

Act XI of 2018: The Media and Defamation Act

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In this article, Ms Cassar discusses how '*journalists have been given new liberties*'. She sheds light on the major changes affecting journalists' rights, as well as the new defining factors for 'defamation' and 'libel'.

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In March of 2017, Dr. Bonnici proposed a bill of newly-amended laws that regulate media and defamation, stating that 'journalists have [now] been given new liberties'. Earlier this year, on the 24th of April, the bill came into force and was published in the government gazette (reference no.19,982). This new law emerged from a fruitful discussion amongst journalists who, in turn, were encouraged to participate by the Institute for Journalism.

Section 2 of the Act makes it clear that the new laws aimed to protect journalists are applicable also to all those persons who broadcast information through various media sources. It goes on to define libel as defamation by publication, and moreover defines defamation as anything which pertains to libel and slander.

Article 3 of the Act states what elements must be present to constitute a libel, that is, any 'defamatory words in a newspaper or broadcast or on a website' which shall be deemed 'to be published'¹. Additionally, under the same provisions, the Act specifies that words shall not be deemed to be defamatory unless they cause serious harm, or are likely to seriously harm the reputation of the specific person or persons making the claim. Nonetheless, it further clarifies that harm to a reputation of a body which deals in trade for profit, is not to be constituted as serious harm, unless it has caused a substantial financial loss². In its later sections, the Act further describes when action must be taken to protect the subjects of defamation³.

The rebuttable solutions are presented in the fourth section of this Act, which states that if the defence is able to prove that the claimed 'defamatory' statements are true, then it is a defence to an action. It is noticeable that in this section, the freedom to hold an opinion is embraced. This section affirms that the defence of the journalists accused of defamation may win the case if they could ascertain that the written content was based on an honest opinion. Moreover, it protects the right for journalists to circulate

1 Art. 3(1) of the Media and Defamation Act.

2 Art. 3(3) of the Media and Defamation Act.

3 Art. 4 of the Media and Defamation Act.

information that is relevant to the general public, especially with regards to public officers, candidates running for office, persons well-established in the trade industry, and also persons who occupy a position of trust in an issue in the interest of the general public.

It is also interesting to note that the seventh section of the Act sets forth a list of privileged publications. Such publications include Acts of Parliament and publications issued with the authority of the President of Malta and House of Representatives⁴. Furthermore, publications written to exchange information between public officers, reports of court proceedings, reports of debated of the House of Representatives, as well as evidence given in good faith shall enjoy the same privileges⁵. All other publications do not enjoy any privileges.

One of the most essential elements of this new set of laws is the removal of criminal liability. The journalists faced with a libel case held against them will drop. As a result, the removal of such criminal acts will only enhance freedom of expression and strengthen the freedom to publish unpopular opinions. The removal of criminal liability will give journalists the opportunity to resolve an issue through mediation rather than proceeding to legal action. Despite the fact that now the new law has decriminalised libel, it does not exclude or diminish the fine of €2,000 as punishment by the court on account of defamation, as articulated in Section 15 of the Media and Defamation Act.

Finally, the new laws of this Act have made significant changes both to the traditional, as well as the modern, media sources. Section 20 of the Act establishes the role of the Media Registrar, which shall be responsible for the administration of declarations produced by the media sources which state basic information about the source, such as name of editor, title of newspaper or magazine and details about the publishers. Most importantly, however, sub-article 3 of Section 20 removes the necessity for traditional media sources, such as newspapers, radio and television stations, to be registered as was the practice until the Act came into force. Moreover, the same concept applies to online news broadcasting

4 Art. 7(1)(a) of the Media and Defamation Act.

5 Art. 7(1) - (2) of the Media and Defamation Act.

websites. As per the new law, it does not require them to be registered.

The Parliamentary Committee for the consideration of laws has given a unanimous approval for the new laws concerning media and defamation. The changes made in Chapter 579 of the Laws of Malta are in favour of freedom of expression, aimed at fulfilling the true meaning of a democracy.