

Mandate of the Special Rapporteur on the right to privacy

REFERENCE:
OL MLT 2/2021

14 April 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolution 37/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the need for a comprehensive revision of the Security Services Act, Cap 391 (1996) to be in compliance with Malta's international human right law obligations** and strengthen good governance and the rule of law with regard to the oversight of the intelligence service in Malta.

In this connection, I recall my previous communication (OL MLT 2/2019 sent on 12 December 2019 and attached for your Excellency's convenience) in which I raised a number of concerns regarding the Security Service Act of 1996 and the need for reforms. While I thank your Excellency's Government for acknowledging this communication, I regret that I have not received a substantive response to date.

I welcome the recent development that Malta has deposited its instruments of ratification of *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, Treaty No 223 (CETS No.223) on the 20 November 2020 (Data Protection Convention 108+) with the Council of Europe. This is an excellent and timely step which is a clear example of Malta's reinforced commitment to the rule of law and international instruments.

I take this opportunity to remind your Excellency that, insofar as personal data and privacy are concerned, Article 11 of this treaty binds Malta to "*the requirement that processing activities for national security and defense purposes are subject to independent and effective review and supervision under the domestic legislation of the respective Party*".

While CETS No. 223 comes into force, at the latest, on 11 October 2023, it may be argued that Malta is already bound to implement these provisions since it is also a party to the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, Treaty 108 (ETS No.108) - of which Article 11 CETS No. 223 is simply an explicit reiteration of the safeguards expected in a democratic society.

I respectfully wish to highlight that, while Malta currently does not have a system in place which would pass muster as "*independent and effective review and supervision of data processing activities for national security and defense purposes*", it would do so if it were to implement, in full the recommendations outlined in my previous communication and in my letter sent on 21 January 2020, in which I proposed a meeting with your Excellency to discuss my proposals regarding legislative reforms.

I take this opportunity to very strongly recommend that your Government introduce without delay the much-needed changes in legislation resulting in the creation of properly resourced, fully independent structures including:

The Security Commissioner;

The Security Service Oversight Board/Intelligence & Surveillance Oversight Board; and

The Security Committee as a Committee of the House of Representatives

thus introducing the safeguards and remedies outlined in the detail in the proposed amendments to the legislation I submitted to the Government (OL MLT 2/2019, pgs. 4-20),

I respectfully submit that a comprehensive revision of the Security Services Act of 1996, as recommended in my previous communication would serve as timely confirmation of your Government's commitment to strongly reinforce the institutions responsible for safeguarding the rule of law in Malta.

This communication, as a comment on legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I remain at your disposal to discuss my concerns and recommendations outlined in this letter and for any other consultation., I may be contacted directly on my mobile phone [REDACTED], e-mail [REDACTED] and through Sonia Cronin, Human Rights Officer, Office of the United Nations High Commissioner for Human Rights (scronin@ohchr.org).

Please accept, Excellency, the assurances of my highest consideration.

Joseph Cannataci
Special Rapporteur on the right to privacy