

***Reply by the Government of Malta to the complaint submitted by the European Federation of Journalists (EFJ)/ International Federation of Journalists (IFJ), the International Press Institute (IPI) and the Index on Censorship Committee to Protect Journalists (CPI) in respect of precautionary garnishee orders issued against blogger Daphne Caruana Galizia.***

*In the first place the Government wishes to clarify that the garnishee orders complained about were not issued by the Government itself but were issued personally by Dr Christian Cardona, Minister for the Economy, and Dr Joe Gerada in their personal capacity in relation to civil libel actions which they filed against Mrs Daphne Caruana Galizia, who carries a hate blog in Malta.*

*Any threat which the said garnishee orders could be deemed to pose to journalism and to the safety of journalists therefore does not emanate from the 'State' as declared in item 9 of the Submission Form entitled 'Source of threat'.*

***Nature of precautionary garnishee orders***

*Precautionary garnishee orders are measures of provisional protection granted by general civil procedural law (Article 849 of the Code of Organisation and Civil Procedure- Chapter 12 of the Laws of Malta) in order to secure a civil debt or claim whilst a court case on that debt or claim is pending.*

*It is not a measure which applies specifically to journalists but it is applicable practically against anyone who is a defendant in a court case where the payment of money is sought. The purpose of the measure is to avoid the non-payment of debts and it is understood that precautionary or interim acts, by whatever name, are common to practically all legal systems.*

***Remedies afforded by the law***

*Precautionary garnishee orders are usually issued immediately by the Courts upon the responsibility of the persons demanding them. However article 836 of the Code of Organisation and Civil Procedure (COCP) grants an immediate right to any person against whom a precautionary act (such as a precautionary garnishee order) has been issued to file an application in Court demanding that the precautionary act be revoked, either totally or in part, on a number of grounds. These grounds include a general ground to the effect that a precautionary act may be revoked "if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable" (Article 836(1)(f) COCP).*

*Hence even ordinary Maltese law grants an action for the revocation of a precautionary act on the mere ground of unreasonableness and if Mrs Caruana Galizia felt that the precautionary acts filed against her were unreasonable, disproportionate or unacceptable in a democratic society from a freedom of expression point of view she could have applied to the Court to revoke those acts immediately on those grounds.*

*Moreover both the Constitution of Malta and the European Convention Act (which incorporates the European Convention on Human Rights into domestic Maltese law) include provisions to the effect that any law which is deemed to be inconsistent with the fundamental human rights and freedoms protected under Chapter IV of the Constitution or under the European Convention on Human Rights shall be deemed to be void to the extent of such inconsistency (Article 6 of the Constitution and Article 3(2) of the European Convention Act -Chapter 319 of the Laws of Malta). Under the said laws the Courts are also given a very wide discretion as to the remedy which they may grant.*

*Hearings with urgency may also be demanded in any of the above actions but it does not result that Mrs. Caruana Galizia attempted to seek any legal remedy for her claims.*

### **Context**

*The Government wishes to point out that recourse to precautionary acts to secure claims for libel damages is, at best, very rare. The Government is not aware that the availability of precautionary acts to secure claims for damages in libel is an issue which has been specifically debated at Council of Europe level nor that it has ever formed the subject of any evaluation of Malta's respect for human rights by any international organisation.*

### **Concerns as to proportionality**

*All this being said, Government agrees that recourse to such precautionary acts may raise freedom of expression issues in the context of a debate on proportionality.*

### **Holistic increase of freedom of expression**

*The Government, during this legislature, has embarked on a legislative program aimed at strengthening freedom of expression in a holistic manner.*

*Act XXXVII of 2016, which entered into force on the 19<sup>th</sup> July, 2016 provided for new, important freedoms of artistic expression. Various criminal provisions which previously provided a disproportionate level of censorship on the arts and artists were modernized, updated or struck off altogether from the law books. The second step was the drawing up of a new press law, aimed at superseding the current Press Act of 1975.*

### **New Media Law**

*On the 3<sup>rd</sup> October, 2016, the Government kick-started the required legislative process for the approval of a Bill called Media and Defamation Act. Subsequently, on 14<sup>th</sup> February, 2017 the Bill called Media and Defamation Act was published with the aim of having it debated in the House of Representatives and subsequently approved by Parliament.*

*The new law is indeed a very important step forward for increased freedom of expression in Malta. An official copy of the Bill in both Maltese and English language is attached with this reply.*

### **Prohibition of recourse to all forms of precautionary orders of warrants**

*The Bill contains a number of proposals, inspired by the jurisprudence of the European Court for Human Rights, which are aimed at increasing the freedom of expression for journalists in Malta.*

*One of the proposals is an ad hoc prohibition of recourse to **any** form of precautionary orders or warrants in actions for libel or defamation under any law.*

### **The cornerstones of the new Media and Defamation Bill**

*The scope of the proposed legislation is to enhance the fundamental right of the freedom of expression through increased freedom for journalists, while giving opportunity to people to protect their reputation through fair and proportionate remedies.*

*The Bill retained a number of concepts from the Press Act of 1975 such as the right of reply and the concept of press registrar. The proposed legislation then provides for a wider scope so as to cater for traditional media, as well as the new media, such as websites and online news portals.*

*The proposed legislation has 7 cornerstones:*

1. *The complete revocation of Criminal libel.*

*One of the most important and principal changes is the revocation of criminal libel, meaning that journalists shall not be subject to the potentiality of imprisonment whilst fulfilling their duties as*

*watchdogs of democracy. With regards to pending criminal libel proceedings, a transitory provision in the Bill precludes the Court of Magistrates from imposing a sentence of imprisonment in whatever form.*

*2. The prohibition of the use of precautionary garnishee orders, precautionary warrants of seizure and precautionary warrants of seizure of a commercial going concern in libel proceedings. This effectively provides for a blanket prohibition of any form of precautionary warrant or order being filed against a journalist in the furtherance of his or her duties.*

*3. Wider and more modern defenses afforded to journalists in libel proceedings, in line with European Court of Human Rights decisions.*

*The new bill provides additional protection to journalists through better and updated definitions of existing defenses in line with ECHR judgments, particularly through the introduction of a new defense of honest opinion which improves on the former defense of fair comment.*

*4. Introduction of Alternative Dispute Resolution measures in Civil libel procedures and incentives for out of court settlements.*

*In line with a general effort to increase the use of mediation and alternative dispute resolution mechanisms across the board in the Civil Courts, the new bill provides for a multitude of incentives for out of court settlements to be reached. The Court will now be given the opportunity to investigate at the first sitting whether the case can be resolved summarily or to refer the case to mediation. In the case of summary disposition of the case, the amount of damages which can be afforded is drastically reduced.*

*5. Increase of the maximum amount of damages which can be awarded in civil libel procedures (up to Eur 20,000 from Eur 11,646.87).*

*Since the introduction of the Press Act back in 1975, the maximum amount of damages has been increased only once in 1996, from Lm2,000 to Lm5,000 (EUR 11,646.87). The maximum amount of damages which can be afforded in civil libel proceedings will now be increased from Eur 11,400 to Eur 20,000.*

*6. A new action of civil libel afforded to protect the memory of a deceased person.*

*The new bill provides for the protection of the memory of a deceased person through an action of civil libel which is afforded to the immediate heirs. A distinction is made according to the length of time a person has been deceased based on a ten year rule.*

*7. Introduction of a new action of civil slander.*

*The bill incorporates the action of civil slander, which is obtaining under a number of European jurisdictions, but was not obtainable in Malta. The aim of this action is to safeguard the reputation of a person against defamation made by spoken words. The maximum amount of damages which could be afforded through this new action is EUR 10,000.*

*The Bill was generally positively received from media practitioners and the Institute of Maltese journalists.*

*The Government will also launch, *pari passu*, a public consultation in furtherance of strengthening responsible journalism on existing models in other leading democracies, such as a press ombudsman or a*

*press complaints office. The Institute of Maltese Journalists has publicly supported this initiative for consultation.*

**Conclusion**

*The Government reiterates that the current Maltese legal system provides adequate safeguards against any alleged threats to freedom of expression. Through the legal proposal called Media and Defamation Act, those safeguards and freedom of expression as a whole, will be further enhanced.*

*The Government is also ready to follow up this communication with specific meetings on this subject and the way forward in terms of the Media Law reform in Malta.*