

Petition by the Ramblers Association of Malta

to the Parliamentary Select Committee on Constitutional Amendments

The Ramblers Association of Malta (hereinafter referred to as “RAM”) is a non-profit, voluntary, non-governmental organization, created in 2005 specifically to encourage rambling in our country. The definition of “Rambling”, according to the Concise Oxford Dictionary, is “walking for pleasure in the countryside”. But rambling is not just another name for hiking because, unlike hikers, ramblers do their utmost to keep off asphalted roads and built-up areas, and seek instead to visit out-of-the-way spots of great scenic beauty or of some other special interest. Unfortunately, this is much easier said than done because such areas in our countryside are diminishing daily owing to the ongoing large-scale “development”, legal and illegal, even in what are supposed to be outside development zones (ODZs). This is what Malta’s true friend Jeremy Boissevain (TODAY SEMINAR – 22nd March 2006) had to say, among other things, about this:-

“One problem in particular has struck me most forcefully. This is the massive destruction of the environment since you became independent. Your countryside and architectural heritage, your coastal zone, the sea surrounding you, even your underground water supply and the air you breathe, quite literally have been and still are being raped to put it harshly. They are being exploited for private gain. – omissis –

(The) landscape is threatened by increasing built-up areas, industrial and coastal development, taller buildings on urban fringes obstructing views of historical centres, modern agricultural practices, increasing vehicular access, littering, poor standards of design and lack of maintenance. - omissis -

Illegal quarrying, building and land occupation persists. Moreover, as the debris, the litter of affluence increases, it is dumped all over the island; in the periphery of villages, along the shore, at the side of major highways and along deserted country lanes in the heart of what is left of the island’s once glorious nature. – omissis –

To clean up your landscape is an enormous task. Is it because so few politicians venture into the countryside that they do not realize the extent of the mess there is and the scale of the task? Have they just got used to the mess? “

This situation explains why two of the main objectives in RAM’s Statute are:-

(para.3.4) “to identify and to ensure the maintenance of a network of public footpaths in the open countryside” and

(para.3.5) “to establish and to preserve the right of access to the open countryside and to the coastal zones”.

In pursuance of these aims, on the 17th September 2008 a RAM delegation had a very cordial meeting with Parliamentary Secretary Dr. Jason Azzopardi principally to discuss the problem of lack of access to the secluded beach of Fomm ir-Rih. During this meeting, a suggestion was made by RAM to include in the Constitution the right of access to the countryside and coastal zones, including beaches and cliffs overlooking the sea. In this respect, Dr. Azzopardi advised RAM to address a petition to the Parliamentary Select Committee currently considering amendments to our Constitution.

Taking up this suggestion, RAM is hereunder proposing how such right of access could possibly be enshrined and protected in our Constitution:-

Under the Human Rights Section of the Constitution the right which immediately comes to mind is that protected under Article 44, i.e. "Protection of Freedom of Movement" which declares, under sub-art.1, that "No citizen of Malta shall be deprived of his freedom of movement and, for the purpose of this section, the said freedom means **the right to move freely throughout Malta**, the right to reside in any part of Malta, the right to leave and the right to enter Malta."

What interests us here is "the right to move freely throughout Malta". Under art.124 (1) "Malta" is defined as "the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof". The problem which crops up at this stage is the phrase "THROUGHOUT MALTA" in that the Constitution does not seem to make any distinction between those areas of Malta which are of public domain and those which belong to the private sector. This question of what belongs to the public, as represented by the Government of Malta, and what belongs to private owners has gradually become the subject of controversy and gross misunderstandings. RAM and other NGOs have long been protesting on the way they are continually harassed and intimidated during their outings in the countryside, finding long established pathways blocked by recently erected gates and signs declaring the land in question as "Private" and warning the public to "Keep Out". Incidents involving aggressive dogs and gun carrying thugs often lead to the intervention of the police who, ironically, usually back the claims of the alleged private owner, turning back members of the public who dare challenge such claim. Thus the legal situation has been turned literally on its head.

In fact, since time immemorial our Civil Code, under section 327, always provided that "Property without an owner belongs to the Government of Malta". In our opinion, this section, under the title "On Property", constitutes a legal presumption in favour of the Government of Malta (formerly the Crown). In other words, our law lays down that all property in Malta (whether movable or immovable) is presumed to belong to the State unless and until whoever claims otherwise proves, according to law, his legal title to the land or pathway in question. Hence the onus of proof rests squarely on the private claimant and only when the latter succeeds in proving his claim should he be allowed to block the free passage of the public.

Similarly, the "Central Registry Bill", presently before Parliament, under section 63 of Title V "Public Land", provides that "- omissis - all streets and alleys, including those

linking two existing roads, but not those leading to an internal development, already in existence at the time of the coming into force of this Act, - omissis - be they levelled, asphalted or not, shall, for all intents and purposes, be deemed to be public roads and to belong to the Government: provided that any interested person may file for registration of his title to the street, on submitting proof of ownership as provided for in subarticle (2) of article 65.”

Similarly, as regards the coastline, the same law provides under section 64 that “All the foreshore, up to fifteen metres from the existing shoreline, shall be deemed to be owned by the Government of Malta, provided that any person may file for registration of his title, on submitting proof of ownership as provided for in subarticle (2) of article 65.”

To come back to the Constitution, RAM respectfully submits:-

(a) that the legal presumption, contained in section 327 of the Civil Code and now also being proposed in articles 63 and 64 of the Central Registry Bill, is so important, considering the ever diminishing countryside, that it should be enshrined in the Constitution. This could be done by adding a further definition, to what is already contained in sub-article (1) of art.44, in respect of the phrase “throughout Malta” by specifying that “this covers the whole of Malta, including the coastline up to fifteen metres from the existent shoreline or from sheer cliffs overlooking the sea, and all the land, roads, streets, alleys and pathways, unless whoever makes a claim on any part thereof proves his title of ownership thereto according to law.”

(b) that an amendment should be made to art. 38 of the Constitution, which protects the privacy of home or other property, by specifying, in the exceptions contained in sub-article (2), that where the landward approach to the coastline of Malta, whether this is made up of beaches or sheer cliffs overlooking the sea, is obstructed by private land, the owner of such private land, on payment of an adequate compensation, is to provide and maintain a pathway to facilitate such approach to the coastline by the public. (Something on the lines of what is provided, by way of public servitude, under section 447 of the Civil Code.)

Although the above proposals might perhaps need some refining, RAM hopes that they are accepted in the spirit in which they are being made and given serious consideration by the Select Committee in the interest of the common good of our country and people.

President (date - 2009)