

Gender Identity Issues in Maltese Law

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INTRODUCTION

Of all the current legal and political controversies that have topped the headlines in recent times, lesbian, gay, bisexual, and transsexual (collectively referred to as 'LGBT') rights have been particularly prominent. The late 2000s and early 2010s have seen a number of institutions proliferating various forms of legislation intended at providing increased recognition to persons who identify themselves within this demographic – with the United Kingdom, France, Sweden, the United States and even Malta jumping on the bandwagon.

Yet when we look at the local situation, such a shift in treatment and recognition has been a relatively recent one fraught with political confrontation. This is highly unsurprising given Malta's traditional Christian values, and every proposed advancement is always treated with extensive coverage. However this article does not intend to enter into political controversy but rather give an academic legal analysis of the main issues which have been faced by transgender persons in Malta over the last few years.

The point of departure is the case of Joanne Cassar. On 23 May 2011, the Constitutional Court, composed of Acting Chief Justice Geoffrey Valenzia, Mr Justice Giannino Caruana Demajo, and Mr Justice Tonio Mallia, overturned the ruling of the Civil Court First Hall in its Constitutional Jurisdiction, stating that although it was true that, inter alia, there was a breach of the plaintiff's right under article 12 of the European Convention of Human Rights (guaranteeing the right to marry), the remedy being requested by the plaintiff in this case was impossible to cater for as there did not exist the necessary legislative framework for the Registrar of Marriages to issue a bans in the plaintiff's particular situation.

Following the outcome of the **Cassar** judgment there has been significant legislative upheaval in the wake of the controversy and unsettled issues left by the Constitutional Court. This article seeks to unmask the various legal obstacles which have had to be addressed by the legislator on the issue of transgender rights, particularly the right of a person who has undergone gender reassignment surgery, to marry. It shall also delve into a comparative approach by giving a brief insight to

treatment of transgender people in the European Union as well as other jurisdictions.

BRIEF OVERVIEW OF THE FACTS OF THE CASE AND THE DECISION OF THE CONSTITUTIONAL COURT

The facts of the case are as follows: the plaintiff was born on 24 September 1981 and was registered as male under the name 'Joseph'. Over the years, it became increasingly obvious to the plaintiff that his inclinations, orientation, and behaviour was more feminine in nature, and for this reason underwent gender reassignment surgery in order to become part of the female sex. The medical intervention which the plaintiff underwent was irreversible.

The plaintiff then filed an action under article 257A of the Civil Code¹ in order to have her new gender recognised at law. By a decree handed down on 28 June 2006, the Court accepted the plaintiff's requests and stated that [s]he had assumed the female sex in an irreversible manner and ordered an annotation in the Act of Birth as well as a change of name from 'Joseph' to 'Joanne'. Subsequently, a new Act of Birth was issued indicating that the plaintiff was a woman.

The plaintiff then applied for the publication for the issuance of a Banns of Marriage in order to marry a man, however the Registrar of Marriages was of the opinion that he was incapable at law to do so and gave his reasons to the plaintiff under article 8 (1) of the Marriage Act.² The plaintiff then filed a lawsuit in front of the Court of Voluntary Jurisdiction under article 8 (2) of the Marriage Act, requesting the Court to order the Registrar to issue the Banns. The Court accepted this request by a decree dated 12 February 2007.

The Registrar then filed a suit requesting the revocation of the aforementioned decree, and by way of a Court judgment dated 21 May 2008 the Civil Court First Hall acceded to this request on the grounds that 'the decree was founded upon a premise that does not correspond with reality as the two parties are not of the opposite sex' as well as 'marriage between (the plaintiff) and another person of the male sex is contrary to the provisions of the Marriage Act of 1975.' The Court further held that:

The annotation made to the Act of Birth of the respondent by way of the Court judgment dated 28th June 2006 was only applicable insofar as the respondent's privacy was concerned and conferred no right to him to be equated to a 'woman' for the purposes of the contracting marriage.

PROCEEDINGS BEFORE THE CIVIL COURT FIRST HALL IN ITS CONSTITUTIONAL JURISDICTION

¹ It shall be lawful for any unmarried person domiciled in Malta to bring an action for an annotation regarding the particulars relating to sex which have been assigned to him or her in the act of birth

² Chapter 255 of the Laws of Malta

The plaintiff filed a suit in front of the Civil Court First Hall claiming that her fundamental human rights under article 32 (c) and 36 of the Constitution of Malta, as well as articles 3, 8, and 12 of the European Convention of Human Rights (the 'Convention') had been violated. Furthermore she requested the Court, inter alia, to declare that the Director of the Public Registry (in his capacity as Registrar of Marriage) could not refuse to issue the Banns of Marriage once the plaintiff had gone through a gender reassignment procedure.

The Civil Court First Hall declared that the application and interpretation of the law as practised by the Director of the Public Registry, insofar as recognition of transsexual persons is concerned, constituted a breach of the rights of the plaintiff under articles 8 and 12 of the Convention, and furthermore declared that the Director of the Public Registry cannot refuse to issue the Banns of Marriage when the relevant annotations to a person's Act of Birth have been made.

PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

The Director of the Public Registry appealed the sentence of the First Hall, arguing that the Court had erred in its interpretation of articles 8 and 12 of the European Convention. Regarding article 8, the appellants claimed that the First Hall had completely disregarded the fact that article 8³ of the Convention presupposes the existence of familial relationship and that the plaintiff brought forward no proof of such a relationship. The Court noted that although it was true that article 8 presupposes the existence of a family, it did not mean that single persons were not entitled to protection. Furthermore, article 8 specifically protects the right to *one's private life* as well. For this reason, the fact that the plaintiff failed to bring proof of a familial relationship does not preclude her from the protection under article 8.

In terms of respect for private life, the appellants claimed that article 257A of the Civil Code was only enacted to avoid 'embarrassing situations when one is requested to produce official documents'. The Court noted that whilst it is true that the right to one's private life is protected under article 257A et sequitur of the Civil Code, it pointed out that an interpretation of the extent of the annotation,⁴ was something which should have been treated in normal civil procedure and not in constitutional proceedings. The Court pointed out that in this respect the plaintiff had not availed herself of all ordinary remedies in order to ascertain the correct interpretation of these articles.

The Court, however, disagreed with the appellants' argument as elaborated in the preceding paragraph. It held that the decision of whether one marries or not is intimately tied to his private life, however the decision of the Registrar together with the interpretation of the law in the previous judgment, was denying the plaintiff the power to make such a choice.

The appellants also sought to invoke the article 8(2) of the Convention which permits interference of the state in one's private life by stating that the 'marriage'

³ The right to privacy

⁴ i.e. whether the change of sex on the Act of Birth was effective for all intents and purposes of the law

referred to by the plaintiff was against public order as established in the Maltese legal system in the sense that marriage is only possible between persons of opposing sex. The respondents submitted evidence proving that the plaintiff was only phenotypically female, and therefore only has the exterior form of a woman. By that logic, Maltese law prohibits this kind of marriage because the plaintiff can in no way be assimilated to a 'woman'.

The Court acknowledged the legal reality that the position under the Marriage Act is that marriage can only take place between males and females, and further explained that the plaintiff could not be considered as a woman for all intents and purposes of the law. It stated that should the definition of the union between man and woman be developed it would radically alter the legal nature of the relationship regulated under the Marriage Act. The Court quoted the *Goodwin* case⁵ and noted that although a number of social changes were taking place worldwide, these were developing at an uneven pace and could not be rubber-stamped by the Court, in an exercise it considered to be 'social engineering'.

The Court considered that despite the fact that the decision of the Registrar was done according to law, it did not justify the interference of the state in the plaintiff's private life. The Court acknowledged that there were no legal provisions regulating the particular situation faced by the plaintiff. It held that the crux of the problem was not so much the refusal of the Registrar to issue the Banns, as much as it was the fact that there was a lacuna in the law regulating such relationships. The Court thus held that there was a breach of article 8.

The Court held that insofar as article 12 of the Convention was concerned it agreed with the conclusion of the First Hall that there was a breach of the right protected, however it pointed out that the particular right protected was in fact not regulated in the Marriage Act. Consequently this meant, in the opinion of the Constitutional Court, that it had no power to compel the Registrar to issue the Banns of Marriage because such possibility was inexistent at law.

The Court thus found breaches of articles 8 and 12 of the Convention due to the failure of the law to contemplate the type of relationship that the plaintiff found herself in.

CRITICAL ANALYSIS OF THE DECISION

The **Cassar** case was notable for pushing the legal regime regulating transsexual marriage, or rather in the opinion of the Constitutional Court the lack thereof, into the limelight. It is notable that the furore caused by this judgment unveiled greater deficiencies in the law, which will be discussed later on this article. The judgment of the Constitutional Court was criticized harshly particularly by the media and commentators for its very restrictive approach. Unfortunately, although the decision may seem unfair *prima facie*,⁶ once one delves a bit deeper into the legal argumentation, one comes to the conclusion that if one had to adopt the true and

⁵ *Christine Goodwin v the United Kingdom* App no 28957/95 (ECHR, 11 July 2002)

⁶ An opinion shared initially even by the author of this article

correct interpretation of the law as found within the Maltese statute book, the Constitutional Court could not have come to any other conclusion.

ARTICLE 257A OF THE CIVIL CODE AT THE TIME OF JUDGMENT

Of much controversy, amongst commentators as well as law students, was the scope of article 257A of the Civil Code.

Article 257A et seq of the Civil Code were added as part of major reforms to the law of persons in the early 2000s. The article essentially empowered unmarried persons who had undergone irreversible gender re-assignment surgery to apply to the Civil Court First Hall to have an annotation made to his/her Act of Birth and Identity Card where the person's 'sex' is located.

According to The Honourable Dr Tonio Borg, who was piloting the Bill, the legislator had a very narrow view of the scope of this article⁷:

Irrid naghmilha ċara, għax staqsewhieli fis-second reading, li l-gvern qed jagħmilha ċara li din ma tintonax li n-nies ta' l-istess sess jistgħu jiżżewweġu. Din għedtha pubblikament li fit-test oriġinali kien hemm li għal kull skop tal-ligi se jitqies hekk u konna qlajniha 'l barra apposta. Issa min irid jagħmel kawża kostituzzjonali jagħmel kawża kostituzzjonali, kif hemm min fil-qorti Ewropea tad-drittijiet tal-bniedem għamel il-kawża, pero' ahna nibqgħu nsostnu li biex minn Mario ssir Maria kollox sew, halli mhux isejju Mario lil xi hadd li jidher bhala mara, imma mbagħad Mario ma jistax jiżżewweġ Mario iehor.⁸

The scope of this article was referenced in obiter by the Constitutional Court in the **Cassar** case, although the Court was of the opinion that its merits should have been tackled in separate, ordinary proceedings. That being said, it is important to note that despite the fact that the Constitutional Court initially declined to examine this issue more closely, it indirectly interpreted the provision in order to reach a conclusion to one of the arguments brought forward by the appellants, ie that relating to the union in marriage of a man and another man.

From this aspect, it is difficult to engage in a concrete legal criticism of the Court's conclusion as it seems to adequately portray the intent of the legislator. Insofar as interpretation is concerned, one may say that the Constitutional Court reached a correct conclusion. That being said however, one questions the legal end which the legislator sought to reach through this article. It is quite apparent that the interpretation given by the legislator placed transsexual peoples in a no-man's land,

⁷ Permanent Committee for the Consideration of Bills of Law 26 April 2004 Meeting No 15

⁸ Translation: I would like to make it clear, as I was asked during the second reading, that this government is making it clear that this will not empower persons of the same sex to marry. I stated publically that this was to be the position for all scopes of the law and we excluded it specifically. Now, whoever wishes to institute constitutional proceedings may do so, as has been done by some persons in front of the European Court of Human Rights, however, we shall keep insisting that for a Mario to become Maria is fine, so that we don't call him Mario when he has the appearance of a female, but then Mario cannot marry another Mario

and that the scope of the law was merely cosmetic rather than offering much of a substantive solution.

It must be noted that following the change of administration in March 2013, these articles of the Civil Code have since been amended to reflect the change in policy towards transsexuals attempting to marry. These amendments will be tackled in more detail later on in this article.

THE DEFINITION OF ‘MARRIAGE’

Central to the theme of this paper is the issue of the right to found a family and its corollary, the right to marriage. Given that the institution of marriage is one which is intimately tied with the culture and traditions of a State, it is unsurprising that there has been difficulty in ascertaining a precise definition of marriage. This is especially so given that in recent times legislation has been promulgated in various states⁹ eliminating any discrepancies between traditional heterosexual marriages and homosexual marriages. Such political upheavals have contributed to much discussion as to the real meaning of the word marriage, both from a religious and a civil perspective.

Notwithstanding this difficulty, it does help to place marriage and the right to found a family within the context of this paper, in order to better understand the nature of the breach of rights being complained of. Article 12 of the European Convention reads: ‘Men and women of marriageable age shall have the right to marry and to found a family, according to national laws governing the exercise of this right.’

It is sufficiently clear from the wording of the article that the framers of this Convention did not have the intention to impose an absolute right to marry. The extent of this protection has been tested several times at the European Court of Human Rights (‘ECHR’) level, and one particular judgment has been highlighted below.

GOODWIN VERSUS THE UNITED KINGDOM

Of particular relevance to this dispute is the case of *Christine Goodwin v the United Kingdom*,¹⁰ which judgment was actually mentioned in obiter dicta in the decision of the Constitutional Court in the **Cassar** case. At the time of its decision, the *Goodwin* case was ground breaking in that the European Court of Human Rights positively recognised the right of a transsexual person to get married to a person of the opposite sex.

The facts of the case were broadly similar to those in **Cassar**, namely that Ms Goodwin had undergone gender re-assignment surgery and was facing multiple

⁹ Including, for example the Netherlands and the State of New York (USA)

¹⁰ *Christine Goodwin v the United Kingdom* App no 28957/95 (ECHR, 11 July 2002)

issues of appropriate recognition from governmental authorities, and she instituted a claim of breaches under articles 8 and 12 of the European Convention on Human Rights. It was initially noted that in previous jurisprudence of the same Court, the right of transsexuals to marry was not protected under article 12, due to the fact that at the time 'traditional' marriage was considered as a union between two persons of opposing *biological sex*.¹¹

Significantly however, the Court did take into consideration the evident shift in the perception and attitude of different national legislators and popular opinion on the status of persons having undergone gender re-assignment surgery. It is apparent that the Court was attempting to be sensitive to a scientific and social reality which could not be easily confined in space or time.

It is quite intriguing to analyse the Court's somewhat scathing attack on what it, in the interpretation of the author of this article, perceived to be laws hostile to persons having undergone gender re-assignment surgery. Paragraph 101 is particularly telling in this respect:

In that regard, it [the Court] finds that it is artificial to assert that post-operative transsexuals have not been deprived of the right to marry as, according to law, they remain able to marry a person of their former opposite sex. The applicant in this case lives as a woman, is in a relationship with a man and would only wish to marry a man. She has no possibility of doing so. In the Court's view, she may therefore claim that the very essence of her right to marry has been infringed.

Unsurprisingly, following such a brutal analysis the Court did eventually unanimously find a violation of article 12 of the Convention.

Two points come to mind when trying to reconcile the decision of the *Goodwin* case with the outcome of the **Cassar** judgment of the Maltese Constitutional Court. First, it is difficult in the opinion of the author to ignore the lack of conviction that the Constitutional Court had in finding a breach of article 12 of the Convention. It is very telling that though the Constitutional Court did acknowledge a breach of applicant's rights, it did so somewhat begrudgingly and in fact failed to provide a real remedy to Cassar's complaint, instead leaving the matter somewhat unresolved.

Secondly, it is also quite telling that in a survey conducted by Liberty, which was quoted in the *Goodwin* case, the Maltese legal position regarding the eligibility of post-operative transsexuals to marry a person of sex opposite to their acquired gender fell within the category of 'unclear',¹² a view which seemed to be corroborated by the hesitant approach of the Constitutional Court.

TREATMENT IN THE EUROPEAN UNION AND OTHER JURISDICTIONS

¹¹ *ibid* para 97

¹² *ibid* para 57

In the **Goodwin case** it was noted by the Court that the past few decades were marked with a continual change in attitudes towards the status of persons post-gender reassignment. Malta is not the first state to have come in contact with the consequential social friction that comes with such changes. For this reason, it would prove a useful exercise to examine the legal advancements, amendments, and judicial approaches of other states facing legal questions of a similar stature.

Given Malta's membership in the European Union, it would be a useful exercise to ascertain current EU trends and policies towards the treatment of transsexuals who claim the right to marry. The EU does not have competence to legislate on issues which touch upon the right to marry, given that this area of law making is still fiercely protected by Member States as it is widely acknowledged that marriage has an intimate relationship with the familial and moral policy of each particular State. However, the European Union does have a positive policy towards the elimination of discrimination against persons who are transsexual, and notably this has resulted in an Intergroup on LGBT Rights within the European Parliament.¹³

The Intergroup has been instrumental in the backing of EU-mandated legislation, most notably the Gender Recast Directive.¹⁴ Recital 3 of the latter legislative intervention states:

The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person.¹⁵

However despite the positive tone emanating from the Recast Directive, it is notable that its scope is somewhat limited to equal treatment legislation in matters of employment and occupation as well on equal pay and social security benefits.¹⁶

In an internal note of the European Parliament on LGBT Rights, a study was undertaken to analyse, as of 2010,¹⁷ the varying legal treatment of transsexuals in respect to their right to marry. It is significant that, *at the time*, a majority of EU Member States had legislation in place which secured the rights of transsexuals to marry. Malta has since joined such a group following Act VII of 2013, as will be elaborated upon in the subsequent section.

Of further interest is a judgment which was cited in the Liberty study and then quoted in the *Goodwin case*. Placed in context, Liberty attempted to stress the more liberal legal movement taking place outside of Europe, and quoted extensively from jurisprudence emanating from both the New Zealand Courts as well as the Australian Courts. Of particular interest to Maltese readers in this context is the following extract from the *Re Kevin case*:

¹³ The European Parliament's Intergroup on LGBT Rights <<http://www.lgbt-ep.eu/>> accessed 15 December 2013

¹⁴ Directive (EC) 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23

¹⁵ *ibid* Recital 3

¹⁶ Transgenders' Rights in the EU Member States, Directorate General for Internal Policies, European Parliament p 4

¹⁷ No further comparative law process has since taken place at EU level

I see no basis in legal principle or policy why Australian law should follow the decision in Corbett. To do so would, I think, create indefensible inconsistencies between Australian marriage law and other Australian laws. It would take the law in a direction that is generally contrary to development in other countries. It would perpetuate a view that flies in the face of current medical understanding and practice. Most of all, it would impose indefensible suffering on people who have already had more than their share of difficulty, with no benefit to society ... Because the words 'man' and 'woman' have their ordinary contemporary meaning, there is no formulaic solution to determining the sex of an individual for the purpose of the law of marriage. That is, it cannot be said as a matter of law that the question in a particular case will be determined by applying a single criterion, or limited list of criteria. Thus it is wrong to say that a person's sex depends on any single factor, such as chromosomes or genital sex; or some limited range of factors, such as the state of the person's gonads, chromosomes or genitals (whether at birth or at some other time). Similarly, it would be wrong in law to say that the question can be resolved by reference solely to the person's psychological state, or by identifying the person's 'brain sex'.¹⁸

It is the opinion of the author that the logic adopted by the Mr Justice Chisholm in this decision was both instructive and sound. The Family Court of Australia succeeded in adequately portraying the potentially damaging consequences of a state not paying heed to the needs of transsexuals within their communities. The Court's remark on 'indefensible inconsistencies' captures the dangers of such an approach.

ACT VII OF 2013

Subsequent to the judgment of the Constitutional Court, Joanne Cassar applied to the European Court of Human Rights in Strasbourg alleging a breach of her rights under article 12 of the European Convention on Human Rights and Fundamental Freedoms, ie the right to marry.

However, following a change in administration in 2013, a Bill was piloted in Parliament which sought to eradicate the lacuna that existed in the law at the time of the judgment of the Constitutional Court in the **Joanne Cassar** case. As was stated by the Honourable Franco Mercieca during the Second Reading in Parliament¹⁹:

Sur President, illum qed niddiskutu abbozz ta' ligi li jemenda l-Kodiċi Ċivili biex il-persuni transgender ikollhom id-dritt taż-żwieġ. Jien nilqa' din l-emenda b'mod pożittiv għax dan huwa dritt ċivili li għandu jingħata f'Malta wkoll. Personalment ilni nsegwi dan is-settur u nista' ngħid li dan id-dritt ċivili ġie mnebbah mill-każ ta' Joanne Cassar li kienet għamlet kawża kontra pajjiżna quddiem il-Qorti Ewropea. Illum il-każ tagħha se jiġi rizolt. U din hija aħbar li se tiġi milqugħa tajjeb mill-komunità lesbian, gay, bisexual and transgender

¹⁸ *Kevin and Jennifer v Attorney General for the Commonwealth* (2001) FamCA 1074

¹⁹ Sitting No 7 of the Malta House of Representatives 15 April 2013 Plenary Session

community (LGBT). Dan huwa dritt li se jgħinhom biex jġu integrati aktar fil-komunità tagħna.²⁰

As a consequence of this Act, which was, passed on 12 July 2013, article 257C (2) of the Civil Code was amended to read as follows:

Without prejudice to the other provisions of this article, as from the said day the person in respect of whom a declaration is made under article 257B shall be considered for *all civil purposes*, including with regard to the capacity of that person to exercise the *right to marry*, as belonging to the acquired sex indicated in the Register (emphasis added).

It is notable that the wording employed by the law eliminates all forms of doubt that existed in the previous incarnation of these set of articles. Significantly, sub article 2 of article 257C makes a special reference to the right to marry. This is most certainly due to the steps taken by Parliament to take heed of the decision of the Constitutional Court in the **Cassar** case. This positive inclusion of a particular example will thus serve to curtail somewhat the discretion of the Registrar of Marriage as found in the Marriage Act, and the argumentation which has been previously employed by the Registrar to refute such marriages is now inoperable.

That being said, despite the fact that Act VII of 2013 somewhat normalises the particular situation of a transsexual person who intends to enter into a matrimonial union with a person of the opposite sex, the right referred to in article 257C (2) is by no means an absolute one and does not grant the right to such person to enter into a matrimonial union with a person who is of the same-sex (post-gender reassignment surgery). Although this is deviating somewhat from the original argument, it is still quite apparent that homosexual marriages are prohibited at Maltese law and it is quite clear that Act VII of 2013 does not take any steps to change that.

However on the 30th of September 2013 the Government of Malta laid on the table of the House of Representatives a Bill which seeks to legalise civil unions between couples of the same sex. Although this particular issue is not of major relevance to the topic which is being discussed in this article, it would be an interesting academic exercise to analyse its comprehensiveness, naturally assuming that the Bill would eventually make it through the parliamentary procedure and become law.

Another interesting observation to be made when touching upon transsexuals' rights is the interpretation of the word 'unmarried' as found in article 257A (1) of the Civil Code.²¹ A prima facie reading of this article would seem to imply that only persons who have never contracted marriage would be allowed to apply to the Court for a revision of the identification documents. However, it is not an unknown

²⁰ Translation: Mr President, today we are discussing a Bill to amend the Civil Code such that transgender persons will have the right to marry. I positively welcome this amendment as this is a civil right which should be available in Malta as well. Personally, I have long followed this sector and I must say that this civil right was realised through the lawsuit of Joanne Cassar, who had instituted proceedings in front of the European Court. Today, her case will be resolved. And this is news that will be kindly welcomed by the LGBT community. This is a right that will augment their integration with our community

²¹ It shall be lawful for any *unmarried* person domiciled in Malta to bring an action for an annotation regarding the particulars relating to sex which have been assigned to him or her in the act of birth (emphasis added)

phenomenon that issues of gender identity may arise at a more advanced stage of a person's life, including at a stage subsequent to marriage to a person of the opposite sex.

A number of unresolved issues thus arise: does the interpretation of the word 'unmarried' extend to a person who has obtained a divorce decree in terms of article 66A et seq of the Civil Code? Furthermore, would there be a positive obligation of a married person who has undertaken gender reassignment surgery to divorce from his/her previous spouse, given that Maltese law does not, at the time of writing, recognise same-sex marriages?

Thus while there is an effort being made by the current legislature to normalise the situation for the LGBT community, there are still a number of pending issues which require clarification, either by way of further legislative intervention or otherwise, by Court instruction. The author hopes that should the latter tactic be taken up, a more modern and correct approach would be adopted by the Courts in order to prevent further problems for families, and ultimately persons who are made to suffer due to sub-standard legal treatment.

Conclusion

Gender identity issues are becoming increasingly evident especially with the advancement of medical practices and procedures, together with increasing sympathy towards those who find themselves in such situations. Such a reality merits additional legislation to ensure that persons from all walks of life are guaranteed adequate protection of their fundamental rights.

Although it is true that discussions on the increasing rights of the LGBT community have seen somewhat of a negative backlash from more conservative quarters of society, it remains a priority of the State to have in place an appropriate legal framework to regulate relationships of various natures. The plain and simple truth is that lack of regulations leads to increased uncertainty and possible miscarriages of justice, as happened in the **Cassar** case, which was a focal point of this paper.

Thus, whilst the author does commend the current legislature for making positive steps in the right direction to eliminate the vast legal lacunae in respect of LGBT relationships, there are still a number of incidental issues, some of which have been highlighted above, that demand resolution. Unfortunately all too often, lack of foresight and a failure to legislate properly will cause more problems than the legislation sought to solve. In order to truly protect the rights afforded under the Constitution of Malta and the ECHR, a determinate drive must be made to identify these residual issues, and construct a comprehensive legal answer to each of them.