

The Challenge of Water and the legal protection of the tenant farmer in Malta

The background

Until June 1967 agricultural leases in Malta were regulated by our Civil Code¹ provisions on lease. It is important to note that farmers in Malta hardly ever own the land they cultivate. They hold it on annual lease basis without a written contract and pay the very low rent (say €5 per 1000 m²) yearly on the 15th August of each year². Till some time ago ownership of agricultural land was divided roughly as to one-third owned by the Government, one-third by the Catholic Church and one-third by private individuals. In 1992 the Church transferred all the property it did not need for its mission to the Government. So the Government of Malta now owns roughly two-thirds of all agricultural land in Malta.

As many of the leased holdings go back generations to the same tenant family, and as farmers were notorious in the past for having large families, fragmentation of holdings has developed leaving farmers with very small plots which cannot in any conceivable way support a family. This has led to a proliferation of part time farmers who use the plot mainly for fodder production which is not as intense as crop production, and grow a selection of vegetables for their own use.

Malta occupies a land area of 316 square kilometres including Gozo and Comino, two much smaller islands forming part of the Maltese archipelago. The total

¹ The Maltese Civil Code is based originally on Roman Law as updated over the years, including by the Code Napoleon.

² This coincides with the feast of the Assumption (Santa Maria) which also coincides with the driest period in the year, most fields being fallow.

population is approximately 450 thousand. The number of agricultural holdings is 12,530, due mainly to the division and fragmentation of the land when inherited from the older generations. The utilised agricultural area (UAA) represents 36.2 % of the whole territory and it covers 11,450 hectares, the smallest value recorded within the EU-27: 89 % of farmers have less than 2 hectares of UAA, while the remaining 11 % do not exceed 10 hectares of UAA. Moreover, 81 % of the UAA of the whole country is in agricultural holdings with less than 5 hectares of UAA; the remaining 19 % is covered by holdings which did not exceed the size of 30 hectares.

The number of persons working in agriculture is approximately 18,500. Accordingly, in 2010 the population working in agriculture represented 10.6 % of the economically active population of Malta. Of these the number of full time farmers is approximately 1,300.

While the population increased by 14%, Maltese produce decreased by 20% and Gozitan produce decreased by 35%. Profit from the agricultural sector had diminished by 9% and 70% of fruit and vegetables consumed in Malta are imported.

The nature of the land

Agricultural land in Malta is traditionally divided into three categories:

Irrigable land: this is land with its own source of water such as a natural spring from the upper water table. The general rule is that one requires 10,000 litres of water per 1000m² per annum for land to be classified as irrigable.

Dry land: this is land with no direct source of water and therefore depends in theory only on the winter rains. It is used mainly for potatoes, onions, and wheat. Our rainfall is very seasonal, generally only between October and March or April with an average of 300mm to 500mm per annum. Many farmers have dug boreholes for extraction of water from the aquifer, but there has been over-extraction over the years and there is penetration

from the sea into the aquifer. This obviously affects the salinity of the water. There is no charge to the farmer for the extraction of water from the aquifer. A further issue is the over use of nitrates by Maltese farmers which also leeches into the water table.

Garrigue: this is land with dispersed pockets of soil which cannot sustain any crops. It is used as grazing land for sheep and goats.

Water

Malta has an acute water shortage. This is due to several contributing factors including a population of approximately 450 thousand on a very small land area; the needs of approximately two million tourists per year, a very low annual rainfall, no proper catchment area in the valleys allowing the flow of water into the sea before it has a chance to penetrate into the water table and over extraction by farmers and industry from the aquifer leading to its depletion and its replacement by sea water which filters through the limestone.

It is said Malta is like a sieve when it comes to boreholes. There are literally tens of thousands, of which only 10% are registered with our regulator. Although the regulator is fully aware of this discrepancy in registration, there is no political will to close down the unregistered bore-holes. It has become impossible for farmers to grow anything consistently without a source of water. Any enforcement will lead to a situation where local production will not suffice to supply the market making us further dependent on foreign imports and pushing up the price on the market for agricultural products. This will push up the cost of living and will in turn lead to demands for wage increases.

It is a difficult situation and I doubt there is either a quick and simple legal or political solution to this. We have three reverse osmosis plants which convert sea water into potable water but the cost of production is very high and its use

is limited to water for domestic consumer use, where it contributes to approximately 50% of production.

The protected tenant farmer

In 1967, as pressure on agricultural land increased due to building development, the Government enacted Chapter 199 of the Laws of Malta which gave tenant farmers two important rights: (a) the right to renew the lease on a year to year basis under the same conditions and (b) the right to keep the rent at the same rate. A special judicial board was set up and the owner could not evict the tenant or increase the rent without the authorisation from this Board. It is called the Rural Leases Control Board presided by a judge or magistrate and two technical members.

It is consequently very difficult to evict a tenant farmer from agricultural land. The law recognises just six grounds which are:

- a) If the owner or member of his family want to use the land for agricultural purposes for at least 4 years. The Board will assess hardship in this case and try to determine which party will suffer most.
- b) If the owner requires the land for construction, provided it is not irrigable. The judgments have made it clear that to evict on this ground the owner must have devolvement permits in hand.
- c) If the tenant has sub-let or assigned to a person other than a co-tenant or a member of the family. This is notoriously difficult to prove. It is possible to assign to a member of the family whilst still alive.
- d) If the tenant has allowed the land to lie fallow for twelve months or more.
- e) If the tenant has not paid the rent within fifteen days on two occasions from a demand in writing;
- f) If the tenant has failed to maintain and repair walls; or habitually disregarded any other condition of the lease or through negligence allowed to be caused damage (other than of small importance) to any fruit trees.

The judicial process is long and tedious with innumerable sittings. The average case will last around three years and after this there is a right of appeal which will add one to two more years. In this scenario, especially when the owner has building permits in hand, tenant farmers are often offered tens of thousands of Euro as an incentive for them to renounce to the lease.

Despite this protection, the number of farmers is decreasing and there are very dire predictions about what the situation will be in say ten years' time. Too much agricultural land is being eaten away by road formation and petrol stations. The work is difficult and financially unrewarding and does not attract new blood. If farmers are charged for water extraction as has often been threatened, this will expedite their extinction.

Another point I wish to stress is the human rights aspect of the protection afforded to tenant farmers of agricultural land. This protection violates the right to enjoyment of one's property. The rent bears no relationship to the value of the land yet the private owners are taxed on the value of that land for succession duty purposes and transfers. Some private owners are challenging this before our constitutional court and the outcome is likely to be in their favour. Yet our legislature will not change the law as the repercussions are enormous. There is no way that a tenant farmer can afford to pay rent which is in any way related to the value of the land.

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