

I assent.

(L.S.)

UGO MIFSUD BONNICI
President

3rd March, 1995

ACT No. I of 1995

AN ACT to amend the Marriage Act, Cap. 255.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and
commencement.
Cap. 255.

1. (1) This Act may be cited as the Marriage (Amendment) Act, 1995, and shall be read and construed as one with the Marriage Act, hereinafter referred to as “the principal Act”.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes of this Act.

Amendment of
section 2 of the
principal Act.

2. Subsection (1) of section 2 of the principal Act shall be amended as follows:

(a) immediately after the definition “act of marriage” there shall be inserted the following:

“ “Agreement” means the Agreement between the Holy See and Malta on the Recognition of Civil Effects to Canonical Marriages and to the Decisions of the Ecclesiastical Authorities and Tribunals about the Same Marriages, as well as the Protocol of Application thereto, both signed in Malta on the 3rd February 1993, as well as the Second Additional Protocol thereto signed in Malta on the 6th January, 1995, which Agreement and protocols are reproduced in the Schedule to this Act;”.

“Canon law” means the Code of Canon Law promulgated by the competent organs of the Catholic Church and any other rule of law so however called of the said Church relative to marriage;

“Catholic Marriage” means a marriage celebrated in accordance with the norms and formalities of Canon Law or with a dispensation therefrom granted by the competent organ in accordance with Canon Law.”.

(b) immediately after the definition “Minister” there shall be inserted the following definition:

“ “parish priest” for the purposes of this Act includes also any ecclesiastic who according to Canon Law, is equivalent to a parish priest or substitutes a parish priest;” and

(c) immediately after the definition “Registrar” there shall be added the following definition:

“ “Tribunal” for the purposes of sections 23, 24, 29 and 30 means the competent court or courts which in accordance with Canon Law applicable at the time can pronounce on the validity of a Catholic Marriage.”.

3. For section 3 of the principal Act there shall be substituted the following: Substitution of section 3 of the principal Act.

“Age for marriage.

3. (1) A marriage contracted between persons either of whom is under the age of sixteen shall be void.

(2) Without prejudice to the provisions of subsection (1) of this section, a person who is subject to paternal authority or to tutorship may not validly contract marriage without the consent of the person exercising such authority, or of the tutor, as the case may be.

(3) Notwithstanding the provisions of subsection (2) of this section the Court of Voluntary Jurisdiction within whose jurisdiction the minor habitually resides, may upon good cause being shown, authorise the celebration of a marriage referred to in that subsection, where the consent of the person exercising paternal authority or of the tutor, as the case may be, is not forthcoming; and for the purposes of proceedings in connection with this subsection paragraph (a) of section 781 of the Code of Organisation and Civil Procedure shall not apply.”.

Cap. 12.

4. Section 5 of the principal Act, shall be amended as follows: Amendment of section 5 of the principal Act.

(a) the present provision shall be renumbered as subsection (1) thereof; and

(b) immediately after subsection (1) as renumbered there shall be added the following:

“(2) For the purposes of subsection (1) of this section, the relationship of an adopted person shall be deemed to subsist both with reference to his natural and to his adoptive family.

“(3) The Court of Voluntary Jurisdiction within whose jurisdiction either of the spouses resides may upon good cause being shown dispense from the provisions of paragraphs (c) and (d) of subsection (1) of this section.”.

Amendment of section 7 of the principal Act.

5. In subsection (8) of section 7 of the principal Act, for the words “has been produced to him” there shall be substituted the words “has been produced to him; and that certificate or a certificate issued in terms of section 10 of this Act shall be final and conclusive proof of its contents.”.

Substitution of section 12 of the principal Act.

6. For section 12 of the principal Act there shall be substituted the following:

“Registra-
tion of
marriage.

12. (1) Registration is not essential to the validity of marriage.

(2) Registration shall not operate as to validate a marriage which, independently of such registration is null.

Cap. 16.

(3) A marriage shall not have effect for any purpose of law unless and until the appropriate act of marriage is completed and delivered for registration in accordance with the provisions of sections 293 and 294 of the Civil Code.”.

Amendment of section 17 of the principal Act.

7. For the words “A religious marriage” in subsection (1) of section 17 of the principal Act there shall be substituted the words “Saving the provisions of section 21 of this Act, a religious marriage”.

Addition of new section 19A to the principal Act.

8. Immediately after section 19 of the principal Act there shall be added the following new section:

“Annul-
ment of
marriage on
the grounds
of non-con-
summation.

19A. (1) A valid marriage may be annulled at the request of one of the spouses on the grounds that the other party has refused to consummate the same.

(2) The provisions of subsection (2) of section 19 shall apply to an action for the annulment of a marriage referred to in subsection (1) of this section as it applies to an action for the annulment of a marriage therein referred to.

(3) An action for the annulment of a marriage under this section may not be instituted before the lapse of three months from the date of the celebration of the marriage.”.

Renumbering of sections 21 to 24 of the principal Act.

9. Sections 21, 22, 23 and 24 of the principal Act shall be renumbered respectively as sections 33, 34, 35 and 36.

Addition of new sections 21 to 32 to the principal Act.

10. Immediately after section 20 of the principal Act there shall be inserted the following new sections:

“Catholic Marriages

Recogni-
tion of
Catholic
Marriage.

21. (1) A marriage celebrated in Malta after the coming into force of this section, in accordance with the norms and formalities established by Canon Law shall as from the moment of its celebration, be recognised and have the same civil effects as a marriage celebrated in accordance with the norms and formalities of this Act.

(2) The provisions of subsection (1) of this section shall apply only where:

(a) The banns required by this Act have been either published or dispensed with in accordance with sections 7 to 10 of this Act and the Registrar has issued a certificate attesting such publication or dispensation;

(b) the parish priest who in accordance with Canon Law has jurisdiction in the place where the marriage was celebrated transmits to the Director of the Public Registry an Act of Marriage in the form as may be prescribed duly signed by such authority as is provided for in the Agreement; and

(c) no impediment to the marriage as is referred to in sections 3, 4, 5 and 6 of this Act, subsists. So however that the competent organs of the Catholic Church may for the purpose of Catholic Marriages under this Act grant authorisations or dispense from the restrictions in subsection (2) of section 3 and paragraphs (c) and (d) of subsection (1) of section 5.

(3) The certificate referred to in paragraph (a) of subsection (2) hereof shall constitute definite and conclusive proof of its contents.

Transcrip-
tion of
Act of
Marriage.
Cap. 16.

22. (1) Notwithstanding anything contained in this Act or in the Civil Code relative to the procedure whereby, and the term in which, an Act of Marriage is to be registered, the Parish Priest referred to in paragraph (b) of subsection (2) of section 21, shall transmit to the Public Registry the Act of Marriage therein referred to for registration within five working days of the celebration of the marriage.

(2) Failure to transmit the Act of Marriage for registration as is provided for in subsection (1) of this section shall not be an obstacle to such transmission after the lapse of such term. Either spouse may at all times demand that such transmission be effected by the Parish Priest who shall remain at all times obliged to effect such transmission.

(3) When the Act of Marriage has been transmitted to the Public Registry, the Director of the Public Registry shall ascertain that the provisions of section 21 of this Act apply to the marriage, and upon having so ascertained he

shall register the Act which shall be deemed for all effects at law to be an Act of Marriage referred to in section 12 of this Act. Upon registration of the Act of Marriage the Director of the Public Registry shall, as soon as may be, give notice of such registration to the Parish Priest transmitting the Act of Marriage.

(4) A marriage which is recognised in accordance with section 21 of this Act shall upon transmission and registration of the Act of Marriage be recognised as from the moment of its celebration. Such recognition shall not, however, prejudice any property rights lawfully acquired by third parties in good faith before the transmission of the Act of Marriage as aforesaid in this section, where such Act of Marriage is transmitted after the expiry of the term referred to in subsection (1) hereof.

Recogni-
tion of
decisions
given by
Tribunals.

23. (1) A decision which has become executive, given by a tribunal, and declaring the nullity of a Catholic Marriage shall, where one of the parties is domiciled in, or a citizen of, Malta, and subject to the provisions of section 24 of this Act be recognised and upon its registration in accordance with the said section 24 shall have effect as if it were a decision by a Court and which has become *res judicata*.

(2) An executive decision given by a tribunal and upholding the validity of a Catholic Marriage shall, where one of the parties is domiciled in, or a citizen of, Malta, and subject to the provisions of section 24 of this Act be recognised and upon its registration in accordance with the said section 24 shall have effect as if it were a decision by a Court and which has become *res judicata* and as such shall not be subject to re-examination on the same grounds.

Registra-
tion of
decisions
given by
Tribunal.

24. (1) Registration of a decision as is referred to in section 23 of this Act shall be effected by the Court of Appeal.

(2) A request for such registration shall be made by application filed in the Registry of the said Court, and which shall be served on the Director of the Public Registry and where it is presented by one only of the spouses, on the other spouse.

(3) The respondents shall have a right to file a reply within twelve working days of the service upon them of the application.

(4) Together with the application, the applicant shall file:

(a) an authentic copy of the decision;

(b) a declaration of executivity according to Canon Law issued by the Tribunal that has given the decision.

(5) The Court of Appeal registers that decision by giving a decree declaring the decision enforceable in Malta; such decree shall not be given unless the Court of Appeal is satisfied that:

(i) the Tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was a Catholic Marriage; and

(ii) during and in the proceedings before the Tribunal there was assured to the parties the right of action and defence in a manner substantially not dissimilar to the principles of the Constitution of Malta; and

(iii) there does not exist a contrary judgement binding the parties pronounced by a court, and which has become *res judicata*, based on the same grounds of nullity; and

(iv) in the case of a marriage celebrated in Malta after the 11th August, 1975, there has been delivered or transmitted to the Public Registry the Act of Marriage laid down by this Act; and

(v) in the case of a decision delivered on or after the 16th July, 1975, but before the coming into force of this section, the request for recognition is presented by both spouses; or where it is presented only by one of the spouses it is satisfied that the other spouse does not oppose the registration of the decision.

(6) Notwithstanding the provisions of paragraph (v) of subsection (5) of this section where a request for the registration of a decision as is referred to in subsection (1) of section 23 of this Act issued by a tribunal on or after the 16th July, 1975 but before the coming into force of this section, is made by one only of the spouses, and the other spouse opposes such registration, the Court of Appeal shall give the spouse opposing such registration a term not exceeding two months within which the spouse opposing such registration may present a plea, in accordance with Canon Law applicable, before the competent Tribunal to have the decision revoked; and the Court of Appeal shall only register that decision where the party opposing the registration has not entered the plea in the term established, or has entered the plea but the same was rejected or the decision declaring the marriage null was confirmed by the Tribunal.

Recognition of decrees *super matrimonio rato et non consummato*.

25. A decree given by the Roman Pontiff "*super matrimonio rato et non consummato*", when one of the spouses is domiciled in or is a citizen of Malta, shall, subject to the provisions of section 26 of this Act, be recognised and upon its registration in accordance with the said section 26, shall have effect as if it were a decision given by a Court and which has become *res judicata* annulling a marriage on the grounds of non-consummation, in accordance with section 19A of this Act.

Registration of decree.

26. (1) Registration of a decree as is referred to in section 25 of this Act shall be effected by the Court of Appeal.

(2) A request for such registration shall be made by application accompanied by an authentic copy of the pontifical decree filed in the Registry of the said Court, and which shall be served on the Director of the Public Registry and where it is presented by one only of the spouses, on the other spouse.

(3) The respondents shall have a right to file a reply within twelve working days of service upon them of the application.

(4) (a) Registration shall be effected by an order of the Court of Appeal declaring the decree of the Roman Pontiff enforceable in Malta.

(b) The Court of Appeal shall register the decree if it is satisfied that it refers to a Catholic Marriage which was celebrated after the coming into force of this section and either of the spouses is domiciled in or is a citizen of Malta.

(5) Notwithstanding the provisions of subsection (4) hereof, the Court of Appeal shall give a decree which refers to a Catholic marriage celebrated before the coming into force of this section where the application therefor is filed by both spouses, or where it is filed by one only of the spouses, the other spouse does not oppose the registration.

Applicability of subsection (2) of section 19 of this Act.

27. The provisions of subsection (2) of section 19 of this Act shall apply to applications made in terms of sections 24 and 26 of this Act.

Court of Appeal not to re-examine issue.

28. In the course of an application under sections 24 and 26 of this Act the Court of Appeal shall not go into the merits of the case leading to the decision or the decree the registration of which is demanded in the application but shall limit itself to ascertain if the requirements of this Act for the registration requested exist.

Evidence
required
before
Tribunal.

Cap. 12.

29. (1) Where the evidence of any person is required before a Tribunal, any of the parties may request the Civil Court, First Hall to order that the evidence of such person be heard by one of the supplementary judges or magistrates according to the residence of the witness, and upon such order being given the Court shall fix a date for the hearing of the witness before the supplementary judge in the manner provided in sections 606 and 607 of the Code of Organization and Civil Procedure.

(2) The parties to the case before the Tribunal shall be notified of the date fixed for the hearing of the witness before the supplementary judge or magistrate and may be present and be assisted by an advocate or legal procurator.

(3) Any deposition taken in the manner provided in the preceding subsections shall also be signed by the supplementary judge or magistrate and deposited in the Registry of the Court. The Registrar shall give official copies of any evidence so registered to any of the parties or the Chancellor of the Tribunal.

(4) Subsections (4) and (5) of section 610 of the said Code shall apply to evidence taken under this section.

(5) All the provisions of the Code of Organisation and Civil Procedure and of any other law relating to the admissability of evidence and to the competence and compellability of witnesses, as well as to privileged communications, shall apply to evidence taken under this section as they apply to evidence of witnesses before the Civil Court First Hall.

30. (1) Where the Tribunal decrees the acceptance of a petition whereby a case for the declaration of nullity of a Catholic Marriage celebrated after the coming into force of this section, is initiated before such Tribunal, the Chancellor of the Tribunal or his substitute shall deliver a certificate of such acceptance, duly authenticated, to the Registrar of the Superior Courts who shall keep the same in an appropriate register.

Courts to
suspend
action
when
matter is
before a
Tribunal.

(2) Upon the registration as is referred to in subsection (1) of this section, the Court shall cease to be competent to deal with the matter; and where an action is pending before the Court for the declaration of nullity of a marriage in relation to which a certificate has been delivered to the Registrar in accordance with subsection (1), the Court shall suspend the hearing of the case before it, and may not resume hearing the case and, in any case, shall not again be competent until the said case has, in accordance with the procedures of the Tribunal, been withdrawn from before the Tribunal or been declared abandoned.

(3) It shall be the duty of the Registrar to bring to the notice of the Court any certificate which refers to that case, delivered to him in accordance with subsection (1) of this section, as well as any decision relative thereto, registered in terms of section 24 of this Act.

(4) Where an action for the declaration of nullity of a Catholic Marriage is brought before a Court, the Court shall ascertain its competence in terms of this Act.

Failure to
oppose
within
term.

31. (1) Where a person who is served with an application as is referred to in sections 24 and 26 of this Act does not oppose the request for registration within the term prescribed for filing a reply, he shall be deemed to have admitted the application.

(2) When all the parties to an application have admitted the same, the Court shall not put the application for hearing but shall give the relative decree "*in camera*".

Applicabi-
lity of
other
sections of
this Act to
Catholic
Marriages.

32. Sections 11 to 17 of this Act shall not apply to Catholic Marriages celebrated after the coming into force of this section."

Amendment of
section 35
as renumbered,
of the principal
Act.

11. In section 35 of the principal Act, as renumbered by this Act, for the words "Canon Law shall" there shall be substituted the words "Without prejudice to sections 21 to 31 of this Act, Canon Law shall".

Amendment of
section 36
as renumbered,
of the principal
Act.

12. In section 36 of the principal Act as renumbered for the words "sections 18, 19 and 20 and of subsection (1) of section 23" there shall be substituted the words "sections 18, 19, 19A, 20 and 35 of this Act".

Addition of
new section 37
to the principal
Act.

13. Immediately after section 36 of the principal Act as renumbered, there shall be added the following new section:

"Agree-
ments
with other
Churches
etc.

37. (1) The Government may enter into agreements with other churches, religions or denominations regarding the recognition of marriages celebrated in accordance with the rules and norms of that church, religion or denomination, and declarations of nullity or annulment of such marriages by the organs of such church, religion or denomination having authority in accordance with its rules.

(2) Such agreements shall conform substantially to the provisions of the Agreement between the Holy See and Malta referred to in this Act.

(3) When an agreement as is referred to in the preceding subsection has been entered into by the Government, the Minister responsible for justice may make an order extending the provisions of this Act, with such modifications as may be required, to marriages celebrated in accordance with the rules and norms of such church, religion or denomination, and its declaration of nullity or annulment.”.

14. For the purposes of the Ratification of Treaties Act, the Government is hereby authorised to ratify the Agreement between the Holy See and Malta on the recognition of Civil effects to canonical marriages and to the decisions of the ecclesiastical authorities and Tribunals about the same marriages. Ratification
of Agreement.
Cap. 304.

15. Immediately after section 37 of the principal Act, there shall be added the following Schedule: Addition of
Schedule to the
principal Act.

“SCHEDULE

(Section 2)

AGREEMENT BETWEEN THE HOLY SEE AND MALTA ON THE RECOGNITION OF CIVIL EFFECTS TO CANONICAL MARRIAGES AND TO DECISIONS OF ECCLESIASTICAL AUTHORITIES AND TRIBUNALS ABOUT THE SAME MARRIAGES

(The Agreement is in the Italian and English languages).

La Santa Sede e la Repubblica di Malta,

— tenendo conto, da parte della Santa Sede, della dottrina cattolica sul matrimonio, come è anche espressa nel Codice di Diritto Canonico, nonché dell’insegnamento del Concilio Ecumenico Vaticano II sulle relazioni tra la Chiesa e lo Stato e, da parte della Repubblica di Malta, dei principi sanciti nella Costituzione di Malta;

— volendo assicurare, nel rispetto dei diritti fondamentali dell’uomo e dei valori della famiglia basata sul matrimonio, una libera scelta in materia matrimoniale;

hanno riconosciuto l’opportunità di addivenire ad un accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni.

A tale fine la Santa Sede, rappresentata da Mons. Pier Luigi Celata, Arcivescovo titolare di Doclea, Nunzio Apostolico a Malta, e la Repubblica di Malta, rappresentata dal Prof. Guido de Marco, Vice Primo Ministro e Ministro per gli Affari Esteri, hanno stabilito, di comune intesa, quanto segue.

Articolo 1

1. Sono riconosciuti gli effetti civili ai matrimoni celebrati a Malta secondo le norme canoniche della Chiesa Cattolica¹, dal momento della loro celebrazione, a condizione che:

a) risulti da un attestato del "Marriage Registrar" che sono state eseguite le pubblicazioni richieste dalla legge civile, o che vi è stata dispensa dalle stesse, costituendo tale attestato una prova definitiva ed insindacabile della regolarità delle pubblicazioni o della dispensa dalle stesse;

b) il Parroco del luogo dove è stato celebrato il matrimonio trasmetta al Registro Pubblico un esemplare originale dell'atto di matrimonio redatto nella forma stabilita di comune intesa fra le Alte Parti, e sottoscritto dall'Ordinario del luogo o dal Parroco o dal loro Delegato, che ha assistito alla celebrazione del matrimonio.

2. La Santa Sede prende atto che la Repubblica di Malta riconosce gli effetti civili dei matrimoni canonici quando non sussista fra i contraenti un impedimento che, secondo la legge civile, produca la nullità del matrimonio e che la stessa legge civile consideri inderogabile o non dispensabile.

Articolo 2

1. L'atto di matrimonio deve essere trasmesso al Registro Pubblico per la debita trascrizione entro cinque giorni utili dalla celebrazione del matrimonio.

2. Qual ora la trasmissione dell'atto di matrimonio non venga effettuata entro il termine stabilito, rimane l'obbligo del Parroco di effettuarla al più presto possibile. Le parti, o anche una di esse, hanno sempre il diritto di chiedere tale trasmissione. La trasmissione tardiva non osta alla trascrizione.

3. Ove consti che le condizioni stabilite nell'articolo 1 siano state soddisfatte, il Direttore del Registro Pubblico trascrive l'atto di matrimonio e, al più presto possibile, ne dà notizia in iscritto al Parroco.

Articolo 3

La Repubblica di Malta riconosce per tutti gli effetti civili, nei termini del presente Accordo, le sentenze di nullità e i decreti di ratifica di nullità di matrimonio emessi dai tribunali ecclesiastici e diventati esecutivi.

Articolo 4

1. Ai fini del riconoscimento degli effetti civili di cui all'articolo 3, la Santa Sede prende atto che:

a) dal momento in cui viene notificata al "Registrar of Courts" l'accettazione, da parte della Cancelleria dei tribunali ecclesiastici, della domanda presentata da almeno una delle parti per ottenere la dichiarazione di nullità di un matrimonio canonico celebrato dopo l'entrata in vigore del presente Accordo, è riconosciuta unicamente agli stessi tribunali ecclesiastici la competenza di decidere in merito, purchè i tribunali civili non abbiano già emanato una sentenza passata in giudicato, basata sugli stessi capi di nullità;

b) qualora risulti che sia stata ammessa dal giudice ecclesiastico la rinuncia ad una causa iniziata presso i tribunali ecclesiastici o che una causa sia canonicamente caduta in perenzione, i tribunali civili potranno riprendere l'esame della causa eventualmente già iniziata presso di essi e sospesa in virtù di quanto disposto alla precedente lettera a).

2. La Chiesa illuminerà i futuri sposi in merito alla specifica natura del matrimonio canonico e, di conseguenza, alla giurisdizione ecclesiastica in materia di vincolo matrimoniale.

I futuri sposi prenderanno formalmente atto di ciò, per accettazione, in iscritto.

Articolo 5

Le sentenze di nullità e i decreti di ratifica di nullità di matrimonio emessi dai tribunali ecclesiastici sono riconosciuti come efficaci per gli effetti civili, a condizione che:

a) dalle parti, o da una di esse, sia presentata domanda alla Corte d'Appello insieme con una copia autentica della sentenza o decreto, e con una dichiarazione di esecutività secondo il diritto canonico rilasciata dal tribunale che ha emanato la decisione esecutiva;

b) consti alla Corte d'Appello che:

(i) il tribunale ecclesiastico era competente a conoscere della causa di nullità del matrimonio in quanto questo era stato celebrato secondo la forma canonica della Chiesa Cattolica o con dispensa da essa;

(ii) nel procedimento giudiziario canonico è stato assicurato alle parti il diritto di agire e di resistere in giudizio, in modo sostanzialmente non difforme dai principi della Costituzione di Malta;

(iii) nel caso di un matrimonio celebrato a Malta dopo l'11 agosto 1975 è stato consegnato, o trasmesso, al Registro Pubblico l'atto di matrimonio prescritto dalla legge civile;

(iv) non esiste una sentenza contraria emanata dai tribunali civili e passata in giudicato, basata sugli stessi capi di nullità.

Articolo 6

Le disposizioni di cui agli articoli 3 e 5 si applicano anche:

a) ai matrimoni canonici celebrati prima dell'entrata in vigore del presente Accordo;

b) alle sentenze di nullità e ai decreti di ratifica di nullità di matrimonio emanati dai tribunali ecclesiastici tra il 16 luglio 1975 e l'entrata in vigore del presente Accordo:

(i) quando la domanda per il riconoscimento degli effetti civili sia presentata da ambedue le parti o, almeno, da una di esse non contraddicente l'altra parte;

(ii) nel caso che vi sia una parte contraddicente, quando, dopo che alla stessa parte sia stato concesso dalla Corte d'Appello un termine, non superiore a due mesi, per presentare istanza al tribunale ecclesiastico contro la sentenza di nullità o il decreto di ratifica di nullità di matrimonio, sia trascorso inutilmente tale termine o, se sia stata interposta l'istanza, il competente tribunale ecclesiastico abbia respinto l'istanza o confermato la precedente sentenza di nullità o decreto di ratifica di nullità di matrimonio.

Articolo 7

1. I decreti del Romano Pontefice "super matrimonio rato et non consummato" sono riconosciuti per gli effetti civili dalla Repubblica di Malta, dietro richiesta, accompagnata da copia autentica del decreto pontificio, presentata alla Corte d'Appello dalle parti o da una di esse.

2. La Corte d'Appello ordina il riconoscimento dei decreti di cui al numero 1 del presente articolo se consta ad essa che gli stessi decreti sono relativi a matrimoni celebrati secondo le norme canoniche della Chiesa Cattolica:

- a) dopo l'entrata in vigore del presente Accordo;
- b) anche prima dell'entrata in vigore di questo Accordo, a condizione che la copia del decreto sia presentata da ambedue le parti o almeno da una di esse non contraddicente l'altra parte.

Articolo 8

Nell'espletamento delle proprie funzioni in ordine al riconoscimento dei decreti di cui all'articolo 7, come pure delle sentenze di nullità e dei decreti di ratifica di nullità di matrimonio di cui all'articolo 3, la Corte d'Appello non procede al riesame del merito.

Articolo 9

Gli effetti civili derivanti dal riconoscimento di cui agli articoli 3 e 7 sono regolati dalla legge civile.

Articolo 10

Se in avvenire sorgessero difficoltà di interpretazione o di applicazione del presente Accordo, la Santa Sede e la Repubblica di Malta affideranno la ricerca di un'amichevole soluzione ad una commissione paritetica che sarà composta, per parte della Santa Sede, dal Nunzio Apostolico a Malta e dal Presidente della Conferenza Episcopale Maltese o da loro delegati, e, per parte della Repubblica di Malta, dal Ministro della Giustizia e dall'Avvocato Generale o da loro delegati.

Articolo 11

Il presente Accordo entrerà in vigore al momento in cui le Parti si scambieranno ufficiale comunicazione della avvenuta piena applicazione di tutte le disposizioni dello stesso Accordo mediante gli strumenti giuridici propri dei rispettivi ordinamenti.

Fatto alla Valletta, Malta, il tre febbraio millenovecentonovantatre, in doppio originale in lingua italiana ed inglese, ambedue i testi facendo ugualmente fede.

Per la Santa Sede

Per la Repubblica di Malta

(+ Pier Luigi Celata)

(Guido de Marco)

PROTOCOLLO ADDIZIONALE

Al momento della firma dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei Tribunali ecclesiastici circa gli stessi matrimoni, la Santa Sede e la Repubblica di Malta, desiderando precisare ulteriormente alcune disposizioni dello stesso Accordo per assicurarne un' accurata applicazione ed evitare ogni difficoltà d'interpretazione, dichiarano di comune intesa:

I. In relazione all'articolo 1,1.b)

a) Le Alte Parti stabiliranno, di comune intesa, il modulo dell'atto di matrimonio prima dell'entrata in vigore dell'Accordo, mediante scambio di Note tra la Nunziatura Apostolica ed il ministero degli Affari Esteri.

Esse seguiranno la stessa procedura qualora, in futuro, concordassero di apportare modifiche a tale modulo.

b) Escluso il caso di pericolo di morte in cui si trovi almeno una delle parti, il "Marriage Registrar", insieme all' attestato di cui all'articolo 1,1.a), rilascia alle parti un modulo dell'atto di matrimonio, debitamente riempito con tutti i dati relativi agli sposi. Il modulo così preparato dev'essere consegnato alle parti al più presto dopo la scadenza del periodo delle pubblicazioni e, in ogni caso, non più tardi di quattro giorni prima della data fissata per la celebrazione del matrimonio. Spetta alle parti di trasmettere immediatamente tale modulo al Parroco del luogo della celebrazione. Qualora rilevi qualche discrepanza tra i dati relativi agli sposi come risultano dal modulo di cui sopra e dai documenti canonici, il Parroco deve fare, al più presto possibile, le opportune verifiche al fine di concordare col "Marriage Registrar" la corretta stesura dello stesso modulo.

II. In relazione all'articolo 1,2

Ai fini dell'applicazione dell'articolo 1,2 si intendono come impedimenti considerati inderogabili o non dispensabili dalla legge civile:

a) il difetto di età, che è di sedici anni compiuti per ambedue le parti;

b) l'infermità di mente di almeno una delle parti che renda incapace di contrarre matrimonio;

c) la consanguineità in linea retta e, fino al secondo grado, in linea collaterale;

d) la sussistenza di un precedente matrimonio, valido agli effetti civili, di almeno una delle parti.

III. In relazione all'articolo 4,1.a)

L'accettazione da parte della Cancelleria dei tribunali ecclesiastici viene immediatamente notificata in iscritto dal Cancelliere degli stessi tribunali o da chi ne fa le veci.

IV. In relazione all'articolo 5,b.i)

Si considera che il tribunale ecclesiastico era competente a conoscere della causa di nullità del matrimonio anche quando questo è stato impugnato per difetto di qualche elemento richiesto per la validità della forma canonica o della dispensa da essa.

V. In relazione agli articoli 6,b.i) e 7,2.b)

Il termine perentorio per la presentazione della nota di contraddizione alla Corte di Appello è di dodici giorni utili dalla data della notifica fatta dalla stessa Corte alla parte interessata.

VI. Col termine “parroco” si intende anche ogni ecclesiastico equiparato al parroco, o che lo sostituisce, a norma del diritto canonico.

Il presente Protocollo Addizionale fa parte integrante dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, contestualmente firmato tra la Santa Sede e la Repubblica di Malta.

Fatto alla Valletta, Malta il tre febbraio millenovecentonovantatre, in doppio originale in lingua italiana ed inglese, ambedue i testi facendo ugualmente fede.

Per la Santa Sede

Per la Repubblica di Malta

(+ Pier Luigi Celata)

(Guido de Marco)

Secondo Protocollo Addizionale

La Santa Sede e la Repubblica di Malta, desiderando evitare ogni difficoltà d'interpretazione ed assicurare la corretta applicazione dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, firmato il 3 febbraio 1993, dichiarano di comune intesa che:

1. Le sentenze emanate dai tribunali ecclesiastici in cause di nullità che sono a favore della validità del matrimonio, che non sono state appellate o che sono state confermate in appello, comprese *mutatis mutandis* le sentenze nelle cause di cui all'Articolo 6, b), (i) dell'Accordo, sono riconosciute a tutti gli effetti di legge in Malta e saranno ritenute come *res judicata* e non riesaminabili sugli stessi capi dalle corti civili, a condizione che alla Corte di Appello consti quanto è stabilito all'Articolo 5, b) dell'Accordo. La stessa Corte, ai sensi dell'Articolo 8 dell'Accordo, non procede al riesame del merito della causa.
2. Quando una domanda per ottenere la dichiarazione di nullità del matrimonio è presentata alla corte civile, il giudice accerta la sua competenza ai sensi dell'Articolo 4, 1 dell'Accordo e del Numero 1 di questo Protocollo.

Il presente Protocollo Addizionale fa parte integrante dell'Accordo sul riconoscimento degli effetti civili ai matrimoni canonici e alle decisioni delle Autorità e dei tribunali ecclesiastici circa gli stessi matrimoni, firmato a Malta tra la Santa Sede e la Repubblica di Malta il 3 febbraio 1993.

Fatto alla Valletta, Malta, il 6 gennaio millenovecentonovantacinque, in doppio originale in lingua italiana ed inglese, ambedue i testi facendo ugualmente fede.

Per la Santa Sede

Per la Repubblica di Malta

(+ Pier Luigi Celata)

(Guido de Marco).".

The Holy See and the Republic of Malta,

— considering, on the part of the Holy See, Catholic doctrine on marriage, as also expressed in the Code of Canon Law, as well as the teaching of the Second Vatican Ecumenical Council on relations between the Church and the State, and, on the part of the Republic of Malta, the principles enforced by the Constitution of Malta;

— wanting to ensure, in line with fundamental human rights and the values of the family based on marriage, a free choice in matters of marriage;

have recognized that it is opportune to reach an agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages.

Wherefore, the Holy See, as represented by Msgr. Pier Luigi Celata, titular Archbishop of Doclea, Apostolic Nuncio to Malta, and the Republic of Malta, as represented by Prof. Guido de Marco, Deputy Prime Minister and Minister of Foreign Affairs, have, by common accord, established as follows.

Article 1

1. Civil effects are recognized for marriages celebrated in Malta according to the canonical norms of the Catholic Church, from the moment of their celebration, provided that:

a) it results from a certificate issued by the Marriage Registrar that the banns required by civil law have been published, or that a dispensation from the same has been granted; such certificate shall constitute definitive and conclusive proof of the regularity of the banns or of the dispensation therefrom;

b) the Parish Priest of the place where the marriage was celebrated transmits to the Public Registry an original of the act of marriage compiled in the form established by common accord between the Parties, and signed by the local Ordinary or the Parish Priest or their Delegate, who has officiated at the celebration of the marriage.

2. The Holy See takes note that the Republic of Malta recognizes the civil effects of canonical marriages where there does not exist between the spouses an impediment that, according to civil law, produces the nullity of the marriage and that the said civil law considers as mandatory or not dispensable.

Article 2

1. The act of marriage shall be transmitted to the Public Registry for due transcription within five working days of the celebration of the marriage.

2. Should the transmission of the act of marriage not be effected within the established time limit, it shall be the duty of the Parish Priest to effect the same as soon as possible. The spouses, or either of them, always retain the right to demand such transmission. Late transmission shall not be an obstacle to transcription.

3. When it is ascertained that the conditions laid down in article 1 have been complied with, the Director of the Public Registry transcribes the act of marriage and, as soon as possible, gives written notice of this to the Parish Priest.

Article 3

The Republic of Malta recognizes for all civil effects, in terms of this Agreement, the judgements of nullity and the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals and which have become executive.

Article 4

1. For the purposes of the recognition of the civil effects mentioned in article 3, the Holy See takes note that:

a) from the moment in which notice is given to the Registrar of Courts of the acceptance by the Chancery of the ecclesiastical tribunals of a petition presented by at least one of the parties to obtain the declaration of the nullity of a canonical marriage celebrated after the coming into force of the present Agreement, competence to decide on the matter is recognized solely to the ecclesiastical tribunals, provided that the civil tribunals have not already given a judgement that has become "res judicata", based on the same grounds of nullity;

b) should it result that the ecclesiastical judge has admitted the renunciation of a case opened before the ecclesiastical tribunals or that a case has canonically fallen into abatement, the civil tribunals shall be able to again take up the examination of the case that may have already been presented before them and suspended by virtue of what is provided in letter a) above.

2. The Church shall enlighten prospective spouses about the specific nature of canonical marriage and, consequently, about ecclesiastical jurisdiction concerning the marriage bond.

The prospective spouses shall, by way of acceptance, formally take note of this in writing.

Article 5

The judgements of nullity and the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals are recognized as producing civil effects, provided that:

a) a request is presented, by the parties or either of them, to the Court of Appeal together with an authentic copy of the judgement or decree, as well as a declaration of its executivity according to canon law issued by the tribunal that has given the executive decision;

b) the Court of Appeal ascertains that:

(i) the ecclesiastical tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was celebrated according to the canonical form of the Catholic Church or with a dispensation therefrom;

(ii) during the canonical judicial proceedings there was assured to the parties the right of action and defense, in a manner substantially not dissimilar to the principles of the Constitution of Malta;

(iii) in the case of a marriage celebrated in Malta after the 11 August 1975, there has been delivered or transmitted to the Public Registry the act of marriage laid down by the civil law;

(iv) there does not exist a contrary judgement pronounced by the civil tribunals and which has become 'res judicata', based on the same grounds of nullity.

Article 6

The provisions of articles 3 and 5 apply also:

a) to canonical marriages celebrated before the coming into force of this Agreement;

b) to the judgements of nullity and to the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals between the 16 July 1975 and the coming into force of the present Agreement:

(i) if the request for the recognition of the civil effects is presented by both parties or, at least, by one of them with the other party not dissenting; or

(ii) in case there is a dissenting party, if, after the Court of Appeal has granted to this same party a time limit, not exceeding two months, to present a plea to the ecclesiastical tribunal against the judgement of nullity or the decree of ratification of nullity of marriage, such time limit has elapsed to no avail or, if the plea had been entered, the competent ecclesiastical tribunal has rejected the plea or has confirmed the previous judgement of nullity or decree of ratification of nullity of marriage.

Article 7

1. The decrees of the Roman Pontiff "super matrimonio rato et non consummato" are recognized as regards civil effects by the Republic of Malta, upon request, accompanied by an authentic copy of the pontifical decree, presented to the Court of Appeal by the parties or by either of them.

2. The Court of Appeal shall order the recognition of the decrees referred to in paragraph 1 of this article if it results to it that such decrees refer to marriages celebrated according to the canonical norms of the Catholic Church:

a) after the coming into force of this Agreement;

b) and also prior to the coming into force of this Agreement, on condition that the copy of the decree is presented by both parties, or at least by one of them with the other party not dissenting.

Article 8

In the exercise of its specific functions as regards the recognition of the decrees mentioned in article 7, as well as of the judgements of nullity or of the decrees of ratification of nullity of marriage mentioned in article 3, the Court of Appeal does not re-examine the merits of the case.

Article 9

The civil effects flowing from the recognition mentioned in articles 3 and 7 are regulated by civil law.

Article 10

If in future there shall arise difficulties of interpretation or of application of the present Agreement, the Holy See and the Republic of Malta shall entrust the search for an amicable solution to a Joint Commission that shall be composed of the Apostolic Nuncio to Malta and of the President of the Maltese Episcopal Conference or of their delegates for the Holy See, and of the Minister for Justice and the Attorney General or of their delegates for the Republic of Malta.

Article 11

The present Agreement shall come into force when the Parties exchange an official communication that the full implementation of all its provisions through the appropriate legal instruments according to their respective legal systems has taken place.

Done at Valletta, Malta, on the third day of February, one thousand nine hundred and ninety-three, in two originals, each in the Italian and English languages, both texts being equally authentic.

For the Holy See

For the Republic of Malta

(+ Pier Luigi Celata)

(Guido de Marco)

PROTOCOL OF APPLICATION

At the time of signature of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages, the Holy See and the Republic of Malta, desiring to further specify certain provisions of the same Agreement to ensure their precise application and to avoid all difficulties of interpretation, by common accord declare:

I. With reference to article 1,1.b)

a) The Parties shall establish, by common accord, the form of the act of marriage before the coming into force of the Agreement, through exchange of Notes between the Apostolic Nunciature and the Ministry of Foreign Affairs.

They shall follow the same procedure should they, in future, agree to modify the said form.

b) Except in case of danger of death in which at least one of the parties finds itself, the Marriage Registrar shall, together with the certificate mentioned in article 1,1.a), issue to the parties a form of the act of marriage, duly filled in with all the information referring to the spouses. The form so prepared shall be consigned to the parties as early as possible after the completion of the period of publication of the banns and, in any case, not later than four days prior to the date fixed for the celebration of the marriage. It is incumbent on the parties to immediately transmit such form to the Parish Priest of the place of celebration. Should the Parish Priest notice any discrepancy between the information referring to the spouses as it results from the form mentioned above and from the canonical documents, the Parish Priest must, as soon as possible, make the opportune verifications so as to reach agreement with the Marriage Registrar about the correct compilation of the said form.

II. With reference to article 1,2

For the purpose of putting into effect article 1,2 the following are understood to be impediments considered mandatory or not dispensable by the civil law:

- a) the lack of age, which is sixteen years completed for both parties;
- b) the infirmity of mind of at least one of the parties which renders it incapable of contracting marriage;
- c) consanguinity in the direct line and up to the second degree in the collateral line;
- d) the subsistence of a previous marriage, valid in civil law, of at least one of the parties.

III. With reference to article 4,1.a)

The acceptance by the Chancery of the ecclesiastical tribunals is to be immediately notified in writing by the Chancellor of the same tribunals or his substitute.

IV. With reference to article 5,b.i)

The ecclesiastical tribunal is considered to have been competent to judge the case of nullity of the marriage even when it was challenged on the ground of the lack of some element required for the validity of the canonical form or of the dispensation therefrom.

V. With reference to articles 6,b.i) and 7,2.b)

The peremptory time limit for the presentation of the note of pleas to the Court of Appeal is of twelve working days from the date of notification made by the same Court to the interested party.

VI. The terms “parish priest” refers also to any ecclesiastic equivalent to the parish priest, or who substitutes him, according to canon law.

The present Protocol of Application forms an integral part of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of ecclesiastical Authorities and tribunals about the same marriages contextually signed between the Holy See and the Republic of Malta.

Done at Valletta, Malta on the third day of February, one thousand nine hundred ninety-three, in two originals, each in the Italian and English languages, both texts being equally authentic.

For the Holy See

For the Republic of Malta

(+ Pier Luigi Celata)

(Guido de Marco)

Second Additional Protocol

The Holy See and the Republic of Malta, desiring to avoid all difficulties of interpretation and to ensure the precise application of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical Authorities and tribunals about the same marriages, signed on the 3rd February, 1993, by common accord declare that:

1. Judgements given by ecclesiastical tribunals in cases of nullity upholding the validity of the marriage, which have not been appealed or which have been confirmed on appeal, including *mutatis mutandis* judgements in cases in terms of paragraph (b) subparagraph (i) of Article 6 of the Agreement, are recognized for all purposes of law in Malta and shall be considered as *res judicata* and not subject to re-examination on the same grounds by the civil courts provided that the Court of Appeal ascertains what is laid down in paragraph (b) of Article 5 of the Agreement. It shall not in terms of Article 8 of the Agreement re-examine the merits of the case.

2. Whenever a plea for nullity of marriage is presented to the civil court, the judge is to ascertain his competence, in terms of paragraph 1 of Article 4 of the Agreement and of Number 1 of this Protocol.

The present Additional Protocol forms an integral part of the Agreement on the recognition of civil effects to canonical marriages and to the decisions of ecclesiastical Authorities and tribunals about the same marriages, signed in Malta between the Holy See and the Republic of Malta on the 3rd February, 1993.

Done at Valletta, Malta on the 6th day of January, one thousand nine hundred ninety-five, in two originals, each in the Italian and English languages, both texts being equally authentic.

For the Holy See

For the Republic of Malta

(+ Pier Luigi Celata)

(Guido de Marco).'

16. (1) The Ecclesiastical Courts (Constitution and Jurisdiction) Law, shall be amended as follows:

Consequential
amendments
to other laws.

(a) for section 2 thereof, there shall be substituted the following:

Cap. 1.

"Jurisdiction of Ecclesiastical Courts and Judges.

2. Ecclesiastical Courts and Judges established or appointed, or that may be established or appointed in Malta, to decide cases regarding the laws of the Roman Catholic Church shall have no jurisdiction and shall not make, or attempt to make any judicial act having civil, other than purely spiritual, effect except as may be provided by law."

(b) for section 3 thereof there shall be substituted the following:

“Docu-
ments of
Ecclesias-
tical
Courts.
Cap. 12.
3. Documents and Acts of Ecclesiastical Courts where the same may, as provided in section 2 of this law, have civil effect are admissible as proof in the same manner as provided in section 627 of the Code of Organization and Civil Procedure, provided that the same are authenticated as provided from time to time by the ecclesiastical law regulating such courts.”; and

(c) sections 4, 5 and 6 thereof are repealed and section 7 thereof shall be renumbered as section 4 thereof.

Cap. 15. (2) The Bishop of Gozo (Extension of Privileges) Ordinance, shall be amended as follows:

(a) sections 2, 3 and 4 thereof shall be repealed; and

(b) section 5 thereof shall be renumbered as section 2 thereof.

Passed by the House of Representatives at Sitting No. 386 of the 31st January, 1995.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives