

Submissions with regard to changes to the Constitution of Malta

[1] a review of article 39(1) of the Constitution in the light of the judgement by the Constitutional Court in *Federation of Estate Agents versus Direttur Ġenerali (Kompetizzjoni) et* given on the 6th May 2016.

Effectively this judgement means that the Director General (Competition) within the Malta Competition and Consumer Affairs Authority ('MCCAA') cannot impose any administrative fines on non-compliant undertakings since such sanctions are of criminal nature as they are meant to punish. According to article 39(1) sanctions of criminal nature can only be imposed by a court. I suggest that the wording used in this article is modified to reflect the wording of article 6 of the European Convention on human rights and fundamental freedoms.¹ I suggest that the concept to be adopted should be on the lines that administrative fines can be imposed by a public authority provided that any decision imposing such fines is subject to appeal before a court – will not in any case be applicable before the lapse of the appeal during which such a decision can be contested and if contested can only be applied once final court judgement has been given. This will ensure that an aggrieved person will always have the right to recourse to a court to stop the application of any such sanction.

[2] the interpretation of what constitutes a 'court' for the purposes of article 39(1) of the Constitution should also be extended to other adjudicative fora where the decisions are effectively taken only by a judge or magistrate such as for example the Administrative Review Tribunal ('ART'). In the case of the ART I suggest that the possibility of having former judges or magistrates presiding over such a Tribunal is reconsidered. To date no former judge or magistrate has been appointed to preside over the ART.

[3] the listing of rights specific to the elderly and other vulnerable members of society to ensure that the rights and interests of such persons are not undermined as a result of progress brought forth by new technology, in particular that the access to traditional means of payment remains in place.

[4] the listing of basic consumer rights in the Constitution – including the right to adequate means of redress – I suggest replicating the principles stated in article 43 of the Consumer Affairs Act (Cap. 378).

¹ The Constitutional Court in the *Federation of Estate Agents* judgement whilst deciding that the then applicable provisions of the Competition Act (Cap. 379) were contrary to article 39(1), these same provisions were not in breach of article 6 of the European Convention.