

Other Hobbies are NOT at Risk from an Abrogative Referendum!

A legal research document addressing the question on whether an abrogative referendum may be brought about to restrict hobbies or pastimes, other than spring hunting.

The following document is aimed to address one of the claims that have been made by the pro spring hunting lobby, that if Spring Hunting would be abolished through the abrogative referendum, other abrogative referenda may follow to attack other hobbies or activities. This is a case of fearmongering which cannot take place because of the way the abrogative referendum works. It is important to start off by understanding what is the propose of a Referendum and the different kinds of Referenda.

A referendum is the ultimate tool of direct democracy. It is a legal instrument whereby the people go out and vote in favour or against a proposal made by Government or to remove a law. Thus, the people give clear and direct instructions to the Maltese Parliament.

A referendum can essentially be of two kinds:

A Resolutive Referendum, which means that the people vote to approve a resolution proposed by the House of Representatives; &

An Abrogative Referendum, which means that the people vote to abrogate an existing law.

Both Referenda are specifically contained in our law under the Referenda Act (Chapter 237 of the Laws of Malta). To abrogate means to remove, annul or to do away with. Through such a referendum, voters can vote on whether they want to keep or remove **a specific legislation**. Not everything can be subjected to an abrogative referendum; fiscal measures, the Constitution, international treaties, electoral legislation and issues of human rights are some matters that cannot be the subject of a referendum.

The following is the question which will be asked during the upcoming spring hunting referendum:

'Do you agree that the provisions of the Framework for allowing a Derogation opening a Spring Hunting season for Turtle Dove and Quail Regulations (Subsidiary Legislation 504.94) should continue in force?' If the majority vote NO, the president will have the obligation to abrogate SL 504.94.

In principle, unless a person is in breach of a law, he or she is free to practise any hobbies or pastimes that he or she may wish. Our Constitution upholds our fundamental rights and freedoms and everyone is free to practice these "subject to the respect for the rights and freedoms of others and for the public interest" (Art. 32 of The Constitution of Malta).

In principle, most hobbies are completely unregulated, meaning that the Government and Parliament do not feel that these require regulation. Typical examples could range from stamp collecting to kite flying to most forms of physical exercise and training. These are just by way of example and the examples are extremely vast. As an exception, certain hobbies are subject to regulatory legislation, meaning that there is a law in force that regulates their enjoyment, reason being that such hobbies or pastimes may be dangerous or may be against the interest of the public or that of government if not practiced and enjoyed in a proper manner. One methods of regulation adopted is that of licensing of such activities and the

creation of parameters under which such activities should be carried out. The legislation in such cases is drafted in the manner of a regulatory law.

There is a clear distinction between *regulatory legislation* and what can be termed *permissive regulation*, such as spring hunting. Here lies the key legal issue that is subject of the hunting lobby's fear-mongering campaign. Pastimes and hobbies could be subject to **regulatory legislation**. Indeed, hunting in general is subject to regulatory legislation (Hunting Licenses Regulations, S.L.10.39, Conservation of Wild Bird Regulation, S.L.504.71 and other laws). However, Spring hunting is exceptionally permitted by the legislation entitled: Framework for Allowing a Derogation Opening a Spring Hunting Season for Turtle Dove and Quail Regulations (S.L. 504.94 and other laws). The law permitting spring hunting creates an exception to the general law that does not permit hunting in the mating and rearing season. Therefore, whilst an abrogative referendum would have not utility or scope in relation to other regulated hobbies, the above law permitting spring hunting would be removed should the abrogative referendum go through. Should the referendum go through (meaning that more people will vote 'No' rather than 'Yes'), the result would be that the above law permitting hunting would be removed and that hunting would remain permitted in Malta, as subject by the regulatory legislation in force at this point in time.

The following is an analysis of the regulation of some of the hobbies and pastimes which have been mentioned recently:

1) Horse Riding & Racecourses

In the case of horse riding, horses are traditionally beasts of burden and animals involved in sports. The law giving rise to the licensing for the keeping of horses is the Code of Police Laws (CHP. 10). It simply states that no one shall be permitted to keep a horse unless they have a license. Therefore, Should this Article be removed the result is that anyone will be permitted to keep horses without the need of a license.

The Racecourse Betting Ordinance (CHP. 78) deals with racecourses. It is drafted in a classic manner whereby the Minister responsible for the Police may issue (or revoke) racecourse licenses etc. Therefore, similarly, **a successful abrogative referendum would leave this hobby widely unregulated and therefore enthusiasts will enjoy more freedom to enjoy such hobby.**

2) Fireworks

In the case of fireworks, the license to manufacture fireworks is dealt with under the following laws:

CHAPTER 33

EXPLOSIVES ORDINANCE

3. (1) No person shall introduce into Malta gunpowder or other explosives or establish or keep any gunpowder factory or firework factory or any other factory in which explosive powders or other explosives are manufactured, without a licence from the Commissioner of Police. Such licence shall not be granted unless the necessary precautions for protecting life and property have been taken.

The laws are all worded in a manner that states that no person may produce fireworks unless they hold a license. There is not a law that specifically prohibits the manufacturing and use of fireworks. Therefore there is no possibility of holding an abrogative referendum in relation to fireworks. **Fireworks enthusiasts are not under any threat that an abrogative referendum could be passed to remove their rights to produce firework.**

3) Car enthusiasts

Cars are primarily a mode of transportation. The use of cars is meticulously regulated by several laws, both Maltese and European. Motorsports are not practiced by many due to the lack of proper racecourses and thus there is not much regulation of such. There is however a specific regulation for 'off-roading' and this is drafted in the classic licensing method. **Therefore, there is not much that an abrogative referendum would actually restrict in relation to this pastime.**

In the case of off-roading it is regulated by the Motor Vehicles (Offroading) Regulations of 2013 (S.L. 504.15). The regulations limit off-roading to sites 'marked as an offroading site' and by means of approved signs. The organisers of off-roading events also have to be insured. **A referendum on this topic would also leave off-roading without restrictions or regulation.**

4) Band clubs

Band clubs fall under the general expression 'club', interpreted under SUBSIDIARY LEGISLATION 10.21, REGISTRATION OF CLUBS REGULATIONS.

Constitutionally, people have a right of association. **Article 32.** ... *"every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –*

.....

(b) freedom of conscience, of expression and of peaceful assembly and association..."

Membership of a Band Club is an expression of such a fundamental human right. **Band club members are therefore safe from any abrogative referenda.**

5) Pigeon racing

Pigeon racing is regulated primarily by CHAPTER 30 - CARRIER-PIGEONS ORDINANCE. Similarly to other such laws, this is drafted on a licensing and regulation principle whereby licenses are issued to pigeon enthusiasts and the carrying out of such hobbies are regulated accordingly. **The removal of this law will leave this hobby widely unregulated and therefore enthusiasts will as a matter of fact enjoy more freedom to practice their hobby.**

6) Fishing/angling

Local Fishing Boats and fishing from board of such boats is regulated by CHAPTER 425, FISHERIES CONSERVATION AND MANAGEMENT ACT. This law regulates and licenses commercial fishing. Commercial fishing is described as the catching or taking of fish for sale. Therefore, this law regulates Commercial Fishing and not Fishing as a Hobby.

The Fisheries Regulations (S.L. 425.01), another principal piece of legislation on this matter, is drafted in the manner that it establishes that there are a number of fishing methods that do not require licensing:

Reg. 2: *“Subject to the provisions of regulations 10 and 11, the use of the following fishing implements and methods is permitted without any licence at all times and in all localities:*

(i) all methods of hook and line fishing, including jigging with gulpara and Jiel;

(ii) the fish spear or grains;

(iii) the basket traps called drajna, nassi tal-gran`, nassi tal-qarnit, and nassi tal-imrejjen;

(iv) the small hand nets called kopp tal-gambli, kopp tal-wi``, kopp tal-la``i, and kopp tal-lhud;

(v) all other minor and recognised fishing implements not otherwise specified in these Regulations, such as delfinara, gan`, or gaffa.”

Therefore, any person who is fishing (not commercially) with the above implements does not require licensing. Regulation 3 goes on to state that *the use of any fishing implement which is not mentioned in regulation 2 is subject to a licence from the Director of Fisheries.* Therefore, it follows that similarly to the other laws researched, fishing is regulated and licensed and the removal of legislation would simply make such hobby more free to be enjoyed. This, with the obvious exception that the above are excluded from the requirement of licensing. **So recreational fishing for non-commercial fish species should not be affected negatively by any referendum.**

In conclusion, therefore, it is the professional reasoned opinion of the lawyers and former judiciary hereunder listed that the fears being raised that regulated sports, hobbies and activities could be threatened or prejudiced by future attempts to have an abrogative referendum related to the legislation or regulation of people's hobbies is totally without any legal basis.

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