problems that are currently manifesting themselves in the market: the inadequacy of rent regimes for either their disproportionate rigour or their excessive liberality and the record numbers of social housing applicants⁸ caused simultaneously by the rapid decline in rental affordability and the absence of new construction of social housing units during the recent years⁹. It is in this light that the various international statutes under which the Maltese State is bound will be analysed in more detail.

3. Housing Rights under the Maltese Legal Order

Malta's principal obligations in the sphere of housing are, in fact, constituted by the number of international instruments that it has ratified over the years. First amongst which, there is the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁰ that requires the necessary standard of the housing conditions to be "adequate" (Article 11). Malta has also

⁵ L. Bianco, 'Malta: Housing and Real Estate 1980-2005', *Architectural Design* 76 (2006): 3.

⁶ C. Vakkil-Zad, 'Housing Policy in Malta: A Welfare State Regime Approach', *The FEMA Research Bulletin*, 2006:1(2), 64.

⁷ As regulated by Chapters 69, 116 and 158 of the Laws of Malta.

⁸ In November 2017 the total number of applicants for social accommodation was that of 3,271 (Hon. Michael Falzon, Minister for Family, Children's Rights and Social Solidarity, PQ no. 2080, Legislature XIII, 29 November 2017).

⁹ Between the 2010 and 2017 only 14 new units were erected (the last one was erected in 2014). In 2017 Government announced a number of new projects that should house up to 683 households (Hon. Michael Falzon, Minister for Family, Children's Rights and Social Solidarity, PQ no. 1456, Legislature XIII, 2 October 2017).

¹⁰ Malta signed the International Covenant on Economic, Social and Cultural Rights on the 22 October 1968 and subsequently ratified it on 13 September 1990. It entered into force on 13 December 1990 [United Nations Economic and Social Council, *Implementation of the International Covenant on Economic, Social and Cultural Rights: Initial reports submitted by States parties under articles 16 and 17 of the Covenant*, Addendum, MALTA, 7 February 2003]. Malta, however, has not signed the Optional Protocol that allows the Committee to hear complaints from individuals.



7. Writing – Article

accepted housing rights deriving from the European Social Charter besides other relevant provisions contained in the European Convention on Human Rights as well as the European Union treaties and regulations.

3.1. ICESCR

This universal right to “adequate” housing conditions, as contained in the ICESCR, places a significant obligation on the part of the State to ensure the provision of adequate accommodation to its citizens. This does not mean that the Covenant imposes onto States the obligation to eliminate homelessness immediately¹¹, however, the State must show that the measures being taken are “sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources”¹².

The Committee on Economic, Social and Cultural Rights has itself recognised that housing rights are infinitely more complex than the commonly cited ‘right to a roof over one’s head’ and it entails additional concerns such as security of tenure, non-discrimination and affordability¹³. The norm is the right to a place to live in security, peace and dignity¹⁴.

The practical implications of this right were explained by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment no. 4. The main concepts include:

i) Legal security of tenure

The object of this law is not so much that of prolonging leases as much as that of ensuring that evictions only occur in strictly defined circumstances (the legality of an eviction would be initially determined by reference to domestic law)¹⁵.

ii) Availability of services, materials, facilities and infrastructure

The State must ensure that homes contain the necessary facilities for one’s health, security, comfort and nutrition, and there should be sustainable access to resources such as water and energy supplies, sanitation, washing facilities, food storage, refuse disposal, site drainage and emergency services.

iii) Affordability

This is one of the most important elements as this requires States to ensure that elevated housing costs do not threaten or compromise the fulfilment of other basic needs as well as ensure that these remain commensurate with income levels. Hence, the State’s obligations are those of ensuring enough low-cost housing to cater for the needs of the population, particularly the more economically disadvantaged categories¹⁶. In respect to tenants the Committee specifically lays down that: “... tenants should be protected by appropriate means against unreasonable rent levels or rent increases”. Therefore, States are expected to exercise some control over rent levels in the private sector¹⁷ at least where these become a threat to social inclusion.

iv) Accessibility

¹¹ M. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, Oxford Monographs in International Law (Oxford: Clarendon Press, 1995), 330.

¹² CESCR General Comment no. 5, para. 14.

¹³ S. Leckie, “The Justiciability of Housing Rights” in *SIM Special No. 18 Proceedings of the Conference on an Optional Protocol to the Covenant on Economic, Social and Cultural Rights*, Netherlands Institute for Human Rights, Utrecht.

¹⁴ Office of the United Nations High Commissioner for Human Rights, *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, UN Doc. E/1992/23, 13 December 1991, para. 7.

¹⁵ *Ibid.* Craven, 339, 344.

¹⁶ *Ibid.* Craven, 338.

¹⁷ *Ibid.* Craven, 338.

certain ethnic groups. This discrimination goes to the extent that estate agents have been described as “gatekeepers in maintaining certain neighbourhoods as ‘white/non Muslim’” whilst they have also been found to steer certain categories into depressed areas⁵². Similar conclusions emerged from a separate research that once again identified discrimination as “one of the key obstacles in finding rented accommodation in the community”. A pilot project, conducted by the same NGO that drew up the report, which aimed at assisting residents of one particular Open Centre with finding places for rent was also reported to have been met with resistance by local landlords⁵³.

This misconduct on the part of legislators is, however, already foreseen by local legislation. The *Equal Treatment of Persons Order*⁵⁴ expressly prohibits discrimination in relation to access to housing and any discriminatory act, including any instruction to discriminate against any person, would be exposing the offender to a *multa* of up to €2,239.37 and to any term of imprisonment inferior to six months.

4. State duties under Housing Rights

The above analysis may shed more light on the scope of the right housing as protected under the various instruments to which Malta is a state party. The ICESCR and ESC (even simply under Article 16) are the treaties that assert this right in the clearest terms although, despite having ratified and accepted the relevant provisions, Malta has not transposed their contents into domestic legislation. The ICESCR and the ESC are the two instruments that could guarantee the full development of the right to housing in Malta since rather than binding a State to provide a home for every household, it obliges it to take concrete policy measures, commensurate with economic resources at its disposal, in favour of segments of the population, particularly the most vulnerable ones, who would face the inevitable prospect, or the risk, of homelessness. The State would also be bound to oversee the housing standards and take the necessary steps to ensure that essential services (such as heating and electricity) are available to all.

The ECHR and EU Legislation protect the right to housing in a more indirect manner, however, being already transposed into Maltese law they can already guarantee certain remedies. As regards the ECHR, one has to underline the procedural guarantees that it requires, particularly in the process of depriving someone of one’s home. Specifically, that of allowing an occupant to question the proportionality and reasonableness of the measure being taken against him before an independent tribunal, irrespective of whether he would have a valid title or otherwise. EU Law may primarily be availed of in order to guarantee the fairness of rental agreements where the tenant/consumer would have contracted with a business or a professional entity and to curtail discriminatory practices that limit access to housing for racial or ethnic minorities.

5. Conclusion

The recent economic realities have exposed the peril of having the housing rights of segments of the population depend entirely on the political discretion of the public administration. The juridical advancements in the conception of housing rights both at a European as well as at a global level should serve as the basis on which to start a local discussion on the usefulness of such a formal safeguard within the local context. In today’s society, housing rights have become key to both an effective welfare policy as well as a guarantee of Malta’s fulfilment of its human rights

⁵² National Commission for the Promotion of Equality (NCPE), *I’m Not Racist, But...: Immigrant & Ethnic Minority Groups and Housing in Malta*, 2012, 15.

⁵³ *Ibid.* no. 72, 37-38.

⁵⁴ Subsidiary Legislation 460.15.

commitment.

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7. Writing – Legal Writing

- 3 main types of legal writing:
 - i. Case briefs – summary of case
 - ii. Legal Briefs – submissions
 - iii. Legal correspondence – legal letters



7. Writing – Legal Writing – Case Briefs


- Case summary
- Include only most relevant facts of the case that highlight the main issue, identify the applicable law, application of the law to the issue, include court's reasoning and decision
- Check for assenting or dissenting opinions especially when dealing with ECHR judgments

Video with example:

https://www.youtube.com/watch?v=_wzWq_XJE-w&t=1s



7. Writing – Legal Writing – Case Briefs



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 2021
May 2021

Terheş v. Romania (dec.) - 49933/20
Decision 13.4.2021 [Section IV]

Article 5

Article 5-1

Deprivation of liberty

52-day general lockdown imposed by the authorities to tackle the COVID-19 pandemic:
Article 5 inapplicable; inadmissible


Facts – On 11 March 2020 the World Health Organization declared that the world was facing a pandemic caused by COVID-19.

On 16 March 2020 the Romanian President therefore introduced a state of emergency involving restrictions on freedom of movement. No movement outside the home was permitted, except in a certain number of exhaustively listed circumstances and on production of a document attesting to valid reasons for leaving home. Persons breaching the regulations were liable to a fine.

The state of emergency ended on 14 May 2020 at midnight.

Law – Article 5 § 1: The applicant did not rely on Article 2 of Protocol No. 4 in the proceedings before the Court, seeking instead to demonstrate that the general lockdown had constituted a deprivation of liberty and not simply a restriction of the right to freedom of movement.

The measure complained of had been imposed under a state of emergency, with the aim of isolating and confining the entire population on account of a public-health situation which the competent national authorities had deemed to be serious and urgent. Under Romanian law a state of emergency was a special legal regime which enabled a set of exceptional measures to be taken derogating from the established constitutional order. It was thus declared in the event of imminent or actual danger, for a specified period, and allowed the State to take measures restricting the exercise of certain fundamental freedoms. The Romanian President had declared the state of emergency after consulting the competent bodies, and on account of the “exceptional and unforeseeable context” created by the evolving international situation regarding the epidemic: the SARS-CoV-2 coronavirus was spreading throughout the world and the World Health Organization had officially declared it a pandemic. If the authorities had not taken extraordinary measures as a matter of urgency to stem the spread of the virus in the population, their lack of action would have had very serious repercussions, primarily on the right to life and, secondarily, on the right to health. Hence, the gradual introduction by the Romanian State of emergency measures, including lockdown, had been aimed at mitigating the economic and social impact of the epidemic and safeguarding the right to life.



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In the Court's view, the COVID-19 pandemic was liable to have very serious consequences not just for health, but also for society, the economy, the functioning of the State and life in general, and the situation should therefore be characterised as an “exceptional and unforeseeable context”.

The impugned measure had remained in place for fifty-two days. It was a general measure imposed on the whole population through legislation enacted by the various authorities in Romania. As a result of the implementation of the measure the applicant had been obliged to stay at home, being allowed to leave only for one of the reasons expressly provided for in the legislation, and with the relevant exemption form.

Thus, the applicant had been free to leave his home for various reasons and could go to different places, at whatever time of day the situation required. He had not been subject to individual surveillance by the authorities and did not claim to have been forced to live in a cramped space, nor had he been deprived of all social contact. Accordingly, in view of its degree of intensity, the measure in question could not be equated with house arrest.

Furthermore, the applicant had not explained in concrete terms how the measure had affected him. He did not allege that his circumstances were not covered by any of the reasons for leaving home provided for by the legislation and that he had thus been confined indoors for the entire duration of the state of emergency. More generally, he had not provided any specific information describing his personal experience of lockdown.

In view of all these considerations, the level of intensity of the restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. Accordingly, the applicant could not be said to have been deprived of his liberty within the meaning of Article 5 § 1.

Lastly, Romania had announced its intention to derogate under Article 15 of the Convention from the obligations flowing from Article 2 of Protocol No. 4 guaranteeing freedom of movement, a right which the applicant had not asserted before the Court. In any event, given that Article 5 § 1 was not applicable in the present case, it was not necessary to examine the validity of the derogation notified to the Council of Europe by Romania.

Conclusion: inadmissible (incompatible *ratione materiae*).

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This summary by the Registry does not bind the Court.

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