

**Mandate of the Special Rapporteur on the right to privacy**

REFERENCE:  
OL MLT 2/2019

12 December 2019

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.

I write in order to share the benefits of the work of my mandate and especially that of the International Intelligence Oversight Forum (IIOF) which I have established and which the House of Representatives of the Republic of Malta very kindly hosted, last year in November 2018.

Recent developments in Malta seem to indicate that existing safeguards need to be significantly improved in order to conform to Malta's obligations under human rights law and thus retain the confidence of the international community in the rule of law in Malta.

Malta's laws need to be reformed in such a way so as to introduce greater accountability and better safeguards which would protect democracy, privacy and the rule of law in Malta. The flaws and the lacunae in some of Malta's relevant laws have long been noted. I made reference to several of them in an interview granted to the Sunday Times of Malta<sup>1</sup> shortly after my appointment as UN Special Rapporteur in July 2015. International human rights law has long had a special focus on surveillance and interception of telecommunications, with, for example, multiple relevant decisions being delivered by the European Court of Human Rights since 1985. Indeed, it was precisely concern with surveillance and interception of communications which led to the creation of the mandate of the UN Special Rapporteur on the right to Privacy in 2015, following the Snowden revelations of 2013-2014

I have followed closely the revelations which have unfolded in Malta's judicial proceedings over the past several weeks and I am therefore hereby attaching a set of detailed recommendations which should tighten safeguards and avoid the current potential for conflicts of interest, especially where the role of Ministers and the Prime Minister is concerned. In summary, these recommendations include:

1. The substitution of Ministerial discretion by that of an independent Security Commissioner who would be responsible for approving interception warrants and other activities of the Malta Security Service (MSS). This measure thus avoids current situations where a Minister or Prime Minister would be expected to sign interception warrants involving any politician or Minister or their family or associates and reduces further

---

<sup>1</sup> <https://timesofmalta.com/articles/view/surveillance-laws-are-out-of-date-dont-offer-protection.576641>

any temptation for undue “spying” on opposition or Government side politicians;

2. The allocation of specific explicit oversight powers including that of spot-checks to the independent Security Commissioner especially with regard to MSS;
3. The creation of a Security Service Oversight Board consisting of three serving or retired Judges tasked with oversight of the Security Commissioner and the MSS as well as with dealing with complaints from the public about the MSS;
4. The change of ultimate reporting lines for the MSS from the Prime Minister to the President;
5. The expansion of the President’s powers in appointing the Head of the MSS, the Security Commissioner and the Security Service Oversight Board;
6. An increased constitutional role for the President of the Republic with regard to the operations and findings of the MSS.
7. A new constitutional power to dismiss the Prime Minister in cases where when, after information received by the President in terms of the Security Services Act or on account of strong evidence in the public domain, the President would remove the Prime Minister from office on grounds that his behaviour or those of his close associates may be exposing him or them to imminent prosecution for serious crimes or are otherwise seriously prejudicial to the national interest or to the international reputation of Malta.
8. The tightening of Parliamentary scrutiny by the elevation of the Security Committee to a standing committee of Parliament and the removal of Prime Ministerial veto over what the Security Committee actually reads, with such “filter power” being instead transferred to the President.

I respectfully submit that new legal safeguards on the lines of the attached would not only intrinsically improve the protection of citizens available under Maltese law, but that they would also serve to bolster international confidence that the Executive in Malta is sincerely committed to bringing integrity to the country’s institutions.

I am therefore forwarding them to you as a matter of urgency in order that they may be considered for inclusion in a package of measures aimed at restoring national and international confidence in the rule of law in Malta.

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

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

Joseph Cannataci  
Special Rapporteur on the right to privacy

## **Amendments required - Security Services Act Cap. 391 of the Laws of Malta**

### **Article 2**

There shall be inserted the following

"the Board" means the Security Service Oversight Board which holds office in terms of article 11;

### **Article 3**

*3.(1) There shall continue to be a Security Service (in this Act referred to as "the Service") under the authority of the Minister.*

Be amended to read

3.(1) There shall continue to be a Security Service (in this Act referred to as "the Service") under the authority of the President.

### **Article 4 (1) of the Act**

*4.(1) The operations of the Security Service shall continue to be under the control of a head of the Service appointed by the Prime Minister.*

be amended to read:

4.(1) a) The operations of the Security Service shall be under the control of a head of the Service appointed by the President of Malta acting in accordance with the advice of the Prime Minister and the Leader of the Opposition. Where the Prime Minister and the Leader of the Opposition prove to be incapable of agreeing on the name of an appointee over a period of one calendar month from being requested to do so by the President, then the President shall proceed to appoint the head of the Service at his own discretion independently of the advice of the Prime Minister and the Leader of the Opposition.

(b) The Head of the Security Service shall hold office on a full-time basis for a period of four years, which term may be renewed once. The Head shall have paid to him out of the consolidated fund such allowances as the President may determine but which shall not be less than the remuneration and allowances of the Commissioner of Police of Malta.

(c) The Head shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

### **Article 4 (3) of the Act**

*(3) The arrangements mentioned in subarticle (2)(a) shall be such as to ensure that information in the possession of the Service is not disclosed for use in determining*

*whether a person should be employed, or continue to be employed, by any person, or in any office or capacity except in accordance with provisions in that regard approved by the Minister.*

Be amended to read as follows:

(3) The arrangements mentioned in subarticle (2)(a) shall be such as to ensure that information in the possession of the Service is not disclosed for use in determining whether a person should be employed, or continue to be employed, by any person, or in any office or capacity except in accordance with provisions in that regard approved by the Minister, or except in those instances where any Minister, including the Prime Minister, or any of their staff, family or associates may be involved, in which case that information may be conveyed by the Head of the Service directly to the President who shall make such determinations as may be necessary in the national interest and which may involve invoking Article X of the Constitution.

#### **Article 4, subsection 5 of the Act**

*(5) The head of the Security Service shall make an annual report on the work of the Service to the Prime Minister and the Minister and may at any time report to either of them on any matter relating to its work*

shall be amended to read as follows

5) The head of the Security Service shall make an annual report on the work of the Service to the Committee. If it appears to the head of the Security Service, after consultation with the President, that any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the Head of the Security Service may exclude that matter from the copy of the report as put before the Committee, including a note that certain unspecified matter has been so excluded, and depositing such excluded matter with the President who shall not divulge the contents of the excluded matter to the Prime Minister, Minister or other members of the Security Committee. He may also at any time report to either or both the Minister and the Prime Minister on any matter relating to its work except in those cases where any Minister, including the Prime Minister, or any of their staff, family or associates may be involved, in which case the Head of the Service may report directly to the President.

#### **Article 6**

*(1) No entry on or interference with property shall be unlawful if it is authorised by a warrant issued by the Minister under this article.*

*(2) No interception of or interference with communications in the course of their transmission by post or by means of a radio communications or telecommunication system or by any other means shall be unlawful if it is authorised by a warrant issued by the Minister under this article.*

*(3) The Minister may, on an application made by the Security Service, issue or modify a warrant under this article authorising the taking of such action as is specified in the warrant in respect of any property so specified or in respect of any communications so specified if the Minister*

*(a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting the Service in carrying out any of its functions under this Act; and*

*(b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means; and*

*(c) is satisfied that satisfactory arrangements are in force under this Act with respect to the disclosure of information obtained by virtue of this article and that any information obtained under the warrant will be subject to those arrangements.*

be amended to read as follows

(1) No entry on or interference with property shall be unlawful if it is authorised by a warrant issued by the Commissioner under this article.

(2) No interception of or interference with communications in the course of their transmission by post or by means of a radio communications or telecommunication system or by any other means shall be unlawful if it is authorised by a warrant issued by the Commissioner under this article.

(3) The Commissioner may, on an application made by the Security Service, issue or modify a warrant under this article authorising the taking of such action as is specified in the warrant in respect of any property so specified or in respect of any communications or information so specified if the Commissioner

(a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting the Service in carrying out any of its functions under this Act; and

(b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means; and

(c) is satisfied that satisfactory arrangements are in force under this Act with respect to the disclosure of information obtained by virtue of this article and that any information obtained under the warrant will be subject to those arrangements.

#### **Article 7 2 (b)**

*at the time when the warrant is issued, the Minister issues a certificate certifying the descriptions of information the examination of which he considers necessary as mentioned in article 6(3)(a).*

shall be amended to read

at the time when the warrant is issued, the Commissioner issues a certificate certifying the descriptions of information the examination of which he considers necessary as mentioned in article 6(3)(a).

## **Article 8**

*.(1) A warrant shall not be issued or modified except –*

*(a) under the hand of the Minister; or*

*(b) in an urgent case where the Minister has expressly authorised its issue or modification and a statement of that fact is endorsed on it, under the hand of a senior government official.*

*(2) A warrant shall, unless renewed under subarticle (3), cease to have effect –*

*(a) if the warrant was under the hand of the Minister, at the end of the period of six months beginning with the day on which it was issued; and*

*(b) in any other case, at the end of the period ending with the second working day following that day.*

*(3) A warrant may at any time be modified.*

*(4) If at any time before the day on which a warrant would cease to have effect the Minister considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may by an instrument under his hand renew it for a period of six months beginning with that day.*

*(5) The Minister shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.*

*(6) In the preceding provisions of this article "warrant" means a warrant under article 6.*

Shall be amended to read

*.(1) A warrant shall not be issued or modified except –*

*(a) under the hand of the Commissioner; or*

*(b) in an urgent case where the Commissioner has expressly authorised its issue or modification and a statement of that fact is endorsed on it, under the hand of a senior government official.*

*(2) A warrant shall, unless renewed under subarticle (3), cease to have effect –*

*(a) if the warrant was under the hand of the Commissioner, at the end of the period of six months beginning with the day on which it was issued; and*

*(b) in any other case, at the end of the period ending with the second working day following that day.*

- (3) A warrant may at any time be modified.
- (4) If at any time before the day on which a warrant would cease to have effect the Commissioner considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may by an instrument under his hand renew it for a period of six months beginning with that day.
- (5) The Commissioner shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.
- (6) In the preceding provisions of this article "warrant" means a warrant under article 6.

## **Article 9**

- (1) If, apart from this article, a person would be liable under any law in Malta for any act done outside Malta, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Minister under this article and is one which the Minister may authorise under this Act or consists in the arrest of any person or is an act done in furtherance of any of those acts or for the purpose of retrieving property of the Government of Malta to return the same to Malta.*
- (2) The Minister shall not give or modify an authorisation under this article unless he is satisfied –*
- (a) that any acts which may be done in reliance on the authorisation or, as the case may be, the operation in the course of which the acts may be done will be necessary for the proper discharge of a function of the Security Service; and*
- (b) that there are satisfactory arrangements in force to secure-*
- (i) that nothing will be done in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the Security Service; and*
- (ii) that, in so far as any acts may be done in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are carried out; and*
- (c) that there are satisfactory arrangements in force under this Act with respect to the disclosure of information obtained by virtue of this article and that any information obtained by virtue of anything done in reliance on the authorisation will be subject to those arrangements.*
- (3) Without prejudice to the generality of the power of the Minister to give an authorisation under this article, such an authorisation –*
- (a) may relate to a particular act or acts, to acts of a description specified in the authorisation or to acts undertaken in the course of an operation so specified;*
- (b) may be limited to a particular person or persons of a description so specified; and*
- (c) may be subject to conditions so specified.*
- (4) An authorisation shall not be given or modified under this article except -(a) under the hand of the Minister; or(b) in an urgent case where the Minister has expressly authorised it to be given or modified and a statement of that fact is endorsed on it, under the hand of a senior government official.*
- (5) An authorisation shall, unless renewed under subarticle (6), cease to have effect –*



*(a) if the authorisation was given under the hand of the Minister, at the end of the period of six months beginning with the day on which it was given;*

*(b) in any other case, at the end of the period ending with the second working day following the day on which it was given.*

*(6) An authorisation given under this article may be modified at any time.*

*(7) If at any time before the day on which an authorisation would cease to have effect the Minister considers it necessary for the authorisation to continue to have effect for the purpose for which it was given, he may by an instrument under his hand renew it for a period of six months beginning with that day.*

*(8) The Minister shall cancel an authorisation if he is satisfied that any act authorised by it is no longer necessary*

Shall be amended to read as follows

(1) If, apart from this article, a person would be liable under any law in Malta for any act done outside Malta, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Commissioner under this article and is one which the Commissioner may authorise under this Act or consists in the arrest of any person or is an act done in furtherance of any of those acts or for the purpose of retrieving property of the Government of Malta to return the same to Malta.

(2) The Commissioner shall not give or modify an authorisation under this article unless he is satisfied –

(a) that any acts which may be done in reliance on the authorisation or, as the case may be, the operation in the course of which the acts may be done will be necessary for the proper discharge of a function of the Security Service; and

(b) that there are satisfactory arrangements in force to secure-

(i) that nothing will be done in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the Security Service; and

(ii) that, in so far as any acts may be done in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are carried out; and

(c) that there are satisfactory arrangements in force under this Act with respect to the disclosure of information obtained by virtue of this article and that any information obtained by virtue of anything done in reliance on the authorisation will be subject to those arrangements.

(3) Without prejudice to the generality of the power of the Commissioner to give an authorisation under this article, such an authorisation –

(a) may relate to a particular act or acts, to acts of a description specified in the authorisation or to acts undertaken in the course of an operation so specified;

(b) may be limited to a particular person or persons of a description so specified; and

(c) may be subject to conditions so specified.

(4) An authorisation shall not be given or modified under this article except -(a) under the hand of the Commissioner; or(b) in an urgent case where the Commissioner has expressly

authorised it to be given or modified and a statement of that fact is endorsed on it, under the hand of a senior government official.

(5) An authorisation shall, unless renewed under subarticle (6), cease to have effect –

(a) if the authorisation was given under the hand of the Commissioner, at the end of the period of six months beginning with the day on which it was given;

(b) in any other case, at the end of the period ending with the second working day following the day on which it was given.

(6) An authorisation given under this article may be modified at any time.

(7) If at any time before the day on which an authorisation would cease to have effect the Commissioner considers it necessary for the authorisation to continue to have effect for the purpose for which it was given, he may by an instrument under his hand renew it for a period of six months beginning with that day.

(8) The Commissioner shall cancel an authorisation if he is satisfied that any act authorised by it is no longer necessary

## **Article 11**

*11. If it appears to him to be necessary to do so, the Prime Minister may exercise any of the powers of the Minister under this Act subject to the same review of the exercise of those powers as would apply to the exercise of those powers by the Minister.*

Shall be substituted by the following

- (1) The President shall appoint a Security Service Oversight Board acting in accordance with the advice of the Prime Minister and the Leader of the Opposition. Where the Prime Minister and the Leader of the Opposition prove to be incapable of agreeing on the names of the members of the Security Service Oversight Board over a period of one calendar month from being requested to do so by the President, then the President shall proceed to appoint such member or members at his own discretion independently of the advice of the Prime Minister and the Leader of the Opposition. The Security Service Oversight Board shall consist of three persons who hold or have held the office of judge of the superior courts or who have held the office of Attorney General. The term of office shall be for six years, renewable once. The members of the Board shall, in rotation, each hold the office of Chair of the Board for a period of two consecutive years.
- (2) No member of the Board shall be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.
- (3) In the discharge of their functions under the Act, the Board's members shall act on their individual judgment and shall not be subject to the direction or control of any other person or authority and shall not be liable to be questioned by any court;

- (4) The Board shall be assisted by one or more full-time officials designated for the purpose as may be appointed by the President at the request of the Board's Chair.
- (5) The Board shall keep under review the exercise by the Commissioner of his powers under articles 6 to 10 as provided further hereunder.
- (6) The Board shall at its own discretion but not less than three times a year, review the operations of the Commissioner on the basis of a random sampling of cases handled by the Security Service utilising its legal powers to follow every single action in a case from inception of an action to the closing of a file.
- (7) It shall be the duty of any person falling under one of the descriptions contained in article 18(2) to disclose or give to the Board such documents or information as it may require for the purpose of enabling it to discharge its functions.
- (8) The Board may from time to time make recommendations to the Commissioner as to the better discharge of his functions in the light of its review of cases handled by the Security Service. The Commissioner shall be obliged to submit a full justification for not following any such recommendations in his subsequent annual report to the Committee.
- (9) The Board may from time to time make recommendations to the Head of the Security Service for the better discharge of his functions. The Head of the Security Service shall be obliged to submit a full justification for not following any such recommendations in his subsequent annual report to the Committee.
- (10) The Board shall also be empowered to receive and decide upon any complaint from the Head of the Security Service as to the decisions of the Commissioner with regard to the discharge of his duties under Articles 6-10 of this Act. The Head of the Security Service may only bring forward such complaint in very urgent matters or instances where the security of the state or the rule of law are being manifestly placed in jeopardy by a decision of the Commissioner. Where such complaint is found to be justified, the Board shall present the relevant decision and the basis for its findings to the President who may thereafter exercise his individual judgement in instructing the Commissioner to follow the decision of the Board in that particular matter or otherwise, which Presidential instruction, if any, the Commissioner shall be bound to respect;
- (11) The Board shall make an annual report on its work and the work of the Commissioner to the Committee. It may also at any time report to either or both the Minister and the Prime Minister on any matter relating to its work except in those cases where the Commissioner or any Minister, including the Prime Minister, or any of their staff, family or associates may be involved, in which case the Board shall report directly to the President.

## **Article 12**

*(1) The Prime Minister shall appoint as a Commissioner for the purposes of this Act a person who holds or has held the post of judge of the superior courts or who has held the office of Attorney General: Provided that if a Commissioner is not so appointed by the Prime Minister the Attorney General shall automatically assume the functions of Commissioner until such time as a Commissioner shall be so appointed.*

*(2) The Commissioner shall hold office in accordance with the terms of his appointment and, in the case of a Commissioner who is not a serving judge of the superior courts or the Attorney General, there shall be paid to him by the Minister such allowances as the Prime Minister may determine.*

*(3) (a) In addition to his functions under the subsequent provisions of this Act, the Commissioner shall keep under review the exercise by the Minister of his powers under articles 6 to 10.*

*b) In the discharge of his functions under the Act, the Commissioner shall act in his individual judgment and shall not be subject to the direction or control of any other person or authority and shall not be liable to be questioned by any court.*

*(4) It shall be the duty of any person falling under one of the descriptions contained in article 18(2) to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to discharge his functions.*

*(5) The Commissioner may at any time report to the Prime Minister or to the President on any matter relating to the discharge of his functions under this Act.*

*(6) The Commissioner shall make an annual report on the discharge of his functions.*

*(7) The Prime Minister shall put before the Security Committee a copy of each annual report made by the Commissioner under subarticle (6) together with a statement as to whether any matter has been excluded from that copy in pursuance of subarticle (8).*

*(8) If it appears to the Prime Minister, after consultation with the Commissioner, that any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the Prime Minister may exclude that matter from the copy of the report as put before the Security Committee*

Shall be amended to read:

(1) The President shall appoint a Security Commissioner for the purposes of this Act in accordance with the advice of the Prime Minister and the Leader of the Opposition. Where the Prime Minister and the Leader of the Opposition prove to be incapable of agreeing on the name of the appointee over a period of one calendar month from being requested to do so by the President, then the President shall proceed to appoint the Commissioner at his own discretion independently of the advice of the Prime Minister and the Leader of the Opposition. Provided that if a Commissioner is not so appointed by the President, the Attorney General shall automatically assume the functions of Commissioner until such time as a Commissioner shall be so appointed.

(2) The Commissioner shall hold office for a period of five years, which term may be renewed once. The Commissioner shall have paid to him out of the consolidated fund such allowances as the President may determine but which shall not be less than the remuneration and allowances of the Chief Justice of Malta. The Commissioner may not

hold any other office, remunerated or otherwise, which is incompatible with the discharge of his duties.

(3) (a) The Commissioner shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

b) Save for the provisions of Article 11 of this Act, in the discharge of his functions under the Act, the Commissioner shall act in his individual judgment and shall not be subject to the direction or control of any other person or authority and shall not be liable to be questioned by any court.

(4) In addition to the duties carried out in terms of articles 6-10 of this Act, the Commissioner shall of his own initiative and at his own discretion but not less than three times a year, review the operations of the Security Service on the basis of a random sampling of cases handled by the Security Service utilising his legal powers to follow every single action in a case from inception of an action to the closing of a file. These powers include the ability to carry out spot-checks without any form of advance warning of all premises or equipment used by or under control of the Security Service, including access to all documents and files, whether paper, electronic or otherwise. All members of the Security Service or contractors thereof shall be bound to respond truthfully, comprehensively, thus omitting no detail, and immediately to all questions posed to them by the Commissioner in the discharge of his functions.

(5) The Commissioner may from time to time make recommendations to the Head of the Security Service for the better discharge of his functions. The Head of the Security Service shall be obliged to submit a full justification for not following any such recommendations in his subsequent annual report to the Committee.

(6) It shall be the duty of any person falling under one of the descriptions contained in article 18(2) to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to discharge his functions.

(7) The Commissioner may at any time report to the Prime Minister or the Minister or to the President on any matter relating to the discharge of his functions under this Act.

(8) The Commissioner shall make an annual report to the Security Committee on the discharge of his functions. If it appears to the Commissioner, after consultation with the President, that any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service or his office, the Commissioner may exclude that matter from the copy of the report as put before the Security Committee, depositing the relevant excluded matter with the President who shall not divulge the contents of such to the Prime Minister or the Minister or other members of the Security Committee.

(9) If it appears to the President or the Prime Minister, after consultation with the Commissioner, that any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the President or the Prime Minister may request

the Security Committee to exclude that matter from the copy of the report as subsequently put before the House of Representatives by the Chair of the Committee.

### **Article 13**

*13.(1) The Commissioner shall also investigate complaints about the Security Service in the manner specified in Schedule 1 to this Act.*

*(2) The decisions of the Commissioner under Schedule 1 to this Act shall not be subject to appeal or liable to be questioned in any court*

Shall be replaced by

13.(1) The Board shall also investigate complaints about the Security Service in the manner specified in Schedule 1 to this Act.

(2) The decisions of the Board under Schedule 1 to this Act shall not be subject to appeal or liable to be questioned in any court

### **Article 14**

14.

*(1) There shall be a Committee, to be known as the Security Committee, to examine the expenditure, administration and policy of the Security Service.*

*(2) The Security Committee shall consist of the Prime Minister, the Minister, the Minister responsible for Foreign Affairs and the Leader of the Opposition.*

*(3) Schedule 2 to this Act shall have effect with respect to the procedure of and other matters relating to the Security Committee.*

*(4) The Security Committee shall make an annual report of the discharge of their functions.*

*(5) The Prime Minister shall lay before the House of Representatives a copy of each annual report made by the Security Committee under subarticle (4) together with a statement as to whether any matter has been excluded from that copy in pursuance of subarticle (6).*

*(6) If it appears to the Prime Minister, after discussion in the Security Committee, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the Prime Minister may exclude that the copy of the report as laid before the House of Representatives.*

Shall be amended to read as follows:



(1) There shall be a Committee of the House of Representatives, to be known as the Security Committee, to examine the expenditure, administration, operations and policy of the Security Service.

(2) The Security Committee shall consist of the Prime Minister, the Minister, the Minister responsible for Foreign Affairs, the Opposition member tasked with shadowing the Minister and the Leader of the Opposition.

(3) Schedule 2 to this Act shall have effect with respect to the procedure of and other matters relating to the Security Committee.

(4) The Security Committee shall make an annual report of the discharge of their functions.

(5) The Chair of the Committee shall lay before the House of Representatives a copy of each annual report made by the Security Committee under subarticle (4) together with a statement as to whether any matter has been excluded from that copy in pursuance of subarticle (6).

(6) If it appears to the Prime Minister or the Chair, after discussion and a majority vote to that effect in the Security Committee, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the Chair shall exclude that matter from the copy of the report as laid before the House of Representatives.

## **Article 16**

2) *Subarticle (1) does not apply to:*

*-(a) any disclosure which is made for the prevention or detection of crime or for the purposes of any criminal proceedings;*

*(b) any disclosure of matter falling within paragraph (a) of that subarticle which is made in obedience to a warrant issued by the Minister under article 6 or in pursuance of a requirement imposed by the Commissioner under article 12(2); or (c) any disclosure of matter falling within paragraph (b) of subarticle which is made in the interests of national security, the economic well-being of Malta or public safety, or in pursuance of the order of a court.*

*(3) For the purposes of subarticle (2)(c) a certificate signed by the Minister, or by the Attorney General, certifying that a disclosure was made in the interests of national security, the economic well-being of Malta or public safety shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.*

Shall be amended to read:

2) Subarticle (1) does not apply to:

a) any disclosure which is made for the prevention or detection of crime or for the purposes of any criminal proceedings;

(b) any disclosure of matter falling within paragraph (a) of that subarticle which is made in obedience to a warrant issued by the Commissioner under article 6 or in pursuance of a requirement imposed by the Commissioner under article 12(2); or (c) any disclosure of matter falling within paragraph (b) of subarticle which is made in the interests of national security, the economic well-being of Malta or public safety, or in pursuance of the order of a court.

(3) For the purposes of subarticle (2)(c) a certificate signed by the Commissioner, or by the Attorney General, certifying that a disclosure was made in the interests of national security, the economic well-being of Malta or public safety shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

## **Article 19**

To be inserted as follows:

This Act may not be amended except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof.

## **SCHEDULES**

### **SCHEDULE 1 (article 13) INVESTIGATION OF COMPLAINTS to be replaced with the following:**

#### **Preliminary**

1. Any person may complain to the Board if he is aggrieved by anything which he believes the Security Service has done in relation to him or to any property of his; and unless the Board considers that the complaint is frivolous or vexatious it shall deal with it in accordance with this Schedule.

#### **Investigations by the Board**

2. The Board shall investigate

(a) whether the Security Service has obtained or provided information or performed any other tasks in relation to the actions or intentions of the complainant; and

(b) if so, whether the Security Service had reasonable grounds for doing what it did.

#### **Functions of the Board in relation to complaints**

3. (1) The Board shall investigate, as the case may require –

(a) whether a warrant was issued under article 6 in relation to the property or communications concerned; or



(b) whether an authorisation was given under article 9 to the doing of the act in question.

(2) If the Board finds that a warrant was issued or an authorisation was given, it shall determine whether the Commissioner was acting properly in issuing, modifying or renewing the warrant or, as the case may be, in giving, modifying or renewing the authorisation.

#### Report of conclusions

4. (1) Where the Board determines under paragraphs 2 or 3 that the Security Service or the Commissioner did not have reasonable grounds for doing what it or he did, it shall –

(a) give notice to the complainant that it has made a determination in his favour; and

(b) make a report of its findings to the President.

(2) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) is made by the Board, it shall give notice to the complainant that no determination in his favour has been made on his complaint.

#### Special references

5. If in any case investigated by the Board -(a) its conclusions on the matters which it is required to investigate are such that no determination is made by him in favour of the complainant; but (b) it appears to him from the allegations made by the complainant that it is appropriate for there to be an investigation into whether the Security Service has in any other respect acted unreasonably in relation to the complainant or his property, it shall so investigate and report to the President.

#### Remedies

6. (1) Where the Board gives a complainant notice of such a determination as is mentioned in sub-paragraph (1) of paragraph 4, the Board may do one or more of the following, namely:

(a) direct that the obtaining and provision of information in relation to the complainant or, as the case may be, the conduct of other activities in relation to him or to any property of his shall cease and that any records relating to such information so obtained or provided or such other activities shall be destroyed;

(b) quash any warrant or authorisation which the Board has found to have been improperly issued, renewed, given or modified and which he considers should be quashed;

(c) recommend to the President that the complainant be paid such sum by way of compensation as may be specified by him.

(2) Where the Prime Minister receives a report under paragraph 5, he may take such action in the light of the report as he thinks fit, including any action which the Board has power to take or direct under the preceding provisions of this paragraph.

#### Procedure

7. (1) Subject to sub-paragraph (2) of paragraph 8, the Board shall carry out its functions under this Act in such a way as to secure that no document or information disclosed or given to it by any person is disclosed without his consent to any complainant, or to any other person; and accordingly the Board shall not, except in reports under item (b) of sub-paragraph (1) of paragraph 4 of this Schedule, give any reasons for a determination notified by him to a complainant.

(2) Subject to sub-paragraph (1), the Board may determine its own procedure.

#### Staff and expenses

8. (1) The Prime Minister shall, after consultation with the Minister responsible for finance, and on the recommendation of the President, provide the Board with such staff and shall defray such expenses as he thinks necessary for the proper discharge of its functions under this Act.

(2) The Board may authorise any member of staff provided in terms of sub-paragraph (1), to obtain any documents or information on his behalf.

#### References

9. Any reference in this Schedule to a complainant's property includes –

(a) a reference to any communication originated or received or intended to be received by him; and

(b) a reference to any place where the complainant resides or works.

#### Supplementary

10. The persons who may complain to the Board under this Schedule include any organisation and any association or combination of persons.

#### Transitory

11. Any person who feels aggrieved by anything which he believes the Security Service has done in relation to him or to any property of his before the coming into force of this Act shall complain to the Board within six months after the coming into force of this Act and the Board may unless it considers that the complaint is frivolous or vexatious grant any remedy in accordance with paragraph 6 as if such thing shall have been done by the Security Service pursuant to a warrant by the Commissioner under this Act.

### **SCHEDULE 2 [Article 14(3)] THE SECURITY COMMITTEE Procedure to be replaced with the following:**

1. Subject to the following provisions of this Schedule, the Committee may determine their own procedure.

2. (1) The Committee shall be chaired by the member of the Opposition tasked with shadowing the Minister.

(2) If on any matter there is an equality of voting among the members of the Committee, the chairman shall have a second or casting vote.

(3) The chairman may appoint one of the members of the Committee to act, in his absence, as chairman at any meeting of the Committee.

(4) The quorum of the Committee shall be three.

#### **Access to information**

3. (1) If the head of the Security Service or the Commissioner or the Chair or any member of the Board is asked by the Committee to disclose any information, then, as to the whole or any part of the information which is sought, he shall either -(a) arrange for it to be made available to the Security Committee subject to and in accordance with arrangements approved by the President; or (b) inform the Committee that it cannot be disclosed either (i) because it is sensitive information (as defined in paragraph 4) which, in his opinion, should not be made available under item(a); or (ii) because the President has determined that it should not be disclosed.

(2) The fact that any particular information is sensitive information shall not prevent its disclosure under item (a) of sub-paragraph (1) if the head of the Security Service or the Commissioner or the Chair or any member of the Board considers it safe to disclose it.

(3) Information which has not been disclosed to the Security Committee on the ground specified in sub-item (i) of item(b) of sub-paragraph (1) shall be disclosed to them if the President considers it desirable in the public interest.

(4) The President shall not make a determination under sub-item (ii) of item (b) of sub-paragraph (1) with respect to any information on the grounds of national security alone and, subject to that, he shall not make such a determination unless the information appears to him to be of such a nature that, if he were requested to produce it before a Select Committee of the House of Representatives, he would think it proper not to do so.

(5) The disclosure of information to the Security Committee in accordance with the preceding provisions of this paragraph shall be regarded for the purposes of this Act as necessary for the proper discharge of the functions of the Security Service.

#### **Sensitive Information**

4. The following information is sensitive information for the purposes of paragraph 3:

(a) information which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to the Security Service;

(b) information about particular operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of the Security Service; and

(c) information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information.

**Proposal of insertion of Article 78 (4) in the Constitution of Malta complementing amendments to the Security Services Act**

Nothing in this article shall prevent Parliament from conferring functions on the President if the Act conferring such functions is approved by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and where any subsequent amendment of such Act by the House of Representatives would likewise require the votes of not less than two-thirds of all the members thereof.

**Proposal of insertion of Article 81 (2) d in the Constitution of Malta complementing amendments to the Security Services Act**

[The office of Prime Minister shall also become vacant] -(d) when, after information received by the President in terms of the Security Services Act or on account of strong evidence in the public domain, the President shall remove the Prime Minister from office on grounds that his behaviour or those of his close associates may be exposing him or them to imminent prosecution for serious crimes or are otherwise seriously prejudicial to the national interest or to the international reputation of Malta.