



**Din l-Art Helwa**

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The President

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**Submission concerning the need to strengthen the Constitution of The Republic of Malta,  
in favour of the protection of the natural and built environment, by Din l-Art Helwa.**

Article 9 of the current Constitution of Malta refers to the obligations of the State to protect and preserve the natural and built heritage (as part of the artistic patrimony) of Malta and Gozo. The following principles found in Art.9 are clear and unequivocal – although the reference to built heritage ought to be clearer.

- (i) The State shall safeguard the landscape and historical and artistic patrimony of the Nation.
- (ii) The State shall preserve and conserve the environment and its resources for the benefit of present and future generations and shall take measures to address any form of environmental degradation in Malta, including that of air, water and land, and any sort of pollution problem and to promote, nurture and support the right of action in favour of the environment.

However, Article 21 of the same Chapter, however, says:

The provisions of this Chapter shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws.

This means that although the principles enshrined in the Constitution are laudable, there is no mechanism by which the consistent implementation of these principles can be monitored and enforced. This proposal by Din l-Art Helwa is intended to strengthen the mechanisms by which these principles are safeguarded in the interest of the citizens of the Republic.

The proposal by Din l-Art Ħelwa is inspired by the words in the current Art.9:

“to promote, nurture and support the right of action in favour of the environment.” There is therefore already an obligation on the State to support the right of action in favour of the environment – the word environment being taken in its widest sense to include also our urban environment. The current problem is that the State has not provided the tools by which the “right to action” is supported. If the right of action is understood to mean the right to action in Court, this is contradicted by Art.21. Even if it were decided to remove the applicability of Art.21 to the provisions of Art. 9 on "protecting and conserving": "the environment and its resources for the benefit of present and future generations ..., and admit, for example, that NGOs militating in the protection of the natural and built environment, have a juridical interest in seeking recourse to the Courts, this could, naturally, only be done on legal aspects. It would not really be possible to debate on technical environmental or heritage issues, in front of a Court which does not have expertise in such matters.

In order to adhere to the constitutional direction to "promote, nurture and support the right of action in favour of the environment " and the national heritage , and this in an effective manner, Din l-Art Ħelwa proposed that a **constitutional body be set up by and incorporated in the Constitution** itself in order to receive applications from any person in Malta for the body to review :

1. existing policies whether of the State or any other Authority or parastatal body;
2. existing legislation on the environment and conservation thereof;
3. existing planning policies.

Any person will have the right to request this **constitutional body**, possibly called the **“Commission for the Environment and Heritage”**, to review specific policies or legislation which are alleged to negatively impact the environment and built heritage, and which therefore run counter to the constitutional obligation of the State to protect the same environment. This constitutional body shall be empowered to request, and receive from, the Government, or any authority, such information as may be required for the proper ascertainment of the validity of the complaint. On finding that a complaint that a specific policy or law is leading, or will lead, to environmental degradation, the constitutional body shall be authorized to:

- a. Declare null the offending policy as unconstitutional either with immediate effect or at the lapse of a time period established by the constitutional body for the government , Parliament or Authority to remedy the situation through new policies ;
- b. Declare that the policies under review require revision without the need of nullity.

The constitutional body will **not** review any project-specific applications; in other words, it shall neither take the role of an appeals tribunal replacing the appeals tribunal specified in the Development Planning Act, nor would it replace the process by which specific objections are raised before the Courts, in accordance with current legislation. It will not take the role of

the Environment Ombudsman, whose remit excludes the ability to take action to strike down offending policies enacted, for example, by the Planning Authority. The Commission would not replace the Environment and Development Planning Parliamentary Committee, which is an extension of the parliamentary process, and which provides no mechanism whereby civil society can challenge the government and authorities such as the Planning Authority from adopting laws and policies which violate the principles in favour of the environment, laudably enshrined in the Constitution.

The Commission's review would be limited to government laws and policies, and policies adopted by the Planning Authority or other administrative bodies. However, the decisions taken by the constitutional body would be deemed as policies binding on the State and other authorities.

The composition of the Constitutional body needs to be studied in greater detail. It is envisaged, however, that the Commission could be presided over by the President, or by a person appointed by the President of the Republic. It is also envisaged that the composition of the Commission would be limited to about six members, for example, members nominated by statutory bodies such as the Kamra tal-Periti, the Chamber of Advocates, and the Office of the Attorney General, but also by NGOs active in the protection of the built and natural environment. This composition needs to be studied in more detail, to ensure that it gives adequate representation to civil society, is able to operate above partisan politics, and is technically competent to be able to assess the impact of the laws and policies it is asked to review. For the latter purpose, it would have the right, of course, to seek the advice of technical experts in the field of environment and heritage protection.