

**LEGAL ANALYSIS OF THE DRAFT LAW OF THE REPUBLIC OF MALTA TO PROVIDE  
FOR THE UPDATING OF THE REGULATION OF MEDIA AND DEFAMATION  
MATTERS AND FOR MATTERS CONSEQUENTIAL OR ANCILLIARY THERETO**

Commissioned by the Office of the OSCE Representative on Freedom of the Media from  
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## **Executive summary**

This Analysis examines the draft Bill of the Act “to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto”.

This Act deals with a broad range of issues within the media law area, and includes different provisions covering a relative wide range of topics. Most importantly, the enactment of this law shall represent the repeal of the Act XL of 1974, known as the Press Act and thus eliminate the current criminal provisions vis-à-vis journalists and other media actors regarding slander, libel or defamation. These matters would fall, with the adoption of this law, under the exclusive competence of civil courts.

The law also includes some remarkable provisions with regards to defences in libel civil actions, as well as to the imposition limits of libel damages by the Court. The text refers to several procedural aspects regarding legal actions for defamation, as well as criteria for the assessment of the sum to be awarded by the court. The document also includes a series of provisions on the concrete orders that can be given by the Court when it has decided for the claimant. Specific provisions regarding trade libel and defamation of deceased persons are also included, as well as a comprehensive regulation of the right of reply. Some of the most important provisions refer to the possibility for media outlets to register before the so-called and newly created “Media Registrar”. The text also incorporates a series of provisions related to the protection of journalists’ sources.

The de-criminalization of certain offences related to journalists’ and media activities that this draft incorporates can only be welcomed. Provisions regarding the introduction of limits to libel civil liability, alongside the responsibility of website editors are also entitled to a very positive assessment.

## **Summary of main recommendations**

a) Definitions included in the draft can be simplified and further clarified in order to improve legal certainty. They may also need to be formulated in a more technologically neutral manner in order to safeguard a proper and consistent application of the future Act.

b) It is advised to include a balanced approach with regards to the defence of truth, introducing the possibility for the Court, in some cases, to reverse the burden of proof and therefore the presumption of falsity.

d) The defences of truth and honest opinion must also be applicable when the persons

affected are not public figures.

e) Some additional criteria need to be introduced for editors to contemplate when dealing with a notice of complaint, in terms of balance between the possible defamatory nature of the statement and the public interest in its publication, as well as possible limitations in terms of time and scope of such measures.

f) In the cases of defamatory statements against deceased persons, it is advised to limit the legal protection to cases of actual and proven damage to the reputation of the living members of the family as the consequence of those statements.

g) Regarding registration procedures, it is recommended not to introduce excessive or duplicative burdens to media outlets and to establish those requirements and obligations that are strictly necessary and proportionate for the protection of the public interest.

## **Introduction**

The present analysis was prepared by Dr. Joan Barata Mir, independent media freedom expert, at the request of the Office of the OSCE Representative on Freedom of the Media.

This Analysis refers to the draft Bill of the Act “to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto” of the Republic of Malta, which still needs to be discussed and approved in the Parliament.

This is the second Analysis on the draft Bill made by this expert for the Office. The first one was commissioned and submitted in February 2017. The draft Bill that is the object of this Analysis has incorporated a few relevant changes, which aim at addressing some of the issues raised in February. Thus, the present Analysis will build on the findings and arguments already presented in the previous one, highlighting and commenting on the mentioned changes.

The structure of the comment is guided by the tasks formulated by the Office of the OSCE Representative on Freedom of the Media. These tasks include: comments on the current version of the draft law by comparing provisions against international media standards and OSCE commitments; indication of provisions which are incompatible with the principles of freedom of expression and media; and recommendations on how to bring the legislation in line with the above-mentioned standards.

The Analysis first outlines the general international standards on freedom of expression and freedom of information and then presents those particularly referring to libel and insult. These respective standards are referred to as defined in international human rights treaties and in other international instruments authored by the United Nations, the OSCE and the Council of Europe. Part II includes an overview of the proposed

legislation, focusing on its compliance with international freedom of expression standards. The Analysis mentions the most important positive aspects of the draft law, focusing particularly on the changes recently incorporated into the text, and elaborates on the drawbacks still pending to be properly addressed, with a view of formulating recommendations for a further review.

## **Part I. International legal standards on Freedom of Expression and Freedom of Information, and Defamation**

### **General standards**

In Europe, freedom of expression and freedom of information are protected by article 10 of the European Convention on Human Rights (ECHR), which is the flagship treaty for the protection of human rights on the continent within the context of the Council of Europe (CoE). This article follows the wording and provisions included in article 19 of the International Covenant on Civil and Political Rights (ICCPR), and is essentially in line with the different constitutional and legal systems in Europe.

Article 10 reads as follows:

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.**
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.**

Freedom of expression and freedom of information are essential human rights that protect individuals when holding opinions and receiving and imparting information and ideas of all kinds. It also presents broader implications, as the exercise of such rights is directly connected with the aims and proper functioning of a pluralistic democracy<sup>1</sup>.

On the other hand, freedom of expression and freedom of information, as well as the other rights protected in the Convention, are not absolute and therefore may be subject to certain restrictions, conditions and limitations. However, article 10.2 ECHR clearly provides that such constraints are exceptional and must respect a series of requirements, known as the three-part test. This test requires that: 1) any interference must be provided by law, b) the interference must pursue a legitimate aim included in such provision, and 3) the restriction must be strictly needed, within the context of a

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<sup>1</sup> See the elaboration of such ideas by the European Court of Human Rights (ECtHR) in landmark decisions such as *Lingens v. Austria*, Application No. 9815/82, Judgment of 8 July 1986, and *Handyside v. The United Kingdom*, Application No. 543/72, Judgment of 7 December 1976.

democratic society, in order to adequately protect one of those aims, according to the idea of proportionality<sup>2</sup>.

At the OSCE level there are political commitments in the area of freedom of expression and freedom of information that clearly refer to the international legal standards extant in this area. In particular, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 proclaims the right to everyone to freedom of expression and states that:

**This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards<sup>3</sup>.**

### **Standards with regards to criminal defamation**

The use of criminal law instruments to deal with attacks against the reputation of others raises important concerns in terms of proportionality and has been considered by international organizations and freedom of expression protection mechanisms as an excessive and inappropriate tool for this purpose. These organizations have also repeatedly warned about the chilling effect that the existence of such legal measures entails and advocate for the full decriminalization of speech offenses.

General Comment No. 34 concerning Article 19 of the International Covenant on Civil and Political Rights (ICCPR), adopted on 29 June 2011, by the UN Human Rights Committee<sup>4</sup>, clearly indicates the need for States to consider the de-criminalization of defamation and reminds that:

**(I)n any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.**

Similarly, the international rapporteurs on freedom of expression, including the UN Rapporteur on Freedom of Expression and Freedom of Opinion, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression, have repeatedly underscored the need to abolish criminal defamation laws and replace them, when necessary, with appropriate civil

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<sup>2</sup> See for example *The Sunday Times v. UK*, Application No. 6538/7426 Judgment of April 1979.

<sup>3</sup> This document is available online at: <http://www.osce.org/odihr/elections/14304>.

<sup>4</sup> Available online at: <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

laws<sup>5</sup>.

The Parliamentary Assembly of the OSCE has made similar calls to the participating States in repeated occasions<sup>6</sup>.

In the CoE, the Parliamentary Assembly adopted the Resolution 1577 (2007), which urged those member States that still provide prison sentences for defamation, albeit they are not actually imposed, to abolish them without delay<sup>7</sup>. With regards to the ECtHR, although it has never clearly called for a full decriminalization of defamation, it has always underscored that criminal sanctions, particularly imprisonment, deserve a very deserve strict scrutiny with regards to its compatibility with article 10, and they are only acceptable in exceptional cases, notably hate speech or incitement to violence<sup>8</sup>. In more general terms, the Court has always warned that the imposition of disproportionate remedies in cases of defamation, either at the criminal or even at the civil level, will dissuade the press from taking part in the discussion of matters of legitimate public interest<sup>9</sup>.

## **Part II. Overview of the proposed legal reform**

### **Content and scope of the proposed legislation**

The draft that is the object of this Analysis has as short title “the Media and Defamation Act” and, according to its “Objects and reasons”, its main aim is “updating the laws on defamation, the abolition of criminal libel in media laws, the introduction of the new civil tort of slander.” Compared to its first version, the draft has reduced its scope and in the current version does not aim at regulating “web-based news and current affairs services”. This is an option to be welcomed, as the provisions originally introduced in this area had some problems in terms of vagueness and possible arbitrary and overbroad interpretation. Therefore, the current scope of the draft is more appropriate and in fact aims at introducing important and necessary changes in specific areas of the

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<sup>5</sup> See the Joint Declaration of 2002, available online at: <http://www.osce.org/fom/39838?download=true>, and the Joint Declaration of 2010 on “Ten Key Challenges to Freedom of Expression in the Next Decade”, available online at: <http://www.osce.org/fom/41439?download=true>.

<sup>6</sup> See for example the Resolution on Freedom of the Media included in the Declaration of the Annual Meeting of the Parliamentary Assembly in Paris in 2001, available online at: <http://www.oscepa.org/documents/all-documents/annual-sessions/2001-paris/declaration-14/214-2001-paris-declaration-eng/file>.

<sup>7</sup> Available online at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17588&lang=en>.

<sup>8</sup> See *Bladet Tromsø and Stensaas v. Norway*, Application No. 21980/93, Judgement of 20 May 1999.

<sup>9</sup> See *inter alia Cumpăna and Mazăre v. Romania*, Application No. 33348/96, Judgement of 17 December 2004, and *Mahmudov and Agazade v. Azerbaijan*, Application No. 35877/94, Judgement of 18 December 2008.

Maltese media legal system. It is obvious that such changes will affect the exercise of the rights to freedom of expression and freedom of information in the country.

More specifically, the adoption of this legal text would entail the complete repeal of the Act XL of 1974, named the Press Act. The mentioned Press Act includes a wide set of criminal offenses to be committed by journalists and different media actors including publishers, broadcasters and other agents, such as the malicious publication of false news, negligent publication of false news, and defamatory libel.

The draft starts with a series of definitions aimed at facilitating the interpretation of its further provisions. Such definitions are of particular importance, as they include relevant normative elements. Afterwards, the text delineates the notion of libel, slander and defamation and circumscribes these matters within the area of civil law, establishing a comprehensive regime which includes the different possible defences (truth, honest opinion, public interest, scientific or academic statements, privileged publications) and a series of provisions regarding limits to the imposition of libel damages by the Court. The text subsequently refers to several procedural aspects regarding legal actions for defamation, as well as criteria for the assessment of the sum to be awarded by the Court. The text also includes a series of provisions on the concrete orders that can be given by the Court when it has decided for the claimant. Specific provisions regarding trade libel and defamation of deceased persons are also included.

On a related matter, the text includes a comprehensive regulation of the right of reply.

A very important area of provisions encompasses a series of obligations applicable to editors and publishers, particularly vis-à-vis the registration process before the so-called and newly created Media Registrar.

The text also incorporates a series of provisions regarding the protection of journalists' sources.

The final part of the draft is devoted to introduce a series of consequential amendments to the Criminal Code, as well as to the Code of Organization and Civil Procedure, caused by the fact that one of the most important effects of the adoption of this Act would be, as it was already mentioned, the de-criminalization of the offenses in the area of defamation.

## **Analysis of the provisions of the proposal in light of applicable international standards**

### **- Definitions**

The draft includes a series of definitions covering the main concepts included in the text, such as "author", "editor" or "publisher". These definitions have been improved and clarified in the latest version of the draft. However, a few recommendations are still to be made in this area.

In this sense, an "editor" is defined as "the person registered as editor in terms of article 19 and includes any person responsible for the publication of information, ideas or images on a web site and the person responsible for a broadcasting medium". The reference to Article 19 is therefore linked to the provisions regarding the registration of



editors or publishers before the so-called Media Registrar (as it will be explained later). However, it has to be noted that the current version of this article does not impose such registration as a requirement, but only as a possibility. Therefore, the reference to the registration process included in the definition is not appropriate any more, although it would be correct to refer to the provision established in the first paragraph of the mentioned article, which states that “(a)ny person who is resident in Malta and who has legal capacity may be an editor”.

The mentioned definition of an “editor” still refers to the publication of information, ideas or images on a web site, as it has been noted. However, the current version of the draft deleted the concept of “web site” from the list of notions defined. As commented in the previous Analysis, this notion is in any case too wide and may not refer necessarily to media activities, as web sites may also consist of e-commerce sites, search engines, and similar online platforms that do not have any impact, as such, on the formation of the public opinion.

The draft, in its current version, defines a “publisher” as “a person who owns or controls an enterprise publishing a newspaper or who holds a broadcasting licence and includes any person who owns or controls facilities for the production or reproduction of any printed matter when the said person holds editorial or content control in respect of the said printed matter”. The last phrase of this provision requiring editorial or content control was not included in the first version of the draft, and it has to be positively considered as it avoids defining a “publisher” in a too broad and not operational manner.

However, it is difficult to understand the difference between the current definitions of “editor”, and “publisher”, as they are both based on the idea of holding editorial responsibility.

The draft also still includes a definition of the so-called “printed matters”. It refers to “any writing or print by any device, as well as any bill, placard or poster in any manner fixed or impressed and includes any other means whereby words or visual images may be heard or perceived or reproduced and includes any media content and any material uploaded on a website and words shall be construed accordingly”. Taking into account that the process of convergence is transforming the traditional understanding and the barriers between different media, such definition lacks simplicity and clarity, and is problematic in terms of lack of technological neutrality.

Therefore, with regards to the abovementioned definitions the law should be revised to:

- a) Keep just one single or unified notion of “editor”, focusing on the idea of editorial or content control, and thus eliminate the notion of “publisher”.
- b) Introduce a general and comprehensive notion of media, referring to all forms of dissemination of ideas, information and opinions on matters of public interest to the general or a non-defined portion of the public, under the editorial control of an “editor”. This notion should be based on the principle of technological neutrality.
- c) Eliminate the notion of “printed matters” and introduce a single notion of “written media”, regardless of the content being distributed offline or via online platforms.

Finally, with reference to the notions of “slander”, “libel”, and “defamation”, it is worth noting that the most recent version of the draft does include a definition of the latter, which was originally missing.

### **- Scope**

As it has already been mentioned, the object of the draft is to establish a series of provisions that regulate different aspects of the activities of journalists and main media actors, replacing the current Press Act.

Therefore, it has to be particularly outlined that this new text introduces quite a remarkable change within the Maltese legal system, as it protects journalists and media actors from possible criminal actions on the grounds of slander, libel or defamation. This means that with the adoption of the Act, these issues will be exclusively handled by civil courts, which will only be able to adopt compensatory measures, particularly the awarding of financial sums. This change must be particularly welcomed.

It is to be welcomed that the new version of the draft has completely eliminated the provisions regarding the crime of contempt to the President of Malta. Moreover, the new draft also incorporates new amendments to the Criminal Code (particularly articles 73 and 74) in order to guarantee that excitement to hatred or contempt against the President or the Government of Malta shall be punishable only when committed by violent means, as well as repeals article 75 of the Criminal Code, which establishes a specific punishment of “falsely imputing misconduct in administering the Government of Malta to a person employed or concerned in the administration of the Government of Malta”. Similarly, article 82 of the Criminal Code is also amended to introduce provisions aiming to focus the punitive action of the State in hate speech to cases where disturbance ensues in consequence of the offence.

In line with the intentions of the legislator regarding full de-criminalization of defamation, the draft contemplates the completed deletion of the provisions included in the Criminal Code regarding this matter (articles 252 to 256).

Finally, it is important to underscore and evaluate in a very positive manner the introduction in the latest version of the draft of a transitory provision stating that “(a)ny criminal proceedings instituted under the repealed Act prior to the coming into force of this Act and which, on the coming into force of this Act, are pending before any court shall be discontinued”.

### **- Defences**

As it has already been mentioned, the draft includes a series of possible defences vis-à-vis possible defamation legal actions in the civil area. One of the most relevant defences in such area is truth, that is to say the capacity to prove before the Court that “the statements that originate the legal action are substantially true” (article 4, paragraph 1).

The two main options in terms of legal policy are either to put the burden of proof on the claimant, who should be required to show that the imputations are false in order to destroy a legal presumption of truth, or to impose on the defendant the burden to prove

that the allegations made are true. In line with other European legal systems, the draft has selected the second option.

The ECtHR does still not have a completely clear approach to this matter. In some cases, it has declared that requiring the defendants in a defamation case to prove the facts was a justified restriction on the right to freedom of expression, in the interests of the protection of the reputation and rights of the plaintiffs<sup>10</sup>. This being said, there are a series of decisions where the Court has taken a more balanced approach, thus acknowledging that in some cases providing such proof would be an excessive and very complex burden for the defendant, which can also have the effect of unduly inhibiting the publication of material whose truth may be difficult or burdensome in a court of law. Therefore, it can be said that the ECtHR, at least in some cases, has expressed the need for national jurisdictional bodies to strike a proper balance between the parties' conflicting needs on a case by case basis<sup>11</sup>.

It is therefore recommended that the draft includes a more balanced approach with regards to the defence of truth, introducing the possibility for the Court, in some cases, to reverse the burden of proof.

On a different note, the draft also establishes in paragraph 5 of article 4 that the defences of truth and honest opinion shall only apply where the person aggrieved is a public figure. This provision also establishes that "the truth of the matters charged may not be enquired into if such matters refer to the private life of the claimant and the facts alleged have no significant bearing on the exercise of that person's public functions", as well as the fact that, notwithstanding such limitation, the abovementioned defences "may be raised where the matter referred to is a matter of general public interest".

The wording of these provisions is still not completely satisfactory. The draft needs to clearly state that in matters of public interest, the defences of truth and honest opinion can be raised when the plaintiffs are not public figures, but involved in matters of public interest, in line with the public interest defence established in paragraph 4 of article 4.

### **- Libel damages**

Articles 9, 10 and 11 of the draft establish a series of parameters and principles vis-à-vis the determination of the libel damages by the Court. These provisions determine some caps applicable to the sums that may be ordered to be paid in different circumstances. Article 11 establishes additional criteria to be considered by the Court when assessing the sum to be awarded to the claimant, including the gravity or extent of the defamation, the due diligence exercised by the defendant before publishing the defamatory content, and the offer by the defendant to make an apology or to publish a clarification. All these measures should in principle be welcomed, as they will definitely meet the criteria of the principles of necessity and proportionality.

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<sup>10</sup> See *McVicar v. United Kingdom*, Application No. 46311/99, Judgement of 7 August 2002, and *Rumyana Ivavova v. Bulgaria*, Application No. 36207/03, Judgement of 14 February 2008.

<sup>11</sup> See also *Steel and Morris v. United Kingdom*, Application No. 68416/01, Judgement of 15 February 2005, and *Kasabova v. Bulgaria*, Application No. 22385/03, Judgement of 19 April 2011.

It is worth noting that the current version of the draft includes provisions that contemplate the need for the Court to take into account the economic capacity and the impact that the imposition of certain compensation may cause on a media outlet or on any other media actor (new paragraph 4 of article 11). This is a relevant improvement, in line with the recommendations made by the previous Analysis in February 2017. It also needs to be welcomed the fact that the general cap for libel damages has been reduced from 20.000 euro to 11.640 euro (from 10.000 euro to 5.000 euro in actions for slander by way of moral damages).

### **- Specific defences for website editors**

Article 12 establishes a series of specific defences for editors of websites, therefore limiting in quite a clear manner the cases and circumstances when they may not be held liable for the defamatory content posted on their sites. As it is known, this is a highly sensitive area that has been the object of recent and controversial decisions by the ECtHR<sup>12</sup>. In any case, the fact that this provision has been kept in the latest version of the draft shows the need for the new legislation to cover online media as well.

It has to be noted that the provisions included in this area look particularly balanced and limit the liability of editors to cases where it can be proved that the editor had knowledge of the nature of the statements and did not respond with due diligence.

This being said, some comments need to be made to the provisions included in paragraph 5 of the same article 12. According to the provisions, an administrative body referred to as “the Minister” would have the power to adopt regulations regarding the action required to be taken by an editor of a website in response to a notice of complaint. The new version of the draft refers to the fact that such regulations “shall be made after a consultation process and (...) shall be approved by resolution of the House of Representatives before they come into force”. This new version represents a clear improvement vis-à-vis the original draft and therefore needs to be welcomed. In any case, and in line with the comments already made in our previous Analysis, it is recommended to also include some criteria which ought to be taken into account when dealing with a notice of complaint in terms of balance between the possible defamatory nature of the statement and the public interest in its publication, as well as possible limitations in terms of time and scope of such measures. It is recalled that the ECtHR has stressed that because of the threat that interim injunctions pose to freedom of expression, they are only acceptable within the context of the existence of due safeguards embedded in the system to prevent arbitrary restrictions to freedom of expression<sup>13</sup>.

### **- Defamatory statements against deceased persons**

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<sup>12</sup> See *Delfi AS v. Estonia*, Application No. 64669/09, Judgement of 16 June 2015, and *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, Application No. 22947/13, Judgement of 2 February 2016.

<sup>13</sup> See *Cumhuriyet Vakfi v. Turkey*, Application No. 28255/07, Judgement of 8 October 2013.

Article 17 of the draft contemplates possible actions for defamation “in respect of the memory of a deceased person” provided that he/she was the parent, sibling, or child of the plaintiff and the statement is made within 10 years since his/her death.

As a matter of legal principle, human rights including the right to preserve individuals’ reputation are directly connected to the personality of their holders and thus they should be considered extinct upon their death. This being said, it is also true that fierce attacks against the reputation of recently deceased persons may have a strong effect on the reputation or the right to privacy or even engage the right not to be subjected to inhuman or degrading treatment of their families. For this reason, the ECtHR has accepted only in a very limited manner and in specific cases to protect the reputation of non-living persons<sup>14</sup>.

Therefore, it was already recommended in the previous Analysis to introduce some additional restrictions to the mentioned provisions (or, at least, delete the reference to the “respect of the memory of a deceased person”), in order to guarantee that only in cases of actual and provable damage to the reputation of the living members of the family a defamation action is considered by the Court. For this reason, the deletion, in the current version, of the following paragraph cannot be welcomed: “(p)rovided further that the claimant must show that his own reputation was seriously harmed or is likely to be seriously harmed by the statement or that the statement is such as would reasonably cause serious moral suffering to claimant”. Despite the fact that the wording “is likely to be seriously harmed by the statement” was not particularly satisfactory, this paragraph was specifically aimed at introducing the mentioned restrictions.

### **- Registration requirements**

As it has already been mentioned, article 19 establishes that “(a)ny person who is resident in Malta and who has legal capacity may be an editor”.

On the one hand, it still needs to be noted that this implies that persons based or present in Malta whom, for different reasons, may not hold the status of legal residents are significantly deprived from important platforms and media enabling the exercise of the right to freedom of expression. This restriction to the right to freedom of expression is not justified in the law and do not seem to pursue any pressing social need or relevant necessity within a democratic society<sup>15</sup>, and therefore it is recommended that it should be removed. On the other hand, it needs to be welcomed the fact that the latest version of the draft does not include any age requirement but the need to have legal capacity.

Article 19 also establishes that editors or publishers of a newspaper may submit to the Media Registrar a declaration containing information on their identity and the content they disseminate. It is welcomed that the current version of the draft does not establish

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<sup>14</sup> See *Genner v. Austria*, Application No. 55495/08, Judgement of 12 January 2016.

<sup>15</sup> It has to be reminded that the UN Rapporteur on Freedom of Expression and Freedom of Opinion has strongly underscored that limiting to the age of 18 the exercise of the right to freedom of expression and freedom of information is an arbitrary restriction which is not in line with international law. See the report A/69/335 to the General Assembly of 21 August 2014, available online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/512/72/PDF/N1451272.pdf?OpenElement>.

such registration as an obligation and that the references to the imposition of sanctions to those whom do not comply have been deleted. Regarding broadcasters article 21 also establishes that “(e)very holder of a broadcasting licence in Malta shall, for the purposes of this Act, be considered as editor and be considered as editorially responsible for the broadcasting service and may be required to so register as editor in the Media Register unless such person appoints another person to be editor in his stead”. This last provision can be interpreted in the sense that broadcasting legislation will determine the registration requirements for broadcasters. It is obvious that in the case of broadcasting activities the use, in some cases, of scarce or public resources may justify, according to article 10.1 of the Convention, the provision of licensing mechanisms<sup>16</sup>. In any case, it is recommended not to introduce excessive or duplicative burdens to media outlets and to establish those requirements and obligations that are strictly necessary and proportionate for the protection of the public interest.

Article 2 defines the Media Registrar as “such person as the Prime Minister may, from time to time by notice in the Gazette, designate as Media Registrar for the purposes of this Act”.

The draft only contains a vague description of the Media Registrar. Considering the importance and the sensitivity of the tasks that this body is entrusted with, a further and detailed regulation about the appointing process, decision making processes and safeguards for citizens vis-à-vis its decisions would be needed. Ideally, and in line with comparative best practices, such tasks would be more suitably performed by an independent body not subject to political instructions. However, it is to be welcomed as a positive improvement the fact that the latest version of the draft establishes that a regulation initiated by the Prime Minister and approved by the House of Representatives after a consultation process will provide “that the functions of Media Registrar shall be fulfilled by such person or organization as may in his opinion duly represent journalists and publishers”, the possibility for the Registrar to “perform other functions in the field of training, analysis of developments in the media and the fostering of alternative and accessible means of dispute resolution”. It is clear that these new provisions introduce more clarity to the regulation of this figure.

## **Confidentiality of sources**

Article 22 of the draft contains a series of provisions aimed at protecting the right of journalists to preserve the confidentiality of their sources. This right is widely and strongly protected by international standards, including the OSCE, the Council of Europe or the United Nations<sup>17</sup>.

The provisions included in this article are in line with international standards. It is also very positive that the latest version of the draft does not include the paragraph 2 of

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<sup>16</sup> See Informationsverein Lentia and others v. Austria, Application No.13194/88; 15041/89; 15717/89; 15779/89; 17207/90, Judgement of 24 November 1993.

<sup>17</sup> See the recent report by the the UN Rapporteur on Freedom of Expression and Freedom of Opinion on this matter, Available online at: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ProtectionOfSources.aspx>

article 22 included in the first version, which stated that those protections should only apply to authors of publications on websites on condition that “the author habitually exercises the profession of journalist either on a full-time or on a part-time basis”.