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THE HISTORICAL EVOLUTION OF THE LAW OF OFFICIAL SECRECY IN MALTA

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Introduction

In this paper I trace the historical evolution of the Maltese Law of Official Secrecy from the first enactment on the subject, that is Ordinance No VI of 1899, to date. I discuss the historical background to the enactment of the said Ordinance in order to better illustrate why the need was felt for such an enactment. From the chronological developments which took place in the period 1899 till 1996, it is quite evident that the main source of inspiration of the Maltese Law of Official Secrecy is primarily British Law and secondly legislation of British colonies like Gibraltar. Malta essentially reflected the developments which took place in the United Kingdom in its own legislation both during colonial times as well as in the post-colonial period. This is logical once the Maltese Law of Official Secrecy is British inspired. Hence, it was natural for the Maltese legislature, in the post-independence period, to continue to model its legislation on the subject under review on British law. In conclusion, this article draws the attention of the Maltese legislator to certain developments which have taken place in the United Kingdom and even in Malta which are not reflected in the Maltese Law of Official Secrecy.

Maltese Law Prior to Ordinance No VI of 1899

It appears that there was more than one causal factor which prompted the introduction of a Maltese Law similar to the U.K. Official Secrets Act 1889. An example in point is the case concerning the oath of secrecy taken by Members of the Executive Council. Dr. Fortunato Mizzi, LL.D., had on 26 May 1888, submitted a detailed Memorandum to the Governor noting that the oath of secrecy administered by the latter to the Members of the Executive Council was not required under any law, nor under the Colonial Regulations then in force in Malta, and that Members of the Executive Council could refuse to take such oath once it did not result to be mandatory from any law or regulation.¹ The Governor was of the same opinion² so much so that he had requested the Secretary of State – as Dr. Mizzi had proposed – to advice the

1. Cf. C[olonial] O[ffice] 158/287.

2. Ibid.

Sovereign to issue an Order in Council to cater for the administration of such oath. Indeed, such an Order was issued in July 1888 to provide for the taking of an official oath by the Members of the Executive Council of Malta.³

Another instance which may be cited regarded the Crown Advocate, Sir Antonio Micallef, LL.D. On 14th June 1893, the then Governor of Malta wrote to the Secretary of State for the Colonies, the Marquess of Ripon, K.G., informing him that the Crown Advocate, Sir A. Naudi, LL.D., had discovered twenty-two manuscript volumes containing records of opinion of the late Crown Advocate Sir A. Micallef in the house which the latter had occupied prior to his death. In fact, a member of the Maltese Bar, Dr. B. Ullo Xuereb, LL.D. had previously consigned

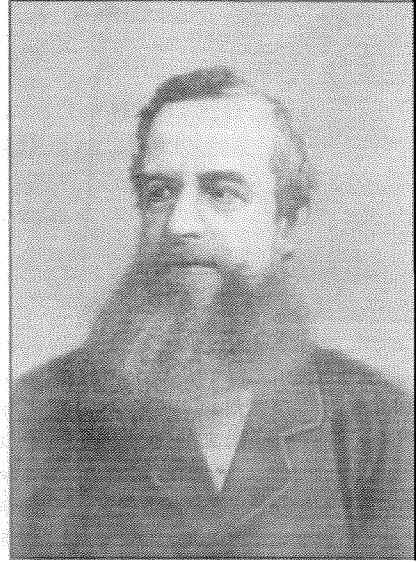


Fig. 1. The Marquess of Ripon

two volumes to the Crown Advocate Sir A. Naudi and it was through Dr. Xuereb that Sir A. Naudi came to know of the existence of the other twenty-two manuscripts so much so that the Crown Advocate was prompted to buy the other twenty-two volumes from the heirs of Sir A. Micallef on payment of a sum of ten pounds.⁴ The Governor had consequently proposed to the Secretary of State for the Colonies to enact a law in Malta compelling all Government officers, on retirement from the service – or their heirs, in the case of officers dying in the service – to return to the Government all similar documents, which, even when they were of a confidential and private nature, should, if connected with the service, be considered as delivered to the Government to those officers who were then serving or whose interests they were expected to represent.

As a result of the Micallef case, the Governor became aware that official departmental papers or copies thereof had remained in the possession of other public officers after the transfer of such officers to a different department or after retirement from the service (as was the case of Sir A. Micallef), and that they had retained, as their private property, drafts of dispatches or letters prepared by them whilst occupying posts they no longer held.⁵

Considering that this objectionable practice had to be stopped without delay, the

3. Ibid.

4. Cf. CO 158/304/10321.

5. Ibid.

Governor decided to issue a circular to the effect that government employees who possessed official documents otherwise than by reason of their office were to return them at once to the head of department responsible for their custody and warned them that any infringement of this regulation was to be considered as a breach of trust and would, in the case of officers who retired from the service, render them liable to stoppage of pension.

The circular was issued to all heads of departments with the exception of His Majesty's Judges and the Magistrates of Judicial Police who, in the opinion of the Executive Council, were not likely to have in their possession documents of the nature referred to.⁶ This point of view notwithstanding, it was the then Chief Justice, Sir Adriano Dingli, who probably kept the largest number of such documents retaining them on his promotion from the post of Crown Advocate occupied by him for nearly twenty-seven years during which time there appears to have been a different view held by the Government as to the ownership and custody of drafts and similar documents.⁷ Indeed, it seems that no action of any sort was taken against the aforementioned Chief Justice.

When the U.K. Official Secrets Act 1889 was enacted, its application extended also to Malta and this by virtue of section 5 thereof. However, it was found in the U.K. that this Act contained a considerable amount of defects⁸ and, thus, when the Crown Advocate was drafting the Maltese version, he tried to improve upon the British model. Of course, although Ordinance VI of 1899 constituted on the whole a slight improvement on the U.K. Act, it still left much to be desired.⁹ Indeed, there were only two provisions in the Criminal Code regulating official secrecy prior to Ordinance VI of 1899: section 51 and section 245.

Section 51(3) provided that:

Whoever shall subvert or attempt to subvert the Government of Her Majesty, Her Heirs and Successors established in the Island of Malta and its Dependencies or in any other Dominions of the British Crown by committing any of the acts mentioned in this section, shall be punished by death; ... by aiding Her Majesty's enemies in any other manner whatsoever, against the Government.¹⁰

6. Cf. CO 158/299/6696.

7. *Ibid.*

8. The U.K. Official Secrets Act 1889, unlike the 1911 version, did not apply to everyone but only to crown servants and certain government contractors. In addition, an offence was committed only if it could be established that information had been communicated to a person to whom it ought not have been so communicated and that the communication was not in the public interest.

9. Cf. CO 158/334/34849.

10. This section is now article 56(1)(c) of the Criminal Code, Chapter 9 of the Laws of Malta.

But the latter provision extended also to the disclosure of official secrets to a foreign or other Government which had to be at war with her Majesty.¹¹ On the other hand, section 245 provided that:

If any physician, surgeon, phlebotomist, accoucher or apothecary or any other individual generally, who by reason of his position or of the profession exercised by him is depository of secret matters confided to him shall divulge them, saving always the case wherein he shall be obliged by law to give information to the public authority,¹² he shall be punished with *multa* from five pounds to twenty pounds.¹³

These two provisions are still part and parcel of Maltese Criminal Law.¹⁴ This notwithstanding, it was considered that these provisions contained in the Criminal Code did not provide for such disclosure of secrets as regulated by the enactment of the Official Secrets Act 1889 in the United Kingdom.

From the above, certain conclusions may be drawn with regard to the Maltese Law of Official Secrecy prior to Ordinance VI of 1899.

First and foremost, no criminal action could be taken for possession of official documents *per se* unless such documents were - in terms of section 2 of the U.K. Official Secrets Act, 1889 - communicated in the way therein established or were used contrary to sections 51 or 245 of the Criminal Code. Possession by itself did not constitute a criminal offence.¹⁵ Hence, the sanction which could be applied in

11. Cf. K. Aquilina, *Treason and Seditious in Maltese Law*, LL.D. thesis, Faculty of Law, University of Malta 1988, 55-7.

12. No specific person was designated as such by the Criminal Code.

13. This section is now article 257 of the Criminal Code which has since then been amended to read as follows:

'If any person, who by reason of his calling, profession or office, becomes the depository of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (*multa*) not exceeding twenty thousand liri or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that, notwithstanding the provisions of any other law, it shall be a defence to show that the disclosure was made to a competent public authority in Malta or outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute -

- (a) any of the offences referred to in article 22(2)(a)(1) of the Dangerous Drugs Ordinance; or
- (b) any of the offences referred to in article 120A(2)(a)(1) of the Medical and Kindred Professions Ordinance; or
- (c) any offence of money laundering within the meaning of the Prevention of Money Laundering Act;

Provided further that the provisions of the first proviso of this article shall not apply to a person who is a member of the legal or the medical profession.'

14. Section 56(1)(c) and 257 respectively of the Criminal Code.

such instances was of a disciplinary (rather than a penal) nature so much so that the Governor could only threaten retired would-be possessors of official documents with an administrative sanction, namely stoppage of pension.

Second, there was no law which prohibited the retention by public officers of drafts or manuscripts of government official documents.

Third, Maltese Law did not clarify what constituted an official document: if an officer wrote a minute or a memorandum for the Government and made a rough copy of it first, was the rough copy official? Section 8 of the U.K. Official Secrets Act 1889 also did not provide a definition of what constituted an official document.

Fourth, no action could be taken against the heirs of the deceased officer who refused to return back the official documents concerned. In fact, in the Micallef case, the Crown Advocate had to purchase the said volumes rather than demand their restitution by the heirs of Sir A. Micallef.

Consider also, briefly, the Marvin case in England which preceded the enactment of the U.K. Official Secrets Act 1889.¹⁶ The only charge which could conceivably be brought against Marvin was that of removing a document from a government office and stealing the paper on which the document he communicated to the *Globe* was copied. In point of fact, however, Marvin had used his own paper and had copied the contents of a government document onto it. This dealt a severe blow to the Government's chance of securing a conviction as it could not be said that he had stolen an official paper. On the other hand, he could not be held to have 'stolen' the information written on it, either, as the latter did not constitute an offence under the U.K. Larceny Act 1861.

Ordinance No VI of 1899

Ordinance No. VI of 1899 was the first major attempt of introducing official secrecy provisions into Maltese criminal law.

In a letter written by the then Crown Advocate Dr. A. Naudi to the Chief Secretary to Government, it was stated that the *raison d'être* for the enactment of Ordinance No. VI of 1899 was suggested partly by the desirability that the Criminal Code should not be incomplete and principally by the tendency shown in the latter decade of the nineteenth century by some of the foreign Consuls of obtaining information for the benefit of their respective governments on matters connected with the defence of Malta and its Dependencies.¹⁷ Indeed, Ordinance No. VI of 1899 inserted new provisions in the Criminal Code. One will readily

15. This is no longer the position under U.K. Law. Cf. the U.K. Official Secrets Act, 1989, section 8. Nor is it the position under the Maltese Law of Official Secrecy following the amendments made by the Official Secrets (Amendment) Act, 1996 (Act No. XVIII of 1996) which has introduced a new provision on safeguarding of information (article 13 of the Official Secrets Act).

16. 1878. Cf. D. Hooper, *Official Secrets - The Use and Abuse of the Act*, Martin Secker and Warburg, London 1987, 19-21.

17. Cf. CO 158/330 - 7th October, 1899.

notice that these provisions were modelled on the U.K. Official Secrets Act 1889 with some differences.

Section 1 of the 1899 Ordinance extended the jurisdiction of the criminal courts of Malta to cover individuals who, whilst abroad, perpetrated any of the crimes contemplated in sections 2 and 4 thereof, namely, a breach of official trust and disclosure of information. It can be seen that this provision corresponds to section 6(1) of the U.K. Official Secrets Act 1889, except that according to the Ordinance the extra-territoriality of the Maltese Courts -

- (a) applied not only to cases committed in any of Her Majesty's dominions, as is provided in section 6 of the U.K. Act, but also to cases committed in any foreign country, provided that the offender was a native or a naturalised Maltese, and
- (b) did not apply to any British subject not being a native or naturalised Maltese who committed any of the said crimes abroad.

Section 2 of the 1899 Ordinance introduced in the Criminal Code three new sections namely, sections 57a, 57b and 57c.

Section 57a¹⁸ defined the crime committed by means of the disclosure of official secrets which constituted a breach of official trust. The provisions of this section corresponded to section 2(1) and (2) of the U.K. Official Secrets Act 1889 with the following difference. Whilst section 2(2) of the U.K. Act established a two-fold punishment -

- (a) in the case where the communication was made or attempted to be made to a foreign state; and
- (b) in any other case.

In the Maltese amendments to the Criminal Code, although the two-fold

18. This section read as follows:

57a. Whoever, by means of his holding or having held an office under Her Majesty the Queen or under the Government of these Islands, has lawfully or unlawfully obtained possession of or control over any document, model, or sketch, or has acquired any information, and at any time, corruptly or contrary to his official duty, communicates or attempts to communicate that document, model, sketch, or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated, shall be punished as follows:

If the disclosure has been made to a Foreign Government not at war with Her Majesty, or to its agents, the punishment shall be hard labour from five to twenty years;

In any other case, the punishment shall be hard labour or imprisonment for a term not exceeding one year, or fine (*multa*), or both punishments jointly.

division was still retained, the words 'not at war with Her Majesty, or to its agents' were added to paragraph (a) above. This addition implies that the penalty imposed by section 57a in the case of a disclosure made to a foreign government which was *not* at war with Her Majesty or to its agents, was to be less than the case where the disclosure was made to a foreign Government which was at war with Her Majesty or to its agents.

It is submitted that the Crown Advocate must have inserted these words so that there would be no conflict between section 57a and section 51(3) of the Criminal Code aforesaid as under the latter section communication made or attempted to be made to a foreign government which was at war with Her Majesty, or its agents, fell under the 'aiding the enemy' provision therein contemplated. Although the Crown Advocate sought to avoid such duplicity, he still ended up by regulating the same criminal conduct in two different provisions of the law and meting out two distinct punishments. Further, the term 'plan' does not figure in the Maltese version of section 2 of the U.K. Act dealing with the breach of official trust. Likewise, the words 'at that time' after 'communicated' are absent and the statement that such person 'shall be guilty of a breach of official trust' do not appear either. Moreover, no provision was made in Ordinance No. VI of 1889 to cover the case of persons holding a contract with any department of the Maltese Government and who communicated official information.

On the other hand, section 57b¹⁹ was introduced in addition to the general provisions about accomplices, which were contained in section 38 of the Criminal Code,²⁰ as it was envisaged that doubts might arise whether the person who maliciously obtained the disclosure of a secret from a person who was doing so did not act maliciously, although carelessly. Indeed, the general principles of complicity in the Criminal Code differed from the U.K. doctrine of complicity in the sense that an accomplice must always be proved to possess *mens rea* in order to be convicted. This section was intended to replace section 3 of the U.K. Act dealing with punishments for incitement or counselling to commit official secrets offences and it appears that it was meant to hit the offending consuls. Note, nevertheless, that no provision was made with regard to inciting to commit an offence mentioned in section 3 of the U.K. 1889 Act. This is due to the fact that such an eventuality, as well as that of an attempted offence, were already catered for in the Criminal

19. This section read as follows:

57b. Whoever shall obtain or be an accessory to the disclosure of the secrets referred to in the preceding article, or shall otherwise procure a knowledge thereof, shall be liable to the punishments established in the said preceding article.

20. This section is now article 42 of the Criminal Code.

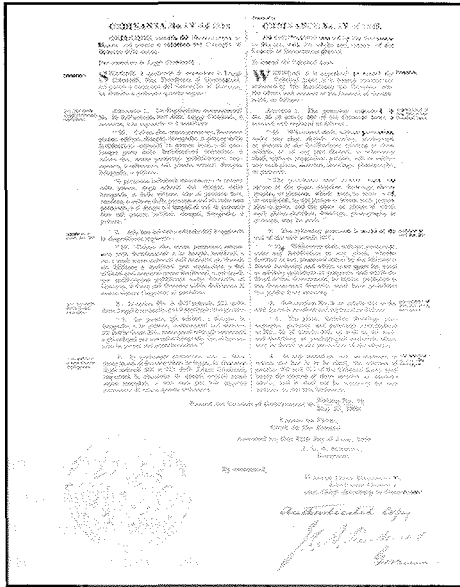


Fig. 2. Ordinance IV of 1888.

Code.

In addition, section 57c²¹ provided against the disclosure of information which did not amount to breach of trust and corresponded in substance to the provision of section 1 of the U.K. Official Secrets Act 1889 dealing with disclosure of information. Nevertheless, section 57c is not a very successful reproduction of section 1(1)(a)(i), (ii) and (iii) of the U.K. Act. It omits section 1(b) of the U.K. Act whilst section 1(2) and (3) of the U.K. Act are not reproduced at all although a new section 123a is introduced in a different part of the Criminal Code under the heading 'Abuse of authority' in their stead.

It should be noted, however, that the second paragraph of section 57c contained a provision which does not exist in the U.K. counterpart. Such a provision was intended to punish any person who clandestinely or with deceit entered any fortification, arsenal, factory, dockyard or camp. Such clandestine entrance in the said places was punishable in itself as it always implied a presumption that the object of the entrance was to obtain the knowledge of secrets, and in no case could such entrance have a good purpose.

21. This section read as follows:

57c. Whoever, for the purpose of wrongfully obtaining information, shall -

1. without authority given by or on behalf of Her Majesty, take any plan or sketch of any fortifications, arsenal, factory, dockyard, or camp, or
2. for that purpose, clandestinely or with deceit, enter any of the said places, access to which is prohibited to the public, or
3. when lawfully or unlawfully in any such place as aforesaid, either obtain any document, sketch, plan, model, or knowledge of any thing which he is not entitled to obtain, or take without lawful authority any sketch or plan, or
4. after having been entrusted in confidence by some officer under Her Majesty the Queen or the Government of these Islands with any document, sketch, plan, model, or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully and in breach of such confidence, communicate the same to any person to whom the same ought not, in the interest of the State, to be communicated at that time, shall be liable to imprisonment for a term not exceeding one year, or to the payment of a fine (multa), or to both punishments jointly.

The simple act of entering the said places clandestinely or with deceit makes the offender liable to imprisonment for a term not exceeding three months or to the payment of a fine (multa).

No equivalent provision is found in Ordinance No. VI of 1899 to sections 4, 5 and 6 as these provisions are peculiar only to U.K. law.²² On the other hand, no equivalent provision was made in Ordinance No. VI of 1899 in section 7 of the U.K. Act which required the Attorney General's consent so that a prosecution could be instituted under the said Act. Possibly this is due to the fact that under the Criminal Code the Executive Police did not need the Crown Advocate's consent in order to institute any criminal proceedings and, thus, it was not intended to upset this procedure. Moreover, it is to be observed that Ordinance No. VI of 1899, in contradistinction to section 6 of the U.K. Act, did not define the terms which it utilised. Although no cases have been reported in Malta under the sections introduced by Ordinance No. VI of 1899, it would have been safe to refer to the definition of the terms mentioned in the U.K. Act in case of doubt as to their proper construction.

Another innovative provision introduced by section 4 of Ordinance No. VI of 1899 - which does not find any counterpart in the U.K. Act - subjected to criminal punishment the action of a public officer who, in the case not foreseen in the preceding sections of Ordinance VI of 1899, communicated or published such documents or facts, known to him by reason of his office as were to be kept secret, or who in any manner facilitated a knowledge thereof. This section still forms part of our Criminal Code.²³

In addition, Ordinance No. VI of 1899 introduced two novel sections (245a²⁴ and 245b²⁵) which made punishable three attempts against the secrecy of private correspondence sent otherwise than by post and consisting:

22. Article 4 deal with the expenses of prosecution, article 5 was a saving clause for the laws of British possessions and article 6 concerned the extent of the U.K. 1889 Act and the place of trial of any offence prosecuted thereunder.
23. This section is now article 133 of the Criminal Code. When introduced into the Criminal Code in 1899 it was numbered section 123a and read as follows:
 - 123a. Any public officer who communicates or publishes such documents or facts, known to him by reason of his office, as are to be kept secret, or who in any manner facilitates a knowledge thereof, whenever the act does not constitute a more serious offence, shall be liable to the punishment of imprisonment for a term not exceeding one year or to the payment of a fine (*multa*).
24. Section 245a read as follows:
 - 245a. Whoever shall maliciously suppress or destroy any epistolary correspondence not addressed to him, even though, it being closed, he shall not have opened it, shall be liable to the punishment of imprisonment or hard labour for a term not exceeding one year or to the payment of a fine (*multa*).
25. Section 245b read as follows:
 - 245b. Whoever shall unlawfully open any closed letter or packet, not addressed to him, shall unlawfully obtain possession of any epistolary correspondence belonging to other persons which is not closed, for the purpose of knowing its contents, shall be liable to the punishments established for contraventions.

- (a) in the malicious suppression or destruction of an epistolary correspondence by a person to whom it was not addressed, even though it was closed and he did not open it prior to its suppression or destruction;
- (b) in the opening any closed letter or packet by a person to whom it was not addressed; and
- (c) in unlawfully obtaining possession of any epistolary correspondence belonging to other persons and not closed for the purpose of knowing its contents.

No similar sections existed in the U.K. Official Secrets Act 1889. These two provisions, which in the meantime were renumbered as sections 258 and 259 of the Criminal Code, were deleted by section 19(c) of the Security Services Act, 1996.²⁶

Notwithstanding the enactment of Ordinance VI of 1899, the U.K. Official Secrets Act 1889 remained in force concurrently with the said Ordinance and could be resorted to should the U.K. Act appear to apply more closely to any particular case than the Maltese Ordinance.

In order that an Order-in-Council could be issued suspending the U.K. Act in whole or in part, Her Majesty had to be satisfied that the provisions made by the Maltese Ordinance were, in terms of section 5 of the U.K. Act, 'of like effect' to those contained in the Official Secrets Act 1889.

From the above, it can be seen that there are certain departures from the U.K. Act which do not seem to satisfy the 'like effect' criterion of section 5 and presumably this is the reason why no Order-in-Council suspending the operation of the U.K. Act in Malta was issued by the British Sovereign.

Ordinance No XI of 1905

Ordinance No. VI of 1899 was supplemented by Ordinance No. XI of 1905, an Ordinance intended to prevent unauthorised persons from trespassing on or making sketches of fortifications and other Naval or Military works of defence, or positions, and to amend the Criminal Code accordingly. This Ordinance is to a certain extent modelled on Ordinance No. 3 of 1887 of Gibraltar.

The main object of this Ordinance was to consolidate and to render more effective the then existing provisions in the Criminal Code relating to:

- (a) the trespassing on fortifications or other places, whether fortified or not, possessed by the Naval or Military Authorities or set apart for Naval or Military operations or purposes; and
- (b) the unauthorised sketching of fortifications and sale of such sketches.

26. Act XVII of 1996, Chapter 391 of the Laws of Malta.

The provisions on this subject, which were in force prior to the passing of Ordinance No. XI of 1905, were contained in subsections 35 and 37 of section 336 of the Criminal Code (which were added to the Criminal Code by Ordinance No. IV of 1888). Subsection 35 aforesaid provided as follows:

35. Whosoever shall, without permission, make any plan, sketch, drawing, photograph, or picture of the fortifications existing in these Islands, or any part thereof, or whosoever shall, without permission, publish, sell, or exhibit any such plans, sketches, drawings, photographs, or pictures.

The permission had to clearly state the nature of the plans, sketches, drawings, photographs, or pictures, which could be made, sold or exhibited, by the person to whom such permission was given, and the place or places of which such plans, sketches, drawings, photographs, or pictures could be made.

Subsection 37 read as follows:

37. Whosoever shall, without permission, enter any fortification or any place, whether fortified or not, possessed either by the Naval or Military Authority and which is set apart for naval or military operations or purposes, and which the Head of the Government, by notice published in the Government Gazette, shall have prohibited the public from entering.

These provisions were, by experience, found to be an insufficient deterrent in the first place, because the penalties attached to the prohibitions were too light, such penalties consisting in the ordinary punishments for contraventions;²⁷ and secondly, because the condition requisite for the prosecution of offences against these provisions was all too commonly not met, inasmuch as unless a member of the Police Force happened to be present in the place in which the contravention was committed, trespassers were able to escape being brought to law, as the Military and Naval Authorities had no power to apprehend the offenders and hand them over to the Civil Power.²⁸

These shortcomings in the law above mentioned were removed by Ordinance No. XI of 1905. The penalties attaching to a trespass on fortified or other Military or Naval places (section 2 thereof) were raised to a heavier scale, that is, a fine (*multa*) from five pounds to twenty pounds, or imprisonment for a term not exceeding one month, saving the power of the Court to award a smaller fine (*ammenda*) in cases

27. That is, admonition and reprimand or a fine (*ammenda*) not exceeding five pounds, and - on a second or subsequent conviction - detention for a term not exceeding one month.

28. Cf. CO 158/352/24474.

in which the circumstances of the case were in the opinion of the court of a slight nature.

The penalties for the unauthorised sketching of fortifications (section 4 thereof) were also revised, the offender being now liable, even on a first conviction, to a fine (*ammenda*) or detention, or both.

Under section 9 of Ordinance No. XI of 1905, power was given to Commissioned Officers in H.M.'s Naval and Military Forces and to non-Commissioned Officers holding a rank not inferior to that of first class petty officer in H.M.'s Navy, or of Sergeant in H.M.'s Military Forces, wearing the uniform of their respective rank, to detain, or cause to be detained without any warrant, in any case in which an Officer of the Civil Police does not happen to be present, any person offending against the Ordinance, or suspected to be so offending.

This power, as already stated, had to be given to ensure the prosecution of offenders. For the protection, however, of persons detained by the Naval or Military Power, it was provided under the same section that the case had to be forthwith reported to the Civil Police and the person apprehended was to be released as soon as the identity of the offender was established with a view to make it possible that proceedings against him could be instituted by the Police.

Another new feature in the enactment relating to the sketching of fortifications and the sale of such sketches was that permission to make sketches had to be granted by such officers as were authorised by the Head of the Government to issue such permits (section 8 thereof). Under the former enactment²⁹ no reference was made to the power vested with the authority granting the said permits and such authority consequently devolved on the Superintendent of Police.

This alteration in the law was made to give effect to a recommendation made by a Board appointed by His Excellency the Governor in 1904 for the purpose of considering and reporting what restrictions were to be placed on the issue of permits to take photographs and sketches of fortifications in Malta.³⁰ The Board had recommended that the permits in question should be granted by His Excellency the Governor on the recommendation of the Commanding Royal Engineer and through the Assistant Military Secretary to foreigners; by the Commanding Royal Engineer to persons serving in H.M.'s Army and their families; by the Chief of the Staff to persons employed in the naval service and their families; and by the Superintendent of Police to civilians, not being aliens.³¹

Power was given to the Head of the Government under section 8 to make regulations with respect to the permits to be obtained for the sale of sketches or fortifications. Regulations to the above effect were made by the Governor on the promulgation of the Ordinance under review. The Regulations were published in

29. Section 336 paragraphs 35 and 37 of the Criminal Code.

30. Cf. CO 158/352/24474.

31. *Ibid.*

the Government Gazette by Government Notices No. 174 of the 18th August 1905. By the said regulations the authorities by whom permissions to sell sketches of fortifications and to make such sketches were also designated.

The special meaning of the words 'sketches', 'sketching materials' and 'fortifications', as used in the Ordinance, were also defined in section 1 thereof.³² It is contended that notwithstanding the provisions of the Ordinance for the prevention of the unlawful sketching of fortifications and the care and attention shown on the part of the Authorities concerned in enforcing the law, it was never possible to check entirely the evasion of its provisions, considering that the works of defence in the fortified towns were surrounded by private dwellings built at a much higher level than these works. In this respect, it seemed that here the legislator had to rely on the loyalty of the inhabitants of these houses as a sufficient guarantee against abuses. This Ordinance was subsequently repealed by Ordinance VI of 1914.

Aerial Navigation Ordinance 1914

Ordinance No. IX of 1914, an Ordinance to regulate aerial navigation over the Maltese Islands, was drafted on the lines of the U.K. Aerial Navigation Act 1911³³ and the Aerial Navigation Act 1913.³⁴ In effect, the Ordinance consisted of the provisions of the two U.K. Acts arranged together into one enactment.

The Ordinance was supplemented by an order of the Governor under section 3 prohibiting, for the purposes of the defence and safety of the Maltese Islands, the navigation of aircraft over the whole of their area and the adjacent territorial waters thereof. Simultaneously, regulations were made for giving effect to the provisions contained in section 6 thereof. However, the U.K. Air Navigation Act 1920³⁵ repealed the aforesaid U.K. 1911 and 1913 legislation whilst Ordinance No. IX of 1914 was superseded by the Air Navigation Act, 1920 as applied to Malta by Order-in-Council made under the latter Act.

Official Secrets Ordinance 1914

The advisability of reproducing in a local Ordinance the provisions of the U.K. Official Secrets Act 1911 was, in the first place, suggested by the expediency of

32. These three terms were defined on the following lines:

'Sketch' includes any drawing, photograph, picture, painting, map, survey, or other pictorial representation by whatever means or process made;

'Sketching materials' includes all implements, materials and apparatus which are or may be used for the purpose of making any sketch, drawing, photograph, picture, painting, plan, map, survey, or other pictorial representation;

'Fortifications' includes any fort, battery, or other work of defence and any Government Dock or naval establishment, whether the same be constructed or in the course of construction.'

33. 1 & 2 Geo. 5 Cap. 5.

34. 2 & 3 Geo. Cap. 22.

35. 10 & 1 Geo 5 Cap. 80.

bringing more closely the subject under the attention of the public, by a formal enactment of the Maltese legislature. The Ordinance aimed also to facilitate the application of the law, eliminating diversities of nomenclature and of classification of offences, which occurred between U.K. and Maltese legislation. Lastly, it removed certain difficulties as to the exercise of the powers of arrest provided by the U.K. Act, further referred to hereafter.

This method had been likewise adopted in the case of the 1889 Act subject to certain variations. The provisions of the latter Act had been embodied in the Criminal Code (sections 63 to 65) notwithstanding the fact that it was also applicable to all Her Majesty's Dominions.

In the present instance, in view of the importance of the subject and the nature of some of the provisions of the U.K. Official Secrets Act 1911, involving a departure from the general principles underlying the criminal laws and procedure of Malta, it was deemed more convenient to deal with the matter by a separate Ordinance. Furthermore, it seems that the desirability of merging into one law the provisions relating to official secrets and the provisions of Ordinance No. XI of 1905 was yet another reason for adopting this course of action.³⁶

Before examining the details of the Official Secrets Ordinance 1914, there remains one further point of a general character to be considered, namely, the question of the extra-territorial jurisdiction exercisable by the Maltese Courts in respect of offences coming under this Ordinance.

According to section 5(3) of the Criminal Code, the Maltese Courts had jurisdiction to try treasonable offences committed abroad by subjects born or naturalised in Malta. As the law stood prior to the enactment of the Official Secrets Ordinance 1914, that rule applied to disclosure of official secrets, these offences having been classified in the Criminal Code under 'Offences against the Safety of the Government' (treasonable offences, sections 63 to 65).³⁷ The point could have arisen whether the Maltese Courts could still be competent to try the offences created by the Official Secrets Ordinance 1914, if committed by nationals abroad.

Considering the restricted character of extra-territorial legislation, the rule contained in section 5 of the Criminal Code could not be extended to offences other than those contemplated in that section, without express provision to that effect in the Official Secrets Ordinance 1914. Nevertheless, such a provision would have exceeded the power of a colonial legislature. Indeed, the extra-territorial jurisdiction which the Maltese Courts were competent to exercise under the Criminal Code was conferred on those Courts by the Sovereign in Council, under the Order of the 30th January 1854, giving effect to the Criminal Code. In view, however, of section 10(2) of the U.K. Official Secrets Act 1911, it seemed doubtful whether a

36. Cf. CO 158/379.

37. Sections 57a, 57b and 57c introduced by Ordinance No. VI of 1899 were renumbered as sections 63 to 65 of the Criminal Code in 1900.

similar extra-territorial jurisdiction in respect of offences which, according to that Act, were only cognizable by Colonial Courts, could be conferred on the Maltese Courts by an Order-in-Council. Besides, such extension of jurisdiction, supposing that it could be granted by an Order-in-Council, would not be consistent with the principle which underlined section 10(2) of the U.K. Act, nor, with the intentions of section 11 thereof. This latter section did not contemplate the vesting of Colonial Courts with a wider jurisdiction than that which they were enabled to exercise under the U.K. 1911 Act. In view of such considerations, the jurisdiction of the Maltese Courts to try such offences had to be confined within its ordinary limits *ratione loci criminis patraii*.

Furthermore, the provisions of Ordinance No. XI of 1905 were reproduced in Ordinance No. VI of 1914 as they were considered to be sufficiently connected with the scope of the Ordinance to come within the terms of the title, without specific reference thereto.

At this juncture, I intend to analyse the provisions of Ordinance No. VI of 1914. The title of this Ordinance is adopted from the U.K. Official Secrets Act 1911, an enactment which is still in force in the United Kingdom.

For the sake of uniformity of method, the definition section, section 2 thereof, though containing auxiliary definitions only, was placed at the beginning, as is the custom with Maltese legislative drafting. The definition of 'offence under this Act', which occurs in the U.K. 1911 Act, was omitted as unnecessary, having regard to the general principles of the criminal law of Malta. Again, the denomination of felony which does not form part of the classification of offences in the Law of Malta had to be omitted. Under the Criminal Code, criminal offences are divided into 'crimes' and 'contraventions'. For this reason, the designation of the nature of the offence, in these sections, was quite correctly left out. Moreover, such designation was not necessary, as general rules in the Criminal Code existed relating to the classification of offences.

Section 6 of the Malta Official Secrets Ordinance defined what constitutes a 'prohibited place' on the lines of section 3 of the U.K. Official Secrets Act 1911. However, a new paragraph was inserted in the definition of 'prohibited place' (paragraph (e) thereof) which dealt specifically with works of defence, and enabled the Governor to exclude from the category of prohibited places such fortifications as in the opinion of the Governor could be regarded as falling out of the scope of the Ordinance, whether in respect of sketching, or any other purpose. The power to exclude certain fortifications from the operation of the law was not a novel one as it was exercised by regulations under Ordinance No. XI of 1905 with respect to the old fortifications surrounding Valletta and the other towns, the fortifications of Gozo and the towers round the coast of Malta.³⁸

38. Cf. CO 158/379.

Section 7 of the Maltese Official Secrets Ordinance is a literal reproduction of section 7 of the U.K. Official Secrets Act 1911. A maximum fine of fifty pounds had to be fixed, as according to the general rule of the Criminal Code, the maximum of a fine, in the absence of special provisions to the contrary, could not exceed twenty pounds.

Section 8 of the Maltese Official Secrets Ordinance is also a textual transposition of section 4 of the U.K. Official Secrets Act 1911 and departed from the ordinary doctrine in Maltese Criminal Law that the attempted offence and the completed offence have different punishments attached to them.³⁹

It was not necessary to make any provision in the Maltese Official Secrets Ordinance in the sense of section 5 of the U.K. Official Secrets Act 1911 which relates to the conviction for a misdemeanour of persons charged for felony. This case was, sufficiently covered by the general rules on findings, then contained in section 460, paragraph 4 of the Criminal Code.⁴⁰

Section 9 of the Official Secrets Ordinance corresponds to section 6 of the U.K. Official Secrets Act 1911. Having regard to the fact that the denomination of felony is foreign to Maltese Law, and that the powers of arrest sanctioned by U.K. law in respect of felonies were not exercisable under the law of Malta, it became necessary to make special provision to legalise a similar procedure. It was chiefly on account of the inapplicability to Malta of section 6 of the U.K. Official Secrets Act 1911 that a local Ordinance had been suggested as stated above.

Sections 10 and 11 of the Official Secrets Ordinance contained identical provisions corresponding to sections 8 and 9 of the U.K. Official Secrets Act 1911 relating to restrictions on prosecution and to search warrants. Section 12 of the Maltese Official Secrets Ordinance dealt with simple trespass on Naval and Military places which were not actually part of the defences, and was intended to supersede sections 2 and 3 of Ordinance No. VI of 1905. It applied to places which were not covered by subsections (a) and (b) of section 3 of the U.K. Official Secrets Act 1911, or which could not strictly be brought under subsection (c) of section 3 of the said U.K. Act, and the access to which by the public was considered undesirable on grounds of order and discipline.

The Official Secrets (Malta) Ordinance in Council, 1914 was promulgated by the King. The latter provided that:

‘The operation in Malta of the Official Secrets Act, 1911, is hereby suspended, so long as the Official Secrets Ordinance, 1914, enacted by the Governor of Malta with the advice and consent of the Council

39. At the time, there was only one exception in the Criminal Code, namely section 56 of the Criminal Code. This provision, which is still in force, concerns insurrection or *coup d'état*.

40. This is now section 467(4) of the Criminal Code.

of Government thereof, continues in force in Malta and no longer, but the suspension of the said Act in Malta shall not extend to the holder of an office under His Majesty who is not appointed to that office by the Government of Malta.⁴¹

Official Secrets Ordinance 1923

In order to pave the way for an Order in Council suspending the operation of the U.K. Official Secrets Act 1911 (as amended in 1920) in Malta, it was necessary to frame an Ordinance containing provisions of the like effect to those contained in that composite measure. This was done through the Official Secrets Ordinance 1923 which was considered to form as comprehensive and effective protection for official secrets as the U.K. 1911 and 1920 Acts.⁴²

In adopting the provisions of the U.K. Acts for Malta a few technical difficulties had to be surmounted. Thus section 1(1) of the U.K. 1911 Act refers to a 'felony' and to 'penal servitude' and section 2 to 'misdemeanour' - these terms being unknown in Maltese Law: the Criminal Code recognising only 'crimes' and 'contraventions'. Furthermore, every offence which entails a more serious punishment is called a 'crime'. And in most cases the question whether an offence is a crime or a contravention is to be gathered only by looking at the penalty imposed for its commission.

The result of this is that the U.K. Acts could not be closely followed. However, it can be seen that this difficulty was finally met by inserting a penalty clause at the end of every section (on the lines of the Criminal Code). This distinguishes the 1923 Ordinance from the U.K. 1911 and 1920 Official Secrets Acts, but the distinction is not without reason.

The Nominated Council left it to Mr. R.P. Mahaffy, legal advisor to the Governor, to decide whether the phrase 'passes over' in section 1(1)(a) of the 1923 Ordinance was wide enough to include flying over a prohibited place. It was pointed out by the Air Force Member of the Nominated Council that valuable secrets might be discovered by aeroplanes which did not, or did not vertically, pass over the fortress. Accordingly, the wide definition in section 1(3) of the 1923 Ordinance was inserted, which does not have any counterpart in the U.K. Official Secrets Act 1920.⁴³

The definition of the expression 'foreign agent' in section 3(2)(b) of the 1923 Ordinance is important, as evidence of communication with such an agent may be fatal to an accused person. A member of the Nominated Council thought

41. Promulgated on 23 December 1914.

42. The Official Secrets (Malta) Order in Council 1923 revoked the Official Secrets (Malta) Order in Council of 23 December 1914 and suspended the operation in Malta of the Official Secrets Acts 1911 and 1920.

43. Cf. CO 158/432.

that the definition of 'foreign agent' contained in section 2(2)(b) of the U.K. Official Secrets Act 1920 was not wide enough as it would not include a person acting for an unfriendly association or society (e.g. in Russia, Egypt or elsewhere) who could not be said to be a 'person employed by a foreign agent'. It seemed that the argument in favour of widening the definition was on the whole more acceptable, and the words 'or hostile agency' therefore appeared in this section, such definition being, to that extent, stronger than in the U.K. counterpart.⁴⁴

Section 17 of the 1923 Ordinance is a reproduction of section 19(1) and (2) of the 1911 U.K. Official Secrets Act; but inasmuch as the Maltese Courts had



Fig. 3. Governor Plumer.

no jurisdiction to try persons for crimes committed outside Malta it was deemed necessary, in order to have an Ordinance at least as effective as the U.K. Acts, to give the said power to such a Court. Indeed, when this section was enacted, the Governor appointed the then existing Criminal Court of Valletta to try such cases. The Court was thus invested with the very wide powers given to the Court of King's Bench by the U.K. Criminal Jurisdiction Act 1802.

Again, it will be noted that it was necessary to change a few of the titles of the Police officials mentioned in the U.K. Acts in order to give the powers allotted to them to officers of sufficient standing in the Malta Police Force. In addition, the definition of 'wireless telegraphy' in section 12(3) of the Maltese Official Secrets Ordinance 1923 was also widened beyond the limits of the U.K. Acts by utilising the definition later reproduced in section 41 of the Malta Constitution Letters Patent, 1921.⁴⁵

The remaining sections not discussed above of the Official Secrets Ordinance 1923 were lifted verbatim from the Maltese Official Secrets Ordinance 1914 and from the U.K. Official Secrets Acts 1911-1920.

44. *Ibid.*

45. *Ibid.*

Ordinance No II of 1923

The year 1923 was a very hectic year for Maltese legislation on official secrecy. Ordinance No. II of 1923 prohibited the access to any place which was held by the Naval, Military or Air Force authorities and which was not considered to be a prohibited place as defined by section 5 of Ordinance No. III of 1923, i.e. the Official Secrets Ordinance 1923. Thus, Ordinance No. II of 1923, the Trespass Ordinance, complimented and supplemented the official secrets provisions on unauthorised entry in a prohibited place.

Ordinance No. II of 1923 was amended by Ordinance No. XXXV of 1934. It was then repealed in 1970 by means of the Malta Armed Forces Act, Chapter 220 of the Laws of Malta and reproduced as section 159 thereof, which now provides as follows:

- (1) If any person, without authority, enters or is found in or upon any place, which is held by any authority of the force for the purpose of the force, or the access to which by the public has been for the time being prohibited by the Minister by notice in the Gazette, such person shall be guilty of a contravention and may, without any warrant or other authority, be apprehended and detained by any Police officer.
- (2) In the absence of a Police officer it shall be lawful for an officer of the force or of a man of the force of a rank not inferior to that of a lance-corporal or lance-bombardier, wearing the uniform of his rank, to apprehend and detain such person, if he finds it necessary to do so for the identification of that person by the Police, and no longer than it may be necessary for such purpose.

Ordinance No IV of 1923

On 17th October 1921, the Governor proposed to avail himself of the powers reserved in Section 3 of the Convention for the International Regulation of Aerial Navigation⁴⁶ to prohibit, for military reasons, the flight of aircraft of every kind, except with the special authorisation of the Governor. He proposed to make the following regulation under section 3 of Ordinance No. IX of 1914:

No foreign aircraft of any kind shall at any time fly over the Island of Malta and its Dependencies or over the territorial waters thereof, except with the special authorisation of the Governor.⁴⁷

46. Signed at Paris on 13 October, 1919.

47. Cf. CO 158/425/52875.

However, this proposal was rejected by the Secretary of State for the Colonies on 13 April 1922⁴⁸ as it was felt that at that particular moment in time no colony should, on account of the dangers of espionage, establish areas over which civil (as opposed to military) flying should be entirely prohibited in time of peace. Indeed, it was then regarded as most undesirable from the point of view of civil aviation that a prohibited area extending over the whole of Malta should be established. Also, if this were the case, questions could arise as to the legitimate exercise of the powers contained in Section 3 of the International Air Navigation Convention.⁴⁹

Subsequently, on 23 June 1922, the Governor dropped the proposal to make the aforesaid regulation but suggested instead that an Ordinance be made to prohibit the taking of photographs from the air, in view of the importance of Malta as an Empire Fortress.⁵⁰

On 2 March 1923, a draft Ordinance to prohibit photography by aircraft was published in the Government Gazette and on 6 April 1923 the Governor enacted Ordinance No. IV of 1923, the Aircraft (Photography) Ordinance, 1923, which was Chapter 51 of the 1984 Revised Edition of the Laws of Malta prior to its repeal in 1992.⁵¹

This Ordinance prohibited the use of any photographic apparatus for the purpose of taking from any aircraft while flying over Malta or the territorial waters thereof, any photograph of any land, fort, building, ship, dockyard, work of defence or other object whatsoever.⁵² It further empowered an officer of His Majesty's Forces or any Police Officer not below the rank of an Inspector to search any person descending from the air at Malta or its Dependencies or within the territorial waters thereof for the purpose of discovering whether such person was in possession of any photographic apparatus.⁵³ It enabled the detention of such person having the said photographic apparatus⁵⁴ and the awarding of a fine (*multa*) not exceeding fifty pounds by the Court of Magistrates of Judicial Police and, if need be, ordering that person not to leave Malta until he or she had paid the relative fine.⁵⁵ The court was obliged to confiscate any such photographic apparatus, plate or film used in contravention of the Aircraft (Photography) Ordinance.⁵⁶ No person could bring any claim in respect of any delay or damage occasioned or caused to him or her by the exercise of any

48. Cf. CO 158/431/13753.

49. *Ibid.*

50. Cf. CO 158/429/31303.

51. This Ordinance was repealed by the Aircraft (Photography) (Repeal) Act, 1992, Act No. XVII of 1992, with effect from 30th October, 1992.

52. Section 1 of the Aircraft (Photography) Ordinance.

53. Aircraft (Photography) Ordinance, section 1.

54. *Ibid.*, section 3.

55. *Ibid.*, section 4.

56. *Ibid.*

of the aforesaid powers.⁵⁷ Finally, persons or aircraft in His Majesty's Service were exempted from the provisions of this Ordinance.⁵⁸

Ordinance No IX of 1934

Ordinance No. IX of 1934 was enacted on 7th March 1934 by the Governor of Malta in order to amend the Official Secrets Ordinance 1923. It provided for the constitution of a Criminal Court to sit without a jury to hear and determine breaches of the Official Secrets Ordinance. H.M.'s Criminal Court had already been designated since 1923 as the competent court to try such offences. However, according to the provisions of the Criminal Code, the Criminal Court had to sit with a jury. So Ordinance No. IX of 1934 did away with the jury system for offences under the Official Secrets Ordinance, 1923.



Fig. 4. Governor Campbell.

Furthermore, if application was made by the prosecution to the Criminal Court on the ground that the publication of the reasons on which the sentence of the Court was delivered would be or might be prejudicial to the national safety, the public had to be excluded during the delivery of such reasons even though the passing of the sentence took place in public. If the reasons were not given in public they could not be inserted in the record of proceedings and had to be kept by the Registrar of H.M.'s Criminal Court (now the Criminal Court) under seal. They could only be inspected by any person who had the written permission of the Governor⁵⁹ to do so.

Chapter 50 of the Laws of Malta

In 1942, the Official Secrets Ordinance 1923 (as amended in 1934) became Chapter 82 of the Laws of Malta whilst in the 1984 Revised Edition of the Laws of Malta, it figured as Chapter 50 thereof.

57. *Ibid.*, section 5.

58. *Ibid.*, section 6.

59. Today the said permission is granted by the Attorney General in terms of article 24(2) of the Official Secrets Act.

The Official Secrets (Amendment) Act, 1996

The Official Secrets (Amendment) Act, 1996⁶⁰ was enacted on 26th July, 1996 and came into force on the same day except for section 9 of the 1996 enactment (which amended section 21 of the Official Secrets Ordinance relating to the registration and regulation of persons carrying on business of receiving packets) which came into force on 22nd November 1996. Its long title indicated that it was intended to replace section 6 of the Official Secrets Ordinance by provisions protecting more limited classes of official information. In all, it contained eleven sections.

Section 1 is the short title and commencement provision. Section 2(1) substituted the word 'Ordinance' with 'Act'. Thus, following the 1996 amendments, the Official Secrets Ordinance has now been styled as the Official Secrets Act.

Section 2(2) repealed section 13 of the Ordinance (which dealt with the power to compel the production of telegrams) and re-numbered sections 7 to 12 and 14 to 18 of the Ordinance to respectively read sections 15 to 20 and 21 to 25 of the Official Secrets Act.

Section 2(3) now states that any reference in any law to the Official Secrets Ordinance is to be read as a reference to the Official Secrets Act and any reference in the Official Secrets Ordinance or in any other law enacted before the coming into force of the Official Secrets Act and to sections 7 to 12 and 14 to 18 of the Ordinance have to be read as a reference to the respective section as renumbered by the Official Secrets Act.

Section 3 of the 1996 Act substituted the definition of the Ordinance with a new interpretation section. New definition of the expressions 'disclose', 'Government contractor', 'international organisation', 'Minister', 'prescribed', 'public servant', 'Security Service', 'State' have been added to the new section 2 of the Official Secrets Act whilst the definition of the expression 'office under the Government of Malta' and 'superintendent of Police' have been deleted.

In terms of section 4 of the 1996 amendments, the words 'a person holding, or in the employment of a person holding office under the Government of Malta' in section 4(1)(d) concerning the offence of personation were substituted by the words 'a public servant or a Government contractor'.

Section 6 of the Ordinance was substituted by 9 new sections, that is, by new sections 6 to section 14. Section 6 deals with security, section 7 with defence, section 8 with international relations, section 9 with crime and special investigation powers, section 10 with information resulting from unauthorised disclosures or entrusted in confidence, section 11 with information entrusted in confidence to other States or international organisations, section 12 to unauthorised disclosures, section 13 to safeguarding of information and section 14 establishes penalties for the infringement of the provisions of sections 6 to 13 above-mentioned.

60. Act No. XVIII of 1996.

The fine of ten liri in section 15 of the Official Secrets Act (that is, section 7 of the Official Secrets Ordinance) dealing with the case where a person charged with a crime may be convicted of a contravention has been increased to one hundred liri.⁶¹

The words 'President of Malta' in section 18 of the Official Secrets Act (that is, section 10 of the Official Secrets Ordinance) have been replaced by the words 'Attorney General'.⁶²

In section 19 of the Official Secrets Act (that is, section 11 of the Official Secrets Ordinance), the words 'an offence under this Ordinance', wherever they occurred, were changed to read 'an offence under this Act, other than an offence under subsections (1), (4) and (5) of section 13'.⁶³

Minor amendments were made to section 21 of the Act (that is section 13 of the Ordinance) which requires the registration and regulation of persons carrying on business of receiving packets.⁶⁴

Section 24 of the Act (that is, section 16 of the Ordinance) concerning the exclusion of the public from the hearing in certain cases makes consequential amendments in the sense that the words 'President of Malta' have been substituted by the words 'Attorney General'.

Two new sections in the Official Secrets Act were introduced by section 11 of the 1996 amendments. Section 26 empowers the Prime Minister by order to prescribe anything that needs to be prescribed under the Official Secrets Act and section 27 which provides for extra-territorial offences in the case of any act done by a Maltese citizen or public servant which is in violation of the Official Secrets Act.

61. Section 6 of Act No. XVIII of 1996.

62. *Ibid.*, section 7.

63. *Ibid.*, section 8.

64. These consisted in the following: (a) the word 'telegram' and 'postal packet' were respectively substituted by the words 'communication' and 'packet' wherever they occurred in the section; (b) subsection (1) thereof was amended as follows: (i) the words 'superintendent of police' were substituted by the words 'Commissioner of Police'; (ii) the words 'for the district in which such business is carried on' were deleted; and (iii) the words 'each superintendent of Police' were substituted by the words 'the Commissioner of Police'; (c) subsection (2) of section 21 was amended as follows: (i) the words 'cause to be entered in a book kept for the purpose' were substituted by the words 'make a record for retention purposes'; (ii) the words 'date of posting (as shown by the postmarking)' in section 21(2)(c) were substituted by the words 'date of sending'; and (iii) the words from 'and shall not deliver' to the words 'in such book as aforesaid' were changed to read 'and shall not deliver a packet to any person until that person has signed a receipt for the same'; (d) the words 'the books so kept' to the words 'packets received' in subsection (3) of section 21 were substituted by the words 'the records so kept' (e) subsection (4) was also slightly amended in the sense that the words 'of Judicial Police' were substituted by the words (Malta) or the Court of Magistrates (Gozo) as the case may be' and the words 'ten liri' now read 'one hundred liri'; (f) a new subsection (7) was added which provides that for the purposes of section 21, the word 'packet' has the same meaning as is assigned to that term in section 2 of the Post Office Act.

Conclusion

Although the Maltese Law on Official Secrecy has been updated in 1996, these amendments do not take into consideration the amendments made in the U.K. by the Official Secrets Act 1939. Moreover, the legislator has not taken the opportunity to align the Maltese Official Secrets Act with the 2002 amendments to the Criminal Code made by the Criminal Code (Amendment) Act, 2002⁶⁵ and with the new provisions of the Police Act.⁶⁶ Finally, the Official Secrets Act has also to be studied from the human rights and fundamental freedoms perspective in so far as compliance of the Official Secrets Act is concerned with Chapter IV of the Constitution of Malta which sets out the human rights and fundamental freedoms of the person, the European Convention Act⁶⁷ incorporating the European Convention on Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.⁶⁸ Hence the need for the Official Secrets Act to be revisited in order to ensure that its provisions are compliant with these laws.

65. Act No. III of 2002.

66. The Malta Police Ordinance, Chapter 164 of the Laws of Malta was amended by the Malta Police Ordinance (Amendment) Act, 2002 (Act No. XIII of 2002) and the Ordinance was re-styled as the "Police Act".

67. Chapter 319 of the Laws of Malta.

68. Official Journal of the European Communities, 18th December 2000, 2000/C 364/8.

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