

SUBSIDIARY LEGISLATION 350.26

**REQUIREMENTS AS TO STANDARDS AND
PRACTICE ON THE PROMOTION
OF RACIAL EQUALITY**

30th April, 2007

GOVERNMENT NOTICE 413 of 2007.

The title of these requirements is the Requirements as to Standards and Practice on the Promotion of Racial Equality. Citation.

International Law

Crimes of racial hatred as a limitation or restriction to freedom of expression are referred to in Article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination - which Convention has been adhered to by Malta - when it provides that:

"State parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.....".

The international community views with great alarm activities based on racial hatred so much so that the United Nations requires Member States to outlaw such conduct. There is also no doubt that such laws do impinge on freedom of expression. However, the mere fact that racist speech is involved does not automatically mean that a state can punish such discourse. If there is a threat to the democratic order or to the basic assumption of democratic states so that the interference with a person's speech is necessary for the protection of the rights of others and in the interest of national security, then the matter might take a different twist. In other words, freedom of expression as contained in both article 41 of the Constitution of Malta and article 10 of the European Convention of Human Rights and Fundamental Freedoms (as well as other international instruments such as the United Nations International Covenant on Civil and Political Rights, etc.) allows as an exception thereto certain discourse which falls within the limitations referred to in article 41(2) of the Constitution of Malta and article 10(2) of the European Convention of Human Rights and Fundamental Freedoms.

European Law

Apart from Article 10 of the European Convention on Human Rights and Fundamental Freedoms, reference is to be made to Article 7, paragraph 1 of the Council of Europe's Transfrontier Television Convention which states that:

"All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others. In particular, they shall not give undue prominence to violence or be likely to incite to racial hatred."

On the other hand, the European Union's Television Without Frontiers Directive states in Article 22a that:

"Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality."

During the meeting of the High Level Group of Regulatory Authorities in the Fields of Broadcasting held in Brussels on 17th March 2005, it was agreed between the European Commission and Regulatory Authorities in Europe that effective supervision of hate speech can only be guaranteed through strong cooperation between Regulatory Authorities in Europe.

Maltese Law

Maltese Law regulates racial hatred in the following laws:

Article 45 of the Constitution of Malta which prohibits discrimination on the grounds of race. No law can make any provision that is discriminatory either of itself or in its effect. Article 45 (3) defines discriminatin as follows:

"45. (3) In this article, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description."

Article 14 of the European Convention of Human Rights and Fundamental Freedoms also prohibits discrimination as follows:

"14. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 82A of the Criminal Code reads as follows:

"82A. (1) Whosoever uses any threatening, abusive or

insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up racial hatred or whereby racial hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

(2) For the purposes of the foregoing subarticle "racial hatred" means hatred against a group of persons in Malta defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

The Criminal Code also provides that in the case of several specified crimes* the punishment is increased by one or two degrees when the offence is racially or religiously aggravated, that is,

- a) if at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility based on the victim's membership which in relation to a racial or religious group, includes association with members of that group, or presumed membership (that is, membership presumed by the offender) of a racial or religious group; or
- b) the offence is motivated, wholly or partly, by hostility towards members of a racial group based on their membership as presumed by the offender to that group.

For the purposes of the Criminal Code, "racial group" means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins, and "religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

Article 6 of the Press Act reads as follows:

"6. Whosoever, by any means mentioned in article 3, shall threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their race, creed, colour, nationality, sex disability as defined in article 2 of the Equal Opportunities (Persons with Disability) Act, or national or ethnic origin shall be liable on conviction to imprisonment for a term not exceeding three months and to a fine (*multa*).

*The specified crimes where the punishment is increased as aforesaid are the case of wilful offences against the person (bodily harm, whether grievous or slight); threats; blackmail; private violence; causing explosion likely to endanger life or property; where death or grievously bodily harm is caused by the explosion; discharge, etc., of lethal device; arson endangering life; arson to the common danger; arson without danger of life; arson of vineyards, etc; destruction by the springing of a mine; and spoil, damage or injury in general.

Article 13(2)(a) of the Broadcasting Act reads as follows:

"13.(2) It shall be the duty of the Authority to satisfy itself that, so far as possible, the programmes broadcast by persons providing sound or television broadcasting services in Malta comply with the following requirements, that is to say:

- a) that nothing is included in the programmes which offends against religious sentiment, good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling.

Legal Interpretation

In this respect, article 13(2)(a) of the Broadcasting Act when read in conjunction with article 82A of the Criminal Code do not violate freedom of expression even if they tend to restrict its exercise within a democratic society which is based on the rule of law.

Bearing the above international, European and national law on the subject, the Authority has adopted these Requirements as to Standards and Practice hereunder in virtue of article 20(3) of the Broadcasting Act, Chapter 350 of the Laws of Malta, to assist local producers and broadcasters in their civic obligation to promote racial equality as well as when dealing with matters which might relate to racial hatred.

Requirements

1. Promotion of Racial Equality, Tolerance and Diversity

1.1 Broadcasters must be proactive by promoting racial equality in their programming.

1.2 Broadcasters must exert a judicious decision when selecting presenters and participants during a programme dealing with racism. In making such a selection, broadcasters must not invite persons with racist ideas and opinions.

1.3 In their programming, broadcasters are to foster a multicultural society. This could be done, for instance, by ensuring, as far as possible, that racial groups are represented by members of the racial groups themselves, and by providing space to inform on other cultures present amongst the Maltese population and their perception of the Maltese culture and attitudes.

1.4 When discussing multicultural issues, broadcasters are to include the views of persons from different ethnic and religious backgrounds rather than report their views second hand. Broadcasters must take into account the linguistic and cultural differences which may be experienced by the interviewee and all necessary steps must be taken to place the interviewee at ease and to reflect the interview faithfully.

2. Prohibition of Illegal Content

2.1 No programme may contain any matter contrary to law.

3. Respect for Human Dignity and Treatment of Racial Groups

3.1 Viewers and listeners have a right to expect that broadcasters will assume their responsibility to respect and to promote human dignity, in respect of both individuals and individuals as members of groups.

3.2 Individuals must not be exploited or caused unnecessary distress, nor should the audience be made to feel that they are mere voyeurs of others' distress.

3.3 The likely effects of both mis-representation and under-representation must be taken into account when portraying vulnerable racial groups.

4. Racial Hatred

4.1 Programmes that are likely to stir up racial hatred should not be transmitted. Programme schedules must give a fair reflection of the contribution of all races to society.

4.2 Racist terms are to be avoided. As insensitive comments or stereotyped portrayal cause offence, their inclusion is acceptable only where it can be justified within the context of the programme.

4.3 Careful account has to be taken of the possible effect upon the ethnic group concerned, as well as the population as a whole, and of changes in public attitudes to what is, and is not, acceptable.

5. Discrimination and respect for National and Ethnic Values

5.1 The presentation or portrayal of people in a way which is likely to encourage denigration of or discrimination against any person or section of the community on account of race, ethnicity, nationality or colour must be avoided. This requirement is not intended to prevent the broadcast of material which is factual, or the expression of genuinely-held opinion in a news or current affairs programme, or in the legitimate context of a humorous, satirical or dramatic work.

5.2 The broadcasting media must at all times be aware of the danger that arises when media, deliberately or by inadvertence, encourages discrimination and intolerance. Mindful of this danger, the broadcasting media have to be aware of the fact that they cannot incite or inflame hatred or inequality on grounds of ethnicity, nationality, race or colour, or incite criminal acts of violence as all these are prohibited by law.

5.3 The act of remaining impartial when citing events of racial hatred may be tantamount to supporting them. Hence all broadcasters must clearly state their position against racial discrimination.

5.4 Broadcasters are to avoid prejudicial or insulting references to a person's ethnic group, nationality, race or colour. Reference to a person's ethnic group, nationality, race or colour must be made only when directly relevant to the event being reported.

5.5 A broadcaster has to respect national and ethnic values. In

doing so, a broadcaster must not air material, which encourages discrimination on the grounds of ethnicity, race, nationality or colour.

6. Violence against specific groups

6.1 Broadcasters must not air programmes which sanction, promote or glamorise violence based on race, nation or ethnic origin or colour.

7. Political Opposition and Refugees

7.1 When reporting on countries where opposition to the government entails a risk to life and limb, broadcasters must always consider whether mentioning names or visual images could lead to the identification and persecution of the persons concerned. The same applies to reports on refugees. The broadcast of details identifying refugees, their escape routes and the manner in which they prepared and executed their escape might endanger the families and friends those refugees left behind or close escape channels for other refugees. Where in doubt the broadcasters should exercise utmost diligence to protect the identity of the refugee or asylum seeker. In accordance with the Data Protection Act, legally permission is to be sought for the printing or the broadcasting of a photograph of any person, and therefore such permission is to be sought beforehand.

8. Acts of violence covering ethnic disputes or clashes

8.1 News, views or comments relating to local ethnic or religious disputes or clashes must only be broadcast after proper verification of facts and must be presented with due caution and restraint and in a manner which is conducive to the creation of an atmosphere congenial to national harmony, amity and peace.

8.2 Sensational, provocative and alarming headlines and programming must be avoided.

8.3 News reports of commentaries must not be written in a manner likely to inflame the passion, aggravate the tension or accentuate strained relations between the communities concerned. Hence the use of inflammatory language and terms which put ethnic or religious groups into a negative light should also be avoided.

8.4 Programmes which could potentially exacerbate communal trouble must not be broadcast.

8.5 The juxtaposing of programmes aimed at reporting of negative news and promoting racial equality must be dealt with sensitively, bearing in mind the final impact on viewers and listeners.

9. What Broadcasters Ought To Do

9.1 Steer clear of exploiting prejudice.

9.2 Check the facts.

9.3 Do not let the broadcaster's news agenda be driven by the way others are handling the issue.

9.4 Look behind the story line.

9.5 Listen to the people the broadcaster is writing about.

9.6 Do not label if it is not relevant.

9.7 Take the longer term view into account.

9.8 Remember each person of different ethnic or religious background is entitled to respect of human dignity. Hence, they should be addressed with the same respect accorded to others.

9.9 Racial equality is a fundamental human right which the broadcaster and all viewers and listeners have a duty to observe.

10. Self-Regulation by the Broadcasting Media

10.1 Broadcasters should set up an easy-access complaints procedure and pro-actively inform the public and specifically vulnerable groups as to such procedure.

10.2 Media owners and registered editors should strongly support these Requirements.

10.3 Media owners should promote ethical standards amongst editors and journalists and raise awareness about these Requirements. Training on these Requirements should be a standard element of journalistic training.
