

The Hon. Dr Robert Abela
Prime Minister
Office of the Prime Minister
Auberge de Castille
Valletta

By email: robert.abela@gov.mt
Cc: edward.a.zammit-lewis@gov.mt

2 December 2021

Dear Prime Minister,

We, the undersigned group of NGOs and media organisations, are deeply concerned about Legal Notice 456 of 2021, Online Publication of Court Judgements (Data Protection) Conferment of Functions Regulations,¹ which gives complete discretion to the director-general of the court to decide which court judgements are published online, and we hereby urge you to revoke the Legal Notice.

The online publication of court judgements fulfils the Maltese state's Constitutional and ECHR obligation to ensure that all stages of a trial are public, including the judgment. It also serves the public interest of transparency and accountability by delivering access to the public, including, crucially journalists and other social watchdogs.

Moreover, the FATF's greylisting of Malta has obliged the country to step up its control over dubious behaviour. A state that denies journalists and civil society an essential tool - the ability to research judgments - casts doubt on its commitment to transparency.

Additionally, we are alarmed by the fact that the court's director-general is being accorded such discretionary power over publication. The director-general is appointed by and answers directly to the Justice Ministry, raising concerns of conflicts of interest and the independence of the role, and questions regarding the effective separation of powers, specifically, of the judiciary and the executive, which is an essential underpinning of democracy.

While the right of erasure of personal data (also known as 'the right to be forgotten')² is one that places positive obligations on the State, applying this right to the online publication of court judgements is questionable. The right to be forgotten pertains to delisting from a commercial search engine, such as

¹ <https://legislation.mt/eli/ln/2021/456/eng>

² <https://gdpr.eu/article-17-right-to-be-forgotten/>

Google, *in specific circumstances*.³ This cannot be compared to the removal of personal data from an online service administered by the government that contains public records.

The Court of Justice of the European Union's balance of this right to be forgotten with the need to ensure access to information that is in the public interest serves to further emphasise this point, particularly in relation to criminal records. It cites the example of "the role played by the data subject in public life, justifying a preponderant interest of the public in having access to the information".⁴ Relying on the 'right to be forgotten' as a way to censor court judgements is unjustifiable.

We accept that there are legitimate circumstances in which a judge or magistrate may order a ban on the publication, such as names of victims in sensitive cases. However, Legal Notice 456 does not include well-defined criteria that precisely establish in which cases the court's director-general may choose not to publish court judgements online.

Legal Notice 456 compromises fundamental human rights as it denies ordinary citizens the right to know and inhibits access to information that is in the public interest. It also raises serious questions concerning the separation of powers between the judiciary and executive branches of government. The legal notice should be revoked.

Matthew Caruana Galizia, Director, The Daphne Caruana Galizia Foundation

Julian Bonnici, Editor, Lovin Malta

Neil Camilleri, Editor-in-Chief, The Malta Independent

Helen Darbshire, Founder & Director, Access Info Europe

Herman Grech, Editor-in-Chief, Times of Malta

Caroline Muscat, Founder, The Shift

Kevin Papagiorcopulo, Editor, Newsbook

Matthew Vella, Executive Editor, Malta Today

Matthew Xuereb, President, Institute of Maltese Journalists (IGM)

³ <https://gdpr.eu/right-to-be-forgotten/?cn-reloaded=1>

⁴ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf>