



## Commissioner for Standards in Public Life

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### CASE REPORT

**Case no:** K/003

**Complaint:** Alleged breach of the Code of Ethics attached to the First Schedule of the Public Administration Act (Chapter 497 of the Laws of Malta)

**Complainant:** Emanuel Delia

**Complaint Date:** 16 January 2019

**Report date:** 12<sup>th</sup> April 2019

### The Complaint

1. By email of 16<sup>th</sup> January 2019 (the Complaint), Emanuel Delia referred me to a post on his blog dated 11 December 2018 that alleged the following:

*“... Carmelo Abela’s right-hand man, Sandro Mangion, barked at PEN International lobbyist Sarah Clarke calling her a ‘biased asshole’.... “This is conduct unbecoming of an official in the public employ. Actually, this falls under the competence of Dr George Hyzler as the behaviour of Ministers’ persons of trust is covered by the public standards law...”*

### Decision to Investigate

2. Having ascertained that the subject of the complaint, Alessandro Mangion, held the position of Private Secretary to the Minister for Foreign Affairs and Trade Promotion, I decided that the Complaint warranted further investigation under the Act.

### Investigation Procedure

3. I wrote to Alessandro Mangion on 21 January 2019 and invited him to address, by means of a written reply, the allegation made by the Complainant.

4. I also noted other statements in the press about the alleged incident including an article in *MaltaToday* of the 11 December 2018 by Matthew Vella



entitled *Foreign Minister's aide calls PEN activist a "biased shithole" during UN meeting*.

5. Mr Mangion, through his lawyer Dr Ian Borg, replied by letter dated 1 February 2019, wherein he rebutted the allegations principally on the following grounds:

- i. That the Standards in Public Life Act (Chapter 570) is not applicable to Mr Mangion and his position does not fall within the definition of 'person of trust'.
- ii. That the application of Chap. 570 would violate Mr Mangion's contract of employment.
- iii. That he denied having uttered the alleged phrase.
- iv. That the application of Chap. 570 would violate his fundamental human rights.

6. In view of submission (i) above I wrote to Mr Mangion on the 4<sup>th</sup> February 2019 requesting a copy of his contract of employment. This was duly forwarded to me.

7. I wrote to Mr Mangion on the 7<sup>th</sup> February 2019 requesting a copy of his job description, since this was not attached to his contract of employment.

8. In view of submission (i) above I also wrote to the Principal Permanent Secretary requesting a copy of the job description relating to a Minister's Private Secretary.

9. Both Mr Mangion and the Principal Permanent Secretary replied and forwarded the same document listing the duties and responsibilities of a Private Secretary.

10. In view of submission (ii) above I wrote to Sarah Clarke on the 13<sup>th</sup> February 2019 inviting her to describe the circumstances of the incident in question.

11. On the 8<sup>th</sup> March 2019 Ms Clarke forwarded a statement describing the incident (copy attached and marked Document A) which was forwarded to Mr Mangion by letter of the 11<sup>th</sup> March 2019.

12. On the 14<sup>th</sup> March 2019 I met with Alessandro Mangion in the presence of his lawyer Ian Borg and in the presence of the Director General of this office, Charles Polidano, I invited Mr Mangion to explain his position further. Having outlined my own views on this case, I also took the steps outlined in the final section of this report.



## Submissions and Observations

13. Mr Mangion's submissions of 1 February 2019 through his lawyer are hereby reproduced (in italics), and my comments and observations are entered below each submission. I corresponded with Mr Mangion in Maltese but it is my policy to prepare case reports in whichever of Malta's two official languages is used by the complainant. Mr Mangion's submissions are therefore reproduced here in the form of a free translation:

- i. The Commissioner is to determine whether Chapter 570 is or is not applicable to Mr Mangion and whether his position falls within the definition of 'person of trust' as defined in the said Act.*

*According to the Act a 'person of trust' means any employee or person engaged in the private secretariat of a Minister or of a Parliamentary Secretary wherein the person acts as an adviser or consultant to a Minister or to a Parliamentary Secretary or acts in an executive role in the Ministry or Parliamentary Secretariat, and where the person has not been engaged according to the procedure established under article 110 of the Constitution.*

*Mr Mangion occupies the position of secretary to the Minister.*

*The Commissioner is to determine whether Chapter 570 was intended to cover the category of employees such as secretaries that are persons of trust and whether they are subject to parliamentary scrutiny and fall within the scope of the definition of Chapter 570 and its applicability.*

14. This is an interesting argument that should be carefully considered, also because it addresses the question of whether or not the law as it stands, has attained the objective of subjecting a certain category of persons, namely political appointees within ministry/parliamentary secretariats who are not deployed from the public service, to parliamentary scrutiny.

15. It is useful to bear in mind the fact that the point of departure of Chap. 570 was a draft bill intended to cast a much wider net and catch most, if not all, so-called political appointees, that is to say all *employment in any Ministry, Parliamentary Secretariat or in any department or other entity of the Government wherein the employee has not been engaged according to the procedure established under article 110 of the Constitution.*<sup>1</sup> Prior to that draft bill the definition of "position of trust" was even wider as it included "...by way of example persons appointed in the secretariat of ministries, parliamentary secretariats, the

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<sup>1</sup> Vide definition of "position of trust" in the bill circulated with the Report of the Standing Committee (24/03/2014).



*EU secretariat, positions in corporations, authorities and other government-owned entities that would have been occupied by persons not appointed following a public call*". Mayors and local councilors had also been considered for inclusion at an earlier stage.<sup>2</sup>

16. I have reviewed the minutes of the debate within the Select Committee about the setting up of the office of the Commissioner and the Standing Committee for Standards in Public Life in the hope of obtaining a better insight into what the legislator intended.

17. In the sitting of the 4 February 2014, the Hon Dr George Vella had stated "*Aħna għidna li anke rridu ndaħħlu persons of trust, jġififieri, s-segretarjat tagħna! Dawn imkien u qatt ma kienu answerable.*"

18. Regrettably, other than this statement there is not much else that throws light on the subject and therefore it is my duty to give an interpretation of the law as it stands without the comfort of any contribution at the debate stage.

19. Article 2 of the *Standards in Public Life Act* defines "person of trust" as "*... any employee or person engaged in the private secretariat of a Minister or of a Parliamentary Secretary wherein the person acts as an adviser or consultant to a Minister or to a Parliamentary Secretary or acts in an executive role in the Ministry or Parliamentary Secretariat...*",

20. The word "executive" means *relating to or having the power to put plans or actions into effect*.<sup>3</sup> This term is often associated with higher positions when used as part of a job title, but this is not necessarily always the case. For instance, in the public service, the grade of "Executive Officer" is a grade in salary scale 14 which is the same scale as that of a Senior Clerk. The grade of Executive Officer is not considered a management grade; so much so that the list of duties of that grade specify that persons in the grade of Executive Officer work under the direction of management.<sup>4</sup>

21. Mr Mangion holds the position of Private Secretary in the Ministry of Foreign Affairs and Trade Promotion. The description of duties that was provided to me by both Mr Mangion and the Principal Permanent Secretary starts with the words "*This position is responsible for managing the administrative functions of the minister's secretariat*". The duties include "*maintaining close liaison with the Head of the Minister's secretariat to ensure coordination of activities, priorities and deadlines*" and "*ensuring that operational priorities and deadlines are being met*

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<sup>2</sup> Vide Dok 5 attached to the minutes of the meeting of the Standing Committee of the 26/11/2013.

<sup>3</sup> Oxford Online Dictionary.

<sup>4</sup> See paragraph 2(i) of the call for applications for the grade of Executive Officer, as published in June 2017 and available at <https://exams.gov.mt/dbfile.aspx?id=583>.



*and ensuring that the appropriate level of support services are provided by the secretariat*". Even if one were to associate the executive role with that of management, these functions should no doubt be considered as executive functions.

22. The Principal Permanent Secretary has informed me that according to the rules upon which persons of trust are approved none of them may perform an executive role. This emerges from a document dated 7th July 2017 and entitled "*Policy on the Engagement of Persons/Positions on a Trust Basis*". This document states: "*The role and duties of Policy Consultants, Advisors and other persons engaged on a trust basis are to be purely advisory and such positions will not enjoy executive powers on government matters and personnel.*"

23. This does not contradict the argument that I made in paragraph 21. It shows that public administration in Malta is moving towards the pattern adopted in other countries insofar as persons of trust as defined in the Act are concerned. In the United Kingdom, for instance, the Constitutional Reform and Governance Act of 2010 deals inter alia with persons appointed by Ministers to assist them and called "special advisers".<sup>5</sup> These special advisers cannot authorise expenditure of public funds, cannot exercise management powers vis-à-vis the civil service (except in respect of other special advisers) and cannot exercise any powers that emanate from any law or royal prerogative.<sup>6</sup> In Ireland, such a special adviser cannot exercise powers granted by law to a Minister or other officer.<sup>7</sup>

24. In my considered opinion, the document entitled "*Policy on the Engagement of Persons/Positions on a Trust Basis*" refers to similar powers where it states that persons of trust *will not enjoy executive powers on government matters and personnel*. If this were to be interpreted to mean that a person of trust cannot exercise any type of executive role, even within his or her own private secretariat, this would contradict the job description of a Private Secretary that, as stated above, has very important executive functions within the private secretariat, and would create a vacuum in the sense that no member of the secretariat would be able to carry out an executive role within the secretariat.

25. Another question that arises is whether a private secretariat should be considered as forming part of the Ministry/Parliamentary Secretariat. This question is being put because of the text of Article 2 of the Standards in Public Life Act, that refers to "an executive role in the Ministry or Parliamentary Secretariat". Here one should refer to the Public Administration Act (Chapter 497).<sup>8</sup> Article 7(1)

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<sup>5</sup> Vide Article 15(1) of the Constitutional Reform and Governance Act of 2010.

<sup>6</sup> Vide Article 8(5) and Article 8(6) of the Constitutional Reform and Governance Act of 2010.

<sup>7</sup> Vide Article 8(2)(a) of the Public Service Management Act of 1997.

<sup>8</sup> The Public Administration Act of 2009 (chapter 497) was superseded by a new Act (chapter 595) on 1 March 2019. However, chapter 497 is cited here since it was in force at the time of the



states that “A ministry shall be constituted as a distinct organisation in its own right under every Minister who is assigned portfolio responsibilities in accordance with article 82 of the Constitution, and the ministry shall consist of: (a) the Minister’s secretariat; (b) the secretariats of such Parliamentary Secretaries as may be appointed to assist the Minister; (c) the office of the Permanent Secretary; and (d) such other divisions, directorates, sections, offices or other units within the public service as may be placed or established within the Ministry by the Prime Minister.”

26. ‘Secretariat’ in paragraphs (a) and (b) means the private secretariat as per Article 6(3) to Article 6(6) of the same Act.

27. Paragraphs (a) and (b) in article 7(1) represent the political wing of the Ministry, which is to say that composed of persons of trust, whereas paragraphs (c) and (d) represent the administrative wing which is composed of public service employees. A person of trust can give directions to other persons of trust who fall within his or her responsibility, but according to the document entitled “Policy on the Engagement of Persons/Position on a Trust Basis” cannot give directions to officers in the administrative wing of the Ministry/Parliamentary Secretariat. This issue goes beyond the scope of this case report, but should a person of trust be tasked with conveying the Minister’s directions to a public service employee, it would be good practice for that person of trust to always start with the phrase “I am directed by the Minister to instruct you ...” to legitimise the instruction and eliminate any doubt as to who is giving it. This would avoid putting public service employees in any doubt as to whether or not they should obey the instruction.

28. Nevertheless, once the Private Secretariat of a Minister or Parliamentary Secretary forms part of the Ministry, an executive role in the Private Secretariat, such as the role of Private Secretary, constitutes an executive role within the Ministry. In my view, this role satisfies the meaning of “person of trust” in Article 2 of the Standards in Public Life Act, and consequently the role of Private Secretary falls within the purview of this Act.

ii. *Mr Mangion’s contract is an employment contract for a definite period of time. The nature of the said contract constitutes a private contractual relationship between employer and employee irrespective of who is the employer.*

*That it is a well established principle that this contractual relationship is regulated by law (Chapter 452) which law zealously protects the employee’s rights. This is all the more so in the context of precarious employment, which applies in the present case, not because the*

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incident that is the subject of this case report. In any case Article 7 has been retained as is in the 2019 Act, and articles 6(3) to 6(6) are also materially the same.



*position in question is one of trust, but because it has been filled on the basis of a definite contract.*

*That it is inconceivable that an employment contract can be changed through legislative intervention or, worse still, render its conditions of employment more burdensome or rigorous for the employee than those to which the employee had signed up at the commencement of his employment.*

*That the employee had entered into contract of employment for a definite period of time and was bound by its terms and conditions.*

*Mr Mangion asks how could Chapter 570 subject him to a new form of scrutiny and sanctions that were not applicable to him when he commenced his employment and mid-way through the term of his contract. Mr Mangion concedes that at the end of the contract the employer could add this form of scrutiny as one of the conditions applicable to a renewed contract which the employee could either accept or not accept to enter into.*

*That it is a fundamental principle that an employee cannot be subjected to more onerous conditions of employment. The fact this would amount to an ugly and unprecedented situation of forced employment in that an employee would be unable to withdraw from the contract without suffering drastic financial consequences and would therefore be constrained to give in to and work under different conditions to which he was employed.*

*Another point being raised is that Chapter 570 renders the code of ethics that emerges from Chapter 497 (that applies to employees in the public service), applicable to persons of trust but a breach of that code brings about consequences that, for Mr Mangion, would be different to those that are contemplated in Chapter 497. This is a contradiction.*

*Effectively the consequences that emerge from Chapter 570 against Mr Mangion were he to be found in breach of his ethical/statutory obligations confirm without the slightest doubt that the above argument is legally valid and correct.*

29. It should be noted first of all that the Code of Ethics in the Public Administration Act (Chapter 497) applied to Mr Mangion even before the Standards in Public Life Act came into force. Paragraph 4.1 of his contract of appointment as Private Secretary requires him to “be regulated by ... the Code of Ethics and the provisions of the Public Service Management Code (PSMC) which may, from time to time, be applicable to public officers.” The contract does not specify which code of ethics it is referring to, but the only applicable code of ethics is that set out in the Public



Administration Act. This is confirmed by the PSMC itself which, in chapter 6 (conduct and discipline), refers to this code of ethics.

30. It can be said that Chap 570 exposes *persons of trust* as defined therein to a new form of scrutiny with respect to acts that are committed following the introduction of the Act itself. However, this has nothing to do with conditions of employment. It is an act of Parliament not of the employer. It can also be argued that the Minister to whom Mr Mangion is attached is a member of Parliament but surely the distinction between the Minister *qua* employer and the Minister *qua* member of Parliament should be easily understood.

31. I assume that what Mr Mangion may have meant is that the legislator cannot introduce new forms of scrutiny and/or sanctions during the term of his employment; but surely he cannot argue convincingly that the legislator should wait for the expiry of Mr Mangion's contract of employment before ever considering legislation that in some way restricts his right to do what is prohibited by the Code of Ethics made applicable to his category of employment. At this point it may be opportune to point out that the law is not retrospective and that when the alleged act occurred the law had already been enacted. Also, it is a fundamental principle of criminal law that an act cannot be considered a crime if it was not a crime at the time of commission but the case under examination is about a form of scrutiny and a code of ethics that was made applicable to Mr Mangion's category of employment before the alleged commission of his act that gave rise to the Complaint.

*iii. Mr Mangion categorically denies having uttered the phrase alleged to have been said by him in the blog of Manwel Delia.*

32. I understand that this defence is based on the fact that the complainant did not precisely quote the phrase used by Mr Mangion. However, he did so approximately enough.

*Moreover, Sarah Clarke did not file a complaint with the Commissioner.*

33. This is considered totally irrelevant to the issue since I am not bound to act only on the complaint of the "injured party".

*iii (a) Re Code of Ethics Schedule 1 Article 16c Chapter 497.*

*Sarah Clarke does not feature as a member of staff in the Ministry to which Mr Mangion is attached. Therefore, the part that deals with courtesy that should be maintained with other members of staff of course is not applicable to the circumstances under review.*

34. I concur with the statement that Sarah Clarke is not another member of the staff.





*That Sarah Clarke cannot be considered a 'member of the public' in terms of Chapter 497 in that reference to member of the public in the said act is undoubtedly a reference to a member of the public in Malta and not to the public in a foreign country. This is very clear in the context of what is regulated by Chapter 497.*

35. I cannot and do not concur with the statement that Sarah Clarke cannot be considered a member of the public. In my view, for the purposes of Chap 497, a member of the public is any person not being a member of staff. Nor can one argue this on the basis that the definition of a member of the public in Chap 497 does not refer to public in a foreign country. This argument does not have any basis at law or fact.

*iii(b) RE: Code of Ethics Schedule 1 Article 17 Chapter 497. The conduct of a public servant should be such as not to put his position in a bad light and should not reflect badly on the public service. Mr Mangion is not employed in the public service. Therefore, even if in terms of law the code of ethics applicable to whomsoever is in the public service is applicable to Mr Mangion nonetheless his actions can never impact or reflect positively or negatively on the public service since he does not form part of the public service and is not employed by same. This argument is clear and does not need further amplification. Whatever Mr Mangion said could never have any reflection on the public service in that the words were uttered by a person who is extraneous to the public service.*

*As to whether the words uttered reflect badly on his position the code of ethics in any case refers to position in the public service.*

*The Commissioner cannot supplement the basic fault in Chapter 570 or stretch or change what is written therein, since the Act should have introduced a new code of ethics for persons of trust rather than cross reference the code of ethics applicable to employees in the public sector...*

*For these reasons therefore the Commissioner is precluded from and does not have the authority to enter into an exercise effectively taking clause by clause the code of ethics applicable to the public service and changing or twisting the context to make it applicable to that of employees in a position of trust. This would amount to a dangerous exercise bordering on the arbitrary if not the irregular or, worse still, the unlawful, and would not augur well for this new position of Commissioner.*



36. This argument rests on a distinction between different categories of employees. It is important to give some background to this issue before addressing the argument.

37. Paragraph 17 of the Code of Ethics in the First Schedule of the Public Administration Act (Chap 497) (the PAA Code), states that *“At all times the behaviour of a public employee shall be in such a way as not to discredit his or her position and not to reflect adversely on the public service”*.<sup>9</sup>

38. Here the PAA Code, as it does throughout, refers not to public service employees – or, in constitutional law terminology, public officers – but to public employees. “Public employee” as defined by article 2(1) of the Public Administration Act includes both public officers and the employees of state entities outside the public service. Public officers are employed directly by the government through processes overseen by the Public Service Commission in terms of article 110(1) of the Constitution. State entities employ their own staff under article 110(6) of the Constitution.

39. Persons of trust as defined by the Standards in Public Life Act, meaning those who serve in the private secretariats of Ministers and Parliamentary Secretaries, fall outside either category. They are not considered public officers – unless they happen to be already serving as such – because appointments on trust are made without reference to the Public Service Commission. However, they are engaged directly by the government, not by state entities.

40. Mr Mangion’s argument is correctly premised on the understanding that it is only by virtue of the Standards in Public Life Act that the PAA Code applies to persons of trust. Article 3(1)(b) of Chap. 570 refers to *“the Code of Ethics included in the First Schedule to the Public Administration Act to which persons of trust shall by virtue of this Act and without any further requirement, be subject.”*

41. However, Mr Mangion’s argument is in my view otherwise incorrect. The Standards in Public Life Act sets no limits on the applicability of the PAA Code to persons of trust. Its intention is clearly that the entire Code should apply to persons of trust as it applies to public employees. This does not only require that persons of trust should be regarded as public employees for the purposes of the Code. It requires that references to the organisational context, such as “the public service” in paragraph 17, should be taken as references to the organisational context within which persons of trust operate. This is not arbitrarily changing the context as suggested by Mr Mangion, but is a logical, necessary and direct outcome of article 3(1)(b) of the Standards in Public Life Act.

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<sup>9</sup> Here again, the code of ethics in the Public Administration Act of 2009 (chapter 497) is being cited, rather than that of the Act of 2019 (chapter 595), since the Act of 2009 was in force at the time the incident occurred.



42. It should also be noted that paragraph 17 of the PAA Code as quoted above refers both to “public employees” and to “the public service”. This suggests that misconduct by a public employee can reflect adversely on the public service even if the employee were not a public officer. This is reinforced by paragraph 29, which states that “*Former employees shall ensure that they do not accept employment or engage in activities which may cast doubts on their own integrity or that of the organisation in which they were previously employed or of the Public Service generally*” (emphasis added). The public does not distinguish between different components of the public administration, and unethical behaviour on the part of any public employee is likely to reflect badly on the public administration as a whole, including the public service. The same applies to persons of trust. This means that even if one were to insist on a literal interpretation of “the public service” in paragraph 17 of the PAA Code, it would be still relevant in this case. A person of trust, who after all works in a government ministry, does not need to be a public officer for misbehaviour on his or her part to reflect badly on the public service.

43. Finally, there can be no doubt whatsoever that the reference in paragraph 17 of the PAA Code to the positions held by public employees should for the purposes of the Standards in Public Life Act be taken as a reference to the positions held by persons of trust.

- iv. *If Mr Mangion were to be found responsible in terms of the report filed against him, one of the consequences that he could be subjected to is a parliamentary admonition. A reprimand is a penalty of a criminal nature in terms of Chapter 9 of the Laws of Malta.*

44. A reprimand is one of the penalties that can be imposed by a court as a punishment for contraventions. It does not mean that all reprimands by whatever body and by whomsoever are of “a criminal nature”.

*Reference is made to the judgement of the Constitutional Court (Thake vs Electoral Commission et, 8/10/18) that is applicable to this case. Therefore, Chapter 570 infringes fundamental human rights of Mr Mangion in that the entire process should conform that set out in the aforementioned judgements and evidently the function of the Commissioner cannot be segregated from the function of the Permanent Committee, as they are one set of proceedings more so in that the function of the committee is to accept or reject the Commissioner’s report – which means that the Committee would have before it a conclusion of the Commissioner and neither the Committee and nor Parliament itself could adjudicate or impose a penalty of a criminal nature on Mr Mangion as it is not a court for all purposes and effects at law.*



45. The role of the Commissioner as set out in Art 570 is of an investigative nature.

*Finally, whereas it is correct to state that the complainant need not show any interest it has to be remarked that in the blog through which Manwel Delia makes reference, Manwel Delia opts to insult Mr Mangion with disparaging words referring to him as a 'git' and a 'pompous ass with sweaty dewflaps'. It is true Manwel Delia is not subject to parliamentary scrutiny and it is equally true that the Office of the Commissioner should not allow itself to be abused and used for retaliatory purposes and for persons that are subject to parliamentary scrutiny to be punished with this process. Therefore, one would necessarily ask how Manwel Delia files a complaint and then he himself uses language that is certainly more objectionable than the phrase that he is imputing Mr Mangion.*

46. I do not condone the language used by Mr Delia but he does not fall within the remit of this office, which is to uphold the standards of persons in public life. There exist other laws that deal with abuse of media.

### **Conclusions and final steps**

47. For the reasons stated above I conclude that Mr Mangion's actions constitute a breach of cl 16(c) and 17 of the Code of Ethics attached to the Public Administration Act (Chapter 497 of the Laws of Malta).

48. I regard Mr Mangion's actions as particularly reprehensible in that he addressed offensive language towards a member of a non-government organization during an international diplomatic meeting at which he was present as a representative of the Ministry for Foreign Affairs, accompanying the Minister. This incident is all the more serious at a time when Malta is under international scrutiny (by the self-same NGO among others) and its international image has been tarnished.

49. During my meeting of 14 March 2019 with Mr Mangion, I informed him that, in my view, the appropriate remedy in this case was for him to make a formal apology to Ms Sarah Clarke, and that if he did so I was willing to apply the procedure set out in article 23 (5) of the Standards in Public Life Act. Under this article, I can close a case if the person investigated takes the remedial action



proposed by me, and I would report it to the Standing Committee on Standards in Public Life for information purposes.

50. I considered it in the national interest for this case to be resolved as soon as possible. It is for this reason that I considered it appropriate to apply article 23(5) of the Act.

51. I accordingly directed Mr Mangion to draw up a written apology for my approval. Having reviewed the draft and found it satisfactory, I directed him to send it to Ms Clarke. This was done by Mr Mangion on 11 April 2019.

52. The apology states among other things that

*As I am sure you are aware, I made a public apology as soon as I was approached by the media and asked to react to your tweet on the matter. Through this letter, I am again offering my unreserved apologies, this time to you in person, for having responded emotionally to what I felt, at that moment in time, was a situation demanding a defence of my country and my Minister. I sincerely regret my choice of words, and I am truly sorry that I have caused offence.*

*Without attempting to justify my reactions, though, I wish to clarify that verbal abuse has never been my thing, as all who know me can affirm. It happened to be a very bad period for me – as happens to every human being, at times – and, regrettably, I became emotional.*

53. With this apology, I regard the case as closed. I would like to think that Mr Mangion has fully appreciated the seriousness of his transgression and sincerely hope, that this report has sufficiently underlined the importance of correct behaviour on the part of all those who represent the state, particularly in diplomatic circles or abroad.

54. A copy of this report is being given to the Complainant, to Alessandro Mangion, to Minister Carmelo Abela and to the Standing Committee for Standards in Public Life for information purposes.

**Dr George-Marius Hyzler**  
Commissioner for Standards in Public Life

# DOCUMENT A

ARTICLE 19  
Free Word Centre,  
60 Farringdon Rd,  
Clerkenwell,  
London EC1R 3GA

8 March 2019

Dr George Marius Hyzler,  
Commissioner for Standards in Public Life  
11 St Paul Street, Valletta VLT 1210,  
Malta

Dear Dr Hyzler,

In response to your request, please find below my statement concerning verbal abuse by Alessandro Mangion, the Private Secretary of Foreign Affairs Minister Carmelo Abela, at the UN Global Compact on Migration in Marrakesh, Morocco on 10 December 2019.

Please do not hesitate to contact me if you require further information. Please keep me informed on the progress of this investigation.

Sincerely,



Sarah Clarke

Head of Europe and Central Asia  
ARTICLE 19

## **Sarah Clarke - Statement concerning verbal abuse by Alessandro Mangion, the Private Secretary of Foreign Affairs Minister Carmelo Abela at the UN Global Compact on Migration**

I held the posts of Policy and Advocacy Manager and Policy and Advocacy Office for the international freedom of expression organization, PEN International for six years (November 2012 - December 2018) prior to moving to the legal freedom of expression organisation, ARTICLE 19 in January 2019 where I am currently Head of Europe and Central Asia.

From March – December 2018, I worked extensively on the campaign for justice for the assassination of Maltese investigative journalist and anti-corruption campaigner, Daphne Caruana Galizia including *inter alia* researching and drafting the UN Universal Periodic Review (UPR) shadow submission on Malta<sup>1</sup>; coordinating a statement signed by over 300 writers concerning the denigration of the memory of Daphne Caruana Galizia; leading PEN International’s work in supporting the call for a public inquiry into whether the life of Daphne Caruana Galizia could have been saved;<sup>2</sup> and participating in a joint international freedom of expression mission to Malta from 15-17 October 2018 in which the delegation met with Prime Minister Joseph Muscat, Attorney General Peter Grech and Minister of Justice, Owen Bonnici.<sup>3</sup> I have also engaged in correspondence with Minister Bonnici in relation to the clearing of the protest memorial on behalf of PEN International.<sup>4</sup>

In my capacity as Policy and Advocacy Manager for PEN International, I participated in the UN Global Compact on Migration in Marrakesh, Morocco from 8-12 December 2018, advocating for greater protections for writers at risk who are forced to migrate. On 10 December, a plenary panel, including speakers UN Secretary General, Antonio Gutierrez, UN High Commission for Human Rights, Michelle Bachelet and former President of Ireland, Mary Robinson, took place to celebrate the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights. Following the panel, multiple UN Member States intervened with statements concerning migration and human rights issues. The Maltese Minister for Foreign Affairs and Trade Promotion, Carmelo Abela, intervention on behalf of Malta focused on the right to freedom of expression, noting, “not only do we believe freedom of thought and expression is a universal right, but its defence is the sustainment of an intangible right which should be enjoyed by all humanity.”<sup>5</sup>

It is common practice for NGO delegates at UN events to engage with Member States on their interventions within the UN room, especially where the speech of the Member State concerns an area of expertise of the delegate. Indeed, NGOs are invited to participate in UN events specifically because it is the view of the international community that there should be fora in which such engagement is facilitated (as evidenced in resolutions 71/280<sup>6</sup> of 6 April 2017, 72/244<sup>7</sup> of 24 December 2017 and 72/302<sup>8</sup> of 7 August 2018).

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<sup>1</sup> <http://pen-international.org/news/malta-upr-2018>

<sup>2</sup> <http://pen-international.org/news/malta-appeal-to-establish-a-public-inquiry-into-the-assassination-of-ms-daphne-caruana-galizia>

<sup>3</sup> <http://pen-international.org/news/maltas-authorities-are-not-living-up-to-their-obligations-to-safeguard-freedom-of-expression>

<sup>4</sup> <http://pen-international.org/news/statement-on-the-ministry-of-justices-repeated-destruction-of-the-protest-memorial-for-justice-for-daphne-caruana-galizia>

<sup>5</sup> [https://www.maltatoday.com.mt/news/national/91612/foreign\\_ministers\\_aide\\_calls\\_pen\\_activist\\_a\\_baised\\_shithole\\_during\\_un\\_meeting#.XIFcwGT7Q9c](https://www.maltatoday.com.mt/news/national/91612/foreign_ministers_aide_calls_pen_activist_a_baised_shithole_during_un_meeting#.XIFcwGT7Q9c)

<sup>6</sup> <https://undocs.org/A/Res/71/280>

<sup>7</sup> <https://undocs.org/A/Res/72/244>

<sup>8</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/72/308](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/308)

In this capacity, following Minister Abela's speech, I approached his delegation, which comprised of Minister Abela, Alessandro Mangion and a female delegate whose identity I don't know. I requested a copy of the speech. The Minister asked me what I had thought of his intervention. I replied, in line with the position of PEN International and 22 other leading freedom of expression organisations, that Malta could best demonstrate its stated commitment to the right of freedom of expression by immediately conducting a public inquiry into whether the life of Daphne Caruana Galizia could have been saved.

Minister Abela asked me which organisation I represented to which I replied PEN International. He repeatedly told me that I was "biased", "did not know what I was talking about" and had not spoken with any of the "right" people in Malta. In response to these charges, I replied that two months previously in October 2018 I had participated in an international freedom of expression delegation comprised of the Committee to Protect Journalists (CPJ), the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), the International Press Institute (IPI), PEN International, and Reporters Without Borders (RSF), to raise concerns about a lack of justice a full year after the murder of investigative journalist Daphne Caruana Galizia, and to assess press freedom conditions in the country. I noted that the delegation had met with senior government officials, including Prime Minister Joseph Muscat, Minister for Justice, Culture and Local Government Owen Bonnici, and Attorney General Peter Grech. I also stated we had also met with a wide range of journalists and civil society representatives to understand their views about the atmosphere for journalism and about the rule of law in Malta following Caruana Galizia's assassination on 16 October 2017 and that we had monitored hearings in defamation lawsuits that continue posthumously against Daphne Caruana Galizia.

The Foreign Minister then noted that the family of Daphne Caruana Galizia have "full faith" in the investigation into her assassination. I noted this was far from true since the Caruana Galizia family had had to resort to the Constitutional Court to rectify the involvement of certain people in the investigation.

After the Foreign Minister repeatedly stating that I was biased, Alessandro Mangion, the private secretary to Carmelo Abela stated that I was a "biased shithole." I asked if I could quote him on this statement and he responded, "quote away."

Two colleagues from ARTICLE 19, Patricia Meléndez, Head of Civic Space, and Andrew Smith, Head of UN, were present in the event space during this incident. Patricia Meléndez saw the exchange between the Maltese delegation and I from where she was seated about 10 meters away but did not hear what had passed. I discussed the incident as described above immediately after it had taken place with Patricia Meléndez. Some ten minutes later I discussed the incident with Andrew Smith. Both colleagues confirm this account and are available for any further inquiries.

Minutes after the incident, I tweeted that this had taken place.<sup>9</sup> I then wrote a complaint concerning reprisals against human rights defenders for engaging with UN mechanisms addressed to Andrew Gilmore UN Assistant Secretary-General for Human Rights and Louise Arbour, Special Representative of the United Nations Secretary-General for International Migration. On 11 December, a coalition of international and Maltese freedom of expression organisations including the European Centre for Press and Media Freedom (ECPMF), Aditus Foundation, Committee to Protect Journalists (CPJ), European Federation of Journalists (EFJ), International Press Institute (IPI), PEN America, PEN International, Platform of the Human Rights Organisations in Malta (PHROM) and SOS Malta wrote a formal statement concerning the incident noting:

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<sup>9</sup> [https://twitter.com/sarah\\_m\\_clarke/status/1072202101676216323](https://twitter.com/sarah_m_clarke/status/1072202101676216323)



“We condemn this behaviour as part of what we observe as a growing trend of Maltese public officials harassing female activists advocating for justice for the assassination of Daphne Caruana Galizia. Sarah Clarke, along with international and national human rights activists, has worked tirelessly in seeking justice for the murdered investigative journalist Daphne Caruana Galizia. [...] We demand an immediate apology and we ask the UN to include this incident in the UNSG annual report on reprisals.”<sup>10</sup>

On 11 December, I gave an interview concerning the incident to *The Malta Independent*.<sup>11</sup> I stressed that I had never experienced such behavior from diplomats representing a UN and EU Member State. Furthermore, I noted that the focus of any investigation into this incident should address the actions and behavior of the Maltese government at international fora in relation to this case. Of note in this regard are Malta’s omission of the assassination of Daphne Caruana Galizia in the freedom of expression section of the Government of Malta’s August 2018 UN UPR submission,<sup>12</sup> as is the request by the government of Malta at the Council of Europe to remove Dutch MP Pieter Omtzigt as Council of Europe rapporteur monitoring investigations into Daphne Caruana Galizia’s murder.<sup>13</sup>

On 12 December, Alessandro Mangion commented to the Maltese press (*Malta Independent*<sup>14</sup> and *Malta Today*)<sup>15</sup> in which he admitted that he had used the term “biased shithole” in conversation with me but insisted that, “I was certainly not referring to Sarah Clarke herself. I used those words to refer to the unscrupulous network by which she is obviously being fed unproven allegations that she kept parroting without having bothered to check her facts.”

Mangion also stated that he had apologised to me. However I confirm that I received no direct apology.

Mangion also posted an infographic on Twitter and Facebook, restating his allegation of bias, and adding that “those words were used “vis-à-vis a concerted effort to tarnish Malta’s reputation, of which Sarah Clarke is an active part.”<sup>16</sup> In effect, Mangion appeared to characterise the world’s leading freedom of expression organisations calling for a public inquiry part of a concerted effort to tarnish Malta’s reputation. The tweet was retweeted by the Foreign Minister, Carmelo Abela.<sup>17</sup>

To date, I have received no further communication relating to this incident from the Government of Malta.

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<sup>10</sup> <https://www.ecpmf.eu/news/threats/maltese-state-official-verbally-abuses-human-rights-advocate-at-the-united-nations>

<sup>11</sup> <http://www.independent.com.mt/articles/2018-12-12/local-news/Malta-s-behaviour-extremely-concerning-unacceptable-from-EU-State-PEN-International-6736200743>

<sup>12</sup> <http://pen-international.org/news/malta-statement-on-the-universal-periodic-review>

<sup>13</sup> <https://www.timesofmalta.com/articles/view/20180912/local/labour-mps-request-to-remove-coe-rapporteur-on-caruana-galizia-murder.688946>

<sup>14</sup> <http://www.independent.com.mt/articles/2018-12-12/local-news/Malta-s-behaviour-extremely-concerning-unacceptable-from-EU-State-PEN-International-6736200743>

<sup>15</sup> [https://www.maltatoday.com.mt/news/national/91612/foreign\\_ministers\\_aide\\_calls\\_pen\\_activist\\_a\\_biased\\_shithole\\_during\\_un\\_meeting#.XIFcwGT7Q9c](https://www.maltatoday.com.mt/news/national/91612/foreign_ministers_aide_calls_pen_activist_a_biased_shithole_during_un_meeting#.XIFcwGT7Q9c)

<sup>16</sup> <http://www.independent.com.mt/articles/2018-12-12/local-news/Malta-s-behaviour-extremely-concerning-unacceptable-from-EU-State-PEN-International-6736200743>

<sup>17</sup> <https://twitter.com/pcaruanagalizia/status/1072964900161552392>