

# Diploma in Law (Malta)

## The Courts

Lecturer: Dr Antonio Depasquale

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# Re-Cap of Lecture 3

- Jurisdiction
- Interpretation
- Constitution



# Today's lecture

In today's lecture we will be covering the following topics:

- The right to life, protection from arbitrary arrest and detention, protection from deprivation of property and right to a fair hearing
- The Constitution (part)
- Maltese Courts such as the Constitutional Court, Civil Procedure, Court of Magistrates, Civil Court and Family Section.



# Right to life

- Exception of death penalty  
'....save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted'
- Exception in self defence (not just for one self and also includes property), prevention of committing a crime, act of war.....



# Protection from arbitrary arrest & detention

- The most common exception is Police arrest.....
  - Based on a reasonably suspicion not arbitrary.
  - A warrant issued by a magistrate is needed
  - No warrant is needed if person is caught in the act or if he poses danger to himself or others
  - If one has just committed a crime or about to commmit one



# Protection from deprivation of property

- In reality, what is protected is the right to be compensated
  - Payment
  - Access to independent tribunal to contest compensation
  - Right of appeal
- Government can expropriate property when needed for public interest



# Right to a fair hearing

- Everyone is entitled to a fair hearing (both criminal & Civil)
- There is no definition of fair, however certain principles exist;
  - Nemo iudex in causa propria
  - Audi alteram partem
  - A decision must be accompanied by a reason
  - A lot of media attention which can effect the case
- Reasonable time



# The President

- Elected or removed by at least 2/3 of the members of the House
- Holds Office for 5 years
- Can be removed on certain grounds
- The President forms part of Parliament





# Parliament

- Number of members is not fixed by the Constitution though it is fixed by law at 65 (General elections act)
- Elected out of 13 districts
- Corrective mechanisms ensure that the party obtaining the majority of votes have majority of seats in Parliament and in relation to the votes obtained
- Speaker and President are considered as members of Parliament but not for voting purposes unless a casting vote is needed by the Speaker.



# Summoning, Prorogation & dissolution

- To be summoned not later than 2 months after the publication of the official result of an election.
- Lifetime of Parliament is 5 years
- Can be dissolved by the President on advice of the PM anytime the PM wants
- There are instances where the President can refuse to dissolve even after the advice of the PM
- President can dissolve Parliament when the House passes a motion of no confidence and the PM remains inactive
- President can dissolve Parliament in case of a political impasse



# The Executive

- Cabinet shall have the general direction and control of Government
- Cabinet shoulders collective responsibility
- A minister can only resign if he does not support the decision of cabinet
- If the ruling party loses the confidence of the majority of the House either the PM resigns or Parliament is dissolved
- If the PM loses the confidence of the majority of the House the entire government goes down..... Not the same happens if it is in a minister



# Appointment of the PM

- The appointment of the PM is at the hands of the President.
- When there is a vacancy in the post of a PM, there is no PM to give advice!
- The President must appoint the member of the House who in his opinion has the support of the majority of the House.



# Appointment of Ministers

- The PM has the discretionary power to appoint ministers
- Although it's the sole discretion of the PM, certain factors do play an important role.



# Leader of the Opposition

- Apart from representing a substantial minority
- Represents the opposition, which is an integral part of the democratic structure of our system.
- Sits on important committees such as the Security committee
- Is consulted by the PM on certain important appointments such as that of the President.



# Ombudsman

- A constitutional role to investigate any action taken by or on behalf of the government, authority or other persons taken in the exercise of their administrative function
- Officer of parliament and therefore reports to Parliament
- Appointed by the President after being supported by 2/3 of the members of the House



- Ombudsman can appoint commissioners in specific sectors (health, education, environment)
- Ombudsman investigates
  - On his own initiative
  - On a written complaint by an aggrieved person
  - By the heir of an aggrieved person
- Committees of Parliament
- Prime Minister





- Ombudsman gives a recommendation
- Decisions are not directly enforceable
- May forward his recommendations to the PM and thereafter to Parliament



# Speaker

- The first act of a new Parliament is to appoint a Speaker to presides over the House.
- Speaker can be a present member of the House (not a minister or Parliamentary Secretary)..... If so he loses the original vote as an MP
- A Deputy Speaker is also chosen normally being a member of the Opposition



# Judiciary

- Composed of the Chief-Justice, Judges and Magistrates
- Judiciary take decision both against the legislator (declaring laws unlawful) and against the executive when it declares decisions to be illegal or administratively not proper
- Once appointed the Constitution ensures that judges enjoy security of tenure



# Appointment of Judiciary members

- Appointed by the President on advice of the Judicial Appointments Committee
- Judges need to have 12 years of experience (or be magistrates)
- Magistrates need 7 years
- Chief Justice appointed by the President in accordance with a resolution of the House supported by 2/3 of the House



# Judiciary appointments Committee

- Chief Justice
- 2 members elected for a period of four (4) years by the Judges from among themselves
- 1 member elected for a period of four (4) years by the magistrates of the inferior courts from among themselves;
- Auditor General
- Ombudsman
- President of the Chamber of Advocates



# Commission for the administration of Justice

- President as Chairman
- Chief Justice who shall be Deputy Chairman
- 2 members elected for a period of four years by the judges
- 2 members elected for a period of four years by the magistrates
- 2 members appointed for a period of four years as to one by the Prime Minister and as to the other by the Leader of the Opposition
- President of the Chamber of Advocates



# Amending the Constitution

- Constitution can be amended as long as there is the majority of the members present in the House
- Different ways to amend different parts of the Constitution
  - Absolute majority
  - 2/3 majority
  - 2/3 majority + majority in a referendum voting



# The Maltese Courts

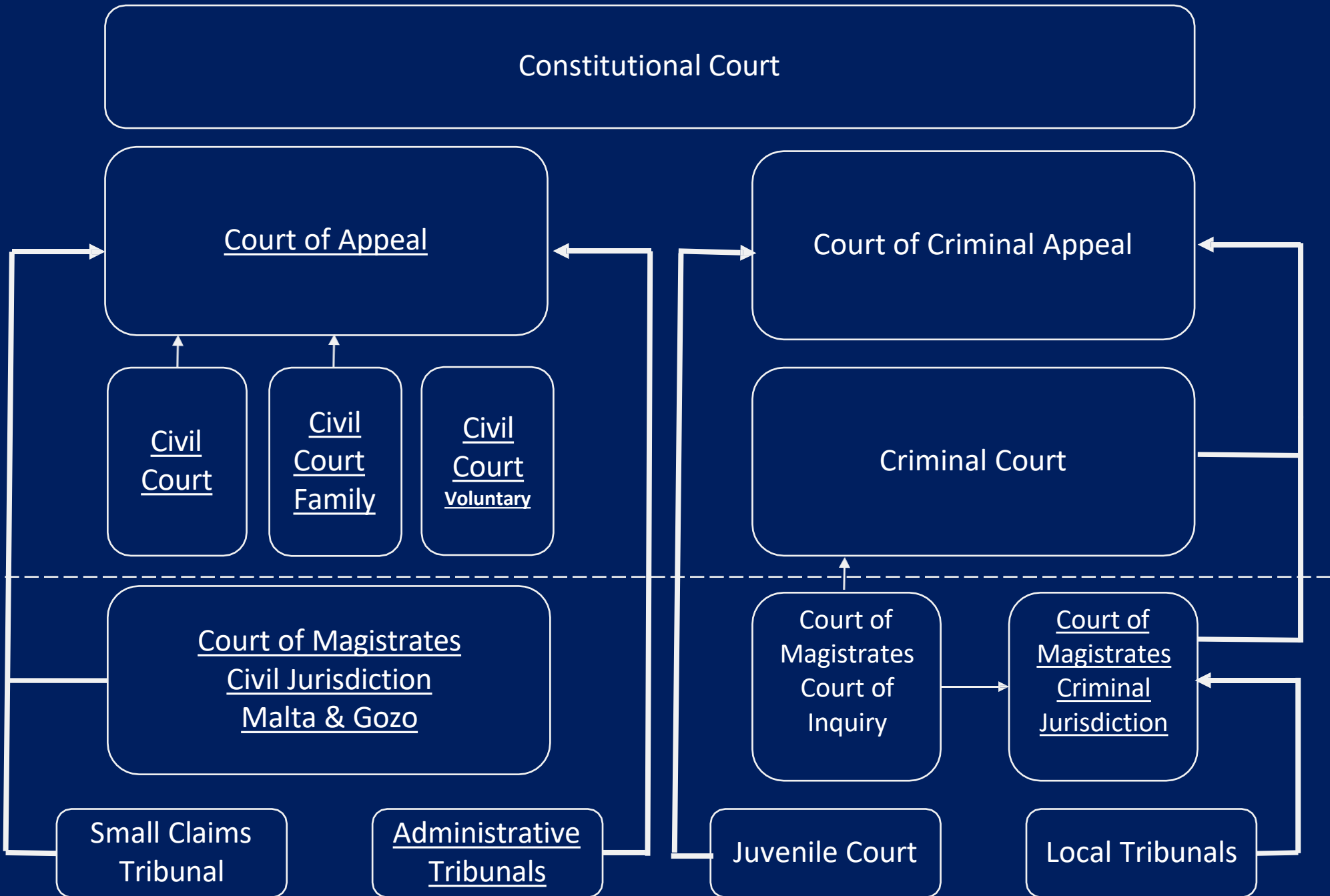
- As we have seen the Courts are one of the pillars in a democracy.
- The rule of law requires independence, security of tenure and capable of enforcing the law.
- The constitution requires that there shall be courts of superior and inferior jurisdiction and a Constitutional Court.





- In Malta we have a number of different Courts
- The Court is not the physical building in Valletta
- Basically there are two levels, the Superior and Inferior Courts
- Though the name implicates a difference in importance it is not so much in reality.
- The Inferior Courts are presided by Magistrates whilst the Superior by Judges





# Civil Procedure

- Where matters are between two parties (including legal persons) these are tackled in the Civil Courts
- Depending on the amount involved one applies to the Courts of Magistrates (Civil) or First Hall Civil Court
- Depending on the matter one refers to the different Courts
  - Family issues – Civil Court (Family Section)
  - Matters on interdiction, incapacitation, secret will – Civil Court Voluntary Jurisdiction
  - Commercial, financial, property, administrative decisions matters – First Hall Civil Court



# Basic Civil Procedure

- The civil action revolves around a conflict between two or more subjects at law who uphold opposing views vis-à-vis the same subject matter and each subject believes or claims that his opinion or conduct is in conformity with the law or protected thereby.
- It is when one aggrieved party institutes an action that the judicial authority is called in to solve the conflict. The ability to institute a demand to obtain the enforcement of law is the **right of action**.
- A person who feels aggrieved (Plaintiff/Attur) files an application (Rikors) whilst the other party is known as defendant (konvenut)



# Court of Magistrates (Civil)

- Presided by one Magistrate
- It hears civil cases which exceed the competence of the Small Claims Tribunal (€ 5,000) but which do not fall within the competence of the First Hall of the Civil Court, therefore not exceeding € 15,000.



- Cases involving ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, including any claim for the ejectment or eviction from immovable property, shall not fall within the jurisdiction of the Court of Magistrates (Malta) independently of the value of the claim.
- Appeals from decisions of this Court are heard by the Court of Appeal.



# Civil Court

- Presided by one Judge
- The First Hall of the Civil Court hears all cases of a civil and/or a commercial nature exceeding the jurisdiction the Court of Magistrates (€ 15,000).
- In its constitutional jurisdiction, it also hears cases relating to violations of the constitutionally protected human rights and fundamental freedoms protected by the European Convention of Human Rights and Fundamental Freedoms.
- Administrative cases in certain cases



# Civil court – Family Section

- This court hears all cases relating to family matters such as marriage annulment, personal separation, divorce, maintenance and custody of children, paternity, repudation, custody.
- Approvals of separation contracts
- Presided by a Judge





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