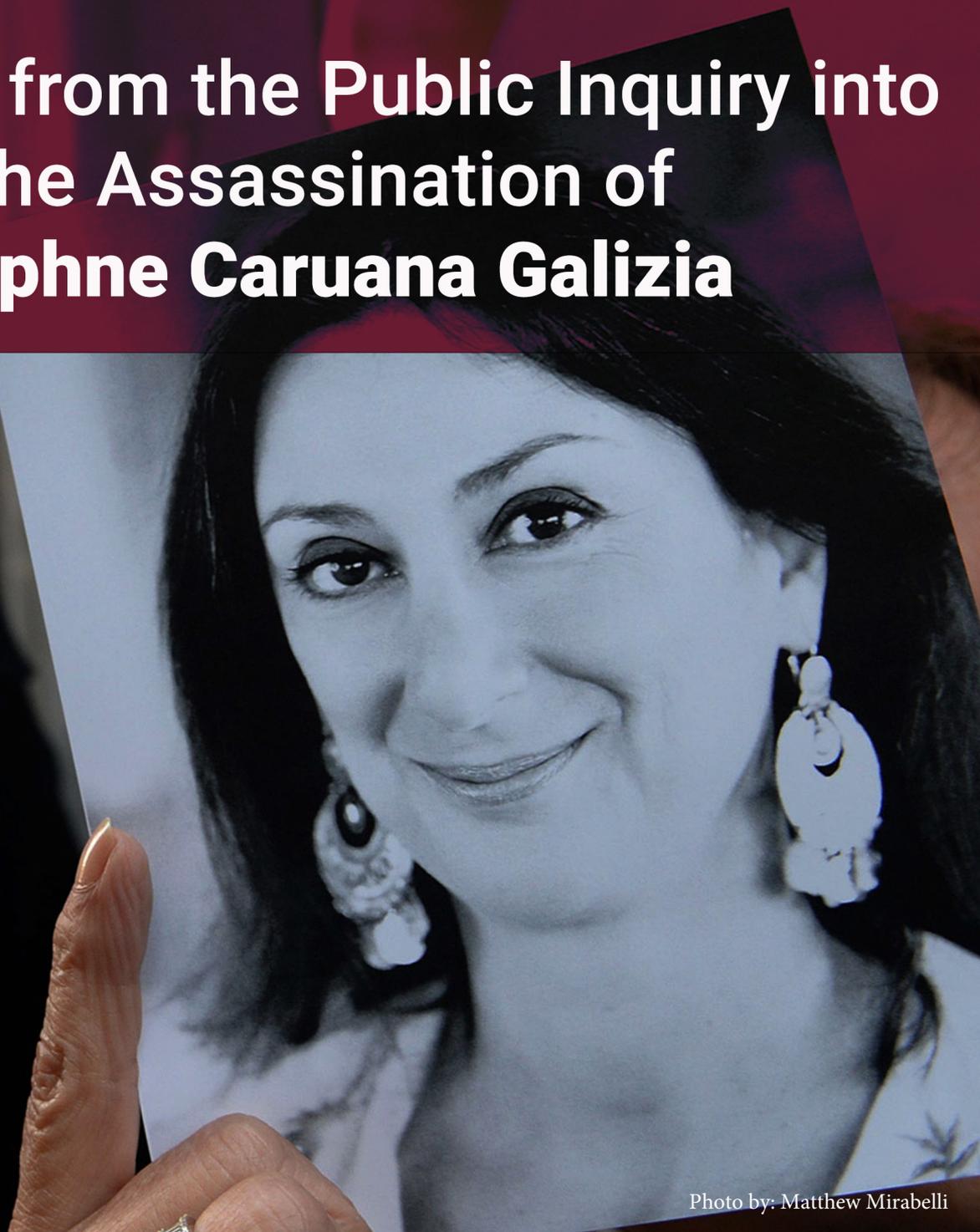




# Tackling Impunity

Lessons from the Public Inquiry into  
the Assassination of  
Daphne Caruana Galizia





DAPHNE  
CARUANA  
GALIZIA  
FOUNDATION



The Daphne Caruana Galizia Foundation's primary purpose is to ensure the public interest of full justice for Daphne Caruana Galizia's assassination and guardianship of her work. The Foundation uses all legal means possible to ensure investigations meet international standards, working with Maltese and international organisations to monitor the investigations and taking corrective action where necessary, and holding state agents to account for their responsibility and failure to protect. The Foundation supports efforts to achieve full justice in the targeted killings of journalists, promotes a culture of public interest litigation to enable access to justice, and supports the growth and resilience of independent investigative journalists.

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# 1. Introduction

A free press is the lifeblood of democracy. Journalists hold those in power to account, reporting on their actions and investigating wrongdoing. Their scrutiny extends to all areas of public interest, including matters of politics, business and crime, and the possible links between them. Investigative journalists play a particularly important role in this. By focusing on specific issues over an extended period of time, they can uncover corruption that would otherwise have gone undetected and unreported. Their reports are hugely powerful and have the potential to lead to changes in government and the prosecution of politicians and businessmen.<sup>1</sup> Nobel Prize winner, Joseph Stiglitz, has referred to investigative journalism as “absolutely essential”.<sup>2</sup> Without the media, including investigative journalists, ordinary citizens would not be able to make informed decisions, and democracy would fail.

Because of the important role that journalists play, States should support an enabling environment for the media, ensuring that journalists are able to report without fear of repercussions. Organisations such as the Council of Europe have recommended that States need to recognise quality journalism as an essential public good, and put in place legal and regulatory protections of it.<sup>3</sup> Yet, in practice, precisely because of the impact that their reporting can have, investigative journalists face a a lot of resistance. They often suffer lawsuits, obstacles to access information held by public authorities, online harassment, and threats of violence at the behest of those whose wrongdoings they expose – including politicians.

Across Europe, violence against journalists is on the rise. Since 2015, 34 journalists have been killed because of their reporting, all during peacetime.<sup>4</sup> Disturbingly, in the overwhelming majority of these murders, those ultimately responsible have not been brought to justice.<sup>5</sup> This has driven a climate of impunity where those responsible for the killing of journalists are literally able to get away with murder. At the same time, in cases where those directly involved in such a murder have been brought to trial, the climate of impunity under which the murder took place is not addressed, thereby leaving journalists at risk. A basic underlying problem is that those who were directly involved in the murder tend to be shielded by people in positions of power. This impunity indicates a fundamental failure of the rule of law, and means that the criminal justice



system is poorly equipped to provide a response to the broad set of questions that such a murder poses.

The assassination of Daphne Caruana Galizia, a Maltese investigative journalist, was the first assassination of a journalist in Europe to be investigated through an independent Public Inquiry as well as through the criminal justice system. Daphne Caruana Galizia reported on corruption in politics and business, and on international money laundering. She reported on the key Maltese figures identified in the Panama Papers, and she had a reputation for pursuing the truth without fear or favour. In her reporting, she had accused Malta's Prime Minister, Joseph Muscat, and two of his top aides, Keith Schembri and Konrad Mizzi, among others, of corruption. On 16 October 2017, she was assassinated in a car bomb attack outside her home in Bidnija.

A criminal investigation was started immediately, with significant help from the US Federal Bureau of Investigation (FBI). But there was strong concern that the investigation would not be able to uncover the full truth, including that surrounding the circumstances behind the murder, and, following a two-year-long campaign, a Public Inquiry was announced. The aim of the Public Inquiry was to assess whether any State entities facilitated, caused, or failed to prevent the assassination; whether effective criminal law provisions were in place and implemented to avoid the development of a de facto state of impunity; and whether the State had taken sufficient preventive operational measures to protect Daphne Caruana Galizia.

The Public Inquiry was carried out by a Board of two retired judges and one current judge. Over a period of 18 months they gathered evidence and heard witness statements from investigators, politicians, persons from within public administration and State entities, journalists, and from Caruana Galizia's extended family. The Board heard accounts of how Daphne Caruana Galizia had been hounded and threatened, how a campaign of vilification and dehumanisation had been pursued against her through the media (especially online and in pro-government media) which had created a climate of hatred against her, and how the police had failed to provide protection despite the obvious risk to her life.

The Board published its report in July 2021, finding that the State "should bear the responsibility for the assassination" and making wide-ranging recommendations for reform throughout both government and policing to improve the safety of journalists in Malta.<sup>6</sup>



This report analyses the model of a Public Inquiry – or a similarly independent process such as a parliamentary inquiry – that can run in parallel with a criminal investigation, but has the broader remit of investigating the circumstances that led to murder, and the political climate within which it happened. To this end, it will explore the efficacy of the Maltese Public Inquiry model as a good practice. It will highlight how it – or elements of it – can be followed by other countries in order to combat impunity for other cases of violence against journalists and, ultimately, prevent such cases. In particular, this report will identify the elements that allowed the Inquiry to function independently from the State, and from the ongoing criminal investigation. This report will also look at the recommendations made by the Public Inquiry and some of the steps required to implement them.

In addition to the Inquiry, this report will also examine the campaign that the family has led, and continues to lead, for justice for Daphne Caruana Galizia. It will determine whether any lessons can be learned from that for future cases, and consider the role of civil society and the international community in the run-up to the Inquiry as well as during it. The report identifies lessons learned from both the campaign and the Public Inquiry.

This report has been compiled based on interviews with those with close personal knowledge of the Public Inquiry and the Maltese justice system – including members of the Caruana Galizia family, as well as politicians, judges, lawyers, journalists, and activists – and is supplemented by desk research.<sup>7</sup>

## 2. Why the push for a Public Inquiry?

Daphne Caruana Galizia was a journalist who published one of the most widely read blogs in Malta, regularly reporting on misconduct and uncovering evidence of corruption that implicated individuals at the highest levels of Maltese business and politics. Her journalism was hard-hitting and she spared no-one. The influential *Politico* website listed her as one of “the 28 people who are shaping and stirring Europe” and described her as a “one-woman WikiLeaks”.<sup>8</sup> While she was admired by many, her journalism also made her many enemies. At the time of her death she had 47 civil and criminal defamation cases pending against her, including by the Prime Minister, Joseph Muscat. In her last blog post, she reported on a court appearance by the Prime Minister’s Chief of Staff, Keith Schembri, during which he said he was not corrupt, despite, as she wrote, “moving to set up a secret company in Panama along with favourite minister Konrad Mizzi and Mr Egrant (...), sheltering it in a top-secret trust in New Zealand, then hunting round the world for a shady bank that would take them as clients.” The blog post ended with the lines, “There are crooks everywhere you look now. The situation is desperate.”<sup>9</sup> Half an hour later, she was killed by a car bomb.

It was immediately clear that Daphne Caruana Galizia’s assassination was not an ‘ordinary’ murder. The brutality of her assassination (with the placing of a bomb under her car seat), paired with the high-level corruption she was uncovering, suggest that she had been targeted for her journalism. Her writing implicated politicians, public officials at the highest level, and businessmen involved in public projects. Her assassination was preceded by a string of car bombs which took place in the year leading up to her death.<sup>10</sup> While a criminal inquiry might be able, in theory, to bring the immediate perpetrators to justice, it would be far less likely to be able to unravel the complex set of political and administrative circumstances that allowed the assassination to happen. Neither would it be likely to make recommendations for the improvements in Maltese law, systems of governance, nor other practices that were likely to be needed to protect journalists.

Furthermore, there were serious questions about whether the Maltese criminal justice system could even deliver justice in this case, given the well-publicised shortcomings in the functioning of the police and in the independence of the judiciary.<sup>11</sup> In the immediate aftermath of the assassination, concerns



were raised over the involvement in the criminal investigation of the Deputy Commissioner of Police, about whom Daphne Caruana Galizia had written critically. There were also immediate concerns about the involvement of the magistrate who initially led the investigation but who had previously initiated a retaliatory criminal defamation case against Daphne Caruana Galizia. Her writing had concerned connections between senior police and politicians, and their dependence on them; and multiple failures to keep the family informed. Added to this, there were strong reservations about the functioning of the rule of law in Malta generally, something that had been flagged up in reports from, amongst others, the European Commission for Democracy through Law (an advisory body of the Council of Europe better known as the 'Venice Commission').<sup>12</sup> All this put in doubt whether a criminal investigation and prosecution could even be concluded effectively and successfully, and whether it could identify steps that ought to have been taken to prevent the assassination – both essential requirements under the European Convention on Human Rights (ECHR). When the family complained about the dependence of the Assistant Police Commissioner, and police in general, on politicians, Maltese MEPs queried how the machinery of the Maltese State could possibly investigate themselves, given the links between Daphne Caruana Galizia's death and her journalism which involved allegations of corruption at the heart of the government, the judiciary, and the police.<sup>13</sup> A formal Public Inquiry led by an independent Board was the only means through which the circumstances of the assassination as well as events leading up to it could be investigated, including the conduct of public officials and State institutions, and recommendations for reform be made.

A Public Inquiry is an independent investigation into an event or a series of events of major public concern. It is ordered by the government but functions independently of it. Its independence is a crucial element that renders it compliant with the requirements of the ECHR. It is typically chaired by someone of high integrity and independence, such as a judge, has powers to hear witnesses and compel evidence, and its proceedings are public. Under Maltese law, it is distinct from a so-called magisterial inquiry which is carried out by a magistrate but takes place behind closed doors, as part of the criminal justice system, and whose report is not usually public.<sup>14</sup>

In the United Kingdom, whose legal system has influenced that of Malta, public inquiries are common. They can be used to establish facts, to learn lessons so as to ensure that mistakes are not repeated, to restore public confidence, and to determine accountability. UK public inquiries have addressed issues such



as transport accidents, fires, the mismanagement of pension funds, deaths in custody, and decision-making that led to war.<sup>15</sup> Provided that a system for follow-up is in place, they can lead to real and meaningful change.<sup>16</sup>

In Malta, by contrast, a Public Inquiry to investigate an event of major public concern is extremely rare (the only previous Public Inquiry, into bus ticketing, had been held in 1996<sup>17</sup>). They are potentially very powerful: under the Inquiries Act 2015, which reformed the mechanism, a Public Inquiry has the power to summon witnesses and compel the production of evidence. Anyone who refuses to appear before an Inquiry or who refuses to hand over evidence may be fined or imprisoned. However, because an Inquiry must be appointed by either the Prime Minister or a government minister, its establishment is a question of politics more than of law. While it was clear to many that a Public Inquiry into the assassination of Daphne Caruana Galizia was absolutely necessary, it was equally clear that to force the government to establish one would take a major campaign.

### **3. The campaign for a Public Inquiry into the assassination of Daphne Caruana Galizia**

#### **An immediate campaign**

The campaign for justice for Daphne Caruana Galizia started on the day of her murder. The magistrate on duty that afternoon (under Maltese law, a murder investigation is led by the police and an Inquiry to secure the evidence is led by a magistrate) had previously started a retaliatory criminal defamation suit against Daphne Caruana Galizia. Citing a conflict of interest, the family had to immediately launch an application to have her recused.<sup>18</sup> While the magistrate stood down a day later, this set the tone for what was to follow: the family had to fight for justice every step of the way. When they won a victory on one issue, they were pushed back on another. The family were forced into a lengthy and ongoing campaign that took a heavy toll: physically, emotionally, and in time and resources.

#### **The role of the family, civil society, and the international community**

The family were at the centre of every step in the campaign. Although they had few resources, they were exceptionally determined. They were not just fighting for justice for their beloved wife, mother, daughter, and sister. Daphne Caruana Galizia had been murdered because of her resolve to fight corruption, and the family knew that obtaining full justice for her would involve exposing corruption and wrongdoing at the highest levels of government.

Though they lacked financial resources, they did have strong professional skills. Daphne Caruana Galizia's husband, Peter, was a lawyer. Two of their three sons, Matthew and Paul, were journalists; the other, Andrew, was a diplomat. One of Daphne Caruana Galizia's sisters, Corinne Vella, was a public relations expert. After the assassination, they set up the Daphne Caruana Galizia Foundation to fight for justice and to campaign for media freedom and journalists' safety.<sup>19</sup> All



their skills were drawn upon as the campaign they coordinated reached across Maltese and international civil society, the European Union, the Council of Europe and United Nations' human rights institutions, international anti-corruption and money laundering institutions, and national and international media. They were tireless in their efforts and, while they did not know it at the outset, the number of hours that they ended up dedicating to the campaign would run into the tens of thousands. For Matthew Caruana Galizia, Daphne's eldest son, and for Corinne Vella, one of Daphne's sisters, it became a full-time job.



*A vigil was organised in front of the Prime Minister's office, 'Castille'.*

The family did not stand alone. Daphne Caruana Galizia was the highest-profile journalist on the island; her blog posts often attracted more readers than the combined circulation of the country's newspapers.<sup>20</sup> She was internationally connected and one of her sons, Matthew Caruana Galizia, was a data journalist with the International Coalition of Investigative Journalists. Her murder caused a national and international outcry, and organisations such as Reporters without Borders, the European and International Federation of Journalists,



and the International Coalition of Investigative Journalists issued statements condemning the murder and calling for an immediate and full investigation.<sup>21</sup>

The international community had already rung the alarm bell over serious shortcomings in the rule of law in Malta.<sup>22</sup> Awareness of this, coupled with a rising level of impunity for the murder of journalists internationally, led to a rapid call for a Public Inquiry. Three days after the assassination, a group of four United Nations Special Rapporteurs issued a joint statement urging “a prompt, thorough and independent Public Inquiry”, stating that:

“At a time of rising insecurity for journalists and anti-corruption activists worldwide it is imperative that the Government do more than pursue investigations and accountability. [It must] devote resources to protect journalists and activists and to encourage a vibrant space for the watchdog role of independent reporting, especially reporting critical of government, officials and politicians.”<sup>23</sup>

Through the media freedom NGO, Reporters Without Borders, the Caruana Galizia family were introduced to London-based international lawyers at Bhatt Murphy Solicitors and Doughty Street Chambers.<sup>24</sup> They focused on the shortcomings in the police investigation and, finding that Malta was “in flagrant violation” of its duty under the ECHR to ensure prompt, effective and independent investigations into murders as well as take steps to prevent them, advised that the family strengthen the call for an independent Public Inquiry.

While the human rights law arguments on the need for a Public Inquiry were strong, the domestic political situation made it unlikely that the government would accede to the request for one to be established. There had only ever been one Public Inquiry previously, in 1996; it was not a tool that was commonly used. The government had a strong parliamentary majority and had made it very clear that it did not believe that a Public Inquiry was required.

### ***National and international pressure***

In Malta, anger and widespread protests erupted on the evening of the murder. Large crowds gathered in Sliema and St Julian’s, and there was a vigil in front of the Maltese High Commission in London. The next day, a vigil was organised in front of the Prime Minister’s office, ‘Castille’. This turned into a four-day vigil from which the ‘Occupy Justice’ movement was born: a non-partisan women-led pressure group that called for accountability for the murder, and demanded the



The campaign put up billboards, inspired by the Oscar-winning *Three Billboards* movie, demanding accountability.

resignation of the Police Commissioner and the Attorney General.<sup>25</sup> Over time, their campaign grew to incorporate broader demands for justice and equality. Further vigils were held at Castille, and the campaign put up billboards, inspired by the Oscar-winning *Three Billboards* movie, demanding accountability. The billboards were taken down by the government, citing planning laws, prompting a comparison between the authorities' zeal to enforce planning regulations with its lacklustre investigation of the murder.<sup>26</sup> A protest memorial to Daphne Caruana Galizia was created at the base of the Great Siege monument in front of the Court of Justice of Malta, consisting of candles, photographs, and posters. A vigil continues to be held there on the 16th day of every month. In an unlikely battle of wills, the memorial was cleared away every night at the personal instruction of then-Minister for Justice, Owen Bonnici, and put back in place the next day by protestors.<sup>27</sup>

At the time of the murder, there were not many civil society organisations in Malta that focused on issues concerning the rule of law and human rights, and the few that existed were small and had few resources. The political landscape was sharply polarised and dominated by two political parties: the Nationalist Party and the Labour Party. Most of the country's media were (and continued to be) allied to, or even paid for by, one of the two political parties, leaving little space for independent media and non-partisan voices and movements. The Occupy Justice movement was the first grassroots non-political movement to have sprung up demanding justice and accountability, and it remains a movement: it is not registered as an NGO, has no formal leaders, but is instead a



collective of committed individuals. A new activist movement to fight corruption and abuse of power, 'Republikka', was launched in 2018.<sup>28</sup> Throughout 2017–2018, only a small number of formal NGOs dedicated to human rights and the rule of law were active, most of them cooperating under the umbrella of the Platform for Human Rights Organisations in Malta (PHROM), hosted by the Aditus Foundation.<sup>29</sup> Their campaigning is often characterised by pro-government media as 'opposition aligned', which turned out to be an effective tactic to limit their impact.

The family knew that in Malta's deeply polarised political landscape, international pressure would be needed alongside the national campaign. Working with the London lawyers, a small group of representatives from international press freedom groups such as Reporters without Borders, the European Centre for Press and Media Freedom (ECPMF), ARTICLE 19 Europe and the Committee to Protect Journalists (CPJ) they set out to devise a strategy to focus the attention of the international community on the case. They targeted two European institutions in particular: the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament.<sup>30</sup>

### ***European Parliament***

Members of Daphne Caruana Galizia's family, along with representatives from international press freedom groups, were in regular contact with members of the European Parliament, starting almost immediately following the assassination. Within a week of the attack, Members of the European Parliament (MEPs) held a minute's silence during one of its plenary sessions, in the presence of members of the family, followed by a number of statements condemning the attack. MEPs called for an international investigation into the case, increased scrutiny of the rule of law, corruption and organised crime in Malta, and drew attention to the need for wider EU action on the safety of journalists.<sup>31</sup> A Resolution expressing strong concern about the rule of law in Malta was adopted in November 2017, calling for an independent international investigation into the murder;<sup>32</sup> and shortly thereafter a European Parliament delegation visited Malta to investigate rule of law concerns.<sup>33</sup> In 2018, MEPs set up a Rule of Law Monitoring Group, building on the visit to Malta and a similar visit to Slovakia following the February 2018 murder of Slovakian journalist Ján Kuciak and his fiancée.<sup>34</sup> In March 2019, the European Parliament adopted a Resolution on the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia. It called for the establishment "without delay" of a full and independent public enquiry, with particular stress on the



circumstances that allowed it to happen, the response of the public authorities, and the measures that can be put in place to ensure that such a murder will not happen again.<sup>35</sup>

### **Council of Europe**

Only ten days before her murder, Daphne Caruana Galizia had been interviewed for a Council of Europe publication on the forms of intimidation and harassment experienced by European journalists, *A mission to inform: journalists at risk speak out*.<sup>36</sup> Following the assassination, the family decided to specifically lobby PACE to call for a Public Inquiry. Because of the Council of Europe's historical focus on protecting the rule of law and its established institutional machinery, the family believed that it would be able to engage in a more targeted and structured effort to pressure the Maltese authorities. The Council of Europe's monitoring bodies include its specialised anti-corruption body the Group of States against Corruption (GRECO), and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) – both of them of particular interest given the nature of Daphne Caruana Galizia's journalism.

The family were put in touch with Dutch MP Pieter Omtzigt, who was a member of PACE and who was known for his strong stance on rule-of-law issues.<sup>37</sup> He posed a formal written question to the Committee of Ministers, asking it to request formal explanations from the Maltese Government on the failure of its police to adequately protect Daphne Caruana Galizia and on the protection it intends to afford to the relevant whistleblowers.<sup>38</sup> In January 2018, together with two other MPs, he hosted Matthew, Paul, and Andrew Caruana Galizia at the Council of Europe's Parliamentary Assembly to discuss the assassination, and demand international scrutiny.<sup>39</sup> The meeting was held as a so-called 'side event' to the assembly's main meeting and was sponsored by a coalition of international media freedom groups.<sup>40</sup> The family pushed for the adoption of a formal motion that would commit PACE to monitoring the ongoing investigation and appointing a rapporteur, similar to the motion that had been adopted following the assassination of the Russian politician Boris Nemtsov.<sup>41</sup> On 23 April 2018, following sustained further campaigning by the family and international civil society, Pieter Omtzigt was appointed rapporteur. His mandate was to prepare a report on the topic 'Daphne Caruana Galizia's assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges'. Omtzigt immediately declared that he would push for the



masterminds to be pursued as well as the hitmen, stating: “It’s very important that not only the people who are guilty of murdering Daphne Caruana Galizia, but also those who commissioned the murder [...] are punished appropriately.”<sup>42</sup> Over the next year, Omtzigt held hearings, gathered evidence, and pushed for the involvement of other bodies within the Council of Europe institutional structure.

Three other important processes were ongoing under the umbrella of the Council of Europe. The Venice Commission, the Council of Europe’s formal advisory body on constitutional law issues,<sup>43</sup> was tasked with advising on rule-of-law issues; GRECO was focused on corruption issues; and MONEYVAL had Malta in its sights in relation to potential money laundering (Daphne Caruana Galizia’s reporting on corruption and money laundering were important sources of information for these last two bodies). Concern within the Council of Europe about the rule of law in Malta pre-dated the assassination of Daphne Caruana Galizia, and the institutions were already primed to take further action.<sup>44</sup>

At the suggestion of Omtzigt, in 2018 the PACE Committee on Legal Affairs and Human Rights requested a formal Opinion from the Venice Commission on Malta’s constitutional arrangements and separation of powers, and the independence of the judiciary and law-enforcement bodies. The Commission’s Opinion, published that same year, strongly criticised the dominant position of the Prime Minister and the weakness of all other institutions, including the President, Parliament, Cabinet of Ministers, Judiciary, and the Ombudsman.<sup>45</sup> It explained that this meant that crucial institutional checks and balances were missing, a very fundamental problem which was further accentuated by the weakness of civil society and independent media. The Commission made urgent recommendations for thorough reform.

GRECO visited Malta in 2018 as part of its regular evaluation rounds and published a report in April 2019. Referencing the Panama Papers and Daphne Caruana Galizia’s journalism, GRECO’s findings were blistering: it criticised the government for lacking an overall strategy and coherent risk-based approach as regards integrity standards for government officials; bemoaned the lack of a sanctions system; and found the criminal justice system lacking. It recommended that a comprehensive set of measures should be taken to streamline integrity policies within the police; that the Independent Police Complaints Board should be strengthened; and that a whistleblowing policy should be put in place within the police.<sup>46</sup> A MONEYVAL delegation visited Malta during the same period and published its evaluation report in July 2019, making similarly critical findings and recommending that the Maltese institutions –



including the police – should be significantly strengthened to enable them to fight money laundering more effectively.<sup>47</sup>

Pieter Omtzigt published his report in June 2019. Referencing the conclusion of the Venice Commission and GRECO (the MONEYVAL report was published a month later) that Malta's government institutions, criminal justice system and law-enforcement bodies do not comply with European standards on the rule of law, he found that rampant corruption had been allowed to fester and that all those in positions of power, including the Prime Minister, had serious questions to answer. The report recommended that there should be an independent Inquiry, that the recommendations of the Venice Commission and of GRECO, and those of MONEYVAL once made, should be implemented as a matter of urgency, and that PACE should continue to monitor the situation until a satisfactory conclusion had been reached in all respects.<sup>48</sup> On 26 June, PACE adopted a Resolution endorsing the report and calling for the establishment of an independent Public Inquiry within a period of three months.<sup>49</sup>

### **A Public Inquiry is announced but the campaign continues**

Bowing to pressure, and in particular to the three-month deadline set by the Council of Europe's Parliamentary Assembly,<sup>50</sup> on 20 September 2019 the government announced that it would set up a public independent Inquiry into the murder of Daphne Caruana Galizia.<sup>51</sup> In the press release announcing the Inquiry, the government restated its concerns about timing and also emphasised that it had, and continued to have, "serious reservations on the methodology used and the conclusions" of the PACE report, indicating that its hand had been forced and there was still an ongoing lack of real political will to allow for an independent and effective Inquiry.

In an attempt to regain the initiative, the government announced that it had already appointed a panel of three members who were to form the Board of the Inquiry, and that terms of reference had already been finalised. While the announcement of the Public Inquiry was welcomed, the announcement of Board members and the finalised terms of reference was not. The independence and impartiality of the proposed Board members was called into question – critics pointed out that at least two of them were either State authority employees or had strong ties to the government – while the terms of reference were criticised for being too weak, lacking in transparency and failing to require that the report should be published.<sup>52</sup> The family immediately raised objections, and the PACE



Committee on Legal Affairs and Human Rights released a note stating that as constituted the Inquiry “clearly does not meet the Assembly’s expectations” and called on the Maltese government to reconsider the Board members as well as the terms of reference “as a matter of urgency”.<sup>53</sup>

Because the events that lead to them are typically controversial, in many countries the establishment of an Inquiry attracts some controversy. In the UK, on whose system the Maltese Inquiries Act is modelled, there are often debates about who chairs an Inquiry, the extent of its terms of reference, resources allocated to it, and its working methods.<sup>54</sup> Such debate typically happens *before* the establishment and formalisation of an Inquiry. Not expecting resistance (in Malta, as the Venice Commission had critically observed, the Prime Minister is extremely powerful, and effective checks and balances are largely absent), the government thought it could push through its preferred members and limited terms of reference. The strong opposition with which the proposal was met, both domestically and internationally, forced the government to reconsider. It also set – or perhaps rather, continued – the tone for how the Inquiry would be conducted, and the ongoing need for the family, civil society, and the international community to monitor the proceedings.

On 15 November 2019, after nearly two months of negotiations between the government and the family, the government announced a Board and terms of reference which were closer to the standards demanded by the Council of Europe and the family. The Board was to be chaired by retired judge, Mr Justice Emeritus Michael Mallia, joined by Chief Justice Emeritus Joseph Said Pullicino and Judge Abigail Lofaro. A revised terms of reference had substantive changes to the original terms, emphasising the Board’s independence; requiring the report to be made public; emphasising the family’s right of participation; and emphasising that the Inquiry’s remit was to include not only whether any State entity knew or ought to have known of a real and immediate risk to Daphne Caruana Galizia’s life, but also whether it *caused* it. The family welcomed the revised terms and new Board members, but described the process of negotiation as “one of the most painful fights we have ever fought”.<sup>55</sup>

## 4. Resistance and the ongoing hate and smear campaign against the family and others

As the family fought for justice, before, during and after the Public Inquiry, it was met with strong opposition. This came in two forms: all-out hatred and wild accusations (including that the family was implicated in the murder), mainly in pro-government media and on Facebook; and resistance through bureaucracy and legal arguments, sometimes on the pettiest points, from the government, and reinforced in pro-government media. The two made for a powerful cocktail, necessitating increased security at the family home and leading Daphne Caruana Galizia's three sons to spend long periods of time abroad. The concerted campaign against the family made their work emotionally draining and very difficult.

In many ways, the campaign against the family mirrored what Daphne Caruana Galizia had herself experienced. As the Public Inquiry would eventually find, she had been vilified and dehumanised for her work. Labelled "the witch of Bidnija" (the town where she lived), a climate of hatred was created which eventually led to her murder. After her death, the family was similarly vilified and they too received death threats. As Paul Caruana Galizia recalled in a 2021 interview: "We faced enormous backlash, and threats, some directly from the government, most from its supporters ... We were harassed online, in person. We still get a lot of threats. Mostly Matthew, who's in Malta now, was at the receiving end of them, some really horrific, some really ugly."<sup>56</sup> The lawsuits continued as well: the defamation cases that had been brought against Daphne Caruana Galizia, including by the Prime Minister, had to be defended by the family even after her death. When the Council of Europe's Human Rights Commissioner wrote to express concern and asked for the cases to be dropped, the Prime Minister responded that dropping all the cases would raise human rights issues for the claimants, and that he would drop his own case only if the family would apologise for the alleged libel committed against him by Daphne Caruana Galizia.<sup>57</sup> Muscat made the same claim, under oath, in court, prompting the family to respond, "We will not concede to extortion by our public servants."<sup>58</sup>

Bizarre and upsetting claims were made against the family, including by public



officials, some even attributing blame for the murder to Matthew Caruana Galizia.<sup>59</sup> When the Caruana Galizia family launched a claim for damages against the men awaiting trial for her death, they were criticised for “being in it for the money”.<sup>60</sup> A government minister described Daphne Caruana Galizia as a “hate-monger” and described her family’s call for justice as “embarrassing”,<sup>61</sup> and the General Secretary of one of the main trade unions said that the best thing about Daphne Caruana Galizia was that she “would not come back”.<sup>62</sup> On social media, and especially on Facebook, misinformation and smears, often feeding off misleading government claims and speculation – including about the corruption scandals that Daphne Caruana Galizia had investigated – combined into a maelstrom of hatred. A six-month investigation of closed and secret Facebook groups found that there had been a concerted campaign that had included employees at the Office of the Prime Minister, including the Deputy Chief of Staff, as well as members of parliament (most prominently, and infamously, Labour MP Glenn Bedingfield), with some groups administered by employees at the Ministry of Justice and other public officials. In a vicious circle, claims made on Facebook posts were fed back into pro-government media, which in turn fuelled further disinformation and hatred in Facebook groups.<sup>63</sup>

There was also strong government resistance to any visible forms of support for Daphne Caruana Galizia. The protest memorial that supporters had erected in front of the Court of Justice was cleared away by government employees every night over a period of months, supporters returning every morning with new candles and photographs. The First Hall of the Civil Court in its constitutional jurisdiction eventually ruled that the repeated clearing of the monument on the orders of then Justice Minister, Owen Bonnici, breached the right to protest.<sup>64</sup> In a similar move, the government cleared away billboards that had been erected demanding justice for Daphne Caruana Galizia, as well as banners that the family had hung up on their own property, citing planning legislation.<sup>65</sup>

The government strongly resisted the idea of a Public Inquiry from the outset. When the family obtained and published legal advice calling for an Inquiry in 2018, the government released a statement denouncing the advice as a “one sided judgment” that was “highly unethical” and “manifest(s) a lack of respect”, and dismissed the advice as “uninformed and speculative attacks”, “irresponsible”, and showing “open contempt” towards the State.<sup>66</sup> As the family reiterated its demand for a formal Public Inquiry, backed by legal advice explaining that a Public Inquiry would not prejudice the criminal inquiry and



would also look at how future deaths can be prevented, the Prime Minister objected stating that he was “not convinced” that one would be required.<sup>67</sup> Over time, the government’s line on this shifted, basing their objection in a concern that a Public Inquiry would jeopardise the ongoing criminal proceedings. This was designed to give the government’s objection a veneer of concern for the rule of law, but ignored the fact that in other countries, criminal investigations, and public inquiries are able to run side by side without prejudice.<sup>68</sup>

Throughout all the hatred and active resistance that they met with from the government, the family were nevertheless required to negotiate with the government. Under the Inquiries Act 2015, only the Prime Minister can set up the kind of broad-ranging Inquiry needed, meaning that the family had to get around the table with him. This took immense emotional strength. As Andrew Caruana Galizia put it, “We had to negotiate with people who bear responsibility for my mother’s assassination.”<sup>69</sup>

Even at the international level, there was a concerted effort to thwart the campaign for justice. Pieter Omtzigt in particular experienced strong counter-campaigning and attempts to smear him as a person as well as his work, by Maltese MPs and Azerbaijani MPs. His Wikipedia page was altered, by someone with an internet address traced to a Maltese government ministry, to suggest that he had paid Russia for false information about Ukraine.<sup>70</sup> When he visited Malta, he was under constant police supervision. When the Parliamentary Assembly voted on his report, Azerbaijani MPs lined up en masse to defend the Maltese government and denounce his report as an attack on their country.<sup>71</sup> It took significant moral strength for Omtzigt to carry on with his mandate, which in an interview with a Dutch newspaper he described as “my most difficult job ever”.<sup>72</sup> One of the Maltese MPs, Rosianne Cutajar, who resigned was later found to be in breach of the PACE Code of Conduct.<sup>73</sup>

Meanwhile, it turned out that the Maltese government even hired a British PR agency, Chelgate, to defend it before a British parliamentary inquiry into fake news, with the EU Observer indicating that, according to sources, Chelgate were tasked as “lobbyists to defend his (Joseph Muscat) image in EU capitals during the murder investigation”.<sup>74</sup>

International civil society was also at the receiving end of abuse. When a PEN International official reiterated the call for a Public Inquiry at a UN High-Level event marking the 70th anniversary of the Universal Declaration of Human Rights, a government adviser called her a “biased shithole”;<sup>75</sup> and, echoing the



abuse often hurled at independent journalists, she was later referred to as an enemy of the State. As a result, the UN Secretary General included Malta in his report on State reprisals against human rights defenders, an unusual inclusion for an EU member state.<sup>76</sup>

## 5. The Public Inquiry

### The hearings

When the Public Inquiry hearings began, on 6 December 2019, the political atmosphere was febrile. On 20 November, one of Malta's most powerful and prominent businessmen, Yorgen Fenech, had been arrested on suspicion of complicity in the murder. He was alleged to be the 'mastermind' behind the assassination. Daphne Caruana Galizia had been investigating possible corruption in relation to a government contract for the building of a power station which had been awarded to a consortium headed by Fenech. Fenech was also the owner of a Dubai-registered company through which several potentially corrupt payments had been made and which was linked to both Prime Minister Joseph Muscat's Chief of Staff, Keith Schembri and to the energy minister, Konrad Mizzi. Schembri and Mizzi resigned soon after Fenech's arrest.<sup>77</sup> On 29 November, a group of journalists was detained by party loyalists acting as unofficial security personnel in the Prime Minister's office following a press conference at 03:00 at which Muscat had announced that he would not be pardoning Yorgen Fenech.<sup>78</sup> Then, on 1 December 2019, under pressure from street protests because of ongoing political interference with the investigation and Inquiry, Prime Minister Joseph Muscat announced his resignation.<sup>79</sup>

It was against this frenzied background that the Board held its first hearing, with testimony from Daphne Caruana Galizia's eldest son, Matthew, and her husband, Peter. They testified to the authorities' failure to investigate the corruption that Daphne Caruana Galizia had uncovered, the efforts to stop her writing and to her demonisation, the multiple episodes of harassment and intimidation that she had suffered, and the police's failure to provide protection.

Over the following 18 months, the Board of Inquiry received written evidence and heard testimony from nearly 150 witnesses, including the family, journalists, police, government ministers, public officials, civil society organisations, and others.<sup>80</sup> Nearly all sessions were open – in line with its mandate, the Board allowed for sessions to take place behind closed doors only when there was a real risk of prejudice – and were attended by members of the public as well as by journalists who 'live blogged' the proceedings. The testimony given included evidence of the widespread corruption that Daphne Caruana Galizia



*Courtroom sketch of Matthew Caruana Galizia testifying at the opening hearing of the Board of the Public Inquiry. Sebastian Tanti Burlò.*

had been investigating, including from a police inspector who talked about the links between Fenech and politicians and his knowledge of election planning;<sup>81</sup> evidence showing that government officials were planning to ‘cripple’ Daphne Caruana Galizia with lawsuits;<sup>82</sup> and testimony from other journalists about the threats Daphne Caruana Galizia had faced and the attempts to ‘demonise’ her.<sup>83</sup>

The Board of Inquiry had the power to force witnesses to give evidence, and it used that power on at least one occasion. Former Energy Minister Konrad Mizzi first refused to appear and, when he was compelled, refused to answer more than 100 of the questions that were put to him, citing his right not to incriminate himself.<sup>84</sup> Others spoke at length but had carefully prepared their statements which they read out during their testimony before the Board – most notably former Prime Minister Joseph Muscat, who read a prepared statement claiming that the Inquiry had become “a political exercise”, before being made to answer questions put to him by the Board.<sup>85</sup> Government ministers were well aware of the glare of the public eye and attempted to ‘spin’ proceedings to cast them in a positive light. Joseph Muscat instructed a former aide, who by that time had been reassigned to head a State authority, to ‘live blog’ the proceedings on



Facebook, and as he spoke his Facebook page posted more than 20 updates, saying that he had never instigated hatred and denying his involvement in the corrupt schemes that Daphne Caruana Galizia had been investigating.<sup>86</sup>

Despite the Public Inquiry not being a criminal process, most of the government politicians who gave evidence were accompanied by their lawyers, who frequently disrupted the proceedings to object to lines of questioning that they disapproved of. This was sometimes done quite aggressively.

Throughout the course of the Inquiry, the family and civil society kept up their campaigning. This was necessary to counter the ongoing smear campaign against the family on Facebook and in pro-government media, but also to ensure that the Inquiry was allowed to proceed independently. The need for this ongoing campaigning became particularly evident when, after nine months, the government under Muscat's successor, Prime Minister Robert Abela, refused to provide an extension to the proceedings. The Board had informed the government of the need for an extension because delays had been caused by the impact of the COVID-19 epidemic and more time was needed for the unexpectedly large number of witnesses that had to be heard. After Pieter Omtzigt and civil society intervened, the government allowed only a three-month extension. When this was about to expire and the government indicated it would not countenance a further extension, the Board, in line with its terms of reference extended the time frame within which it was to conclude its work, indicating that this was necessary for the proper fulfilment of its mandate – two of the judges offering to forego their honorarium.<sup>87</sup> Stating that it was expecting vital further evidence, the Board emphasised that, “[t]he search for truth can never be subjected to arbitrary and unilateral terms that could condition those called to judge”. The government, in response, issued a brief statement saying that the Board would have to “shoulder the responsibility of its decisions and the consequences these bring”.<sup>88</sup>

Because the Public Inquiry did not have its own legal counsel, it relied heavily on two of the lawyers acting for the family, Dr Therese Comodini Cachia and Dr Jason Azzopardi. Over the course of the 18 months that the hearings would take, this became a full-time job as they worked tirelessly in advance of hearings to collect information on witnesses and prepare potential lines of questioning.



## Resources

The Public Inquiry sat in Malta's Court of Justice in Valletta, where a courtroom had been allocated to it. Other than the use of the courtroom, the Inquiry had little by way of resources: it had only been assigned the services of a Deputy Registrar. The Inquiry had nothing else: no lawyers, no investigators, no media relations professionals, no website. Its hearings were not livestreamed, meaning that the public had to rely on news and social media reports for updates. Reporters and other interested parties had to rely on informal communications for information about the timing of hearings and the schedule of witnesses, including late changes. The lack of a dedicated website also means that some of the written evidence and transcripts of the proceedings have been archived on the government's main portal, under 'quick links' – not likely to be a long-term or easily accessible home.<sup>89</sup> The two retired judges on the Board were paid an honorarium; the third, as a sitting judge, continued to receive her judge's salary. No official English-language translation of the report or of the proceedings has been made available, despite English being an official language, nor was there interpretation and translation of evidence during the proceedings.<sup>90</sup> There was also no livestreaming, which made scrutiny by international society, who had been so crucial in bringing the Inquiry about, much harder than it should have been. Some embassies monitored proceedings in person in the early stages of the proceedings.

In short, the Public Inquiry was extremely sparsely resourced. The one advantage of this turned out to be that when the government threatened to shut the Inquiry down, it had very little actual leverage (the two retired judges offered to forego their honoraria).

The lack of resources made available for the Public Inquiry is particularly stark when compared to the budgets and resources available to public inquiries elsewhere. In the UK, it is estimated that the government has spent £630m on public inquiries between 1990 and 2017. The Bloody Sunday Inquiry alone cost £210m. Most of the cost of inquiries is spent on legal counsel, office space, and a secretariat. With inquiries usually lasting for around two years, these costs add up.<sup>91</sup> Modern inquiries usually have significant public relations resources, including a facility to livestream proceedings and extensive online archives. In the Netherlands, the permanent body that carries out public inquiries on issues concerning public safety has an annual budget of €13m.<sup>92</sup> In 2020, this allowed it to initiate four major inquiries alongside 117 smaller ones. In 2021, it started an investigation into the assassination of the investigative journalist, Peter R de Vries.<sup>93</sup>



## The report

### Findings

On 29 July 2021, the Public Inquiry published its report. It found:

“[T]he State should bear the responsibility for the assassination by creating a climate of impunity, generated from the highest levels at the core of the administration ... and spreading its tentacles to other entities such as regulatory institutions and the Police.”<sup>94</sup>

This, the Board found, led to the collapse of the rule of law; a failure to acknowledge the real and immediate risk to Daphne Caruana Galizia’s life; and a failure to take effective preventive measures to protect her.

The Board emphasised that its task was not to attribute criminal responsibility to any particular individual; this was the task of the criminal investigation. The Board’s task was to examine the conduct of the public administration. This, it found, had been severely lacking. The Board identified,

“an extensive culture of impunity not only for the highest officials within the public administration, including persons of trust, but also for the restricted circle of politicians, businessmen and criminals”.

The Board went on to criticise links between the highest level of political and economic power, and the “excessive familiarity” between businessmen and government officials which led to behaviour that was “illicit if not illegal”.

The Board found that it was beyond doubt that Daphne Caruana Galizia had been assassinated because of her journalism on the corrupt links between politics and business. When she exposed those links, or threatened to expose them, this led to a “a direct confrontation with those involved and who were in power”:

“The need was felt right from the beginning that the journalist should be countered with every means both to suppress the negative aspect which her writings were having on the politics of Government and also so that the plans which now result to have been in place, that is, so that some people would enrich themselves through their connections with the public administration, will not be prejudiced.”<sup>95</sup>



This confrontation, the Board found, “continued to escalate until the moment she was assassinated.” Part of the confrontation was by political means and consisted of a sustained campaign of personalised attacks of criticism and hate, abusive pursuit, verbal abuse, and the imposition of financial restrictions following lawsuits instituted against her by politicians. This denigratory campaign, part of which was committed from inside the public administration, demonised Daphne Caruana Galizia and created a climate of impunity in which those who wished to eliminate her could do so “without the least consequence”.<sup>96</sup> As such, the Inquiry was groundbreaking in its findings of the role that political propaganda played in her murder.

The Board found that as Daphne Caruana Galizia’s reporting uncovered ever-deeper and more widespread corruption and collusion between business and politics, the threats to her physical safety escalated. This was particularly the case following her reporting on the Panama Papers. Yet, even though the corruption she uncovered was plain to see, “[w]hat was obvious for everyone was not obvious for the Commissioner of Police, nor for the Secret Services and nor for the regulatory authorities”.<sup>97</sup> The corruption was allowed to fester, sending a clear signal and contributing to the climate of impunity that led to the assassination.

The Board found that “there was an orchestrated plan to neutralise the investigative journalism work of the assassinated journalist”.<sup>98</sup> This plan was “centrally organised from the Office of the Prime Minister”<sup>99</sup> and left Daphne Caruana Galizia totally isolated (she had been equally critical of the opposition), thereby greatly increasing the risk to her safety. This led the Board to conclude that,

“Whoever planned and committed the assassination certainly felt or used to feel that they had the assurance that they were going to be protected by those who were most interested to silence the journalist.

“As is substantiated by evidence, the Board is satisfied that this murder was executed for money and on commission.”<sup>100</sup>

The Board noted its astonishment that the two individuals who had already pleaded guilty to their involvement “were openly displaying the contacts they had with ministers, the Chief of Staff and other individuals at the centre of power” in the apparent conviction that they would be supported and get off lightly. The Board emphasised that, “[j]ust the fact that this mentality existed at



the level of organised crime to the extent that the Chief of Staff and the then Prime Minister were referred to as the No. 1, 'ix-xiħ' (the old one) and 'il-king' (the king), is in itself a show of the familiarity of which they boasted consequent to the culture of impunity that reigned and through which they felt protected."<sup>101</sup>

The Board concluded that

“the State was ultimately responsible for the environment which favoured the commission of the crime both due to the inaction of the relevant entities as well as through the positive acts of vilification, insults and harassment by officials in high positions within the administration.”<sup>102</sup>

Responsibility for this lay with the entire Cabinet of Ministers, but the Board singled out (by then former) Prime Minister Joseph Muscat for “[strengthening] the culture of impunity ... relied upon by the elements of organised crime, whoever they were, and which certainly facilitated the assassination.”<sup>103</sup>

With regard to the State’s duty to take preventive steps to protect journalists known to be at risk, the Board found the police and other authorities wholly wanting. It held that the police ought to have been aware of the serious and increasing risk to Daphne Caruana Galizia. It noted that “rudimentary, ineffective and non-professional protection measures” were put in place only during elections and similar events. The Board characterised the police failings as “inexplicable and unacceptable, and an attestation of inefficiency and incompetence if not worse.”<sup>104</sup>

In the absence of any procedures, the Commissioner of Police was found to be personally at fault:

“[T]here exists no protocol regulating how the Police are to react so as to protect persons who are at a personal risk from criminal acts. Everything still falls within the discretion of the Commissioner of Police to act as is expected of him, which, in the case of Daphne Caruana Galizia’s assassination, the then Commissioner, Lawrence Cutajar, certainly did not do.”<sup>105</sup>

The Board found, furthermore, that the legal framework was lacking, referencing the lack of effective constitutional checks and balances that the Venice Commission had also found. While the Board welcomed the reforms that were already underway, it deplored that it took the murder of a journalist to spur them.



## Recommendations

The Board made a number of recommendations to restore the rule of law and prevent an assassination like that of Daphne Caruana Galizia's from ever happening again. It stated that the recommendations made by the Venice Commission, the GRECO Commission, and the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe (PACE) aimed at strengthening good governance need to be implemented in full (as referenced above, this is a suite of recommendations aimed at restoring constitutional checks and balances and strengthening the independence in both law and practice of institutions such as the judiciary). The Board also recommended that laws on the awarding of government contracts be strengthened, and that measures need to be introduced to improve transparency and accountability of public administration.

### ***The Board recommended the following in particular:***

1. The introduction of a range of laws on issues such as financial crime, hindering police or other official investigations by someone in a public position, obstruction of justice generally, outlawing "mafia-style associations", "abuse of office", strengthening the Attorney General's office and independence, and strengthening the code of ethics for public officials.
2. To strengthen the protection of journalists, there needs to be:
  - a a formal structure in the police which identifies, in a regular and sustained manner, persons, and not only journalists, who for some reason are exposed to serious attacks of any kind and which may escalate to physical violence. This should include a specialised unit with trained personnel capable of identifying persons at risk, making an objective assessment of that risk and its causes, and understanding how this relates to the profession and/or work of the person at risk. An element within this structure must focus on journalists who may be at serious risk;
  - b a timely investigation of allegations of corruption or any other wrongdoing revealed by journalists. The failure by the police to do so in this case created a climate of impunity, and enabled the commission of the assassination. Police should not consider journalists, especially those who dare to investigate conduct which appears to be improper or suspicious, as enemies, but should seek to build bridges with them;
  - c training for the police so that they can better understand and value the work of investigative journalists (in full observance of the independence and autonomy of the journalist and their sources).



3. Constitutional reform, including:
  - a the recognition of free journalism as one of the pillars of a democratic society, and an explicit requirement on the State to guarantee it and protect it;
  - b recognition of an individual's right to access information held by the State and public administration and to recognise also that public authorities are obliged to provide such information.
4. The creation of an independent office following the model of the Ombudsman or Commissioner but for journalistic ethics, independent from the government and responsible for the protection of media freedom, the safety of journalists and the right to information.
5. Revision of the Freedom of Information Act, particularly to restrict the "culture of confidentiality and secrecy with the excuse of privacy or commercial prejudice".<sup>106</sup>
6. Revision of the Media and Defamation Act to address the problem of abusive lawsuits against journalists (including so-called Strategic Lawsuits Against Public Participation [SLAPPs]).
7. A binding requirement that government advertising in the media be distributed on a fair, equal, and non-discriminatory basis.
8. The introduction of a law to regulate the journalistic profession, allowing journalists to "operate freely and totally independent from interference or undue pressure" in a self-regulated structure similar to other professions.<sup>107</sup>

The Board emphasised that its recommendations should be implemented in a holistic and organic framework. It recommended that a Committee of Experts be established to profoundly examine the state of journalism and the exercise of the fundamental right to freedom of expression so as to ensure that the recommendations of the Public Inquiry are implemented. The Board recommended that this committee then makes concrete proposals for law reform "within an established short period".

Finally, the Public Inquiry recommended that the State should formally and publicly acknowledge the serious failings in the public administration which surrounded the assassination of Daphne Caruana Galizia, and that it should take "all the appropriate and opportune steps to ensure that the State reconciles with



the assassinated journalist's family in order to initiate the healing process of a serious and traumatic wound which the country suffered and is still suffering."<sup>108</sup>

### ***Implementation of recommendations***

It quickly became clear that just as it had taken a huge campaigning effort to get the Public Inquiry established and to keep it going in the face of government resistance, it would now take an equally significant campaigning effort to have the recommendations implemented in good faith. Formally speaking, the Board of the Public Inquiry has been dissolved – its mandate has been fulfilled – and follow-up is in the hands of the government. While the Board made a number of recommendations across several fields, it did not lay down a timetable within which those recommendations should be implemented.

At least three reports of significance to the assessment of the process of implementation of the Public Inquiry recommendations have been published since the Inquiry report and the government's appointment of the Committee of Experts on Media.<sup>109</sup> Taken together, these analysis reports underscore the lack of tangible progress in the implementation of the Inquiry's recommendations and with that, the opportunity for Malta to engage in comprehensive reform.

What follows is an assessment of the implementation of the Board of Inquiry's main recommendations, one year after the publication of its report.

***1. The State should formally and publicly acknowledge the serious failings in the public administration which surrounded the assassination of Daphne Caruana Galizia, and that it should take "all the appropriate and opportune steps to ensure that the State reconciles with the assassinated journalist's family in order to initiate the healing process of a serious and traumatic wound which the country suffered and is still suffering."<sup>110</sup>***

The government's initial response to the Board's recommendations was not encouraging. In a parliamentary debate held the day after the report was published, Prime Minister Abela rejected the finding that the government had fostered a climate of impunity for criminals, arguing that there is "no impunity" in Malta, and did not commit to a plan or a timetable for the implementation of the recommendations. He reiterated his apologies to the Caruana Galizia family, but reportedly focused much of his speech on reforms already underway in response to the recommendations of the Venice Commission.<sup>111</sup>



It is disappointing that following the Inquiry report, pro-government media, public officials and politicians continued their campaign of smears and denigration of the Caruana Galizia family, despite this, too, having been a key factor in the creation of the climate that eventually led to the assassination.

***2. The introduction of a range of laws on issues such as financial crime, hindering Police or other official investigations by someone in a public position, obstruction of justice generally, outlawing “mafia-style associations”, “abuse of office”, strengthening the Attorney General’s office and independence, and strengthening the code of ethics for public officials.***

The Public Inquiry recommended that the findings of the Venice Commission, GRECO, and the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe (PACE) aimed at strengthening good governance need to be implemented in full. In its May 2022 evaluation, GRECO found only two of the 23 recommendations had been satisfactorily implemented, or were dealt with in a satisfactory manner by Malta.<sup>112</sup> The EU Rule of Law 2020 report noted that “no specific action for the implementation of the Public Inquiry recommendations relating to anti-corruption has been announced or taken by the Government so far.”<sup>113</sup>

The combined remit of the two committees established by the Prime Minister and detailed below only covers part of the Public Inquiry’s recommendations. It is not clear how the remainder will be addressed; particularly reforms to tackle corruption, improve the functioning of law enforcement, and address the over-familiarity between politicians and businessmen which the Board held had been at the heart of the circumstances that led to Daphne Caruana Galizia’s assassination. The delay in implementing the recommendations on anti-corruption is prejudicial to journalists who continue to report on the same corruption Daphne Caruana Galizia was killed for exposing, and on other malfeasance, and who remain at serious risk.

With regard to the strengthening of the Attorney General’s office, changes to the procedures for their appointment and removal were reformed through an amendment to the Constitution of July 2020. However, the EU’s LIBE mission to Malta in May 2022 found that, “in practice the appointment of the Attorney General still remains predominantly under the power of the Prime Minister, which has been raised as an issue.”<sup>114</sup>



Further concerns relating to the persistent weaknesses in the Attorney General's office emerged in the botched prosecution of the lawyers of Yorgen Fenech, the alleged mastermind of Daphne Caruana Galizia's murder, for attempting to bribe a journalist. Lawyers Charles Mercieca and Gianluca Caruana Curran had been charged by the police with attempting to bribe Times of Malta journalist Ivan Martin by handing him hundreds of euros at the end of a meeting at their Valletta office. They were cleared after the Magistrate ruled the relevant offence was not properly indicated by the Attorney General. The Magistrate was forced to clear the lawyers, as they were charged with active bribery by the police but the Attorney General indicated a different provision of law denoting passive bribery. In July 2022 the Justice Minister launched an independent inquiry into their acquittal for attempted bribery.<sup>115</sup>

***3. To strengthen the protection of journalists, there needs to be a timely investigation of allegations of corruption or any other wrongdoing revealed by journalists. The failure by the police to do so in this case created a climate of impunity and enabled the commission of the assassination. Police should not consider journalists, especially those who dare to investigate conduct which appears to be improper or suspicious, as enemies, but should seek to build bridges with them.***

The persistent lack of political will to prosecute corruption revealed by journalists, including Daphne Caruana Galizia, has been seriously criticised. Laura Kövesi, head of the European Public Prosecutor's Office (EPPO), the EU's financial crime watchdog, has questioned whether there is the political will to tackle corruption, commenting that, "Malta is paying lip service in its efforts to crack down on EU fraud and corruption."<sup>116</sup> The EU's Committee on Civil Liberties, Justice and Home Affairs (LIBE) noted that, "notwithstanding these reforms, and although new appointments have been made at the top of the law enforcement and judicial bodies, NGOs state that Maltese institutions, the Police Commissioner (Angelo Gafà), the Attorney General (Dr Victoria Buttigieg), still fail to truly initiate investigations and carry out effective prosecutions on the trails of corruption leading to the murder of Daphne Caruana Galizia, as well as on scandals post her death, alongside ongoing magisterial inquiries."<sup>117</sup>

Even where investigations have been initiated, the profound delays in prosecuting corruption contribute to a context of impunity for corruption. It took four years for the police to bring any charges in the case of the Pilatus Bank money laundering which Daphne Caruana Galizia investigated. Almost a year



after the first charges against an employee of Pilatus Bank were issued, the police have not yet issued charges against any of the owners or directors of the bank.<sup>118</sup> Several other high profile cases continue to await the outcome of police investigations and the conclusion of magisterial inquiries. These include investigations related to the 2016 Panama Papers scandal which refer to the former Prime Minister's Chief of Staff Keith Schembri, and the former minister Konrad Mizzi, and investigations into other public contract negotiations that took place under the government led by Joseph Muscat as then Prime Minister.

**4. To strengthen the protection of journalists, there needs to be**

- ***a formal structure in the police which identifies, in a regular and sustained manner, persons and not only journalists who for some reason are exposed to serious attacks of any kind and which may escalate to physical violence. This should include a specialised unit with personnel trained capable of identifying persons at risk, make an objective assessment of that risk, its causes and understand how this relates to the profession and/or work of the person at risk. An element within this structure, must focus on journalists who may be at serious risk;***
- ***training for the police so that they can better understand and value the work of investigative journalists (in full observance of the independence and autonomy of the journalist and their sources).***

While some initiatives have been taken within the Maltese police force to establish a main contact point with journalists, much work remains both in terms of training of the police on international standards as they relate to freedom of expression and in securing the trust of journalists. Offers of assistance in this regard from international media freedom organisations have gone unanswered.

In their evaluation of a legislative proposal from the Government of Malta of an "Act to provide for the establishment of structures for the protection of democratic society including the protection of journalists, other persons with a role in the media and in non-governmental organisations and persons in public life", the Organization for Security and Co-operation in Europe (OSCE) welcomed the establishment of a high-level committee that may essentially play a general coordination role. It noted with concern that, "Dealing with particular events and providing effective protection and immediate responses requires the designation and establishment of concrete units and the definition of clear protocols. None of such elements are properly contemplated (even in terms



of assigning such tasks) in the proposal.” It goes on to note that, “Another matter that is not contemplated at all in the proposal is prosecution. It is thus also recommended that the bill designates proper prosecution authorities and mechanisms, taking particularly into account the fact that investigations must be independent and impartial, in law and in practice, and that they should be carried out by specialised, designated units of relevant State authorities in which officials have been given adequate training in international human rights norms and safeguards.”<sup>119</sup>

The measures proposed by the Maltese Government have failed to address the Public Inquiry’s concerns around the safety of journalists in the county. The May 2022 report of the LIBE Committee notes that, “The killing of Daphne Caruana Galizia has brought light to the need to strengthen the protection of journalists from threats. Notwithstanding this, journalists still face considerable threats and risks.”<sup>120</sup> Freedom House notes, “the harassment of journalists, especially those investigating cases of corruption, is widespread, and many individuals, particularly public-service employees, choose silence over the criticism of powerful actors, for fear of retribution.”<sup>121</sup>

It is concerning that there are no further proposals addressing serious issues faced by journalists and the media and clearly identified in the Public Inquiry including serious threats to life or harassment that have the risk to escalate and put journalists’ safety at increased risk. This led to the OSCE in March 2022 to advise Malta “to adopt a series of additional legal instruments and measures to reinforce prevention and prosecution mechanisms with regards to the protection of journalists and avoiding impunity.”<sup>122</sup>

***5. A Committee of Experts should be established to profoundly examine the state of journalism and the exercise of the fundamental right to freedom of expression so as to ensure that the recommendations of the Public Inquiry are implemented. The Board recommended that this Committee then makes concrete proposals for law reform “within an established short period”.***

In September 2021, Prime Minister Abela reported that there had been a series of meetings with police and other stakeholders, and promised that a set of new laws would be introduced in parliament in October 2021.<sup>123</sup> By 16 October 2021, the fourth anniversary of Daphne Caruana Galizia’s assassination, there was still no clear plan for the holistic implementation of the Public Inquiry’s recommendations. The Daphne Caruana Galizia Foundation issued a statement



calling for the establishment of an independent committee of international and Maltese experts, mandated to recommend legal amendments to parliament on strengthening press freedom. The committee would also make non-legislative recommendations, such as on appropriate protection mechanisms for journalists, and measures to address the negative and prejudicial political rhetoric targeting the press. The Foundation stated that the terms of reference for the committee should require committee members to be individuals of integrity and independent from government. Members should, collectively, have sufficient expertise in the role of the media in a democracy and constitutional reform, to entrench press freedom as the fourth pillar of democracy. Furthermore, the Foundation urged for prosecutions to be made for the corruption that paved the way for the murder. Finally, the Foundation demanded that Daphne Caruana Galizia's family have meaningful involvement in follow-up, and expected them and civil society to be consulted on follow-up.<sup>124</sup>

On 8 January 2022, a Private Member's Bill was introduced in parliament proposing a package of legislation to implement the main conclusions and recommendations of the Public Inquiry Board.<sup>125</sup> The government voted against the proposed legislation, thereby ensuring that the Private Member's Bill would not obtain the majority vote it required to pass.<sup>126</sup> Prime Minister Robert Abela instead established two committees and tabled his own draft legislative proposals which he was asking the second committee to advise on.

The first, a Committee for the Recommendation of Measures for the Protection of Journalists, Other Media Actors and Persons in Public Life, is chaired by the Commissioner of Police, and further composed of the Head of the Malta Security Service and the Commander of the Armed Forces of Malta. Reportedly, according to the government, this committee of three had already met and was tasked with deciding on measures to manage identified risks; and preparing a security plan to provide necessary protection to journalists and other media actors, and to provide the necessary protection for persons in public life.<sup>127</sup>

The second, a Committee of Experts on Media, was announced on 11 January 2022. Chaired by former Justice Michael Mallia (who also chaired the Public Inquiry Board), it is made up of media executives, academics, and a lawyer. Its remit is to analyse the journalism and media sector in Malta and underline areas that require development, and to provide the Prime Minister with feedback on draft law reform proposals pertaining to freedom of expression and media freedom which the Prime Minister submitted to the committee.<sup>128</sup>



The two committees have already come in for strong criticism. The first committee, consisting of the heads of Malta's law enforcement, security and military forces, would seem unlikely to have all of the skills, knowledge or experience to advise, let alone decide, on the security needs of journalists. It does not count journalists or any other media representatives among its members. Nothing has been published about what meetings they have already had; there is the same lack of transparency that the Public Inquiry report identified as needing to be rooted out.

The terms of reference (ToR) for the second committee fail to require that the committee is independent, made up of individuals of demonstrable integrity and expertise, and that it should have cross-societal support. Its members include at least one individual with strong links to the government and Joseph Muscat's disgraced former Chief of Staff, and who is on record as referring to Daphne Caruana Galizia as "Queen of Bile". The editor-in-chief of an independent newspaper did not accept an invitation to be appointed as one of the members of the committee.

The rule of law NGO Repubblika said it was disappointing that no international experts or "local experts with competence and integrity" were included in the committee, and asked that committee members declare what they have earned from the government through their past work, a call that has gone unanswered.<sup>129</sup> While the government claimed to have consulted with international media freedom groups, these groups released a statement in response saying that while one meeting had been held, their offer of technical assistance had not been taken up. They were ready to assist if asked.<sup>130</sup>

The lack of transparency and consultation with which the committee has operated since receiving its ToR, poses a major concern to its legitimacy. The committee has not met with civil society, media or journalists, nor the Caruana Galizia family. It has also refused to participate in conferences relating to media freedom in Malta. While it is understood that the Prime Minister was presented with the committee's advice on his draft legislation and that the committee is continuing its work, the process it has opted to follow lacks transparency. The process so far has been shrouded in secrecy with no consultation having taken place since its appointment.<sup>131</sup>

#### **6. Constitutional reform, including:**

- a the recognition of free journalism as one of the pillars of a democratic society, and an explicit requirement on the State to guarantee it and protect it***



***b recognition of an individual's right to access information held by the State and public administration and to recognise also that public authorities are obliged to provide such information.***

There has been no progress on the constitutional recognition of free journalism as the fourth pillar of democracy, despite the urging of the Daphne Foundation and international civil society.<sup>132</sup> This recommendation has been excluded from the government's proposals.

In January 2022, the Committee of Experts was tasked to examine “the draft legislative amendments prepared by the government following the consultations carried out with key stakeholders.”<sup>133</sup> This consisted of two draft laws (attached as annexes to this report):

- A draft Act “to amend the Constitution and various other laws to strengthen the right to freedom of expression and the right to privacy and to implement various measures for the protection of the media and of journalists”; and
- A draft Act “to provide for the establishment of structures for the protection of democratic society including the protection of journalists, other persons with a role in the media and in non-governmental organisations, and persons in public life.”

Also, in January 2022, a group of parliamentarians (MPs) from the Opposition published their legislative proposals, suggesting amendments of 12 laws, including amendments to Malta's Constitution, the Criminal Code, the Code of Organisation and Civil Procedure, and the Media and Defamation Act. These Opposition proposals, presented in parliament as a Private Member's Bill, which were in line with the recommendations of the Public Inquiry, were voted out by the government after a parliamentary debate.

From the outset, concerns about the lack of transparency and meaningful consultation on the government's proposals have been raised.<sup>134</sup> Unfortunately, despite the assertions of the government that the proposal was “widely consulted”, the work of the committee and the government was not transparent and there were no consultations with civil society or a broader range of stakeholders.<sup>135</sup> In its legal analysis of the government's two draft laws on media, the OSCE Representative on Freedom of the Media urged Maltese authorities to hold transparent consultations with the Committee of Media Experts, civil society, media, and other national and international key actors prior to the discussion and adoption by the parliament.



The government's draft laws proposed reforms strengthening the constitutional guarantee of freedom of expression, amended provisions on the liability of editors and publishers in defamation cases in the event of death of the original author, and provisions regarding the recognition and enforcement of foreign judgments in defamation cases.<sup>136</sup>

The OSCE and ARTICLE 19 Europe have conducted legal analyses of the draft proposals focusing on their compliance with international freedom of expression standards.<sup>137 138</sup> With regard to the constitutional amendments, both analyses recommend that the government incorporate the right to seek information as a basic component of the right to freedom of expression. They also highlight concerns that the government proposal imposes restrictions on freedom of expression in a broader way than permitted under international human rights law, calling for these restrictions to be dropped. Both organisations also call on the government to adjust the language of the constitutional provision on hate speech to reflect the terms and criteria used by international law and other relevant international documents in this area.

ARTICLE 19 Europe also analysed the MPs' proposal, and welcomed the "suggestions to include several principles strengthening the protection of freedom of expression, in line with international freedom of expression standards. Importantly, the proposed amendments for Article 41 (4) and 41 (5) of the Constitution provide more clarity and robust protection regarding journalistic sources and the right of access to information than that of the Government." It recommends that the Opposition proposal "should therefore be further considered, this section should be rephrased. Instead, the Constitution could recognise that independent and diverse media play an essential role in supporting the functioning of democratic societies."

#### **7. Revision of the Media and Defamation Act:**

- *There is no place for libel suits against journalists to continue after the death of the prosecuted journalist;*
- *to address the problem of abusive lawsuits against journalists (including so-called Strategic Lawsuits Against Public Participation, also referred to as 'SLAPPs').*

#### **Restrictions on defamation proceedings against the deceased**

The government proposal introduces new provisions to the Media and Defamation Act (Article 3A) which allows the court in defamation proceedings



against an author or editor after their death to “not award any damages against the heirs of the deceased author or editor.” Upon request of the heirs of the deceased, the court can also “summarily order the discontinuance of the proceedings subject to such orders and conditions with regard to the merits of the case and to the payment of costs as it may consider appropriate.” However, it also says that such proceedings may continue upon the request of the plaintiff against the publisher instead of the heirs.

ARTICLE 19 Europe welcomed these provisions, reiterating that “in defamation cases, the harm from an unwarranted attack on someone’s reputation is direct and personal in nature. Unlike property, it is not an interest that can be inherited or transferred upon their death. This reform is also particularly relevant in the context of pervasive SLAPPs against the family of Daphne Caruana Galizia. As for the possibility of the transfer of the liability onto the publishers, we believe that the proposal must include further safeguards; namely to state that such proceedings could continue against publishers only when legal liability can be separately established against publishers as well.”<sup>139</sup>

### ***Protection against SLAPPs – enforcement of defamation judgments from third countries***

Both the government and MPs’ proposals also sought to introduce measures to curb the abusive practice of strategic litigation against public participation (SLAPPs). SLAPPs are meritless claims brought in clear abuse of the judicial process. Their aim is not to win compensation but to harass or subdue the media and other critical voices in society, and to create a chilling effect on the right to freedom of expression. This is particularly important as investigative journalists and the family of Daphne Caruana Galizia face numerous SLAPP cases in Malta.

The government proposes a new Article 24A on protection of journalists against SLAPPs. This would allow the courts to limit execution of defamation judgments from third countries under specific provisions. “Without prejudice to the application of European Union law and of any treaty to which Malta is a party,” the courts will be able limit the execution of such judgements if:

- The action giving rise to the judgment was substantially based on claims related to Malta and could have been filed in Malta; and
- It was probably not so filed as part of a strategy intended to place an unwarranted financial burden on the defendant.



Additionally, courts can also refuse the execution in Malta of such a judgment if the court considers that “the execution of that judgment would violate the right of freedom of expression as protected in the legal system of Malta.” At the same time, third country judgments could still be enforced “to such amount which the Court considers would be due in damages and, or costs under [Defamation Act of Malta] had the action been filed in Malta and decided against the author, editor or publisher.”

While the attempt to limit the enforcement of SLAPP judgements from third countries is welcome, as we are concerned about the cross-border SLAPP cases against journalists, the provisions are confusing and open to arbitrary interpretation of the courts. ARTICLE 19 Europe’s assessment notes that “no procedural rules accompany the government proposal that enable the courts to limit the execution of foreign judgments when it considers that the action was substantially based on claims related to Malta and was part of a strategy intended to place an unwarranted financial burden on the defendant. It also fails to incorporate the public interest as a key legal interest to be protected by courts when conducting said assessment.” ARTICLE 19 Europe finds that the proposal in the Private Member’s Bill to amend the Media and Defamation Act does make a critical reference to public interest as a key factor for the courts to assess when exercising their power to dismiss defamation related claims. This proposal also includes an important procedural provision concerning the stage at which courts can decide to dismiss the claim on the basis of public interest.”<sup>140</sup>

Commenting on the Maltese Government’s SLAPP proposals, the OSCE noted, “Provisions regarding the recognition and enforcement of foreign judgements in cases of defamation are recommended to be eliminated and replaced by a comprehensive anti-SLAPP legal regime containing the provisions and safeguards already recommended by international organisations.”<sup>141</sup> It goes on to recommend that Malta’s anti-SLAPP provisions should cover the following areas:

- Early dismissal: courts should be empowered to ensure that SLAPPs are dismissed at the earliest possible phase of legal proceedings, provided that the respondent persuades the court that the matter falls within the scope of the relevant legislation.
- Deterrent measures: effective, proportionate, and dissuasive measures of penalty are imposed on the claimant, which may also bring an advantage to the party whom the claimant had wished to vex through litigation.
- Restriction of forum shopping: specific rules to deter litigation in



third countries, as well as the extension of remedies available to deter domestic SLAPPs.

- Non-legislative measures: adequate training for judges and legal practitioners or the creation of a specific EU fund to provide support for the victims of SLAPPs.

These elements are particularly important in light of the European Commission's 2022 proposed directive and recommendation on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("SLAPPs").<sup>142</sup> The Coalition Against SLAPPs in Europe (CASE) has urged Member States such as Malta to genuinely engage on this initiative and reach a swift agreement on an ambitious EU anti-SLAPP law with the strongest possible set of rules against SLAPPs.<sup>143</sup>

### ***Amendments to the Criminal Code***

In its final legislative proposal, the government would introduce a new section to Article 222 of the Criminal Code that deals with aggravating circumstances for the crimes of bodily harm. It provides for higher penalties for crimes of bodily harm if the victim was "a journalist" and the offence was committed because they exercised or have been exercising their functions. This proposal is welcomed and is in line with the 2012 Joint Declaration, in which international mandates on freedom of expression called for the law to provide for heavier sanctions for crimes motivated by a desire to silence the victims (which they called crimes against freedom of expression), based on the serious consequences of such crimes, not only for the victims but for society as a whole.<sup>144</sup>

As for the heightened penalties in cases of bodily harm of "a journalist", ARTICLE 19 Europe appreciates that the provisions refer to "journalists ... exercising his/her function" but it is not clear who would be considered 'journalist' in the first place. Under international human rights standards, 'a journalist' should not be defined by reference to some recognised body of training, or by affiliation with a media entity or professional body. It is an activity that can be exercised by anyone, and it is important that any legal standards applicable to the activity should reflect this. In particular, the understanding of the term 'journalist' should be broad to include any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication. For these reasons, it might be more appropriate to state that aggravating circumstances will be engaged if an individual was targeted for exercising their right to freedom of expression.<sup>145</sup>



**8. Revision of the Freedom of Information Act, particularly to restrict the “culture of confidentiality and secrecy with the excuse of privacy or commercial prejudice”.<sup>146</sup>**

A year after the publication of the recommendations, the situation relating to freedom of information in Malta appears to be deteriorating. The LIBE mission report from May 2022 raises issues in relation to the challenges of accessing information held by public authorities, recognising that stakeholders reported “that access to information, foreseen by the Freedom of Information Act, is often violated by public authorities, as requests are rejected, not answered or only partially answered, or replies are delayed.”<sup>147</sup> The 2022 Rule of Law Report reported that “journalists have continued to consistently encounter difficulties when requesting such access, due to numerous rejections, significant delays and absence of reply, the government review of the matter is ongoing.”<sup>148</sup>

These concerns have been echoed by international press freedom organisations who have highlighted their concerns over the challenges that media outlets in Malta face in accessing public information through the Freedom of Information Act (FOIA). The unprecedented appeals by some 40 government ministries and entities against a decision by the Information and Data Protection Commissioner that ordered the disclosure of information on public expenditure requested by *The Shift* are emblematic of these challenges.<sup>149</sup> These appeals are also significant as they relate to freedom of information (FOI) requests seeking information on government contracts given to the owner of one of Malta’s established media, and who has also been appointed on the Committee of Experts on Media tasked with advising Prime Minister Robert Abela on how to implement the Public Inquiry recommendations related to journalism.<sup>150</sup>

Revisions of the FOIA have already been called for by the Information and Data Protection Commissioner, the Venice Commission and the Special Rapporteur for PACE.<sup>151</sup> The LIBE report stated that the government reportedly started a review of the legal framework. Despite this, no action has been so far taken to address this government created challenge.<sup>152</sup>

**9. A binding requirement that government advertising in the media be distributed on a fair, equal and non-discriminatory basis.**

No progress has been made with regard to the reform of government advertising in the media. There continues to be no legal framework for, or transparency in, the allocation of State advertising in Malta.



The situation of government advertising is inextricably linked to lack of political independence of the public service media in Malta, flagged by the most recent annual Media Pluralism Monitor (MPM) report as the worst risk identified for Malta.<sup>153</sup> The report notes that the State broadcast media is so heavily biased towards the government that major corruption stories often go unreported. An investigation by *The Shift* revealed that the Public Broadcasting Service (PBS), an outlet which has a constitutional obligation to be strictly impartial, has also been co-opted by the ruling Labour Party.<sup>154</sup> In addition to owning its own party-controlled news outlets, the government also uses political advertising as a way to channel money to media outlets that have links to, or are supportive of, the ruling Labour Party.

The MPM notes that Malta's Public Service Media (PSM) receives a €4.1 million subsidy each year and €2.4 million from advertising from the government and its entities. Meanwhile, private TV and radio stations struggle to make ends meet, and other legacy news outlets are having to diversify and expand to offer digital platforms in order to survive. Additionally, PSM has been awarded a €30 million cash injection over the next five years to fulfil a "regeneration" project. Other media organisations contend that this creates an unfair scenario.<sup>155</sup>

The situation was exacerbated during the COVID-19 pandemic when measures to mitigate against financial burdens on media due to loss of advertising and increase in costs during the pandemic saw the government fund media companies in a manner that lacked transparency and objective criteria of assessment. The finances provided to the State broadcaster and the media arms of the two parties represented in parliament, Labour Party and Nationalist Party, were superior to the funds given to independent media outlets like *Malta Today*, *Times of Malta* and *Malta Independent*. Amounts appear to have been determined by the government's own discretion, without objective criteria having been set up to calculate the amount of funds to be granted.<sup>156</sup>

## 6. Lessons learned

Journalists are murdered when those who want to silence them believe they can get away with it. When a journalist is assassinated, the rule of law has failed. The Public Inquiry into the assassination of Daphne Caruana Galizia identified a failing system that had allowed for the assassination to happen, in tandem with a concerted, long-running campaign against Daphne Caruana Galizia in pro-government media and on social media in which she was essentially dehumanised.

The criminal proceedings related to the assassination remain ongoing; the investigations into the corruption allegations which Daphne Caruana Galizia uncovered remain ongoing, and the recommendations made by the Public Inquiry are yet to be implemented. Justice for Daphne's assassination and for the corruption her stories uncovered is yet to be delivered. The publication of the Public Inquiry's report, and the initial steps towards implementation of its recommendations, is nevertheless an opportune moment to take stock and identify lessons that can be learned from the process so far. This section will summarise key achievements and learning points thus far.

### **The campaign: Key achievements and learning points**

When Daphne Caruana Galizia was murdered, it was immediately clear that a criminal investigation into the assassination would not alone deliver justice. Even if those directly responsible – the 'hitmen' and those who commissioned the murder – could be prosecuted and convicted, something which seemed doubtful in the immediate aftermath of the murder, a criminal investigation would not examine the broader set of circumstances that created the climate that eventually led to the assassination. Neither would it examine the contribution to that climate by the various politicians and businessmen whose corrupt dealings Daphne Caruana Galizia was investigating. In short, there would not be justice: this would be possible only through an independent Public Inquiry. But, under the Maltese system, only the government can establish a Public Inquiry, and the government was not willing to do that. A sustained campaign was therefore required, led by the family.



***The key achievements of the campaign are, in short:***

- the campaign successfully brought the attention of international community to the case and the need for a Public Inquiry;
- without sustained campaigning, over a period of years, the Public Inquiry would not have happened;
- the campaign brought strong international attention to the need for rule of law reform in Malta, sustained over a period of years;
- the campaign brought strong international attention to the need to strengthen the safety of journalists and respect for media freedom, similarly sustained over a period of years.

The campaign was led by the family. None of them had specific campaigning skills but members of the family did have professional backgrounds that were extremely useful as the campaign went on: Daphne Caruana Galizia's husband, Peter, was a lawyer; two of their three sons were journalists, and the third was a diplomat; and one of Daphne Caruana Galizia's sisters was a public relations expert. They set up the Daphne Caruana Galizia Foundation to fight for justice for Daphne and to campaign for media freedom more broadly. As the campaign went on, they learned from successes as well as from every setback that they suffered.

However, as much as the family is to be admired, their work cannot be recommended as a model. For one, it is unlikely that any other family of a murdered journalist would have similarly superlative skills in law, campaigning and journalism, or that they would have similar national and international networks. Even if other families are similarly qualified, the burden is a huge one: quite aside from the emotional burden and grief that they carried over the loss of their mother, wife, and sister, the family played a leading role in liaising with intergovernmental organisations and national and international civil society. Without them, there would not have been a Public Inquiry, and justice for Daphne Caruana Galizia would be even more remote. Other families of murdered journalists are unlikely to have the same skills, and expecting them to lead a campaign of this kind is an unfair expectation to place on a bereaved and grieving family.

A second important early learning point concerns the pivotal role of the international community, both civil society organisations and intergovernmental organisations. International press freedom organisations were pivotal in introducing the family to specialised London-based lawyers who could work alongside the Maltese lawyers, and their experience working with Council of Europe and EU mechanisms was also very valuable. It was similarly fortunate



that one of the main Maltese lawyers for the family, Therese Comodini Cachia, had herself been a Member of the European Parliament and was well versed in the workings of international mechanisms. For Malta, international opinion mattered, and even if the Maltese Government did not care for the approval of international civil society organisations these were influential with the Council of Europe as well as with EU institutions because of their independence and experience working on media freedom issues. The Venice Commission – a key Council of Europe body – had already expressed concern about the weakness of the rule of law in Malta, adding to the international pressure.

While international pressure was pivotal, there was no clear ‘path’ for the campaign to follow – no set mechanism that could be triggered. Strategising was ad-hoc and the campaign learned as they went along. The appointment of a strong Rapporteur at the Parliamentary Assembly, able to withstand pressure and smears, turned out to be pivotal. Not only did Pieter Omtzigt MP write a strong report, he also kept a close eye on proceedings, issuing statements and press releases throughout.

As the campaign lasted for a number of years (and, indeed, is still ongoing), resources were a real issue. While international civil society organisations were able to dedicate some of their funding and resources to working on the campaign over a period of time, Maltese civil society was under-resourced. The family’s legal team was also poorly resourced; although it received one grant from an international civil society organisation, this did not nearly cover all costs. As a result, the lawyers worked mostly pro-bono, sometimes full time over long periods of time, which is not sustainable.

Finally, there has been aggressive and very hostile counter-campaigning by segments of the media and politics, before, during and following the Public Inquiry. As described above, this took the form of a toxic and very potent mix of messaging through social media and reporting by pro-government newspapers and broadcasters, which combined to continue a hostile atmosphere similar to that which was built against the reporting of Daphne Caruana Galizia. Resources are required to counter this.

## **The Public Inquiry: Key achievements and learning points**

The Public Inquiry was an important stepping stone towards attaining justice for Daphne Caruana Galizia. The public hearings forced individuals from the highest



levels of government, politics and business to answer questions; and when they refused to answer questions, their silence spoke volumes. The hearings went on for a period of more than a year, during which time, rule of law and media freedom issues were front-page news. The report issued by the Board of the Public Inquiry meticulously dissected the failures of the institutions, the failure of the rule of law, and identified recommendations to move forward. It provided a roadmap for improving the rule of law and media freedom in Malta; and a benchmark for assessing the Maltese Government's commitment to implementing reforms, and, eventually, their effectiveness.

This was the first Public Inquiry to have taken place in Malta in nearly 20 years. There was no established template for the Board of the Inquiry to draw on, no set proceedings, and no guidance other than the parameters set under the Public Inquiries Act 2015 and in the terms of reference given to it. As such, there will have been learning points for all involved – from court and government officials to the family and civil society. The following learning points focus on those from the perspective of the family and of civil society, who campaigned for the Public Inquiry to take place.

### ***Terms of reference***

While the Public Inquiries Act 2015 set out general procedures, an Inquiry of this type required its own terms to ensure that the process be a meaningful one and provide the Board with the necessary inquiring force it needed to review State practices, actions and failings. These terms of reference describe the objectives and structure of an Inquiry; which in this instance included clarity on the scope and purpose of the Inquiry, the powers of the Board, the position of the victim, the obligations of State entities vis-a-vis the Board's work, granting the Board the facility to regulate its own procedures, and providing the Board with the facility to publish its report, all ensured that the Board could act independently of government and be given sufficient protection against interference or criticism from the government or persons connected therewith.

The terms of reference were particularly supportive to the Inquiry being able to order that all witnesses be heard publicly, compel witnesses to testify, and also stave off any attempt of interference or subjecting it to undue challenges.

### ***Independence***

The independence of the Public Inquiry was paramount, in every respect: formally, as recognised by its terms of reference; in the membership of the Board; in its funding; and also in its ability to operate independently. All of



these need to be confirmed in the terms of reference, which also need to be sufficiently broad to allow the Public Inquiry to meet its objectives. The stature of individual Board members is crucial: they should be individuals of proven integrity and independence, with demonstrated skills and experience for the function, and able to command the trust of the family as well as of society at large. The members of the Board of the Public Inquiry, as eventually appointed – after the government’s false start – had all these qualities, and this allowed them to resist attempts at interference. For example, when the government threatened to pull its resources, the Board was able to insist that it be allowed to operate without interference. The stature of the Board members was very important: it included sitting and retired judges – one of them a former Chief Justice – whose professionalism, independence and integrity could not be impugned.

### ***Public nature of the hearings and the evidence***

The public nature of the hearings and all the evidence was crucial. It allowed the public to hear about the failures of the State and the individuals within it that led to the assassination, and judge for themselves. At the same time, the lack of remote access to hearings was a lost opportunity, particularly to allow greater international visibility, and there could have been other improvements in terms of visibility and public relations (for example, there should have been a dedicated website, and a secretariat to announce the schedule of hearings). Livestreaming could have ensured easier access to the proceedings, assuring greater transparency and, therefore, faith in the process. Given the international interest in the case, translation into English would also have been valuable (there still is no official English language version of the Public Inquiry report, but a courtesy translation has been published by the Daphne Caruana Galizia Foundation).<sup>157</sup>

### ***Powers and resources***

The Public Inquiry had a statutory basis. This included the power to compel witnesses as well as the production of evidence. In practice, however, it was unable to use its power to call upon State entities to present to it documentary evidence they may have except for compelling witnesses to present documentary evidence to which their testimony related. Part of the reason for this is that it lacked resources. Without criticising its report, those closely involved in the Inquiry recommend that future inquiries should have, at least:

- its own legal team
- a team of investigators
- a secretariat



public communication resources (media personnel, a dedicated website, capacity to archive evidence and witness statements and make them permanently accessible for future research)

## **The Public Inquiry: Implementation of recommendations**

The Board of Inquiry's report represents a milestone in the fight for truth, accountability and justice for Daphne Caruana Galizia's assassination and its conclusions and recommendations are of paramount significance in battling impunity for crimes against journalists and in commencing the process to bring about an enabling environment for journalists in Malta. Its report represented an opportunity to the government to show that Malta was well on its way to take meaningful actions to strengthen, on the one hand, freedom of expression, press freedom, journalism, the protection of journalists in Malta, and on the other, to combat impunity, corruption and abuse of power.

One year after the publication of the Board's report, the Government of Malta has failed to implement the Board's recommendations save for appointing the Committee of Experts on Media. Five years after Caruana Galizia's assassination and one year since the publication of the Public Inquiry report there has been hardly any concrete action or meaningful legislative proposal to provide an enabling environment for journalists. Without urgent action from the government of Malta there is a serious risk that the opportunity to fulfil the promise for meaningful reform presented through the Public Inquiry's landmark recommendations will be lost. European institutions and civil society must continue to maintain close scrutiny of the process.

## 7. Conclusions

The high level of impunity for deadly attacks against journalists is indicative of a failing criminal justice system, and often of a failing rule of law. When a journalist is assassinated, the murder is usually 'on commission', as the Public Inquiry report emphasised, and justice means finding and convicting not just the 'hitman' who pulled the trigger, but those who ordered the killing, and others directly involved in the crime. Experience has shown that even when the 'hitmen' are found, the masterminds behind an assassination often remain at large, and that those directly involved in the murder take advantage of the impunity created by individuals in positions of power in government, law enforcement, or both. The Public Inquiry Board itself indicates that it was astonished at the secure and free way that each person allegedly involved in the material execution of the murder of Daphne Caruana Galizia could openly boast of being in contact with ministers, the Chief of Staff and other persons at the centre of power.<sup>158</sup>

When the criminal justice system is thus compromised, an alternative or parallel mechanism may be required, either to 'cure' the failings in the criminal justice system or to make it politically impossible for those who protected the 'masterminds' to continue to do so. In some countries, such as Malta or the UK, a formal Public Inquiry may provide such a mechanism. In other countries, domestic law may provide for other mechanisms such as parliamentary inquiries, or an ad-hoc mechanism can be put in place. Whichever route is available, it is likely that public pressure will be required in order to force a government to take action.

The campaign for the Public Inquiry into the circumstances of Daphne Caruana Galizia's assassination showed that two forces were pivotal in compelling the government to institute a Public Inquiry: (1) public opinion, and (2) the international community of States. The government stalled and dragged its feet in instituting the Inquiry, and did so only because it was politically forced to do so. In turn, two forces were pivotal in moving both public opinion and the international community: the unrelenting hard work of Daphne Caruana Galizia's family, and pressure and unrelenting campaigning by civil society (in Malta as well as internationally).

Across Europe, there are still at least 26 cases of impunity for the murder of journalists.<sup>159</sup> Each of these cases is essentially stuck at some point in the investigative process, and some of them have been for years and even decades.



The role of international organisations cannot be undervalued. As experience with the Special Rapporteur appointed by the Parliamentary Assembly of the Council of Europe showed, this role was pivotal in keeping the attention of the international community focused on a case. International organisations greatly contributed towards the successes so far reached in the campaign for justice for Daphne Caruana Galizia. The Special Rapporteur is one example; others have consistently passed resolutions, issued press statements and used diplomatic channels. Many lessons can be learnt from the experience of the campaign for justice for Daphne Caruana Galizia, and it is augured that this good practice critique/report will continue to stir debate on measures that other countries and international organisations may implement to ensure that justice for murdered journalists is served promptly and effectively. In this way, other journalists may feel more secure in performing their role as public watchdogs in democratic societies.

As with many models similar to the Public Inquiry into the assassination of Daphne Caruana Galizia, it reaches its full potential when its recommendations are actually implemented within a reasonable time. To this end, therefore, the campaign for justice does not end with the publication of the Board's report.

The work of civil society, international organisations and national organisations, remains of vital importance. As their work was crucial in convincing the government to appoint a Public Inquiry, it is now crucial to ensure that the Board's recommendations are effectively implemented. In doing so, the role of civil society continues to include the making of their expertise available to the government and to the committees appointed by it. Civil society's role is also to analyse whether government action, policy or legislative proposals meet international standards, and to review and comment on any government proposals. Their call for a transparent process of dialogue with all stakeholders – enabling meaningful contributions towards any legislative proposals and other measures needed to implement the recommendations – remains of utmost importance.

The work of civil society is now in its fifth year and despite the great challenges that activists have faced, they tirelessly continue to seek justice for Daphne even through the implementation of the Public Inquiry's recommendations. To this end they need continued support.

## 8. Recommendations

### To the Government of Malta

In line with Malta's obligations under international human rights law, particularly in the European Convention on Human Rights, the case law of the European Court of Human Rights, the recommendations of the Council of Europe, in particular its Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors<sup>160</sup>, and the European Commission's Recommendation on the protection, safety and empowerment of journalists<sup>161</sup> we call on the Maltese Government to:

*Implement, without delay, in full consultation with all stakeholders and in a transparent manner, the recommendations of the Public Inquiry, with particular attention to the recommendations highlighted by the board which have yet to be addressed:*

#### **Corruption**

- In line with the GRECO Commission recommendations, introduce laws on issues including financial crime, hindering police or other official investigations by someone in a public position, obstruction of justice generally, outlawing "mafia-style associations" and "abuse of office".
- Ensure the timely investigation of allegations of corruption or any other wrongdoing revealed by journalists.

#### **Safety of journalists**

- Fully implement without further delay the Council of Europe's Recommendation (2016) of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors and the European Commission's Recommendation on the protection, safety and empowerment of journalists in consultation with national and international press freedom and anti-corruption organisations and bodies, to implement long-term legislative and policy measures to protect journalists, address impunity and create an enabling environment for critical, independent journalism in Malta.



- Develop a National Action Plan on the Safety of Journalists, in close collaboration and consultation with journalists, media outlets and civil society.
- Strengthen training for the police so that they can better understand and value the work of investigative journalists (in full observance of the independence and autonomy of the journalist and their sources) and in consultation with international experts.
- Amend the Bill “to provide for the establishment of structures for the protection of democratic society including the protection of journalists, other persons with a role in the media and in non-governmental organisations and persons in public life” to:
  - Include the designation and establishment of concrete units and the definition of clear response protocols.
- Introduce the formulation of proper engagement and coordination mechanisms with civil society and media organisations regarding the operation of early-warning and rapid-response mechanisms, the need to set up training programmes for State authorities responsible for the protection of journalists and other media actors, as well as the designation of proper prosecution authorities and mechanisms.

***Amend the Government’s current legislative proposals to amend the Constitution to:***

- Include the Constitutional recognition of free journalism as one of the pillars of a democratic society, and an explicit requirement on the State to guarantee it and protect it.
- Include the right to seek information as a basic component of the constitutional right to freedom of expression and freedom of information.
- Eliminate the possibility of imposing additional restrictions to the constitutional right of freedom of expression “for the purpose of maintaining confidence in the public service”.
- Eliminate constitutional restrictions to the right to edit or print periodical publications exclusively based on the residence or the age of individuals.
- Strengthen the protection of the right to access to information at the constitutional level by expressly incorporating the basic



international and regional principles applicable to the exercise of this right.

- Adjust the language of the constitutional provision on hate speech to the terms and criteria used by international law and other relevant international documents in this area (such as Article 20 of the International Covenant on Civil and Political Rights).

***Amend the legislative proposals to the Media and Defamation Act to:***

- Stipulate that in case of the death of the author or editor, publishers can only be liable if legal liability can properly and fairly be established and determined in the absence of the deceased journalist, respecting the due process of law.
- Eliminate provisions regarding the recognition and enforcement of foreign judgments in cases of defamation, and replace them with a comprehensive anti-SLAPP legal regime containing the provisions and safeguards already recommended by international organisations. This includes procedural rules such as the options to initiate early dismissals proceedings at the court's own motion and upon petition of the defendant, short (six months) deadlines for initiating cases, provisions on legal aid and awards of costs as well as the provisions on judgments from the third countries.
- Consider incorporating the Opposition Members of Parliament's proposal on new Articles 5 (4) (b) and Article 10 (4) of the Media and Defamation Act, as well as the proposal to amend Article 827 (1) of the Code of Organisation and Civil Procedure.
- Genuinely engage on the European Commission's proposed Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation (SLAPPs)") and reach a swift agreement on an ambitious EU anti-SLAPP law with the strongest possible set of rules against SLAPPs.

***Amend the legislative proposals to the Criminal Code to:***

- Specify that aggravating circumstances will apply to Article 222 when the victim was targeted for exercising their right to freedom of expression. In any case, the understanding of the term 'journalist' should be broad and not limited to those associated with professional media outlets.



### ***Freedom of information***

- Revise the Freedom of Information Act, particularly to restrict the “culture of confidentiality and secrecy with the excuse of privacy or commercial prejudice”.<sup>162</sup>
- Introduce legislative and other safeguards to improve the working environment of journalists, including on access to information held by public authorities, taking into account European standards on the protection of journalists.

### ***Public service media***

- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.

### ***State advertising***

- Introduce a binding requirement that government advertising in the media be distributed on a fair, equal and non-discriminatory basis.

## **Recommendations to institutions of the European Union**

- Continue to scrutinise the implementation of the Public Inquiry recommendations including through the European Commission’s Rule of Law report and its oversight of the implementation of its Recommendation on the safety of journalists; and the European Parliament’s Democracy, Rule of Law and Fundamental Rights Monitoring Group (LIBE).
- The European Commission and European Parliament should continue to track and monitor national corruption investigations, in support of the work of the Council of Europe, with a view to supporting Maltese journalists in their work to uncover financial crime and corruption.

## **Recommendations to international civil society**

- Continue the campaign for an enabling environment for journalists in Malta by advocating with the Government of Malta for it to find the political will to implement the changes recommended by the Board of Inquiry;



- Offer expertise to the Government of Malta to find ways of implementing those recommendations;
- Ensure that international standards are adhered to in the implementation of such recommendations;
- Review and comment on any legislative proposals and other actions proposed by government to implement the recommendations;
- Continue to support with resources national campaigners advocating for the implementation of the recommendations;
- Call on the government to follow a transparent process of dialogue with all stakeholders with the aim of allowing all to contribute towards any legislative proposals and other measures needed to implement the recommendations.

# Endnotes

- <sup>1</sup> See, for example, 'Five years later, Panama Papers still having a big impact': <https://www.icij.org/investigations/panama-papers/five-years-later-panama-papers-still-having-a-big-impact/>
- <sup>2</sup> See, amongst others, the examples mentioned at <https://impact.gijn.org/>
- <sup>3</sup> 'Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age', 17 March 2022. This recommendation is based on the European Convention on Human Rights (ECHR), a binding international treaty that protects the rights of journalists to freedom of expression as well as the right of the public to receive information on issues of public interest.
- <sup>4</sup> This figure excludes journalists killed in the war in Ukraine.
- <sup>5</sup> Even when the person who carried out the attack – the 'hitman' – is found and prosecuted, those who ordered the killing – the 'masterminds' behind the murder – have often been able to evade justice. According to the 'Council of Europe's Platform to promote the protection of journalism and safety of journalists', there are currently 26 cases across Europe of unresolved assassinations of journalists: <https://fom.coe.int/accueil>. See <https://human-rights-channel.coe.int/end-impunity-for-crimes-against-journalists-en.html> for more detail on each of the cases.
- <sup>6</sup> Alongside the Board of Inquiry, criminal investigations have remained ongoing. Only one conviction has been achieved so far: on 23 February 2021, one of the 'hitmen' confessed to planting and detonating the bomb that killed Daphne Caruana Galizia. Proceedings against other suspects, including the alleged 'mastermind' of the murder, Yorgen Fenech, remain ongoing. A person who confessed to being the 'middleman' was pardoned so he could give evidence against the 'mastermind'.
- <sup>7</sup> A list of interviewees is included in the Annex to this report.
- <sup>8</sup> <https://www.politico.eu/list/politico-28-class-of-2017-ranking/daphne-caruana-galizia/>
- <sup>9</sup> <https://daphnecaruanaGalizia.com/2017/10/crook-schembri-court-today-pleading-not-crook/>
- <sup>10</sup> There had been at least five car bomb attacks in 2016–2017, as reported in <https://www.independent.com.mt/articles/2017-02-21/local-news/Joseph-Muscat-I-had-passed-through-Msida-minutes-before-the-bomb-exploded-6736170659>
- <sup>11</sup> As had already been pointed out before the assassination, for example, in a Council of Europe report of 24 March 2016 (<https://rm.coe.int/168066d624>) the concerns of which were elaborated through later reports of the Venice Commission making detailed recommendations for reform. See also European Parliament resolution of 15 November 2017 on the rule of law in Malta.
- <sup>12</sup> See Venice Commission, [Opinions on Malta](#)
- <sup>13</sup> *Malta Independent*, [No reply from police to my request for protection – David Casa](#)
- <sup>14</sup> See Articles 546–569 of the Maltese Criminal Code. See also *Times of Malta*, [Why an inquiry into Keith Schembri could stay secret – Magisterial inquiries explained](#)
- <sup>15</sup> For more background on public inquiries, see Parliamentary Research Briefing, [Statutory public inquiries: the Inquiries Act 2005](#), 8 November 2021.
- <sup>16</sup> Institute for Government, [How public inquiries can lead to change](#), 12 December 2017.
- <sup>17</sup> According to the Public Inquiry Report, Section I – Preliminaries.
- <sup>18</sup> *Malta Today*, [Magistrate abstains from Caruana Galizia murder inquiry on family request](https://www.maltatoday.com.mt/news/court_and_police/81363/magistrate_abstains_from_caruana_galizia_murder_inquiry_on_family_request), 17 October 2017: [https://www.maltatoday.com.mt/news/court\\_and\\_police/81363/magistrate\\_abstains\\_from\\_caruana\\_galizia\\_murder\\_inquiry\\_on\\_family\\_request](https://www.maltatoday.com.mt/news/court_and_police/81363/magistrate_abstains_from_caruana_galizia_murder_inquiry_on_family_request)
- <sup>19</sup> By setting up the foundation, they were able to attract some funding. For example, FPU grant (<https://web.archive.org/web/20201128011740/https://www.freepressunlimited.org/en/news/free-press-unlimited-supports-caruana-galizia-family>) and <https://web.archive.org/web/20191130171115/https://www.ecpmf.eu/news/press-releases/defending-daphnes-legacy-funding-for-the-caruana-galizia-familys-court-battles>)
- <sup>20</sup> [Running Commentary](#), Daphne Caruana Galizia's Notebook.
- <sup>21</sup> As well as condemnations, there was also a call for a journalism award to be set up in her name, resulting in the establishment by the European Parliament of the annual [Daphne Caruana Galizia Prize for Journalism](#).
- <sup>22</sup> For example, in a Council of Europe report of 24 March 2016 (<https://rm.coe.int/168066d624>). These concerns were elaborated through later reports of the Venice Commission, which made detailed recommendations for reform: <https://www.venice.coe.int/webforms/documents/?country=46&year=all>.
- <sup>23</sup> Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Michel Forst, Special Rapporteur on the situation of human rights defenders; Juan Pablo Bohoslavsky, Independent Expert on the effects of foreign debt and human rights; and David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews>.



- [aspx?NewsID=22262&LangID=E](#) . The four Rapporteurs also wrote to the Maltese Prime Minister expressing their concern: <https://spcommreports.ohchr.org>.
- <sup>24</sup> Rebecca Vincent, then-head of Reporters without Borders' London bureau, invited Matthew Caruana Galizia to speak at an event that was attended by the human rights lawyer Caoilfhionn Gallagher QC, who was on the UK Advisory Board of Reporters without Borders. She offered to advise on legal strategy.
- <sup>25</sup> <https://occupyjusticemalta.com/>
- <sup>26</sup> *Times of Malta*, Caruana Galizia billboards removed, sparking protests of 'vile act of suppression', 17 February 2018.
- <sup>27</sup> The Constitutional Court eventually ruled that the clearing of the memorial violated the protestors' rights: see the case summary at <https://globalfreedomofexpression.columbia.edu/cases/delia-v-minister-for-justice-of-malta-owen-bonnici/>
- <sup>28</sup> *The Independent*, [New civil society group called 'Repubblika' launched](#), 18 November 2018.
- <sup>29</sup> <http://www.humanrightsplatform.org.mt/members/>
- <sup>30</sup> The European Parliament is the parliamentary body within the European Union. The European Union and the Council of Europe are two completely separate institutions, but with overlapping membership. The European Union is a political and economic union of 27 member states, dating back to 1957, and initially focused on economic cooperation but which has grown into a supra-national institution across its member states. Its parliament is directly elected by citizens. The Council of Europe was founded in the wake of World War II to uphold human rights, democracy and the rule of law in Europe. It has 46 member states (including all 27 EU members), and its Parliamentary Assembly is made up of representatives from the legislatures of its member states. The family did also lobby other institutions, such as the Organisation for Safety and Cooperation in Europe (OSCE) and the United Nations' human rights mechanisms, but the focus – and most impact – was with these two European institutions.
- <sup>31</sup> Plenary debate, 24 October 2017: <https://www.europarl.europa.eu/news/en/press-room/20171020IPR86555/meps-praise-daphne-caruana-galizia-and-call-for-concrete-actions>
- <sup>32</sup> European Parliament resolution of 15 November 2017 on the rule of law in Malta.
- <sup>33</sup> European Parliament delegation concludes visit to Malta to investigate rule of law, 1 December 2017.
- <sup>34</sup> Rule of law: Civil Liberties MEPs to report on corruption and press freedom, 5 June 2018.
- <sup>35</sup> European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia.
- <sup>36</sup> Marilyn Clark and William Horsley, *A mission to inform: journalists at risk speak out*. September 2020. The book can be downloaded here: <http://tiny.cc/missiontoinform>.
- <sup>37</sup> The Parliamentary Assembly is made up of 648 members (324 principal members and 324 substitutes) who are MPs appointed by each of the national parliaments.
- <sup>38</sup> <https://pace.coe.int/en/files/24548/html>
- <sup>39</sup> Luxembourg MP Anne Brasseur (ALDE) and German MP Frank Schwabe (SOC)
- <sup>40</sup> ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, Reporters Without Borders, the European Federation of Journalists, Index on Censorship, the International News Safety Institute, the International Press Institute, the Polish Society of Journalists, and Transparency International.
- <sup>41</sup> The need to shed light on the background of the murder of Boris Nemtsov, Motion for a resolution, Doc. 13967, 28 January 2016.
- <sup>42</sup> PACE to monitor investigation into the assassination of Daphne Caruana Galizia, 23 April 2018.
- <sup>43</sup> Officially named the European Commission for Democracy through Law.
- <sup>44</sup> For example, a 2016 report pointed to shortcomings as regards judicial independence and impartiality: Challenges for judicial independence and impartiality in the member states of the Council of Europe, SG/Inf(2016)3rev, 24 March 2016.
- <sup>45</sup> Opinion 940/2018 on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement, 17 December 2018.
- <sup>46</sup> See <https://www.coe.int/en/web/greco/evaluations/malta>
- <sup>47</sup> See <https://www.coe.int/en/web/moneyval/jurisdictions/malta>
- <sup>48</sup> 'Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges', Report, Doc. 14906, 8 June 2019: <https://pace.coe.int/en/files/27724>
- <sup>49</sup> Resolution 2293 (2019), 26 June 2019.
- <sup>50</sup> Resolution 2293 (2019), 26 June 2019.
- <sup>51</sup> Press release, <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2019/September/20/pr191965en.aspx>
- <sup>52</sup> *The Guardian*, [Family of murdered Maltese journalist raise concerns over Public Inquiry](#), 21 September 2019.
- <sup>53</sup> Declaration of the Committee on Legal Affairs and Human Rights, 30 September 2019: <http://www.assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2019/20190930-CaruanaGaliziaAssassination-EN.pdf>
- <sup>54</sup> As discussed in the Parliamentary Research Briefing on [Statutory public inquiries: the Inquiries Act 2005](#), 8 November 2021.



- <sup>55</sup> *Times of Malta*, [New members nominated to the Daphne Caruana Galizia murder inquiry](#), 15 November 2019.
- <sup>56</sup> *Press Gazette*, [Four years after murder of Daphne Caruana Galizia, Malta remains 'hostile environment' for journalists](#), 14 October 2021.
- <sup>57</sup> [Commissioner calls on Maltese authorities to withdraw posthumous defamation lawsuits against the family of Daphne Caruana Galizia](#), 19 September 2019.
- <sup>58</sup> [Commissioner calls on Maltese authorities to withdraw posthumous defamation lawsuits against the family of Daphne Caruana Galizia](#), 19 September 2019.
- <sup>59</sup> *Lovin Malta*, [Matthew Caruana Galizia Is Partially To Blame For His Mother's Murder. Government Lawyer Claims](#), 28 November 2021.
- <sup>60</sup> See, for example, <https://www.facebook.com/maltatoday/posts/10158922366596941> (this is in English; Facebook posts in Maltese language are much more hateful).
- <sup>61</sup> <https://theshiftnews.com/2018/02/17/daphne-caruana-galizia-assassination-time-to-shut-up/>
- <sup>62</sup> <https://theshiftnews.com/2018/10/01/pn-files-motion-to-strip-tony-zarb-of-national-award/>
- <sup>63</sup> *The Shift*, [State-sponsored trolling continued even after Caruana Galizia's death](#), 12 February 2020. A 2018 *Bloomberg* report on state-sponsored trolling featured Malta as one of the case studies: [Global Guide to State-Sponsored Trolling](#), *Bloomberg*, 19 July 2018.
- <sup>64</sup> An English language translation of the Constitutional Court judgment is available at <https://globalfreedomofexpression.columbia.edu/cases/delia-v-minister-for-justice-of-malta-owen-bonnici/>
- <sup>65</sup> <https://globalfreedomofexpression.columbia.edu/cases/galizia-v-the-planning-authority/>
- <sup>66</sup> Statement archived at <https://web.archive.org/web/20171229142836/https://www.gov.mt/en/Government/Press%20Releases/Pages/2017/December/09/PR172850.aspx?IsPrintPrev=1>
- <sup>67</sup> *Newsbook*, “No need for public inquiry into Daphne's assassination” – PM, 22 September 2018.
- <sup>68</sup> *Times of Malta*, [Attorney General weighs in on calls for public inquiry in Caruana Galizia murder](#), 5 October 2018. Even after PACE had set a deadline for an inquiry, the government held to this line: e.g. Justice Minister, Owen Bonnici, [interviewed for Times of Malta](#), 25 July 2019.
- <sup>69</sup> Tweet of 15 November 2019: <https://twitter.com/acaruanagalizia/status/1195317663205122049>
- <sup>70</sup> *Times of Malta*, [Ministry sacks consultant who changed Omtzigt's Wikipedia page](#), 22 January 2020.
- <sup>71</sup> R. Vincent, [With friends like Azerbaijan...](#), 29 June 2019.
- <sup>72</sup> Trouw, Pieter Omtzigt over Malta: Ik wist dat er iets heel erg miszat, 2 January 2020: <https://www.trouw.nl/politiek/pieter-omtzig-over-malta-ik-wist-dat-er-iets-heel-erg-miszat-b13bc92a/>
- <sup>73</sup> See the Decision on Alleged breaches of the Code of Conduct for PACE members – complaint concerning Rosianne Cutajar, <https://assembly.coe.int/LifeRay/PRO/Pdf/DocsAndDecs/2022/AS-PRO-2022-06-EN.pdf>
- <sup>74</sup> *EU Observer*, ‘Blood from stone: What did British PR firm do for Malta?’, 6 December 2019; Committee on Culture, Media and Sport, Disinformation and ‘fake news’: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/1791110.htm>
- <sup>75</sup> *The Shift*, Minister's aide calls PEN International executive a “biased shithole”, 11 December 2018: <https://theshiftnews.com/2018/12/11/ministers-aide-calls-pen-international-executive-a-biased-shithole/>
- <sup>76</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Reprisals/A\\_HRC\\_42\\_30.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Reprisals/A_HRC_42_30.pdf)
- <sup>77</sup> *Times of Malta*, [Daphne murder: 17 Black owner Yorgen Fenech arrested on yacht](#), 20 November 2019; *Times of Malta*, [Konrad Mizzi resigns, Chris Cardona 'suspends himself'](#), 26 November 2019.
- <sup>78</sup> This was later found to breach the ministerial code of ethics: *Times of Malta*, 3 March 2021, [Joseph Muscat's behaviour 'not acceptable'. hidden report says](#)
- <sup>79</sup> *The Guardian*, [Malta's PM quits in crisis over Daphne Caruana Galizia murder](#), 1 December 2019.
- <sup>80</sup> A list is at <https://www.gov.mt/en/Pages/WitnessesPublicInquiry.aspx>. A number of the written submissions are archived here: <https://www.gov.mt/en/Pages/SubmissionsPublicInquiry.aspx>. ARTICLE 19 led coalition of press freedom NGOs' comprehensive submission here: <https://www.article19.org/wp-content/uploads/2021/04/Submission-to-Public-Inquiry.pdf>
- <sup>81</sup> *Malta Today*, 24 June 2020, [Yorgen Fenech told police he knew of early election seven months before](#)
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- <sup>85</sup> *Lovin Malta*, 4 December 2020, [READ IN FULL: Joseph Muscat's Opening Statement To The Daphne Caruana Galizia Public Inquiry](#)
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- <sup>101</sup> English translation, page 410.
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## **Acknowledgements**

We are grateful for the interviews and support of family members, journalists, civil society organisations, legal experts and policy makers in the preparation for this report:

Giovanni Bonnello  
Byron Camilleri  
Matthew Caruana Galizia  
Vincent DeGaetano  
Flutura Kusari  
David Milner  
Peter Noorlander  
Corinne Vella

Joe Borg  
Noel Camilleri  
Paul Caruana Galizia  
Charles Deguara  
Joe Zammit Maempel  
Caroline Muscat  
Pieter Omtzigt  
Rebecca Vincent

Diana Cacciottolo  
Andrew Caruana Galizia  
Therese Comodini Cachia  
Clemence Dujardin  
Anthony Mifsud  
Joseph Muscat  
Joseph Said Pullicino

## **Appendices**

- 1. Acknowledgements**
- 2. Government draft proposals**
- 3. Opposition draft proposals**

**ARTICLE 19**

EUROPE

## **Government draft proposals**



PARLAMENT TA' MALTA

## IT-TLETTAX-IL LEGIŻLATURA

P.L. 7642

Dokument imqiegħed fuq il-Mejda tal-Kamra tad-Deputati fis-Seduta Numru 540 tas-27 ta' Jannar 2022 mill-Prim Ministru.

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Raymond Scicluna  
Skrivan tal-Kamra

**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT biex jemenda l-Kostituzzjoni u diversi ligijiet ohra biex issaħħaħ id-dritt tal-libertà tal-espressjoni u d-dritt tal-privatezza u biex jimplimenta diversi miżuri għall-protezzjoni tal-midja u tal-gurnalisti*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

Titolu fil-qosor.

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2022 li jemenda l-Kostituzzjoni għat-Tishih tad-Drittijiet tal-Liberta tal-Espressjoni u tal-Privatezza u Diversi Ligijiet Ohra Għat Tishih tal-Protezzjoni tal-Midja u tal-Ġurnalisti.

**TAQSIMA I**

**Emendi Għall-Kostituzzjoni ta' Malta**

Emendi għall- Kostituzzjoni

2. Din it-Taqsima temenda l-Kostituzzjoni ta' Malta , u għandha tinqara u tinftiehem haġa waħda mal-Kostituzzjoni ta' Malta , hawn iżjed 'il quddiem f'din it-Taqsima imsejha "il-Kostituzzjoni".

Emenda għall-artikolu 38 tal-Kostituzzjoni

3. L-Artikolu 38 tal-Kostituzzjoni għandu jiġi emendat kif ġej:

- (i) Is-sub-artikoli (1) u (2) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-sub-artikoli (2) u (3) rispettivament u bħala s-sub-artikolu (1) ġdid għandu jidhol dan li ġej:

“(1) Kulhadd għandu d-dritt għar-rispett tal-ħajja privata tiegħu u tal-familja tiegħu, ta' daru u tal-kommunikazzjonijiet tiegħu.”

- (ii) Fil-paragrafu (a) tas-sub-artikolu (3) kif enumerat mill-ġdid minnufih wara l-kliem “saħħa pubblika,” għandu jizjed il-kliem “il-ġid ekonomiku ta' Malta,”.

- (iii) In- nota marginali għall-artikolu 38 għandha tigi sostitwita b' dan li ġej:

“ Protezzjoni tal-ħajja privata u tal-familja, tal-intimita tad-dar u proprjeta ohra”.

Emenda għall-artikolu  
41 tal-Kostituzzjoni

4. L-Artikolu 41 tal-Kostituzzjoni għandu jiġi emendat kif ġej:

(i) Is-sub-artikoli (1) u (2) tiegħu għandhom jiġu sostitwiti bis-sub-artikoli ġodda li ġejjin:

“(1) Il-libertà tal-espressjoni tkun garantita kif provdut f’ dan l-artikolu. Dan id-dritt jinkludi l-libertà ta’ kull persuna li jkollha opinjonijiet u li tirċievi u tagħti informazzjoni u ideat mingħajr indhil mill-awtorità pubblika u mingħajr ma jittiehed kont ta’ fruntieri.

(2) Il-libertà u l-pluraliżmu tal-midja u l-importanza tal-irwol tal-ġurnalisti ikunu rispettati.”

(ii) Is-sub-artikoli (3), (4) u (5) għandhom jiġu enumerati mill-ġdid bħala s-sub-artikoli (4), (5) u (6) rispettivament u dan li ġej għandu jidhol bħala s-sub-artikolu (3) ġdid:

“(3) L-eżerċizzju tal-libertajiet garantiti b’ dan l-artiklu, billi jġib miegħu dmirijiet u responsabbiltajiet, jista’ jkun soġġett għal dawk il-formalitajiet, kundizzjonijiet, restrizzjonijiet jew penali kif preskritti b’ liġi u li jkunu meħtieġa f’ soċjeta demokratika fl-interessi tas-sigurtà nazzjonali, tal-integrità territorjali jew tas-sigurtà pubblika, biex tiġi evitata d-dizordni jew l-egħmil ta’ delitti, għall-protezzjoni tas-saħħa jew tal-morali, għall-protezzjoni tar-reputazzjoni jew tad-drittijiet ta’ haddieħor, biex jiġi evitat il-kxif ta’ tagħrif riċevut sigriet jew biex tinzamm l-awtorità u l-indipendenza tal-ġudikatura. Jistgħu jiġu mposti b’ liġi restrizzjonijiet proporzjonati fuq il-libertà tal-espressjoni ta’ uffiċjali pubbliċi fil-limiti provduti f’ dan is-sub-artikolu għall-iskop li tinzamm il-fiduċja fis-servizz pubbliku.”

(iii) Fl-ewwel sentenza tas-sub-artikolu (4) kif enumerat mill-ġdid il-kliem “gazzetta jew ġurnal pubblikat” għandhom jiġu sostitwiti bil-kliem “gazzetta, ġurnal jew midja oħra pubblikati” u fil-paragrafu (a) tal-proviso tiegħu il-kliem “il-wiehed u għoxrin” għandhom jiġu sostitwiti bil-kelma “t-tmintax”.

(iv) Is-sub-artikoli (5) u (6) kif enumerati mill-ġdid għandhom jiġu sostitwiti bis-sub-artikoli ġodda li ġejjin:

“Libertà tal-Infommazzjoni

(5) L-awtoritajiet pubbliċi jkunu obbligati li jipprovdu aċċess għal informazzjoni miżmuma minnhom u nformazzjoni dwar l-attivitajiet tagħhom taht dawk il-kundizzjonijiet kif ikun provdut bil-liġi.

(6) Dan l-artikolu ma għandux jiġi nterpretat bħala li jipproteġi d-diskors ta' mibegħda li jinċita l-vjolenza jew il-mibegħda bħalma huma l-mibegħda razzjali, reliġjuża, etnika jew tal-ġeneru.”

Emenda għall-artikolu 45  
tal-Kostituzzjoni

5. Fis-sub-artikolu (7) tal-artikolu 45 tal-Kostituzzjoni in-numru '41(2)' għandu jiġi sostitwit bin- numru "41(3)".

## TAQSIMA II

### Emendi għall-Att dwar il-Midja u l-Malafama (Kap 579)

Emendi għall-Att dwar  
il-Midja u l-Malafama.  
Kap. 579.

6. Din it-Taqsima temenda l-Att dwar il-Midja u l-Malafama , u għandha tinqara u tintfiehem haġa waħda mal- Att dwar il-Midja u l-Malafama, hawn iżjed 'il quddiem f'din it-Taqsima imsejjaħ "l-Att prinċipali".

Emenda għall-artikolu 3  
tal-Att prinċipali

7. Minnufih wara s-sub-artikolu (3) tal-artikolu 3 tal-Att prinċipali għandu jizjed is-sub-artikolu ġdid li ġej:

"Mewt ta' awtur  
jew editur

(3A) Minkejja dispozizzjonijiet l-oħra ta' dan l-Att jew ta' kull liġi oħra, meta awtur jew editur imut fi żmien meta proċeduri ċivili għal-malafama taht dan l-Att jkun jistgħu jinbdew jew ikunu pendent kontra dak l-awtur jew editur personalment u dawk il-proċeduri ċivili jinbdew jew jitkomplew wara l-mewt ta' dak l-awtur jew editur kontra l-eredi skont xi liġi li tkun tirregola s-suċċessjoni għall-eredita tal-awtur jew editur, il-qorti meta tiddeċiedi l-kawza fuq il-mertu m' għandhiex tagħti danni kontra l-eredi tal-awtur jew editur mejjet. Il-qorti tista' ukoll, fuq talba tal-eredi tal-mejjet, sommarjament tordna illi l-proċeduri ma jitkomplewx soġġett għal dawk l-ordnijiet u kundizzjonijiet dwar il-mertu tal-kaz u l-ħlas tal-ispejjez hekk kif hija tqis xieraq:

Iżda d-dispożizzjonijiet preċedenti ta' dan is-sub-artikolu ma għandhomx japplikaw meta l-midja li fiha tkun saret l-istqarrija allegatament malafamanti jkollha responsabbli għall-pubblikazzjoni li ma jkunx l-awtur jew l-EDITOR mejjet f' liema kaz il-kawza tkun tista, minkejja d-dispożizzjonijiet ta' kull liġi oħra, tissokta fuq talba tal-attur kontra l-imsemmi responsabbli għall-pubblikazzjoni minflok kontra l-eredi:

Iżda ukoll il-Qorti għandha dejjem tordna skont dan is-sub-artikolu illi l-proċeduri ma jtkomplewx meta wara l-mewt tal-awtur jew l-EDITOR hija tqis illi r-responsabbilita legali għall-malafama ma jkunx possibbli li tigi stabbilita fl-assenza tal-awtur jew EDITUR mejjet.”

Żieda tal-artikoli 24A u 24B  
għodda fl-Att prinċipali

8. Minnufih wara l-artikolu 24 tal-Att prinċipali għandhom jiżiedu l-artikoli għodda li ġejjin:

“Harsien tal-gumalisti  
minn kawzi li jsiru strateġikament  
kontra l-partecipazzjoni pubblika

24A. Bla ħsara għall-applikazzjoni tal- liġi tal-Unjoni Ewropeja u ta' xi trattat li Malta tkun parti fih, meta tintalab l-eżekuzzjoni f' Malta kontra awtur, EDITUR jew responsabbli għall-pubblikazzjoni domiciljat f' Malta ta' sentenza ta' qorti barra minn Malta li tkun tordna l-ħlas ta' danni u, jew spejjez għall-ekwivalenti ta' dak li kien jikkostitwixxi libell jew ingurja skont dan l-Att, il-qorti għandha, jekk tqis illi l-azzjoni li tat lok għas-sentenza kienet sostanzjalment ibbazata fuq talbiet li għandhom x' jaqsmu ma Malta, li l-azzjoni setgħet tigi preżentata f' Malta u li probabbilment ma gietx hekk preżentata bħala parti minn strateġija ntiza biex tpoġġi piż finanzjarju indebitu fuq il-konvenut, tillimita l-eżekuzzjoni ta' dik is-sentenza, jekk dik is-sentenza tkun ezegwibbli skont id-dispożizzjonijiet l-oħra dwar l-eżekuzzjoni ta' sentenzi barranin f' Malta, għal dak l-ammont illi l-qorti tqis li kien ikun dovut bħala danni u, jew spejjez skont dan l-Att li kieku l-azzjoni giet preżentata f' Malta u giet deċiża kontra l-awtur, l-EDITOR jew ir-responsabbli għall-pubblikazzjoni:

Iżda l-qorti tista' ukoll tiċhad l-eżekuzzjoni f' Malta ta' sentenza kif imsemmi f' dan l-artikolu jekk hija tqis illi l-eżekuzzjoni ta' dik is-sentenza tkun tivvjola d-dritt għal-liberta tal-espressjoni kif protett fis-sistema legali ta' Malta.”

**TAQSIMA III**  
**Emendi għall-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili**  
**(Kap 12)**

Emendi għall-Kodiċi ta' Organizzazzjoni  
u Proċedura Ċivili (Kap 12)

9. Din it-Taqsima temenda l- Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u għandha tinqara u tinftiehem haġa waħda mal- Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawn iżjed 'il quddiem f'din it-Taqsima imsejjaħ "il-Kodiċi".

Emenda tat-Tariffa A  
tal-Iskeda A tal-Kodiċi

10. Is-sub-paragrafu ġdid li ġej għandu jżjed minnufih wara s-sub-paragrafu (3) tal-paragrafu 9 tat-Tariffa A tal-Iskeda A tal-Kodiċi :

“(4) F’ kawżi għal malafama preżentati skont l-Att dwar il-Midja u l-Malafama d-drittijiet stabbiliti fil-paragrafi 2(1), 2(2) u 3(2) ta’ din it-Tariffa ma jkunux dovuti meta tigi preżentata r-risposta ġuramentata jew ir-risposta iżda dan ikun mingħajr preġudizzju għall-ġbir tal-istess drittijiet skont is-sentenza tal-qorti meta tintemm il-kawża.”

**TAQSIMA IV**  
**Emenda għall-Kodiċi Kriminali**  
**(Kap 9)**

Emenda għall-Kodiċi Kriminali  
Kap 9

11. Din it-Taqsima temenda l- Kodiċi Kriminali u għandha tinqara u tinftiehem haġa waħda mal- Kodiċi Kriminali, hawn iżjed 'il quddiem f'din it-Taqsima imsejjaħ "il-Kodiċi".

Emenda għall-artikolu 222  
tal-Kodiċi

12. Fil-paragrafu (d) tas-sub-artikolu (1) tal-artikolu 222 tal-Kodiċi l-kliem “Uffiċċjali tal-Kommunita.” għandu jiġi sostitwit bil-kliem “Uffiċċjali tal-Kommunita;” u minnufih wara għandu jidhol il-paragrafu ġdid li ġej:

“(e) fuq il-persuna ta’ kull min kien ġurnalista u r-reat ikun sar minhabba li dik il-persuna twettaq jew tkun wettqet il-funzjonijiet tagħha.”

### Ghanijiet u Raġunijiet

L-Ghanijiet u r-Raġunijiet ta' dan l-abbozz jikkonsistu fl-emendar tal-Kostituzzjoni u ta' diversi liġijiet sabiex jissahħu d-drittijiet fundamentali tal-liberta tal-espressjoni u tal-privatezza u sabiex jiġi provdut għal diversi miżuri li jżidu l-protezzjoni tal-midja u tal-ġurnalisti għall-aħjar twettiq tas-saltna tad-dritt f' soċjeta demokratika.

**A BILL  
entitled**

*AN ACT to amend the Constitution and various other laws to strengthen the right to freedom of expression and the right to privacy and to impliment various measures for the protection of the media and of journalists.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by authority of the same, as follows:-

Short title.

1. The short title of this Act is the Constitution (Strengthening of Rights to Freedom of Expression and Privacy) and Various Other Laws (Protection of the Media and Journalists) (Amendment) Act, 2022.

**PART I**

Amendments to the Constitution of Malta

Amendments to  
the Constitution

2. This Part amends the Constitution of Malta and it shall be read and construed as one with the Constitution of Malta hereinafter in this Part referred to as “the Constitution”.

Amendment of  
Article 38 of the Constitution

3. Article 38 of the Constitution shall be amended as follows:

- (i) Sub-articles (1) and (2) thereof shall be re-numbered as sub-articles (2) and (3) respectively and the following shall be inserted as the new sub-article (1):

“(1) Everyone has the right to respect for his private and family life, home and communications.”

- (ii) In paragraph (a) of sub-article (3) as re-numbered immediately after the words “public health,” there shall be added the words “the economic well- being of Malta,”.

(iii) The marginal note to article 38 shall be substituted by the following:

“Protection of private and family life, privacy of the home and other property”

Amendment of  
Article 41 of the Constitution

4. Article 41 of the Constitution shall be amended as follows:

(i) Sub-articles (1) and (2) thereof shall be substituted by the following new sub-articles

“(1) Freedom of expression shall be guaranteed as provided in this article. This right shall include freedom of any person to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The freedom and pluralism of the media and the importance of the role journalists shall be respected.”

(ii) Sub-articles (3), (4) and (5) shall be re-numbered as sub-articles (4), (5) and (6) respectively and the following shall be inserted as the new sub-article (3):

“(3) The exercise of the freedoms guaranteed by this article, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and independence of the judiciary. Proportionate restrictions on the freedom of expression of public officers may be imposed by law within the limits provided for in this sub-article for the purpose of maintaining confidence in the public service.”

(iii) In the first sentence of sub-article (4) as re-numbered the words “newspaper or journal” shall be substituted with the words “newspaper, journal or other media” and in paragraph (a) of the proviso thereto the words ‘twenty-one’ shall be substituted with the word ‘eighteen’.

(iv) Sub-articles (5) and (6) as re-numbered shall be substituted by the following new sub-articles :

“Freedom of Information

(5) Public authorities shall be obliged to provide access to information held by them and information on their activities under such conditions as may be provided by law.

(6) This article shall not be interpreted as protecting hate speech which incites violence or hatred such as racial, religious, ethnic, or gender hatred.”

Amendment to article 45  
of the Constitution

5. In sub-article (7) of article 45 of the Constitution the number ‘41(2)’ shall be substituted with the number ‘41(3)’

**PART II**  
**Amendments to the Media and Defamation Act**  
**(Cap 579)**

Amendments to the Media and  
Defamation Act  
Cap 579

6. This Part amends the Media and Defamation Act and it shall be read and construed as one with the Media and Defamation Act , hereinafter in this Part referred to as "the principal Act".

Amendment of article 3  
of the principal Act

7. Immediately after sub-article (3) of article 3 of the principal Act there shall be added the following new sub-article:

“Death of author  
or editor

(3A) Notwithstanding the other provisions of this Act or of any other law, when an author or an editor dies at a time when civil proceedings for defamation under this Act may be commenced or are pending against such author or editor personally and such civil proceedings are commenced or continued after the death of such author or editor against the heirs in accordance with any law regulating succession to the estate of the author or editor , the court in deciding the case on the merits shall not award any damages against the heirs of the deceased author or editor. The Court may also, upon a request of the heirs of the deceased, summarily order the discontinuance of the proceedings subject to such orders and conditions with regard to the merits of the case and to the payment of costs as it may consider appropriate:

Provided that the preceding provisions of this sub-article shall not apply when the media in which the allegedly defamatory statement is made has a publisher other than the deceased

author or editor in which case the cause may, notwithstanding the provisions of any other law, be continued upon the request of the plaintiff against the said publisher instead of against the heirs:

Provided further that the court shall always order the discontinuance of the proceedings in accordance with this sub-article when it considers that after the death of the author or editor it will not be possible to establish legal responsibility for defamation in the absence of the deceased author or editor ”

Addition of new articles 24A and 24B in the principal Act

8. Immediately after article 24 of the principal Act there shall be added the following new articles:

“Protection of journalists against strategic lawsuits against public participation

“24A. Without prejudice to the application of European Union law and of any treaty to which Malta is a party, where execution is sought in Malta against an author, editor or publisher domiciled in Malta of a judgment of a court outside Malta ordering the payment of damages and, or costs for the equivalent of what would constitute libel or slander under this Act, the court shall, if it considers that the action giving rise to the judgment was substantially based on claims related to Malta, that the action could have been filed in Malta and was probably not so filed as part of a strategy intended to place an unwarranted financial burden on the defendant, limit the execution of such judgment, if such judgment is found to be enforceable under the other provisions on the enforcement of foreign judgments in Malta, to such amount which the Court considers would be due in damages and, or costs under this Act had the action been filed in Malta and decided against the author, editor or publisher:

Provided that the court may also refuse the execution in Malta of a judgment as referred to in this article if it considers that the execution of that judgment would violate the right to freedom of expression as protected in the legal system of Malta

**PART III**  
**Amendments to the Code of Organization and Civil Procedure**  
**(Cap 12)**

Amendments to the Code of Organization  
and Civil Procedure  
Cap 12

9. This Part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code".

Amendment of Tariff A of Schedule A  
to the Code

10. The following new sub-paragraph shall be added immediately after sub-paragraph (3) of paragraph 9 of Tariff A of Schedule A to the Code:

“(4) In causes for defamation filed in terms of the Media and Defamation Act the fees established in paragraphs 2(1), 2(2) and 3(2) of this Tariff shall not be payable upon the filing of any sworn reply or reply but this shall be without prejudice to the collection of the said fees in accordance with the judgment of the court upon the termination of the cause.”

**PART IV**  
**Amendment to the Criminal Code**  
**(Cap 9)**

Amendment to the  
Criminal Code  
Cap 9

11. This Part amends the Criminal Code and it shall be read and construed as one with the Criminal Code, hereinafter in this Part referred to as "the Code".

Amendment of article 222  
of the Code

12. In paragraph (e) of sub-article (1) of article 222 of the Code the words “Community Officers Act.” shall be substituted with the words “Community Officers Act;” and immediately thereafter there shall be added the following new paragraph:

“(e) on the person of whosoever was a journalist, and the offence was committed because of that person exercising or having exercised his functions.”

**Objects and Reasons**

The Objects and Reasons of this Bill consist in the amendment the Constitution and of various laws in order to strengthen the fundamental rights to freedom of expression and to privacy and to provide for various measures which increase the protection of the media and of journalists for the better implementation of the rule of law in a democratic society.



**ARTICLE 19**

EUROPE

## **Opposition draft proposals**

## PART XI

This Part amends the Constitution of Malta to declare and recognise freedom of the media as one of the pillars of good governance

### **Amendment to Articles 20A and 21 of the principal law and addition of new Article 22 as follows:**

47. Article 20A shall be renumbered as Article 21 and Article 21 shall be renumbered as Article 23 and a new Article 22 shall be inserted and added immediately after the renumbered Article 21 as follows:

“(1) The State recognises media freedom as an essential pillar of democracy and its pre eminent role in a State governed by the rule of law and is duty bound to promote its independence and safeguard media pluralism. The State has a positive obligation to protect and promote media freedom by providing an enabling environment for journalism, journalists and other media actors.

(2) The State shall promote broad participation in public debate in matters of public interest and shall ensure that journalists, other media actors and members of the public are not discouraged, including for fear of sanctions, retribution or other form of retaliation, from voicing their opinions on issues of public interest or from expressing critical value judgments even if the truth cannot be proved.

(3) The State recognises the obligation of the press to impart, in a manner consistent with its responsibilities, information and ideas on all matters of public interest, acting as public watchdog.

(4) The State shall facilitate in a timely manner the access to and provision of accurate and reliable information to journalists and other media actors for its use in accordance with the ethics of journalism and the principle of good faith.

(5) Journalists shall not be obliged to reveal the identity of their source and shall be entitled to the protection of their sources.

(6) The State shall protect journalists from strategic lawsuits against public participation (SLAPP) actions instituted in courts outside Malta or in Malta and from threats of strategic lawsuits against public participation whether threatened to be instituted in courts outside Malta or in Malta.

### **Amendments to Article 41 in the principal law:**

48. Article 41 shall be amended as follows:

(i) Sub-article (1) and (2) thereof shall be substituted by the following new sub-articles:

(1) Everyone has the right to freedom of expression. No person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence. These freedoms are recognised and shall be enjoyed as basic conditions for the progress of a democratic society and for the development of each individual.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) Everyone's right to free and independent journalism shall be protected. Without prejudice to the preceding sub-article, in recognition of the role of

the press as a pillar of a democratic society there shall be no interference by a public authority in the exercise of the right to freedom of expression by journalists and other media actors, except where there is a grave pressing social need.

(4) Public authorities shall facilitate access to information for the press and shall provide access in a timely manner to accurate and reliable information in accordance with the State's obligations of transparency and accountability.

(5) The protection of journalistic sources including the non-disclosure of information identifying a source by a journalist is guaranteed and may not be subject to other restrictions than those referred to in sub-article 2 of this article, save that the disclosure is only to be deemed necessary in a democratic society where it is convincingly established that:

i. reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and

ii. the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure provided that an overriding requirement of the need for disclosure is proved, the circumstances are of a sufficiently vital and serious nature and the necessity of the disclosure is identified as responding to a pressing social need.

(6) Everyone has the right to expect the State to carry out its positive obligation to promote and protect a free and independent press.

(ii) Sub-article (3) shall be renumbered as sub-article (7).

In sub-article (7) as renumbered, the words 'twenty-one' in paragraph (a) of the proviso shall be substituted with the word 'eighteen'.

(iii) Sub-article (4) shall be renumbered as sub-article (8).

(iv) Sub-article (5) shall be renumbered as sub-article (9).

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## PART XII

This Part amends the Media and Defamation Act and the Code of Organisation and Civil Procedure to provide for the protection from strategic lawsuits against public participation (“SLAPP suits”)

### **Amendments to the Media and Defamation Act, Chapter 579 of the laws of Malta.**

#### **Clause 49 Amendment of Article 5(4) of the Media and Defamation Act**

Article 5(4) shall be amended to read:

“(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the Court must make such allowance for:

- (a) editorial judgement; and
- (b) participation in public debates on matters of public interest without fear of legal action.”

**Clause 50 Amendment of Article 10 of the Media and Defamation Act**

The following new sub-article (4) shall be added immediately after article 10(3):

“(4) The Court shall, at the preliminary hearing or at any time before final determination of the claim, after hearing the parties, decide of its own motion or upon the demand by the defendant to dismiss the claim where the court considers that the claim is likely to have a chilling effect on public participation in debate on matters of public interest.”

**Amendments to the Code of Organisation and Civil Procedure, Chapter 12 of the laws of Malta****Clause 51 Amendment of Article 827(1)(c) of the Code of Organisation and Civil Procedure**

Article 827 (1)(c) shall be amended to read as follows:

"(c) if the judgement contains any disposition contrary to the public policy or to the internal public law of Malta;

For the purposes of this sub-article, a judgement delivered on a matter of alleged defamation or libel or slander or tort or quasi-tort arising out of a publication as defined in the Media and Defamation Act (Chap. 579) against a person or entity normally resident or domiciled in or operating within Malta shall be deemed to be contrary to the public policy or to the internal public law of Malta where that judgment is likely to have a chilling effect on public participation in debate on matters of public interest. Failure by the defendant to enter a defence before the foreign court shall not prejudice this rule of public policy.

**Clause 52 Amendment to Article 827(2) of the Code of Organisation and Civil Procedure**

After the words "For the purposes of this article" insert the words "and without prejudice to the provisions of Article 827 (1) (c)"

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