

Chapter 5

The Maltese Presidency and Social Inclusion: Malta's Push for LGBTIQ Rights

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When Malta launched its Council of the EU Presidency in January 2017, the Government outlined its intention “to contribute”, “to focus” and “to deliver” in various sectors but it was only in the area of social inclusion where Malta intended “to lead” with the aim that “we hope our experiences can rub off on our European partners”.¹²¹ This statement reflected the reality, both domestic and European, of the state of social inclusion (and LGBTIQ¹²² rights in particular) across Europe; on one side, it showed that Malta had made significant advances in the area of civil rights and felt able to lead while the EU's track record was more mixed, reflective of its limited competence in this area and, some would argue, a lack of political will from the member states to allow the Union to be involved in this area of civil rights.

The Maltese government listed its 3 objectives under social inclusion as the improvement of female participation in the labour market, efforts to combat gender-based violence and, finally, LGBTIQ issues, primarily the holding of a “Ministerial-level Conference on LGBTIQ issues in order to further explore the Commission's roadmap on this area”.¹²³ With LGBTIQ rights a cornerstone of the Maltese Government's domestic policy (gay marriage was introduced as the first legislative act of the Labour Government after winning the 2017 general election), the importance of this presidency priority rested in the fact that it represented the first time a Member State had included LGBTIQ issues in a Presidency's list of priorities. In this way, Malta entered its Presidency keen to build on its track record which placed the country first in Europe for LGBTIQ rights but restricted in what it could hope to achieve due to the Union's limited competence.¹²⁴ Therefore, the aim of this chapter will be to see what was achieved and whether its inclusion as a Presidency Priority will have a long-term legacy. In addition to press releases issued by the Maltese Government, reports by ILGA-Europe on the state of LGBTIQ rights across Europe and the opinions of MEPs as reported in the press, the primary source of information came from a series of interviews conducted in

¹²¹ Government of Malta (2016) p. 5.

¹²² Acronyms are particularly problematic in this area of social rights. Lesbian, Gay, Bisexual, Transgender, Intersex, Questioning (LGBTIQ) is the acronym which is used by the Maltese Government though some prefer LGBT or LGBTI – when referenced in the context of a law, institution or person, the acronym used in that context or by that actor is the acronym used in the text.

¹²³ Government of Malta (2016) p. 5.

¹²⁴ Ranking according to ILGA-Europe (2017).

the summer of 2017. Those interviewed included the Minister for EU Affairs and Equality (Dr Helena Dalli), the Director of the Human Rights and Integration Commission (Dr Silvan Aguis), the Head of MEUSAC (Dr Vanni Xuereb), the Chairperson of the Malta Gay Rights Movement (Ms. Gabi Calleja) and other LGBTIQ activists.

The EU and LGBTIQ Rights

European states have been at the forefront of the granting of civil rights to the LGBTIQ community, however, this is at odds with the work of the European Union where the promotion of equality has been limited by the EU's lack of competence in this area.¹²⁵ While the European Parliament adopted a resolution on equal rights for lesbians and gays in 1994, going on to declare in 1998 that it would block accession of new member states to the Union which “violated the human rights of lesbians and gay men”, the Union's milestone contribution to LGBT civil rights was the 1999 Treaty of Amsterdam which included articles to combat discrimination based on sexual orientation as well as the Charter of Fundamental Rights, legally binding from 2009 onwards, which also prohibits any discrimination based on any grounds, including sexual orientation. However, since then progress has been limited, especially regarding the proposed anti-discrimination law (*Equal Treatment Directive*) outlawing discrimination in areas of social protection, education, access to the supply of goods and social advantages which remains stalled in the Council. In 2016 the Commission issued a list of actions to advance LGBTI equality, the roadmap referenced by the Maltese Government in its priorities. The “List” is divided into 6 priority areas and covers:

1. Improving rights and ensuring legal protection of LGBTI people and their families in key areas of EU competence (including approval for the Equal Treatment Directive).
2. Strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law.
3. Reaching citizens, fostering diversity and non-discrimination.
4. Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU.
5. Figure and facts for policy makers on LGBTI challenges at the EU: data collection and research activities.
6. External action: LGBTI issues in Enlargement, Neighbourhood and Third Countries.¹²⁶

However, while the 28 member states agreed, in 2016, to a Dutch backed initiative to fight “any discrimination” against LGBT people and to ramp up

¹²⁵ Interview with Evelyne Paradis, Executive Director of ILGA-Europe. “Gay rights organisation: The EU no longer leading on LGBT rights”, Euractiv, 16/12/15.

¹²⁶ European Commission (2015).

efforts on equality, some argued that the conclusions, which included reference to “fully respect ... member states’ national identities and constitutional traditions” would be used to stop progress in this area as a member states need merely indicate that a proposal undermined national identity or constitutional tradition to halt its adoption, a Trojan horse which legitimised homophobia according to the EP’s Intergroup on LGBTI Rights Co-President, Ulrike Lunacek.¹²⁷

Such concerns would appear to be justified. While the EP has been vociferous in calling for LGBTIQ rights, the Commission has been accused of hiding behind the member states and reflected a shift in recent years to view equality issues in terms of subsidiarity, an issue to be tackled by the national governments.¹²⁸ Further to this, there has been extensive opposition to certain rights being given to the LGBTIQ community, primarily from the Central and Eastern European member states. An earlier declaration on LGBTIQ equality, due in 2015, had been blocked by Hungary while Poland was also notable in declaring its opposition. In this way, the EU’s involvement in LGBTIQ rights has been important in ensuring anti-discrimination laws are adopted in the member states, but does not go significantly beyond that and does not advocate rights such as marriage, surrogacy or adoption. It was against this backdrop that Malta adopted its priority in terms of social inclusion and the LGBTIQ community.

Malta and LGBTIQ Rights

As a colony of the UK, Malta had adopted the British penal code where homosexuality was a criminal act but in 1973 the Socialist Government of Dom Mintoff decriminalised homosexuality. However, no progress was seen subsequently with homosexuality remaining a morality issue heavily influenced by the teachings of the Catholic Church. With global shifts in the 1990s seeing a greater acceptance of the civil rights of the LGBTIQ community, Malta saw the founding of the Malta Gay Rights Movement (MGRM) in 2001 and with it, a more organised lobby petitioning for the community’s civil liberties. Malta, with a Westminster/Whitehall political system is dominated by two political parties, namely the Social Democrats (Labour Party) to the centre-left and the Christian Democrats (Nationalist Party) to the centre-right and the parties seemed relatively hesitant to prioritise LGBTIQ rights during the 2008 general election campaign. In 2009 ILGA-Europe, the primary LGBTIQ umbrella group in Europe, held its annual conference in Malta and by this time, a shift had started to emerge within the parties with the socialists establishing an LGBT wing in 2009, and the ruling Nationalists promising a bill to regulate cohabitation (irrespective of sexual orientation) in 2010. In 2011 the country was rocked by the

¹²⁷ European Parliament (2016).

¹²⁸ LGBTIQ activist interview by the author (02/06/17).

decision to hold a referendum on divorce, often seen as a morality issue on an Island where the Constitution gives the Catholic Church the obligation to teach what is right and wrong. While not politicised by the parties, the vote in favour of divorce appeared to precipitate change within the Church (undermining its ability and willingness to involve itself in public debates), within the ruling Nationalist party (creating a schism between its right wing and more moderate factions) and the Labour party which appeared emboldened to push a progressive social agenda as it pursued the youth vote in the 2013 general election.¹²⁹ Subsequently, the Labour party promised civil unions for same-sex couples as part of its electoral manifesto, amongst other promises, and went on to win a landslide victory, passing the Civil Union Bill in April 2014.

Malta has, in the last 5 years, become a world leader in LGBTIQ rights.¹³⁰ In addition to the Civil Union Act (and gay marriage in 2017) the country has also provided full adoption rights to same-sex couples (as well as LGBTIQ individuals), passed legislation amending the Constitution in 2014 to protect against discrimination based on sexual orientation and gender identity as well as banning conversion therapy and outlawing sterilisation and invasive surgery on intersex people as part of the *Gender Identity, Gender Expression and Sex Characteristics Act* of 2015. While surrogacy remains unlawful, IVF access for female same-sex couples was to be introduced in 2017 while the government also announced its intention to remove the ban on gay and bisexual men donating blood (with restrictions) as well as the introduction of non-binary X gender passports and ID cards for transgender or intersex individuals. In opening the “Ministerial-level Conference on LGBTIQ issues” Minister Helena Dalli also announced that further developments being taken by the Government included a trans/intersex policy in schools, a policy for trans prisoners, and gender neutral toilets across all ministries, Parliament, and the law courts.¹³¹ In this way, Malta has seen a transformation in the civil rights of the LGBTIQ community with much of those changes being attributed to the political will of the Socialist Government, a change in popular sentiment regarding gay rights, a diminished capacity for those opposing such rights to influence the debate as well as the committed work of NGOs like MGRM and other individuals who constitute the LGBT Consultative Committee which has helped the Government in drafting much of its LGBTIQ civil rights laws. It is therefore not surprising that the Government would include the LGBTIQ agenda as part of its Presidency Priorities and to outline its intentions to lead in this sector.

¹²⁹ For a more detailed analysis of the significance of the 2011 Divorce referendum see Pace (2012).

¹³⁰ Ranking according to ILGA-Europe (2017).

¹³¹ Government of Malta (2017a).

The Presidency

The decision to include LGBTIQ issues as part of the Presidency agenda was made early on in the planning of the Presidency. Minister Helena Dalli noted in her speech to the Ministerial-level Conference held in Malta in February 2017 that The Netherlands had been consistently pushing LGBTIQ equality from 2013 with the organisation of the first IDAHO congress to mark the International Day Against Homophobia. As part of the trio (The Netherlands, Slovakia and Malta), the Dutch continued to push LGBTIQ issues, as with the 2016 Council declaration against the discrimination of LGBT people, a first in terms of agreement amongst the 28. As Malta's trio partner it was therefore easy for Malta to continue this work though the Maltese were less interested in securing Council declarations on the issue but sought to normalise the issue (namely the rights of the LGBTIQ community) as well as raise its visibility.¹³² At the core of this was to be the Ministerial-Level Conference, an event fully funded by the Maltese government and therefore costed at an early date, indicating that the Government had always planned to give prominence to this initiative.¹³³

The Conference

The High Level Ministerial Conference on LGBTIQ Equality Mainstreaming was held in Malta on 22nd and 23rd February 2017 with the stated aim 'to provide a platform for ministers, European Union officials, policy makers and civil society representatives to take stock of the current situation, share experiences and best practices and learn from one another for better LGBTIQ equality mainstreaming in all policy spheres'.¹³⁴ The Conference was spread over 2 days, the first day being open to the general public and included speakers from the Maltese Government, DG Justice and Consumers, the EP's Intergroup on LGBTI Rights as well as specialised panels on LGBTIQ equality mainstreaming and education, healthcare and public safety. On the second day the Minister indicated that the delegations held an informal discussion of various issues relating to the LGBTIQ community, especially the need for education to tackle intolerance as well as the cultural dimension of attitudes towards the community. For the Minister, the important point for Malta was to show that change could happen and happen rapidly if there was the political will.¹³⁵ The Conference was used by the Commission to launch the 2016 *Annual Report on the List of Actions to Advance LGBTI Equality*.

Beyond the Conference the Government's priority was to drive home the normalisation message with the 2016 Malta Pride being given prominence in the Presidency launch video first aired in November 2016 while all publicity

¹³² Dr Silvan Agius, interviewed by the author (01/06/17).

¹³³ Hon. Minister Helena Dalli interviewed by the author (27/07/17).

¹³⁴ Letter of invitation sent to delegates.

¹³⁵ Hon. Minister Helena Dalli, interviewed by the author (27/07/17).

material related to the Presidency included reference to the LGBTIQ community. Malta placed special emphasis on marking the International Day Against Homophobia (17th May) and cooperated with authorities in having the rainbow flag painted on zebra crossings outside the Berlaymont in Brussels. Groups took the opportunity afforded by the importance given to LGBTIQ issues to launch key initiatives during the events organised by the Maltese Presidency including Transgender Europe (TGEU) which launched its second edition of the *Human Rights and Gender Identity Best Practice Catalogue* on the margins of the Ministerial Conference. The Report featured Malta prominently following the adoption of the *Gender Identity, Gender Expression and Sex Characteristics Act* which the group held to be best practice for legal gender recognition. Richard Kohler, Senior Policy Officer at TGEU said, “Since the publication of the first best practice catalogue in 2011, trans rights across Europe have advanced in leaps and bounds. It is actually very fitting to launch this edition in Malta, whose progress in this area of human rights has become an inspiration for other countries to follow, and a beacon of hope for trans people across the continent”.¹³⁶ With this in mind, what was the impact of the Government’s initiative in terms of this Presidency Priority?

An Assessment

The Maltese Presidency was clear from the inception that it did not seek binding declarations or new road maps with which to lead in this area, allocating, within this Priority area, relatively limited goals, primarily to lead through example. This limited agenda reflected several realities, the first being that the Commission appeared to have lost the energy to lead in the promotion of civil rights. Faced with opposition from some member states as well as a Commission focused on the European economy and migration as well as a Commission less keen on road maps (which are difficult to push forward), the Maltese Government could only hope to maintain focus on the LGBTIQ agenda and to show that change and progress, at the national level, was possible. As noted by the Minister in her address to the Conference, “us politicians are here to help shape public opinion and not be led by it. Countries that are often discounted as not ripe for progress can change, and can change fast the moment that there is the political will and a strong civil society”.¹³⁷ This sentiment was reflected by the Vice-President of the European Parliament and Co-President of the European Parliament’s Intergroup on LGBTI Rights, Ulrike Lunacek, who praised Minister Dalli and the Maltese Presidency for putting LGBTIQ rights on the agenda, saying “what you are doing here, with the successes you have had and you have fought for, and with civil society here, is really something that I strongly appreciate and thank you for, especially coming from a very

¹³⁶ Government of Malta (2017b).

¹³⁷ Government of Malta (2017a).

Catholic country myself Austria, that has not achieved as much as you have been doing during the past years”¹³⁸.

The limited goals of the Presidency in this area also reflected the concerted opposition from several member states to advance the road map and, in particular, to accept the *Equal Treatment Directive*. With many states from Central and Eastern Europe adamantly opposed to LGBTIQ rights, the Maltese Government had to contend with the reality that there was limited enthusiasm for binding resolutions on this topic. While gay and lesbian rights have become more accepted, those of transgendered people as well as intersex, where Malta leads, are especially lacking. Therefore, for Malta, the key was the normalisation drive as well as showing that transformation is possible and that societies were more open to LGBTIQ rights than previously thought (the Labour Party went on to win a 2nd landslide victory in the 2017 general election, based on a booming economy as well as its civil rights platform, showing that the promotion of LGBTIQ rights was not a vote-loser).

For those attending the conference in Malta, the impact was positive with MEP Viotti noting that Malta’s engagement was important for the EU.¹³⁹ Silvan Agius, Director of the Human Rights and Integration Commission, noted that the event was key for showcasing best practice and for enabling a heavy press influx which allowed local activists to see how their work was appreciated abroad, giving a boost to these groups as well as giving hope to other groups in other MSs that change can happen and can happen rapidly. In an interview with Minister Dalli, she noted how delegates took the opportunity to approach the Maltese delegation about best practice, especially in the area of transgender rights. Of particular note was a request from the Greek delegation for Malta to visit Greece to show best practice in this area.¹⁴⁰

In this way, the Maltese Government adopted a limited agenda under its priority for LGBTIQ equality. Hampered by the realities of a Commission focused elsewhere, a Union with limited competence in this area as well as a group of member states unwilling to push for further civil rights (and especially in the area of transgendered and intersex people), the Maltese Government sought primarily to raise the profile of this issue, to ensure it stayed on the Union’s agenda as well as focusing energy on normalising a sector of the population which, in some member states, remain on the fringe, unseen. In that respect, the Presidency can be assessed to have met its limited agenda in this area. However, the hope that this would have a lasting legacy is too early to state. With Malta followed by two Central and Eastern

¹³⁸ Government of Malta (2017b).

¹³⁹ EU Observer (2017).

¹⁴⁰ Hon. Minister Helena Dalli, interviewed by the author (27/07/17).

European states, it is unlikely that any more leadership will be seen from the Council in the next few years. The next Presidency from a country in the top 10 of LGBTIQ rights in Europe (according to the ILGA-Europe Rainbow Map), Finland, will not take place before the end of 2019 though the Malta case has shown that things can change rapidly if there is the political will and a shift in popular sentiment. While LGBTIQ rights do not appear to be an EU priority, for many states like Malta, they are and the Union is, ultimately, constituted by its member states. United in diversity, Malta's efforts in this area remain centred on the hope that the 28 become less diverse on the civil rights of the LGBTIQ community in the future.

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