

# Legally Speaking

EDITION I

## FREEDOM OF EXPRESSION; IS IT AN ABSOLUTE RIGHT?



**THIS YEAR'S WINNER; ANDREA FARRUGIA**  
Andrea Farrugia, a first-year law student, had his essay selected by Professor Tonio Borg from among 10 essays written by law students at various stages of the course.

**TIMES  MALTA**

After careful selection by Professor Tonio Borg, the winning essay was published on the Times of Malta.

### FREEDOM OF EXPRESSION

The nature of freedom of expression is public. As a right, while not binding, it is a given social fact.

“  
*Freedom of expression is a right, only until people stop expressing themselves.*  
”

**ELSA MALTA**

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The European Law Students' Association  
ELSA MALTA

The European Law Students' Association Malta, also known as ELSA Malta is an international, independent, non-political, non-profit making organisation run by and for students.

CREDIT IS DUE TO THE COMPETITIONS TEAM, NAMELY TO THOMAS SCIBERRAS HERRERA AND DAVID CAMILLERI, FOR ORGANIZING THIS COMPETITION.

# A Message from Our President

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**Jack Vassallo Cesareo**

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The Essay Writing Competition organized by ELSA Malta highlights the organization's dedication to bridging the gap between students and the legal profession. By providing a platform for students to engage with legal topics, share their perspectives, and contribute meaningfully, ELSA Malta fosters a culture of active learning and professional development.

Congratulations to Andrea Farrugia for his outstanding contribution as the competition winner. I also commend all participants for their commitment to academic excellence and passion for the law. Special appreciation is extended to the Competitions Office and all those who contributed, for their innovative approach in engaging with students.

This Competition not only enriches participants' academic experiences but also advances legal discourse. Looking ahead, initiatives like this will continue to shape the next generation of legal professionals and promote excellence within the field.

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# A Message from Our Competitions Team

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**Thomas Sciberras Herrera**

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This year, as the Competition Office, our aim was to promote the student into the legal World. Moreover, the key to a successful competition is in fact exposure, the prize and the integrity of the competition itself. The prize being a publication in Malta's most read and prestigious newspaper, Times of Malta, is the best exposure we could have offered to the students. Whereas the competition was one of integrity, as the winning essay was chosen by Prof Tonio Borg. I would like to personally thank Times of Malta's Chief Editor Mr Herman Grech and Prof Tonio Borg for believing in this project, Alec Carter and Saskia Cassingena for the publication and finally I would like to thank all the participants for such great essays and congratulate Andrea Farrugia for a brilliant essay.

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**David Camilleri**

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ELSA Malta's Essay Writing Competition is one which adopted a different approach this year, securing excitement and student participation through the awarding of a prize that ensures quality work, which is precisely what students put forward. This competition was one to cherish, for it saw the production of 10 essays which tackled the question each in its own way, in turn setting the standard high. To that end I congratulate Andrea Farrugia for the winning contribution, and I would like to thank everyone involved, especially the participants. I look forward to future volumes!

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ELSA MALTA

# **The Freedom of Expression**

*Is it an Absolute Right?*

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**Legally Speaking – Vol. I**

*By*

ELSA Malta

# Foreword

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ELSA Malta's 2023-34 Competitions Office sought to give life to a new strain of academic contest – wherein a legally-pertinent essay title would be disseminated to University law students who would thus endeavour at penning a stellar entry with regards to the chosen topic.

ELSA Malta forwarded five essay titles to the Times of Malta in hopes of them agreeing to the notion of publishing the winner's entry on their platform. To everyone's delight, the idea was embraced with open arms by the Editor in Chief – Herman Grech. And thus, a single title was picked by Times of Malta, and *Legally Speaking* marched ever so closer to fruition.

Needless to say, Times of Malta chose a fitting title: *The Freedom of Expression; Is it an Absolute Right?*

The competition was fervently advertised, and ELSA Malta managed at securing the erudite wisdom of Prof. Tonio Borg – who kindly accepted to read all forwarded entries in order to select the best of the bunch, which was later on published by the Times of Malta.

What follows is an account of all the entries submitted by a total of ten competitors.

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*The following script documents the entries of all competitors who took part in Legally Speaking (Vol. 1). The table of contents purports the names of each writer, alongside the respective page upon which their writing is inserted.*

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## **Andrea Farrugia – *Winner***

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It was a somewhat cold morning on the 25th of September. The year, 2018. Thick grey hovered over the long Strada Reale. A small banner, just in front of the law courts, bearing the word ‘Justice’ alongside the flag of Malta, were situated under The Great Siege Monument. Alongside it, several plastic candles, and flowers. Later in the evening of that same day, all of it, would disappear.

Those flowers, candles, flags of Malta, and banner decrying ‘Justice’ were nestled under a medium sized black and white portrait of a real-life person. They would appear, and disappear, again, and again. The Minister of Justice at the time argued that the nature of ‘freedom of expression’ may be restricted in so far as statute law may be concerned. The Cultural Heritage Act protects national monuments from any act or neglect, which may alter the appearance of a listed ‘national monument’.

It sprung a court case. Concluded that it violated the nature of free expression. It specifically violated Article 41 of the Constitution of Malta, and Article 10.1 of the European Convention.

Article 10.1 of the European Convention is very straight forward; “Everyone has a right to freedom of expression.” is the very first thing it proclaims. Then, it continues; “This right shall include freedom to hold opinions... to receive... impart information and ideas without interference...” and so on. The manner of establishment is as follows; first, freedom of expression, then the essence of expression.

Let’s go beyond. The United Kingdom secures the right to Free Expression in Article 10 of the Human Rights Act of 1998. It first establishes; “Everyone has the right to freedom of expression.” Then, that the right includes “opinions and to receive and impart information and ideas without interference by public authority.” The Italian Constitution is very succinct; “Tutti hanno diritto di manifestare liberamente il proprio pensiero con la parola.” It first establishes the ‘right to demonstrate freely’, followed with the ostensive essences such as ‘speech’, ‘writing’, and any other ‘diffusion’.

Article 41 (1) of the Constitution of Malta is, first and foremost, much longer in text than the concise drafting of the previous statutes. Secondly, it does not establish freedom of expression first. Instead, it starts by declaring the exception; “Except with his own consent or by way of parental discipline”, then it follows with “no person shall be hindered in the enjoyment of his freedom of expression”, then the ostensive, “to hold opinions without interference... to communicate ideas and information”.

For Article 41 to establish the exception to the rule first, then the rule itself, is one such unravelling of the intentions behind the law. Or, to ask the question; “why even write the law like that?”

What are the exceptions to the rule? Besides the matter of “his own consent” and “by way of parental discipline”, which are both personal private matters. The nature of freedom of expression is public. As a right, whilst not binding, it is a given social fact.

If there is a complete and total opposite of such drafting, it would be the First Amendment to the Constitution of the United States. It immediately declares; “Congress shall make no law”, before the matter is even introduced. Immediately after, the first establishment is interestingly not free expression but the specific establishment of religion. Then the “free exercise” of speech, the press, and so on.

Freedom of expression, at least in Malta, is an absolute right, only until it isn't. For the Minister of Justice to argue that Freedom of Expression may be restricted, despite the courts referring to Constitution and the European Convention, is itself a small but noteworthy detail. In the United States, unlike Malta, First Amendment absolutists stand and affirm that there shall be “no law” that breaches the right. Rights, in Malta, in so far as they are concerned, are only right until someone somewhere commits to a wrong. The ‘wrong’, with regard to Freedom of Expression, exists in *Dr Anton Buttigieg vs. Dr Paul Borg Olivier*, where the court decided that restrictions to freedom of expression, if they are to exist, must do so in written law.

Therefore, Article 82A of the Criminal Code, which restricts expression in matters relative to “any threatening, abusive or insulting words or behaviour” specifically with the intent to stir up violence or hatred, the so-called Hate-Speech law, exists with such jurisprudence in mind. People have been arrested and arraigned in court specifically because of hate speech. Malta, of course, is not the only country to legally enact restrictions on the basis of hate crimes.

Yet, the one which conjures even more controversy is that of censorship, with respect to vulgarity and obscenity. But what is vulgar to the eyes of the law? In the United States, Justice Potter Stewart, presiding over the case of *Jacobellis*, would famously exclaim “I know it when I see it.”. Obscenity is itself tricky. As it may be subjective, unless the law is clear in its protection of freedom of expression. Burning the American flag may be vulgar and obscene, yet, as the textualist Justice Antonin Scalia would profusely side, 5-4, in the case of *Texas vs. Johnson*, ruling that desecrating the flag is protected by the First Amendment.

The wrongs often committed is when the people on the other end, no matter the delivery of the right, are made lesser than the sum. I may have the right to be free in my speech, but it goes further than merely speaking freely. One may be free, but as Rousseau would say, everywhere we are bound by chains.

Was it obscene to decorate a public monument? Was it a hate crime to then remove the flowers? The courts made it clear in *Delia vs. Minister of Justice Owen Bonnici*. The restriction were itself a farce. Yet, as it is understood, that the exception defines the subject holistically.

Freedom of expression is a right, only until people stop expressing themselves.



# Julian Mifsud

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At face value, the freedom of expression is a cornerstone of every democratic state. It is a pillar which really and truly enables the system of democracy to work it wonders across the world. Although freedom of expression is cherished and at times idolized, it does have its limitations which begs the question; can there be consequences for one who does express themselves freely?

At its core, freedom of expression encompasses the right to articulate ideas, share information, and engage in open dialogue without fear of censorship or reprisal. This freedom empowers individuals to challenge the status quo, voice dissent, and contribute to the diversity of thought that underpins a thriving democracy.

Malta enshrines this fundamental human right in Article 41 of the Constitution. Despite the fact that it states “except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence”, the constitution does outline limitations for the freedom of expression which are designed to strike a balance between the protection of individual rights and the broader interests of society. The fundamental rationale underlying these restrictions is straightforward: the harm principle. This principle is based on the acceptable exercise of power over any individual in a society is solely justified to avert harm to others. Asserting post hoc that one did not intend to cause harm does not constitute a valid defence.

The legal framework governing freedom of expression in Malta and the EU is primarily established through national legislation and the Charter of Fundamental Rights of the European Union. Article 11 of the Charter explicitly enshrines the right to freedom of expression and information but also acknowledges that these rights may be subject to limitations.

## **Limits on Hate Speech:**

One of the well-defined limits on freedom of expression in both Malta and the EU is the prohibition of hate speech. Hate speech, which targets individuals or groups based on attributes such as race, religion, ethnicity, or sexual orientation, is considered a threat to social cohesion and can incite violence or discrimination.

Malta has implemented legislation criminalizing hate speech, and EU directives require member states to adopt measures to combat hate speech, including through criminal law where necessary. In fact, the recent amendments to Articles 82 and 251 of the Criminal Code have introduced a firm hand in combatting hate speech. This can be seen in the case *Pulizija vs David Muscat*, where the Court of Criminal Appeal decided to overturn the previous verdict and punish the accused for using hate speech.

## **National Security and Public Order:**

The protection of national security and public order is another area where the limits of freedom of expression are evident. Both Malta and the EU recognize that certain forms of expression, such as speech that incites violence or poses a direct threat to national security, may need to be restricted in the interest of public safety.

However, the challenge lies in ensuring that these limitations are not used to stifle dissent or curtail legitimate political expression. Striking the right balance between security concerns and the protection of democratic values is an ongoing challenge for legal systems across the EU. This was demonstrated recently in the arrest of Andre Callus, who was protesting against the uprooting of trees in Mosta and the public's opinion who believed that the arrest should not have even occurred due to Callus' right to express himself without having the fear of being put in handcuffs.

### **Defamation and Privacy:**

Freedom of expression also comes into conflict with the rights of individuals when it comes to defamation and privacy. While the media plays a crucial role in holding power to account, there is a need to balance this with the protection of an individual's reputation and right to privacy. The right to freedom of speech is intrinsically tied to the right to defend one's reputation.

All EU member states, including Malta have defamation laws in place, and the European Court of Human Rights has emphasized the need to find a fair balance between the right to freedom of expression and the right to respect for private life. The limits of freedom of expression in Malta and the EU reflect the complex task of balancing individual rights with the broader interests of society. While restrictions on hate speech, national security grounds, and protection of individual rights are necessary, there is an inherent tension between safeguarding these rights and avoiding undue censorship.

In recent years, a new tactic used in defamation litigation cases has become a problem for the media. Strategic Lawsuits Against Public Participation (SLAPPs) have emerged as a controversial tool used by powerful entities to curtail freedom of expression and intimidate individuals or groups engaging in public discourse. While ostensibly framed as legitimate legal actions, SLAPPs are often thinly veiled attempts to silence critics through the burdensome litigation procedures held in faraway jurisdictions solely aimed at forcing defendants to incur exceptionally high legal costs to defend themselves against defamation cases. Media houses in Malta who would be faced with these actions would prefer not to publish an article or news item for fear of facing the risk of being forced to pay considerable damages awarded by courts outside Malta and face also financial ruin.

In 2017, the Media and Defamation act had a complete revamp, but still has a long way to go to protect journalists and media houses from SLAPPs and defamation cases. The EU is working hard in creating Anti-SLAPP measures which will block SLAPP actions and make these defamation judgements unenforceable.

Despite the Freedom of Expression being a fundamental human right in democratic states, it is not absolute. While the freedom of expression will always remain a pillar of democracy, finding the balance between allowing citizens to freely express themselves without the fear of any consequences for doing so and the State prioritizing the protection of every citizen's individual rights being of utmost importance shows that the freedom of expression must have its limitations.

## Amy Zammit

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Freedom of expression is fundamentally important in a democratic society. The right to freedom of expression gives citizens the right to form opinions, thoughts, and ideas without fear of being punished. This right is enshrined in a variety of legislations, including the 1964 Constitution of Malta and the Universal Declaration of Human Rights of 1948.

Although undeniably important, the question that arises is whether this right is absolute. Absolute human rights are those which cannot be restricted. The question of whether this is an absolute human right is debatable; however, it can be said that freedom of expression is not an absolute human right, as it has limits. Without these limits, absolute freedom of expression could allow and promote hate speech, and false information that could possibly cause damage to both the public's safety as well as individual human rights.

The right to freedom of expression finds protection not only in Article 41 of the Maltese constitution but also in Article 19 of the Universal Declaration of Human Rights, which means that this right is not only protected in Malta but all over the world. Article 11 of the EU Charter of Fundamental Rights does not only mention the right to freedom of expression but also includes "the freedom and pluralism of the media."

The right to freedom of expression is applicable to all individuals, as Article 41(1) states "no person," meaning that "everyone according to this article enjoys the right of protection of freedom of expression." This can be seen in the case of *Police vs. Massimo Gorla* (1986). In this case, the Foreign Interference Act of 1982 went against Article 42 of the Constitution, as every person has the right to freedom. "The courts of constitutional competence... [declaring] void laws enacted by Parliament either because they were inconsistent with the constitution or with the ECHR as incorporated in the European Convention Act."

This right is crucial for several reasons. In the case of *Joseph Muscat vs. Lawrence Gonzi et* (2016), magistrate Dr. Francesco Depasquale quoted from the case of *Lindon Otchakovsy-Laurens and July Vs. France* decided by the European Court of Human Rights in October 2007, that "Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment." Freedom of expression empowers citizens to shape their society by voicing their opinions without fear. Citizens are not only allowed but also encouraged to participate actively. Even though citizens have the right to vote in both elections and referendums, through active participation, they do not have to wait for opportunities that only come around once in a blue moon. The right to freedom of expression allows people to speak up. When citizens don't agree with what is happening protests and demonstrations are held. Citizens can exercise their right to freedom of expression in various ways. For instance, through art, using the internet, putting it down in black and white, or even by spoken communication. The right to freedom of expression also gives those in minority groups the opportunity to make people aware, especially when everyone in a democratic society should be treated equally.

Even though this right is protected, in practice it faces certain challenges. For instance, the strategic form of litigation of SLAPP. In addressing the necessity of protecting freedom of expression, it is vital to tackle the issue of SLAPP lawsuits, which through their calculated use of legislation, may limit public participation and silence opinions that go against what is currently being said.

The European Commission has come up with an anti-SLAPP directive, which “safeguards against strategic lawsuits against public participation (SLAPPs) and threats thereof.”

This right also has limitations in terms of eliminating the possibility of abuse. Article 41 of the Constitution of Malta states that freedom of expression is limited when it is "in the interests of defence, public safety, public order, public morality or decency, or public health; or for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or that imposes restrictions upon public officers.”

This provision can be seen as seeking to strike a balance between the right to express oneself freely and the broader interests of society and individuals, taking into account the larger perspective. There is a need to find an appropriate balance between freedom of expression and protection of society from harm.

What is hate speech? Hate speech is “any kind of communication is speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.” Our courts also indirectly refer to hate speech in the case ‘The Police Vs. Michael Leonard Paul Hammond’ decided by Hon. Judge Edwina Grima (2023) “attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combatting racist speech in the face of freedom of expression exercised in an irresponsible manner.” Meaning that discrimination based on sexual orientation is as grievous as any other type of discrimination. It is important to differentiate between speech that is intended to promote ferocious behaviour, and speech that challenges the situations at hand. With that being said, “The law recognises that the right to freedom of expression includes expressions of views and opinions that offend, shock and disturb.”

Currently, people are encouraged to exercise this right on social media platforms. These platforms typically have their own set of rules that users must follow. Usually, these rules would ban hate speech, harassment as well as posting false information. If users don’t follow these rules, the social media platform has the right to act against those users who do not follow their guidelines. As social media continues to evolve, it is not easy to fully control everything being said on social platforms, and laws and regulations dealing with what is said online are continuously evolving.

In conclusion, although fundamental, the right to freedom of expression is not absolute, given its necessary limitations. This right “must come first because our right to speak freely is a prerequisite for all of our other freedoms – and for living in a free society.”

# Martina Sammut

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In the intricate tapestry of human rights, freedom of expression stands out as fundamental and contentious. Societal balance between individual liberties and collective well-being prompts the question: Is freedom of expression an inviolable and absolute right, immune to any legal constraint? The inquiry delves into the heart of democratic values, constitutional protections, traversing jurisprudence, ethics, and social norms.

In this write-up, we navigate the contours of this cherished freedom, scrutinizing its limits and pondering the profound implications of whether it stands as an untouchable pillar in the edifice of human rights or requires nuanced consideration in the face of competing interests. This essay will unravel the complexities surrounding the pivotal question: Freedom of Expression – Is it an Absolute Right?

To comprehend the query at hand, a retrospective examination of freedom of expression's origins is merited. The concept of freedom of speech has evolved through historical milestones across different cultures and periods. In ancient Greece, the democratic principle of speaking freely, termed *parrhesia*, allowed open discussions on politics and religion, as well as critique of the Government. The Roman Republic and the Magna Carta laid the groundwork for limited governmental power. The 17th-century struggles in England, the Enlightenment philosophers like Voltaire, and the American and French Revolutions further solidified individual rights and freedom of expression. The United States specifically enshrined freedom of speech in the First Amendment to the Constitution. Collectively, these historical developments have shaped the modern understanding and protection of freedom of speech as a fundamental human right in democratic societies.

In modern times, the enshrinement of freedom of expression in international and national legal instruments underscores its significance. At the international level, the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 explicitly recognizes the right to freedom of opinion and expression in Article 19. Similarly, the International Covenant on Civil and Political Rights (ICCPR), which came into force in 1976, reaffirms the right in Article 19, emphasizing its importance to democracy. The European Convention on Human Rights (ECHR) is another significant international instrument that upholds the right to freedom of expression under Article 10, affirming the right to share opinions and information without undue interference. While emphasizing its importance in a democratic society, the ECHR permits restrictions for specific reasons, with the European Court of Human Rights adjudicating cases to ensure the protection and interpretation of this fundamental right.

Many countries also incorporate the protection of freedom of expression into their national constitutions or legal frameworks. In various democratic nations, legal provisions and constitutional guarantees that individuals have the right to express their thoughts, opinions, and ideas without unwarranted censorship or Government interference.

In line with these international and regional treaties, Malta protects freedom of speech through constitutional provisions outlined in its 1964 Constitution, which acknowledges fundamental rights while allowing limitations for reasons such as public order and national security. Media and defamation laws further define the boundaries of free expression, aiming to balance the right to speak freely with protections against defamation.

Additionally, Malta is a signatory to the European Convention on Human Rights, providing individuals with recourse to the European Court of Human Rights for cases related to freedom of expression.

While unquestionably pivotal and often hailed as a cornerstone of democratic societies, freedom of expression is subject to limitations and restrictions aimed at safeguarding other crucial values and interests. These constraints typically focus on preventing harm to individuals, maintaining public order, safeguarding national security, and protecting against defamation. Legal systems regularly engage in a delicate balancing act, weighing the significance of free speech against potential harms in specific contexts. For instance, societies that highly value freedom of speech may still restrict expressions that incite violence or pose an immediate threat to public safety. These limitations are not arbitrary infringements but rather calibrated responses to maintain the delicate equilibrium between individual liberties and broader societal welfare.

The digital age introduces a new dimension to the discourse. Digital technologies can, and indeed should, support the right to and serve open and public debate to protect and enhance democracy. Social media platforms, once heralded as bastions of free expression, grapple with the responsibility of curbing misinformation, hate speech, and cyberbullying. The clash between the absolutism of free speech and the necessity of maintaining a safe online environment brings forth a paradigm shift in the traditional understanding of this right. Achieving a delicate equilibrium between fostering open dialogue and mitigating potential harms remains a pivotal aspect of navigating the intricate landscape of freedom of speech in the digital age.

The European Court of Human Rights underscores the vital roles of a free press in a democratic society and emphasizes the media's editorial freedom. The Committee of Ministers has issued various recommendations such as CM/Rec(2022)11 and CM/Rec(2022)4, stressing the importance of media freedom, editorial independence, and a conducive environment for quality journalism. Moreover, Maltese legislation seeks to address the idea of online freedom of expression through Article 3 of the 2018 Media and Defamation Act. Simultaneously, it tackled issues of hate speech, incitement of racial hatred, and related concepts using Article 82A of the Criminal Code.

The exploration of whether freedom of expression is an absolute right transcends a mere legal inquiry; it is a philosophical and societal exploration. Rather than framing it as an all-or-nothing proposition, a case-by-case approach becomes imperative. Ultimately, the answer may lie not in the pursuit of absolutes but in the art of finding equilibrium – a delicate balance between freedom and responsibility to sustain this vital human right in democratic societies.

## Pearl Ebejer

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The nexus between theories of freedom of expression and its link with democracy is widely acknowledged. Many argue that an increase in freedom is inexorably linked to the advancement of democratic principles, thus proposing that whatever advancement occurs are a natural response to societal aspirations. However, on the other hand, the European Court of Human Rights exemplifies this approach by routinely endorsing government-imposed restrictions within the framework of the European Convention of Human Rights. While recognizing the fundamental right to freedom of expression, the court maintains that this right is not without limitations, reinforcing the notion that context is paramount.

The term ‘absolute’ means that the State cannot derogate from or impose restrictions on the right in any way or for any reason. There are, however, exceptions to this rule which is that the opinion must be expressed in a manner which respects public safety and also in a way that respects the freedoms and rights of others.

Article 10 of the European Convention on Human Rights provides that everyone has the right to freedom of expression. This freedom also encompasses within it the right to hold opinions and to receive information without interference. However, the second sub-article provides that these freedoms are subject to limitations that are required in a democratic society. Therefore, these derogations must be employed in the interest of the public and the integrity of the State. The law, both nationally and internationally, seeks to sanction that which is unreasonable in a democratic society. Section 41 of the Maltese Constitution provides that “reasonably required” force is to be used with regards to the derogations, and Article 10 of the Convention requires “formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society”.

When one speaks of reasonableness this must be exerted with no more force than is justifiable in a democratic society. Furthermore, there flows a point of proportionality, something that has been extensively developed by the European Court of Human Rights. The interference with freedom of expression must be proportionate to the legitimate aim pursued. Therefore, a public interest element must be present, however, this is somewhat a very subjective test. To counter this, five statutory permissible derogations have been revealed these being; the restriction has to be contained in a law; the measure must be valid; the restriction must be authorized under the law; the law must be in the public interest, and the measure must be reasonably required in a democratic society.

Of course, in a democratic state, there needs to be a balance between the interests at stake. The determination of a public interest element or pressing social need is usually incumbent also to whether the reasons put forward are relevant and sufficient. In a national context section 41 of the Constitution does provide such a balance but due to the nature of the drafting of the provision postulates the idea that almost everything can be sanctioned. Consequently, this makes the individual very skeptical about how much of his freedom of expression is actually protected. Indeed, in various legal contexts, freedom of expression is not considered a supreme right but rather one that needs to be weighed against other rights. It is fundamental to note that the right to freedom of expression does not automatically supersede the right to human dignity. The legal landscape suggests that these rights coexist within a delicate balance, each warranting protection within its respective context.

Reasonable limitations are a sine qua non because too much freedom will eventually lead to chaos. Unfortunately, frequently it results that sanctions transcend reasonableness in certain situations. In various decisions taken by the European Court of Human Rights relating to the disclosure of information by journalists, the extreme application of restrictions is more clearly seen. Journalists inhibit the right to not disclose their sources, and this is often violated; however, it is to be noted that this is not a mere privilege but part and parcel of the right of information. If the revealing of sources, whether lawful or unlawful, were to be a criterion that determines whether such information is to be sanctioned or not, then it would go contrary to one of the main facets that underpin the rule of law concept, which is that of transparency. Moreover, with regards to censorship as a mode of interference, the penalties imposed on journalists should not amount to a form of censorship intended to discourage the press from expressing criticism.

Therefore, freedom of expression possesses a dual nature that extends beyond merely resisting governmental constraints. While its negative facet serves as a safeguard against state-imposed limitations on expression, its positive dimension necessitates proactive measures by governments to protect and enhance this fundamental right. These affirmative actions fall into two primary categories. Firstly, governments may be obligated to intervene to prevent private entities from impeding the free expression of others. This form of protection involves the state taking action to investigate or prevent attacks on media outlets or individuals by non-governmental actors. International courts have frequently asserted that states must play a role in safeguarding individuals from such interferences.

On the other hand, positive measures require governments to implement policies that contribute to the free flow of information and ideas within society. This involves the establishment of frameworks, such as licensing systems for broadcasters, aimed at ensuring media diversity and preventing concentration. An exemplar of this positive obligation is the recognition of the state's duty to create legal frameworks enabling public access to information held by government bodies. It is crucial to note that the traditional three-part test for restrictions on freedom of expression is inadequate for evaluating these positive obligations. In instances where the state is expected to take proactive steps, a different evaluative approach is necessary. Courts must consider the fair balance between the general interest of the community and the individual's rights, acknowledging the diverse situations within contracting states and the complexities of managing modern societies. The scope of these positive obligations varies based on the circumstances in each country, the challenges inherent in governing contemporary societies, and the choices governments must make in terms of priorities and resources.

In conclusion, freedom of expression is the lynchpin of every democratic state. Without such liberty, the individual would be forced to live in the confinement of not being able to express himself. Every state must consider the relevance of such a fundamental right, and although having its limitations, and these being important, it should be considered as indispensable as any of the other rights.



## Raoul Ciappara

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The cherished tenet of freedom of expression, a cornerstone of human rights, finds sanctuary in international and domestic legal realms. Globally, its sanctity is enshrined within the hallowed text of the United Nations' 'Universal Declaration of Human Rights,' articulated in Article 19. Closer to home, the European Convention on Human Rights, an emblem of continental commitment, echoes this sentiment in Article 10. On the sovereign shores of Malta, the cradle of individual liberties, our constitution, a testament to democratic ideals, reverently safeguards this fundamental right beneath the provisions of Articles 41 and 42. In this mosaic of legal guarantees, the symphony of free expression harmonizes across borders, resonating as an intrinsic and universally recognized human right.

Censorship practices vary widely across countries, reflecting diverse cultural, political, and social norms. In more authoritarian regimes, such as China and North Korea, strict controls on information aim to maintain government authority and suppress dissent. These nations employ extensive internet censorship, restricting access to certain websites and monitoring online activities. In contrast, some Western democracies, like the United States and many European countries, grapple with the delicate balance between freedom of expression and the need to curtail hate speech or misinformation. Each nation's approach to censorship reflects its unique historical context, values, and the ever-evolving dynamics of global communication.

In the realm of Maltese jurisprudence, a discernible and evolving legal paradigm has emerged, underscoring a steadfast commitment to the principle that hate speech finds no sanctuary within the bounds of permissible expression. Through a nuanced interpretation of legal tenets, the Maltese judiciary has woven a narrative wherein the repudiation of hate speech is not merely a matter of legal proscription, but a principled stance grounded in the safeguarding of fundamental human rights.

This position can be seen to take fruition in cases like *Il-Pulizija vs Brandon Bartolo*, decided by the Court of Criminal Appeal on the 17th of January 2019. In this case, Mr. Bartolo had been found guilty of writing hateful comments on the online platform Facebook, targeting a twenty-one-year-old Muslim woman, subsequently landing Mr. Bartolo an incarceration term of six months, suspended for two years. One might be of the opinion that Mr. Bartolo was exercising his fundamental right of freedom of speech. However, the court in this instance has shown that freedom of expression is not an absolute right that allows one to shout "fire, fire!" in a crowded room to get a kick out of watching the surrounding people panic. The court did indeed comment that freedom of expression is fundamental in a democratic society and that its restriction should be kept to a minimum; however, the court expertly showed that the person to whom such speech is aimed at also has rights. Among others, the person receiving such comments has the right to protect his or her own reputation and the right not to be ridiculed or attacked on the basis of one's race, ethnicity, religion, or gender. Therefore, the court here is saying that one may exercise his or her fundamental right to freedom of expression within the limits of not impinging on another person's fundamental human rights.

Maltese legislation has evolved significantly to mirror the steadfast stance taken against racism and hate speech, exemplifying a proactive response to the potential harm that can arise from the misuse of freedom of speech. This legal development underscores a recognition of the imperative to balance the protection of free expression with the prevention of actions that may incite discrimination, violence, or hatred.

The commitment to combat racism and hate speech is evident in the legal frameworks that have been established, with provisions such as Article 82A of the Criminal Code, Chapter 9 of the Laws of Malta, expressly targeting individuals who engage in threatening, abusive, or insulting behavior with the intent to stir up violence or hatred against others on various grounds, including race, gender, and religion. It truly is a sign of the time when such an article was introduced by Act LXV of 2021, further highlighting Malta's ongoing fight against hate speech, which is rife in the current social and economic situation of the island.

By adapting and enhancing legislation to address these issues, Malta demonstrates a commitment to fostering a society that values inclusivity, diversity, and respect for all individuals. The evolution of legal provisions serves as a clear signal that while freedom of speech is a fundamental right, it is not absolute, and the law seeks to strike a balance that safeguards against the misuse of this freedom to perpetuate harm or discrimination.

SLAPP cases, or Strategic Lawsuits Against Public Participation, represent another form of insidious abuse of freedom of speech. These legal maneuvers are orchestrated to stifle dissent, activism, or public discourse by burdening individuals or entities with the onerous costs and stress of litigation. Functioning as a coercive tool, SLAPP cases are characterized by their lack of substantive legal merit, serving primarily to intimidate and silence critics. This strategic abuse of the legal system not only inhibits the open exchange of ideas but also creates a pervasive chilling effect on free expression. The financial and emotional toll imposed on defendants in SLAPP cases is wielded with the calculated aim of deterring others from engaging in similar public participation. Recognizing the threat to democratic discourse, legal reforms, including anti-SLAPP statutes, are crucial in safeguarding the foundational principles of free speech and civic engagement.

Evident in a poignant episode, the proprietor of Satabank initiated legal proceedings against Manuel Delia in February 2020. Delia, shedding light on a police investigation into the bank through a blog post, faced legal threats from the bank's legal representatives. Despite Satabank ultimately losing the case in Bulgaria, the ordeal became a testament to the manifest abuse of legal processes. Delia, having expended considerable resources, exemplifies the formidable challenge confronting journalists which is a threat persisting to this day. This episode underscores the delicate balance between investigative journalism and legal reprisals, echoing broader concerns about the suppression of free expression through strategic legal maneuvers.

While freedom of expression is a fundamental human right, its exercise must be tempered by responsible boundaries. Unrestricted, it can be a potent force for discord and harm. In our interconnected world, words wield unprecedented influence, necessitating a delicate balance between individual expression and societal well-being. Advocating for nuanced limitations doesn't negate dissent but underscores the responsibility tied to free speech. The true strength of expression lies in fostering diverse ideas within the bounds of respect and understanding. Acknowledging these limits safeguards freedom of expression, ensuring it remains a catalyst for progress, enlightenment, and unity rather than division.

## Luca Camilleri

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The right to express oneself, though fundamental, is not absolute, in the sense that there exist circumstances the result of which being that one cannot rely on the said right to relieve oneself from liability. Ergo, a more appropriate question would be whether it should be absolute. Unsurprisingly, the answer is also no. This may come as a shock to those who view their rights as hard-fought and ironclad. In truth, this right, so often the subject of rigorous debate, does indeed have its limitations, as all rights do.

The question as to what a right is remains debated in legal and moral philosophy and its answer certainly falls outside the scope of this essay. However, it is understood that the possessor of a right has more “power” than the simple beneficiary of a duty (this idea of rights being given – it is argued – outsized weight is why advocacy groups often ground their arguments in the existence of them) and because of this perceived power, it is worth exploring where rights originate from.

Natural rights and legal rights are two leading theories on this front, and it follows that the dichotomy between the two is worth investigating. Natural rights, according to, amongst others, Thomas Aquinas, and John Locke, are intrinsically part of the human condition and therefore cannot be derogated from as they are granted to us all by virtue of being human. Conversely, legal positivists such as Hans Kelsen and Joseph Raz reject the link between law and morality created by natural law. Instead, the law – and by extension human rights – is the product of a hierarchical structure that may or may not be influenced by societal norms. To that end, if a right, in this case the freedom of expression, can be granted by a superior entity within this structure (take, for example, a constitution or the edict of a sovereign), it can just as easily be retracted – either in whole or in part – by the said entity.

Today’s legal world has since moved past such binary thinking, with its members making use of a combination of both theories in their work. Ultimately, whether law can be entirely separated from morality is a philosophical question that does not have a definitive answer. Different legal theories and perspectives offer varying insights into this relationship, reflecting the complexity of the interaction between law, morality, and societal norms. What is certain is that, especially following the Enlightenment and the Second World War, a need was felt to codify these fundamental human rights, giving them a solid basis in positive theory.

The right to speak freely in Malta is enshrined in both Article 41 of the Constitution of Malta and Article 10 of the European Convention of Human Rights (ECtHR), and is an umbrella term, including, *inter alia*, the freedoms to hold opinions, receive and communicate ideas and information without interference, and the freedom from interference with one’s correspondence. What’s more, as held in the case of Eddie Fenech Adami, Leader of the Nationalist Party for and on behalf of said Party v. Commissioner of Police and the Hon. Prime Minister, the Constitutional Court has held that the Constitution creates a corresponding positive obligation on the State to protect those exercising these freedoms from both State and non-State entities seeking to disrupt them. Further still, these rights are not exclusive to Maltese citizens, but are enjoyed by anyone within Maltese territory.

Both documents, and others, include derogations to this right. In the case of Hon. Dr Anton Buttigieg v. Hon. Dr Paul Borg Olivier et al the Privy Council held that any restriction on a right must be contained in a law. This requirement, alongside the fact that the restriction must be lawfully done under the authority of said law, must be reasonably required, must be in some public interest expressly mentioned in the Constitution, and must be reasonably justifiable in a democratic society, are known as the five tests for a permissible statutory derogation; all of which must be satisfied to avoid breaching one's Constitutionally safeguarded freedoms.

Interestingly, it is worth noting that the final criterion is independent from the third and introduces a political concept. Ultimately, as individuals we live within a society and as such our needs must be balanced against those of our fellow members and of the society as a whole. This balance, or the failure to maintain it, was referred to by the European Court of Human Rights in the case of Amato Gauci v. Malta where it was held that "the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right". To that end, both the Constitution and the ECtHR state that their respective formulations of the freedom of expression are without prejudice to any other provisions of law promulgated to protect the interests of defence, public safety, public order, public morality or decency, or public health.

Thomas Hobbes, in his social contract theory, highlighted the need for individuals to surrender some of their freedoms to a governing authority in exchange for security and order within the community, emphasizing the importance of doing so in the maintenance of peace and stability. At a time when two globally significant conflicts are occurring simultaneously alongside countless smaller armed disputes, the need to prevent the spread of misinformation is as acute as it has ever been. Social media can quickly shift from a source of on-the-ground information sharing to ground-zero for rumors and speculation presented as fact (sometimes not mistakenly). However, freedom of expression is also inextricably linked with the freedom to organize and participate in political life and public debate, whether at the Oxford Union or on Instagram (social media played a large role in organizing the Arab Spring). Investigative journalists must also be given the freedom to publish their findings to keep the public informed and should expect the protection of the State, something Malta as a country knows all too well. However, limitations must be in place to protect one's reputation and good name from slanders and unfounded assaults on their characters; though the Courts cannot in turn become a gag on those ultimately doing public work through SLAPP suits and other such heavy-handed legal vehicles.

In fine, the freedom to express oneself is not without its limits, taking into account the respect that should be expected by both other individuals and the community at large. However, the strictly limited circumstances in which this right can be derogated from, and the courts and parliament's continued willingness to strengthen its protections show the vaunted status this right still enjoys, especially in the public's perception.

# Julie Ann Camilleri

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Angry and disappointed, I decided to find solace by venting on various social media platforms, using hurtful and derogatory words to describe the person who vexed me, collectively degrading any person who may have anything in common with what was described. My freedom to express emotions came at the cost of someone else's torment. One may argue that there is nothing wrong in expressing your emotions of anger on social media and people shouldn't be so sensitive to such posts. Others may feel deeply offended and seek legal action against the person who posted such hateful speech.

Freedom of expression is a controversial principle which can be taken back many centuries (predating modern ideas fumbling for a definition), back to Ancient Greece, where Athenian democracy pioneered the freedom to express human experience via literature, theatre and politics. They riskily exercised parrhesia, candid speech, which was considered a right under the Athenian Democracy. Such fundamental rights were established as a foundational framework for the rights articulated by diverse forms of government throughout the evolution of Western societies over the years.

Today, the established Charter of Fundamental Rights of the European Union, proclaimed in the year 2000 and implemented in 2009, is a legally binding document which encompasses citizens' fundamental rights of the European Union into one single document. Article 11, corresponding to Article 10 of the European Convention on Human Rights of the Charter states that:

1. Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ...

Rights are certain privileges which safeguard people's dignity by promoting a proper standard of living and preventing unrighteous acts upon people by the government and other citizens. Certain human rights, such as freedom from torture and/or inhumane treatment, are considered non-negotiable and cannot be restricted by law, irrespective of any potential public interest or benefit. These rights are absolute. For example, Jeffrey Dahmer, a notorious serial killer, was ordered to serve fifteen life sentences in succession without parole, and was spared the death penalty, as it violates the absolute right to life.

Freedom of thought and conscience, first emphasized in the Universal Declaration of Human Rights in 1948, is considered to be an absolute right which cannot be altered or restricted. Thoughts in themselves, confined to a person's mind, cannot generally cause harm to others. The expression of thoughts is what could pose possible destruction. Expression does not only include speech, or communication through social media; it encompasses our behaviour, the way we dress and present ourselves to society, the music we listen to and produce, the provision and attainment of information, engagement in political activities, literature and poetry amongst other forms of expression.

At times, an individual's mode of expression may stem from a place of emotional turmoil; in those moments of self-expression, they might not be in the most rational state of mind, as we all experience instances where intense emotions temporarily govern our actions. Some opinions, especially those with malicious intent, shouldn't even be expressed. Freedom without restriction is dangerous and could, for example, promote violence towards certain groups/types of people and damage a State.

Limitation measures (boundaries) regarding freedom of expression are set up by law, as mentioned previously in the second point of Article Eleven of the European Charter of Fundamental Rights. The limitations of time, place, and manner ensure balance between rights. The restrictions imposed suggest an understanding of the potential dangers that could arise if the right to freedom of expression were to become absolute. Apart from this, freedom of expression, in itself, is not considered an absolute right as, by definition, absolute rights cannot be limited and/or have any form of restriction.

The ability to express oneself holds profound significance, serving not only as a personal outlet for emotions but also as a powerful tool for broader societal impact. The act of expression goes beyond a means of cathartic release; it becomes a conduit for constructive contributions to social movements, like the historical protests advocating for women's rights or the impactful protests held for John Paul Sofia. Additionally, in the digital age, a seemingly simple sentence on a social media platform has the potential to brighten someone's entire day, highlighting the far-reaching effects of freedom of expression.

When harnessed with good intentions, constructive expression contributes to the greater good, promoting positive change and inspiring others. Therefore, safeguarding this right is crucial, ensuring that individuals are free to articulate their thoughts and feelings without fear of reprisal.

However, like any right, freedom of expression is not absolute. Recognizing its potential for misuse, limitations are essential to prevent harm. Instances involving discrimination, violence, or hate speech warrant intervention to protect individuals and maintain social harmony. While the inherent positivity of free expression should be preserved, it is imperative to strike a balance that curtails its misuse for malicious purposes.

In reality, restrictions on freedom of expression are not intended to stifle its positive aspects but rather to fortify societal well-being. By creating boundaries that shield against the abuse of this right, society can uphold a balance between individual liberties and collective welfare. Therefore, freedom of expression is not a condemnation of its inherent positivity but a pragmatic acknowledgment of the need to shield against potential misuse, safeguarding a just and harmonious society.

## Bettina Cauchi

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The natural order of the world is rooted in the concept of balance. When a pendulum is displaced from its equilibrium position, it will swing back and forth, until eventually finding its state of rest. Free speech in the eyes of man can be compared to the rhythmic swings of a pendulum. Every rise reflects the descent from the perfect stillness and the recognition of limits and extremism. In a world where freedom of expression is encouraged but at the same time distorted, society is left at a crossroad. When trying to rectify past wrongs, oftentimes socially acceptable norms move onto the radical end. The delicate balance between expression and responsibility is perfectly described by the pendulum, when trying to understand this dynamic right. How does one navigate between what speech should be protected and which is classified as having a destructive power attached to it? In a society with ever-changing values and political correctness, when can a line be drawn which does not break the protection provided by Article 19 of the Universal Declaration of Human Rights? In Dr Sara Ezabe's view, a young Maltese activist, 'When an expression impinges on someone else's human rights it stops being an opinion'.

As time goes on everyone's digital footprint continues to increase, with it a sense of impunity. Many people feel that they can post anything on social media without any repercussions, claiming freedom of expression. The internet is a vital player in giving a platform for people globally to exercise this universally protected right. Social media may be seen as a lawless land. Most view comments on Facebook and Instagram as being harmless words. Words that if spoken would have serious repercussions. Many express their opinion with the protection of anonymity and freedom from censorship. Despite such liberty being given to the general public, a Maltese citizen on paper can place their mind at ease as they are protected. The codification of our rights through our Constitution, Criminal Code, the European Convention Act, the Universal Declaration of Human Rights, and other provisions as well as protection from the courts. The Media and Defamation act of 2018 specifically condemns written media. Despite all these safety nets, in practice one can say that the story is not as clear-cut.

A distorted understanding of this right in many people's minds seems to be that it is absolute in nature. It is used as a cover for justifying hate speech. In a 2018 report issued by the European Commission entitled 'Illegal content online', Malta outranks all other 28 countries listed regarding the level of hate speech. Admittedly one should note that the court this year in some people's opinion, has tried to send a strong message that it does take this right and its limits seriously. The awarding of a 10,000 euro fine to 29-year-old Luke Mihalic after posting an offensive and degrading remark targeting people with Down syndrome showed this. Some viewed this decision as the court sending out a message that it intends to limit freedom of expression. Thus even when attempts to direct the pendulum back to the center are seen as controversial.

In summary, hate speech is disruptive language that is aimed at an individual targeting their protected characteristics. Such are gender, identity, sexual orientation, race, color, language, ethnic origin, age, disability, religion or belief, or political or other opinion. Our code does not refer to language of this nature by its name, hate speech, when being codified in Article 82A in the Criminal code. Since its enactment, the article has been amended several times, but in the opinion of many local legal experts, this article is not sufficiently worded to provide the protection it intends to have.

There is a clear-cut difference between speech that is protected and one which should not be. Free speech encourages debate and exchanging of ideas, while hate speech is the catalyst for violence to erupt. Such speech cannot be protected. This right has led to many controversies within our little island. Six years on, the assassination of Daphne Caruana Galizia is one that cannot go unmentioned when talking about this imperative right. Ms. Caruana Galizia exercised free speech in the manner it was intended, to criticize those in power for the common good. Despite her altruistic intentions of bettering her homeland, the use of this imperative right is what got her assassinated. Daphne's heroic journalism should have been provided with effective protection. One cannot say that all that she wrote was perfect, but her criticism of the government embodied what the essence of free speech is. On a global stage, Malta's track record with protecting such important speech is miles away from being comparable with our EU counterparts. This past October Malta's ineffective protective mechanisms were placed in an unfavorable light yet again by the Council of Europe Commissioner for Human Rights, Dunja Mijatović. Directly addressing the Prime minister and the Speaker of the Parliament of Malta, the public inquiry's recommendation from Ms. Caruana Galizia's case have been questionably implemented, she remarked. The mere fact that the perpetrators for this 6-year-old crime have not been brought to justice is a threat in itself against the freedom of expression.

The existence of groups like Repubblika being able to have a place in society is testament to the fact that democracy can only thrive if people are able to exercise this basic right. Reflecting back on our history the Maltese public has always been on the forefront to exercise their right. When a country places such restrictive limits on what speech is seen as being too liberal, that can no longer be seen to be an effective democracy. Malta's complicated relationship with this right is not a new concept. This tug of war with the government regarding the existence of this right locally is exhibited by Dr. Vincent De Gaetano when describing his experience in Mr. Justice Emeritus Giovanni Bonello's book 'Misunderstanding The Constitution- How The Maltese Judiciary Undermines Human Rights'. When hanging posters criticizing the Marriage act, he recounts the 'chilling effect' of having posters ripped from his hands.

The question which should be asked is if people actually do want to have free speech or it be merely true on paper. In practice are many only tolerant of it if it fits within their personal ideologies?



## Neil Casha

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In order to formulate a logical and rational answer to this question, we must disassemble such question and truly understand what freedom of expression is. What freedom is for you may not be freedom for me. Similarly, a right which you deem absolute is not exactly absolute to me. There must be greater clarity, and for that, we have laws which provide an objective yardstick to understand exactly what is truly meant by these terms.

The Oxford English dictionary defines 'expression' as the following; 'The action or process of conveying or showing something in words or symbols; the action of representing something, ...one's feelings, intentions...' In the same dictionary, 'freedom' is defined as; 'The state of being able to act without hindrance or restraint; liberty of action.' Therefore, in a few words, freedom of expression is the action of one expressing their feelings, thoughts, or ideas at liberty. Interestingly enough, the basis of the idea of freedom of expression in plain English defined by local legislation is relatively comparative.

However, the law, specifically article 41 of the Constitution and article 10 of the European Convention Act, makes it clear that this expression is not at the entire liberty of the individual. The Constitution states the following; 'Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.'

So, up until this point of the article, the individual is at entire liberty of expressing himself or herself and the first definition we previously concluded using plain English is entirely lived up to. Subsequently to this paragraph, sub-article (2) states; 'Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of sub-article (1) of this article to the extent that the law in question makes provision'. Immediately after the first paragraph, the constitution constructs boundaries to this freedom of expression and without hesitation expressly states the limitations of this freedom. Amongst these boundaries there is 'reasonably required' protection 'in the interests of defence, public safety, public order, public morality or decency, or public health', and the protection of 'reputations, rights and freedoms of other person'.

Article 41 also tackles expression in the press, by stating that anyone can publish a daily journal or newspaper, unless they meet certain criteria, that such persons are over twenty-one years of age. The police are also able to seize any edition of the newspaper if such edition contributed to a criminal offence. From reading all of the provisions of this article, one can reach the conclusion that the freedom of expression is not limitless. The legislator deliberately and expressly puts forward conditions, by which the unlimited forms of expression are withheld. Therefore, if the expression is outside the boundaries prescribed by the law, an individual cannot plead a breach of their entitled rights by the Constitution.

If we take a look further in the aforementioned article 10 of the European Convention Act, this article also provides, more or less, the same definition of freedom of expression of that provided by the Constitution in its first paragraph, but subsequently states that; ‘the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’.

Furthermore, in the Media and Defamation Act, we have further restrictions provided by our legislation; ‘Defamatory words in written media shall be deemed to be published and to constitute libel’. In a few words, one cannot simply decide to harm the reputation of someone else, purely out of spite excluding all forms of reason. Even in article 11 of the 1789 French Declaration of the Rights of Man and Citizen states the following; ‘The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.’

In the case of Lawrence Grech et vs Prime Minister (15 May 1995), the constitutional court states; ‘Pero’, l-istess disposizzjonijiet, li jirrikonixxu u jissalvagwardjaw dan id-dritt fundamentali [referring to the right of freedom of expression] jimponu huma stess ċerti limitazzjonijiet’. As said by Associate Professor Tonio Borg in the second edition of his writing ‘A Commentary of the Constitution of Malta’; ‘The Constitutional Court has on a number of occasions stated that the right to freedom of expression is not absolute and in particular can be restricted to protect the reputation of others or some other public interest’.

Freedom of expression also becomes questioned as an absolute right when horrific events occur, such as the murders of Javier Valdez Cárdenas and Daphne Caruana Galizia, who both were mediums of expression. One wonders on whether the boundaries of freedom of expression are not only proposed by the legislator, but also by people running in our streets. I can say that freedom of expression is an absolute right within the confines provided by the law, but would that truly be entirely coherent with the principal of freedom? Freedom in a democracy has two sides of the same coin, on one side there is complete freedom and on the other restrictive freedom. The state attempts to reach somewhere in between the two sides. It must be said that freedom of expression must be controlled, otherwise there will be abuse of such freedom. It is only an absolute right within the boundaries set by the law. If an individual is not able to freely express themselves within such boundaries, the individual will always have a breach of his or her fundamental rights. Otherwise, expression cannot be made in full liberty.

Therefore, freedom of expression is not an absolute right.