[MT] New Media and Defamation Act for Malta

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The Media and Defamation Act, Act No. XI of 2018, was passed on 24 April 2018. After it comes into force, it will replace the Press Act of 1974 (with regard to Legal Notice 150 of 2018 dated 8 May 2018, it already came into force on 14 May 2018).

It must be noted that there were two Media and Defamation Bills presented to the House of Representatives during 2017. The first was Bill No 192, dated 24 February 2017. However, it provoked such a negative reaction that during the parliamentary session ending in May 2017, the Government agreed to overhaul it. In fact, it lapsed when Parliament was subsequently dissolved. After the start of the present legislature, a revamped Media and Defamation Bill (Bill No 17) of 2017, dated 22 November 2017, was presented to the House of Representatives; this Bill was eventually enacted as Act No XI of 2018.

The new law will abolish the crime of criminal libel; pending criminal libel cases will be, ex lege, discontinued. Furthermore, it will no longer be possible for any person to issue a precautionary warrant of seizure [a court order that effectively safeguards the creditor's interest by seizing property belonging to the debtor, which property is deposited in court or kept under the custody of a third party, until the creditor's claim is properly determined and converted into an executive title], warrant of seizure of a commercial going concern, or a garnishee order [a court order issued to third parties who might be in possession of money or movable property belonging to the debtor] in security of any defamation claim. Defamation occurs when serious harm or the likelihood of serious harm to a person’s reputation arises. Such a person can be either a physical person or a legal person; however in the case of the latter, defamation may apply only in the event that that legal person suffers a financial loss or faces the likelihood of such a loss.

Apart from the defence of truth - that is to say, that the statements complained of are substantially true - a new “defence of honest opinion” is provided by the new law. For such a defence to be pleaded successfully, the statement complained of will have to constitute an honest opinion; moreover, the defendant will have to indicate the basis of that opinion and be able to successfully argue that an honest person could have held the opinion on the basis of either (i) any fact that existed at the moment at which the statement was published or (ii) anything asserted to

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be a fact in a privileged statement published before the statement complained of. Both types of defence (that is to say, the “defence of truth” and the “defence of honest opinion”) shall apply even where the complainant is a public figure. Another defence - that of “general application” - relates to a publication on matters of public interest.

A statement may be privileged if it relates to a scientific or academic matter and has been peer-reviewed. The new law also lists a number of instances of privileged publications in respect of which no defamation may apply. The law distinguishes between defamation and slander and sets a lower limit of moral damages in relation to slander. In setting the level of damages, the court must take into account the economic capacity of the defendant and the impact that an award of damages will have on the offending medium concerned. Mediation is also suggested to expedite proceedings, though not made compulsory. Criteria are also provided for the assessment of damages.

Defamation actions can be instituted against website editors. Multiple legal actions cannot be brought against the same person for similar statements. Courts are empowered to order a website editor to remove the defamatory statement in question.

The right of reply is retained but is now enforced through the imposition of civil, not criminal, sanctions. Trade libel, like defamatory libel, is retained but obscene libel is decriminalised. Defamation of a deceased person is retained, provided that the plaintiff demonstrates that his or her own reputation has been harmed. The registration of editors and publishers with the Media Registrar is no longer compulsory.

Media and Defamation Act, 2018

http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=29045&l=1

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