

ACTION TAKEN FURTHER TO THE OSCE LEGAL ANALYSIS OF NOVEMBER 2017 OF THE MALTESE MEDIA AND DEFAMATION BILL CURRENTLY AWAITING HEARING AT COMMITTEE STAGE IN THE MALTESE PARLIAMENT

Proposals to be taken on board:

1. Proposal to amend the definition of 'editor' to remove its applicability to websites;
2. The Proposal to do away with the definition of 'publisher' given its similarity to that of 'editor' was partially taken on board by defining the 'publisher' in stricter terms as including only the owner of a media enterprise. It was felt that recourse to the publisher might still be necessary in order to grant a remedy in cases where the author and the editor are not identifiable. It is felt that maintaining last recourse resort to the owner of the media enterprise was all the more necessary in view of the abolition of the duty of editors to register.
3. Proposal to introduce a general notion of media referring to all forms of dissemination of ideas was taken on board and a new definition to this effect is being proposed;
4. Proposal to eliminate notion of 'printed matter' and to replace it with that of 'written media' was taken on board and a new definition is being proposed;
5. The proposal to allow the defence of 'truth' in cases where even though a person is not a public figure he or she gets involved in matters of public interest will be taken on board;
6. The proposal to re-introduce the condition of harm to a living person's reputation in the article about defamation of deceased persons will be adopted. In this regard it must be pointed out that the proviso in question was deleted in the understanding that it's content was already covered by the following sub-article but it is accepted that it is better to maintain the content of the former proviso in the law.

Proposals which were considered but not taken on board:

7. Proposal to grant the court the power to reverse the burden of proof in cases where the defendant has made statements the content of which is difficult to prove was not taken on board given that the current draft is in line with other European systems, that in civil proceedings the plaintiff may be called as a witness and be examined and cross-examined by the defendant, that it is difficult to prove a negative and that in any case the Court will be able to take all circumstances (and ECHR case law) into account when deciding such a case;
8. The proposal to include further parameters in the power of the Prime Minister to issue regulations with regard to action to be taken by the operator of a website following a notice of complaint was duly noted. However it was considered that given that the suggestions made were in the nature of a reference to general principles which would be taken into consideration in any case, there was no pressing need to change the enabling power to make regulations to make reference to these general principles thereby making the power to make regulations appear rather uncertain. It is also to be noted that the enabling power already included the safeguard of requiring prior approval by resolution of the House of Representatives before the regulations can come into force.
9. The proposal on the requirement to have legal capacity in order to be an editor of a newspaper has been understood as excluding illegal or irregular immigrants from editing a publication. We disagree on this. 'Legal capacity' is the capacity to perform acts under civil law and it is in our opinion clear that a person who lacks legal capacity (for example to contract) would find himself or herself unable to act as an editor of a newspaper. Moreover

there are legal complications involved in suing a person who lacks legal capacity and given that an editor of a newspaper or of a broadcasting medium has to answer to any actions for defamation before the civil courts it is inconceivable that such a person should lack legal capacity. We consider that the reference to illegal or irregular immigrants in this context is misplaced since such persons may sue and be sued in Malta.

10. With regard to the proposal to have a more defined procedure for the appointment of the Media Registrar we fail to understand that this post carries with it the important decision making powers referred to in the report. The Media Registrar as at present contemplated is simply the custodian of the Media Register, registration in which will be on a voluntary basis. The Registrar does not take substantive decisions effecting the operation of the media and in any case any decisions which he may take (such as if he were to refuse to issue a Press Card which grants access to Government events) are subject to judicial review under general administrative law. In the circumstances it is felt that at least at this stage the introduction of a more elaborate process for the appointment of the Media Registrar is not called for.
11. The proposal for the simplification of registration requirements has also not been fully appreciated particularly since the current registration requirements (name, address, name of newspaper, frequency of its publication) are not considered to be unduly burdensome.