

A Note on the Residency Requirement

Article 57 of the Maltese Constitution contains the following provision regarding the right of its citizens to vote in elections:

"... a person shall be qualified to be a registered voter for the election of members of the House of Representatives if, and shall not be qualified to be so registered unless:

- (a) he is a citizen of Malta;
- (b) has attained the age of eighteen years; and
- (c) *he is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months....* [emphasis added]

The exceptions to this residence requirement are for citizens who have been absent from Malta on account of their military, police or diplomatic service.

It has been long-established practice for Maltese political parties to challenge, in court proceedings, the voter eligibility of citizens on the grounds of insufficiently long residence. Such challenges by the political parties have obviously focused on persons thought to be of a different political persuasion.

It once was fairly easy to establish whether a person had left Malta, and for what length of time, by checking the embarkation and disembarkation cards that had to be filled out by all travelers. However, starting in 1999 these cards no longer needed to be filled out by Maltese citizens and no similarly simple administrative method was available to check on absences from Malta.

On the eve of the 2003 election, the Malta Labour Party's challenges included the eligibility of Professor Arnold Cassola who had spent much of the preceding time abroad as an official of the European Greens. Cassola had been active in Maltese politics for a number of years, having been a candidate in each national election since 1992 and he remained a leading member of the Alternattiva Demokratika, the Maltese Green Party.

The case reached the Constitutional Court which, in March 2003, ruled in Cassola's favor. The Court's opinion gave a broad and quite flexible interpretation to the word "residence" in Article 57:

"The word 'residence' does not mean physical presence in the country, but includes and allows periodic absence from the country. A person who is temporarily absent from Malta because of work, study, illness or mission, must not and cannot be considered as not resident in Malta. A person who goes abroad to study or for work purposes is still 'directly and continuously concerned' with the political activity of the country of residence and therefore there exists no reason for the deprivation of the right to vote for that person. ... Residence therefore does not require a continuous presence in the country, but a habitual one, according to the circumstances of the case of that person." [Quotation taken from the Green Party's website]

It remains to be seen whether this interpretation will prevail in future legal actions and, if it does, how the Court's test of a person's being "concerned" with Maltese politics will be applied to persons less prominent politically than Professor Cassola. The scope of the terms "temporary absence" and "habitual residence" will

also require elaboration, especially when an increasing number of Maltese citizens will take up work opportunities in the European Union. Furthermore, eligibility for elections to the European Parliament is likely to produce further litigation on voter eligibility. There does not seem to be a current inclination in Parliament to revisit and revise Article 57.