

Press Release - Front against Censorship - 1st June 2018

Proposed amendment to the Media and Defamation Act in relation to defamation lawsuits decided by competent Courts outside Malta

The Front Against Censorship is proposing an amendment to the the Media and Defamation Act in relation to the threat posed by SLAPP lawsuits to the financial viability of the Maltese press.

The Press Act was recently replaced by the new Media and Defamation Act. The Front Against Censorship had negotiated the inclusion of a large number of amendments to the original Media and Defamation Act, which the Government had accepted. The Front believes that the result was a law which represented a significant step forward in safeguarding press freedom in Malta.

Shortly after the negotiations between the Government and the Front were concluded, a new problem emerged in the form of SLAPP lawsuits against the Maltese press. The amendment to the Media and Defamation Act proposed by the Opposition when the Media and Defamation Bill was being discussed in Parliament was reviewed by the Front. This was found to run counter to the Brussels I Regulation, because it a priori denied the jurisdiction of Courts located in other EU Member States when the defendant of a defamation case was resident or domiciled in Malta. The resulting use of the public policy exception found in the Brussels I Regulation would have risked the law being struck down by the ECJ or in infringement procedures being imposed against Malta.

The Front believes that the present conundrum can only be ultimately resolved through an EU wide directive. In the interim, the Front has sought to a way to provide a buffer for the Maltese press which would still be compliant with the Brussels I Regulation.

Thus whilst not denying Courts found in other EU Member States jurisdiction to hear defamation cases concerning a defendant resident or domiciled in Malta, the Front is proposing that the Maltese Courts give due consideration to a number of aspects prior to deciding whether to enforce a decision given by a foreign Court.

In summary, the amendments guide the Maltese Courts to consider whether the defendant was accorded equal rights in the foreign Court, whether the damages imposed by the foreign Court would result in the financial ruin of the newspaper or compromise its ability to operate, and whether the judgment is likely to impede the newspaper's journalistic freedoms or freedom of expression. We believe that these protections are compatible with the public policy exception of the Brussels I Regulation as explained in the legal rationale provided with the amendment.

This would mean that the jurisdiction of foreign Courts would not be ruled out a priori, and that the judgments given by foreign Courts could still be applied in Malta, as long as they were not in violation of the rights granted above.

It is worth noting that the maximum amount of damages which may be awarded in a defamation case through the Media and Defamation Act is €11,640. This figure reflects the maximum damages which one may incur for a single story. This maximum amount specified in the law for each story reflects the economic situation of the Maltese press. This means that €11,640 is regarded as a significant deterrent for publishing defamatory material, in excess of which press freedom would be curtailed.

The continued existence of a free press is a public good which needs to be protected. These amendments will provide a buffer against financially ruinous judgments given by foreign Courts which do not respect the economic realities of the local press, whilst simultaneously complying with EU regulations. It is our expectation that this will allow the local press to continue to fulfill its essential function until an EU Directive hindering SLAPP lawsuits has been introduced.

Stqarrija - Front kontra ċ-Ċensura - 1 ta' Ġunju 2018

Proposta għal emenda fil-Liġi dwar il-Midja u l-Malafama b'rabta ma' kawżi ta' malafama deċiżi minn Qrati kompetenti barra minn Malta

Il-Front kontra ċ-Ċensura qed jipproponi emenda fil-Liġi dwar il-Midja u l-Malafama, b'rabta mat-treddida li jgħibu magħhom kawżi SLAPP għall-vijabilità finanzjarja tal-midja Maltija.

Il-Liġi tal-Istampa dan l-aħħar kienet sostitwita mil-liġi l-ġdida dwar il-Midja u l-Malafama. Il-Front kontra ċ-Ċensura kien innegozja l-inklużjoni ta' għadd kbir ta' emendi fil-liġi originali dwar il-Midja u l-Malafama, liema emendi l-Gvern kien aċċetta. Il-Front jemmen li r-riżultat ta' dan kien li kienet tixhed pass kbir 'il quddiem biex tkun salvagwardjata l-libertà tal-istampa f'Malta.

Ftit wara li ġew konklużi n-negozjati bejn il-Gvern u l-Front, inholqot problema ġdida minħabba l-prospett ta' kawżi SLAPP kontra ġurnalisti Maltin. Il-Front xtarr sewwa l-emenda għal-Liġi dwar il-Midja u l-Malafama proposta mill-Oppożizzjoni meta l-Abbozz ta' Liġi dwar il-Midja u l-Malafama kien qed jiġi diskuss fil-Parlament. Din l-emenda kienet tmur kontra l-Brussels I Regulation, għaliex kienet tiċhad a priori l-ġurisdizzjoni ta' Qrati fi stati membri oħra tal-Unjoni Ewropea meta l-konvenut f'kawża ta' malafama jkun jgħix f'Malta. L-użu tal-eċċezzjoni tal-policy pubblika li tinsab fil-Brussels I Regulation kien joħloq is-sogru li l-liġi tkun annullata mill-ECJ jew fi proċeduri oħra imposti kontra Malta.

Il-Front jemmen li l-problema li nholqot tista' tkun solvuta permezz ta' direttiva mifruxa fl-Unjoni Ewropea kollha. Sadanittant, il-Front qed jipproponi forma ta' protezzjoni għall-midja Maltija li xorta waħda hija konformi mal-Brussels I Regulation.

Filwaqt li ma jiċhadx il-ġurisdizzjoni ta' Qrati fi stati membri oħra tal-Unjoni Ewropea biex jisimgħu kawżi ta' defamazzjoni fejn il-konvenut ikun jgħix f'Malta, il-Front qed jipproponi li l-Qrati Maltin jikkunsidraw numru ta' aspetti qabel ma jiddeċiedu jekk deċiżjoni minn Qorti barranija għandhiex tiġi infurzata jew le.

Fil-qosor, l-emendi jiggwidaw lill-Qrati Maltin biex jikkunsidraw jekk il-konvenut ingħatax drittijiet indaqs fil-Qorti barranija, jekk il-ħlas ta' danni impost mill-Qorti barranija jwassalx għall-falliment finanzjarju tal-ġurnal inkwistjoni jew jikkompromettix l-operat tiegħu, u jekk id-deċiżjoni hix se xxekkel il-libertà ġurnalistika jew il-libertà tal-espressjoni ta' dak il-ġurnal. Aħna nemmnu li din il-protezzjoni hija kompatibbli mal-eċċezzjoni tal-policy pubblika tal-Brussels I Regulation, kif spjegat fin-noti legali provduti mal-emenda.

Dan ikun ifisser li l-ġuriżdizzjoni ta' Qrati barranin ma tkunx eskluża a priori, u li s-sentenzi mogħtija minn Qrati barranin ikunu jistgħu jiġu infurzati f'Malta sakemm ma jiksrux id-drittijiet imsemmijin hawn fuq.

Ta' min jinnota li l-ammont massimu ta' danni li jista' jintrebaħ f'kawża ta' malafama taħt il-Liġi dwar il-Midja u l-Malafama huwa ta' €11,640. Din iċ-ċifra tirrifletti d-danni massimu għal artiklu wieħed biss. Dan l-ammont massimu speċifikat fil-liġi għal kull storja jirrifletti l-qagħda ekonomika tal-midja Maltija. Dan ifisser li l-ammont ta' €11,640 hu meqjus bħala deterrent sinifikanti għall-pubblikazzjoni ta' materjal defamatorju, u jekk jinqabeż, il-libertà tal-istampa tkun imrażżna.

L-eżistenza ta' midja ħielsa hija benefiċċju pubbliku li għandu jiġi mħares. Dawn l-emendi jipprovdu protezzjoni kontra sentenzi minn Qrati barranin li jistgħu jikkawżaw falliment finanzjarju u li ma jirrispettawx ir-realtajiet ekonomiċi tal-midja lokali. Fl-istess waqt l-emendi huma konformi mar-regolamenti tal-Unjoni Ewropea. Permezz ta' dawn l-emendi, il-midja lokali tkun tista' tkompli taqdi l-funzjoni essenzjali tagħha sakemm tiġi introdotta direttiva tal-Unjoni Ewropea kontra l-kawżi SLAPP.