Public Inquiry Report
Daphne Caruana Galizia

A Journalist Assassinated on 16th October 2017

Presented to the Hon. Prime Minister
Dr Robert Abela
on 29th July 2021

Chairman - The Hon. Mr Justice Michael Mallia
Members - His Hon. Chief Justice Emeritus Joseph Said Pullicino
The Hon. Madam Justice Abigail Lofaro

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Introduction

Introduction

Today 29th July 2021

By means of a letter dated 19th November 2019, the Hon Mr Justice Michael Mallia was informed that a Board of Inquiry was appointed comprising himself as Chairman, as well as His Hon. Chief Justice Emeritus Joseph Said Pullicino and the Hon. Madam Justice Abigail Lofaro as members in order to investigate and report regarding the circumstances of the Assassination of Mrs Daphne Caruana Galizia. The Terms of Reference, which are being reproduced in this report, were attached to this letter.

In order to fulfil this task, the Board held ninety-three (93) sittings and heard one hundred and twenty (120) witnesses.

This large amount of witnesses necessarily limited the amount of references that the Board could directly make to the evidence heard. Whilst the Board is aware of all that was said, reference shall only be made to the extracts relevant to the particular argument being discussed. For the rest, all the witnesses acted as an eye-

opener to the mindset of the administration and how this affected positively or negatively the periods and events which are under the scrutiny of this inquiry. This also applies to the witnesses who were heard behind closed doors who, in truth, were not that instrumental for the outcome of this inquiry although they were elucidatory of important aspects of the merit and conclusions which were reached by the Board. The evidence, apart from that taken behind closed doors, shall also be accessible to the public as part of this report.

Since the three heads of the terms of reference which the Board is entrusted to investigate are correlated and their merit necessarily overlaps, the Board understands that certain aspects of its considerations are pertinent for more than one term and are thus considered.

However, it is pointed out that the testimonies are not edited or altered in any way. They are testimonies which are given directly by the witness concerned and transcribed by the transcriber as they would have been heard. Where there are ellipses, this means that the transcriber would not have understood the spoken word. No attempt was made to decipher what the witness was supposed to have said.

The Board thanks the Lawyers of the Daphne Caruana Galizia family, the State Attorney for the cooperation and loyalty through which they participated in these proceedings. It also thanks those persons who, voluntarily, deemed it their duty to contribute to an inquiry aimed to strengthen journalism in the country, and came forward to give their contribution, including journalists, editors and media house owners. It thanks all those who presented observation and reference notes when authorised to do so by the Board, in particular the family Lawyers. These observation notes together with the testimonies shall be published with this report since they throw light which is relevant to the merits of this Inquiry.

The Board declares that, as instructed in the terms of reference, it shall publish this report in its entirety since it does not consider it necessary to restrict the disclosure of any parts for reasons specified in the same terms of reference. This is being implemented in order to satisfy the element of publicity which was the main characteristic of this Inquiry. The electronic publication shall be released through the Department of Information.

Section I - Preliminaries

Section I

Terms of Reference:

The terms of reference of the public inquiry regarding the assassination of Daphne Caruana Galizia are as follows:-

"The terms of this board are to investigate independently and to report to the Prime Minister following a resolution of the House of Representatives of the twelfth (12) December 2018 and the resolution of the parliamentary assembly of the Council of Europe of the twenty-sixth (26) June 2019 regarding the assassination of Mrs Daphne Caruana Galizia on the sixteenth (16) October 2017 and regarding the events preceding, concomitant with, and following upon that assassination with the purpose of:

1. Determining whether any wrongful action or omission by or within any state entity facilitated the assassination or failed to prevent it, in particular whether:

a. Any state entity knew or ought to have known of a real and immediate risk to Daphne Caruana Galizia's life from the criminal acts of a third party; and

b. Failed to take the measures within the scope of its powers which, by reasonable judgement, it might have been expected to take in order to avoid that risk.

2. Establishing whether the state had and has in place effective criminal law provisions and other practical means to avoid the development of a de facto state of impunity through the frequent occurrence of unresolved criminal acts and to deter the commission of serious criminal offences, backed up by law enforcement mechanisms for the prevention, suppression, investigation and punishment of serious violations of the law.

3. Determining whether the state has fulfilled or whether it is fulfilling its positive obligation to take preventive operational measures to protect those individuals whose lives are at risk from criminal acts, in particular in the case of journalists.

4. That the investigation is conducted in such a way that it does not impede or compromise any criminal investigation or prosecution or its integrity.

5. The Inquiry shall be held in public but the board of inquiry may, where it considers it strictly necessary, conduct particular hearings behind closed doors or to impose restrictions on the disclosure or publication of any document or testimony given or which was accessed during the inquiry in such a way as to protect the confidentiality of investigations and of information received in confidence both when the confidentiality of those investigations or information is protected by law and/or when the board of inquiry considers that hearings behind closed doors or the restriction of disclosure or publication of documents or testimony would be strictly necessary for the protection of the security and rights of the witnesses, of sensitive information from the national security act or in another way which could prejudice other proceedings.

6. The board of inquiry shall have access to all information held by state entities and it shall act in accordance with the inquiries act and shall, subject to these terms of reference, regulate its own procedure on all matters including the issues of access to and participation of the family of the deceased and of the public to the

proceedings and acts of the inquiry. The board of inquiry shall have the authority to appoint any person or persons including technical assistants and experts in particular fields to assist in the inquiry as it deems necessary, whereby the appointed persons have to fulfil the requirements of independence and impartiality on the same level as required in the Court of Justice.

The board of inquiry should:

1. Present a copy of the report: (i) (a) to the Prime Minister and (b) to the Attorney General; (ii) issue a public notice that it has concluded its report and that it had presented a copy to the Prime Minister; (iii) publish the report within eight (8) working days from when a copy of it would have been forwarded to the Prime Minister. The Prime Minister should table the report at the House or Representatives within five (5) working days from its receipt. In regard to the report, which is to be published, the Board of Inquiry shall have the authority to restrict the disclosure of those parts of the report as necessary to safeguard the protection of personal data, public security, national security, future or current criminal investigations or proceedings, and where the disclosure or publication of that information would endanger the personal safety of any person and should clearly indicate the parts which should not be published. If the Board deems it necessary to

restrict parts of its report, the Board is obliged to provide the deceased family the opportunity to read the full report without redactions but without being given a copy of this with the redacted parts and with the condition that they are obliged not to reveal the redacted parts. The Board of Inquiry shall endeavour to conclude its work within a time frame of nine (9) months without prejudice to the proper fulfilment of these terms of reference."

Preliminaries

That primarily it must be stated that Malta does not have a long history of Public Inquiries. This is the second time that an inquiry of this kind has been set up; the first one was that of the Bus Ticketing System led by Justice Victor Caruana Colombo (1996). Therefore, the Board has no local case law or local authors on which to rely regarding the procedures it should follow. The authoritative academic book at the disposal of the Board is the one entitled *"Public Enquiries"* written by Jason Beer Q. C. which appears to be the only publication on the matter. The Board shall therefore make ample reference to this academic work where required.

A Public Inquiry is described as “The organising of controversy into a form more catholic than litigation but less anarchic than street-fighting” (see the introductory part of the above-mentioned book). This Board finds several analogies between the situation that Malta is investigating and the investigations conducted in the United Kingdom involving state entities. Thus, for example, the author Jason Beer states, “Cause for an independent/judicial public inquiry are made with increasing frequency (and sometimes pitch), often in Parliament or multi-media. They often follow some particularly controversial events or series of events, especially those where life has been lost and state agencies have been involved in some way.” This is exactly the situation that we have today. We have loss of life where it is being alleged that ‘state agencies’ or persons forming part thereof could be involved in some way.

It is this Board’s task to investigate this point and to see whether there is ‘a state agency’ which could have been involved as well as whether the latter did everything in its power to avoid Mrs Caruana Galizia’s assassination.

The Aims of the Inquiry

Therefore, the first role of the Public Inquiry is to establish the facts "providing a full and fair account of what happened, especially in the circumstances where the facts are disputed, when the calls and causations of events is not clear". (*ibid*).

The second is the consideration of responsibility, fault and retribution. This means that the inquiry should directly identify every misdeed or misconduct, or every illegal/illicit deed of individuals, organisations or state bodies which could have contributed or enabled the assassination.

The third is that a lesson should be learnt in order that what occurred does not occur again but not necessarily to apportion blame. "The main aim is to learn lessons, not to apportion blame. It is generally recognised, however, that Public Inquiries do not make decisions as to what action should be taken in the light of their findings of fact – they instead make recommendations for such action" (*ibid*).

It is not this Board's function to identify whether there is cause to take criminal steps or otherwise against persons who transpire that they could have been guilty in some way of a criminal offence or serious administrative abuse. This is carried

out by the competent authorities. It is for this reason that the Board shall notify the Commissioner of Police with a copy of the acts of this inquiry which include all the testimonies heard in order that it would be at his disposal for any action that he deems necessary in the investigations which he is conducting.

The fourth point is to restore public confidence. A Public Inquiry is an attempt to restore public confidence, or a section of that public, in a public authority when there are circumstances or a scandal in which such an authority is involved.

The fifth point is to provide an opportunity for reconciliation and resolution by bringing together the main actors in order that they grasp each other's point of view, perspectives and problems which were the cause of the disagreement which originally led to this Public Inquiry.

There are two other elements which involve a Public Inquiry, that is, that of 'developing policy' and 'discharging investigative obligations'. These latter two however are not included in the Terms of Reference of this Board and therefore shall not be considered.

The limits of the terms of reference

Undoubtedly the Board needs to act strictly within its reference parameters. It is important that these are clear and leave no instance for ambiguity in order that the Board carries out its task in the shortest time and with the least expense possible. As has been reported: “Care should be taken to ensure that the Terms of Reference go no wider than is necessary to fulfil the specific need which the Minister has in mind when setting up the Inquiry. If the Terms of Reference are too wide, this may result in unnecessary cost and delay, and may introduce questions which merely confuse the essential issues.” (*ibid* page 73). Therefore, as a minimum, the Terms of Reference should have at least these four elements, that is: (1) the material to which the Inquiry refers; (2) particular circumstances as to why the Board should determine the facts; (3) whether the Inquiry should make recommendations; and (4) any circumstances related to the purpose of the Inquiry which the minister may specify.

From an accurate study of the Terms of Reference attached to the letter of appointment, one finds that these four elements are all included.

Article 3 of the Inquiries Act, Cap. 273 specifically states *"this Act shall apply to any Board appointed or authorised by or under any law,* including this Act, to carry out any inquiry or inquiries into any of the following matters:

"(a) the conduct of public officers, or of officers or servants of a statutory body, or of anyone or more of such public officers or officers or servants;

(b) the conduct or management of any department of Government or of any statutory body;

(c) any matter falling within the functions or responsibility of any such department or body, or otherwise concerning or affecting a service of the Government, ……"

This Board was established in order to investigate the conduct and management of Government departments/entities in connection with the assassination of Mrs Caruana Galizia. Therefore, these Terms of Reference have all the necessary questions according to law in order that the Board would be able to work and reach its conclusions.

It is only the Board that interprets the terms of reference. However, it is important to strengthen the principle that the inquiry has the right to interpret its Terms of

Reference. “It has long been recognised that a Public Inquiry ought to interpret and then publicly explain its own interpretation of its Terms of Reference. This is for reasons of fairness, transparency and certainty...”. (*ibid* page 76).

The Board points out that it had to use this right when it came to interpret the last paragraph of the reference document when an argument was raised regarding the term in which the Board had to conclude this Inquiry. This occurred when despite the extension of the original terms which the Government conceded until 15th December 2020, the Board was of the opinion that due to the great number of witnesses heard and which still had to be heard in other proceedings relevant to this Inquiry, it could not close the inquiry at that stage “without prejudice for the due fulfilment of these terms of reference”. Therefore, in order to be in a position to conclude the task assigned to its satisfaction, it interpreted the terms of reference in the sense that, if necessary, the term period would be extended for its conclusions, as actually occurred.

The quality and extent of the evidence

From an early stage, it is necessary that the Board defines the limits of the terms of reference and the quality and extent of the evidence which it required to fulfil the

given task. This was also because during the inquiry, reservations and objections were raised in this regard which should be briefly addressed.

Thus, for example:-

a) The main Government exponents including the Honourable Prime Minister expressed the opinion that this Board was going beyond what was absolutely necessary in the compilation of evidence in order to fulfil its task. It appears that they are of the opinion that this Board should limit its investigation strictly to the immediate circumstances which led to the assassination and to its actual execution by the persons who today stand accused of involvement in its execution. Such an interpretation could have been valid if there were no factual elements which raised reasonable suspicion that there could have been the involvement of elements within the public administration, events which occurred both prior as well as after the homicide that could have contributed to its execution.

It was this alleged involvement which brought about that in the terms of reference, the Board was given the task to determine whether any wrongful action or omission by, or within, any State entity “facilitated the assassination or failed to prevent it”.

It was also for this reason that this Board was requested to investigate whether a *de facto* state of impunity could have developed enabling the commission of the crime. In order to fulfil this specific task, this Board was required to broaden its investigation in order to establish the relevant facts which could have led it, as has actually occurred, to determine these crucial elements for the Inquiry.

b) On the other hand, the insistence from certain quarters, including to a certain extent, the defence counsel representing the Caruana Galizia family, is just as inacceptable, that the terms of reference of this Inquiry should be extended to an investigation of every State entity action, every major project they promote regarding which there were allegations of maladministration and abuse of power or regarding which accusations of serious irregularities and corruption were put forward.

This was certainly not the aim for which this Board of Inquiry was established. These issues in themselves go beyond its terms of reference. In fact, this Board extended its investigation only to those aspects of bad governance which, in its opinion, was necessary to acquire evidence which was relevant to determining the questions imposed on it.

A relevance which became crucial as this evidence affects matters and issues forming the core of the investigative journalism conducted by the assassinated journalist in the years and months prior to her murder. Investigative journalism, which it stands to reason today, was certainly the immediate cause of her murder.

Article 2 of the European Convention on Human Rights:

This established, the Inquiry should consider Article 2 of the European Convention on Human Rights that obliges the State to take appropriate measures to safeguard the lives of those individuals in its jurisdiction. In order for an Inquiry to be effective for the purposes of this article, it must be *inter alia*: (1) independent; (2) effective; (3) reasonably expeditious; (4) there must be public scrutiny of the investigation and its outcome and finally, the involvement of the next of kin (*ibid* page 271/275). The Board does not believe that there is any controversy regarding these elements especially with the involvement of Daphne Caruana Galizia's family who, besides the right to receive the full report of the Inquiry according to Article 7 of the Terms of Reference, were given the right to participate fully in these proceedings as they actually did. They were involved at every stage of the hearing of witnesses including those who were heard behind closed doors and had the opportunity to ask any question which was pertinent to this Inquiry to the witnesses concerned.

Degree of Proof

In regard to the degree of proof that this Inquiry requires for its conclusion, the Board has to rely solely on case law in the United Kingdom where it appears that Public Inquiries may regulate their proceedings on the basis of the principle that they are fair and just both with the witnesses as well as in their report.

It appears that there was a disagreement regarding this level of proof, that is, whether this had to be without doubt dictated by reason, the level used in the criminal field or whether on the level of probability which is the level used in the civil field. Lord Saville participating in *"The Bloody Sunday Inquiry"* said: "As we have said earlier, since we are an Inquiry and not a Court (Criminal or Civil) we cannot give a verdict or pass judgement on the question of whether an individual was guilty of a specific crime or legally recognised serious wrong doing. For the same reason, the terminology and requirements of the Criminal or Civil Law are largely inapplicable. Thus, it seems to us that we can and should reach conclusions without being bound by rules designed for court cases, such as who has the burden of proof and the strict rules of evidence." (ibid. Page 372).

In brief, it is evident from English experience that Public Inquiries are not prepared to restrict themselves to one level of proof (civil or criminal). Inquiries constantly encompass flexibility to determine which level of proof they require in order to reach their conclusions, “and this approach is unlikely to change” (page 374). This Board shall consider this direction and determine this Inquiry on the basis of equity, fairness, natural justice and where the circumstances determine the level of civil and/or criminal proof.

These preliminary considerations shall now be elaborated in the next Section where the Board analyses that which in its opinion was instrumental whereby a situation was created in which whoever had the intention to commit the crime, or whoever participated in it when it actually occurred, strengthened their willingness to do so.

Section II – General Observations

Section II

This section is divided in the following titles:-

1. Regarding the nature and limits of the terms of reference
2. The evidence relevant to the Inquiry
3. The value of investigative journalism in a participatory democracy
4. A culture of impunity and power
5. A leadership style enabling impunity
6. The exercise of power and the assassination
7. The risk level escalates

Chap. 1
Regarding the nature and limits of the terms of reference

Chapter I

Regarding the nature and limits of the terms of reference

From an early stage, it is necessary to conduct a short but accurate analysis of the terms of reference in order to establish the parameters in which this inquiry had to be and was conducted. Primarily it is premised that:-

a) This Board was appointed to examine the administrative conduct of State entities and of the persons forming part thereof to establish whether their actions and/or omissions had contributed or could have contributed in some way to the assassination of the journalist Daphne Caruana Galizia. This could be either through deeds through which they actively participated or in some way enabled the commission of that crime as well as by failing to take the necessary and appropriate steps to prevent it. Whilst fulfilling this task, the Board had to establish whether State entities or persons forming part thereof held any responsibilities for what had occurred and what ought to have been the consequences of such conduct in its opinion.

b) The Board does not directly have the function to establish whether the conduct of individuals could be qualified as a criminal deed that could have led to

criminal proceedings against them. The terms of reference preclude the Board from conducting the investigation with this aim and in fact specifically imposes that "the investigation is conducted in such a way that it does not impede or compromise any criminal investigation or prosecution or its integrity".

Therefore, the Board, during the hearing of evidence, retained this caveat constantly of the presumption of innocence of every person who could have been subject to criminal proceedings related to this crime or other crimes, as well as any other person who was or is subject to a Police investigation, whether summoned or not before the Criminal Courts to respond to the imputations of crimes allegedly committed by them.

c) It was for this reason that individuals who were requested by the Board to testify before it and who, it transpired according to law, have the right not to depose, were given the due notice opportunely. When they opted to depose, they did so voluntarily, well aware of their rights and of the consequences of their decision and nevertheless they opted to offer their deposition.

d) The fact that the Board is obliged to safeguard the integrity of the investigative processes by the police and criminal prosecution proceedings, in no way does this mean that it did not have or does not have the right to actually hear the witnesses and investigate regarding the allegedly criminal conduct of individuals, which forms the merit of the ongoing criminal proceedings or which may lead to such proceedings against them. As long as such evidence would be relevant in order to establish the administrative responsibilities of any State entities and persons forming part thereof within the limits of its terms of reference. The hearing of evidence of this type, even in public, in the search for truth, can never be considered that it may prejudice the right to the presumption of innocence of the person allegedly implied in the assassination or any other crime.

Whilst the facts which transpired to be proven as well as those alleged during this inquiry are and shall be at the disposal of the Police and the Criminal Courts, who may appreciate them and use them for the purposes of criminal proceedings against persons charged with a crime or who may be of interest in their investigation, there is nothing that precludes this Board from appreciating this same evidence for the purpose of fulfilling its task if it is relevant in order to

establish failings and responsibilities of State entities and persons forming part thereof which it is obliged to investigate according to its terms of reference.

e) The Board conducted this with the full observance of the presumption of innocence of those involved in whose regard criminal action was being alleged. It should stand to reason that in the search for truth, allegations of criminal deeds, regardless of the perpetrator, remain relevant to the merit of this inquiry just as evidence regarding illegal deeds by State entities or persons forming part thereof, should also remain relevant. This ensues until and when, from the analysis of such allegations and evidence, direct or contributory responsibilities for the assassination of the journalist Daphne Caruana Galizia may transpire.

Such an exercise which this Board was required to conduct to fulfil its task properly and appropriately does not dampen in any way the presumption of innocence that each accused person has, nor should it prejudice their fundamental right to a proper and fair hearing.

Criminal act and illicit act

The terms of reference specifically make a distinction between criminal act and illicit act, a distinction which is fundamental for the correct understanding of the nature of the inquiry which this Board is conducting. An inquiry which is pinned and directed primarily within the parameters of the public administrative law in that it is called to determine whether any action or omission by, or within, any State entity facilitated the assassination or failed to prevent it.

It is the considered opinion of the Board that the use of the terms “illicit act” and “criminal acts” is not a random one of words having the same meaning. To the contrary, the Board considers that these are terms with a precise meaning, intended by whoever drew up the terms of reference to clearly and specifically distinguish terms which at first glance may be considered to have the same meaning and that they could be used interchangeably.

In fact, the term “illicit” in English has a much broader meaning than the term “illegal”.

Black's Law Dictionary[1] defines the term "illicit" as "illegal or improper". On the other hand, the same dictionary defines the word "improper" as "Incorrect, unsuitable or irregular. 2. Fraudulent or otherwise wrongful".

Therefore, in legal hermeneutics, the term "illicit" comprises all that is illegal but not vice versa. The term by definition has a much broader meaning from the term "illegal". The term "illegal" necessarily includes conduct which involves the breach of a law and obviously also includes criminal deeds. On the other hand, the term "illicit" extends to other cases of improper and unacceptable conduct such as the conduct of public maladministration, bad governance, deceitful conduct and conduct and behaviour which is incorrect, improper, abusive, oppressive, unethical, immoral and which causes harm but which is not necessarily illegal. This is because it does not violate any laws.

This means that, whilst anything that is illegal because it violates a civil or criminal law, or otherwise, is, in itself and necessarily illicit, not everything that is illicit is essentially illegal. The term illicit includes all conduct that can be qualified as

[1] 8th Edition edited by Brian A. Garner Thompson West, St Paul MN 1999 (page 763)

misconduct or misdeeds because it goes against that which is considered incorrect since it goes against the norms and rules which are considered to regulate proper conduct.

When applied to the field of public administrative law, these basic distinctions are relevant and are concretised in reality that it was not enough that the public administration acts within the limits of the laws and regulations when its conduct could be subject to the courts' scrutiny when it is illegal. The citizen needed to be more protected against the abuse from improper administrative discrimination, arbitrariness and abuse of power. This ensues by recognising the duty of public administrators to also act licitly according to the principles of good governance which are the basic values of proper administrative behaviour.

Good Governance and the Rule of Law

Today it is acknowledged that the rule of law comprises essential elements of good governance which go beyond that which is strictly legal or the rigorous observance of laws and regulations. It also includes the principles of general law acknowledged as essential for good governance by jurists and jurisprudence, including the

principle of equality, non-discrimination, right to a fair hearing, proportionality, as well as the protection of legitimate aspects, the options of that which is proper and fair, in the application of laws and the protection of fundamental rights.

In this context, therefore, one comes to the conclusion that whilst the illegality inevitably generates maladministration, maladministration does not necessarily imply illegality. Therefore, it is not enough to determine whether the public authority had acted illegally. It was also necessary to appreciate whether it had acted in conformity with the principles, values and virtues which comprise the rule of law and which are all constitutive elements of good governance and freedom.

These considerations also lead to the inevitable corollary that the public administrators who have the duty to observe and respect the rule of law in the exercise of the authority granted to them, need to ensure that their action or inaction would respect and conform with other norms which public conscience considers to be inherent in good governance besides being compliant with the laws and norms that are imposed on them.

The Illicit Act and Incorrect Political Judgement

It is essentially in the investigation of conduct which can be deemed illicit if not illegal, with which the Inquiry gains added value in the context of the search to identify elements of a fact which could have contributed to the assassination if nothing else by strengthening the willingness of the perpetrator or whoever in some way was participatory to the crime. The public administration act, considered illicit in the context of the broader definition of the term as explained above, should be distinct from an act of incorrect political judgement. Whilst the illicit act of a public administrator necessarily presumes an incorrect political judgement, whether intended or not, not every incorrect political judgement is essentially illicit. The crucial case for this Inquiry, that of the opening of accounts by politically exposed persons (PEPs) in overseas jurisdictions like Panama or the Virgin Islands, and the circumstances regarding the opening of the 17 Black account classically show this distinction.

The opening of an account in an overseas jurisdiction in itself is not necessarily an illegal act if it does not occur in circumstances that involve the violation of fiscal laws or otherwise. If it is established that whoever opened these accounts did not commit any illegal act, it is the responsibility of the Board to establish whether the

opening of those accounts by a public administrator amounted to the illicit act because it violates the norms of good governance by breaching the norms of good conduct and ethical rules. Illicit conduct can also extend to whoever had the authority to take the necessary steps at the opportune time so that whoever was responsible would be brought to order and disciplined.

On the other hand, one can maintain that the lack of timely action from whoever had the duty to exercise discipline, in this case, the former Prime Minister Joseph Muscat which would have occurred in good faith, could be considered as incorrect political judgement. A judgement that could have had, as it had, political consequences but does not lead to having legal consequences. One could reach this conclusion if one would be satisfied that the inaction was attributable to a lack of correct appreciation of the implications of the illicit if not illegal act as well of these persons.

On the other hand, the lack of censure following the disclosures of the circumstances when the 17 Black account was opened, which included specific charges of illegal if not criminal conduct of politically exposed persons, presents a totally different scenario. In that case, the Board was required to investigate

whether failing to take timely steps against these allegedly involved persons, in itself constituted an illicit act if no violation of any law, and therefore an illegality, transpired, although this is not excluded. It needs to decide whether this inaction constitutes an illicit act in that it was an act that undermined good governance against all norms which require that public administrator transparency and accountability be ensured. The Board, therefore, needs to decide whether these circumstances went beyond the incorrect political judgement which could exonerate or justify the responsible person, even if they had to suffer the political consequences for their conduct.

It is clear that the Government and the family of the assassinated Mrs Caruana Galizia when drafting the terms of reference were well aware of these concepts. It was for this reason that the Board was instructed to also determine whether any State entity or persons forming part thereof were guilty of any act of illicit commission or omission.

On the one hand, they were well aware of the reality that the non-observance of written laws and regulations, including criminal laws, are directly sanctionable. In these cases, the public administration as well as the public administrator, may be

subject to both civil as well as criminal judicial statutory sanctions depending on the case.

On the other hand, the non-observance of good conduct, which is not legally binding, can or should lead to the public administration or public administrator assuming responsibility for the failings that entitle the aggrieved person to redress.

The terms of reference, therefore, set out a scenario where the Board is specifically requested to investigate whether an illicit act by or within a State entity, could have facilitated the assassination or failed to prevent it. This is a scenario that, as stated, does not exclude situations of illicitness that amount to a criminal act of a person or persons within the same State entities which involve them in the commission of the same crime. This includes both actual executors, accessories or accomplices, as well as acts of aiding and abetting intended to conceal whomsoever was involved in some way in the commission of the crime. This includes through initiatives for the concealment of evidence, misleading and diversion of the investigation as well as by colluding with persons allegedly involved in the commission of the crime after it has been committed.

An Inquiry limited to the administrative deeds of all the Entities

Whilst the Board should investigate how events and allegations of this kind position themselves in allegations of illicit conduct on the part of State entities in order to be able to properly fulfil its task within the limits of the task in hand, it is not this Board's remit to investigate the circumstances concerning the assassination itself or the responsibilities of whoever transpires to have been involved in it in some way. Nor is it to express an opinion regarding the innocence or the blame of these persons nor to decide in regard to the allegations of criminal conduct of which they are being accused. This task is in the hands of the competent judicial bodies and is removed from the merit of the inquiry which this Board is instructed to conduct.

The terms of reference impose on this Board to investigate all the State entities and the persons forming part thereof. It is true that in theory these include all the authorities which comprise not only the Executive but also the legislative and judiciary body. It should also be obvious however, for the purpose of this Inquiry, that it is mainly the entities which comprise the Executive which are required to be under the scrutiny of this Board because it is these ones which have the public administration in their hands and which are entrusted with the guardianship of the common good. It is these entities or the persons forming part thereof, which may

have to respond to the deed of commission or omission which could have led or contributed to the crime.

The Cabinet

The terms of reference of this Board address it to determine whether any illicit action or omission by, or within, “any State entity” facilitated the assassination or failed to prevent it. This Board's investigation therefore extends to every entity forming part of the State body without exception. Wording which leaves no instance for discretion so that the Board exempts any entity from its scrutiny and even less so that the same entity expects to be exempt from such scrutiny.

The Constitution in Article 78 stipulates that the executive authority of Malta is vested in the President. It stipulates that this authority shall be exercised by the President, either directly or through officers subordinate to him which include those in the Executive. Sub-article 1 of Article 79 then stipulates that there shall be a Cabinet for Malta which shall consist of the Prime Minister and such number of other Ministers as may be appointed. Undoubtedly, this is the highest State entity

which according to subparagraph 2 of the same Article shall "have the general direction and control of the Government of Malta".

The provision in this same subparagraph that "the Cabinet ... shall be collectively responsible" to Parliament in regard to the exercise of its functions is vital for the purposes of this Inquiry. From this collective responsibility, there emerges the principle of the Cabinet's and the individual Ministers' accountability towards the people's representatives. Accountability which presumes transparency in their work to the degree that Parliament would be in a position to judge the fairness of their work.

It is through this fundamental exercise for democratic life in the country that the collective responsibility of the Cabinet and the individual Ministers who form part thereof can be achieved and ensured. An auditing and verification exercise which can only be conducted effectively and securely if the Parliament and more, is given all the necessary information regarding the Executive's work in order for this judgement to occur. This takes place whilst the same Cabinet is given the tools and freedom to fulfil its function to provide general direction and exercise control of the Government of Malta, freely and without undue hindrance.

It is for this reason that over time rules were adopted to safeguard the Cabinet's work in order that it could work freely and under a certain protection which verges on privilege. Among these rules, there is the law which stipulates that the Cabinet's documents and deliberations should be secret and that therefore the Cabinet members should not be compelled to testify about them even in proceedings before a court.

However, it must be observed that whilst the principle of ministerial collective responsibility is a constitutional norm which is always applicable without exception, the confidentiality rule is a practice designed to ensure that what was said in Cabinet remained undisclosed. This is to ensure that the ministers would be free to express their opinion even when they do not agree with a policy or proposed projects while these would still be under discussion. This is because once the Cabinet's decision is taken and adopted, this would bind all the Cabinet members who would be obliged to support it because they would have to bear collegial responsibility for it.

Therefore, it is not an outright rule. It is a rule that should apply and be supported in that it is required so that the Ministers' collective responsibility is implemented, assured and strengthened. It is a rule which allows for exceptions. This is being stated because before this Board both the Honourable Joseph Muscat as well as some of the Ministers requested to provide information concerning what happened in Cabinet regarding the facts relevant to the assassination as emergent from the Inquiry's terms of reference, they felt bound to the rule of secrecy and submitted therefore that they were not in a position to respond to the questions made.

The Board did not agree with this submission and directed the witnesses to answer such that only that which was strictly pertinent to the question and to the merit of the Inquiry, would be disclosed. The Board declares that it cannot understand how a Cabinet member can invoke this privilege of secrecy when it was the House of Representatives which approved its establishment by resolution of 12th December 2018 and requested it to investigate independently and to report to the Prime Minister regarding the events concerning the assassination. This was set in the terms of reference agreed between the Prime Minister and the Caruana Galizia family and approved by the Cabinet.

Since it transpired during the hearing of witnesses during this Inquiry as well as from the facts which were in the public domain that some events involved or could had involved some Cabinet members or their functionaries, it does not seem logical, rather it was illogical, that this practice of secrecy was invoked.

Were the Board to accept this submission as valid, it would have been stultifying itself in the fulfilment of its functions precisely in the most crucial aspect of the investigation it was required to conduct. Besides the fact that the Board's questions were never intended to disclose that which the law required to be safeguarded.

Today's law stipulates that the government is not obliged to publish Cabinet documents which may disclose the Cabinet's deliberations prior to a decision being taken. This was certainly not the case in the questions which the Board was required to pose. The questions were intended to identify whether there was or whether there could have been some responsibility on the part of the Cabinet collectively or individual ministers, officers of the same Cabinet, which emerges from any illicit act which could have enabled the assassination or failed to prevent it.

These questions, which were posed within the context of the evidence and documents which the Board was collecting, were more than relevant and pertinent.

An Inquiry focused on the Executive's conduct

Although it is admitted that every State entity has failings and faults which contribute to dent good governance in the country, including the lack of transparency and accountability, system inefficiency and inadequate structures, there is nothing to show from the evidence presented to this Board nor from facts in the public domain, that the legislative and judiciary bodies could have actually contributed to the assassination.

The insistence made by some, including the Honourable Joseph Muscat in his testimony before this Board, is therefore altogether incorrect and unacceptable that once this Board deemed that it had to investigate in certain detail the behaviour of the entities within the Executive, it also had to extend its investigation in the same way to other State bodies.

It must be emphasised that this Board was given the specific task to investigate "regarding the events preceding, concomitant with, and following upon" the assassination. It is that tragic and terrible event which was and constantly remained the focus of this Inquiry and the evidence collected and the witnesses that were heard were all intended to throw a light on how the event occurred, why it occurred and whether it could have been avoided. It is not the task of this Inquiry to generally investigate whether the State bodies have the ability to rein in maladministration, abuse of power and organised crime in order to ensure good governance in the country which is the essence of rule of law.

The Board therefore needs to extend its investigation to these aspects of public administrative law to establish whether this was properly observed by the entities within the Executive in the relevant period of time not only because the historical events in the public domain which eventually led to this Inquiry indicate the possibility of a link between the events and the acts of commission or omission of a State entity or persons forming part thereof, but also because its terms of reference request it to establish whether "a *de facto* state of impunity through the frequent occurrence of unresolved criminal acts" could have developed within the

State. A state of impunity which could have been instrumental to strengthen the resolve of whomsoever intended to commit the assassination.

It is appropriate therefore to underline, even at this early stage of the premises of this report, that the evidence gathered by the Board in this regard was precisely in order to establish facts which shine a light on whether this *de facto* state of impunity had developed. This was in circumstances which could have contributed to the assassination, even if in an indirect but instrumental manner, through illicit but not necessarily illegal conduct. Evidence which could throw light on the involvement in one form or another of whoever was suspected with the commission of the crime. This Board should pursue this in observance of the principle of the presumption of innocence of the accused and the fundamental right to a fair hearing and being aware of the obligation that in no way should it impede or compromise any criminal investigation or prosecution regarding which it has refrained from passing judgement. This was both whether such illegal or criminal conduct is attributed to persons forming part thereof or who were connected to the public administration as well as whether it concerned third parties.

The quality and extent of the evidence

These latter observations are relevant to define the limits of the terms of reference and the quality and extent of the evidence which the Board required to fulfil the given task. This is also because during the inquiry, reservations and objections were raised in this regard which should be addressed briefly.

Thus, for example:-

a) Some main Government exponents including the Honourable Prime Minister expressed the opinion that this Board was going beyond what was absolutely necessary in the compilation of evidence in order to fulfil its task. It appears that they are of the opinion that this Board had to limit its investigation strictly to the immediate circumstances which led to the assassination and to its actual execution by the persons who today stand accused of involvement in its execution. Such an interpretation could have been valid if there were no factual elements which raised reasonable suspicion that there could have been the involvement of elements within the public administration in the events which occurred both prior as well as after the homicide which could have contributed to its execution. It was this alleged involvement which resulted in that, in the terms of reference, the Board was given

the task to determine whether any wrongful action or omission by, or within, any State entity "facilitated the assassination or failed to prevent it".

It was also for this reason that this Board was requested to investigate whether a *de facto* state of impunity could have developed enabling the commission of the crime. In order to fulfil its specific assignment, this Board needed to broaden its investigation to establish the relevant facts which could have led it, as has actually occurred, to determine these crucial elements for the Inquiry.

b) On the other hand, the insistence from certain quarters, including to a certain extent, the defence counsel representing the Caruana Galizia family, is just as inacceptable, that the terms of reference of this Inquiry should be extended to an investigation of every State entity action, every major project they promote regarding which there were allegations of maladministration and abuse of power or regarding which accusations of serious irregularities and corruption were put forward.

This was certainly not the aim for which this Board of Inquiry was established. These issues in themselves go beyond its terms of reference. In fact, this Board extended

its investigation only to those aspects of bad governance which, in its opinion, was necessary to acquire evidence which was relevant to determining the questions imposed on it.

A relevance which became crucial as this evidence affects matters and issues forming the core of the investigative journalism conducted by the assassinated journalist in the years and months prior to her murder. Investigative journalism which it stands to reason today, was certainly the immediate cause of her murder.

It is only the Board that interprets the terms of reference

c) The Board deems it completely unacceptable and without grounds that the expectation of the State spokespersons, including the Honourable Prime Minister, as well as the former Prime Minister the Honourable Joseph Muscat, that only they had the right to interpret the terms of reference given to this Board and that this Board was obliged to act within the limits of that interpretation. This is totally incorrect. If anything, because these terms of reference transpire to have been agreed between the Government and the family of the assassinated journalist Daphne Caruana Galizia. An agreement which therefore constitutes a connection

between the State and the family, who agreed that the investigation which this Board had to undertake in the search for the truth had to be done according to the terms which they established.

For certain, none of the signatories of the agreement drawn up for these terms of reference may unilaterally and arbitrarily amend it nor may it be interpreted extensively or restrictively. The terms are set and it is only this Board which has the faculty to interpret them faithfully according to the meaning of the words and reflections expressed therein. This Board is very satisfied that the terms of reference are a result of an intense consultation with the Caruana Galizia family. They are drawn up accurately and precisely using terminology which also reflects, among others, the reflections on the matter of the institutions of the Council of Europe of the European Union as well as the case law of the European Court of Justice and the European Court for Human Rights.

Degree of Proof required

The Board needs to keep in mind at all times, the nature of this Inquiry as an investigation of the public administration operation. This was in order that it would

be in a position to evaluate the probatory value of the acquired evidence and their weight and relevance to respond to the requirements in the terms of reference. For all intents and purposes, one must underline the fundamental distinction between the required burden of proof in order that the Bord satisfies the conclusions reached and the criminal proceedings on the same merit. It stands to reason that whilst in proceedings of a criminal nature, intended to establish the innocence or guilt of a person accused of a crime, the adjudicator needs to acquire evidence beyond any reasonable doubt, in an Inquiry such as this which is investigating the behaviour of the public administration, it is enough that the Board's judgement is based on the preponderance of evidence and the balance of probabilities. A judgement which is formed not only from the evidence it would have heard *viva voce*, from the documents exhibited and with facts that would be in the public domain, but also based on facts that emerge from magisterial inquiries and from those undertaken by competent authorities and the conclusions reached. Conclusions which, in light of the principle which this Board has to decide on the basis of the balance of probabilities, obtain a notable significance for the purposes of this investigation.

The Board's judgement, based on the balance of probabilities, should lead to the moral certainty that the Board, following a considered and responsible deliberation enlightened by professional integrity, becomes convinced that not only was it possible but it was also probable that the facts happened as shown by the evidence acquired.

Chap. 2
The evidence relevant to the Inquiry

Chapter II

The evidence relevant to the Inquiry

Prior to considering the three separate and distinct heads indicated in the terms of reference, the Board needs to make a number of short reflections regarding the acquired evidence which are relevant to them and on which it needs to base its considerations.

I. The evidence gathered through the witnesses that were heard, the exhibited documents and that in the public domain is extensive but certainly not exhaustive. In fact, during the Inquiry, further factual allegations emerged in diverse fora which, if proven, confirm the conclusions which this Board shall reach. They could also exacerbate the responsibility of the State or the persons involved in these tragic events although in no way do these change the principal parts of the conclusions which the Board reached. If anything, they demonstrate and strengthen them.

II. The Board necessarily had to limit the compilation of evidence to that which was relevant and required for its deliberations to reach the conviction on which it would base its conclusions. It was of the opinion that once enough evidence was compiled which would satisfy that level of certainty which would allow it to fulfil

the task, it would not be required to go further. This was not only because the purpose of this Inquiry was not to investigate the full conduct of the public administration in the relevant time. It is only linked to the circumstances which led to the journalist's assassination. Circumstances which could include failings in good public governance that could have enabled or provoked it.

III. The Board is aware that this inquiry and the evidence acquired therein may in fact lead to further scrutiny regarding the behaviour of the public administration and the officers forming part thereof and even third parties, in situations which prompted allegations of serious maladministration, abuse of power or even criminal conduct. Therefore, it is not excluded that the facts that emerged from this Inquiry could lead to further investigations from competent authorities. It is sufficient to state that during the Inquiry, the Commissioner of Police filed an application to be given an official copy of the sworn deposition of testimonies which he required to investigate allegations of perjury which were made in a report against them.

IV. The Board is satisfied that the greatest added value of this Inquiry is the fact that the Government of today decided to submit the operations of all the State

entities for the scrutiny and judgement of an independent Board to establish whether there could have been some form of their involvement in the assassination. The compilation of evidence in a public forum in itself is a strong exercise of transparency and accountability intended to grant a degree of satisfaction and healing to the victim's relatives and to the society in general. It is also an inquiry that has the aim to provide essential information to which the citizen is entitled, regarding how the State entities acted or reacted in the circumstances which led to the assassination or which succeeded it. An exercise which may help the assassinated journalist's relatives but also the same society to reach a degree of closure regarding the tragic events.

V. Therefore, the opinion that the compilation of evidence in a Public Inquiry of this kind, that proceeds parallelly with criminal proceedings which concern the same merit necessarily prejudice these same proceedings, is altogether incorrect. This is because the persons accused of crimes which emerge from the facts which are being investigated, may criminally object in the criminal proceedings that their right to a fair hearing was being prejudiced. The Board does not understand how the search for truth in an Inquiry intended to establish the facts regarding the behaviour of the public administration can prejudice the presumption of innocence

which every accused person is entitled to, when their innocence or guilt would not be the merit of such an investigation. To the contrary, the facts which transpired from the Inquiry have an objective value which could give a valuable contribution in order that an accused person has a fair and just hearing. This was in particular when the investigation is conducted as specified in the terms of reference of this Inquiry, in such a way that it does not impede or compromise any criminal investigation or prosecution or its integrity.

The common good requires that society be well and duly informed of the involvement of the State entities and the persons forming part thereof in the tragic event which shocked the country and brought reactions of disdain from further ashore and if this transpired in some way, who had to respond to such conduct and what were the limits of such a responsibility. The purpose of the Inquiry shall always be to establish what happened and how this was related to the public administration, to investigate why it happened and to recommend measures which may assist such that serious failings of good governance of this kind do not happen again.

VI. The presumption of innocence of the accused party and their right to a fair hearing are inviolable However, just like any other fundamental right, they have their limits and should not be abused. Above all, they should be applied according to how these are interpreted by the jurisprudence and case law of the courts. Nor should they be used by the accused as an excuse of imaginary prejudice to try and take an unjustified advantage in the criminal proceedings against them. Nor should a public administration put forward this pretext as a reason for failing to conduct the investigation that needs to be done regarding the behaviour of State entities which form part of it. The facts which transpire in this Inquiry which concern the accused or suspected persons in a crime which is related or involved in the assassination remain inviolable and form evidence for the consideration of this Board whether these are acquired during a public hearing or in private.

In regard to this evidence, the Board remains, as it has always been since the beginning, attentive not to pass judgement regarding the innocence or guilt of accused persons because this goes beyond its terms of reference and it only rests with the competent judiciary authorities. However, this evidence has an objective value and the Board analyses and appreciates it in the context of the investigation

which it is required to conduct regarding the behaviour of State entities and persons involved therein.

VII. In regard to the impact that this Inquiry may have on conducting any criminal investigation by the Police or any other competent authority, it can only be said that during the whole of this investigation, there was mutual cooperation and agreement in the search of truth with the Police and other authorities, that are investigating various aspects of this homicide.

The Board remains of the opinion that the terms of the reference of this Public Inquiry required that it investigate all that which could have instigated or contributed to the assassination. Since the facts were indicating that persons within the public administration or close to it could have been involved in some way, it was obvious that this Board had to investigate this aspect of the circumstances which could have contributed to the assassination. In fact, this Inquiry itself and the terms of reference accept this requirement as a fact. The Board was set up to respond to such a situation.

It was therefore fair and just that society is given the opportunity to be informed about the way the country was being managed in the relevant period, by whom and how power was being exercised, as long as this was compliant with the rules of good governance. One could appreciate from the evidence that emerged from the hearing of witnesses, in a natural manner and one can say, without needing guidance from the part of the Board, that an analysis had to be made as to whether the formation of an environment which channelled authority into the hands of the few who amassed for themselves the power to manage the common good without feeling the need to respect, in a real and effective manner, the laws and regulations intended to ensure transparency and accountability, had contributed to the assassination. Concentrated authority which when exercised without restraint gives rise to bad public administration and abuse of power.

VIII. When good governance is seriously undermined, through illicit behaviour and abuse of power by elements within the same public administration, entrusted with safeguarding the common good, and when those elements act together, if not instructed by, persons who are extraneous to the same public administration motivated only by their personal interests, this produces the best recipe for the formation of a sense of impunity which could lead to criminality. Whoever abuses

of power sows the conviction that nobody and nothing had power over him. This was to the extent that he was never going to take responsibility for his actions. This was because the position that he held gave him the authority to exercise that power or else because he feels protected by whomsoever has that power.

This Board was instructed to investigate whether the circumstances which led to the assassination of the journalist Daphne Caruana Galizia were entrenched in a scenario of this type, taking into account of how the State entities acted and had acted in the relevant time frame. The evidence compiled by the Board is also intended to show this important aspect of the investigation

IX. Under this aspect, which goes beyond the consideration of facts concerning the actual execution of the assassination and whether the entities responsible for the journalists personal security had fulfilled their duties properly, the launch of this Public Inquiry and the proceedings undertaken, were a positive experience in a participative democratic process which a Member State of the European Union is expected to foster. This was also conceded by several of the witnesses including ministers among others, who expressed the satisfaction for the fact that this Board was established, as well as for the manner in which the investigation was drawing

to the public's attention aspects which are not that well known regarding how the country was being managed, with its strong points and weaknesses.

Chap. 3
The value of investigative journalism in a participatory democracy

Chapter III

The value of investigative journalism in a participatory democracy

Whenever there is a murder in the country, regardless of the motive behind it, the peace in the country is shaken to the core. Society no longer feels protected and therefore the question arises whether the State was doing enough to satisfy its obligation to safeguard the life and safety of its citizens. It is necessary to identify as quickly as possible who committed the crime and bringing this person to justice.

Society's response would be much stronger and the demand for satisfaction that all that could have been done in order to avoid the murder, had actually been done, would be stronger where the crime's victim would be totally innocent, would be doing her duty and would be extraneous to the criminal behaviour of whoever wanted to eliminate her.

When subsequently the victim is a journalist who is exercising her profession in a unique manner in the service of democratic life in the country, it was natural and inevitable that the reaction of anger and protest would be, as was the case in fact, a very strong one and the call for justice was also strong and unfaltering. This was both in our country as well as more internationally perhaps. This is because there

is an increasing awareness of the vital role that free and independent journalism has in a democratic state, supported by the rule of law and by the necessity that journalists, in particular those who are dedicating their activities to investigating the behaviour of State entities entrusted with public administration, would be adequately protected. There not only ought to be structures which guarantee adequate protection of the physical person but also by the State creating a favourable environment which allows them to exercise their profession in a secure and effective manner.

This favourable environment for a public debate intended to keep the public administration and whoever forms part thereof accountable for their actions, is today considered not only an essential factor in the formation of a participatory democracy which every democratic state should aspire to, but also as the necessary element to strengthen democracy, human rights and the rule of law.

The European Court of Human Rights acknowledges this vital role of independent journalism and ensures its protection by imposing on the State the obligation to act positively in order to create effective systems which safeguard journalists adequately and promote free journalism.

Thus, in the case "Dink vs Turkey (No. 2688/07 6102/08 30079/08 7072/09 7134/09 para. 137)" of 14th September 2010, the European Court considered thus: "States are obliged to put in place an effective system of protection for authors and journalists as part of their broader obligation to create a favourable environment for participation in public debate by everyone and to enable the expression of opinions and ideas without fear even when they are contrary to those held by the authorities or by its significant action of public opinion and even if they are annoying or shocking for the latter".

It is therefore this consideration which is well reflected in the terms of reference given to the Board which should be the starting point of this Inquiry. It is in light of these principles that the facts which transpired from the investigation should be appreciated and evaluated. Not only that. The Inquiry cannot stop there. This is because the Board needs to also investigate whether the State has a system of protection to safeguard a person's life and safety, in particular that of journalists and whether such a system is an effective one which satisfies the positive obligations which it has under this Convention . It also needs to investigate the veracity of the allegations made, that State entities or persons forming part thereof

not only did not protect the murdered journalist's life using effective systems, but even contributed through their behaviour or inaction such that her life was endangered.

Allegations which shall be analysed in the considerations that the Board needs to make in the various heads of the terms of reference that it was given. Allegations of the gravest bad governance which, if proven to be true, shall burden the State with the responsibility that not only would it have failed to take active steps to prevent in an effective manner the commission of the murder, but also that it would have contributed by creating an environment of impunity which enabled the crime to be committed or which strengthened the opinion of those who planned it and executed it.

Allegations regarding the behaviour of persons forming part of a State entity which this Board needs to consider more than anything else to determine whether it constituted illicit, illegal or even criminal conduct or misconduct. This would be without passing judgement regarding the guilt and innocence of suspected or accused parties who committed such conduct.

An attack on journalism, especially if it is orchestrated by whoever has the political or financial power both through physical violence or otherwise, as well as through measures intended to hinder it if not silence it altogether, is an attack on the fundamental right to freedom of expression and democracy.

When this attack results in the assassination of a journalist, democracy suffers a wound from which it cannot easily recover. When subsequently the assassination is that of a journalist who has dedicated her life in the search for truth by investigating the conduct of the public administration in order to hold those in power accountable for their actions, democracy suffers a mortal blow. A blow from which the country shall not rest until the actual executors of the crime and their mandatories are all identified and brought to justice, but also if this is the case.

Daphne Caruana Galizia - an investigative journalist of great calibre

The evidence in this Inquiry establishes, if there ever was a need, the undisputed and vital fact for this inquiry, that Daphne Caruana Galizia was a journalist of great calibre who for many years dedicated her life to investigate public administration

behaviour in the search for truth in order to ensure good governance in her country. In carrying out what she considered to be a mission, she needed to investigate serious allegations of maladministration, abuse of power, improper and illicit or not illegal conduct of State entities and of person in positions of authority or with financial strength and in business. Undoubtedly this work carried great risk as it often meant that what she succeeded to publicise as a result of her thorough investigation, often threatened to hinder projects which were intended not only to garner substantial profits, but also and maybe even worse, to hinder plans of illicit gains, a result of bad and suspicious public administration.

A lot has been written and there is still a lot more to be written about the life and writings of Daphne Caruana Galizia and the impact which her journalistic work had and still had on the socio-political life of her times. No one, neither her biggest critics nor those who allegedly eliminated her, throw any doubt on the ability and incisiveness of her investigation. The tenacity to continue pursuing her investigation until the end, regardless of the consequences and the courage to publish stories which would certainly expose her to great danger, in the opinion of some, verged on irresponsibility.

Under a certain aspect, she was aware of the strength that she had and of the fact that through her direct and straightforward writings with which she used to expose the facts which transpired from the investigations, analysing them incisively and credibly, and publishing them, she was managing to influence what was happening in the country. Many were those who liked her and admired her for her writing. However. many others therefore hated her and despised her. The several thousands who followed her 'Running Commentary' were witness to this and they participated actively in a dialogue with her, both positively and negatively.

During her lifetime, and increasingly so after she was assassinated, she was an icon for free journalism in her country, in Europe and beyond. It is neither the case nor the time for this Board to express itself on the investigations carried out by Caruana Galizia, their validity, the correctness of the facts and the style through which they were exposed. Similarly, the Board is not allowed to express judgement on that which motivated her to conduct the investigations she did and whether this went beyond the passion she had in the search for truth and the repugnance for that which, in her opinion, was improper, abusive or corrupt conduct.

What is required for the purposes of this Inquiry is to affirm as a fact that:-

a) Through her investigative, constant, steadfast and credible journalism, Caruana Galizia managed to create a formidable reader base who were following her regularly. This was especially when she started publishing the articles regarding the Panama Papers and other related events. She was well aware of the fact that with her writings, for diverse reasons, she was followed by hundreds of thousands who considered her a source of information regarding how the country was being managed and regarding allegations of misconduct. She also satisfied the thirst of those who wished for reforms in order to ensure a clean administration.

b) It is a fact that in a situation where the Opposition party was weak following two large electoral losses, the journalist Daphne Caruana Galizia with her writings took on the role of a "politician", even if involuntarily. In the words of the then Prime Minister Dr Joseph Muscat, she was practically the sole opposition. This reached a point which was proven that the government party machinery was forced to take initiatives to balance the effect that her writings were having on the electorate. However, there is nothing to indicate that her assassination was in some way linked to considerations of partisan politics. The Board has no reason to doubt that the expressions of sorrow and repugnance for the assassination from

government exponents and of the party in government in this regard were genuine. Just as were those who expressed anger for the journalists murder and condemnation without any reserve for any type of violence as a political weapon. The Board therefore eliminates this element as a factor which could have directly enabled the crime to happen.

c) Obviously, this does not mean that the way in which the country was being managed by the principal persons entrusted with that administration and the effect which the disclosure of incriminating information which was emerging from the murdered journalist's writings were not crucial elements which are part of the terms of reference of this Inquiry. To the contrary, all the facts as known to date establish a certain connection regarding the circumstances which led to the assassination, the cause and its motive are intimately linked with that behaviour and with the connection which is proven between the person who to date transpires to be allegedly compatible in the execution of the crime and persons in public administration who held the leadership in vital sectors in the country's development.

d) The Board cannot exclude that there could have been other persons who in some way took part in the commission of the crime, extraneous to those who were actually suspected and having different motives. This was not excluded by high ranking police officials in charge of investigating the murder who testified before this Board, although they all confirmed that the evidence and the circumstantial evidence which they had against the persons whom they accused as the actual executors or mandators were such that they justified that the latter would be charged in Court.

The considerations to be made by the Board on each one of the three terms of reference that it has, certainly apply in that they illustrate the behaviour of the State entities, these persons and the circumstances in which they are allegedly involved, but also apply to every other person who may be eventually accused of the commission of the crime or of having been part of it or of having enabled it. The Board therefore needs to consider as a starting point not only the facts which transpire to be proven from the evidence it has but also that which is in the public domain that concern the actual execution of the murder, the alleged mandators and the involvement of the State entities. Without passing judgement on the innocence or guilt of the persons involved, it focuses on those proven facts from

which emerges the responsibility of the State entities and persons involved therein who could have contributed or enabled the homicide. This was strictly within the limits of the terms of reference that it has.

Taking also into account that, whilst that which to date transpired to be proven, shall remain proven, the reality is that since the Inquiry was set up to date, new facts regularly kept emerging regarding the conduct of these State entities and persons forming part thereof which are relevant to the case.

Even if anything, because they strengthen the considerations being undertaken by the Board and the conclusions that it reached.

It is not the task nor the case that this Board investigates these allegations, some of which are very serious, which have been made and are being made and which are being revealed by various sources, because it is not its task to investigate every charge of every irregularity and abuse to establish their veracity. This is undertaken if it is the case in the competent fora.

At this stage, what remains relevant for this Board is the fact itself that during the hearing of the witnesses before it, these incidents kept on being disclosed, because this strengthens the conviction which it reached of a style of governance and a flawed system of conduct which effectively, as everyone accepts, led to the breakdown in the institutions and the erosion of the rule of law. Additional proof which is also relevant in that it continues to confirm the correctness and the authenticity of the allegations made by Daphne Caruana Galizia, based on exact information, which was often documented. Information regarding serious cases of maladministration, abuse of power and corruption which today is accepted, beyond any reasonable doubt but certainly on a basis of probabilities, which instil the moral conviction that they were the cause of the assassination. This was without excluding the possibility regarding which no proof transpired, that there could have been someone else who participated in the assassination as a mandator or otherwise.

A victim of her own ability and success

The correctness of the facts which the assassinated journalist used to disclose as a result of her investigative journalism even in the detail, their perspicacious analysis,

the reliable sources to which she had access, as well as the conclusions which she reached with great precision, were remarkable even at the time when she published her articles.

They were increasingly remarkable when over time and especially after her death, it clearly transpired that there was substance in the allegations of serious failings within the public administration which were truly worrying, undermining good governance and eroding the rule of law.

There can be little doubt that Caruana Galizia became a victim of her own ability as an investigative journalist and the success that she was achieving with the publication of information acquired through authoritative sources, both researched and interpreted, having sound knowledge of how public administration operated and of the mentality of Maltese society.

This does not mean that there were not instances where her contributions were found not to be totally supported by facts or that they were not adequately proven. However, these were exceptions and even these had elements of truth which merited to be investigated.

Thus, for example, a Magisterial Inquiry declared that there existed no proof that the company Egrant which was opened in Panama belonged to the then Prime Minister or members of his family. That inquiry however did not cast any doubt on the existence itself of the company Egrant nor did it determine who was its ultimate beneficiary. The same can be said in the case of the serious allegation that the Prime Minister's Chief of Staff was suffering from a terminal illness was not proven, although it transpired that in effect, he had travelled abroad for treatment overseas with expenses borne by the person who is today accused of involvement in the assassination.

It is not this Board's task to pass a definitive judgement on the veracity of these assertions and other similar ones by Caruana Galizia. Certainly, both Dr Muscat as well as Mr Schembri had every reason if the allegations were not true to be annoyed and angered that these were made in their regard.

However, the fact remains that:-

a) The allegations were not frivolous and light but were a result of information, even if incorrect and incomplete, which Caruana Galizia obtained; and

b) More importantly as far as this Board is concerned, both Dr Muscat as well as Mr Schembri before this Inquiry affirmed that regardless how serious and shocking these allegations were for them, they would never lead to any form of violent retaliation in regard to the journalist whose homicide they strongly condemned without reservation when they testified before the Board.

In this context, the Board established that Caruana Galizia often elaborated her writings with references to aspects of the social life of politically exposed persons or even persons who were familiar with the public administration or of the party in government. References which often referred to the personal life and private relationships, written in a style that could offend and hurt. This was the aspect of Caruana Galizia's writing which was controversial and objectionable to many as it verged more on gossip rather than a serious journalistic investigation. Thus, there could have been some who felt offended, even seriously, with such writings. However, from the compiled evidence nothing indicates that the assassination could have been motivated by some extreme reaction that someone had for such writings.

On the other hand, the Board needs to establish that, whilst it can share the erstwhile serious reservations one may have in regard to that aspect of Mrs Caruana Galizia's writings, not every incident reported concerning the private life of persons or suspected relationships of or with politically exposed persons or persons close to these persons, was necessarily censurable.

In fact, it transpires from the evidence and facts that are still emerging, that indicate that certain allegations of this type of personal relationships were far from not being extraneous to the allegations of public maladministration and the persons involved therein. There were serious indications of evidence that there are instances where situations like these were manipulated by whomsoever had an interest to acquire favours, access to information, financial gain or otherwise. Now that most of the articles published by Caruana Galizia that give an indication of this type of relationships are being corroborated, one must appreciate that there was more than a valid justification for their publication. Naturally, where the truth is proven, the public interest had and should prevail over private interest.

Private relationships and the lifestyle that one chooses to live should be protected and respected even by journalists. As a rule, they should not be the object of

investigative journalism. However, this is the case as long as these are not used and manipulated as a weapon in the exercise of power, exercised for advancement and personal wealth to the detriment of the common good.

The relevance to this Inquiry

In this context, one notes how the disclosure of facts in the assassinated journalist's writings, which allegedly exposed conduct of maladministration and serious irregularities, was received by State entities and persons forming part thereof.

This Board found the categorical declarations remarkable where these considered these investigative reports as totally credible in that they considered that the allegations were based on serious research and sources which were reliable, even if it was necessary to verify their credibility. Authorities such as the Police, the Secret Services, the FIAU and the MSA considered her as an open source of information who provided useful facts for the identification of circumstances which could indicate a serious breach of good governance practices, laws and financial regulations which merited being investigated.

This crucial reality for the recognition of the quality and validity of Daphne Caruana Galizia's investigative journalism regarding the grave facts that she was disclosing, especially with the publication of the Panama Papers and thereafter, leads to these essential considerations which should guide this Board in the search for answers to the questions made.

a) It ought to have been obvious to those responsible for the State entities entrusted with the protection of public order and the guarantee of the rule of law, that the assassinated journalist's articles were often indicative of illicit, if not illegal conduct at the highest level of public administration. They were allegations which, in other countries, led to great political disruption, resignations and prosecutions of the involved persons in authority.

b) It ought to have been clear to these authorities that the assassinated journalist's investigative journalism was not limited to an isolated allegation of irregularity by some person in authority. It was extending to extensive investigations on the most important projects which were being completed by the government and from which there were arising facts of alleged irregularities in their implementation interweaved with collusion with third parties extraneous to the

public administration. Suspicious behaviour intended to promote and benefit private interests. Allegations which were so substantial, credible and well-founded that eventually led to several investigations by regulatory authorities, including the Auditor General.

c) Moreover, there were also occasions when Caruana Galizia's investigation had started extending to allegations of criminal conduct by persons involved in organised crime, even internationally, who were not directly involved in the public administration. This was even if there could have been signs of favouritism or screening by persons in authority.

d) Through these circumstances, the State entities responsible for the safeguarding of the individuals' safety and the protection of their lives became aware that the allegations made were not frivolous but had or could have had elements of truth and a basis of truth. They reasonably led to the conviction that the journalist was taking it up against whoever had great authority. She was waging a war against organised crime. She was exposing herself personally and one can say she was solely taking it up against whoever was allegedly implicated in illegal and

criminal conduct in an attempt to ensure that whoever was responsible would be brought to justice.

e) It ought to have been more than clear for the officials in good faith at the State entities responsible for the protection of the Rule of Law, from the Commissioner of Police and the Head of the Secret Services and below, that Mrs Caruana Galizia at a certain time in her writings had exposed herself to great risk with imminent danger to her life and property and that of her family.

f) This was not a case of a journalist who had a good story of an isolated incident with an allegation of an irregularity by some person in authority. She was a journalist who, through her work came into possession of very sensitive information from various credible sources, which indicated to her circumstances that pointed towards serious cases of irregularities, abuse of power and corruption. She made it her mission that bravely, she would expose these facts and reveal that which, in her opinion, was eroding public administration and institutions in our country. This focal fact in itself, even if one disregards the correctness or otherwise of what the assassinated journalist had published and the motive which pushed her to persist in this crusade till the end, ought to have been enough to impose an

obligation on the State to grant her the highest level of protection possible to ensure her safety and protect her life.

Provocative investigative journalism

These considerations should be read in view of the fact that the evidence amply shows that the assassinated journalist's writings had the potential to provoke and in fact provoked a strong reaction in society at least on three different levels. A reaction which for various reasons generated hate and a spirit of vengeance, which showed themselves in episodes of psychological, material or physical violence which in the end culminated in her murder.

This is elaborated in other sections of this report. For now, it is enough to identify these three levels of reactions which Caruana Galizia's investigative journalism provoked in those persons who were the target of her criticism or which were the object of her investigations. A reaction not only in regard to the content of her writings but also for her clinical and direct style, at times written to cause upset because it was exposing that which was expected to remain hidden or exposing that which was never expected to be publicised.

It is also said that often the exposed facts were not the most provocative but the comments made about them by the journalist and the hypotheses and conclusions which she contrived about them. Professional work of investigative journalism which, as long as it remained within the established limits of correct ethics, is recognised as valid and legitimate by jurisprudence.

Nor is it the case nor does this Board have the means to get into an extensive investigation of the environment in which the journalist used to exercise her profession. An environment which, it must be said, was not provoked by her writings but by a strong element of the truth of the facts which gave rise to her investigations.

Three reaction levels

For the purposes of this Inquiry and in order to establish whether any responsibility could be attributed to a State entity for failing to take action which could have avoided the assassination or whether it had even enabled it in some way, it is

enough to identify, in a general and broad manner, three reaction levels for her investigative work by the persons who were in her line of sight.

1. A level of writing regarding private lives of figures directly or indirectly related to the stories she investigated. Reference has already been made to the fact that an effective element in Caruana Galizia's style of writing, even by keeping her followers' interest aroused, was to focus on certain aspects of the private life of persons of interest through a gossip level also intended to satisfy the readers' morbid curiosity.

This type of writing, especially when directed towards persons who are not politically exposed, who have nothing or almost nothing to do with the merit of the story in which they are involved, could have easily been considered as invasion of privacy, a writing which could comprehensibly generate anger and hate in the injured party if it were not true.

Obviously as has already been said, as long as this writing is not justified by some connection which allegedly there could have been between the person in the journalist's sight and the story which is being investigated and therefore would be

relevant to the public interest. Often, the reaction for these writings takes the form of virulent contributions and exchanges on websites and other media.

2. Writings which were aimed at the government's and the public administration's activities as well as those of the party in government, intended to expose cases of alleged irregularities, maladministration or abuse of power or even simply a criticism of policies which the journalist disagreed with. Essentially, writings of a political nature that when she did not imply misconduct intended for the benefit of private interests and illicit gain, were so effective that principal elements at the core of the public administration deemed it to be a serious political threat which could weaken the government, undermine its projects and discredit it with the electorate.

In reaction to this type of criticism, there appeared to be persistent and serious attempts to try to stop and silence the journalist, using measures which may be considered by some as politically acceptable but certainly not legitimate if they are considered as an attempt to suppress the right to freedom of expression. This type of reaction was justified with the questionable opinion that they used the same weapons against the journalist that she used against them.

3. Then there is the third reaction level for the criticism of the investigative journalism of the assassinated journalist aimed at disclosing, in an incisive, direct and documented manner, illicit behaviour, alleged acts of corruption intended to acquire substantial profits from them, persons at the core of the administration, in collusion with others who involved themselves in the organisation and implementation of major government projects.

In her investigations, the journalist Caruana Galizia projected the existence of an organised crime system at the highest levels, in a net which started to materialise concretely through the publication of evidence which began supporting her allegations. The reaction for this type of investigation can only be measured by the uncontested fact that the involved persons knew very well that what the journalist was disclosing in their regard was correct in substance. They may have also been aware of the facts that she was on the point of disclosing even other stories which were perhaps more incriminating. In any case, what she was disclosing was of such gravity that it could thwart the plans they had for future illicit gains. This was besides the serious and imminent risk of being caught and brought to account for their actions before the courts.

It is clear to the Board, and the evidence acquired to date indicate thus, that criticism of this type at this level could only be counteracted by silencing the journalist by any means and if this were not successful, the only remaining tactic would be to eliminate her.

It is not the Board's task to arrive with certainty at the circumstances that led to the assassination, who actually committed the crime or commissioned it, or who made a declaration regarding the guilt or innocence of whoever is accused before the courts. It heard several witnesses and compiled a lot of evidence in this regard but it did this in order to be in a position to judge the behaviour of the State entities and the persons forming part thereof who had the duty to prevent the crime and to ensure that justice is done.

Chap. 4
A Culture of Impunity and Power

Chapter IV

Impunity and Power

From the evidence acquired to date, there can be little doubt that the assassination of Mrs Caruana Galizia occurred in view of circumstances which also involved in some way, persons forming part of State entities or others close to them. This is a fact that is confirmed in a declaration made by the Commissioner of Police during a press conference after he had arraigned the persons who allegedly had manufactured the bomb used in the assassination before the Court. The Commissioner said that in light of the evidence that the police had in their possession, the persons involved in the murder, whether they were the actual executors or accomplices or whoever commissioned it, had been arrested and arraigned before the court.

This is a declaration that does not exclude the fact that there may be other evidence that includes other individuals who were involved in the execution of the crime or who contributed to obstruct it after it happened or who perverted or hindered the course of justice. The facts which transpired from the evidence, both before this Board as well as in other proceedings and in the public domain, remain the focus of this Inquiry in that it is established that they truly happened. This was beyond

any consideration regarding the criminal responsibility of the persons involved in whose regard the presumption of innocence remains guaranteed.

High ranking police officials who testified before this Board did not exclude the possibility that there could be other lines of investigation which could lead to the involvement of other individuals who had an interest that the journalist be eliminated and who could have taken steps in this regard. This would not necessarily be in orchestration with the persons who are today charged with having committed or took part in the execution of the crime, even if this is not excluded, but independently of them. In fact, testimonies given recently before the Court of Magistrates alleged in detail the involvement of other people whom they identified as being, and it is understood that they still are, persons of interest for the Police in the investigation besides other serious crimes.

It is a fact that these two specific lines of police investigation – there may be others – one of which led to the arrest of persons accused as the principals, accomplices or mandators of the crime and the other which is at a much earlier stage and until now has led to no conclusion which justifies the arrest of the suspected persons, also involve persons who occupy important positions within State entities and the

public administration. An involvement that, if proven, may not necessarily lead to these persons being accused of taking part in the execution of the assassination as in fact happened. It transpires in fact that the police are investigating allegations that the journalist's murder had been planned long before it actually happened, by other persons even if with the involvement of the same actual executors who are now accused of having committed the crime.

The Board is satisfied, and all indicators point in this direction, that although the motive is not yet established to date, there is nothing to indicate that the assassination did not happen for reasons directly linked with the investigations being conducted by Mrs Caruana Galizia regarding serious allegations of public maladministration, abuse of power and corruption, in view of the close and dubious links between politics, big business and organised crime.

A reality which today is generally so well acknowledged that, after strong pressure by the civil society in Malta as well as authoritative institutions of the Council of Europe, of the European Union and others, it led to the resignation or dismissal of several of the protagonists who were in some way indicated as responsible for the

formation of systems which eroded public administration or who were indicated as persons of interest in the assassination of Mrs Caruana Galizia.

A reality which effectively also led to the establishment of this Board of Inquiry with terms of reference which implicitly, if not explicitly, welcome investigations regarding the involvement of some State entities or persons forming part thereof who could have assisted to enable a state of impunity for those criminals who committed the crime.

A culture of impunity

A culture of impunity means that whoever intends to commit illicit, illegal or even criminal behaviour would be aware and have the conviction that they would be able to commit them without facing consequences for their deeds.

This culture may lead to a popular perception that every illegality or abuse, irrespective of their severity, may be pardoned, fixed or forgotten and that therefore one could ignore the laws and regulations and commit illegalities even when this would be in breach of explicit provisions of the law. A culture of impunity

to the extreme that organised crime deems itself so protected that it could commit crimes with the greatest impunity because it would be convinced that there would be no full investigation leading to identifying them as the persons who committed the crime and less so to their arrest.

This culture of impunity is created due to the State failing to take all the necessary steps to safeguard the rule of law. It fails to take steps in a timely manner to enforce the observance of the laws and to take steps to prevent, investigate, identify and punish those who break them. A culture which is sown and flourishes from the expectation of those subject to the law that its non-observance would not lead to any sanctions but to State action to regulate the wrongdoing committed.

There is no doubt and this, not because it was warranted, was amply confirmed by the evidence before this Board that this culture of impunity has been woven in society's mentality for a long time and little has been done to eradicate it.

In fact, one administration after another considers sanctioning measures for illegalities and irregularities as a useful weapon to restore order and good governance whilst not to exceedingly alarm whoever broke the law. It is used, and

not exceptionally, as a means to satisfy the bidding of those who had broken the law to continue enjoying that which they had acquired illegally. This would be through the payment of a monetary fine as is done for example in sanctioning construction schemes which were not built according to the planning and development regulations, as is also the norm quite often, by various administrations over these past decades, as a fiscal measure to regularise abuses in the financial sector and payment of taxes even with the notion that the State would recover substantial income for the inland revenue.

In this regard, the criticism made by the current Commissioner for Revenue Mr Marvin Gaerty was timely, that schemes such as these undermine the valuable work undertaken by the Department to ensure the observance of the law, in that these enable a culture of impunity, encourage evasion and create injustices. A mentality which is unfortunately woven in society's DNA, also enabling the black economy and corruption as it is based on bias and favouritism. Where importance does not lie with doing what is correct but on whom you know and who can be of service.

Impunity and abuse of power

When that mentality infiltrates in the relationships between the citizen and the public administration, it is inevitable that situations which erode good governance are created. Situations which give rise to abuse, for the creation of undue obligations and opportunities of expectation of illegitimate compensation and advantage for the public administrator who would have provided their services in order to gain unwarranted favouritism. Situations which often involve the creation of conflicts of interest which are the essence through which abuse of power and corruption are developed.

The bigger the project and the sounder the projected substantial financial interests and gains, the greater the possibility of an illicit partnership between whoever bids to be given an advantage to implement their project and those in the public administration who are in a position of authority to appease them.

It can be said that all of Mrs Caruana Galizia's investigative writings consist of an investigation of this type of situation, of allegations that entail illicit, illegal if not criminal conduct as well, involving the active or passive participation of persons forming part of State entities which fail to do their duty to ensure that such conduct

does not occur. This is because they fail to manage the common good properly, or to implement regulations or laws properly and duly. This is due to various reasons which vary from misjudgement due to human regard, friendships and requirements linked to the implementation of a government programme, among others.

It would subsequently be a totally different scenario if these incorrect decisions were taken by persons in administration with the intent of taking personal advantage from them or even worse, if they themselves would be involved in some way with the persons who would be benefitting from their suspicious decisions. In this latter case, the scenario changes from being illicit maladministration, to one of illegality if not also criminal.

Impunity and organised crime

This last hypothesis sets itself within the second reference given to this Board to establish whether the State had and has in place effective criminal law provisions and other practical means to avoid the development of a *de facto* state of impunity through the frequent occurrence of unresolved criminal acts and to deter the commission of serious criminal offences.

The Board notes that this reference as written is not limited to the circumstances which led to Mrs Caruana Galizia's assassination, although obviously this Board remains focused in order that its investigation establishes whether this could have been avoided if there were not (if in fact there was) a *de facto* state of impunity which enabled the execution of that crime.

The Board forms its considerations regarding this aspect when it covers this second reference in detail later on in this report. For the time being, it is to be noted that this term of reference is not exclusively linked to the assassination. The Board was requested to establish whether a *de facto* state of impunity through the frequent occurrence of unresolved criminal acts could develop in the country. This was in a general manner. The criminal acts therefore involve serious crimes of all type including therefore crimes like corruption, misappropriation of public funds, money laundering and other financial crimes, the obstruction of justice and others.

The Board acquired more than convincing evidence that conclusively establishes that crimes of this type occurred in recent times and even beforehand. It was also established that in most of these cases, whoever committed them could do so with

a high sense of impunity and with the conviction that they were never going to take responsibility for their actions. At this stage it is enough that the Board establishes the parameters into which its report must extend in this regard.

Definition of impunity

The Inter-American Court of Human Rights defines impunity as "The overall lack of investigation tracking down, capture, prosecution and conviction of those responsible for violating the rights protected by the American Constitution"[2]. A definition given in the context of proceedings regarding the murder of a journalist and therefore involves the fundamental rights to life and to the liberties of expression and opinion.

A definition which certainly fully applies to Caruana Galizia's assassination but also applies for every form and type of other serious crimes. Impunity is considered as a consequence of "the absence of a complete investigation leading to the criminal punishment of all those responsible for the murder of a journalist ".

[2] Inter-American Court of Human Rights, Constitutional Court vs Peru January 2001 Series C No 71 paragraph 123.

The same Inter-American Court considered that timely actions to investigate crimes and to punish those who commit them is the manner in which the State sends "A strong message to society that there will be no tolerance for those who engage in such a grave violation of the right to freedom of expression"[3].

This sense of impunity which led to the conviction that allegedly illegal or criminal conduct was not going to be investigated and punished, would be even more aggravated, serious and impudent if this involved persons in authority or close to authority, which for that fact alone gives a sense of guarantee that the investigation and prosecution of the illicit or illegal conduct would not occur. More so if, as has often been alleged before this Board and at other locations, these persons would be involved or participative in some way in that conduct. This was either because they were simply implementing the public administration policy that they would be providing or because they would be protecting unwarranted profits or personal gain, even together with third parties.

[3] Inter-American Commission on Human Rights – Louis Gonzalo Restrepo and family vs Colombia – 23 October 2010.

The link between organised crime and impunity

The Board is being requested to investigate whether there was a link between the organised crime and the sense of impunity that could have enabled the assassination or other serious crimes. In the opinion of the Board, organised crime is not and should not only be that of persons who succeed from the execution of professional crimes up to the extreme point of executing a murder on commission, against payment from the mandators, as Mrs Caruana Galizia's murder appears to be from the evidence.

There is another level of organised crime which involves persons who are not criminals professionally, who would be involved in fully licit activities, in business, in public administration and in politics but who decide to act together to acquire gains in an illicit or illegal manner. Thus, the allegations made, regarding the Panama Papers, 17 Black, and those regarding serious irregularities in the completion of large infrastructural projects like Electrogas, the hospital privatisation, the Montenegro windfarms and others, may qualify if proven.

Organised crime surmises that those involved in the organisation would have the same goal to commit criminal conduct and that through their actions, they would appear to have started committing it. Often it involves a nucleus of people who project and execute the criminal project, involving other people with them so that in one way or another they would help them execute their activity. Persons who are extraneous to the nucleus' criminal activity but who, for one reason or another, accept to provide unwarranted service or assistance even through illicit or illegal conduct to whomsoever is organising and committing the criminal conduct. These persons may have no knowledge of the organisation's criminal activity however they must bear the responsibility for their deeds. If anything, this would be because they would be facilitating committing crimes and enabling the creation of an evil web which infiltrates society and allows criminals to act with impunity.

Organised crime seeks to act in a secure way because it would be covered by a veil of impunity, as a result of friendships, familiarity or communion of interest with persons in authority who would be able to ensure protection from investigation and prosecution for its criminal conduct.

Among others, figures such as Professor Joe Bannister, former MFSA Chairman; Mr Johann Buttigieg, former Chairman of the Planning Authority; Mr Heathcliff Farrugia and Mr Joseph Cuschieri, former Chairmen of the Malta Gaming Authority; Mr Lawrence Cutajar, former Commissioner of Police; Mr Silvio Valletta, former Assistant Commissioner; and other high-ranking Corps officials could all come under this category. All these occupied positions of authority and had decisional powers, in whose regard there have been, and there still are specific allegations of improper conduct, familiarity or proximity to individuals implicated in the assassination, particularly an alleged mandator.

Besides similar allegations made in regard to politicians including the former Prime Minister Dr Joseph Muscat, Minister Edward Zammit Lewis, the former Opposition Leader Dr Adrian Delia and Mr Pierre Portelli, former General Secretary of the Nationalist Party. These all held high positions within the public administration in a broad sense or in the country's governance but in no way from the evidence did they transpire to be implicated in the assassination.

The Roots of *de facto* impunity

These examples are being given in order to emphasise that organised crime grows roots and flourishes where a *de facto* state of impunity would have developed or due to the police force's inaction which does not manage to hinder the occurrence of criminal acts because of incompetence or inefficiency, or far worse, if organised crime succeeds in fostering the conviction to enjoy strong protection by persons in authority who have the obligation to hinder it and to ensure that nobody is above the law.

Allegations of misconduct, serious administrative failings, breach of ethics and abuse of power have been made and are still being made, which if proven could have strengthened or abetted the execution of the crime. This is because they would have helped to create that sense of impunity which reassures criminal minds and strengthens their resolve.

This Board hears with a feeling of contempt and disgust a series of situations where public officials responsible for the security and good order in the country failed to do their duty and investigate appropriately and in a timely manner, serious allegations of abuse of power, financial crimes, corruption and maladministration,

that the assassinated journalist through her investigation was bringing to the attention of society. Allegations which, as a rule, were well researched and documented and which today for the most part are resulting to be proven.

This scandalous inaction of the police force, but also of other regulatory authorities that had the duty to ensure good governance in the main and vital sectors of the country's economy, can only be attributed to the inappropriate close ties of friendship and familiarity against every ethical rule, of persons in a position of authority with those who were intending to act, and in fact acted, to garner illicit gains from activities and projects accomplished with the public administration.

The creation of a network which infiltrated the institutions

It is obvious, and it has been amply proven, that individuals intending to commit crimes or illicit acts, through a meticulous plan, created a control system of every public institution which could in some way hinder them in the execution of their projects. The institutions were weakened and suppressed simply by placing persons of trust at their highest administrative level, who, on the basis of friendship or in the expectation of future gain or favour, or simply because they were gratified by

some measly gift or because they feel important through the proximity with someone who had money to spare, were ready to abdicate their duties to serve their country in order to serve private interest.

When one considers that it transpires that such a network was created to serve one of the biggest entrepreneurs in Malta, with huge resources and that this would not have been possible to create if not through a concerted effort with the most powerful person in the public administration, one would quickly realise that the system in itself created a *de facto* State of impunity, for all those criminals who in some way were involved in it and found or pretended to find, or in fact found, refuge therein.

A state of impunity which, when the assassination of the journalist Caruana Galizia was planned, and even thereafter, infiltrated among all those who in some ways were allegedly involved in its execution, both as mandators, accomplices and its actual executors, but also those who are known as well as those who are still unknown.

In fact, there is convincing evidence, especially from the testimonies given before this Board but also in the criminal proceedings, that the alleged actual executors of the crime at every stage were well aware of the protection which they were certain to enjoy from individuals in the highest State positions, who could guarantee them such protection including within the police and in the political sector. They expected that as had happened on other occasions they would not be caught and if they were caught, there would be someone to consider them to get off lightly.

This is what transpired if anything, from the testimony of Vince Muscat, known as 'il-Koħħu'. Accused as actual executor of the crime with others who admitted his guilt, as well as that from the intermediary Melvin Theuma. The same alleged mandator was expecting that even he would enjoy such protection. They were all convinced that they were going to benefit from this impunity and that in some way they would avoid being arrested to answer for their deeds.

These testimonies indicate that for them Keith Schembri, the Chief of Staff at the Office of the Prime Minister, the Commissioner of Police Lawrence Cutajar and other high-ranking officials in the corps, the former Minister Chris Cardona as individuals, among others, who could assure them of such impunity. These persons

deny any involvement whatsoever in the circumstances which led to the assassination as well as thereafter. This is an issue that this Board needs to leave in the hands of the inquiring Police to continue investigating. However, the fact still remains relevant to this inquiry that the persons who are actually accused of involvement in the assassination were convinced that they benefitted from such protection, by persons in power who had the power to grant it to them.

This is also taking into consideration the uncontested fact that this foul crime occurred following strong criticism by the assassinated journalist and of serious allegations resulting from her investigation against the same public administration of which these persons of power formed part.

A sense of *de facto* impunity

These observations led the Board to these general considerations:-

a) It is obvious that there is a close bond between the exercise of power and its abuse and the creation of this sense of impunity. The stronger and closer the bond,

the greater the sense of impunity which assures that whoever intends to break the law could do so without consequences or at least with a lesser risk.

b) It is also clear that this sense of impunity is created in the first instance where the criminal is convinced that whoever has the duty to ensure that no crimes are committed, to prevent them and pursue them, would not have the ability, the means and the resolve to do so. This sense of impunity develops in the first instance, where the State entities responsible for maintaining order indicate that they are not in a position to investigate and solve certain crimes over a period of time. This inability, incompetence or even lack of resolve of these State entities encourages and facilitates the commission of similar crimes because they grant a tangible advantage and a sense of safety and security to the criminal.

Thus, therefore, those who planned and committed the journalist's murder, chose to carry out the execution by means of a car bomb, because they were assured of the fact that a number of crimes of this type which occurred during the previous ten years, even if they themselves could have been involved in some of them, had not been solved. The Board was horrified when hearing the impudence with which this crime was planned by professional criminals, prepared to commit the worst

form of crimes against the person on commission and simply for the payment of the sum of money agreed and not because they had some personal motive for revenge or any other criminal interest to eliminate the victim.

c) The impact of this impunity and the sense of security which it creates for crime, whether organised or not, would be even more convincing and determining where there is some form of bond of friendship, interest, dependency or other type of complicity, between whoever plans to commit the crime and those who are obliged to hinder it.

This Board took note of a multitude of allegations regarding bonds of this type, arising from credible facts and documentation which were and are still being disclosed with nauseating regularity by investigative journalism in the media, on social media and in the Criminal Court. Worrying episodes of suspected proximity and inappropriate friendship, not only between criminal elements and high-ranking officials in the Police Corps, but also between businesspeople involved in large public administration projects and high-ranking officials of regulatory authorities not only with the function of approving the said projects but also to ensure that these are accomplished according to good governance regulations.

d) These incestuous relationships on many levels between public administration in the highest levels in the power scheme and big business and organised crime created a corruptive system which internally eroded many of the country's institutions. A system which seriously weakened the framework of controls and balance established by the Constitution and the laws of the country to restrain the abuse of power and ensure good governance.

This was up to the point that this system of friendship, proximity, dependence and communion of interest was so extended, efficient and watertight, as the journalist Caruana Galizia had surmised and exposed, that the country in these past years was not simply facing isolated and sporadic cases of corruption allegations even at a high level, but it was faced with a situation where the true power, at least in certain vital sectors of the country's economy, was being exercised not by those who were entrusted by law to do so, but by a small group of individuals. With a criminal intention which is not necessarily correlated to advance their own private interest, these managed to take charge and control the management of those institutions and authorities which could advance the accomplishment of their projects, acting to facilitate them or ensuring that they are not hindered in any way.

They did this using a variety of initiatives, often designed on an individual basis and intended to influence and bring under their control those persons in the highest positions in these institutions that could actively or passively help them accomplish their dubious plans. Initiatives that also extend to the necessary protection against any action from the competent authorities which could hinder them in their accomplishment and even against any attempt for an investigation or prosecution.

e) The conclusion is therefore fully justified that insofar as these persons were involved a government within a government state was created, where the true power was exercised by those who formed part of this group of individuals having the intention to enrich themselves to the detriment of the common good and with a sense of impunity. In this context therefore, the power was not being exercised by those whom the people had entrusted to run the country.

It is well stated that the conclusion reached by this Board in this regard is not only based on its findings in regard to Yorgen Fenech, in particular the chats most of the content of which is in the public domain, but also on the testimonies in regard to

other individuals not only in business but also with some occupying high positions within the public administration.

f) Many contributed through their conduct to the formation of this informal but real association in order to favour and protect private interest to the detriment of the common good. An association which enabled the formation of a *de facto* system of impunity. The link between all the individuals involved in this association was woven with several elements including fear, the expectation of a benefit which was not necessarily a financial one, friendships of all types and form, a communion of interest and granting of favours, proximity to those who exercise power and proximity to those who held the power of money.

g) The Board is satisfied that all this would not have happened had a strong synergy not been created between whoever intended to abuse the systems and those who could facilitate such abuse. Therefore, there definitely must have been a mind or minds who prospected, protected and formed these friendships and intricacies first on a personal level, which were required to ensure the success of their dubious projects and to be in a position to protect them and assist them if any difficulties arose.

Chap. 5
A leadership style enabling impunity

Chapter V

A leadership style enabling impunity

The highest form of impunity

The highest form of impunity is that which is fostered where whoever plans and executes the illicit, illegal or criminal conduct would have the advantage of being in a position of authority and power at all levels of the public administration. The greater the power, the greater the sense of impunity in those who exercise it, borne from the conviction that the protection granted to them from the position they occupy would place them above the law.

A conviction that, due to the fact that they are powerful, because they are not subject to anyone's scrutiny, or because no one would dare to criticise their conduct, would lead them with impunity to break the law and regulations which every other individual would be subject to. This was not only in the exercise of the functions inherent to the position they occupy but also through conduct intended to advance their personal interests by abusing that same office.

Impunity which leads to corruption

This type of impunity is a constitutive ingredient which favours public maladministration, abuse of power and corruption. When the use of power is no longer an instrument to favour and enrich the common good but becomes a tool to augment personal and private interests by any means, this would easily give rise to situations which undermine good governance. An attractive terrain is formed to create suspicious associations between the public administrator and unscrupulous businesspeople even with the infiltration of organised crime. All with the common objective of enhancing their personal wealth even through illicit and illegal means.

The focus of Caruana Galizia's writings was aimed to investigate and reveal serious situations such as these. The Board stated that today no one places any doubt on the fact that she was eliminated in order to silence her from continuing to write regarding allegations of maladministration and abuse of power which not only involved important figures in politics and public administration, but also persons of trust appointed by the Prime Minister and entrusted with the management of entities and public authorities.

Figures who were in a position to exercise the power and who inevitably may be attracted towards themselves business individuals who were among the wealthiest in the country, with a vision of large projects which required the blessing and the thrust of the public administration. In the words of the former Prime Minister Dr Joseph Muscat, this proximity between the power of the State is the private driving force of the real economy; not only is it necessary but also inevitable.

Friendship, proximity and intimacy

He testified, *"So let me start by making a statement which may come as shocking. 'Every government in the world including Malta must be close to business. If you are not close to business, the economy does not move forward. An economy and a society like Malta, the economy is managed by no more than ten people ... Now if we wish to escape the inescapable truth, then we can escape the inescapable truth. These are the facts and if the government or the policy makers, so as to be clearer, in one way or another, do not keep direct contact constantly with these individuals, the economy and the decisions are not taken and there would be a gap between the State and the real economy. To me this was crucial. The real economy is crucial. Whatever we say, the real economy, the people's jobs, the people's quality of life,*

these were the No 1 Priority for me. But this did not kick off today. I did not discover this because I'm a genius; I am a normal person. If there was intimacy, that intimacy has long been there."

This clear and concise declaration of the former Prime Minister made at a time when he was well aware of the serious allegations made against his government and which led to his resignation, is a real politique statement which is difficult to contest. It is a statement which is confirmed by almost everyone who testified before this Board and who had a part in the government policy-making to justify the closeness and proximity that existed with big business in fulfilling this policy.

The concept of "intimacy" between those who exercise power and those who deal with the capital which for Dr Muscat is apparently inevitable, alarms this Board. Intimacy goes beyond the simple acquaintance or friendship and is well distant from the professional detachment which the public administrator needs to maintain in the exercise of power when conducting its functions. A professional detachment which whilst imposing respect, attention, collaboration and encouragement in negotiations for the creation of common good, requires

correctness and strict observation of all the requirements and rules which ensure good governance.

The friendship, proximity and more so the intimacy favour, on the one hand, the creation of a communion of interest, mutual obligations and personal ties which often condition the objective judgement of the public administrator. It is within this fertile terrain that corruption is often sowed. As is often well stated, power corrupts and absolute power corrupts in an absolute manner. It is given that criminality and corruption are not the monopoly of any administration. The craving for money and power is kneaded in human nature, often doing everything he can to obtain them appropriately or not. However, as long as the country's institutions are working properly and are beyond any influence or undue interference, illegality and corruption are restrained.

On the other hand, when the institutions are internally eroded and no longer remain an effective shield against whoever breaks the law, there is the real risk that illegality and corruption become institutionalised and the rule of law is seriously prejudiced. Then, when the erosion of the institutions is not due to one single action or circumstance, but is provoked and controlled in a systematic manner,

through intricacies and abuse of power by some of those whose duty is to safeguard society, the situation becomes even more serious and dangerous.

A link between the assassination and the collapse of the Rule of Law

From the very beginning, this Board was faced with facts and situations which point to situations of this nature. Situations which link the assassination of the journalist Caruana Galizia with serious failings of the State institutions which failed to act correctly and in a timely manner, not only to prevent this murder but also in investigate immediately and appropriately the serious allegations arising from her writings. Whilst evidence emerges that powerful elements within the public administration could have been involved in illegal activity which was the main subject of the murdered journalist's investigations, it was becoming evident that there was a close link between her assassination and the serious allegations which she was making regarding abuse of power, illegality and corruption by elements at the core of the public administration.

The Board began hearing evidence regarding the origins of a denigratory campaign of Daphne Caruana Galizia's character, of the efforts to hinder and control her

journalistic activities with the aim of suppressing her and possibly silencing her. This evidence is all relevant to the terms of reference of this Board and which consistently points towards the manner in which power was being exercised in the relevant period, by whom it was exercised and for what purpose, what links could there have been between that exercise of power, the alleged illegalities which the journalist was investigating, big business and crime, whether organised or not.

It was immediately obvious in the eyes of the Board that it needed to at least investigate the general framework within which the country was being managed. This was to establish whether the leadership style could favour an environment which facilitated the execution of the assassination. This was especially to determine whether this leadership style could have led to certain individuals within the administration, who today transpire to be persons of interest to the police in the investigation of the assassination and other serious crimes, acquired so much power that they could act with impunity to the point that through the abuse of the same power, they sought to advance their personal interests through illicit, illegal or even criminal conduct.

The Board needed to undertake this exercise also with a sense of fairness in respect for those in a position of authority who were not in the least directly involved or who were totally extraneous to the abuses and irregularities which allegedly occurred at the core of the public administration. Allegations which today and, as time passes, are transpiring to be substantiated both by the evidence which the Board heard as well as from other sources and which today are in the public domain.

Inappropriate criticism

Therefore, the criticism that this Board's investigation had nothing to do with its terms of reference is totally out of place, or as the then Prime Minister Dr Joseph Muscat testified "they hardly contributed so that (the Board) fulfils its task". In the statement made before the Board at the start of his testimony, Dr Muscat said the following:- *"The fact that both the Prime Minister who appointed you as well as the Prime Minister who shall receive your report are expressing this concern, should be taken seriously. Frankly, the direction taken by this inquiry was more of an exercise in curiosity which decreased the credibility and undermined the legitimacy of this very important task. In the best hypothesis, what was mentioned had the objective*

to show whether Caruana Galizia was right or not in regard to some of the items she wrote about which is a legitimate exercise but is not part of the terms of reference. In the worst hypothesis, this inquiry deteriorated into a political exercise."

Dr Muscat and the current Honourable Prime Minister are entitled to their opinion, but this Board shall in no way be conditioned by untoward admonishments or cautions. The Board already explained that only it has the power to interpret the terms of reference which it was given. The facts continue to prove it right that the evidence it heard and which was being revealed with nauseating regularity, was and is all quite relevant in order that it reaches its conclusions.

Not only that. The hearing of the testimonies in public was a unique exercise of transparency and accountability of the administration and how power was exercised. Society was given an indication of what could have led to the collapse of the institutions and authorities which have the function of guaranteeing the rule of law. An exercise which even if not perfect, drew the attention not only of the society which was yearning for information regarding how their country was being managed, but also that of authoritative institutions which followed and are

following the developments in our country such as the Venice Commission and the European Parliament.

Right from the very beginning, the Board was faced with evidence which indicated that there was a link between the allegations of serious irregularities of bad governance and corruption in many of the large projects executed by the government and the involvement of elements within the public administration, including ministers and actual heads of public authorities. Even more serious than this was that there started emerging allegations of contacts and proximity between some of the public officials and those who could have been implicated to plan the execution of the assassination or who thereafter acted to try and obstruct or hinder or divert its investigation.

This fact today is undisputed and the evidence which emerged and which is still emerging today confirms this. This is also confirmed in declarations made by several figures in the highest positions in the country who spoke with authority. Thus, for example, His Excellency President George Vella who was a Minister in the first government led by Dr Joseph Muscat in his speech made on the occasion of Republic Day in 2019, acknowledged that Malta was facing great challenges as a

consequence of all that had happened and which led to Caruana Galizia's assassination. He reiterated that justice had to be done and it was not enough to say that we were sorry for what had happened. On the other hand, *“Due to this case, it is not right that the whole of Malta is thrown in a bad light. Malta is much greater than any group of people whoever they may be, who are involved. Our country's role in the creation of all that is good and for the people's benefit both on a national level as well as internationally should not be buried under the evil which unfortunately occurred".*

More recently, in April of this year, President Emeritus Marie-Louise Coleiro Preca, in an article which she wrote in Malta Today, insisted that the Labour Party ought to apologise not only to its members, but and more importantly to the country. She asked whether the party's principles *“still were to help the workers and the vulnerable, or else to promote only every businessman who knocked on the politician's door".*

It was immediately clear to this Board that, whilst the political responsibilities for what happened may be much broader, it was necessary not only to identify who were the individuals within the public administration who could have been directly

involved in the creation of a corrupt environment which could have facilitated the assassination or strengthened the resolve of those who committed it, but also what could have been the style of government which allowed that this restricted but powerful and strategically positioned circle, to cause so much damage in the implementation of projects which formed the core of the programme drafted for the 2013 election.

This Board accumulated a mountain of evidence both from the testimonies it heard as well as from other sources such as the Auditor General's reports and testimonies given in several inquiries, regarding serious irregularities of bad governance, lack of observance of regulations and procedures intended to ensure transparency and accountability which all were pointing to the same group of people, who all had the former Prime Minister's trust and who were entrusted with the realisation of the projects drawn up in the electoral programme.

This evidence was constantly pointing towards a reality – in truth generally acknowledged – that this restricted circle, which included individuals who were not accountable to the electorate, but who occupied high positions in State entities, due to the power it had, could act under the radar and scrutiny of regulatory

institutions and the same Cabinet of Ministers. The question which the Board needs to answer is whether it is true that therefore there were two levels of government.

Two levels of Government

The reply to this question was given concisely and clearly by the Hon. Evarist Bartolo who, in the relevant period, was the Minister for Education and today is the Minister for Foreign Affairs. He revealed the existence of two levels of Government and in these terms, *"But what we have, we have people with money who use their money to buy influence in every part of life including in politics and I warned that you may have two governments, you may have a government on stage and you may have a parallel government behind the scenes". And when the Board specifically asked him whether there were two levels of government, the Minister replied in the affirmative, "Yes that is why I spoke about those networks. That is why I spoke in that way and warned about the damage which could be caused in the whole country".* He continued to elaborate *"... even if I feel that in our country, it would be easy to have two cabinets, an official cabinet which meets at Castille and you would have other cabinets which meet at farmhouses and on boats and would meet at other places and matters are decided which bypass the institutions of our*

country. I am very worried about this. I am very worried and it is not enough to be worried if you do not have institutions, if you allow power to be concentrated on just one side, you will have problems".

Later on, during the same testimony, the family's Lawyer referred the Minister to an interview he had given in the programme "Conflict Zone" in which he said that: "In a small society, personal networks and personal relations are stronger than institutional ones" and that "there is no boundary between the first and second group (networks), personal versus institutional". And the Lawyer asked him, *"Now when you are pointing out that therefore there was a shadow government, and I believe that you used 'shadow government' as a term in that interview, and on the other hand you are pointing out the figure of Keith Schembri, are we to understand from what you are stating that the 'shadow government' was led by Keith Schembri?"*. The Minister confirmed that that was the case.

The concentration of power and the kitchen cabinet

This style of government managed by Prime Minister Muscat and this *modus operandi* was confirmed unequivocally by the former Minister for Finance Mr

Edward Scicluna who voluntarily and without prompting from the Board confirmed that *"like any government and in any country, this would be the so-called kitchen cabinet, that is, there would be a few people always present and involved in certain matters"*. He declared that he was not part of that kitchen cabinet. The Minister felt ostracised to the point that when he would be at home, *"I would tell her*

– Listen, I am experienced and all that in negotiations, how come I am never invited in to negotiate? ... in anything ... ". When asked to give the names of those who took part in this kitchen cabinet apart from the Prime Minister and Keith Schembri, Minister Scicluna declined to do so because he said *"I cannot name names due to the reason that this is my opinion. That I was not part of the inner core; to feel that you are excluded from certain matters but I was not that intimate with the Prime Minister ..."*.

Later on, he elaborated, *"everybody knows of Keith's closeness with the Prime Minister and that they were almost one and the same in the sense of a team. On these projects being mentioned, of the power plant and the hospitals, there was Konrad with them. That is, I can only state as much. That is, I cannot conclude regarding the others whether they were definitely there or not, I cannot say"*.

Prime Minister Muscat in his testimony tried to minimise Professor Scicluna's testimony. He maintained that he did not exclude that he had used the phrase 'kitchen cabinet' because the phrase had been thrown out to him (to Minister Scicluna) whilst he was testifying and thereby, in one way or another, he coined it for himself, without malice. This is a totally incorrect affirmation. Not only because he used the phrase spontaneously and without prompting, but also because the Minister seemed truly annoyed that he was being burdened with a responsibility for decisions in which he was not involved in any way even though these directly impinged on the finances, the capital expenditure and the economic planning of the country.

Prime Minister Muscat tried to give the impression to the Board that the government he led met the Cabinet regularly and no Minister and no one else ever told him in one way or another, that they believed that there was a kitchen cabinet, that there was a restricted group. He admits that he had his team comprising individuals who were not ministers, but who were in his secretariat, primarily among them was Keith Schembri who was the driving force. Dr Muscat maintained that the Chief of Staff's functions remained the same as they always were under diverse administrations even if under the different titles of Head of Secretariat or

Personal Assistant or Head of Cabinet or of the Office of the Prime Minister. His functions were not changed. Dr Muscat's declarations are contradicted by several testimonies and evidence which show the great power that Mr Schembri had and the authoritative manner in which he exercised power.

Thus, for example, Minister Bartolo testifies *"If you see other tweets, I, for example, was clearly commenting on Keith Schembri's influence in the Cabinet and in these networks was exaggerated and wrong. And I spoke and I spoke about it clearly, that is, you will find other tweets where I tell him that you absolutely cannot have a person who has a role with all that authority, with a concentration of power which is wrong ... Because in the general context this is what it meant that the power which he concentrated in his hands, was not beneficial to the government nor to the country"*.

Power in the hands of unelected individuals

A concentration of power in the hands of individual who are not democratically elected and who therefore are not accountable to the electorate for their deeds, easily leads to the abuse of power reinforced with a sense of impunity. This was

especially when the person would not be qualified in the discipline of the rules which regulate public administration and would not be aware of the duty to follow them and if they would have, as was the case here, the blind trust of the Prime Minister. It transpired amply proven from the evidence but also from the same admission of Dr. Muscat that his Chief of Staff had a free hand to act because he was acknowledged to be competent, that he was a doer and produced results.

It is not this Board's task to criticise and decide on the validity of the style of government which Prime Minister Muscat adopted to manage the public administration. This was his political decisions and is not included in the Terms of Reference of this Board. However, what is relevant is whether that style of governance reached such a level that allowed that a small clique of people abused of the power given to them to enrich themselves unduly to the detriment of the country which they were obliged to serve. More so – and this brings us closer to the terms of reference of this Board – whether this leadership style was such that those who expected to make undue substantial gains with their personal involvement in large projects initiated by the public administration, felt threatened by Caruana Galizia's investigative journalism. Journalism which could prejudice not only their projected gains but also and worse still which could expose them to the

real risk that their wrongdoing – as actually happened – would eventually be exposed with disastrous consequences for them.

From the evidence it is established that this concentration of power in the hands of a selected few to implement the major investment projects in the country which were to boost the economy according to the policies drafted in the 2013 Electoral Programme, was determined from the very beginning, probably well before that election.

Prime Minister Muscat's political decision

It was the then Prime Minister's political decision with the collaboration of his Chief of Staff whereby they decreed to keep under their control and under their watch those aspects of economic development which involved heavy capital investment and which had to foster wealth. This was at the exclusion of other ministers who normally one would expect to be involved at least certainly up to the negotiation and finalisation of the project framework.

This was a decision which left a particular imprint on the leadership style but it was in no way censurable from the good governance aspect unless the administrator acts with good intentions, and with respect for the applicable rules including those of transparency and accountability. Rules which impose that it is the whole Cabinet that gives the general direction regarding how the public administration should act in every sector and that all its activities remain under its final control (Article 79(2) of the Constitution). This subparagraph of the Constitution is drafted in precise terms which delineates not only the functions to be undertaken by the Cabinet, but also the parameters in which it is collectively responsible to Parliament and the people.

The Cabinet's responsibility

It is obvious that this Cabinet should also have *"the general direction of the Government"* and was not expected to involve itself in the details of the implementation of activities resulting from that direction. This implementation rests with the individual ministers under their portfolio and who remain individually responsible for their decisions and how they implement them.

In this regard, therefore, the submission made to the Board by various ministers who testified before it that they were not informed of many of the details of the projects implemented by other ministers, including therefore those of the so called shadow cabinet, is correct and should not be surprising.

On the other hand, whilst it was expected and understandable that the Cabinet is not informed of many of the details of the implementation of the government's policy for which the Prime Minister and the Minister responsible had to bear responsibility, it was obvious that the Cabinet at all times had to be in a position to exercise government control. Control which could only be exercised if it were well informed with the general direction and the essential points of the plan for the implementation of government policies, to be a participant in the decisions in their regard and to be informed of the manner in which the decisions were being implemented. This would be to the point where it would be able to exercise effective control and ensure their correctness.

It is in this regard that this Board identifies serious failings in the style of governance which in its opinion lead not only to the concentration of power in the hands of the few beyond what was legitimate, reinforced with a sense of impunity since this

exercise of power in practice was not questioned by anyone, but also to the distortion of the essential function of the Cabinet to have the general direction and control of the government on those initiatives and projects decided and implemented by this restricted group.

Safeguarding the Constitution

It is emphasised that often one ignores that, the government of Malta *"shall consist of the Prime Minister and such number of other Ministers"* which compose the Cabinet (Article 79(1) of the Constitution. Whilst the Constitution grants a lot of power to the Prime Minister in the fulfilment of his functions as the head of the government (a concentration of power which everyone is agreeing should be revised and limited), it is a fact that the same Constitution today requires that the government of Malta should be a collegial one and therefore the collective responsibility which this Board repeatedly refers to during the hearing of the testimonies. A leadership undertaken by the Prime Minister and his ministers together.

It is actually in this context that it can be said that all the ministers who testified before this Board expressed their reservations that they were being burdened with responsibility for the implementation of Government projects regarding which today there are allegations of serious irregularities, when they were not involved in them in any way. In the best of hypotheses, the Cabinet should have been informed and decided regarding the guidelines of large projects of privatisation and investment, even with the participation of external investors, in vital sectors of the country's economy. It should not have been simply offered some generic presentation after everything had been agreed and completed. It appears that these generally were matters reserved for the Prime Minister and his team led by the Chief of Staff, with the other ministers accepting this situation, naturally against their will, even if the project would lie strictly within their portfolio.

A style of leadership which even if in itself it is not illegal, when it is manipulated in a certain way, it can lead to situations which undermine the collegiality of the government imposed by the Constitution.

Excluded Ministers and Parliamentary Secretaries

Situations where a Minister or Parliamentary Secretary is relegated to be a simple administrator of the portfolios entrusted to him and he would have no knowledge or involvement in decisions and major infrastructural projects which interest them from his Ministry and even less so having a decisive say in them. He was expected and obliged to implement those decisions and execute those projects, which would practically be imposed on huma and they would even defend them even when he would have serious reservations about them.

The Board heard testimonies directly from Ministers and former Minister who confirmed this style of leadership as a system which conditioned the governance of the most sensitive sectors of the administration in the country in the relevant period.

A Few Examples

Reference is being made to a few of the many examples which demonstrate this reality:-

- The Honourable Dr Michael Farrugia, today Minister for the Elderly and Active Ageing, between March 2013 and April 2014, was Parliamentary Secretary at the Office of the Prime Minister responsible for planning and simplification. Dr Farrugia was emphatic that as Parliamentary Secretary responsible for the Lands Department, the Prime Minister gave him full authority “carte blanche” to manage the department.

When asked how therefore he was involved with the facts which occurred at the time, regarding the resolution of the Café Premier concession which fell under his responsibility, he declared more than once that he was not involved in any way. He declared “I was not involved and I was not informed”. When asked who was involved, he replied, “I don’t know”. It was a feeble and non-credible attempt to hide the identity of the Prime Minister to whom he reported when he himself had accepted all the facts which emerged during an inquiry before the Parliament's Public Accounts Committee.

- The Ministry for Education does not seem to have been involved in any way in the negotiations for the implementation of the American University of Malta project, promoted as the biggest foreign investment in the education sector in our

country. The expected high profile of the institution with the influx of thousands of foreign students not only should have had an impact on the economic regeneration of the neighbourhood where it was going to be established but also and even more so on the orientation and development of tertiary education. The project which ended up marred in controversy was piloted by Projects Malta under the responsibility of the Minister for the Economy and Development and the negotiations were led by the Prime Minister and his Chief of Staff but not the Minister for Education who always distanced himself from it.

- The Parliamentary Secretary responsible for Health, who today is the Minister for Health and Deputy Prime Minister, was not involved in the privatisation process of part of the health services and the transfer of hospitals to the company Vitals. The Honourable Minister Dr Chris Fearne explained that in 2014 it was the Prime Minister's Chief of Staff, Mr Schembri, who asked me, *"Are you interested that we take the model in place at the time of Louis Deguara that the Minister or whoever would be responsible for health would take care of the health part, of the health services and public health – but the infrastructural projects would be in another Minister's hands"*. In fact, he was appointed Parliamentary Secretary under Minister Konrad Mizzi who was appointed as Minister for Energy and Health, with

the role of taking charge of the health part. The Hon. Fearne then makes an interesting observation

"In fact, in the civil service, I think there was a situation which I hardly know of anything similar to it that I had a Parliamentary Secretary who answered to me who was different from the Parliamentary Secretary which Minister Mizzi had", the Minister with whom he was the Parliamentary Secretary.

He also confirmed that the Vitals contract was not yet signed. He declared that *"The negotiation process with the preferred bidder, the RFP drafting process, the adjudication process and the negotiation process with the preferred bidder were not under my remit*". The Parliamentary Secretary was informed of the project after a Concession Agreement was signed and he remembers *"that there was a discussion both in the parliamentary group for information as well as a discussion in the Cabinet and there was a discussion in Parliament with the Opposition not having voted against on that day. That is because on paper it appeared to be a good project"*.

- It seems that the same *modus operandi* was adopted by the government to implement large infrastructural projects including energy privatisation. This was with the notable difference that the Electrogas contract negotiations fell directly under the remit of the Minister for Energy the Honourable Konrad Mizzi. What was really surprising for this Board was the fact that the operation, which was going to crucially impact the country's economy and finances, the Minister responsible the Honourable Professor Edward Scicluna, was not involved in any way in its programming and negotiations. This was when this type of project and entity did not simply require a one-time expenditure allocation, regardless of amount, but it meant that the government was bound for a considerable number of years to a substantial recurring expenditure which would notably, if not significantly, impact the country's economy.

- In this regard, in the testimony of Mr Alfred Camilleri who has long held the position of Parliamentary Secretary at the Ministry of Finance since 2006, threw a clear light on the role of the Ministry of Finance and on the involvement of that department in the implementation of large infrastructural projects and up to what extent it was expected to interfere to verify their sustainability and the correctness of the observance of procedures that ensure transparency and accountability.

Mr Camilleri emphasised that the Ministry of Finance does not implement projects, which were always and still are implemented by the relative Ministries. It does not get involved in the project approval and implementation but facilitates its financial aspect. He emphasised that very often, whether projects are undertaken or not is decided at Cabinet level, “We must not forget that this country is led by a Cabinet and not by one person, that is the Cabinet decides”. The Ministry of Finance then has the duty to ensure that that decision is implemented. The problem appears to be that in many of these crucial decisions, the Cabinet was not involved effectively and therefore the Minister for Finance was not informed of the financial implications of these projects.

A leadership style that can be abused

It is that style of governance that has been practiced for several years one administration after another. This is because in the country regulatory institutions have been set up whose functions is to ensure regularity in all procedures which should lead to the accomplishment of a process/project, including its feasibility and sustainability, the financing required and the due diligence on the investors’

credibility. One of the most important institutions in this regard is the Department of Contracts which works autonomously and has the objective of guaranteeing consultation and transparency and a level playing field in the public procurement procedures according to rules and criteria established by law and regulations.

Mr Camilleri confirmed that there were instances where projects were submitted to the Department of Contracts and these were approved and therefore the project would proceed even if there were not enough financing. Today the Ministry requires that when there are large projects, the Department of Contracts basically had to alert the Ministry for Finance and advise them “here there is a project with this financial consequence and we either approve it to proceed or we disapprove of it”. It is interesting that Mr Camilleri testified that the Ministry started enforcing assiduously that it should be informed when there was a strong financial commitment in large projects in view of what had occurred regarding the kitchen extension and massive development at St Vincent de Paule residence for the elderly by James Caterers and DB Group. An expenditure which, according to the Auditor General, was authorised by direct order in breach of all the regulations which regulate public procurement.

The Auditor General investigated this project and reached the conclusion that he found no reason to justify the government's decision to ignore the law and that in his opinion the contract could be considered as invalid. It is certainly interesting that he had made a remark which is relevant to this Inquiry, when he notes that the facts clearly indicate the lack of every political authorisation with which the government endorsed its commitment to such large expenditure in this project. The Auditor notes that the agreement for the leadership of the additional blocks which had to be constructed at the hospital had not been submitted for the attention of the Cabinet, despite the fact that this project was one of national importance.

More interesting and relevant is the declaration of the current Honourable Prime Minister that in his opinion, a project of that entity had to brought to the consideration and approval of the Cabinet. An appropriate declaration but also an admission of censure, that when in previous years this did not happen in similar circumstances in other large infrastructural projects, the same mistake was made with the same consequences. It is essentially within this lack of observance of the regulations and the laws that the Auditor General identified that a culture of impunity develops.

The circumstances regarding the Electrogas project, the privatisation of the hospitals and others, are naturally not identical to those of the St Vincent de Paule project, however all the arguments to which the Auditor General alludes in this regard may be applied to them *mutatis mutandi*.

In fact, the Auditor General had the opportunity to investigate a number of these projects and reach the conclusions that in all of them there were strong elements of administrative irregularities and non-observance of procedures and regulations which cast a dark shadow on the workings of the regulatory institutions and of the private individuals as well as public officials who were involved or interested in some way in the implementation of these projects. There is no doubt that the laws, regulations and regulatory institutions intended to ensure good governance, transparency and accountability in the contract procurement sector and the approval of public expenditure have often failed. They were totally inadequate to protect against attempts of manipulation and abuse by whoever intended to make undue personal gains through illicit, illegal and corrupt conduct. More so when these acted in collusion with whoever has power in administration.

The St Vincent issue is the latest report in a series of investigations conducted by the Office of the Auditor General following allegations regarding these large projects and others. Reports which confirm not only serious irregularities and abuse of power which undermined good governance but also the negative effects caused by inappropriate closeness and familiarity between the public administrator and big business. The Auditor General repeatedly identified cases where the public administration often chose to ignore or circumvent the regulations intended to ensure the auditing and control of spending of public funds. This was in order to ensure that the project would proceed, would proceed quickly and to the satisfaction of the investor with the excuse to avoid the so-called excess bureaucracy specifically aimed to avoid abuse. The worst thing is, and this is truly deplorable, whether the public administrator was ready, as happened in the St Vincent case and others, to break the law to ensure that the project is executed.

It transpired clearly that people in business often consider regulations and laws as extra obstacle to fulfil their goals. When this attitude finds reassurance and cooperation by a few within the public administration who involved themselves in a personal manner with businessmen not only to promote the declared government policy that its priority was the creation of good, but also to promote

their private interests, therein lies the best recipe which favours abuse of power and creates the strongest sense of impunity. A recipe which becomes even more insidious and dangerous when power is concentrated in the hands of a few and when those few manage to manoeuvre having the full control of the principal activity which generated the economic development in the country and even to infiltrate regulatory institutions which should restrain abuse and ensure public order.

Chap. 6
The exercise of power and the assassination

Chapter VI

The exercise of power and the assassination

This Board needs to carry out the task it was assigned strictly within the parameters of the terms of reference given, which determines whether and how State entities or persons forming part thereof exercised or failed to exercise the power they had in a way which contributed or enabled the execution of the assassination. From the garnered facts, from the hearing of the testimonies and from the gathered evidence, the Board reaches the following general considerations which shall be elaborated hereunder when it considers in detail every one of the three terms of reference it was given. It emphasises that its motivations are in no way exhaustive even when it considers that they remain substantially valid and correct because they are based on certain and conclusive evidence which totally support the conclusions which it shall reach.

The Board records as a fact that during the testimonials before it, evidence kept on emerging both in the proceedings before the courts as well as a result of very useful and expert investigations by journalists which with dedication and tenacity continued and are still following complex intricacies and manoeuvres, which throw a light on how power was being exercised in the relevant period. This was not only

by State entities or by persons forming part thereof and third parties involved with them in some way and who were within the sights of the assassinated journalist's writings.

Some of these facts and circumstances may not have been known by Mrs Caruana Galizia but are useful in order to close up the framework of a complex net created to also ensure impunity in the exercise of power. Facts which may prove useful for other investigations which are being conducted or which are still to be conducted by the competent authorities, but which, for the purposes of this Inquiry, have only a corroborative value to strengthen further that which the Board had already surmised form the gathered evidence.

It was for this reason that the Board decided to end its investigation and the compilation of evidence when it had collated in its opinion, all that was necessary, in order that on the basis of probabilities, it would lead to the conviction that it can serenely report on the questions made. Beyond the restricted terms of reference which stem the workings of this Board, every aspect of this complex reality which it is handling, at times superficially as necessary because, for the purpose of this Inquiry, it was not necessary in the eyes of the Board to investigate further, can be

further delved into, verified and analysed not only by individuals who are specialised in the subject, but also by competent authorities in the exercise of their own functions.

The point of departure

As far as this Board is concerned, the point of departure, which is today accepted as a certainty by everyone, should be that where the assassination is closely linked to Mrs Caruana Galizia's investigative journalism and to the revelations she made or was going to make, regarding the behaviour of elements within the public administration and big businesses in the implementation of projects which we have already mentioned and others.

Behaviour whereby the assassinated journalist often identified conduct which in her opinion was abusive, dishonest and illicit if not also criminal. Investigations which were not limited to the implementation of projects but also to the behaviour of politicians and politically exposed persons of a different political ideology both on the government side as well as on the opposition side. Investigations which always had as their objective the exercise of power and how, in her opinion, this

was being exercised and abused. This was both from operators as well as entities in the economic sector, as well as leading figures in the political sector.

For the purposes of this Inquiry, it is altogether secondary as to what led this assassinated journalist to dedicate her life to this type of investigation, whether she had a political agenda, as many believed especially in the opposite camp, or whether she was simply motivated by a sense of justice and correctness in the public administration and the good of our country.

However, the fact is relevant and essential that the Board considers that Caruana Galizia's investigative journalism, even if in some instances it was aggressive and violent, was legitimate within the limits of the right to freedom of expression granted to her by the Constitution and the European Convention on Human Rights. This is also because in her work, she focused on matters which in the most part are certainly of public interest. So much so that to date they still draw society's attention and are investigated for various reasons by the competent authorities.

A legitimate exercise in her fundamental right for freedom of expression which requires that the State guarantees and promotes an environment which favours a

public debate on matters of general interest. This is well within the limits of that which the European Court in its judgement Dilk vs Turkey and others affirmed in regard of this fundamental right that:- “is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any sector of that protection. Such are the demands of that pluralism, tolerance and broad mindedness without which there would be no democratic society”.

The public interest element in that the investigations can be said that almost all of them involved the conduct of the public administration or of third parties who had close relations with the said administration, is essential for the purposes of this Inquiry. This is because the State should acknowledge that in a democratic society, the public authorities should be exposed to the permanent scrutiny not only by the citizens, but also and maybe more so, by independent journalism and media and by whoever is in a position to attract the public’s attention to the necessity that solutions are found for situations which are considered illicit or illegal.

In this case, in several judgements including in the case Vides Aizsardzibas and Klubs vs Latvia and in the case Tatdr and Faber vs Hungary, the European Court affirmed

that special attention had to be given for the element of public interest which would be involved in the disclosure of information by journalists and which could interactively contribute to debate on matters which affect society. “In a democratic system the acts or omissions of government must be subject to the close scrutiny not only of the legislative and judicial authorities, but also of the media and public opinion. The interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence”.

The European Court affirmed this with greater vigour in cases which dealt with allegations of corruption in State institutions, abuse of power, organised crime and serious violations of the country’s financial laws, among others. These were all matters which were the object of the investigations of the assassinated journalist. One may agree or disagree with the inferences that the journalist made from the facts that she garnered. One may consider them as far-fetched, prejudiced, exaggerated or otherwise, however one cannot fail to agree with the fact ascertained today and ascertained by everyone, even by the public authorities, that in the allegations there was always a strong element of factuality which could be, as it was almost always, verified.

This tenacious and objective effort in the search for truth, even if at times this was slanted with suppositions and personal opinions which could be considered by some as prejudiced opinions, together with the undisputed fact that the journalist Caruana Galizia was considered by almost all the authorities as an open source of information which had to be taken into consideration in the exercise of their functions, invalidated and gave credibility to her contribution to the political debate in a society which should embrace a participatory democracy.

In this respect, the Board finds reassurance in the consideration made by the European Court for Human Rights in the case in the names Kudeshkina vs Russia which concerned corruption, organised crime and the judicature whereby it maintained: “However, even if the applicant (the journalist) allowed herself a certain degree of exaggeration and generalisation, characteristic of the pre-election agitation, her statements were not entirely devoid of any factual grounds .... and therefore, were not to be regarded as a gratuitous personal attack but as a fair comment on a matter of great public importance”.

The confrontation and lack of agreement in a political debate even if expressed in very hard terms are, as a rule, protected by Article 10 of the European Convention which protects the right of every individual to have and express opinions freely without interference by any public authority even if these opinions differed from those of the majority. This last consideration is being made in order to emphasise that even on the level of debate and political dialect, the journalist Caruana Galizia exercised her profession of journalist legitimately and therefore she had the right to the full protection from the State entities. Not only for the safety of her person and her life but also to assure that she could exercise her profession to disseminate information and share views and opinions with others, with total freedom and without pressure or threats. The State on its part was obliged to provide her with such protection and to guarantee her these rights. It should stand to reason that the greater the credibility of the journalist and the impact that her message has on those who follow her, the greater the duty incumbent on the State to extend all the protection she needs.

The Board now hints at the impact the assassinated journalist's writings had on the exercise of political power and on the exercise of economic power.

The impact on the exercise of power political

The Board considers that broadly the investigative work of the journalist Caruana Galizia can be considered in three distinct phases or periods, determined by what would be happening in the country's leadership from time to time.

A. Until the 2013 election

The first phase was the one until the 2013 election where the journalist was mainly active as antagonistic and critical of the Labour Party in Opposition on a purely and typically political level, although she did not fail to criticise the policies and actions of the Nationalist Party in Government where she was of the opinion that they merited her censure, it cannot be doubted that she supported the government of the day with harsh and sustained criticism of the former Opposition.

Therefore, once can affirm that she essentially had a political agenda to favour the Nationalist Party with criticism for the Labour Party. Her writing style was already incisive and aggressive such that she began to gain notoriety and credibility from thousands of followers who started following her work and investigative writing. Since that time, the Labour Party started considering her not only as a journalist in the opposite camp who could harm it, but also and even more an as a political

adversary with the potential that if not restrained, could develop into a determining element which conditions the electorate and endanger the favourable result which it was anticipating when the election was held. It was for this reason that the need was felt to find means to counteract the negative effects of her writings.

Unfortunately, in Malta vilification and dehumanisation of political adversaries are often the most negative traits of the political conflict which are almost always personalised, with direct attacks aimed at the protagonists in politics rather than what they are representing. This has been so for decades and is still the reality in the political scene. The politicians themselves realise and acknowledge that this was an aspect of political life which they needed to confront and abide by. Even in this however there are limits of tolerance that should not be exceeded.

This type of writing which goes beyond these limits should be considered irresponsible, illegal and therefore sanctionable. After all, it is a threat to democratic life because it endangers in a direct and real manner the exercise of the fundamental right of freedom of expression. If this applies to political protagonists, it applies more to journalists who investigate and write regarding matters which

impact the country's administration, as Caruana Galizia was doing ever since even 2008.

A clear distinction which needs to be made

However, there is a clear distinction which has to be made between the position as of 2013 and what occurred afterwards. Undoubtedly until that day the confrontation between the journalist and politics was one of political debate but essentially correct although not lacking verbal violence which at times resulted also in incidents of harassment and physical violence by hotheads and irresponsible individuals. Deplorable incidents which unfortunately are the ugly side of politics and originate transversally from persons having different political beliefs.

There were also incidents in the past which ended up in deaths and tragedies. The Government of the time was aware of the tone of the political confrontation prior to the Election was escalating and of the central figure which the journalist Caruana Galizia was gaining in that regard which was exposing her to a risk of being a victim of some random act by an irresponsible person. It was for this reason that the Commissioner of the time Michael Cassar had taken steps to extend to her physical protection and patrols in the vicinity of her residence. It was for the same reason

that as soon as he was sworn in in 2013, the Prime Minister Dr Muscat had rightly and personally ordered the same Commissioner to continue extending the same protection.

B. The scene changed after the 2013 Election

After the 2013 Election and the change in government, the environment in which the journalist exercised her profession changed radically. Until that day, she had in her sights, and conditioned by various circumstances but also by her conviction and her political orientation, the party in opposition and its activists who were aspiring to gain power. Therefore, as a rule, she did not investigate and write about State entities and the persons forming part thereof nor about persons who exercised power in public administration. She used to criticise and attack the party in opposition. She was not confronting the exercise of power. As soon as that party became the party in government, it is obvious that once she continued to criticise the public administration with the same vigour and incisiveness, she started to be identified as part of the opposition and therefore as a potential threat to the retention of that power.

This change meant that Caruana Galizia's writings started to provoke a strong reaction from the very beginning on two distinct albeit related fronts. On the one hand the public administration could consider that the assassinated journalist's work was hindering it in the fulfilment of the government's operations; on the other hand, the political party, which was now in government, started considering her as a real threat which could contribute to the loss of power which it had gained and is enjoying due to the fact that the electorate had entrusted it with the country's management.

A distinction between the Government and a Party in Government

It is an unfortunate reality that often, the essential and clear distinction which should always be held between the government which has the obligation of manage the common good for everyone's benefit, according to the established laws and regulations, and the political party that it embraces, which first and foremost mainly has the interests of its members at heart that they obtain power or protect it and preserve it, is not upheld.

This is a fundamental distinction in the democratic process which however is often ignored. A crucial distinction which is fundamental not only to ensure good governance but also because it guarantees that the elected government is obliged to manage the common good in everyone's interest. A distinction which also means that the public administration must be transparent and accountable for its deeds to the whole electorate at all times. Therefore, it must be subject to continuous scrutiny not only by the State bodies which have this function but also through journalism and all those who have at heart the manner in which the common good is being managed.

It is therefore for this reason that this distinction between the government and the party is relevant for this Inquiry. This is because the State, as distinct from the party, has the obligation to:-

1. Guarantee the journalist's right to investigate and report the conduct of the public administration at all levels;
2. To encourage and promote such investigations which, even if undertaken by a journalist who is considered as unsympathetic to the government of the day, remain a healthy exercise in participative democracy in the common interest;

3. Accept the results of these investigation and where necessary commits to investigate them further in order to ensure the veracity of the allegations made; and

4. Ensure that all the necessary steps are taken by the State entities, in order to restrain abuse and illegalities, to redirect the rule of law by taking the necessary steps against the persons responsible.

The State has the obligation to create and ensure a free and serene atmosphere in which a journalist may carry out his tasks free from any undue interference, threats or violence of any kind, with full access to crucial and timely information when necessary and when this is of public interest. In this context, the State should consider the journalist even if and when they would be unsympathetic to its policies or to the way it was managing, not as its adversary or enemy, but as a valid collaborator in the search for truth and a useful instrument to ensure the right for good administration to the citizens.

The citizens' duty to be informed

In this context, it is maintained that the European Court for Human Rights is acknowledging that Article 10 of the Convention which pronounces the fundamental right for freedom of expression includes therein the right to access of information and documents held by public authorities which they are obliged, within reasonable limits established by law which are justified in a democratic society, to place those documents and information at the disposal of the public. This acts as a practical and effective guarantee for the exercise of that fundamental right.

The public's right to be well informed regarding how its assets were being managed and thus ensuring transparency and accountability in leadership, is now balanced by the obligation of the State and its entities to inform the citizens. An obligation which, whereas before it could be argued that it was only an essential principle of good governance, has been transposed into the European Court jurisprudence as a legal standard which binds the State and its entities.

This is also because it was recognised that it is essential in order to ensure that appropriate and serene atmosphere in which journalism may operate effectively.

In fact, the Court, in the case Guseva vs Bulgaria, emphasised that in previous judgement, a principle was established that - “In case where the applicant was an individual journalist and human rights defender it has held that the gathering of information is an essential preparatory step in journalism and is an inherent protected part of press freedom”. It continued to state that “Obstacles created in order to hinder access to information which is of public interest may discourage those working in the media or related fields from pursuing such matters. As a result, they may no longer be able to play the vital role as public watchdogs and their ability to provide accurate and reliable information may be adversely affected”.

The Board at this stage is emphasising this obligation of the State and its entities, which is legal today, because the evidence it has demonstrates that the public administration failing to be transparent and accountable for its actions by providing access to information and documents of public interest to its citizens and particularly to journalists, is a main factor in creating a climate of uncertainty, doubt and reasonable suspicion that an operation of a State entity or authority could have been tainted with irregularity, abuse or even corruption.

The journalist's access to information

This reluctance of the public administration to provide information and access to documents or to be given partial information or incomplete documents, and not in a timely manner, often with an attitude that the public administration was not bound to justify its actions, at that stage, was not some new negative trait which started in 2013. It certainly started beforehand, even if at a lesser extent and at a time when there was little awareness of this State obligation to communicate with the citizens.

It is certain that after 2013, when investigative journalism in the country, in particular with the assassinated journalist's work but also that of others, started requiring more information to verify the correctness of the stories being investigated, the refusal to give such information became the order of the day. A refusal that was and is still aided by a freedom of information law (Freedom of Information Act) interpreted in such a way that it protected the public administration beyond what is required and allowed today in a democratic society. This was the difficult and noxious environment in which Mrs Caruana Galizia mainly exercised her profession, but also other journalists. It was a hostile environment which obviously instigated a strong reaction against her by those who did not agree

with her, Not only that. It was more hostile because from the facts, which have now also transpired from the evidence before the Board and also in the public domain, she had established facts from her investigations for which she wanted a confirmation and which today they transpire to have been substantially correct. Facts which became allegations of irregularities by the administration, abuse of power and corruption which as a minimum transpire to be well founded and provide elements of substance so much so that they were and still are being investigated by competent authorities including the Judicial Police, the Auditor General and others.

A real risk

Allegations which involve among other a Minister and leading officials in the public administration, heads of departments and authorities, as well as third parties including several involved in big business with the said public administration. Thus, these people who all held a position to exercise power, were aware of the fact the Mrs Caruana Galizia's investigations were narrowing the possibility that their deeds, both if tainted with abuse of irregular administrative procedures or even

worse through attempts of undue if not illegal gains, rather increased the personal safety and security risk of the assassinated journalist.

A real risk which in normal circumstance should have led the competent authorities to prepare for it and extend all the necessary protection to her. However, the circumstances were not normal. What was obvious and clear for almost everyone was that with her writings, Mrs Caruana Galizia was seriously irritating individuals at the centre of power, who were strong not only politically but also economically, it was not obvious for the State entities entrusted by law with the duty to safeguard her physical safety and that of others like her, who ran the real risk of being the target of an attack by whoever wished to silence her.

In the opinion of the Board, therefore, all the evidence it heard indicates that the State through the various entities which comprise it, failed since 2013 to satisfy the obligation that they had to create and ensure a free and serene atmosphere whereby the journalist Caruana Galizia could do her duty to investigate and report on public administration activities, the behaviour of public officials and to freely communicate her opinion about them. The State also failed in its primary obligation from that time to acknowledge the risk in which the assassinated journalist was

working which was far greater than was expected and beyond that which other journalists in the same period were exposed to.

A threat to political power

Not only that. The Board considers that this responsibility of the State and entities comprising it is more serious than that. This is because it was not limited to its dereliction to guarantee to the journalist her right to freedom of expression and to protect her as appropriate. The evidence shows that there were elements both within the State entities and in particular within the Office of the Prime Minister that actively acted to thwart the journalist in her work and contributed to a sustained campaign in an organised manner. A campaign which formed part of a dehumanisation process, inspired by hate at least until the said Caruana Galizia published the Panama Papers in 2016, mainly a matrix of political contrast.

This sustained and strong denigratory campaign found its strongest outlet in social media and its worst expression was the blog which was set up and led by the Honourable Glenn Bedingfield who occupied a position within the Office of the

Prime Minister in Castille. This shall be explored later on when the Board proceeds to consider its terms of reference in greater detail.

At this stage it is enough to emphasise the fact that Mrs Caruana Galizia, well before the 2013 election until she was assassinated was considered by the Labour Party, in Opposition and then in government, more as a formidable political adversary rather than a journalist, with an agenda and having difference opinions which had to be thwarted on a political level. Therefore, she started to be considered as a threat to political power, capable of exercising great influence on thousands of followers. Politically therefore, the need was felt for her to be suppressed in some way.

The fact that as from 2013 Caruana Galizia started to be considered by the Government as a formidable political adversary who therefore had to be attacked with all the accessible and applicable weapons on partisan political level and not as an investigative journalist who was doing her job is crucial for this Inquiry.

The Board refers to part of the testimony given by Dr Joseph Muscat in the sitting of 4th December 2020 in which he not only gives a clear indication that he personally

followed at that Mrs Caruana Galizia wrote and everything that was written about her, besides the great impact that her writing was having with her incisive style regarding the public administration actions on the abusive and corrupt manner in which, in her opinion, power was being exercised:

"**Dr Joseph Muscat:** *Please allow me to tell you Mr Justice in my opinion, in my humble opinion that Daphne Caruana Galizia was stronger than the Times, Independent, the Malta Today and all the newspapers altogether here in Malta, ok? So, she might have been a one woman show but she was much more powerful than the whole lot when it comes to following and the way she worked that is ...*

Justice M. Mallia: *In fact, not to interrupt you, but even Chris Cardona in an interview that he had with the Times described her as "the most formidable political adversary you could possibly have"*

Dr Joseph Muscat: *Wasn't she the Opposition? The Opposition had been finished no and the irony of all this was just one. That's why it's mind boggling for me, mind boggling. That at one time after the 2017 election when she started focussing totally on the Opposition and she was becoming, I know that the family will not be happy with what I'm about to say, almost politically irrelevant because she was fighting the government and fighting the opposition, she was then killed. That is to me it is*

mind boggling. Whoever committed this deed apart from being a criminal and an assassin, he is ignorant too. With all due respect it does not tie in".

A political adversary who had to be thwarted

This concise and clear declaration confirms that the government was considering Mrs Caruana Galizia as a major political adversary if not the sole one. A political adversary who had to be confronted and thwarted. However, it is a declaration which leads the Board to the following reflections among others:-

a) Dr Muscat considers Caruana Galizia solely as a political figurehead and her writings regarding how relevant she was or nor, that is, how effective she was to influence public political opinion.

b) Without being prompted in any way by the Board's questions, Dr Muscat assumes that her assassination had a direct link with politics so much so that he observes that whoever committed the crime "apart from being a criminal and assassin he is ignorant too" just because he committed it at the time when Caruana Galizia had become "almost politically irrelevant".

c) Such a declaration from a person who used to hold the Prime Minister's position at the relevant period, who was therefore well informed of the facts and was aware of other lines which were being investigated to establish the motive of the murder and considering the close ties with persons who subsequently were of interest to the police so much so that they were investigated including his Chief of Staff, has great importance and significance.

d) Even if eventually the involvement of other individuals in the assassination is established by some motive extraneous to politics, today there can be no doubt that the assassination has as its matrix, the exercise of power and the involvement of individuals within or close to the public administration of the time.

e) It is noted that Dr Muscat considers the assassination solely from a purely political perspective. He considers that whoever committed it is ignorant as they do not appreciate that politically they did not need to commit it because the victim had become irrelevant. He attempts, therefore, to reduce the assassination to a deplorable and condemnable political episode and committed by an irrational

person to silence a political adversary. He attempts to compare this assassination with other political crimes which occurred in Malta even in relatively recent times. It is obvious from the mountain of evidence before this Board and elsewhere, that this was not the case.

Dr Muscat's position

f) It is significant that Dr Muscat despite being well aware when he testified not only of the serious allegations on various fronts which occurred under his administration and for which Caruana Galizia had harsh criticism, and even if today he knows well that all the evidence that came out regarding the circumstances which led to the assassination and even those that occurred thereafter, he made no mention that the crime could have occurred because of what she published or what she was going to publish in this regard.

Dr Muscat, at no time during his testimony where he was given every opportunity by the Board to justify his operations, did he feel that he had to make any reference to the serious allegations made in regard to individuals who were not only involved

directly with him, but also with whom he had and maintained a close friendly relationship.

This was even after the homicide had occurred, even after hints started to be released regarding their alleged involvement, both in the homicide itself as well as in the attempts to hinder the investigation and the eventual arrest of the alleged actual executors and mandators of the crime which included two of his Cabinet ministers, the Chief of Staff, high-ranking officials and others not withing the Office of the Prime Minister, Secret Service officials, the Commissioner of Police and other corps officials among others.

The former Prime Minister defended himself and his family and the political and economic legacy of his administration. He absolutely denied any involvement in the assassination and in this regard, he insisted that he always acted correctly in a timely manner to ensure that the crime is solved. In fact, in his opinion, it had been. Dr Muscat however did not defend the operations of those around him, rather he distanced himself from them altogether.

From his testimony but also in truth from the testimony of the majority of the witnesses who worked or are still working or are undertaking work in Castille, it was given to understand that everyone at the core of the administration worked independently. Nobody knew what the other was doing, who was talking or meeting who, and who was responsible for what.

When, together with this, one adds that most of the former ministers who testified before this Board attempted to hide behind the presumed privilege regarding that which would have happened in Cabinet and which according to them bound them not to reveal information about it, one understands the difficulties this Board occasionally had to obtain the information which would have been useful even if not vital for its investigation. It would have been of interest to the citizen regarding how public assets were being managed, the reluctance of these witnesses not to depose openly as they were obliged to do to assist in the search for truth may perhaps be justified by the instinct of self-preservation and the necessity that they felt to distance themselves as much as possible from whoever was involved in some way in this tragedy.

The former Prime Minister's attitude however, in the best hypothesis in his regard, could indicate that he was in a state of complete self-denial regarding what happened in his Cabinet whilst in the worst hypothesis, it may also be considered as a weak attempt to pervert the investigation in an extreme, difficult situation.

Allegations regarding another attempt to murder Caruana Galizia

The Board is informed of serious allegations which were made regarding another attempt to murder the journalist in 2016, through a plan which involved not only the same actual executors of the homicide, but also the former Minister Chris Cardona who at the time was Deputy Leader of the Labour Party, and others. Mr Vincent Muscat, known as 'Koħħu', one of the actual executors of the crime, testified in regard to these allegations, that he also played a part in the planning of the previous attempt which failed, when he admitted his guilt and was sentenced by the Criminal Court. Muscat testified both before this Board as well as before the Criminal Court.

These allegations, which were strongly denied by the former Minister Cardona, are the subject of investigations being conducted by the Police. It was mainly for this

reason and also because from the allegation as is currently known, there did not transpire to be the alleged involvement of State entities or persons forming part thereof except for the said Minister who allegedly could have been involved in some way, which the Board opted not to investigate further regarding these facts. Naturally, things would change if it would transpire that the former Minister was involved in some way in these plans which failed or if any truth in the allegations transpires to be proven.

The Board needed to act with discretion and attention in order not to do anything which could in some way hinder the investigation which the police appeared to be conducting regarding this attempt. On the other hand, beyond the alleged involvement of Minister Cardona and his involvement in this first attempt if it truly occurred, serious allegations were made in his regard which remain unexplained and which are of interest to this Board. This is because they concern the second homicide attempt which was actually committed.

A homicide which was hatched close to the corridors of power

The most serious one is that which arose from the discovery of a letter which, according to Dr Cardona, *"was found in the apartment or office of Yorgen Fenech*

(who today stands accused of being the mastermind of the assassination); *there is an allegation that this letter was taken from a doctor and this doctor is saying that he took it from someone else"*. Dr Cardona insists that it is a fact and not a suspicion that someone tried to frame him. This letter albeit being anonymous made such serious allegations that this led to Dr Cardona suspending himself from being a Minister.

At the same time when Dr Konrad Mizzi, as Minister and Keith Schembri, as Chief of Staff, resigned or suspended themselves. Eventually he also resigned from the position of Deputy Leader of the Labour Party. After a few days, Dr Cardona was re-integrated in the offices which he occupied following a decision of the Prime Minister who informed the parliamentary group that the police had given him the assurance that he was not being investigated on that day.

What is relevant to this Board is the fact that when pressed to reveal who had written the anonymous letter, Dr Cardona insisted that he had his suspicions but he could not elaborate further because they were not facts. In the interrogation he continues as follows:-

"**The Board:** However, did you have any suspicion of anyone in the administration?

Dr Cardona: Yes, I still have a suspicion.

The Board: ... could he have been the author?

Dr Cardona: Yes, isn't it Mr Justice? Not everyone has a suspicion however ... suspicions.

The Board: But the fact is that you had this suspicion?

Dr Cardona: Yes, but until now what has been proven?"

A testimony such as this is very relevant to the terms of reference of the Board because:

i) It proceeds to confirm the conclusion which it reached – now on evidence and not simply conjectures – that the assassination was hatched with the involvement of persons within the administration and in the corridors of power.

ii) It is clear that whoever wrote the letter attempted to involve Dr Cardona in a credible manner as the mastermind behind the assassination not only because he was often the target of the assassinated journalist's harsh and offensive criticism to him, but also because he knew that there was a degree of familiarity between

himself and the persons who at the time were investigated, including those who eventually were charged. The latter, even according to the evidence collected by this Board, but also that which transpired in the other proceedings, affirm that they had the shielding and protection for what they had committed from the same Dr Cardona, Mr Keith Schembri, and high ranking police officials and others. These are allegations which are still to be verified.

iii) It is well symptomatic that in the attempt to pervert the police investigation, the anonymous writer, according to Dr Cardona's suspicion someone within the public administration, did not try to implicate, as the mastermind of the assassination, someone extraneous to the government like, for example, someone involved in arms trafficking or in the illegal petroleum business or human trafficking. Whoever wrote the letter considered that he would be far more credible if the diversion were addressed to a Cabinet minister.

In truth, it must be fairly said also in regard to Dr Cardona, that even if his involvement in these tragic events were to transpire in any way, from the evidence before this Board there do not seem to be any elements which in any attribute the responsibility to him on the basis of illicit gains from some obscure business, or

complexities in projects which were directly under his portfolio, as well as those in which he was only marginally involved, both with individuals in public administration as well as business individuals totally extraneous to it.

If he had any motive to confront the assassinated journalist, this could only have been either for the love of the party he led and because he considered here as a serious threat even to hold on to power, or for strictly personal reasons in reaction to writings directed to him and his family, which in his opinion were totally unacceptable. Although nothing can be excluded, the Board expresses the opinion that it would have been difficult that such reasons could lead to involvement in a homicide plan, especially at a time when the party in government was registering one electoral victory after another despite Mrs Caruana Galizia's opposition and at a time when, according to Dr Joseph Muscat, she had become irrelevant.

Confrontation on a political plan and disclosure of complexities

It is important to emphasise that in the first two years of Prime Minister Muscat's first administration, the confrontation with Caruana Galizia was essentially on a political plan. She criticised, even harshly, projects undertaken on the government's

initiative that in her opinion, were suspicious or tainted with corrupt practices, as they were in the case of Cafe Premiere, the Gaffarena case, the passport sale scheme, the American University, the Montenegro windfarm scandal and others.

Her investigations began to provide her information regarding the extent of the involvement of big business with the public administration in the execution of the projects and how this could have led to inappropriate, illicit or illegal conduct from which even high-ranking officials in public administration could be making gains. Her investigations began to provide her with an indication of the evil network, which was being created to ensure that, whilst the government projects translated to benefit and wealth for the people, high government officials as well as private businessmen and others at different levels did not fail to enrich themselves and gain from them in an illicit and undue manner.

It appears that this net of connections which set in motion a system which today everyone agrees that it eroded the country's institutions and proper governance, had deep roots not only through familial ties, childhood friendships and business interests and way of thinking with the aim of making substantial profits by abusing their position or by taking unwarranted favours in the execution of the government

projects, but also it managed to greatly erode regulatory institutions and those which have the function to control and stop abuse and ensure the rule of law.

Regarding these matters, the evidence collected by the Board and that in the public domain, is damning, alarming and shameful for the country. Not everything that was executed is known to date - and this Board has no doubt that there is much more to be revealed - maybe it was not even known by Mrs Caruana Galizia. However, what she managed to unearth in her investigations was enough to put her on the right path.

She started with her writings trying to shock public opinion regarding how and to what extent this system - how power was being exercised - was going to be very dangerous for the country.

However, it was when she was given access to the substantial, credible and explosive information of the Panama Papers and what she revealed thereafter, that Caruana Galizia confirmed not only that her investigations were leading here in the right direction but she was also given the certain proof of the involvement of a government minister and the Chief of Staff in operations of establishment of secret

companies, with suspicious overseas jurisdictions on the grey list if not worse, like Panama and trusts in New Zealand and other locations allegedly intended to provide a means for money laundering operations.

Dr Mizzi and the Chief of Staff (Mr Schembri) denied this at every instance, including before this Board, however elements which were and are being proven can barely support them. Even in this regard, the Board limits itself to registering the facts without passing any judgement on the responsibility, guilt or innocence of the persons interested in them.

Chap. 7
From the publication of the Panama Papers after which the risk level escalates

Chapter VII

The risk level escalates

From the considerations made by the Board, it was established that Caruana Galizia's assassination could not have not been closely linked to the investigations she was conducting regarding the country's administration, with the substantial interests involved and the involved of big business with leading figures in administration, there could not have been much doubt that the publication of information resulting from the Panama Papers - even if delivered to her accidentally - and all that transpired thereafter, was the main factor which exponentially escalated the level of risk in which she was exercising her profession.

She herself was aware of the gravity of the allegations which she was publishing and that these could totally jeopardise the government stability as had in fact happened in other countries. She was well aware of the fact that she was disclosing information which included serious allegations of improper conduct against figures of great potency in the corridors of power and this could bring about strong tensions from various aspects which could also lead to serious attempts to be silences in every way.

This was generally obvious in the country. It is enough to follow the diverse comments on this Running Commentary from 22nd February 2016, when Caruana Galizia gave the first clue that she had in her possession evidence regarding the existence of secret companies in Panama and trusts in New Zealand, to realise that the blog readers started warning her regarding the great danger she was facing and entreated her to take care of herself. This was and should have been obvious for the public entities who have the function to safeguard the safety and life of persons at risk, first amongst them, the police.

Caruana Galizia persevered in her mission

With dedication and perseverance, as was her duty as an investigative journalist in the search for the truth and which became her life's mission for her, Caruana Galizia continued publishing all that she had found out from her investigations, analysing the facts and very incisively expressing her convictions. She continued doing this even though at a certain time she was completely isolated because the former Leader of the Opposition and other figures of the same party ended up in her sights and they reacted on par and with the same force. A circumstance which highly emphasised the measure of hate generated against her in the country.

In these totally abnormal circumstances, Caruana Galizia showed that not only was she an investigative journalist of great calibre, but also a person full of courage and independence. It was totally unusual in a democratic society that both the government as well as the opposition would take it all out against a journalist who at the end of the day was investigating what was happening in the country and expressing and commenting the facts which she discovered from her personal perspective.

From the Panama Papers onwards until she was assassinated there was the general perception that with her provocative writing, with the attacks she was making against whoever had some power, she was taking a great risk and one day in some way, she was “going to get it”. Many considered her as a person of great courage; many others maintained that she was irresponsible and did not care for her life. Today after all that which became known, one can consider her as the Joan of Arc of Maltese and even international journalism. The French heroine who was abandoned by everyone, scorned by her French companions, stood alone fighting with determination and courage against the potency of power and the occupation

of her country by foreigners until she finally succeeded to banish them. Similarly, Caruana Galizia became a victim of her convictions and beliefs.

This is being stated not because the Board wishes to confer a certificate or a hymn of praise to the assassinated journalist, but because it needs to emphasise the circumstances in which this tragic event occurred. This was to determine whether the State entities undertook all they could to protect the journalist who was in a clear and imminent risk and whether the existing structures to guarantee her security were adequate. The Board needs to establish whether they exercise their respective functions as appropriate and as expected of them. The Board remains focused to seek a response for these questions which are the essence of its terms of reference even in view of that which it has considered to date in the previous chapters.

The relevance of the Panama Papers

The relevance of the Panama Papers for the purposes of this Inquiry, is mainly due to the fact that this clearly affects the State institutions' level of inaction required to investigate the allegations of misconduct which arose from the journalistic investigations. Inaction of the State entities to restrain the abuse which generated

a sense of impunity in persons who planned to commit and who in fact committed illicit, illegal or criminal acts, including eventually the planning and execution of the assassination.

The effect of the publication of the Panama Papers on the administration

There can be no doubt that the publication of the Panama Papers and the involvement therein of the former Minister Konrad Mizzi and the Chief of Staff Keith Schembri conditioned and changed the country's political scenario and irremediably prejudiced the government led by Dr Joseph Muscat.

Today there is a consensus in the country that the published facts constituted as a minimum inappropriate conduct by the Minister and the Chief of Staff which should have been avoided. Even though it might not have been strictly illegal – this aspect still needs to be verified by other authorities – it was certainly illicit, against every rule of good governance and proper political ethics.

So much so that in other countries, wherever such complexities were revealed similar to those in the Panama Papers by public administrators, there were serious consequences, Prime Ministers resigned, governments were overthrown,

suspected individuals were arrested and sentenced. A dark shadow was thrown on all those countries which in some ways were mentioned or were implicated in financial operations in the overseas jurisdiction, renowned for money laundering and other financial abuses. One must accept that the damage to Malta's credibility as a serious and healthy financial sector was and still is great.

Dr Muscat's Reaction to the Panama Papers

In this context, the Board faced the former Prime Minister Muscat again with the question at which level or in which period did he deem that Keith Schembri had erred, if he had erred. The questioning unfolded as follows:

*"***Dr Joseph Muscat:** *No, no, I made a mistake and I am not going to judge anyone else. This was an avoidable issue from day one had he taken a valid political advice on all this, (the story) was avoidable from day one.*

The Board: *That is, because effectively if action had been taken when appropriate or when one thinks that it should have been taken, then all this would not have happened too.*

Dr Joseph Muscat:*In my opinion he should not have done it, full stop. That's it, it should not have been done. Who instigated whom, I do not know and I am not*

interested. Whoever gave a cue of this type of solution was perhaps reasoning from the legal aspect, was reasoning from the financial aspect, was reasoning from the tax efficiency aspect. You can reason with anyone. He certainly did not reason from the political aspect. Alright?

The Board: *Because then this kept moving on gradually almost until you resigned.*

Dr Joseph Muscat: *Yes. Yes."*

The State entities' reaction

At this stage it is necessary for the Board to consider what was the State entities' reaction to what the assassinated journalist was revealing.

This Board found the categorical declarations remarkable where these considered her investigative reports as totally credible in that the allegations were based on serious research and sources which ought to be heeded, even if it was necessary to verify their reliability. Authorities such as the Police, the Secret Services, the FIAU and the MFSA considered her as an open source of information who provided useful facts for the identification of circumstances which could indicate a serious breach of good governance practices and of laws and financial regulations which merited being investigated.

This crucial reality for the recognition of the quality and validity of Daphne Caruana Galizia's investigative journalism and of the serious facts which she was disclosing especially following the publication of the Panama Papers, leads to these essential considerations which should guide this Board in the search for answers to the questions made.

a) It ought to have been obvious to those responsible for the State entities entrusted with the protection of public order and the guarantee of the rule of law, that what the assassinated journalist was publishing was often indicative of illicit, if not illegal conduct at the highest level of public administration. They were allegations which, in other countries, as soon as they were disclosed led to great political disruption, with resignations and prosecutions of the involved persons in authority. It ought to have been clear to these authorities that the assassinated journalist's investigative journalism was not limited to an isolated allegation of some irregularity by some person in authority. It extended to extensive investigations on the most important projects which were being completed by the government and from which there were arising facts of alleged irregularities in

collusion with third parties extraneous to the public administration. Suspicious behaviour intended to promote and benefit private interests.

Allegations which were substantial, credible and well-founded so much so that eventually they led to several investigations by regulatory authorities, including the Auditor General even if several of them were concluded after her murder. Moreover, there were also occasions when Caruana Galizia's investigation had started extending to allegations of criminal conduct by persons involved in organised crime, even internationally, which did not directly involve the public administration, although there could have been signs of favouritism or screening by persons in authority.

b) All this should be considered in the context of the State entities' knowledge, responsible for the safeguarding of the individuals' safety and the protection of their lives, that the allegations made were not frivolous but had or could have had elements of righteousness and a basis of truth. Serious allegations which should have reasonably led to the conviction that the journalist was taking it up against whoever had the power. She was fighting organised crime and was exposing herself

personally and one can say single-handedly so that whoever could have been implicated in illegal and criminal conduct would be exposed and brought to justice.

It ought to have been more than clear for the officials in good faith at the State entities responsible for the safeguarding of the rule of law, from the Commissioner of Police and the Head of the Secret Services among others, that Mrs Caruana Galizia with her writings was exposing herself to risk and great and imminent danger to life and her property and her family.

c) This was not a case of a journalist who had a good story of an isolated incident, with an allegation of an irregularity by some person in authority. Daphne Caruana Galizia was a journalist who had in her possession very sensitive information from various credible source which indicated to her circumstances which pointed towards serious cases of irregularities, abuse of power and corruption. She made it her mission that bravely, she would expose these facts and reveal that which, in her opinion, was eroding public administration and institutions in her country.

This focal fact in itself even if one disregards the correctness or otherwise of what the assassinated journalist had published and the motive which pushed her to

persist in this crusade till the end, ought to have been enough to impose an obligation on the State to grant her the highest level of protection possible to ensure her safety and protect her life.

d) At least through the publication of the Panama Papers, Prime Minister Muscat was certainly aware of the serious implications of the misconduct of his Chief of Staff and principal Minister and of the serious consequences that this would have on the country's reputation particularly in the main economic sectors such as the financial services, e-gaming and others. Nevertheless, even though almost all the Ministers including the most senior and principal ones, testified before this Board that they advised the former Prime Minister that the persons involved no longer had a place within the Cabinet, Dr Muscat opted to practically not take any concrete and credible action against them.

e) In fact, whilst Dr Mizzi was imposed with a political sanction in that he was removed from Deputy Party Leader, he held his place within the Cabinet as Minister without portfolio but with a portfolio which included the responsibility for the implementation of all major projects which previously fell under his remit. The Prime Minister opted to take no action against Mr Schembri and maintained that

Mr Schembri was his person of trust. He testified word for word:- *"I bore the responsibility. The only step I could take was to remove him or keep him. Thereby I decided to keep him."*

Later on in his testimony he gave the reason why he chose to keep him, saying, *"I felt it necessary that Keith Schembri remained within the government machinery, and even Konrad Mizzi, because they were doers. Right or wrong even their biggest critics would tell you that they were doers."*

He accepts that that was a wrong decision, he deems that it was the result of *"a political judgement which I made of which I am possibly its victim at the end of the day. I bore it which means that I am not coming here to blame someone else."* The Board had previously asked him:- *"But don't you see that there was a shortcoming that at that moment when the Panama Papers were published where you had your Chief of Staff and your Minister, you should have taken the initiative not to accuse but at least to alert whoever was responsible, the Home Affairs Minister, the Minister for Police so that you yourself, as internal government control, in order to check whether there is some truth in it. To what extent did you get to this?"*

Dr Muscat: *I shall answer you in total honesty, yes, I think that I could have proceeded with more authority, yes. My point the more (time) passed but it was a trickle of information it wasn't, wasn't dumped it came in trickles".*

f) Dr Muscat admits that he was weak at a time when he was expected by many, including many of the Ministers and persons involved in the public administration and public opinion, to show courage and take decisive steps to check the conduct of the persons involved as soon as it started to transpire that the allegations against them were not frivolous. He had the serious obligation as from the very first moment that the news was disseminated by the assassinated journalist to ensure that the competent authorities investigate to establish the truth as early as possible and to assure the country that a Prime Minister's Minister and Chief of Staff were not involved in any way in activity which definitely verges on illegality.

Seriousness required that even if at that stage there existed no certainty regarding the alleged irregularity, the persons involved would be forced to take a step backwards until their position was cleared. The fact that this was not done, sent a message to these persons not only that they could act above the law without

suffering the consequences but also that they had the protection if not the blessing of the Prime Minister.

A message which undoubtedly infiltrated to the persons involved in the implementation of large government projects which were directed and were under the responsibility of Minister Mizzi and more broadly the Chief of Staff. Whoever had the intention of proceeding with their projects in any way, even if it were necessary not to observes rules and laws, as the Auditor General eventually also verified in several of them, he knew that he would be dealing with individuals who had the authority to exercise power without restraint and were ready to use it, if necessary, even unscrupulously.

17 Black – Specific serious charges

The Board deems that even if in the best of hypotheses for the former public administration, one would find some justification for the lack of timely action to check the allegations made – in truth Dr Muscat neither confirmed nor executed the minimum expected from him by giving instructions or orders to Mr Schembri and to Dr Mizzi to immediately dissolve their company structures in Panama – the

position became even more serious when Daphne Caruana Galizia revealed the existence of the company 17 Black incorporated in Dubai.

The news was first revealed on 22nd February 2017 in her Running Commentary. It is to be noted that in the comments made following that news, that same day Caruana Galizia dropped the first hint that the company was connected in some way to alleged corruption in the power station and with one of its shareholders Yorgen Fenech. This was eight months prior to the assassination. On 26th May 2017, practically on the eve of the Election of that year and five months prior to the assassination, the Malta Independent where the assassinated journalist regularly contributed, revealed that from an FIAU report, it had transpired that this company had been created with the purpose of transferring money to Minister Konrad Mizzi and the Chief of Staff Keith Schembri through their companies in Panama Hearnville and Tillgate.

The FIAU report had not yet been concluded. It is not the Board's task to investigate nor to pass judgement on the correctness of that report and the allegations contained therein. What is creditable is that today this is being investigated in criminal proceedings. However, what is of interest to the Board is the uncontested

fact that whilst in the case of the Panama Papers one could attempt to justify the Prime Minister's inaction because there were no specific accusations of violation of laws, and cone could not exclude the possibility of opening a company in an overseas jurisdiction for a legitimate purpose, the same cannot be said for the 17 Black case. In this case, specific accusations of serious offences were made against the Chief of Staff and Minister Mizzi, with the involvement of an Electrogas shareholder and the other big interests in major government projects which go well beyond the simple opening of a company in a suspicious overseas jurisdiction.

Dr Muscat when asked whether following 17 Black he had decided to keep Keith Schembri and Konrad Mizzi in the positions they held, he bluntly answered in the affirmative. The Board therefore asked him, *"And at what point in time did you feel that Keith Schembri could no longer stay in his position."* Dr Joseph Muscat replied, *"I think that in truth in the final days, in the final days and he had come to inform me that he was going to resign and then his arrest was triggered too ... a little time before the arrest ... but, that is, let me state clearly, even if he had resigned prior to being arrested, I am not sure of the exact timing, I would have resigned because as a state of fact, that is what integrity entails."*

The Prime Minister's unacceptable conduct

As far as the Board is concerned, the former Prime Minister's conduct in this circumstance and abusively in the way he persisted in protecting his Chief of Staff and supporting him in the important position he held in the administration until he was arrested in connection with the assassination, is unacceptable, condemnable and verges on a serious and abusive shortcoming in the exercise of his functions as leader of the government and guarantor for good governance. This has nothing to do with an incorrect political judgement which exceed the terms of reference of this Board. In the worst hypothesis for Dr Muscat, this concerns the shielding, protection of persons who allegedly committed serious crimes.

The Board was astonished with the reply he gave to the question whether he had spoken to Mr Fenech and Mr Schembri regarding 17 Black following the assassination when further details were emerging regarding who the owner of that company was. This was also in view of the fact that there existed a friendship and a direct line of communication between them even through WhatsApp which continued even for some time when he was a person of interest in the homicide. Dr Muscat answered as follows: *"No. I never asked and I never talked to him on this point. I had asked Keith Schembri, who fell under my responsibility, after all this*

had emerged and he said once again that it was a business issue between them both and told me that it had nothing to do with Electrogas."

Mr Schembri in truth reiterates this even to date. It is not the Board's task to express itself on what is the truth in this regard. The crucial point is that when the accusation was made, months prior to the assassination, the Prime Minister did not do anything when he should have done a lot. As a minimum, he was obliged to report the allegation formally to the Police with a request to investigate it with urgency if anything because it could threaten the stability of governance in the country. The Police, at the time under Commissioner Lawrence Cutajar did very little. They certainly did not do what they had to do. Certainly, he did less than the previous Commissioner Michael Cassar who following the details revealed in the Panama Papers and being informed that the FIAU were working on it, he opened a file entitled 'Operation Green'. He had resigned some three weeks later after he had received the reports regarding Mr Keith Schembri and Minister Mizzi. The Board was given to understand that he could not take the pressure which such serious accusations brought on him. Manfred Galea did the same.

Abuse of power which if proven will change the scenario

The Board is making these short references to the circumstances of the Panama Papers and the company 17 Black at this stage because they are indicative of how the exercise of power at the highest level was being abused in order to protect persons central to the administration. They are also important because if one considers that two of the persons involved were or could still be persons of interest to the police in their homicide investigation which was planned over a period of time and if their involvement is in some way ascertained by a competent authority – always subject to the presumption of innocence and their right to a proper and fair hearing – the issue does not solely remain to determine whether some illicit act or omission by or within a State entity facilitated the assassination when it should have prevented it. The scenario changes to one of active participation of persons who form part of a State entity in the commission of the crime.

Besides, on a factual and not just a hypothetical basis, the blatant inaction of the Prime Minister and the State entities, including the Police who have the function to protect society from crime and to guarantee public order, to take effective and timely steps against person of power in politics and in business, fosters a strong sense of impunity, not only in the same persons involved, but also in whoever

intended to act in order to participate in some criminal conduct. As transpires from the evidence, these sought to have connections at the highest level of friendship or interest with whoever had authority in order to be able to act in the real or perceived assurance that they would be protected by them.

These circumstances are also relevant because they are a tangible proof of the bond that occurred between the exercise of political power and the exercise of economic power. An incestuous bond which was the focus of the assassinated journalist's investigations and it was stated, it could not have not been the main motive of her murder.

A threat to the exercise of economic power

The Board is convinced as it is, that on a strong basis of probabilities if not certainty, Mrs Caruana Galizia's assassination is inevitably linked to that which she considered as being serious scandals of maladministration, a result of the proximity between political power and big business power that led to the utter erosion within the country's regulatory institutions, the conclusion is inevitable that the journalist found her fatal nemesis in the government's declared policy well before the 2013 election that it was determined that it would be totally business friendly. A policy

which had the purpose of benefitting business, encouraging the government's partnership with private investment and executing large projects which create wealth.

Once the thesis was excluded that the homicide could have been due to some unconceived act of partisan political fanaticism – in this regard no evidence transpired before this Board – the relevant facts which transpire both before as well as after the homicide should be considered from that perspective.

The Board repeatedly affirmed that there was nothing objectionable in the government having a business-friendly policy, rather quoting the Chief of Staff Keith Schembri, a government with a business mentality, as long as the execution of this policy and the relationships between the public administration and businessmen and investors remains strictly within the limits of the applicable laws and regulations.

The government's conduct failed in this instance. This is because a businessman's mentality as a rule has the aim of maximising its business profits, with less bureaucracy, and since it acts decisively, it gained the upper hand on that which

should be the aim of every government to create wealth in the interest of the community in a fair and transparent manner according to the laws of the country, that this gave rise to situations where one can say that every major project initiated by the administration ended up tainted with irregularities, abuse of power and corruption. Allegations which imply that businessmen involved in these projects made or had the intention to make undue gains on the back of the people even in some instances in collusion with main political figures involved in the execution of the projects. The Electrogas project is one of these projects regarding which the Auditor General expressed great reservations regarding the regularity of the procedures in the execution of the project and the observance of the applicable laws.

An unrestrained business mentality

That which was revealed in the Panama Papers and in the FIAU report regarding the overseas company 17 Black obviously has to be verified by the competent authorities. However, it is testimony to the mentality of association and proximity between some businessmen and public administrators who together aim such that whilst working to execute large investment projects for the country, they ensure that they would promote their own interests through them. This is a typical

business mentality, considered legitimate if it observes the rules and laws but certainly illicit if not illegal if undertaken with abuse of power and through friendships and obscure connections.

The Board already had the opportunity to express its opinion that this was not an isolated incident or two between someone who abused the system and got caught in the act, even if it was the case of a businessman who acted in collusion with a public administrator. Isolated incidents such as these occurred and will continue to occur and until the regulatory institutions work properly, they present no difficulty for the journalists who investigate them and even less so for good governance.

This concerns a reality of abusive conduct in the manner business operates and its relationships with public administration. Bonds which are developed in a system based on friendships and strategic interests. This leads to situations where whoever is involved, whilst on paper they would be appearing that the applicable laws and regulations are being observed, in fact they would be finding a way to avoid them. This is done with the intention that an undue advantage is gained which often translated to unfair gains but also to the detriment of the competitors and at a cost to society.

Business and corruptive practices

Naturally, leading businessmen who in one way or another used such corruptive practices and many of whom testified before this Board but also in other fora such as the Public Accounts Committee of the House of Representatives, all deny having acted improperly. They all affirmed that they abided by the rules and that they stole nothing. This may be because, for the businessman with this mentality, incorrectly this was the way business should be normally conducted. Testimony which often was not convincing, with amnesia attacks and expressions of surprise that the Board seemed to be doubting their correctness or their desire to create wealth for their country.

None of them showed that they were accepting the criticism being addressed to them for example by the Auditor General and even less so showed any remorse for the manner declared to be improper in which they tried to amass their fortunes. At one point the Board had the perception that it was having a dialogue with a number of oligarchs of power, capable of generating millions thanks to the personal relationships which they developed with public administrators and ministers who ultimately have the last say regarding project implementation.

This type of people has always existed. However, it appears that even as a result of the policy adopted by the government to be close to people in business, it seems that they have grouped into a well-defined distinct class. A class of people who were aware of their strength and arrogant in the manner in which they acted even with the same public administration. In certain aspects, they expect that they are above the law so much so that with impunity they can avoid doing what they are obliged to do or to observe the rules that they had to just as every other citizen had to observe.

The manner in which some of these 'businessmen' were and maybe still are capable of conditioning the public authorities in various ways, not excluding granting of favours and improper compensation, is alarming. If anything, because the erosion was extending to almost all the main sectors of the public administration, including regulatory authorities such as the MFSA, the Gaming Authority, the Planning Authority, the Tax Department, the Police and others.

The Board heard and saw documentary evidence of a great number of these abuses regarding which it shall not analyse or pass judgement. It is enough for it to state

that these very serious allegations were committed whereby several of them are being investigated by the competent authorities. However, it notes that it is difficult to devise the setup of such an extended net of complexities without there being a central direction which at least condones these facts.

The Board was left astonished hearing for example how Mr Paul Apap Bologna, former Director of Electrogas and a principal businessman in the medical product sector so much so that he has an interest in the new industry for the production of medicinal cannabis, found himself to be a member of the Planning Authority for some time. He admits that he had no experience in planning and has no idea how he ended up there. However, it transpires that at the time the Planning Authority was considering applications for large development projects in Sliema and Mriehel promoted by Gasan companies in which he had direct interest due to family connections. Obviously, he insists that when these applications were discussed, he withdrew from the meeting.

The Board heard how Mr Joseph Cuschieri testified that he deemed that there was no conflict of interest in the fact that when he had become CEO of the Malta Financial Services Authority, he had accepted an invitation of Mr Yorgen Fenech

who had great interests in casinos in Malta, to accompany him at his cost on a visit to Las Vegas to give him advice regarding a gaming business which he was planning. He understands that this invitation was extended because he was his friend but also because until very recently, he occupied the position of CEO at the Gaming Authority.

In truth, he insists that at the time, he did not know that Mr Fenech was the owner of the company 17 Black or that for the Police he was a person of interest in the murder of Mrs Caruana Galizia. Typically, but not surprisingly, Mr Cuschieri justified his action in a way which this Board often heard repeatedly from other prominent figures, “in hindsight had I had the gift of foresight, I would have acted differently.”

At this stage, only these two examples are being given in order that the Board gives an indication of the means and to what extent business power had managed to infiltrate to befriend and influence public administrators in the execution of their duties. Other examples shall be given elsewhere in this report. There are many others regarding which the Board acquired convincing evidence for which it is not in a position to refer to them for various reasons, including to respect the right of privacy of third parties but also and mainly because there is a real risk that the

investigations being conducted by the police or proceedings and trials before the criminal courts may be prejudiced.

Serious Police failing

This is evidence and maybe there are others which are at the disposal of the competent authorities who can use them in the execution of their functions. The Board has no doubt that if the competent authorities like the Police or regulatory authorities had taken the steps which they ought to have taken at the right time to preserve evidence once serious allegations began to be made of irregularities and illegalities which obviously should have been investigated immediately, a lot more evidence would have been compiled and preserved. It is obvious for example that if the Police had acted when it ought to have acted, a lot of data stored in servers and electronic means would have been compiled and no mobile would have been lost.

The Board reminds that it is not tasked to investigate the abuses which took place in the execution of the projects or every illicit or illegal conduct which emerges from dubious relationships between businessmen and public administrators. The Board is satisfied that now the police appear to be doing its best to follow the lines of

investigation which emerged both from this Inquiry as well as from data acquired in other proceedings. As far as this Board is concerned, it is enough that it has satisfactory and clear evidence regarding the system which was created and that it was so serious that it infiltrated up to the level of organised crime which deemed that it could act with impunity and securely because it was protected if not supported, not only by the State entities which had the obligation to restrain them but also by business financial strength.

Electrogas is not the only tainted project

It would be greatly erroneous if one were to consider that Electrogas was the only tainted project in this system intended to create a synergy between the public administration and the business world and because it was abused, it ended up undermining every rule of good governance which assures transparency and accountability. A system which ended up giving rise to serious abuses not only from leading businessmen whom one understands that they would take advantage of it, but also and even more seriously from public administrators whose duty was to restrain these abuses.

Electrogas was perhaps a classic example of this contamination because it involved a major government project which it was committed to complete in the shortest time possible after the election. However, it can be said that several other large projects, for one reason or another, in one way or another, even according to the style and modus operandi of their respective initiators, as well as according to the level of contacts and familiarity with ministers and other involved authorities, ended up being part of this system. They sought to take advantage of it, not all of them up to the same level and arrogance generated from the success in business and thirst to gain money and power. However, there were some who made use of the system to the maximum because they acknowledged its potential to keep on amassing suspicious fortunes beyond the fair gains to which they were entitled.

A serious and dangerous reality

This is a most serious and dangerous reality which the journalist Caruana Galizia was facing when she decided to pursue her investigations in the projects which the government launched immediately after the 2013 election.

With great acumen she noticed that the abuse allegations which she was unearthing were not simply indicative of wrongdoings on the part of the project initiator but that there was active involvement even from public administrators.

It was not that easy to piece everything together from one project to another to get a clear picture of what was happening. It was not easy for her to single-handedly manage to establish the link between the businessman and the public administrator. Even if she could manage this for single projects like Electrogas in the energy sector, Vitals in the health services privatisation sector, the projects in which the company DB Group was involved such as the St Vincent de Paul home for the elderly project and the ITS land concession, the passport sale scheme, the Montenegro windfarm scheme, the extensive operations of illegal development by the companies of Charles Polidano (ċ-Ċaqnu) and others. The evidence of a structured system of abuse and irregularity continued to escalate.

It was from the evidence which emerged from the Panama Papers and eventually with the disclosure of the existence of the company 17 Black that Caruana Galizia ascertained beyond any doubt that she was going against an essentially corrupt system that involved the exercise of the greatest two powers in the country, the

political one and the economic one. With the disclosure of these facts which rocked the country, she gave clear notice to whoever was seriously involved in this system, that with her revelations, Mrs Caruana Galizia was endangering not only the individual projects regardless of their size and exposing them to the risk of serious, maybe fatal, consequences which would lead to bankruptcy, the way the Electrogas project was progressing, but even worse than that was that she was endangering the same secure system from which the persons involved were making great gains and were planning for more in the future.

The failings of the Police

It is in this scenario that one can examine, appreciate and judge the behaviour of the State entities in regard to the assassinated journalist and their duty to protect her from any act which could prejudice her safety and her life. One must keep in mind that the police especially were aware of the facts which the journalist actually revealed, even if they might not have known all that she knew. They were certainly in a position that even with that, they could get to all the people involved and who eventually it transpired that they were part of this system. They surely could have or should have reached the same conclusions as the Honourable Evarist Bartolo who, before this Board, affirmed that in Malta, “we have people with money who

use their money to buy influence in every part of life including in politics and I warned that you may have two governments, you may have a government on stage and you may have a parallel government behind the scenes".

Later on, when asked whether he could give an indication regarding this network or the businesspeople who were part of these projects, the minister answered, "I would think that wouldn't one draft an organigram of the contracts and the persons involved and the companies involved? This is empirical evidence, not what I think." If the police had done their duty at the time when things were being clarified, it would have been clear for them that the risk that someone would attempt to silence her or suppress her in some way had reached such a high degree that one had to or would expect that there would be a strong reaction in this regard. The police were obliged not only to extend the maximum protection to her, but also and maybe even more, to actively and urgently investigate the allegations that she was conducting and the persons involved therein. The former Commissioner of Police and other Corps official admit that neither one nor the other was pursued.

This Board shall submit further considerations in this regard later on.

The Chief of Staff figure

Finally, the Board cannot omit as a conclusion to this chapter a few considerations regarding the role held by the Prime Minister's Chief of Staff to promote the creation of national wealth in close partnership between the government and the leading business in the country.

Since Mr Keith Schembri at present is subject to criminal proceedings before the Court of Magistrates and since it is also still not clear whether he is a person of interest to the police in regard to the homicide, the Board needs to be very careful not to say anything which might prejudice his position in this regard. It shall limit itself therefore to quote short extracts from his testimony before it. Testimony which in another hall would merit going into more details because it throws a light on the new policy which the government introduced in 2013 and the efforts made to create a positive synergy between the government and leading businessmen as a driving force to create wealth.

1. He declares that he had encouraged Dr Joseph Muscat to run for Party Leader in 2008. Dr Muscat asked him to help him in the campaign and he told him, *"I will help you where I can, obviously I have my own business."* He had the role of

campaign manager for the 2013 election. When this was won and Dr Muscat then Prime Minister told him that he needed him within the government, he took the difficult decision to go along with him as Chief of Staff. Voluntarily and in agreement with the Prime Minister, he resigned from all his directorships in the companies and assured the Prime Minister that, *"The paper tenders activity, since that is our line of work, one of our lines which I was always awarded for the past fifteen years, I shall participate because they are tenders. But I will not touch new government projects."*

2. It was one of the main originators in policy that the new government would need to have a business mentality and be business friendly which was the main platform of the electoral programme for that election. He declared that he was in a position to understand well the needs of the business and that he could give significant input *"because I went into business and then I went into politics and not vice versa."*

3. He had been successful in business and he understood what businesses needed, *"We always believed that although we originate from the left side of the political sphere, we always believed that in order to distribute wealth, you have to*

create it first and the Prime Minister and I used to laugh and say, 'listen, you create the wealth and we will distribute it'." This means that the principal role of the Chief of Staff was that of creating wealth by means of a new policy which was being introduced.

4. He maintains that this policy was very successful and in seven years produced impressive results in the economy without imposing taxes or new burdens. He testified that thanks to him, a synergy was created with people in business, however he categorically denies that on large specific projects, no dialogue or commitment was made prior to being completed. This also applied to the Electrogas project. He maintains that it was true that a project presentation was held before the election. However, there were many who presented projects and their plan was to create an alternative energy source, reduce emissions and decrease prices, *"My position as campaign manager and afterwards as Chief of Staff was that in the electoral manifest, we committed to reduce the electricity and water bills and provided a term for it. Right?"*

It was for this reason that the project was given top priority. In his opinion all the procedures undertaken for the execution of the project were regular. In his view,

"This was a simple power station, right, which would reduce emissions and reduce the cost of production. My question is, Mr Justice, how was this never done before as this is something basic. How was this never done before?". It was not true that all the planning was ready before the election. The Auditor General however does not agree with this position and the evidence which the Board heard strengthen its conclusions in this regard despite the fact that many of the Ministers who testified before it sang from the same hymn sheet.

5. Mr Schembri elaborates on the difference between the way he regards the country's public administration, the public service and the way he regards it from the administrative perspective designed on how a businessman manages his business, "there is a difference between a business friendly Government and a Government with a business mentality. The business mentality, I for example was not well seen by many people in the civil service, right? Now I am no longer in that position and can say it as it is. In my view, right, the first word I am told when I visit someone at the Civil Service, is no. The word no does not exist in the world. We have to do it, no does not exist, I am here to deliver, right." A statement which means that extra rules and the so-called bureaucracy were a hindrance for progress

and where necessary, they should be avoided. This was the mentality and that is how business is done.

6. When asked by the Board how he reconciled the fact that from a successful business from the private sector, he came into a such a high-ranking position that no person in business had ever occupied, Mr Schembri answered, *"It was very difficult. It was difficult It was a culture shock."*

When asked whether he had ever considered that he would put himself in a position of a conflict of interest, Mr Schembri answered, *"Conflict of interest, no – the only conflict of interest that I had was in my mind, because after twenty (20) years in a good business, the fact that there would be certain decisions that would be so easy, right, so logical, so obvious, that no one would want to take them, that bothers my mind. Which means that I could never accept them. Which means that I, the fact, call me disagreeable, in the private sector, I am used to working with KPIs, key performers indicators."*

"I, since I consider things from a logical business aspect, I always said: listen, if there are a number of big companies which need to pay a lot of NI, they need to pay a lot

to the Government, right, and they have properties just sitting there, the Government should say, instead of letting a family sleeping on the floor or with six (6) children sleeping in two rooms, if these persons owe me 20 million, 30 million in NI, why don't I tell them: listen, give me 150, give me 200 flats where I can house families for accommodation. I used to think that way and obviously people dragging their feet because no, we cannot, because no we cannot (from the public administration side), I did not accept these things."

As Chief of Staff he used to deliver results because he introduced and operated a business mentality, cutting corners and reducing extra bureaucracy.

As Chief of Staff his interest was only that the deadlines given for the completion of projects *"had to be adhered to."*

7. In regard to the accounts he opened in Panama and elsewhere, Mr Schembri testified, *"In two thousand and thirteen (2013) when I entered into politics, right, prior to entering into politics, I already had offshore structures which everybody knows, right. Offshore structures because we had, first of all, there is nothing illegal with having an offshore structure. Let's start from there, that is, if there were more*

than three quarters of the large groups in Malta that all have offshore structures and offshore accounts, that's good and our holding had the same thing, right. In thirteen (13) obviously when I ventured into politics, on the advice which I was given by lawyers as well as auditors, right, I opened a trust with Bank of Valletta where, what was I doing? I was depositing all my assets and eventually I was going to switch over all my companies under this trust.

After some time, some months passed and a number of people, more than two (2) people told me: listen, the Nationalist Party knows about the trust you have with Bank of Valletta including the amounts contained therein and what you are doing and not doing. I had written to the Chairman of the time John Cassar White and John Cassar White had replied to me in writing: listen, we have opened an investigation however we cannot give you the assurance that nothing was leaked from the bank. Therefore, the bank in which the Government is a shareholder, me being Chief of Staff of the Government, I went to the Prime Minister and told him: Prime Minister, I have two (2) things which I can do and we talked about this – either I sue the bank, but can you imagine the Government's Chief of Staff suing a bank of which the Government is a shareholder, not nice, or I let it go." He did not want anything to do with Malta and upon advice given to him by the auditors, he

opened an offshore company in Panama which was temporary because he wished that his assets from Malta would be passed on to a trust in New Zealand. A strange and discontent situation where the Prime Minister's Chief of Staff declares that he did not trust the country's banking system and this led him to operate with suspicious banks in a foreign country.

Mr Schembri denies doing anything illegal. Although he could not give satisfactory replies to the Board to the various questions asked in this regard. This was especially in which circumstances whereby he opened three offshore companies in Panama and whether there was a connection between him and Minister Mizzi who maintains that he had nothing to do with him in this affair.

He was very evasive regarding the link that there was between his offshore company Tillgate and the companies 17 Black and Macbridge which his auditors Nexia BT indicated to be the source from where he was to receive funds. Mr Schembri insisted that there were indicated as main potential clients and admitted that since that time he knew who the beneficial owner of the company 17 Black was but he had no idea to whom Macbridge Ltd belonged. He kept insisting that he

had not mentioned Macbridge but his auditors had done so without informing him whose it was. In this part of his testimony, Mr Schembri was not credible at all.

8. When confronted with the allegation that 17 Black was to forward money to his company Tillgate which originated from dubious sources connected to Electrogas, Mr Schembri's reply was the following, *"But with all due respect Mr Justice, with all due respect. If I had my client, right, who is a potential client of mine, right, and he becomes involved, I don't know in some trouble and so on, I who will be a potential client what fault is it of mine? Who know how many things happen like this? Who know how many things happen like this, right?"* He tried to distance himself from the company 17 Black even though the evidence showed otherwise. He admits however later on that he knew who the owner of 17 Black was well before February 2017.

Asked whether he had informed the Prime Minister about this fact at the time, Mr Schembri affirmed that as he had already told the Prime Minister, he had told him that all that appeared in the Panama Papers were operations that were not related to Malta. Therefore, he did not have to talk to the Prime Minister about 17 Black

and the Prime Minister did not feel the need to ask him. This part of the questioning continued thus:

"Dr J. Azzopardi: He did not ask you and you did not feel the need to tell him?

Keith Schembri: I did not need to tell him.

Judge A. Lofaro: Ok.

Judge J. Said Pullicino: But it's not ok, because you did not feel the need for it and the Prime Minister apparently neither felt the need to ask you. But in these circumstances allegations of this kind, was it not in the interest of the country that you explored this and check the story behind it? I mean a person ...

Keith Schembri: The story we saw that it did not – sorry, sorry.

Judge J. Said Pullicino: Mr Schembri, let me tell you, you are a person who is friends with both, you were saying, right. You are involved in some way in something regarding which there are serious, very serious allegations, right, because you give substance to that which is alleged in the Panama Papers. Maybe it's not true , but that incident gives it substance. Now I tell you that you did not feel the need to tell the Prime Minister, even himself too, here regarding this story ...

Judge A. Lofaro: He cannot answer you for the Prime Minister.

Judge J. Said Pullicino: ... you know whose that is? Is it that one's and we have this problem to resolve. But this did not happen at all?

Keith Schembri: There was nothing to resolve.

Judge J. Said Pullicino: What?

Keith Schembri: There was nothing to resolve.

Judge J. Said Pullicino: No there was a lot to resolve because at the time there were still no murders. At the time there were still no murders, understood? Therefore, there were matters to resolve. If at the time, steps were taken as they should have been, ok, the murder, there was a great probability that it would not have happened, understood, let us understand each other properly.

Keith Schembri: I cannot understand how you have reached this conclusion. I don't know. I cannot understand how you have reached this conclusion.

Judge J. Said Pullicino: But the connection is there. Now we'll see, ok? But in the meantime, you are telling us that you did not feel this need.

Keith Schembri: I did not feel that there was any need. I downplayed it for obvious reasons in my mind, now if I made a mistake there, I made a mistake and I will be the first to say sorry I made a mistake. But I, in my mind, a potential client, I will conduct business with him after I leave politics, as he was going to do – now I happen to be Chief of Staff, is it true that I made an ethical mistake? It could be.

Judge J. Said Pullicino: When you conduct business with a person does not mean that you forgive all their sins, you know. Because in fact it is legitimate to conduct business with a person ...

Keith Schembri: That's it."

During his testimony, Mr Schembri attempted to give the impression that he was just a coordinator between ministers and responsible for the completion of Government projects, gives the impression that he was not a person of great authority but executed the Prime Minister's orders and takes the decisions required in order that the government's policy is implemented. He insists that all the large projects were approved by the Cabinet and accepts that he used to be present when the Prime Minister discussed matters with the ministers following the Cabinet meeting. The evidence shows otherwise.

First, he maintained that he never went into the meetings in any scope unless invited, he would be present to push the project execution and to implement government policy. He described how the large projects were approved by the Cabinet and the coordination between the diverse ministries in a way under a certain aspect that was different from that described by some of the ministers. He

then described the way Prime Minister Muscat operated for which he expressed great admiration thus, *"He always used to work through the so-called triangle, correct. That is ... scheme that is he is on top and the lines below him does not necessarily mean that everyone knows what is happening."*

Undoubtedly, he was at the summit of the pyramids, at the same level as the Prime Minister. Both confirmed that not only were they great friends who trusted each other almost blindly and treated each other like brothers. All the evidence leans towards this reality.

From Mr Schembri's evidence, one concludes that he knew well what was happening in every sector of the administration and maybe as a CEO this was his work. Officially he confirmed all that most ministers said that he had great authority whom some thought to be exaggerated. The evidence also confirms that even when he was a CEO, he kept a business mentality and took part in their implementation if he was not also the main initiator for some of them.

He directly participated in the negotiations to attract big investment to the country, including projects which ended up with dark shadows cast over them and the target

of Mrs Caruana Galizia's investigative journalism and subsequently even following her death, the Auditor General, among others. It is enough for one to mention the Electrogas project, the alleged link with the company 17 Black, the Vitals project, the Montenegro windfarms project, the Crane Currencies project, the American University of Malta and others. It appears that Mr Schembri was not always honest with the Prime Minister – his great friend. The latter confirms assuredly that if he had known the details of the negotiations of the Montenegro windfarms, he would have stopped the project.

The Board reached the conviction that what really happened in regard to these projects is not reflected in Mr Schembri's testimony which attempts to give an impression of normality of a transparent and clean administration, intended to grow the national wealth in a transparent and correct manner. The evidence before this Board and in the public domain shows otherwise. It confirms that between him and the Prime Minister there was not only a fine tuning of thought and method on the way the country should be managed, but also a strong friendship which fostered a climate of mutual trust and respect which certainly remained until the time when Mr Schembri was arrested on suspicion that he could have been involved in the assassination and maybe even subsequently. A friendship which in

appearance seemed to extend to the alleged mandator of the crime who up to a certain time, it appears that he did everything he could to defend him. The Board refrains from expressing a judgement regarding these facts.

The figure of Mr Schembri as the not-so-hidden hand which controls power in the relevant period with all that this implies certainly cannot be dismissed. The full truth in this regard still has to come out.

Section III

The first term of reference

"1. Determining *whether any wrongful action or omission by or within any state entity facilitated the assassination or failed to prevent it. In particular, whether (a) a State entity knew or should have known, or caused, a real and immediate risk, including through the criminal behaviour of a third party, for the life of Daphne Caruana Galizia and (b) failed to take measures within its range of powers which, by reasonable judgement, it was expected to take to avoid that risk;"*

Section III

The First Term of Reference

Legal aspect/Case-law

As stated, to determine the legal aspect of this Inquiry, the Board refers to Article 2 of the European Convention of Human Rights, as the point of departure. This Article states: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a Court following his conviction of a crime for which his penalty is provided by law."

This means that the State should take all the necessary measures in order to protect the lives of those in its jurisdiction. This primary duty is incumbent on the State which establishes effective criminal provisions to deter crimes against individuals supported by the police and effective courts for the protection, suspension and punishments for the violation of these provisions (see Machove et vs Bulgaria Nos. 43577/98 and 43579/98 ECHR 2005-VII).

The European Court for Human Rights however went beyond this primary right of the State. In the case "Osman vs U.K. 87/1997/871/1083 of 28th October 1998 the Court said: "It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain, well defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual". This therefore means that due to the primary obligation to protect the life of people who are in its jurisdiction, the State also has the positive obligation to take the necessary operational measures to protect an individual whose life is at risk from the criminal acts of third parties.

The Board understands and extends this guideline to affirm most categorically and decisively that such a positive obligation would come to pass even if the individual/individuals concerned refuse the primary obligation of the protection of life.

In the same above-mentioned judgement, the Court understood that due to the unexpected behaviour of human conduct and the operational choices which have to be made in terms of priorities and resources, such an obligation should be interpreted such that it does not pose an impossible and disproportionate burden on the authorities. Another relevant consideration is the necessity of assurance that the Police exercise their powers to control and prevent crimes in such a way and manner that they respect the laws, the legal process, including the guarantees found in Articles 5 and 8 of the Convention.

The Court continues: “In the opinion of the Court when there is an allegation that the authorities have violated that positive obligation to protect the right to life in the context of the above mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their public office which, by reasonable judgement must have been expected to avoid that risk.” “For the Court ... it is sufficient for an applicant to show that the authorities did not do

all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge." This guideline was also pursued in the case in the names "Branco Tomasich et vs Croatia" (application number 46598/06 of 15th April 2009) where the Court said: "A positive obligation will arise when it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which judged reasonable might have been expected to avoid that risk."

For further jurisprudence on the matter, the Board refers to the cases "Kajak vs Turkie, para 53 et seq, numbers 6044/08 of 10th July 2012" as well as "Civek vs Turkie, para 54 et seq, numbers 55354/11 of 23rd February 2016."

The terms of reference reflect the ECHR case-law

The first article of the term of reference of this Inquiry actually reflects this point when it states that this Board should determine "whether any wrongful act or Omission by, or within, any State entity facilitated the assassination or failed to prevent it. In particular whether (a) any state entity knew or ought to have known

of, or caused, a real and immediate risk to Daphne Caruana Galizia's life including from the criminal acts of a third party; and (b) failed to take measures within the scope of its powers which, by reasonable judgement, it might have been expected to take in order to avoid that risk."

There is no doubt that this paragraph was drafted on the advice and direction of the above-mentioned sentences. At this stage one must point out a comment regarding the quality of the witnesses who deposed before this Board, where amnesia and lack of cooperation especially by those who worked at Castille at the time in question are quite prominent. This was expected because the personal consequences were substantial and these witnesses had an interest not to cooperate. This is not something new or limited only to Malta but is a phenomenon that often generally stands out in public inquiries. So much so that:

"It is inevitable that inquiries will not always receive the full cooperation of those who appear before them because there may be interference or obstruction with the work of the inquiry and because orders that the inquiry makes as to the provision of documents and evidence, and attendance at hearings, may not be obeyed. Indeed, as inquiries frequently consider allegations of serious wrongdoing

by individuals and organizations, and because the consequence for individuals and organizations (both in terms of immediate reputational harm and the potential for downstream proceedings) may be severe, there are plain incentives for non-cooperation" (ibid p. 251).

The Board was expecting that at least the Government ministers of the time would be more ready and open to provide the necessary information regarding what actually happened and which was relevant to the merits of this Inquiry. Very few spoke out openly, the majority attempted to seek protection in the secrecy that they maintained that bound them regarding all that is said during Cabinet meetings. A reason which this Board does not understand when it concerns circumstances relevant to the assassination. This is apart from the fact that many of the witnesses expressed ignorance of what was happening around them in Castille.

Therefore, this first paragraph of the Terms of Reference must be considered against the above-mentioned sentences with the guideline that such primary and positive obligations happen even in disagreement or refusal of the person/persons who are at risk. This is with the caveat that such a positive obligation should not be

interpreted in a way which poses an impossible or disproportionate burden on the authorities.

The agreement or refusal of the Person at risk

This leads the Board to comment regarding the note presented by Lawyer Dr Joseph Brincat bearing the date of 7th December 2020 and which exhibited several posts published by Mrs Daphne Caruana Galizia on her blog about the philosophy she had regarding the protection which the State could offer her. In this post, Mrs Caruana Galizia is showing a certain contempt towards Lawyer Dr Franco Debono who was very critical of Dr Lawrence Gonzi's Government, when he had sought Police protection to guard his residence. In these posts, Mrs Caruana Galizia expressed the opinion that guard dogs would be even more effective than a Police guard when she said: "You never know who or what those constables are (they change on a shift basis) and even if they don't report back to base, they are not immune to reporting to their friends and relatives." Through this note Dr Brincat wanted to show the Board that Mrs Caruana Galizia expressed reservations regarding the protection that the State could offer her and therefore if the State failed to provide the protection, this was the fault of the said Caruana Galizia with her behaviour and attitude towards such protection. However, this is not the conclusion reached by

the European Court in the afore-mentioned case "Osman vs United Kingdom" when it said that Article 2 of the Convention must be interpreted "in certain well defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual".

This "positive obligation" and "preventive operational measures" do not depend on the consent or acceptance of the person whose life is at risk. It is a generic declaration which applies for everyone even in the absence of consent. It was for this reason that this Board previously extended this interpretation by affirming that this positive obligation would happen even if the individual concerned refuses the primary obligation to protection of life. Therefore, even if Mrs Daphne Caruana Galizia showed a certain reluctance and lack of trust in the Police to provide her protection, this does not mean that the Police/State had to fail to provide the protection if her life was at a real and imminent risk.

Preventive Operational Measures:

The Board now must consider whether these "preventive operational measures" were going to place an impossible or disproportionate burden on the authorities.

From the evidence it transpires that until Commissioner Mr John Rizzo was still in office, he used to maintain communication with Mrs Caruana Galizia and used to check that she would have protection even through the police rounds present in vicinity of her residence. Since Mrs Caruana Galizia had a history of attacks on her residence, like for example the burning of her home's door and the poisoning and killing of the dogs, it was necessary that this protection would become more frequent and there was a time as well when there was a fixed point with the Police. Even though the Commissioners who succeeded Mr John Rizzo said that they did not change anything in the rudimental system set up beforehand, it transpires as a fact that this minimum protection which Mrs Caruana Galizia had in John Rizzo's time had been withdrawn.

It is certain however that the Police at the time had all the means, both in regard to the logistics as well as personnel in order to offer the minimum protection to Mrs Caruana Galizia and as stated, this protection should always be provided, in any case, even in the absence of consent of the said Caruana Galizia.

The Police were well aware of this obligation of theirs. In fact, in the first sitting before this Board Matthew Caruana Galizia on 6th December 2019 said: "Police officers who were sent to guard our house even after my mother protested against their presence during events that were considered to be high risk for her, for example the Hunting Referendum, General Elections and following the attack by neo-Nazis in 2006...." "Police protection even in the form of neighbourhood patrols were stopped in 2013 under what could only have been on instruction from the new Police Commissioner...." Therefore, the Board concludes that whilst in the past the Police used to provide a measure of protection to Mrs Caruana Galizia, this positive obligation of the State was not going to place some impossible or disproportionate burden on the authorities.

Whether it was a real and imminent risk

The Board now needs to evaluate whether Mrs Caruana Galizia's life was at risk that merited protection.

In regard to the first experience of an unpleasant encounter with the authorities, the Board turns to the testimony of lawyer Dr Peter Caruana Galizia, Mrs Daphne's husband. He recounts that in 1984, when Daphne, eighteen years old at the time,

was taking part in a protest against the authorities regarding their policies concerning private schools, she was arrested by former Inspector Angelo Farrugia, who today is the Speaker of the Parliament, where she was kept under arrest for thirty-six hours and in the end, she was coerced to sign a statement that she refused. According to Dr Caruana Galizia, Mrs Caruana Galizia's radicalisation began at that time where she experienced the power of the State against private citizens where the latter could be subjected to abuses without adequate protection.

Daphne and Dr Peter Caruana Galizia were married in August 1985 and she started writing after the children were born, around 1988. The first political item that Mrs Caruana Galizia undertook was an interview with the then Minister Michael Falzon in 1988 following a lot of complaints regarding drainage overflows from Sliema. She conducted an interview and published here opinion where Minister Michael Falzon was not very pleased because he deemed that her comments were not fair in his regard. With further encouragement by the Editor of The Times, Anthony Montanaro, she started writing her column entitled "The Good, The Bad and The Ugly". She started writing regularly and her column grew in popularity. She had a serious encounter with the authorities in 1995 with the issue of Meinrad Calleja, the son of Brigadier Maurice Calleja, who, at the time in question, was the

Commander in Chief of the Armed Forces. There was also involved Clarissa Cachia who is Meinrad's sister. She was caught with one kilogram of cocaine in her car. Since it was being alleged that Meinrad Calleja was keeping the cocaine at his parents' house, Mrs Caruana Galizia wrote in the sense that this could compromise the Brigadier's position as Commander of the Armed Forces of Malta. Subsequently when Meinrad Calleja was hauled up before the Court to answer for some charges in connection with this drug, his Defence Counsel, lawyer Dr Giannella Caruana Curran also raised a controversy with Mrs Daphne Caruana Galizia since she deemed that she was in a position of conflict of interest since her father Professor Guido Demarco was a Cabinet member close to the then Prime Minister Dr Eddie Fenech Adami. When Mrs Caruana Galizia wrote an opinion piece regarding this situation, the Times Editor did not want to publish it for her, therefore she went to another newspaper, the Malta Independent, whereby the latter accepted and published the story. Subsequently, she received a letter from the Times where she was told that they would no longer allow her to write in their newspaper.

At the time, they had the first attack on their house when someone tried to burn down the main door. Nobody was charged for this incident. In the meantime, Mrs

Caruana Galizia continued writing in the “Malta Independent” regularly until her demise.

Another serious incident occurred in 2006 when Mrs Caruana Galizia started writing about Normal Lowell and his party “Imperium Europa” when someone set fire to their house whereby the fire was kindled with truck tyres filled with petrol. Even though they suffered a lot of damages, nobody was hurt and nobody was charged in connection with this incident. In the meantime, she continued writing in perfect English, in clear and incisive writing where her popularity continued increasing. It is true that she had a bias towards the Nationalist Party however it transpired that she did not form part of that party nor did she have any special assignment to write on its behalf. In fact, she used to criticise strongly various figures associated with the Nationalist Party, for example, she wrote against Richard Cachia Caruana who was very close to the Prime Minister Eddie Fenech Adami as well as the Deputy Prime Minister Guido de Marco. In 2004 she criticised Fenech Adami himself for accepting the country’s presidency.

The blog "Running Commentary" is launched

Just prior to the 2008 election, she launched her blog "Running Commentary" which immediately achieved great popularity. It is said however that she was quite aggressive in her writings especially with Labour Party exponents. This however was not enough and Mrs Caruana Galizia started writing also about private persons whose only criterion that motivated criticism was their association with the Labour Party. This criticism led to the creation of another blog in 2008 entitled "Taste Your Own Medicine". This was anonymous, however it started attacking Mrs Caruana Galizia and her family personally where they became an object of hatred. It was alleged that this blog was a creation of the Labour Party.

The testimony given by Mark Anthony Sammut on 8th February 2021 is interesting where he referred to a conversation he had with his late father the author Frans Sammut, an intellectual associated with the Labour Party. He had told him that Dr Joseph Muscat had approached him to contribute to a blog intended to counter Mrs Caruana Galizia's writings. His father had refused to do this. In his testimony before this Board on 4th December 2020 Dr Muscat said that he never had anything to do with blogs intended to counter Mrs Caruana Galizia nor did he encourage writings against her. The fact remains that this blog existed and kept on attacking

Mrs Caruana Galizia, exposing her to contempt, ridicule and harassment until the Honourable Glenn Bedingfield launched his blog.

A hostile campaign by individuals who occupy a public position:

The Honourable Bedingfield testified before this Inquiry in the sitting of 21st February 2020 where he denied any connection with this blog known as "Taste Your Own Medicine". He admitted however backing a blog which he launched under his name as well as a One TV programme entitled "Ta' Taghna t-Tnejn" together with lawyer Dr Luke Dalli. In this programme Mrs Caruana Galizia was described as "el fava", a derogatory term with sexual connotations which portrayed her often as an object of contempt and condemnation.

The Honourable Bedingfield presented a list of five hundred and fifty-eight (558) names of people who were attacked by Mrs Caruana Galizia and argued that the right to freedom of expression applies to everyone and not to just one person. He often used the phrase "an equal and opposite reaction" to writings which Mrs Caruana Galizia wrote where she mercilessly attacked any person connected to or an exponent of the Labour Party. As already stated, Mrs Caruana Galizia was very aggressive in her writings, and it is true that she might have hurt several people.

For example, her reporting that the Chief of Staff Keith Schembri was seriously ill was malicious and cruel, and moreover she mentioned the term of three months when he was to die. It is certain that such reporting would badly affect whoever is involved and instil in them a sentiment of great anger.

This style of reporting should be condemned, regardless of where it originates.

However, to state that Honourable Bedingfield's writings were "an equal and opposite reaction" is wrong. There was nothing "equal" in what Honourable Bedingfield used to write when compared to what Mrs Caruana Galizia used to write. This is because the former had the backing of a media house as well as the strength of a Political Party and the Government of the day with its almost infinite resources.

The attacks became more ruthless prior to the 2017 Election

When the 2017 election was approaching, the Government communications which discredited Mrs Caruana Galizia's reporting intensified, particularly where these involved the Panama Papers, Konrad Mizzi, Keith Schembri, Joseph Muscat, Michelle Muscat, Pilatus Bank and related others. As if this was not enough, it was

also reported that the Government had engaged the public relations firm Chelgate, officially to give counsel to the Government to counter the fake news in its regard. However, the Swedish newspaper "Svenska Dagbladet" reported that the Maltese Government had engaged the English firm Chelgate to spread a rumour that Mrs Caruana Galizia was a Russian spy during the 2017 election campaign. (https://www.sudh.se/mordhistorier-shaker-on-kapplas-till-oversta-maken). In his testimony before this Board, the then Head of Communications Kurt Farrugia denied that the engagement of Chelgate was to discredit Mrs Caruana Galizia, although he did not deny that Chelgate had been engaged by the Government. Regardless, this shows the financial strength, influence and power which the Government had at its disposal and at the disposal of the Honourable Bedingfield to counter Mrs Caruana Galizia.

The contrast could not have been clearer:

The Honourable Bedingfield and even Government officers attacked the journalist whilst Mrs Caruana Galizia was a journalist attacking the Government.

Whenever he wanted Mr Bedingfield could go on television and broadcast his opinions to the four winds whilst Mrs Caruana Galizia used to write alone in the English language in which not everyone was fluent. So much so that this Board is convinced that many of the people who condemned her never read what she used to write, an issue which did not escape the journalist Roberto Saviamo in his book "Di la verità anche se la tua voce trema". On page 9 he says: "Each of Daphne's article was judged without even being read, many Maltese did not even read the English in her works but knew well how to counter it..."

A dehumanisation campaign:

This is because whilst many were not that comfortable with the English language, they were continually exposed to television programmes in Maltese which attacked Mrs Caruana Galizia mercilessly such that with time she became dehumanised and an object of hate and contempt. A typical example of this was the incident in Rabat soon after the 2013 election where the former Mayor of Zurrieq Ignatius Farrugia was involved. Mrs Caruana Galizia was attending the feast in Rabat together with her friends and relatives when Mr Farrugia glimpsed her, started shouting against her and a crowd of people went running after her so much so that she had to seek refuge in a monks' convent. This incident however had more serious consequences

since when Mr Farrugia was hauled before the Court to answer for the charges in connection with this incident, the Court of First Instance found him guilty, Mr Farrugia appealed and in the appeal a decision was granted that the same Judge deemed was incorrect and requested the President of the Republic to publish a pardon in regard to Mr Farrugia, as in fact happened.

The importance of this is not the pardon in itself but rather the message that it portrayed. It is not likely that the public in general was understanding the legal complications which had led to this pardon. They only knew that Ignatius Farrugia who was involved in some aggression against Mrs Caruana Galizia was released from all charges and therefore could be considered as fair game for whoever wanted to harm her in any way. This started increasing the level of risk that Mrs Caruana Galizia was facing at the time.

Meanwhile however as stated, following the 2006 incidents of the burning at her house, Mrs Caruana Galizia was having some form of protection from the police. The former Commissioner of Police John Rizzo who testified on 7th January 2020, said that he continued with the measures which his predecessors Commissioners Alfred Calleja and George Grech had established. Rizzo stated verbatim: “it is

certain that there was protection with Daphne, it is certain that it remained in place. However, I do not know for how long it remained there. I can't remember whether I removed it, whether my successors removed it."

It transpired that the Police used to organise frequent patrols in the vicinity of her residence, these were increased, and a fixed point was also set up at election time or else at the time of the Hunting Referendum. The former Commissioner Peter Paul Zammit testified that he knew that there was an order for frequent patrols and that he left it in place. Similarly Former Commissioner Michael Cassar presented a list of days when there were fixed point duties to Mrs Caruana Galizia's residence. These were at election times and at the time of the Hunting Referendum. He testified that he never gave an order for all this to stop however there was no regular communication between him and Mrs Caruana Galizia, a matter which was very prominent between herself and Commissioner Rizzo. Mr Rizzo explained that he used to have regular contact with her and despite the fact that she showed a certain opposition to have the Police watching over her, Mr Rizzo used to insist with her that he would be providing her with this protection whether she wanted it or not.

Meanwhile the pressure on Caruana Galizia piled on in the 2013 electoral campaign when the Labour Party put up a billboard which showed Caruana Galizia's face together with other exponents of the Nationalist Party such that she was identified together with that party.

Huge Pressure after 2013:

Following the 2013 election, individuals who were directly involved in the attack campaigns against the assassinated journalist took on public official positions, many of whom within the office of the Prime Minister. They occupied positions with the function of managing the Government means of communication with the people. In this capacity, these persons not only had the obligation to stop these attacks because they were obliged to defend the fundamental right to freedom of expression. They had the obligation to take steps to restrain these attacks regardless from where they originated even by those by the party who were its members but also if the journalist Daphne Caruana Galizia was writing aggressively against the declared policies of the Government or persons forming part thereof. This aspect was also discussed in the general observation of the Board.

This derogatory campaign now worsened through Glenn Bedingfield's blogs who then started holding an official position as well as through posts, among others, which were made by Neville Gafa, another Government official who portrayed Daphne Caruana Galizia as a witch with graphic figures and photos having malicious and cruel intentions. Mrs Caruana Galizia was being followed wherever she went with her photos being uploaded on Facebook together with disparaging comments both on Neville Gafa's Facebook posts as well as on Glenn Bedingfield's blog and others.

At this stage, her dehumanisation was well advanced and she had become an object of contempt and hate. The Police did not do anything in this regard, rather in certain situations, they were also a source of nuisance and harassment of the said Caruana Galizia when, for example, someone maliciously reported that Mrs Caruana Galizia had hit his car when this was parked in the car park of the then St Luke's hospital. The Police asked Mrs Caruana Galizia to go to the Police Station and she refused because she said that that report was not true. Therefore, they went to Mrs Caruana Galizia in order to inspect her car and check whether this had some marks which would indicate some form of impact with another vehicle. In fact, nothing

transpired. There was another circumstance where she was given parking tickets for nothing, and sometimes where the Police committed perjury in her regard.

A change to the risk after the Panama Papers

In February 2016, the risk for Mrs Caruana Galizia increased enormously when she started exposing secret offshore structures which had been set up by the accountant group Nexia BT for high-ranking Government exponents. Initially, this story was ridiculed as a pure invention of the Nationalist Party to destabilise the Government. When later its veracity began emerging in public, since this was not something made up in Malta, but was concerning international structures subsequently known as the Panama Papers, the situation became even more serious. At the same time, FIAU reports started coming in regarding the illegality which could have been committed by the Prime Minister's Chief of Staff Keith Schembri as well as by Minister Konrad Mizzi. When the Police requested authorisation to proceed against Nexia BT, the Attorney General Dr Peter Grech had written a letter where he had advised that such a search at the Nexia BT offices for servers and documents could have been considered as "too intrusive". On the basis of this counsel, the Police, then led by the Head of the Economic Crimes Unit, Superintendent Ian Abdilla, decided not to do anything about it and everything

remained the same. Nexia BT continued operating in a regular manner, receiving contracts from the Government, Keith Schembri held his position as Chief of Staff whilst Konrad Mizzi was moved laterally from one portfolio to another. Whilst the Panama Papers shook the whole world, where Malta was concerned, they barely made a ripple and everything proceeded as if nothing had happened. Meanwhile every report by Mrs Caruana Galizia regarding irregularities by high-ranking Government officials increased the risk which she was facing.

In May 2016 it was reported that the FIAU had conducted and concluded a report where they expressed their concern and suspicions that a transaction of one hundred thousand euro (EUR 100,000) between Keith Schembri and Brian Tonna was the result of a criminal activity linked to the sale of passports. Similarly, there was no consequence for Keith Schembri or Brian Tonna for this report. It started to be clear that whoever was close to the power in Castille was protected and this started generating that culture of impunity regarding which the Board has already started making considerations. In this same period of time, the tension kept increasing when Mrs Caruana Galizia alleged that the beneficiary of the offshore company Egrant was none other than the Prime Minister's wife, Michelle Muscat. There was an agitated discussion with the country divided, some in favour of what

Mrs Caruana Galizia had written and some against until, whether right or wrong, the Prime Minister decided to call a general election in March 2017. It was a time when Mrs Caruana Galizia started being portrayed as an important support for the Nationalist Party. The election was won by an overwhelming majority by the Labour Party and thus it seemed to appear that not only did the Nationalist Party lose trust but also Mrs Caruana Galizia. The only protection which was given by the Police was in those election days where fixed points were set up at the door of her residence. Once those days passed, Mrs Caruana Galizia found herself alone once again. A scenario of impunity and weakening of the institutions was created whereby whoever wanted to cause her harm, built up courage and kept on brewing the plan in greater detail so that Daphne Caruana Galizia would be eliminated once and for all.

This plan was further abetted by the political situation that emerged after the election, with the resignation of the then Opposition Leader Dr Simon Busuttil and the election process for a new leader. Here, Mrs Caruana Galizia gave her contribution with her usual style where she mercilessly attacked the candidate Dr Adrian Delia. Despite everything, he was elected as Opposition Leader and thus, it appeared that Mrs Caruana Galizia was completely isolated, attacked from every

front. However, she kept on building up courage because the hits on her post were at their highest and she was very popular among her readers. This was not enough to assure her security since the attacks on her kept increasing and becoming more ruthless and aggressive in their tone and manner.

Proximity to individuals in the public administration

A determining factor in the increase of risk that Mrs Caruana Galizia was facing was the proximity of the alleged executors of the crime with prominent individuals in the public administration. In the sworn testimony given by Vincent Muscat il-Koħħu before this Board on 6th April 2021 and as confirmed in the testimony he gave in the compilation records against the Degiorgio brothers on 16th and 21st April 2021, he explained this proximity and how another plan had been devised in 2014-2015 to kill Mrs Caruana Galizia. In this plan, Vince Muscat and some other persons were involved. The plan failed when the money requested was not paid. Vince Muscat il-Koħħu testified that the second plan was devised and had to be executed prior to the 2017 election. He confirmed that the plan was stopped and restarted immediately after the election results were known. This fact, if it transpires to be verified and pointed out by a person who was involved in the actual planning and execution of the crime, confirms beyond any reasonable doubt that whoever

committed the crime was careful to commit it at the right and opportune moment not only for themselves personally but also politically.

It is not the task of this Board to enter into the merits of the assassination plan or who could be responsible for it because this is a task for the Police however, it must remark that these circumstances gave peace of mind to those who had the plan to executive the murder that they would not be caught after the assassination. Vince Muscat mentioned a former Minister in particular. The alleged executors were so level-headed that they knew three weeks in advance that they were going to be arrested on 4th December 2017 and that they had the opportunity to dismantle the surroundings which they occupied in the renowned Potato shed in Marsa. This was confirmed by the then Prime Minister Dr Joseph Muscat when he testified (behind closed doors although subsequently available in the public domain) before this Board on 4th December 2020. *"Nowadays I have a rather well-founded suspicion that at the meeting or meeting which were taking place prior to the arrest of the three persons, there was a leak... In those days, there used to be present, yes, Keith Schembri and Silvio Valletta ... but it is clear that the arrested individuals knew ... It was a fact."* Vince Muscat testified that he was given information by the Degiorgio brothers whose arrest had to be a temporary one where after their arrest they

would have been interrogated and released after a few days. In fact, they were not and what happened thereafter is in the public domain.

For this exercise, the proximity of organised crime to politics and the highest organ of power in the country is relevant. A proximity which encouraged and strengthened the willingness of the alleged executors of the assassination who were convinced that they were not going to get caught after the commission of the murder and if they were caught, they would be released after a few days. This proximity alleged by Vince Muscat but otherwise denied, if it transpires that it existed before the homicide, would have raised the level of risk which Mrs Caruana Galizia was facing to very dangerous levels.

There is evidence of involvement of public officials within the OPM including Keith Schembri, others in his office and members withing the Police corps definitely after the murder in order to assist the alleged executors in some way. Whoever allegedly committed the assassination felt shielded to the point where he was convinced that he would either not get caught or get off lightly. As stated, there is evidence that elements within the Police corps at the highest ranks were involved in improper

friendships for personal gain, certainly after the murder had been committed. It is not excluded that they could have existed beforehand.

Serious incidents and complexities which effectively led to the resignations of some of these high-ranking officials and to Magisterial Inquiries.

State entities ignore the journalist's serious allegations

It is difficult to keep a timeline of events which occurred prior to the assassination because their frequency and duration overrode each other. However, the common line which used to happen in all that Mrs Caruana Galizia reported was that whatever she wrote about corruption, illegalities and lack of professional ethics by individuals in the highest positions, nothing was ever done despite that the police and the institution directors who testified before this Board said that they used to use her reports as a source of information. This inaction increased Mrs Caruana Galizia's isolation and consequently the risk to her life.

One libel after another was being filed by politicians, Pilatus Bank and leading businessmen with the most serious one being that of the then Minister Dr Chris Cardona. It is known that Mrs Caruana Galizia had alleged that Minister Chris

Cardona had frequented a brothel in Germany which being on official Government duties. His reaction was an unprecedented aggressive one where, apart from the libel case, he tabled and acquired a Seizure and Freezing Order of Mrs Caruana Galizia's finances. The significance of this was not the financial difficulties that she would have to face, insofar as her vulnerability had been exposed to whomsoever wished to cause harm with their impunity almost secured. The irony is that in an interview given by Dr Cardona, then deputy leader of the Labour Party, to the Times of Malta published in the issue of 5th June 2020, when asked whether Mrs Caruana Galizia was "... a thorn in your side", Dr Cardona is reported to have replied, "she was not a thorn in my side, in anybody's side, she was a pillar of democracy." When taking into consideration the treatment/persecution that she suffered from all quarters, this difference between words and facts could not have been more manifest.

The Electrogas Project

Meanwhile, Mrs Caruana Galizia began receiving a great deal of leaked emails from the company Electrogas and she was certain that there was corruption in the process of the granting of contracts. She knew of the existence of 17 Black. She knew that Electrogas was on the verge of bankruptcy and in September 2017 she

wrote about this and soon after the Government got involved to provide a surety whereby the company acquired financial closure in November 2017 that is, one month after her assassination. It is probably that if the owner of the company 17 Black had been revealed with certainty and publicly prior to the assassination, the Government would have found itself in an uncomfortable position to provide a surety and the future of the company would have been cast in doubt. This would be without ignoring the fact that the Prime Minister's Chief of Staff knew very well who the UBO of 17 Black was well before Daphne Caruana Galizia revealed the news. This transpires from his own testimony. It is not this Board's task to discuss the assassination's motives since, as stated, this falls within the competence of the Police.

Daphne was not killed because of gossip but because of something far more serious.

The State Entities' responsibility

Therefore, when the Board considers all this, it concludes that between 2013-2017, Mrs Caruana Galizia was exposed to an increasing scale of personal risk. A real and actual risk which at the same time put her life in clear danger. A danger which could

easily be identified by the authorities who failed in their positive obligation to take those necessary operative measures, which would not place an impossible and disproportionate burden on them, in order to protect the life of Mrs Caruana Galizia from criminal actions of third parties.

Section IV

The second term of reference

"2. Establishing whether the state had and has in place effective criminal law provisions and other practical means to avoid the development of a de facto state of impunity through the frequent occurrence of unresolved criminal acts and to deter the commission of serious criminal offences, backed up by law enforcement mechanism for the prevention, suppression, investigation and punishment of serious violations of the law."

Section IV

The Second Term of Reference

The Board of Enquiry shall now proceed to examine the second term of reference, that is, that the Board "should establish whether the State had and has in place effective criminal law provisions and other practical means to avoid the development of a *de facto* state of impunity through the frequent occurrence of unresolved criminal acts and to deter the commission of serious criminal offences, backed up by law enforcement mechanism for the prevention, suppression, investigation and punishment of serious violations of the law."

A Fight against Corruption and the Rule of Law

Communication from the European Commission to the European institutions

In this regard, the Board begins by quoting from the "Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, 202 Rule of Rule Report, The Rule of Law Situation in the European Union". Through this Report, the European Commission emphasised that the fight against corruption is essential in order that the rule of law functions.

The Report states the following: “Corruption undermines the functioning of the State and of Public Authorities at all levels and is a key enabler of organized crime. Effective anti-corruption frameworks, transparency and integrity in the exercise of state power can strengthen legal systems and trust in public authorities. Fighting corruption needs to be based on evidence about its prevalence and form in a given country, the conditions that enable corruption and the legal institutional and other incentives that can be used to prevent, detect and sanction corruption. The fight against corruption cannot be reduced to a standard one size fits all set of measures. It also needs to take into account specific risk factors which may vary between different member states. Nevertheless, all member states need tools in place to prevent, detect, curb and sanction corruption. The need for comprehensive preventive strategies that increase transparency and integrity in all sectors of society and function on root causes has long been recognized by the E.U. Such strategies should be based on an assessment of threats, vulnerabilities and risk factors, likewise the need for reliable and effective integrity measures, efficient corruption preventive systems and effective, accountable and transparent public institutions at all levels is also part of the E.U. approach to fighting corruption.”

A need for measures of prevention and repression

Subsequently, the Report states that it is necessary that every State has "a combination of prevention and repressive measures". The Report continues as follows: "This calls for independent and impartial justice systems that effectively enforce anti- corruption legislation by conducting impartial investigations and prosecutions and effective proportionate and dissuasive sanctions including the effective recovery of proceeds of corruption. This in turn requires a robust legal and institutional framework, sufficient administrative and judicial capacity as well as the political will for enforcement measures, independent and pluralistic media, in particular investigative journalism and an active civil society playing an important role in the scrutiny of public affairs detecting possible corruption and integrity breaches, raising awareness and promoting integrity. The fight against corruption also has an important E.U. dimension as it is linked to the protection of the financial interests of the Union. The European Public Prosecuting Office will pay a crucial role in this regard."

Legislation is required against corruption

The Report also mentions that there is a need for legislation against corruption, whistle-blower protection, revised rules against money-laundering and the need

for there to be the exchange of financial information in order that investigations of a financial nature are fast-tracked. The Report mentions Malta specifically and states the following: “The ongoing investigation and separate Public Inquiry into the assassination of investigative journalist Daphne Caruana Galizia unveiled deep corruption patterns and sparked a strong public demand for significantly strengthening the capacity to tackle corruption and wider rule of law reforms.” It also mentions the media's independence and in regard to Malta states: “The independence and competence of media authorities is established by law in all member states. Nevertheless, some concerns have been raised with regard to the politicization of the authority for instance in Hungary, Malta and Poland.”

It is also significant that the Report maintains that in Malta they found that the citizen had difficulties and obstacles to obtain information in regard to the right of access to information which is important even for the scrutiny of public institutions and in order to retain the rule of law.” The report found a shortcoming in regard to Malta since it has not yet appointed a National Human Rights Institution. Nevertheless, the Report states that the Parliament of Malta is considering the establishment of this National Human Rights Authority, an independent NHRI.

The GRECO Evaluation Report is Critical of Malta

In order to continue on the guidelines issues by the European Union and the Council of Europe, the Board shall now refer to the Evaluation Report about Malta by the Greco Commission of the Council of Europe, which was published on 3rd April 2019. The Report evaluated whether Malta had an effective framework in place in order to ward off and even prevent corruption by Ministers and high-ranking Government officials and by members of the Police force. The Report, among other matters, states the following: "For a country of that size, Malta has on paper an impressive arsenal of public institutions involved in checks and balances. However, their effectiveness is being questioned as the country was confronted in recent years with an unprecedented wave of controversies concerning the integrity of senior government officials up to the highest levels. These included allegations of misuse of state resources and nepotism, conflicts of interest in relation to privatization, tenders, energy supplies and the sale of land measured to attract foreign investments including through the sale of passports, the award of contracts and public positions, the capacity of its criminal justice system and preventive mechanisms to deal with allegations of corruption and money laundering in the above context was largely questioned.

The Greco Report found that Malta does not have a strategy "or coherent risk based approach" when the integrity of Government officials was concerned and therefore there is a need that there are more stringent rules in regard to the involvement of high-ranking Government officials in construction, offshore operations, conflicts of interest and declarations of assets and interests. It also found that there is no "general verification and enforcement regarding such rules" and that there is no sanction system. It was found that the system in Malta which regulates criminal justice does not take effective steps when serious allegations are made in regard to the distribution of duties between the Office of the Attorney General, the Police and the Inquiring Magistrates and it was necessary that these responsibilities are re-distributed.

An ineffective Permanent Commission Against Corruption and a need for reform within the Police

The Report also notes that the Permanent Commission against Corruption in Malta has no real and effective value, after having been established for thirty years since after having read more than four hundred cases, the little information that is released suggests that this Commission to date has not come to any solid results. On 2nd December 2020, the Secretary of the Permanent Commission against

Corruption testified and stated that on the day that he testified, the Commission had about ten pending cases before it. The Chairman of this Commission, Judge Lawrence Quintano, also appeared and informed the Board that he could not testify because he was prohibited by law from testifying and therefore the Board was not given further information regarding the work being undertaken by this Commission.

In regard to the Police, the Greco Report states that it is necessary that the State takes “a comprehensive set of measures to streamline integrity policies in the management of the force.” It states that there was a Chief Executive Officer appointed in 2017 and this was a positive development but more measures were necessary “including more robust ethical standards, a clear merit based approach for career decisions and promotions, the introduction of a communication policy, a more robust training system and so on”. It was also necessary that “The Independent Police Complaint Board” is strengthened and becomes more effective. In order to fight corruption, clear strategy is required on reports by whistle-blowers and other persons and in this regard, it is necessary that protective measures are taken for those who provide information as well as for whistle-blowers.

A Negative Appreciation of the situation in Malta

The Report mentions that an evaluation team was sent to Malta from the 2nd to 6th October 2018. Malta was placed in the fifty-first (51) position from one hundred and eighty (180). According to the T I Perception Index 2018. The Eurobarometer 457 "on Business Attitudes towards corruption provides a similar picture. 58% of business respondents considered that corruption is a problem for doing business whilst 84% perceived corruption as widespread and 90% see excessively closed links within business and politics as one of the main causes of corruption on very specific variables. The above study refers to negative trends since 2015 for instance as regards the forms of corrupt behaviour, links with political financing, tax fraud, vat avoidance, manipulation of tenders, impartiality of anti-corruption efforts etc". This transpires from surveys which were conducted in Malta itself. In this regard, the Swiss Leaks, Panama Papers, the Citizenship by Investment Programme, Mrs Caruana Galizia and Maria Efimova controversies were mentioned. The Report mentions that there were five different Police Commissioners between 2013 and 2018. It lists the reports issued by the FIAU regarding Government officials, the assassination of the journalist Daphne Caruana Galizia, the Electrogas deal, the privatisation of the Hospitals to a firm which had no experience in the health sector,

the sale of public land for prices lower than the market value, misuse of public resources and the calls which were made for the resignations of the Commissioner of Police and the Attorney General.

The Greco Report concludes by making a number of recommendations and follow up in regard to Malta's situation.

In effect, an "Addendum to the Second Compliance Report Malta" was drawn up on 25th March 2021, which was published on 11th May 2021.

This Report acknowledged that there were a number of positive reforms which were implemented in Malta since 2019. However, five from nine proposals which were made in 2019 were still not implemented. The Report made several recommendations to the Maltese authorities. The Board notes the many other Reports from authoritative institutions such as the Venice Commission for Democracy, through the Council of Europe Law, the Legislative Assembly of the European Parliament, Moneyval and others which identified more or less the same failings in the manner the country was being managed.

Facts relevant to this Second Term of Reference

1) On 16th October 2017, the investigative journalist Daphne Caruana Galizia was killed with a car bomb which exploded a short distance from her residence in Bidnija. It is relevant to state that during the preceding years in Malta, there were several car bomb incidents. None of these crimes were solved and no person was charged in Court in their regard.

2) The arrests made following the assassination of the journalist Daphne Caruana Galizia were the result of forensic investigations which linked the bombs to the alleged executors. Evidence suggests that the modus operandi and maybe the same matrix in the murder of the journalist Daphne Caruana Galizia was that used in previous explosions.

3) In this instance, the assassination of a prominent and internationally renowned journalist led to the pressure on the Maltese State to solve the assassination. There was significant public insistence, even internationally, for a serious forensic investigation with the assistance of foreign agencies and experts like Europol and the FBI. This does not appear to be the case for the previous car bombs. In truth, the Government quickly realised the severity of the situation so

much so that immediately after the assassination occurred, it took steps to involve the FBI.

4) The fact that all the car bomb cases which occurred in Malta remained unsolved may have given the mandators and the actual executors of this heinous crime the peace of mind that they would not be caught since no one had ever been caught before in connection with crimes of this type.

These alleged assassins acted according to the instructions given to them by mandators who engaged them or ordered them to commit this crime. The evidence shows that even the circumstances were such that the alleged mandators deemed that they were protected and probably would not be caught and that they would never pay for their actions.

The Second Reference concerns the study of the efficacity of the Criminal Law applicable to this case

As stated, this Board was requested to establish whether the State had and has in place effective criminal law provisions and other practical means to avoid the development of a *de facto* state of impunity through the frequent occurrence of

unresolved criminal acts and to deter the commission of serious criminal offences, backed up by law enforcement mechanism for the prevention, suppression, investigation and punishment of serious violations of the law.

Mafia-style Terrorist Acts

Were we to apply Italian criminal law to Daphne Caruana Galizia's assassination, the assassination could be called a mafia-style terrorist act. The journalist's assassination was not intended to end her life but to end her work and activism. This is because the persons who decided to kill her would continue with their plans without any hindrance. They also wanted to instil fear in the sources, the journalists, the activists and whoever could continue with her work.

From an analysis of the evidence compiled by this Board, it transpired that in Malta a crime organisation was being fostered which was depending on the improper influence and friendship of persons in business, in the police, in politics and in high institutions. An organisation which had started to spread and if left to expand its roots, it would develop into a criminal conspiracy which corrupts institutions and destroys good governance. It is necessary therefore that a legal and enforcement

framework is developed in order to eradicate every possibility that a similar one is formed.

In countries where there is legislation against the mafia or a mafia-style organisation this is defined as an organisation whose members may use the power of intimidation from partnership links, the ruling State and the culture of secrecy. This fosters a culture where crimes are committed, in order to obtain direct or indirect control over economic activities, licences, authorisations, public procurement or service contracts or to make profits or gains for themselves or for other parties or to avoid or hinder the free exercise of voting or to obtain votes for themselves or for other parties in elections. A membership in this type of organisation is in itself a punishable crime, even if it cannot be proven that there exists a direct connection between the mafioso and the execution of a crime committed by mafiosos in the name of the organisation. The sentences are exacerbated if it is found that the organisation members have access to arms or explosives with the aim of proceeding with the organisation goals.

Corruption grows roots in a culture of impunity

The Second Term of Reference requests the Board to establish in which circumstances and environment would a *de facto* state of impunity develop even because unresolved criminal acts would have occurred frequently. In truth, there are two sides to every coin. There may be a situation where this climate of impunity is created because a number of serious crimes remain unsolved. On the other hand, there may be a climate of impunity because whoever commits the criminal deeds would either have so much power that they believe that they can abuse of it or to the contrary whoever is going to commit the crime would be assured that they can commit it because they would be covered by persons of authority who could protect them.

In the case of the assassination of the journalist Caruana Galizia, these two aspects appear clear, even if at times these are interconnected to the *de facto* State of impunity which conditioned the assassination. It is to be noted that here we are not limiting criminal acts to those which are only acts of physical violence like the assassination but they also include other serious criminal acts like money-laundering, corruption, abuse of power, misappropriation and abandonment of duties by public officials, among others. From the case in question, it is clear that

the allegations are that whoever was actually involved in the homicide act felt assured of the protection of people in power, both politically and economically. On the other hand, those who are allegedly involved in serious crimes of the financial type and corruption, among others, benefitted from the impunity which they felt they could enjoy thanks to the strength of the position of power that they held.

The topic has already been addressed in the general observations

The Board has already made its observations regarding the culture of impunity and power in Chapter V of its general observations. Here it makes full reference to them and shall limit its comments at this stage to demonstrate how and to what extent its general observations apply to the case in question. This is also by giving an indication of the basic facts which show how the web between business and public authorities operated, what limits it reached and how it created a culture of impunity by having infiltrated and determinedly influenced the commission of the crime.

The action of the public authorities enabling impunity

The Board already established that it reached the inevitable conclusion that the assassination of Daphne Caruana Galizia is intrinsically if not exclusively linked to

her investigative work which led to the disclosure of allegations of irregularities and administrative abuses in the realisation of major development projects in which elements of big business in the country were involved. Irregularities and abuses which could not happen if whoever were involved in them, both from the public administration side as well as from the business side, did not feel shielded by a cloak of impunity which gives them the strength to act without fear of being discovered. That impunity could only be created if there is the certainty that the authorities who had the obligation to ensure the rule of law by actually restraining those irregularities and administrative abuses, were not going to act efficiently or even cover those who were involved in them. The Board has already referred to the wide net of public officials not only within the Police and in the public service but also spread with all the authorities who had anything to do in some way with the planning and execution of major projects and those involved in their realisation.

At this stage therefore, the Board shall limit itself to the essential part of the coverage, which can be said to be almost complete and from every aspect, of the events which started happening following the publication of the Panama Papers which, in the eyes of the Board is the crucial moment when the risk to which the

assassinated journalist was being exposed started to escalate in a very dangerous manner.

It shall provide the essential facts how this culture of impunity developed and emerged publicly, even if all those who were involved attempted to justify their behaviour, today manifestly dubious, by maintaining that they always followed the rules and according to what was expected of them.

The Board emphasises once again that since, in regard to the various prominent figures mentioned in this account, they may still be subject to investigations by the police or are actually subject to criminal proceedings, for some reason or other connected with the execution of their duties in the relevant period, the Board shall rely exclusively on the evidence given before it without making comments or judgements regarding this. It also considers that it is relating to the facts from the perspective of the behaviour of the public officials within the public administration in a broad sense and is not making any substantial reference to the conduct of a person or persons actually accused with the participation in the assassination in one way or another.

Not only that. The almost airtight extension of the net of impunity that whoever created it managed to weave, involved public officials at the highest level of administration that, even if not always intentionally, today it appears that they were acting for the same goal and spirit with one objective, definitely orchestrated from a centre of power with two branches, apolitical one and an economic one. There were multiple reasons for which such high-ranking officials within the public administration succumbed to temptations of benefits and favours which were offered to them. Every incident has its own storyline which emerges from the witnesses before this Board and even from the evidence which was revealed and which still has to be revealed in the public domain. It is not the case that the Board goes deeper because it is of the opinion that it should keep to the general lines which lead it to the assassination.

One must remember that this culture of impunity had not only led to whoever was actually involved in the homicide feeling assured that they were not going to be caught and evade having to answer for their actions but also for the implementation of large projects which the assassinated journalist alleged having irregularities, abuse, bribes and corruption. As far as the Board is concerned, it was established that the impunity which was created had become a lifestyle and

attitude which whoever intended to deal with the public administration for the implementation of the projects they had needed to lean towards it. As stated, serious irregularities invaded, as they always do, talks and negotiations of this type and at this level. In order to give a direct example of the effect that this net of impunity had, both for what happened before and after, it shall concisely record the facts which occurred as transpires from the testimonies given to this Board by persons of authority who participated personally in the events that occurred.

The FIAU, the Police, the Attorney General and the Creation of Impunity

The journalist Daphne Caruana Galizia had reported in her Blog on 22nd February 2016 that Minister Konrad Mizzi had suspicious financial connections with Panama and New Zealand. On 25th February 2016, she uploaded another blog post in which she revealed that Keith Schembri, the Chief of Staff of Prime Minister Joseph Muscat, had a Trust in New Zealand, which had a company in Panama. All this happened two months before the Panama Papers leak around the whole world in April 2016. The Board learnt that the FIAU had filed a preliminary report after the scandal had shaken the whole world and the report was given to the Commissioner of Police of the time, Mr Michael Cassar. The Report was not a formal one.

According to law, the FIAU is obliged to pass on the information to the Police and the Police have all the authority and duty to continue conducting its investigations, whilst the FIAU continues the investigation. Mr Manfred Galdes who was the Director of the FIAU at the time in question and had been occupying that position for eight years, deemed that he had to forward this report to the Commissioner of Police because he rightly deemed that the issues were urgent and of national importance. The Commissioner of Police Cassar had been informed that more time was required for the FIAU to finalise the full report. Mr Galdes deemed the duty to inform him immediately of what he had in hand in order that the Police would be able to take all the necessary action. He testified that the information that he gave him was correct and deemed that there was enough information for the Police to understand the importance of the allegations and keep on investigating. In effect, the former commissioner testified before the Board that he had opened a file called Operation Green. These preliminary reports were passed on to the Commissioner of Police on 7th April 2016.

Upon a direct question by the Board, Mr Galdes replied that the fact that the FIAU was probing in no way does it stop the Police from investigating. The Police also had the duty to act and should not have failed to do so with the excuse that it was

waiting for the FIAU to finish its investigation. He mentioned cases where the FIAU had worked together with the Police and it is good practice that the FIAU and the Police work together and help each other in the investigations.

It transpires from former Commissioner Cassar's testimony that a few days after he received this preliminary report on the Panama Papers from the FIAU, he resigned from Commissioner of Police. Mr Galdes testified that in July 2016, he resigned from his position as FIAU chairman because he, according to himself, was not being given enough backing from the Ministry of Finance for the employees' salaries at the FIAU to be raised and in order to have more people and therefore deemed that he could not be more efficient in his role.

The FIAU and Pilatus Bank

Mr Galdes testified regarding Pilatus Bank about which the FIAU had issued a report in March 2016. He testified that FIAU officials had gone to Pilatus Bank, they remained there for around ten days and each time they returned and reported to him that when they asked for certain information, this was not being given to them. Mr Galdes testified that this information was supposedly to have been held by the Bank as due diligence on the clients of the said Bank. It was for this reason that the FIAU issued a report on Pilatus Bank in that significant failings were found,

essentially because it did not transpire that there was the documentation which the Bank should have kept.

Mr Galdes had spoken to the Chairman of Pilatus Bank that he had not agreed with the FIAU report and made an agreement with him that he would send the officials again to conduct a second visit. Nevertheless, Mr Galdes deemed that the conclusions in the first FIAU report regarding Pilatus Bank should remain as is, because the Bank had repeatedly refused to give it the requested information as happened in fact during the second inspection.

The involvement of the Attorney General

Mr Galdes also testified that the FIAU Board, consists of four persons: one of them appointed by the Attorney General, another by the Police, another by the MFSA and another by the Central Bank. He stated that when the FIAU was instituted until the day that he testified, that is until 20th January 2020, the person appointed by the Attorney General had always been the Attorney General himself, in this case it was Dr Peter Grech. Mr Galdes testified that one time Dr Grech had phoned him and asked him for some details on a related case or with Keith Schembri or else with Minister Konrad Mizzi and at the time, Mr Galdes told him, *"Are you asking*

me as the Attorney General or as Chairman of the FIAU?" and when Dr Peter Grech hesitated to give him an answer, Mr Galdes told him, *"I will not give you information."* He continued to testify that there were other similar incidents.

He maintained that he was of the opinion that there were certain decisions where the conflicts of interest were not being managed properly. When place in that position, he was feeling very uncomfortable. Another time, the Attorney General had phoned him again and asked whether, according to the Prevention of Money Laundering Act, the FIAU could assume the role of Inquiry Board in situations of this type. He had explained to the Attorney General that the FIAU had powers which are very different from a simple inquiry in order to reach the conclusions whether there was improper conduct or not.

Interference in the FIAU Work

Mr Galdes had the clear impression that the FIAU was not pleased with the fact that they were inquiring and investigating the Panama Papers. He said that from the whole Board it was Dr Peter Grech who was passing on this message. Dr Peter Grech had told him that the FIAU should be business friendly, a remark which, worryingly reflects the Government's declared policy regarding which this Board

already expressed its serious reservations, appears that this policy even conditioned the Attorney General's mentality in the execution of his duties. Mr Galdes rightly deemed that this should not be the case because the FIAU had the duty to investigate something as serious as the Panama Papers and this issue certainly also influenced his decision to resign.

Mr Galdes also testified that the resources to the FIAU were stopped suddenly at the time when they started investigating the Panama Papers. There was an ongoing process in which other persons were going to be recruited, but which was stopped suddenly just when the Panama Papers scandal struck and the FIAU started investigating them. Mr Galdes testified that when he went to give the FIAU reports to the Commissioner of Police, to Mr Michael Cassar, he had taken it badly, was very shocked and seemed quite worried. He appeared visibly shaken and shocked. Mr Galdes' resignation date from the FIAU was on 15th September 2016.

Why the Commissioner of Police resigned

Kenneth Farrugia, Mr Manfred Galdes' successor, also testified and confirmed that the FIAU forwarded the Panama Papers reports to the Police but despite that the law states that the Police should give them feedback after they would have passed

on the reports to them, they never received anything. The Police as a reason, gave the fact that there were Inquiring Magistrates' Inquiries. He also mentioned a working document that he had forwarded to the Police in regard to the Power Station and Minister Konrad Mizzi. In this working document, the Police were given information regarding which banks they should contact for further information. He testified that there was "reasonable suspicion of money laundering".

It transpires from the evidence heard by this Board that the Police took no action in regard to this preliminary report of the FIAU and that Michael Cassar had decided to resign because he felt that he had been burdened with all the responsibility. Due to the political climate at the time, he felt that he could not take the proper steps in regard to this report.

As stated previously, Michael Cassar had opened a file named "Operation Green" and Superintendent Raymond Aquilina testified that the Anti-Money Laundering Squad at the time, that is in 2016, was led by Superintendent Ian Abdilla who subsequently became Assistant Commissioner and continued heading this Squad. On 2nd November 2016, an FIAU report was also received in regard to Adrian Hillman and Keith Schembri and Superintendent Ian Abdilla requested

Superintendent Raymond Aquilina to read it, issue the respective letters which had to be sent to the local authorities to collect the required information and then to pass the report back to Mr Abdilla.

Superintendent Aquilina had received the replies towards the end of December 2016, had put them in the file and passed everything on to Superintendent Ian Abdilla on 20th February 2017. Superintendent Aquilina testified that he kept on waiting for a reply and further instructions from Superintendent Abdilla. However, until the date when he testified before this Board, that is 5th February 2020, Superintendent Aquilina had not been given any further instructions from Mr Ian Abdilla. Superintendent Aquilina testified that subsequently a Magisterial Inquiry had been initiated. When asked by the Board whether the Police was impeded from continuing the investigation once there was a Magisterial Inquiry, he replied that the Police is not withheld in any way from continuing with their investigations simply because there would be an ongoing Magisterial Inquiry.

Three investigation lines

He testified that the Police had received preliminary reports which were going to be split in three: once concerning Keith Schembri, Brian Tonna and the company

Willoughby, another report about Keith Schembri and Adrian Hillman and the investments in place and the third one, a global general report. He continued to testify that the last report was in regard to the company 17 Black. He had seen it and passed it on to Superintendent Ian Abdilla. A decision was taken that first they would request information from foreign countries and then proceed after seeing the replies. A decision was taken to send rogatory letters and therefore they had taken the counsel from the Attorney General in this regard.

When asked whether the Police had sent for the persons who were identified in these various reports, for example Hillman and Keith Schembri, the Superintendent answered that despite the information being there and they had enough to initiate the case is they so wanted and proceed against the suspected individuals, he had passed on everything to Mr Abdilla and he did not know whether Mr Abdilla had sent for the suspected persons or not.

Superintendent Aquilina clarified that the Magisterial Inquiries had been initiated following the request made in this regard by the former Leader of the Opposition Dr Simon Busuttil. Superintendent Aquilina also testified that in these FIAU reports there was also Minister Konrad Mizzi mentioned, with timeframes regarding how

all the Electrogas circumstances had occurred and how the company 17 Black had been revealed and the payment which was made from a local Bank to the company 17 Black. Superintendent Aquilina re-confirmed on being questioned by the Board that the Police still had not sent for any of all the persons which were suspected in the FIAU reports. He re-confirmed that from 2017 until the date of his testimony, Mr Abdilla had not told him to send for anyone for interrogation from all these persons mentioned in the FIAU reports. He testified that when he received the FIAU report regarding Mr Hillman and Keith Schembri in November 2016, this was passed on to him separately and without a Police File. This was not normal practice. Usually, a Police File is opened and the Superintendent assigned it to the Inspector for further investigation.

The FIAU Report regarding 17 Black was issued on 27th March 2018. Superintendent Aquilina testified that the Financial Crimes Unit was understaffed and despite the fact that he had drawn the attention of his superiors in this regard and that he had a backlog u was not managing to do his work, no other people were being recruited. They did not have enough resources. Four inspectors in 2018. The Superintendent testified that he had not concluded because Mr Abdilla did not return the file and did not tell him to continue investigating.

From the testimony of Superintendent Antonovitch Muscat who was stationed at the Economic Crimes Unit, it transpired that in 2016, Mr Abdilla was his Senior. He confirmed that they had received analytical reports from the FIAU in July 2016 and Mr Abdilla had forwarded him these reports, telling him to read them only. He had said this to him and to Superintendent Aquilina. This witness confirms Superintendent Aquilina' testimony in the sense that the FIAU report has just been passed on to them and it was not incorporated in a Police File as was usually done. He confirmed that this was not normal practice. In March 2018, they received another FIAU report which concerned Operation Green Power and around the end of March 2018, the 17 Black report came in. The witness confirmed that several rogatory letters were drawn up and they had requested this information from Europol and Interpol. An Inquiry was also initiated. The witness said that among the persons concerned, there were Keith Schembri and Konrad Mizzi.

Among the reports which were received in 2016, there was one concerning the Panama Papers. Superintendent Antonovitch Muscat testified that despite there being all these reports, he never received any instructions to conduct any investigation regarding the Panama Papers. The witness confirmed that they never

sent for anyone and they investigated no one. In regard to 17 Black, they had requested information. There was a place, Dubai, which did not cooperate at all with them and had not sent them any information. At this time, Mr Abdilla was the Head of the Economic Crimes Unit within the Police Corps.

It is a fact that Mr Ian Abdilla, when he testified on 13th March 2020 (that is more than four years since the publication of the Panama Papers) he told the Board that until then the Police had not yet sent for anyone, had not talked to anyone, and had not investigated anyone regarding the Panama Papers and regarding all the reports that the FIAU had sent them. He confirmed that these reports had been discussed by him, by Mr Silvio Valletta, the Commissioner of Police and with the Attorney General who had advised them, and this was revealed from a minute in the Police File, "to thread very carefully" and to be vigilant in their investigation. He had also given them counsel, as transpires from the minute in the Police file, in order to be very careful before seizing the Nexia B.T. servers.

When the FIAU reports were leaked, Mr Keith Schembri had sent for Mr Abdilla and requested his opinion about them where these concerned him, that is, Mr Keith Schembri. Mr Abdilla testified that he had met with Keith Schembri twice and

discussed these reports which affected Keith Schembri and the meetings were held in Castille. This shows that there was direct and suspicious interference by Mr Schembri in the Police's work and investigation regarding his role in the Panama Papers. Behaviour which is well censurable and even illicit.

The Police knew that the company 17 Black belonged to Yorgen Fenech, an important entrepreneur with close connections both with leading politicians as well as with the Prime Minister's Chief of Staff. Mr Abdilla also revealed that it had been decided that they could go to talk to Fenech at Portomaso but on their way there, Mr Silvio Valletta phoned to tell them to turn back because Mr Fenech could not talk to them on that day as he was unavailable. They did not go again to talk to him nor did they ask him to go to the Police Depot so that they would talk to him.

Mr Ian Abdilla said that the FIAU reports are just Intelligence and at the same time said that once there are ongoing FIAU investigations, the Police can stop and wait until these are completed. This certainly is quite an absurdity. Moreover, according to Mr Abdilla, the Police did not investigate because there were Magisterial Inquiries. He testified that when the Panama Papers scandal struck, the Police did

not send for anyone and did not investigate anyone. They had sent for people only some months later, when the Egrant enquiry was under way.

The Police rely on the Attorney General's counsel

On 10th May 2016, Ian Abdilla gave his opinion to the Assistant Commissioner Silvio Valletta regarding the preliminary FIAU report regarding which the Operation Green file was opened. Mr Abdilla told him that the FIAU report does not explain and does not define which criminal offences emerged from the Panama Papers. He said that the FIAU had implicated in discussions with him, that the crime was obvious but Mr Abdilla said, verbatim, "this was never clearly illustrated", "the F.I.A.U does not mention any proof, and the circumstantial evidence of the underlying criminal activity". The Report continues as follows: "When a crime or an underlying criminal activity has not yet been established it is considered that the Police has to be cautious before taking drastic steps of this nature. As such the Police think that at the moment, with the evidence at hand, it would be disproportionate for the Police to seize the servers. There is no guarantee whatsoever that the seizure of the servers is likely to produce the result which F.I.A.U. wishes to achieve. The information in question might not exist or might

have been deleted or might have been encrypted. This should leave the Police exposed to legal action for damages by Nexia B.T."

Now the Attorney General's counsel stated the following: "hence the seizure of servers which correctly the F.I.A.U. does not make any proposal about in its preliminary report is a matter for the Police to decide upon". It transpires that Mr Ian Abdilla as Head of the Economic Crimes Unit did not take the decision to seize the Nexia B.T. Servers and computers. As has been mentioned in its considerations regarding the first term of reference, the Board emphasises that the counsel of the Attorney General Dr Peter Grech continued as follows: "It is agreed that the measure is highly intrusive and drastic and carries the considerable high legal risk of counter-productivity. In such circumstances the Police are legally entitled to exercise their judgement with caution and to demand a high level of reasonable suspicion in deciding whether the proof available justifies such a measure".

Another worrying fact which emerged from Mr Ian Abdilla's testimony is that the Police saw the Nexia B.T. servers in 2017. That is only when the former Prime Minister Dr Joseph Muscat filed a suit regarding Egrant and his frame-up and that

of the family and not the preceding year in 2016 when the Police had information that Nexia B.T. were well involved in the Panama Papers in regard to Maltese PEPs including his Chief of Staff and former Cabinet Ministers. A whole year passed during which these servers could have been tampered, the information could have been deleted or encrypted in some way.

The Attorney General's counsel

When Dr Peter Grech was asked why he gave this counsel to the Police, he replied and tried to justify his counsel by saying that if they had taken the servers, it would have been intrusive, a drastic measure because practically it would close an Accountancy Firm. The Police therefore needed to have a high level of reasonable suspicion that would be strong enough to allow them to take the servers. The former Attorney General testified that he wanted to give legal guidelines and he gave this counsel without knowing what the Police had in hand. Dr Peter Grech testified that when he gave this counsel, he had not read the FIAU report properly which had concluded that there was "reasonable suspicion of money laundering". He testified that the final decision whether to seize the servers or not rested and should have rested in the hands of the Police. The Attorney General testified that the Police never approached him again to ask him again whether they should seize

the servers. He maintained that he only just gave them legal guidelines. The Police from their end appear to have interpreted this counsel as an instruction that they should not seize the Nexia B.T. servers at that stage.

When pressed and asked whether he changed his counsel following the publication of the 17 Black account, Dr Peter Grech mentioned the Egrant Inquiry and said that in this Inquiry the Nexia B.T. servers had in fact been seized. Nevertheless, the fact remains that there could have been some information which in the meantime might have been deleted or changed. Subsequently, the former Attorney General testified that in the Egrant Inquiry the Nexia B.T. servers were not seized however Nexia B.T. was only requested to provide some documents to the Inquiring Magistrate, and in fact, they gave them to the FIAU. It transpires that this counsel was given by the former Attorney General around one or two months after the publication of the Panama Papers account in the whole world.

When Dr Peter Grech was asked whether there were any discussions following the publication of the Panama Papers account, with for example, Keith Schembri, Konrad Mizzi or some Ministers, or with the Prime Minister, Dr Peter Grech answered in the negative. He testified that he gives counsel when he is requested

to do so and he does not provide it voluntarily. Dr Peter Grech was also asked regarding the counsel of the current Attorney General, Dr Victoria Buttigieg who at the time was his Deputy in regard to the Electrogas project. He testified that they were acting as Lawyers for the Ministry of Finance besides overseeing the Government contract.

This attitude from the Attorney General's office, to be more than cautious in such sensitive matters which affect the involvement of high-ranking public officials even when it concerns large projects with private interests, is reflected in the counsel given by Dr Victoria Buttigieg, Deputy Attorney General in regard to the Electrogas project. It appears that Dr Buttigieg was involved in a discussion with the Electrogas Lawyers regarding the Security of Supply Agreement which had to guarantee a large loan for Electrogas. As a result of these exchanges, Dr Buttigieg provided counsel in the sense that it would not be necessary for the Cabinet or the Maltese Parliament to approve the Electrogas projects if there is the signature of the Minister responsible. The Attorney General's counsel to find a solution to the problem, whatever it may be, in a way to bypass Parliament and Cabinet, is out of place and does not generate confidence in that office which first and foremost acts in the interest of the State and not the Government of the day.

The Former Deputy Commissioner Silvio Valletta testifies

When the former Deputy Commissioner Silvio Valletta testified, he told the Board that he had forwarded all the reports received from the FIAU to Ian Abdilla. When it was announced in the media that 17 Black allegedly belonged to Mr Fenech and that this company allegedly was intending to redirect money to Keith Schembri and Konrad Mizzi, he affirmed that only Intelligence was forwarded to the Police from the FIAU. The Police would not be able to use this when having to arrest somebody and obligatorily would have to give them full disclosure. This was also Mr Ian Abdilla's thesis.

Mr Silvio Valletta revealed a worrying fact regarding the incident when Ian Abdilla and another official were going to speak to Yorgen Fenech at Portomaso. He told the Board that Keith Schembri, the Prime Minister's Chief of Staff, had called him and said to him, *"So you are going to speak to Yorgen Fenech simply because an article was printed in the Times?"* The Board explains that the report which appeared in the newspaper Times of Malta was referring to the fact that Yorgen Fenech was the owner of 17 Black. Keith Schembri phoned the Police, more

specifically Silvio Valletta and told him to order Ian Abdilla and the other Police Officers not to go to speak to Yorgen Fenech to investigate this fact.

This is a clear case of hindrance by Keith Schembri in Police operations. In his testimony, Silvio Valletta first said that on the day when they were going to speak to Yorgen Fenech, Ian Abdilla had phoned him and told him that they were not going to speak to him because he was unavailable. However, when the Board pointed out that Ian Abdilla and others had testified that it was him, that is Silvio Valletta, who told them not to go to speak to Yorgen Fenech since he was unavailable on that day, Mr Valletta said that he did not remember. He only remembered that Keith Schembri had called him and told him that the Police had no reason to speak to Yorgen Fenech because an article appeared in a newspaper.

Mr Valletta confirmed that when the Police went to give briefings at Castille regarding the investigations they were conducting regarding Daphne Caruana Galizia's assassination, Keith Schembri was always in attendance. This suspicious behaviour of high-ranking Police officials, incidents which occurred following the assassination, are also confirmed by alarming incidents which occurred including friendly meals at Mr Fenech's ranch to which high-ranking Corps officials were also invited, Mr Silvio Valletta's overseas trips as a guest of Yorgen Fenech to watch

football matches in Kiev and Liverpool, following the announcement of the news regarding the ownership of 17 Black. Valletta testified that he did so because if he did not go, Fenech would suspect that he knew something about him. This is a feeble excuse which was also used by Joseph Muscat when asked regarding the chat he had with Yorgen Fenech and Keith Schembri, which they set up among themselves following the arrest of the alleged executors and the party at Girgenti.

Leaks from the Police

It transpired that there were leaks from the Police both in regard to the investigations regarding Daphne Caruana Galizia's assassination as well as regarding the dates when the first three suspected persons were due to be arrested during a raid at the potato shed in Marsa. There were also leaks when Melvin Theuma was going to be arrested and where these raids by the police were going to be conducted at his properties. It is also alleged that the former Commissioner of Police Lawrence Cutajar had passed on some information about Melvin Theuma to Edwin Brincat, known as 'Il-Ġojja' and there are undergoing investigations in this regard. It transpires clearly that Yorgen Fenech knew when he was going to be arrested, he spoke at length with Keith Schembri regarding this, and the latter had

told him not to leave. The same Prime Minister Muscat admitted in his testimony that he had told Keith Schembri to tell Yorgen Fenech not to abscond from Malta.

All this shows the net of exchange of information between the Police, the Prime Minister's Chief of Staff and the persons who allegedly killed Mrs Daphne Caruana Galizia.

Another kind of impunity

The culture of impunity which in this case appears to have been fostered purposely to favour, shield or hide illegal acts but also financial crimes and their perpetrators. One should not ignore another impunity where whoever was actually involved in the planning and execution of the assassination was certain that they would benefit from it. The Board has already hinted at the fact that in Malta over time there were several car bombs u other serious crimes which were never solved. The Board refers to the testimony of the Head of the Secret Services who testified that despite that the Services, together with the Police, had worked hard to solve these crimes, these had never been solved because they did not have the technical means to do so. Undoubtedly in the opinion of the Board this failure was a factor which contributed to the sense of impunity which assured those who thought out and planned the

murder that, as had happened on previous occasions, they were not going to be caught. They deemed themselves protected that since crimes of that kind were never resolved, this one was not going to be solved either.

This impunity goes back to the inability of the Police and those in charge of public order to solve certain types of crimes because of a lack of technical and expert knowledge on the matter as well as limitations in personnel and resources. It is an impunity which can happen even in more normal circumstances because often organised crime is more cunning, has technical knowledge and even resources from the law enforcers who are responsible to restrain it. In the case in question, however, one must consider the main factor that whoever planned and executed the crime acted with the knowledge or assurance that they had the protection and shielding of people of power in the administrative and economic sector too and the worst of high-ranking officials within the Police Corps. It is alleged that this was the conviction of whoever committed the assassination. Whether this is true or not is still to be established from the investigations which the Board has been informed that the Police is conducting and obviously, if this is the case, by the Courts.

It is also said that in a certain sense, these considerations apply to the financial crimes in which leading businessmen are alleged to be implicated regarding whom the Board has already commented. Even in this case it appears that there were serious failings in the investigation and prosecution of these crimes, and many similar others, by the regulatory authorities and the Police. This was due to lack of human resources and trained and expert personnel, as stated. Even in this regard in the case in question whoever intended to commit a serious crime like this one was reassured by the fact that almost no prosecutions were made on allegations of such crimes. Moreover, one must also emphasise that the dynamic used to commit or attempt these alleged crimes was one of ultimate secrecy considered as absolutely watertight and secure with the establishment of offshore companies and in obscure jurisdictions. Even with this secrecy they sought reassurance and peace of mind.

Has the State got effective criminal law provisions in place?

The Board, in the Second Term of Reference, is invited to give an opinion, in light of the evidence compiled, whether the State had or has effective criminal law provisions in place to avoid the formation of a *de facto* state of impunity. Whilst it cannot be excluded that the execution of serious crimes, including those such as

homicide and corruption have occurred and shall keep on occurring from time to time even by organised crime, it is rare that this is characterised under cover of impunity which favours it or protects it. Undoubtedly this bitter experience which transpired from the evidence heard before this Board but also from what was learned in the public domain, uncovered a new, serious and shocking phenomenon. This is because, as has been exposed in this report but also from the several other investigations which were conducted by international Institutions, this occurred in the highest level of the public administration. As a reply for this question the Board refers to this part of a report of the Parliamentary Assembly of the Council of Europe which concerns the serious scandal allegations which actually link big business to the administration and attribute the erosion of the institutions to this *de facto* State of impunity which was created and which allowed these serious facts to occur without restraint.

The Parliamentary Assembly of the Council of Europe

This report of the Committee on Legal Affairs and Human Rights is a follow up of Parliamentary Assembly Resolution 2293/2019.

This resolution concerns the Office of the Prime Minister, High-Ranking Officials in the Public Service, the Parliament of Malta, the appointment of Judges and Magistrates, the appointment of the Attorney General, the State Advocate, the Commissioner of Police, Magisterial Inquiries, the delay in compilations, the Office of the Ombudsman, the Office of the Auditor General, the FIAU, the Office of the Commissioner for Standards in Public Life, the Freedom of Information Act, the Protection of the Whistle-blower Act, the Permanent Commission against Corruption.

The Parliamentary Assembly then "notes that these fundamental weaknesses have allowed numerous major scandals to arise and go unchecked in Malta in recent years including the following: The Panama Papers Revelations, The Electrogas Affair, The Egrant Affair, The Hillman Affair, The Golden Passports Affair, The Vitals Global Healthcare Affair, Nexia B.T., Pilatus Bank. The Assembly concludes that the Rule of Law in Malta is seriously undermined by the extreme weaknesses of its systems of checks and balances noting that individuals such as Dr. Mizzi, Mr. Schembri and Mr. Tonna seem to enjoy impunity under the personal protection of the Prime Minister Muscat for their involvement of the above affairs. The Assembly considers that recent events in Malta illustrates serious damage that can result

from its dysfunctional system. Despite certain recent steps Malta still needs fundamental holistic reform including subjecting the Office of the Prime Minister to effective checks and balances, ensuring judicial independence and strengthening law enforcement and other rule of law bodies. Malta's weaknesses are a sort of vulnerability for all of Europe. Maltese citizenship is European Union's citizenship, a Maltese Visa is a Schengen Visa and a Maltese Bank gives access to the European Banking system. If Malta cannot or will not correct its weaknesses European Institutions must intervene."

This Report maintains that these big scandals happened because the institutions were fundamentally weak. In this respect, it is not exact because in the opinion of the Board, the institutions in the country, even if not perfect, normally assured a clean administration and good governance. Obviously, this does not mean that amendments were not necessary even structurally, to be strengthened. The truth is that the scandals occurred because there were elements, among the most powerful in the country, who took advantage of the Government's declared policy to be business friendly at all costs and to concentrate on generating wealth, in order that in the process, they would maximise their own profits and fatten their wallets.

What was and is worrying and dangerous was the way in which these individuals organised themselves, certainly soon after the 2013 election to create a modus operandi, which is not transparent nor legitimate, as they could in this scenario of agreement among a restricted number of public administrators and leading businessmen. A net of control and support was created within the public authorities, including the Police and those responsible for enforcement and it can be said that all the public authorities who have a function to regulate the main economic activities in the country. When required, this extended its connection to organised crime as appears to have happened with the assassination of Mrs Caruana Galizia. A dangerous system was in place, the organisation was being developed and was already bearing fruit.

Investigative journalism revealed this net

The extent and gravity of Mrs Caruana Galizia's allegations regarding the irregularities and abuses from almost all the project for the creation of wealth by the administration in partnership with the private sector and the great number of high-ranking Government officials and in public authorities which were involved therein in some way, are testimony to this. In this aspect, the country was moving towards a situation which could be qualified as a mafia state. It was the journalist's

assassination that put a brake on this predicted disaster. Not only that. The Board notes that it was actually because of this *de facto* State of impunity, from which all those involved in this structure were benefitting, that the serious financial irregularities and abuses or otherwise, kept on occurring even after the publication of the Panama Papers and 17 Black. An impunity which kept on shielding them and eventually even the actual executors of the assassination until after the murder had been committed.

Such an organised net at this level and with significant resources, motivated by a common interest which began infiltrating well into the institutions to assure protection was a new reality for Malta. It goes beyond the simple acts of corruption and abuse of power which are expected to occur under any administration and that when the institutions work properly, as is generally the case, these are controlled. Therefore, it is necessary that the State takes steps, even legislative steps, to prevent the formation of similar organisation and associations in the future and assure that the country shall never again be faced with the situation it had experienced and is still experiencing.

The Assassination and the abuses within the administration are closely linked

The assassination of journalist Caruana Galizia in itself was a most serious criminal offence but this crime cannot be separated from the background of the facts which motivated it and provoked it, that is, from corrupt procurement, money-laundering and bribery. Those directly involved in the murder of the journalist deserve the consequences of their deeds and their punishment. However, all those who, through the abuse of political and financial power, made illicit gains to the detriment of the common good and of the State, are just as responsible for the same crime. In regard to this criminal organised net, the prosecution cannot limit its action on elements and manifestations limited to extreme action of the mafia, that is, to the assassination, without considering the existence of the mafia-like structure in itself. This is because there would be the danger of this remaining active with the consequence that it would assert itself without too many consequences.

The laws of the country should not deny that there is the possibility that such an organisation grows roots in the country. They should acknowledge that its simple existence would be a threat for the viability of the Maltese State even if it would have not manifested itself with some extreme violent act as was the case. Above all, in this regard, the Board stated that whilst as has been stated, the existing

criminal laws are considered to be adequate and effective to cover and protect against crimes that the State to date considers to be a threat to society, dramatic events which surrounded and provoked the assassination of the journalist Caruana Galizia suggest the need of a structured legislative action to shield against this new reality. This would be so that society would be protected against the serious threats that it could face from the abuse of power and the unrestrained and unscrupulous thirst for gain and power.

Recommended Legislative Measures:-

The Board points out a few of these legislative measures which it recommends should be taken:-

Unexplained Wealth Orders

1. The enforcement of laws against financial crime, including bribery and corruption is difficult because of the tools available for the criminals to cover their tracks. Nevertheless, whoever is wealthier than can be justified from their income is the beneficiary of income which they cannot justify.

The testimony given before this Board as well as in Court, regarding suspected persons who allegedly were involved in the crime and other even within the public administration, is relevant, in the sense that, despite being unemployed, they had luxurious cars, boats and other items of value. If this law were to exist, they would have had to explain how they were so wealthy when they were unemployed.

If the Police and other authorities investigated such persons in time because there was a crime, the events would have taken a different turn.

Our legislative framework does not have the measures inherent to the one in the United Kingdom where they have a procedure providing for unexplained wealth orders. These are orders issued by the courts whereby the persons are forced to reveal their sources of unexplained wealth. The persons who do not provide a statement and fail to justify the origins of their wealth would be subject to a confiscation of assets when an enforcement agency such as the National Criminal Agency, successfully makes a plea before the English High Court.

It is also necessary that in Malta there would be a clear and similar deterrent in law such as this in order to avoid that persons who abuse of power accumulate wealth

from their illicit conduct. In this case, the crime is aggravated because they may be in a position to avoid investigations and prosecutions linked to such conduct, In these situations, the law should increase the sentence.

Whoever abuses of their Office to hinder or influence some other authority

2. It is necessary to create a specific crime that persons in a public position would be subject to criminal proceedings if they try hindering the Police, the Prosecutors, the investigators and/or other officials like the Auditor General, the Ombudsman or the Commissioner for Standards in Public Life from conducting such investigations.

The Board considers that had there been these legislative tools in place in Malta, the enforcement bodies, as well as the regulatory authorities especially in the financial sector, would have been confident and not compromised as they were, they would have had the authority to act on diverse occasions prior to and following Daphne Caruana Galizia's murder to ensure that the rule of law is protected. They would ensure that there was no suspicious destruction of public records when they use private email accounts for official work to undermine the auditing and control

process, intervene when evidence is not given, contradictory evidence or partial non-transparent evidence is given.

This shows that legislative reforms are needed, to support some of our existing Criminal Code provisions which are hardly used like those regarding misappropriation, abuse of position, obstruction or attacks on public officials in the execution of their duty and other provisions covered by specific administrative laws.

A need to introduce a crime similar to Article 416 bis of the Italian Criminal Code

3. The Board strongly recommends considering the possibility of an amendment in the Maltese Criminal Code in order to incorporate the crime included in Article 416 bis of the Italian Criminal Code which includes the crime “of criminal mafia-style conspiracy”.

This Article was introduced in Italian criminal law in 1982 in order to make punishable any mafia-style conspiratory conduct which did not come under Article 416 of the Italian Criminal Code.

In the publication *"Il reato di associazione a delinquere di stampo Mafioso"* by Cammino Diritto of 21st July 2015, it was said that it is not always simple and easy to find a method and formula to define exactly the mafioso phenomenon. "Jurisprudence has brought to light that the purpose of enrichment of mafiosi using personal dependence relationships at all social levels and classes has made it such that the legislator's attention was concentrated on the prevalent character of a form of entrepreneurial or para-entrepreneurial activity, all in the framework of that which can be possibly defined as a logic of dominion and illegal and violent seizure of positions of real power."

Italian jurisprudence explained that in order for a crime included in Article 416 bis to be committed, this does not only need a simple agreement for the crime to be committed but also needs an organised structure. That, therefore, Italian jurisprudence tried to identify elements of the mafia-style organisation like secrecy, the code of silence, etcetera and established that in any case there always needs to be a stable and permanent organisation and structure.

The evidence compiled by the Board indicated that an organisational system is being created even if not consciously to unduly benefit individuals in order to enrich

themselves to the detriment of the common good, through friendships, closeness and association with persons in power. A similar amendment is necessary to prevent the formation of such an organisational system.

The Crime of Abuse of Office

4. In France, the French Criminal Code mentions the crime of *"Abuse de Confiance"* whilst in Italy there is the crime of *"Abuso d'Ufficcio*". Article 314(1) of the French Criminal Code states that the abuse of public trust happens when the person, with prejudice to others, transfers to themselves funds or other assets which would have been entrusted to them with the purpose of giving them back or use them in a specific manner. Whoever is found guilty is sentenced to five years' imprisonment and a fine of three hundred seventy-five thousand euro (€375,000). The sentence increases to ten years' imprisonment and a fine of one million and five hundred thousand euro (€1,500,000) when this abuse is committed by a public or ministerial official or any official entrusted with fulfilment of justice and when the abuse is committed in the exercise of their functions.

In the Italian Criminal Code, we find Article 323 which also provides for this type of abuse which is committed by a public official or a person in charge of the public

service, in the execution of their duty or service. This crime may lead to a one year to four years' imprisonment sentence, a sentence which increases in the event that the gains or damages are relatively serious. From this Board's findings, there is an urgent requirement that in Malta legal provisions are introduced to protect against such abuses.

Inappropriate Conduct by Public Officials including the Police, the Security Services and Public Authorities' High-Ranking Officials

5. From the testimonies heard by this Board as already mentioned in the observations made for this term, and considered from the administrative perspective, there was misconduct and abuse of power from public officials in the execution of their duties, both before October 2017 as well as afterwards. There were shades of corruption from collusion and influence from friendships which go beyond that which is expected of person who occupy official positions. The Board was astonished when it saw that the Police did not take action when the FIAU reports were received and when the Panama Papers scandal broke out, and more so with the disclosure of the company 17 Black. Keith Schembri and Konrad Mizzi were not expelled, Nexia B.T. was allowed to keep on operating and its servers were not seized. Pilatus Bank was allowed to keep on operating as if nothing had

happened. And for certain people, regardless of what they did, everything remained business as usual. Their improper conduct was not stopped, nor punished, not censured in any way.

One would expect that these persons should have resigned or made to resign and not carry on as normal. The Police did not even bother to act and send for the individuals involved. Not only did the Police not take any action, but leaks emerged from the Police to the persons suspected of the assassination, as has already been mentioned in several instances in this report.

It transpired that there was inappropriate conduct from public officials, and this in the case of public officials who associate party with the Government, officials who appointed their children and relatives on boards within their own portfolio, public officials who had a secret private income, others who were declared by the Court to have committed perjury and nothing happened, public officials who combined public money to multinational projects on trips to which the media were not invited and therefore there was no scrutiny. There were cases where public officials appointed individuals on the Selection Board on very large projects and who should have never been on such a Board due to a blatant conflict of interest, just as there

were public officials who made a secret agreement, Memorandum of Understanding, prior to the issue of a public tender regarding the same subject, in projects of national importance.

A legislative provision is required to act as a deterrent so as to restrain the inappropriate misconduct which persists without any consequence to whoever commits it. A deterrent which should also cover public administration in a broad sense.

In this regard, not only legislative amendments are required but also appropriate provisions in the Codes of Ethics to safeguard against this type of inappropriate and suspicious misconduct.

To consolidate the Attorney General's office and other measures

6. It might be that the time has come that Secret Service officials should no longer go to the Executive to request the interception of suspected individuals when these may have connections with politicians and this applies also in the event of a presidential pardon. Why should it be the Cabinet that decides and makes recommendations regarding presidential pardons to the President of Malta?

Maybe it is time that there should be some kind of Committee which would be independent from the Executive that will decide regarding these matters of presidential pardons and to submit its recommendations to the President of Malta in this regard.

The Board notes that the Government has taken steps to implement the recommendations of the Venice Commission for the establishment of an independent office of Director of Prosecutions or General Prosecutor and opted to divide the office of the Attorney General in two, that of Government Attorney and that of Attorney General who has the function to conduct the prosecution of crimes which entail a sentence with more than two years' imprisonment.

The amendments made satisfy the requirement of the independence of the office from the Government. An important point which has not yet been implemented remains, that which the Commission recommended that this office does not conduct the investigations itself, these should remain in the hands of the executive Police. In order that the reform is carried out properly, it is necessary that the office of the Attorney General is given all the necessary resources to be able to execute this function and thus would have complete control over serious crimes. The Board

is of the opinion that the office of the Attorney General itself should have the power to initiate investigations of facts which entail the commission of serious crimes, even without needing to have a report from the Police or from a third party.

The Police need to be even more proactive when reliable information is released by investigative journalists regarding corruption or abuse of power and investigative journalists also need to be recognised for the important work that they do and they would also be protected.

Obstruction in the course of justice, perversion

7. In Malta, the crime "obstruction of justice" does not exist. This crime is included in the Canadian Criminal Code in Article 139. In Canada, this type of crime may lead to imprisonment for a period not exceeding ten years. The law in Australia stipulates in Article 319 of the Crimes Act 1900, "A person who does any act or makes any omission intending in any way to pervert the course of justice is liable to imprisonment for fourteen years." In Ireland the Criminal Justice Act, 1999, in Article 41 states the following: "A person with the intention thereby of causing the investigation or the course of justice to be obstructed, perverted or interfered with

shall be guilty of an offence." This crime is also included in the New Zealand Crimes Act 1961.

In our Criminal Code there is no crime which includes someone's attempt to obstruct the course of justice in some way. This gap in our law also gives rise to impunity and offers the opportunity for persons to commit abuses and even obstruct or interfere in the course of justice.

During this Inquiry, the Board heard evidence of attempts by public officials both to pervert the course of justice as well as to obstruct it. Therefore, it is urgently required that effective provisions be introduced to safeguard against this abuse.

Section V

The third term of reference

"3. determining whether the state has fulfilled and whether it is fulfilling its positive obligation to take preventive operational measures to protect those individuals whose lives are at risk from criminal acts, in particular in the case of journalists"

Section V

The Third Term of Reference

The Board now proceeds to present some further reflections, pertinent to third term of reference which it was given. This is to determine "whether the state has fulfilled or whether it is fulfilling its positive obligation to take preventive operational measures to protect those individuals whose lives are at risk from criminal acts, in particular in the case of journalists".

These considerations are being made in light of that which has already been considered by the Board in the Section where it presented its general considerations. Considerations which cover most of the ground presented by this term of reference and which also covers that which was discussed by this Board regarding the first term of reference. In fact, the legal background of this term of reference is the fundamental right that every person has in the State of Malta for the protection of life and of freedom of expression. Rights which are protected both by the Constitution of Malta as well as by the European Convention on Human Rights incorporated in Cap. 319 of the Laws of Malta.

The Board makes a brief reflection regarding the extension of the protection in the two fundamental institutions. The Constitution of Malta in Article 33(1) stipulates that “No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence under the law of Malta of which he has been convicted”. On the other hand, Article 2 of the European Convention on Human Rights states “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a Court following his conviction of a crime for which his penalty is provided by law”.

The distinction between the two provisions even if only on the emphasis between the right of the citizen and the obligation of the State in regard to the protection of life and even though this may essentially seem to be two sides of the same coin, it is clear and significant. Whilst the Constitution emphasises the right to life of an individual and to the safety of the person and that therefore the State had the obligation to guard that right, the Convention aims to guarantee that this same right to life should be protected by law and that such protection should be extended to every individual in the State.

Whilst the aim of the two provisions is identical in that both are intended to protect the life of every individual, the Constitution proclaims the right of every individual not to be deprived of his or her life intentionally if not in cases listed specifically in the Constitution.

A right which translates into the corresponding obligation and the State's that in no way should the individual be deprived of his or her life. On the other hand, the Convention goes further and imposes the obligation on the State to ensure that this right to life of every individual is protected by law. This is an obligation which includes positive and timely action by the organs of the State so that this right to life is ensured even when threatened. The Constitution proclaims the right to life of each individual that translates into the obligation of the State to protect it. The Convention specifically emphasises that the right to life of each individual should be protected by a law from the State.

These basic considerations are reflected in the terms of reference of this Board that is requested to determine "whether the State has fulfilled or whether it is fulfilling its positive obligation to take preventive operational measures to protect those individuals whose lives are at risk from criminal acts". Being established that this

positive obligation of the State fulfils, forms and materialises the fundamental right to the right to life and safety of the person as enunciated in the Constitution and in the European Convention and considering that the positive obligation of the State in this regard is specifically imposed in the European Convention, it is clear that the jurisprudence of the European Court of Human Rights which interpreted Article 2(1) of the Convention, acquires significant relevance.

The obligation of the State under Article 2 of the Convention which guarantees the safety and physical integrity of every person in its jurisdiction does not only entail the negative duty that it desists from intentionally and illegally have the life of each person be prejudiced or removed. It also imposes the positive obligation on the State to take all the proper and necessary measures in order to protect the lives of all those in its jurisdiction. It is specifically obliged to legislate in order that this fundamental right is guaranteed that it would certainly not to anything to put it at risk.

It is in the identification of this specific positive obligation that the European Convention goes beyond that which the Constitution implicitly recognises. The European Court of Human Rights in its judgement in the names Gongadze vs

Ukraine[4] explained as follows in regard to the nature of this positive obligation of the State to protect the right to life: "This involves a primary duty on the State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual".

This Board is not being requested to give an appreciation regarding the provisions in the Criminal Code intended to prevent and restrain crimes against individuals or regarding whether the established rules and sentences which can be appealed as to how these, to whoever is found guilty of such crimes, are fair and just. Nor is it required to investigate whether the State machinery for law enforcement to prevent, suppress and punish crimes against the person were adequate and suitable. However, it is being specifically requested to investigate whether the State *"fulfilled or whether it is fulfilling the positive obligation to take preventive*

[4] Application No 34056/02 ECHR 2005 – XL

operational measures". Precisely the terms used in the above-mentioned European Court judgement.

It must be stated for the sake of correctness that the same judgement qualified this positive obligation of the State in a context which is established in case-law of the same court in these parameters.

In light of this lesson, this Board needs to draw up its considerations. The Board considers:-

1. That the positive obligation of the State to fulfil preventive operational measures to protect the individual is not absolute, it is relative, linked to the particular circumstance of each case.

2. That whilst it is true that in order for the positive obligation of the State to subsist, it has to be established that the authorities knew or should have known, at the time when the crime took place, in this case, the assassination, of the existence of a real and imminent risk on the life of the victim, this did not mean that this risk had to be linked or limited to criminal actions of the actual executors of the crime

or their mandators. This real and immediate risk to the life of the victim could have been created and sustained, as was the case here, with the development of a hostile environment, of hate and threats which led to the full dehumanisation of the person and made her extremely vulnerable, to whoever had the intention to eliminate her maliciously. There is enough evidence that the high risk which Daphne Caruana Galizia was facing when single-handedly she was taking it against the power of the State and the economic power, with direct and straightforward confrontation especially after the publication of the Panama Papers and 17 Black, it was a real and imminent one.

3. Real to the point that the authorities and the entities responsible including the Police and the Secret Services responsible for maintaining order must have known of its existence and gravity. Nor could they ignore that the frontal confrontation and violence, both verbal, physical or otherwise, rendered the serious risk into an imminent one. It was so obvious for many that the situation had escalated to the point that one had to reasonably expect that it could resolve itself with some violent act.

4. What is really worrying and concerning in the eyes of the Board, and not only for the Board, is the fact established from the evidence which points towards the State's contributory responsibility as a result of abusive behaviour of elements who formed part of its entities who contributed significantly to the formation of this real and imminent risk. Not only that. There is convincing evidence that the circumstances which placed Caruana Galizia's life in a real and imminent risk as a result of her investigative work involved the highest level of public administration. High-ranking officials at the Office of the then Prime Minister.

5. The Board pays great attention so as not to speculate and point fingers at whoever could have participated or enabled the plan or plans of the assassination. In truth, its considerations regarding the real and imminent risk which it imposed on the State entities to ensure maximum protection to the assassinated journalist, may apply mutatis mutandis for whoever in fact planned, was a mandator or the actual executor of the crime. They are considerations which apply even to the ill-advised act of a mad person who decided to eliminate the journalist. This was certainly not the case.

6. Closer to the time when the murder was committed, Caruana Galizia's position was aggravated because the attacks in her regard were coming from every direction, including from the side which supported the then Opposition Leader Dr Adrian Delia.

She was truly isolated. Nobody was defending her. The more investigations she revealed, as for example, regarding the existence of 17 Black or allegations regarding the behaviour of the then Opposition Leader, the more insults and threats were thrown at her even through judicial actions against her. One can say that at the time she had become Public Enemy No. 1 on the two sides of the political sphere.

In truth, it must be said that there was evidence both before the Board as well as in the public domain that the assassination had long been planned prior to the 2017 election and prior to the intense confrontation with the then Opposition Leader. The Board therefore considers that on the basis of probability if not certainty, because this can only be established in judicial proceedings, that what led to the assassination was Mrs Caruana Galizia's investigative work regarding the connections between politics and big business.

7. It is also relevant how the Police and the authorities responsible for maintaining order in the country did not appreciate or did not wisht to appreciate that which was obvious for the whole country. The total complete inaction to protect a person whose life is at such a real and imminent risk when it ought to have been clear for them that the fact that she was fighting against the power of politics and the power of money. The impudent manner in which the former Commissioner of Police, Lawrence Cutajar, among others, testified with the greatest impudence that the police kept on providing Caruana Galizia with the same protection that they provided her beforehand is alarming, unexplainable and condemnable. He testified that in the circumstances they could not do anything more than they were doing, before 2013 when the circumstances were very different and the level of risk was much lower. In fact, they did nothing. Rather they decreased the little protection that she was provided by limiting it to periods when elections, referenda and other events of this type were held.

8. The fact that Caruana Galizia was being attacked so ferociously from every side because she was exercising her profession and the fact that she was fighting against the power of politics on every side and the power of money, in no way does

it appear that the Police were alarmed that the journalist was exposing herself to a real and imminent risk of retaliation. This was even at a time when she started making specific accusations of commission of crimes. The Police ex admissis did not deem that they had to increase the security measures to extend her protection. It appears increasingly that they did absolutely nothing to restrain the ruthlessness of the attacks from well identified sources and partially identified, in that these originated from the said Office of the Prime Minister, easily verifiable.

9. Another aspect where the State entities failed to fulfil their positive obligation of prevention to ensure that the journalist could exercise her profession in a safe environment, concerns the almost absolute failure to investigate the serious allegations which Caruana Galizia was revealing against a Minister and the Chief of Staff of the Prime Minister but not only that. Investigations which ought to have been conducted against persons who exercise power and on whom those who were bound to investigate them depended on.

In this regard, it was not only the Police who had failed to exercise their duties, but also the regulatory authorities; such as the MFSA, the FIAU, authorities such as the Planning Authority, the Lands Development Authority and the Gaming Authority,

all of which at some time or another abdicated from exercising their functions properly to ensure that the laws were observed and that abuse was restrained.

There were some who attempted to do their duties such as the former Commissioner of Police Michael Cassar and the former Director of the FIAU Manfred Galdes among others, however these, for some reason or another, did not stay in their positions for long after the allegations against persons in power began to be revealed.

The reasons for this total inaction by the authorities which undoubtedly strongly led to the creation of a climate of impunity and therefore enabled the execution of the crime, are many and they are all censurable. They could have been fear of reprisal and revenge from persons who were going to be investigated, human respect and the fear of investigating your own superior as was the obligation due, the weakness motivated by a fear of the consequences which such serious investigation could bring on the country's stability, the clear incompetence of persons placed in high positions who do not deserve this and others.

There are however other more sinister reasons for this condemnable inaction which emerge from the evidence before this Board, from the testimonies before the Courts and from the public domain. In fact, the Board has information in hand, which it is not at liberty to reveal, in that it may prejudice the ongoing criminal proceedings in some way. It can however affirm, as has already been mentioned further above in this report, the existence of a net of people who can control regulatory authorities, chosen and places as persons of trust of political power, with blind faith towards the persons who appointed them and answering directly to the centre of power at the Office of the Prime Minister.

It is difficult if not impossible even in normal circumstances, that such persons who would owe their successful careers, if not future advancement, to their appointers, to take any necessary steps in the exercise of their functions to investigate alleged abuses in regard of those persons whom they consider to be not only their superiors, but also their leaders.

For these people, such a situation as described in this report, the circle of power also extends to those persons including leading businessmen who fostered good and close relationships with political power. They would have become insiders

whom they could trust and from whom they could gain favours. On the other hand, the businessman did not take long to realise the potential that through money, through favours and more, he could use these people for his own purposes in order to be take advantage of it when he needs it, even, if necessary, by abusing a little of the power they had.

As an example of these people the Board can point out, among others, Mr Joseph Cuschieri, former CEO of the Malta Gaming Authority; Mr Johann Buttigieg, former CEO of MEPA; Mr Marvin Gaerty, Commissioner for Revenue; and Superintendent Silvio Valletta, former Deputy Commissioner for Police who were responsible for the investigation of Daphne Caruana Galizia's homicide. The latter testified before this Board that he felt he was obliged to answer to Keith Schembri, the Prime Minister's Chief of Staff, because he was his superior. He used to give him information regarding the investigation even if, as a rule, he was not entitled to it.

10. It is true, that transpires as a fact, that these public officials and others involved themselves in close friendships with a person who today stands accused of involvement in the homicide, who infiltrated himself so much that this translated itself in gratuities, favours, gifts and employment promises.

Such relationships certainly were in violation of rules of ethics and good conduct which bind every public administrator. It is not the Board's task to judge whether such conduct constituted a violation of some criminal law. However, the fact remains that all these public officials and others occupy positions which impose on them the obligation to investigate serious allegations of abuse and maladministration which the assassinated journalist conducted not only against themselves but also in those circles of power on which they depended.

It is an inexplicable fact that these same people saw not conflict of interest between the position they held and the friendship that they had with persons whom they themselves may have had to investigate. All this is a reflection and proof if required for the level of impunity which was created in these environments in the relevant period.

11. The Board, in its general observations, has already hinted at the fact that in the case of journalists, the access to information which was of public interest and that therefore facilitates the investigation and search for truth, is a principal means of how the State fulfils its positive obligation to protect them if their life is at risk.

This is not only because when given the proper and timely information, the State would be showing that it values the journalist's work and eliminating a lot of the confrontation which arises from suspicion and doubt, but it also gives a positive sign that the journalists deserved every protection and it was ready to defend them against all attempts of aggression.

The European Court recognised that the notion of freedom to received information includes the right to access to information. This places the obligation on the public authorities, that is the flip side of the coin, that the State provides that information which is in the public interest. Giving this information, especially to journalists is a crucial element to ensure the public administration's transparency and accountability, especially in matters which are of general public interest.

It is obvious in Mrs Caruana Galizia's case, that the State failed in that obligation. It is true that all the governments in Malta as a rule are reticent and stringent in giving out information to journalists because they start off with the often mistaken premise that the administration may suffer prejudice if the public is informed of certain details in a certain period. In fact, there is reason for the legislation to be broadened and regulate better the right for the public to receive information by

limiting the exceptions to this principle within the obligation of the State which gives it.

12. It is clear however that in Mrs Caruana Galizia's case, that the almost absolute reluctance to provide correct and timely information, was not dictated by some political convenience. It was more the result of the need to minimise as much as possible the checks by the journalist and others in the machinations and intricacies which occurred in the planning and implementation of several projects which inevitably ended up as the target of the assassinated journalist's investigation.

In truth, although in regard to Mrs Caruana Galizia, there was this more compelling reason to starve her completely from receiving any requested information, it was a government policy and maybe not only a government one, that as a rule the least information possible is given regarding what interests the public on the administration of the common good. There is the tendency that politics use journalism for its propaganda purposes or to push the policies of the government of the day. Worse than that, journalism may be used when some State entity or persons forming part thereof attempt to spread fake news or pervert investigations

by using the services of journalists whom they think they can trust to benefit them. The Board is informed that this had happened after the assassination when from the Office of the Prime Minister it was circulated that there was the possibility that the crime executors could have been persons linked to oil smuggling. News which was also being disseminate in the international media.

13. The evidence before this Board shows that the State did not do anything to fulfil the positive obligation to take preventive operational measures to protect Mrs Caruana Galizia against the real and imminent risk that she was facing. It transpires that there was no logistical plan to actually protect her not only by providing her with physical coverage as far as possible, but also and maybe more so, by taking serious steps to suppress the origins and the cause which was giving rise to the development of that risk. This would be not only to conduct timely investigations of the serious allegations that she was making but also by immediately stopping the denigratory and hateful campaign which went beyond any sense of humanity, supported by the power of the government. A campaign which was so ruthless that it could easily provoke violent attacks against her person motivated by some political extremism but also and worse, as in fact happened, which serves as a good

and effective coverage for someone who had a very different reason to eliminate her.

Creating a climate which favours investigative journalism

In their exhaustive and well-researched observation notes, the Caruana Galizia family lawyers, when considering the third term of reference, identified those which, in their opinion, are the measures which should be taken by the State to create a favourable atmosphere so that journalism in the country, in particular investigative journalism, would be able to work freely and securely as is fitting for a democratic country, They are observations built on the experiences undergone by the assassinated journalist, as well as other journalists, in the same period. Observations which look to the future in the hope that following an informed debate, if there would be the required political will, all the necessary steps would be taken in order that the journalists' work would be deservedly valued as a tool which determinately contributes to the transparency and accountability of public administration.

In their notes they discuss among others, topics such as the right of the journalist to access to information by the State regarding matters of public interest. The

journalist's right to the protection of the sources on which they base their investigations as an essential characteristic of the right to the freedom of expression of the press in the country, a right which is established and sanctioned in the jurisprudence of the European Court; the protection of whistle blowers who, courageously and sometimes with great risk, decide to reveal situations of abuse of power and corruption within the public administration, as well as the recognition for the protection of journalists as a professional class, with an essential function in the democratic process. It is noted in the absence of the profession's self-regulation structures which assure high ethical and professional standards in a legislative and effective framework which guarantees the profession's full autonomy and independence, among others.

All these topics are discussed with reference to what transpired from the evidence of leading editors and journalists during this Inquiry who all emphasised on the need that journalism in the country needed to be strengthened, given support and financial autonomy in order to be able to properly exercise its function with professionalism and loyalty for the truth.

Proposals which should be considered and implemented

The Board must share the observations made and not support the wide range of recommendations that they made not only for the improvement in general of the journalists' profession but also to ensure that the journalists in Malta would have adequate protection from the competent authorities and are not subjected to threat and extreme intimidation campaigns of all kinds as Daphne Caruana Galizia was subjected to in the months prior to her assassination.

Upon invitation from the Board, several other observation notes were made by persons and associations who have Maltese journalism at heart and wherein the same topics as discussed by the Caruana Galizia family lawyers were discussed and they made recommendations along the same lines. The Board was of the opinion that all these notes have very useful material for whoever has the duty to take the necessary initiatives in order that journalism in the country is established on a strong and secure base and to ensure that that which occurred does not happen again. They can and should serve as a platform for a healthy and open debate which would lead to solid recommendations for whatever is required to be done to ensure that the journalists would be able to exercise their professions freely and securely, free from any abuse of power and protected from any improper interference or undue pressure.

Certainly, a journalist should never be reduced to become a direct target of elements in a public administration that is hostile towards him because of his work, and even less so an uncomfortable object that needs to be eliminated by whoever has an interest to silence him because he seems to be a threat for his shadowy activities. Daphne Caruana Galizia was assassinated because of this. It would only be if the country learns a lesson from that tragic event that Daphne would not have died a futile death.

The Core Point of this term of reference

The Board is of the opinion that the submissions made in these notes which concern steps that are recommended to be taken to strengthen journalism in Malta strictly do not form part of the terms of reference it was given. In fact, the third term of reference requests the Board to determine whether the State, at the time of the assassination, had fulfilled and even if it is fulfilling today “the positive obligation to take operational protection measure to protect journalists at risk from criminal acts".

The defamation and dehumanisation campaign of the journalist as that which was sustained against the assassinate journalist, may in itself be considered a criminal act. This aspect was amply discussed in this report. It is also obvious that this term of reference invites the Board to determine which measures should be taken by the State to protect journalists at risk from criminal acts, motivated by persons who feel aggrieved with their investigative work.

In this context a connection has to be established between the criminal act and the criminal behaviour which motivated the violent act against the journalist. A connection which in this case, the Board determined most satisfactorily and well beyond a simple basis of probability. The Board established that the State, in Daphne Caruana Galizia's case, did not fulfil the positive obligations to take the preventive operational measures to protect her from the serious and imminent risk which she was facing as a consequence of the revelations she was making.

It is now established that the obligations to intervene in attacks on journalists are closely connected and linked with that of the State whereby it should protect journalists from attacks and violence. Especially in these cases where the authorities know or ought to know that there is a real and immediate risk that the

journalist may suffer a violent attack. The European Court of Human Rights in the case in the names Gongadze vs Ukraine affirmed that the obligation of the State "Extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect and individual or individuals whose lives are at risk of the criminal acts of another individual[5]".

On its part, the Inter-American Court of Human Rights in its judgement in the case in the names Gozales et al vs Mexico decided on 16th November 2009[6] maintained that the prevention strategy should be a comprehensive one and which protects against the challenges which female journalists in particular were facing, in view of the case that it was examining. The Court maintained that the Court had to "prevent the risk factors and at the same time strengthen the institutions that can provide an effective response in cases of violence against women. From this perspective an absence of a general public policy of prevention and failure to take account of any risk factors facing women journalists can mean that the State has failed in its duty to prevent". "Where there is a risk of these (crimes against freedom of expression) occurring and in specific situations where the authorities know or

[5] Application No 34056/ 02 decided 02 November of 8 November 2015, para 164.
[6] Series C No 205 para 258.

should have known of the existence of a real and immediate risk of such crimes and not only in cases where those at risk request State protection", the positive obligation of the State to extend protection comes into force. This is because the circumstances would be such that there would be a serious threat to the fundamental right of freedom of expression. These are considerations which precisely show the legal principles in which the Board sets what happened in this case.

On the other hand, it was established that these preventive operational measures, which were expected to be taken by the Police and the Secret Services in similar circumstances, were not taken. In effect it transpires that established, clear and effective protocols did not even exist regarding what action should be taken to extend the required protection for any individual who would be at risk of some criminal act. In fact, not even when it was clear that Mrs Caruana Galizia was in serious danger of becoming a victim of some such act, was the need felt to take urgent steps to protect her even if these surprisingly were not stipulated in any established practices for maintaining order in the country. The Police deemed that it was not the case to take any preventive operational measures to protect her safety despite the fact that they knew that for months, the journalist had been

subjected to a denigratory and dehumanisation campaign orchestrated also by leading government exponents within the Office of the Prime Minister.

They remained insensitive to the gravity of the risk

They remained completely insensitive to the gravity of the risk to which the journalist was being exposed especially after the publication of the Panama Papers and even more so that of 17 Black. This was or ought to have been therefore obvious to the Police that the journalist was going against individuals with significant interests, in the highest position of power in the country who had a lot to lose. One would have expected that, if at least they could not provide physical protection to the obviously threatened journalist in these circumstances, the Police ought to at least have taken immediate steps to show that it was going to investigate the serious allegations which the journalist was making against these powerful individuals. They ought to have acted in a timely manner and with determination to preserve evidence and show that they had every intention to protect the journalist who made the allegations until these would be verified. They ought to have sent a strong message that to them everyone was equal before the law and nobody could act with impunity to abuse of power and keep breaking the law.

The Police officials' defence that they had to proceed with caution and in the circumstances not to act when they did not have conclusive evidence of the allegations in hand because they could cause unrest in the country, is totally unacceptable and goes against all logic on how keeping order and justice in the country should be managed.

Police who abdicated the execution of their duties

It is enough to say that the Police were obliged to act even to simply prevent attempts of serious crimes in the financial sector which allegedly happened or could have happened. The Police did nothing in this regard and looked the other way. In this years-long saga, between Daphne Caruana Galizia's journalism, with allegations of abuse by the public administration and allegations of criminal conduct by persons within the public administration and businessmen who had interest therein, the Police Corps under the former Commissioner Lawrence Cutajar deemed that no significant steps should be taken to intervene in order to at least assure what truths or substance there was in the serious allegations being made.

They stirred only when the then Prime Minister filed a suit because he felt aggrieved when it was alleged that he or his wife were the owners of the offshore company Egrant. Even then the Police stirred to initiate a magisterial inquiry which was aimed not to determine whether the opening of that offshore company, regardless whose it was, and the other two offshore companies which the Panama Papers indicated belonged to the Prime Minister's Chief of Staff and Minister Konrad Mizzi, whether there were elements which indicated violation of laws and financial regulations which constitute crimes or their attempt.

They only stirred, and rightly so, to defend the honour of the Prime Minister and his wife.

Having said this, the Board notes that this is relevant in the context of all that has been said so far, that this term of reference requested the Board to determine whether the State has fulfilled preventive operational measures to protect the journalist from criminal acts. It seems therefore presumed that the criminal acts were extraneous to the State entities and the persons forming part thereof. In truth, in the case in question, there are far more sinister situations.

The Board discussed and established a scenario where criminal acts, to which Daphne Caruana Galizia was subjected, originated from or were enabled even by elements within the Office of the Prime Minister which adversely contributed to increase the risk to which the journalist was exposed through a vilification and dehumanisation campaign against her. Perhaps even more serious than this, the allegations of criminal conduct, abuse of power and maladministration which, in the opinion of the Board, led to the elimination of the journalist, were targeted towards and involved high-ranking officials within the public administration and leading businessmen. It is clear that in regard all these persons of power in authority, the Police took no steps. They only acted when they were forced to do so by the circumstances, when the truth regarding the assassination started to emerge and when it was no longer possible to keep on doing so, even for those who occupied an official position and who until the end attempt to conceal the truth.

Even at that crucial time when the journalist was being subjected to the greatest pressure, with threats and intimidation, she never found refuge or solace from the police. The Police took no operational prevention measure to protect her even though the great risk she was facing was obvious. It is clear that the bigger the

journalist's confrontation was with the power of the State and potentially with whoever allegedly had committed serious criminal offences, the greater was the obvious and clear need for the journalist to have all kinds of protection to prevent any act of violence against her. This was in a scenario where the act of intimidation on the person and damage to property, violence in the form of threats, insults and menace continued until she was murdered.

The clear and concise response to this question is therefore in the negative. The State showed that it neither fulfilled nor did it plan to fulfil any preventive operational measures to protect the journalist and satisfy the positive obligation is had in the terms of Article 2 of the European Convention.

The experience of journalist Daphne Caruana Galizia in her own words

It is fitting that at this stage in justice to the assassinated journalist, that extracts are reported from an interview which Daphne Caruana Galizia gave to a journalist at the Council of Europe ten days before she was assassinated and in which she spoke very graphically about the significant vilification, harassment, threatening and dehumanisation campaigns even prior to the 2013 Election, but even more so following the publication of the Panama Papers thereon.

In this interview, the journalist described attempts so that her house would be burnt down, attempts to prejudice her income and her livelihood, the freezing of her bank accounts and tens of libel suits against her from Ministers and people in business, as well as attacks on social media and in the street from her critics who had nicknamed her "Saħħara" (Witch).

These extracts are being reported word for word as part of the testimony given before this Board by her son Matthew Caruana Galizia. This is being done not only by reason of justice in memory of the journalist but also because they illustrate a clear picture of the high level of risk that the journalist was facing and how much whoever had the authority and the obligation to minimise it failed to execute their duties.

> *"Daphne Caruana Galizia describes the environment in which she published as one in which she was made the national scapegoat. She uses the following words:*
>
> *(i) "So, it's, when you look at my story, it's a classic, classic case of scapegoating on a national, nation-wide scale. So, obviously, when*

you have the scapegoat, there's an entity which is doing the scapegoating and encouraging others to scapegoat. And in my case, that became the labour party which was in opposition for many years but now has become more dangerous because labour party is actually in government and so has a lot more power. But all the problems, leaving aside the attended problems, like abuse of power in my regard, and so on; all the problems, the greatest difficulties I encounter, come from the fact that they have made me into what in effect is a national scapegoat. And this has gone on for thirty years now almost."

3. She continues:

(i) "I am in a situation where people who can't even read English and therefore, have never read anything I've written, at the same time are aware of who I am, know that they are meant to hate me, or dislike me, or despise me, or disagree with me, or whatever, and react to me on that basis. Totally irrespective of what I write but as the person, as the figure that they are told to hate. So, this has become a massive, massive problem and I have had cases, especially

when the incitement is really high at times of political tension, where I have had problems even with people in the street ..."

Daphne Caruana Galizia draws an important difference, which is also of relevance to this inquiry, between harassment and interference. In this interview she states

"I experience a lot of harassment. Umm in the past I had interference because I had editors. ..." She continues to describe attempts at shutting her up and narrates that having experienced being sacked from the newspaper she thought a blog would be her fall-back position, thinking "Now, nobody can say – we're gonna shut her up!" Because before that 'shutting me up' constituted putting pressure on my directors to sack me and they're still doing it to this day, you know? Trying to get me to lose my column at 'The Independent' by saying, "We won't give you government advertising because you've got her on board." She speaks of 'blatant abuses where they make it clear that umm, that the newspaper is not getting government advertising because they've got me on board.

...' She speaks of the government's attempt at intimidating her financially by 'they just want, umm to reduce my income because,

I'm paid by 'The Independent', you see? So, they want to close off all avenues to me. And they even ha-harass people who work closely with me "

9. Daphne Caruana Galizia elaborates further on economic harassment which goes beyond her losing income from The Independent and refers to her income from advertising on Running Commentary. She explains that businesses recognize their audience as being their target customer base yet they 'are afraid' to advertise 'because they think they would get retribution from the government, who supports the old government or that supporters of the government would boycott their product or their shop.' She defines the impact of this on her as "It makes life a real struggle But because of this scapegoating issue ... It's classic scapegoating, you know, umm, punish her, don't whatever, isolate her, I mean. It's all like a systematic attempt to isolate me and cut me off from everybody else."

10. Glen Bedingfield's blog was also discussed in this interview.

Daphne Caruana Galizia indicates that she had complained of this to the OSCE. She describes Bedingfield's blog as 'the instrument of government targeting' which was systematic. She describes how she was harassed by persons who were closely connected to the Labour Party. Such harassment took its toll and also brought about changes in her daily habits. She gave up going to the beach after 'this group Sharon Ellul Bonici, Ignatious Farrugia, whatever, following me around taking photos of me and uploading me on Facebook. I said, "Forget it, I'm not going to the beach anymore, you know?"

11. Daphne Caruana Galizia recognised that the 'biggest-biggest negative impact it has, leaving aside the impact it has on me, ... But my biggest concern is that because people see what happened to me, they don't want to do it. It's scared others off! So, people keep asking, "Why is there only one of her?" And the only reason, there's one of her is not because I do something unique or wonderful or my abilities are super special because there are loads of people, especially in the younger generation ..." She continues to explain

that 'People are scared because they see me under constant attack. They see what my life is like and they say, "No way!"'

12. The interview also considers judicial intimidation. She speaks of the use of precautionary warrants demanded by the then Minister Chris Cardona against her and explains how even when the government stated it would change the law so that such warrants would not be used against journalists, the government had used the Department of Information to publish a press statement to continue scapegoating her in which Cardona said 'he agrees with removing precautionary warrants for journalists but makes an exception in my case back to what we were talking about, scapegoating, because I am different from other people. I am evil!" Caruana Galizia also recognizes that despite this political rhetoric in the end 'they didn't change the law as they promised they would."

13. Addressing the issue of libel proceedings instituted by persons in public life, Daphne Caruana Galizia describes this as 'a public relations reaction." She highlights the fact that under Maltese law one could institute a libel procedure for every publication even if the subject matter were connected. She refers to the five libel suits

presented against her by Adrian Delia on different blog posts referring to the same subject matter, and she also refers to the nineteen libel suits presented by Silvio Debono. She describes the former as being a case of public relations reaction, but she saw the latter as being a case of direct harassment indicating that the plaintiff had himself intimated as much when he told her "Għax jien għandi ħafna flus u nista' nagħmel, you know, dsatax-il kawza (Because I have a lot of money and I can file, you know, nineteen suits)." She identifies this situation as placing journalists in Malta at the mercy of those on whom they write and agrees that this creates a climate of fear.

14. The interview also discusses psychological violence. When asked how this happened in her regard, Daphne Caruana Galizia replied in the following manner:

"Well, that is constant with me and it is absolutely terrible. And there have been periods where literally I would feel like, oh my god, I'm going to get a stomach ulcer. That churning, churning nerves all the

time. Because you're living under it constantly, you know? And it was bad enough, as I said, when Labour party was in opposition but now, they're in government. Now, they have access to all my private information, everything, you know, at the push of a button. And umm, I think the worst part of it, this is why I make the distinction, the political distinction, because the Nationalist party in government also had access to that information. It also had the journalists that it didn't like and whatever, but I can't imagine ever in a million years that anybody who was in government crossed the line and used any information about any journalist abusively or used it to threaten them or whatever.

Interviewer: But you feel that this is happening now? Daphne Caruana Galizia: Of course, it's happening! Interviewer: And to you personally.

Daphne Caruana Galizia: They have absolutely no red lines. For them-for them, and I say 'them' advisedly, umm they- any information they have access to is all fair-all's fair in love and war and there are absolutely no boundaries. They can call up anything

about anybody, even your children's exam results. I'll give you one example, which is, it's really shocking.

Interviewer: This is a state of surveillance essentially."

15. Daphne Caruana Galizia also spoke of 'acts of aggression' which she distinguished from the smear campaign which she experienced 'All the time, all the time, all the time, all the time.' She states 'that one of the most aggressive tools which the labour party and the government tries to use against me which is the one of social ostracism and alienation ..." She refers to her being repeatedly called a 'witch' and she expresses concern that while this smear campaign does not stop her work it does affect others. She states 'And I'm quite again, I am quite sure that I am one of the reasons why there aren't more women in public life. I'm quite sure because earlier, earlier on, I used to literally get a lot of correspondence from younger women, or women saying, "You know, you're really good role model, umm you know, you really encourage me to whatever." And I think, okay, the flip side of that is that they probably see

what's happening to me as well, and they might not want to have to deal with that."

16. Daphne Caruana Galizia claims in this interview that 'a climate of fear' surrounded journalism in Malta inducing not only journalists to self-censorship but also negatively affecting their sources who were in turn afraid of consequences should they speak up as well as 'anybody who is required to speak openly', indicating that 'It has become very difficult, for example, for journalists to get comments from people." She explicitly states that real journalism had become very difficult. She agrees with the interviewer that the intimidation was filtering down even to people who are sources and Daphne Caruana Galizia states "Yes, its filtering down and there's been a clear change over the last four years where people are actually scared."

17. Harassment and intimidation towards Daphne Caruana Galizia included receiving 'shit in envelopes through the post.", 'poison pen letters', 'harassing phone calls' and "one of the things I used to worry about most was that they used to phone home blaspheming, saying all kinds of things and the children used to pick up the phone,

you know. They used to pick up the phone and they used to hear this string of blasphemy at the other end. That was top." Harassment on traditional mediums moved to harassment online with Daphne Caruana Galizia being harassed on social media.

18. The harassment and intimidation that Daphne Caruana Galizia experienced also left its effects on her family. Testimony of her sons, husband, sisters and parents also expresses the constant attacks on Daphne Caruana Galizia as a person as opposed to criticism of her work. Her family narrate the ongoing attacks on Daphne Caruana Galizia which long before her assassination, these attacks had dehumanized her and sanctioned actions being taken by government officials or persons closely connected to the government and to the party in government.

19. Her mother's testimony clearly shows the constant anxiety which her parents experienced as a direct consequence of Daphne Caruana Galizia being a journalist. Her mother states that she was constantly concerned that her daughter might suffer a physical violent attack.

Her father testified that 'All of those 'weapons' were directed against my daughter Daphne, at different times, in a bid to stop her from holding government under scrutiny." The weapons he was referring to were 'The suppression of free speech and the denial of the people's right to know, as also the use of the police and the regulatory structure in general as tools to harass, and to wear down, any individual or organization the party perceived as being in conflict with the attainment of its objectives."

Surveillance and Tailing of a Journalist

Caruana Galizia rightly complained that she was being tailed wherever she went by persons some of whom she identified as close to the Office of the Prime Minister. She was under surveillance and this is proven too by what was being published about her, especially around the time when the Panama Papers were being revealed by her and other journalists and thereafter. Surveillance practices, typical of totalitarian regimes planned to intimidate, scare and restrain the journalist to silence. Direct attacks on the fundamental right of freedom of expression.

The Board acquired conclusive evidence from testimony heard behind closed doors from very reliable sources that these tactics were not being used only in regard to Caruana Galizia but also with other journalists who were at the forefront of the Panama Papers investigation and other allegations of abuse which were being investigated. Several journalists reported that they went through similar experiences even if not with the same intensity and that these had a chilling effect on their journalistic work.

In one instance, the journalist recounts in an explicit and detailed manner how he was followed by individuals, one of whom was certainly employed with the Office of the Prime Minister at some point and who confirmed before this Board that he answered to his Chief of Staff. This journalist recounts how he was followed from where he had been reporting on a Labour Party activity in the 2017 electoral campaign up to the place where he was due to meet his source person who was well informed regarding aspects of the Panama Papers. They made a successful attempt to record the conversation between the journalist and his source. This fact was also proven so much so that due to this incident, the source suffered serious consequences such that he had to abandon his work.

These are condemnable tactics which elicit the contempt of the Board but also of whoever cherishes democratic values. Worse than this, these mean that an administration which had the obligation to support and protect journalists to encourage them to continue investigating what was in the public interest, was concentrated in order that with any means possible, it would silence them or hinder them from doing their duty. An indication that this type of surveillance was developing into a system of control. In fact, one of the persons involved in this incident close to the Office of the Prime Minister with direct connections with the Head of Information Kurt Farrugia and with the Chief of Staff did not confirm that he had a specific order to follow the journalist on that occasion but the Board was given to understand that their work was that if they deemed that there was the opportunity to acquire useful information, they were to follow that lead, acquire it and refer it to their superiors.

When they testified before this Board, the then Head of Communications Kurt Farrugia denied any involvement of his office in such incidents and denounced them. However, the reality remains that whoever executed this kind of surveillance did so because they deemed it was their duty as part of their work to do so or

otherwise, they were convinced that were they to do this, they would be of service to the party they supported or to the government that employed them.

An unbearable level of confrontation

The Board makes ample reference to the detailed and documented testimonies of the Caruana Galizia family members, including her son Matthew and her husband, as well as her friend Caroline Muscat who graphically gave details to illustrate the unbearable level of confrontation to which the assassinated journalist was subjected. This confrontation was in the most part generated by those who had the obligation to protect her from such attacks. The extension of threats and harassment which she had to face leave no doubt of the part that public officials had in the campaign to dehumanise Mrs Caruana Galizia and in the process create an insecure and intimating environment which did not allow the journalist to exercise her professions freely and serenely.

The State's obligation to investigate

It was an obligation of the State entities at all levels to strongly intervene to stop this intimidating campaign, especially when some time just prior to being murdered, she was also the target of a ferocious attack by elements within the two

main political parties. To the contrary, these persons and entities who were obliged to protect her were actually the protagonists in the campaign to suppress the journalist Caruana Galizia. With any means, even if apparently legal.

They attempt to silence her with Libel Suits and SLAPP Actions

The Board heard how at the time of her death, there were at least 47 libel suits pending against Caruana Galizia, five of which of a criminal nature, some of which from the Leader of the Opposition too. Sometime before her death, she had discovered for example that Henley & Partners, through their legal representative Christian Kalin, with the approval of Prime Minister Muscat, his Chief of Staff, Minister Owen Bonnici and Jonathan Attard who was the CEO of Identity Malta in charge of the Passport Scheme, together had planned to prosecute the journalist in England with the aim of causing her very serious financial repercussions. This was one of the SLAPP actions referred to by Caruana Galizia in her interview and which were planned to crush her and ruin her financially.

Following her death, the family discovered that even the owner of Pilatus Bank had instituted libel proceedings against her in America in his name and on behalf of his bank wherein he was expecting 40 million dollars in damages. Her husband Peter

Caruana Galizia also testified that there was a time when his wife had received an assessment from the Income Tax and VAT Department and she was subjected to a detailed scrutiny of her accounts. This came from a department where its Commissioner admitted before this Board that he had friendly relationships with the entrepreneur Yorgen Fenech who today regrets them.

Another circumstance which resulted to have been planned to determinately undermine the financial income and the means of livelihood of the journalist was the confirmed attempt by Mr Silvio Debono of the DP Group and Mr Yorgen Fenech, owner of 17 Black to purchase the newspaper The Malta Independent. Two figures who were constantly in the sights of the investigation being conducted by Caruana Galizia regarding the alleged complexities of the business they had in government projects. Caruana Galizia was a regular contributor in this newspaper and if the aim were to silence her, this was certainly a means for them to reach their aim. On the other hand, they deny that this was the intention; in fact, the project was abandoned after some time.

The Board notes that the fact that the private party attempted to use the libel suit as a weapon to try and stop the criticism of the allegations considered offensive is

not censurable in itself. The fact that one uses the legitimate weapon of libel even if in an excessive manner cannot be considered that they actually increased the level of risk to which the journalist was exposed. Even if the private party had recourse to this legitimate weapon to intimidate the journalist and inundate here with cases which she could not handle for various reasons, this can only amount to nuisance as well as harassment caused by the exercise to the right that they have.

On the other hand, the weapon of libel by State entities or persons forming part thereof against journalists should only be used in exceptional circumstances and only in cases where the harm would be very serious. As stated, this would be for the reason that they have the obligation not only to guarantee the right to free expression but also to protect journalists in their work even when they are harsh critics of the administration. Then there are the very censurable requests for sequestration and seizure orders against the journalists which only had the aim of paralysing all their income and freezing their capital.

The Board acknowledges that in 2018 Parliament approved the Media and Defamation Act through which, among other beneficial provisions, the right to issue a mandate in relation to libel or defamation suits was abolished, as well as the

criminal libel was abolished retroactively from the Maltese laws. Whilst undoubtedly there is always room for improvement, this law was a very important step in the recognition of the value of journalism, in the protection of journalist and in the formation of a more secure and free environment where they could exercise their profession. It is to be noted that to a lower degree, there were other journalists who experienced all these serious difficulties in the execution of their work and one cannot see exactly why these tragic events had to pass to instigate the Parliament to take the first steps in the right direction.

On the other hand, not steps have been taken so that journalists are protected against the threat of legal proceedings known as SLAPP, whereby journalists in Malta who are prosecuted in overseas jurisdictions to respond to charges of defamation, with great risk that if they are found guilty, they would be exposed to substantial damages which they would definitely be unable to afford. This matter includes international law studies and is being analysed by the European Union institutions. However, there is no reason why the Maltese Parliament cannot take steps to protect journalists even prior to there being European Union directives in this regard.

Conclusions and recommendations

In light of the considerations made by the Board in this section as well as those made in the general observations, the Board reaches the following main conclusions:-

The State failed to defend life

1. In regard to the protection of the life of the journalist Daphne Caruana Galizia, the State did not fulfil the positive obligation to take preventive operational measures to protect her person and her life actually and physically. Everything indicates that there was not and there is still not to date any formal procedure or system whereby the police conduct a risk assessment that a journalist would be exposed to as a result of exercising her profession. The appreciation of this journalist's risk, but in truth of any other person, to which they may be seriously exposed, was left to and still remains at the discretion of the Commissioner of Police, who follows an evaluation process of this risk, its gravity and the potential it had to provoke violent incidents on the person. It is true that the Police cannot be held responsible because they did not prevent some unconceived act of someone who acts in a moment of anger of political passion. Such acts are unexpected and take everyone by surprise.

However, Caruana Galizia's assassination was not like this. It was planned for several months, it involved persons who were known to organised crime, the journalist was exposed to great risks because of serious allegations that she was making in her writings which could endanger the stability of the government and she was taking it all out against the political and economic powers. This ought to have been more than obvious for the Police and the forces entrusted with maintaining order. The fact that they did not act when faced with this threat and did not provide any measure of protection, rather they reduced the little that was being provided prior to the 2013 election when there was less risk, is inexplicable, verges on irresponsibility and amounts to abandonment of the State of its serious duty to take all those measures necessary to protect the life of the journalist.

The Police among others failing to investigate the allegations

2. Among the preventive operational measures which the Police and the forces entrusted to maintain order in the country as well as the regulatory authorities should take to protect the life of the journalist who would be conducting investigations of that kind which was leading the assassinated journalist with serious allegations against persons with the greatest power in the country and

which had the potential to instigate, as they in fact did, a strong reaction not only of repudiation but also in defence with every means of shadowy interests, there is that where they start investigating the allegations being made immediately and seriously. With any means and without looking at anyone.

To open a file or to send a letter to some bank is a certificate of incompetence or an act of weakness, or worse in order not to upset someone who is strong or to accommodate them. Certainly, the State is not sending a strong signal, for example, as soon as the Panama Papers were published and even more so when the facts regarding 17 Black or when Caruana Galizia published allegations of serious irregularities in large project, that it had every intention of defending the journalists, that it respects and values her work and that it was going to do everything possible to protect her even physically and materially in order that she could be able to execute her work in the interest of democracy in the country.

They failed to identify who was the cause of the risk

3. Among all the operational preventive measures which the Police and the forces for maintaining order were obliged to take as soon as they learnt, as they should have learnt, that the person, who, in this case , the journalist, was in a real

and imminent risk for her life, they should have identified as soon as possible, those elements in the country which had created a hostile environment and demonising the journalist for reasons which were not necessarily linked to the allegations of abuse and alleged scandals which she was investigating.

It is this sustained campaign of hate and vilification which enabled the commission of the crime because it helped determinedly with the creation of a climate where whoever committed it on commission, felt at ease at being able to do this whilst being shielded and with impunity. It is now established without any doubt, that the cause of the assassination was note the media campaign or the violent political encounter, regardless how condemnable they are, even if wen in some environments there were those who momentarily were satisfied and even content that finally they got rid of her. To date there transpires to be no evidence of a direct or indirect link between this hostile media campaign for the journalist and her assassination. There is evidence that this campaign was determinant and created an environment which enabled it.

However, the truth is that the journalist was killed because she had become and was becoming a more difficult persons for those who wanted to abuse of power

and a serious and imminent threat for the projects they completed and which still needed to be completed by the public administration and from which they had planned to amass a fortune.

Persons who necessarily were very close to the core of the public administration if not forming part thereof.

Dubious relations and contacts

4. The allegations which shook the country regarding close relationships, friendships and dubious contacts of all kinds between high-ranking officials of the Police Corps, from the Commissioner downwards, which they allegedly had with persons who were in some way involved, investigated or accused of the assassination, if eventually proven, brought closer to the figure not only of the crime of abuse of office but also and even more serious to that crime which we do not have to date in Malta, that of association with a mafia-style organisation. They may offer a plausible explanation because realistically, all the operational preventive measures which the police and the forces entrusted to maintain order, were not taken in time, in the right place and in an effective manner.

To date the prevention measures are still inadequate

The Board in this reference is requested to also determine whether the State is now fulfilling its positive obligation to protect the life of people at risk, like journalists, as explained above. The answer to this question since it concerns the existence of procedures or protocols on how to evaluate the risk facing a person and what had to be done on the ground so that their life is protected, appears that it has to be in the negative. Although one thinks and expects that there is an acknowledgement of the problem, the Board does not have information that in practice actual steps have been take so that the level of protection improves.

In this regard the Board deems that it would be useful to reproduce clear and concise proposals put forward by the assassinated journalist's family lawyers in paragraph 280 of their submissions note and brings them to the attention of the competent authorities.

"The Police Force must implement a formal risk assessment procedure which assesses the risk of journalists based on a consideration of their publications and the circumstances in the country. This needs to be an ongoing process undertaken by persons assigned this responsibility and who are accountable for this process.

Meanwhile journalists need to have a contact point within the police force who is able to understand their role and responsibility while efficiently receiving notification of threats received by journalists and who has the power and ability to offer and execute protection in their regard as well as investigate incidents and prosecute perpetrators. In this regard an early warning and rapid response mechanism is required to provide journalists and media workers with immediate access to authorities who are competent and well-resourced to provide effective protective measures."

Mechanisms of this kind would instil in the corps the acknowledgement of the intrinsic value of journalism and the need that journalists are protected at all times from attacks instigated by their investigative work.

How to acknowledge and value the journalist's work

5. The best protection that can be given to journalists which qualifies as the best operational measure which ensures the journalist's safety, is the commitment that journalistic work to reveal credible and documented allegations of serious abuses of corruption, maladministration, violation of financial laws, money laundering, crimes of perversion of the course of justice, complicity and collusion

between persons within the public administration, regardless of rank, and persons in business, are investigated immediately without considering anyone in respect of the fundamental principles that the law is equal for everyone and everyone is subject to it.

Considerations regarding what could be the effects and consequences of such investigations considering the powerful persons who may be involved and the gravity of the crimes attributed to them and the magnitude of the projects and what this means to the country, should not be factors which in some way hinder the investigations or pervert the course of justice. To the contrary, the stronger and the more important the persons allegedly involved in the abuse, the greater should have been the reaction of the police and those entrusted with maintaining order and the regulatory authorities. They had the obligation to intervene in a strong manner, immediately and with efficacy investigate and stop the abuse and root it all out. This was clearly not done in regard to Daphne Caruana Galizia's serious allegations, as well as those revealed by other brave journalists.

In this, the State failed; the shame and tragedy for the country is that this serious failing did not only occur due to inefficiency or negligence of some elements within

the public administration. It occurred because the institutions were weakened because they became intolerant to criticism or because elements within the public administration and in business felt threatened by what the assassinated journalist was revealing or was about to reveal. As stated, they tried all means to silence her and force her to stop her helpful work. When nothing and no one managed to silence her, there were those who deemed that there was no other way than to eliminate her physically. They chose to do this with a typical weapon and the classic method used by mafia organisation to eradicate the magistrates who were investigating them.

One expects that the experience which the country went through with the death of Daphne Caruana Galizia should have taught us a lesson and one hopes and expects that progress is being made in this context. Indications show that movement in this direction.

During the Inquiry, several leading journalists and editors testified, where some of them offered their testimony voluntarily to inform the Board of the Status their profession found itself, what where the most serious failings which they were facing and they made several recommendations how journalism in Malta could be

set on solid foundations as is fitting in a democratic country as well as gave an indication of some operational measures which should be taken to protect journalists from threats, harassment and safety risk, among others.

These journalists, whom the Board thanks for their interest, as well as the assassinated journalist's family members were motivated by the sense of responsibility that the country needed to learn a lesson from the events that occurred, to look forward and act such that journalism acquires once again its intrinsic value as an essential instrument for democracy and is placed on solid foundations, whilst being assured that these events do not happen again.

Proposals

At this stage, the Board points out a few of these proposals which it recommends for consideration by the competent authorities.

1. The necessity that every incidence of violence against a journalist would be investigated immediately. The Board clearly illustrates the ordeal experienced by Daphne Caruana Galizia when she was the target of those individuals whom she was investigating or criticising. Physical violence, threats, harassment, extreme

financial vexation, dehumanisation and demonisation. A systemic campaign which neither the police nor any other authority took steps to stop it in any way. Even when it was clear from where part of this was originating. This inaction in itself is a violation of the journalist's fundamental right to the right of expression.

In fact, in the case Luis Gonzalo "Richard" Vales Retrep and family vs Colombia decided by the Inter-American Commission on Human Rights on 23rd October 2010 (para. 136), it was found that the State of Colombia was guilty of violation of this right because it failed "to effectively investigate earlier violence against the journalist which resulted in subsequent threats and harassment against him". It was said that "By taking steps 'to prevent, investigate, identify and punish' the perpetrators of human rights violations states should ensure that there are adequate and effective mechanisms of accountability to break such a 'vicious circle' of violence and combat the culture of impunity surrounding violence against journalists".

According to this judgement, the State was expected to take immediate and effective action against whoever would have committed these crimes because it was only then that the State could send "a strong message to society that there will

be no tolerance for those who engage to set a grave violation of the right to freedom of expression". The Maltese State failed in this clear obligation which it had in regard to Mrs Caruana Galizia. It is therefore necessary that the Police and the forces entrusted to maintain order should have procedures to ensure that they would be in a position to intervene in similar situations before it is too late. It is true that Malta is different from Colombia and that it does not have the same organised crime problems as that country. However, the fact remains when faced the with the reality that Caruana Galizia, for several years, was the target of violence of all kinds , the State did not do anything or put her at greater risk.

2. For this purpose, it was suggested that the Police should have a specific unit with the function to safeguard and protect journalists. This unit should be specialised in media law and should be in a position to well understand the value of journalism and the threats that journalists face from time to time. In this regard, it is important that there would exist a synergy between this unit and the media operators by establishing a point of direct contact which facilitates a police intervention in order that the threats against journalists and newsrooms would be restrained immediately.

On their part, the journalists should be in a position to feel at ease in requesting police protection because they would be satisfied that they would be provided with proper response and protection and that their requests for protection would be considered seriously and competently. Obviously, it is the State's obligation to offer proper protection to journalists from all kinds of violence, to investigate every report of threats in their regard. It is different from its obligation to seriously investigate reports of allegations of abuse and irregularities by persons in authority who may be the cause of such threats. The Board has already made its observations in this regard.

3. In Malta there is already legislation which regulates hate crimes and harassment as separate offences which concern other crimes against a person such as threats, menace and grave insults. It is recommended that these are considered as aggrieved offences and therefore subject to harsher sentences when committed against a journalist. The intrinsic value of the journalists' work should be reflected in the level of protection that the State accords to them by acknowledging that threats and violations in their regard are not only considered as criminal offence but that whoever commits would be liable for harsher sentences.

4. The Board acknowledges that Act No. XI of 2018 provides for the update and regulation of matters which concern the media and defamation. It was a step forward and that in certain aspects it provides protection to journalists which they did not have before. The law provided a new legal framework for laws regarding media, libel, defamation and harm, whilst extending its effects not only for journalism in writing but also for journalism through electronic means. The law has positive aspects that not only protect the journalists but also under certain aspects to make them aware of their responsibilities.

Separately, and this is relevant to this Inquiry, it abolishes criminal libel as well as removes the possibility of the issue of mandates, which expose them, as they truly exposed Mrs Caruana Galizia, to serious threats of the same means of their livelihoods. For the most part, this law is positive even because it is drafted to incorporate quite recent principles, formulated in the jurisprudence of the European Court of Human Rights.

Even here it is quite unfortunate that a journalist had to be killed in order to introduce a new law which regulates the media which in the most part is positive

and not controversial. The Board also reminds that the assassinated journalist was subjected to a large number of libels from private individuals who felt aggrieved with her writings and to this end they were exercising their right.

However, there were also a number of libel suits made in her regard from persons in authority who attempted to silence her. As explained above, they had the obligation to protect her right to freedom of expression as well as the intrinsic value of journalism. Some of the libel suits were kept in place even after she was murdered.

Worse than that, the Board refers once again to that which was already mentioned regarding the so called SLAPP cases which were filed against her. There were plans for some of these to be initiated in overseas jurisdictions even with the forbearance if not the approval of the government. The family's lawyers suggested that there would be room for improvement in this media and defamation Act including by ensuring that public officials would not be in a position to institute libel suits which are terminated on the death of the prosecuted journalist. That no warrants of injunction may be ordered whereby the journalist would be preventively withheld from publishing articles which they would have investigated, obviously save for

exceptions as provided by law, and that concrete steps are taken in order that, as much as and as long as possible in the circumstances, the journalists are protected from this kind of libel. This would be conditional to the matter being definitely determined by European institutions.

These are a few of the several important recommendations made by journalists and editors who testified before this Board which include legislative proposals but also practical administrative measures which if implemented together would provide a structured framework wherein the journalists would feel safe, protected and respected by the competent authorities, such that they would be in a position to exercise their profession freely and unreservedly. Obviously, the best and highest protection that the State can provide to journalism is to act in a manner which ensures that no system is created in the country which allows maladministration, abuse of power and corruption systematically, deeming to be covered by a strong sense of impunity.

The Board now proceeds to summaries its conclusions and make recommendations as requested.

Section VI

Conclusions

Section VI

CONCLUSIONS

The Board reaches these conclusions and recommendations which may also be considered as the "Executive Summary" of the report:

In regard to the reply to the first term of reference, a reply has already been given in the concluding part entitled "Responsibility of State Entities". However, in brief, it is reiterated that whilst there was no evidence that the State as such had any role in the assassination of Mrs Caruana Galizia, for the reasons which were amply demonstrated in the body of this report, the 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 at Castille and spreading its tentacles to other entities such as regulatory institutions and the Police which led to the collapse of the rule of law and therefore (a) the State and the entities forming part thereof did not acknowledge, as it was due to acknowledge, the real and immediate risk, including from the criminal conduct of third parties, to Daphne Caruana

Galizia's life; and (b) failed to take measures within the scope of its powers which, by reasonable judgement, it was expected to take in order to avoid that risk.

01. All the evidence in this Inquiry led to the conviction that Daphne Caruana Galizia's assassination is intrinsically if not exclusively linked to her investigative work, with allegations of irregularities and administrative abuses in the realisation of major development projects in which elements of big business in the country were involved.

02. Even if it were to transpire that there could have been some connection between the assassination and other elements extraneous to the public administration - something which is not excluded by the police but in no way does it transpire to this Board - it is ascertained that what the Police found regarding the execution of the assassination, and which led to those who in their opinion were allegedly responsible as the mandators or actual executors, remain at the centre of all that happened. The Commissioner of Police confirmed this before this Board whilst indicating that the investigations were still ongoing and it was not excluded that these involved other individuals and lines of investigation.

03. The mandate given to this Board was not to investigate or to identify or to attribute responsibility to the persons who to date are allegedly involved directly or indirectly. Very person remains presumed innocent and their rights to a fair and just hearing remain untouched. Only the actions of the public administration are of interest to the Board and how these could impact on the assassination regardless of who were the persons who planned it and committed it.

The responsibility of some State entities including the Police and regulatory authorities

04. All the evidence before this Board intended to establish the circumstances in which the assassination occurred, revealed an extended 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.

05. The links between politics and big businesses which have always existed and regarding which steps need to be taken to restrain and regularise them, found their release in the Government's declared policy well before 2013 that public administration should be business friendly. A policy regarding which the Board does not pass judgement, and which may be positive as long as it is not abused and is

applied strictly within the boundaries of the applicable laws and regulations. Being business friendly should never mean being money friendly. The public administration is obliged to protect the rule of law and should never allow the thirst for money and profit for the businessman or public official to obscure correctness and good governance.

06. The Board acquired enough evidence regarding the complexities and excessive familiarity between elements at the highest level of public administration and leading businessmen interested in pushing large development projects. This proximity was a determining factor for the majority of these large projects fulfilled in the relevant period ended up under the scrutiny of the Auditor General and Magisterial Inquiries, among others. Investigations which confirmed that there were significant irregularities to the point that the possibility that for some of them the whole process was vitiated was put forward.

07. The Board was faced with situations where the established procedures dictated by good governance appear that they are being followed when in fact they were just the means by which whoever was involved achieved their purposes.

This was also confirmed in the Auditor General's reports that it is the constitutional institution that verifies the correctness of a public administration's conduct. In this context the Board needs to take on the findings reached by the Auditor General to the point that he identified the public administration's misconduct Behaviour which although not always illegal, it is certainly illicit.

08. The reality is that part of big business, unsurprisingly, took the opportunity to be able to start operating and fulfilling their projects with the least administrative hindrance and by manipulating public officials at the highest levels with whom common interest links were forged.

09. It is crucial to understand how these links developed and how public administration operated in the relevant period that it was not only the declared policy to be business friendly but also the figure of the Prime Minister's Chief of Staff, the person who incorporates the highest level of public administration and the leading businessman.

10. It is established that in the relevant period, the assassinated journalist's writings were totally critical of these public administration actions and the existing links with certain businessmen in the implementation of projects. Links which created two centres of power – political power and economic power. It was inevitable that when the journalist began attacking these two powers directly and credibly, a direct confrontational reaction was imitated with those in power who were involved. 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 causing on the Government's declared policy and in order not to prejudice the plans that there might have been, that some people would enrich themselves thanks to the connections they had with the public administration.

11. This confrontation reached its peak following the publication of the Panama Papers and of the circumstances of the establishment of the overseas company 17 Black, when it became obvious that the journalist had acquired and was still acquiring very sensitive and restricted information which could irremediably prejudice not only the plans of those who were going to make undue gains from the projects in which they were involved but even the stability of the same

Government. Confrontation which continued to escalate until the moment she was assassinated.

12. It was proven that the confrontation was so strong that the government following the 2013 election began considering the journalist as the sole opposition in the country. These were the words of the then Prime Minister. A confrontation which was accentuated by the fact admitted almost universally that the information and the facts on which the journalist Daphne Caruana Galizia was basing the allegations were substantially correct and her writings were an open source even for the Police.

13. The political reaction to this confrontation was principally a sustained campaign of personalised attacks of criticism and hate, incidents of verbal abuse, abusive pursuit, financial restrictions even by legal means. Such incidents, some of which were serious, may perhaps be acceptable in some way although always censurable, on the level of conflict between political parties. However, it can never be accepted that a State entity which involves itself or promotes initiatives of this kind, the State has the obligation to defend in every way the value of journalism in a democracy and defend the fundamental right of free expression and the safety

and the life of journalists. This obligation rests on the State even when the journalist would be expressing harsh opinions against the policies and administration of the government of the day.

14. It has been proven that in the relevant period some State entities not only failed in their obligation to extend full protection to Daphne Caruana Galizia but there were individuals in the State entities who actively and directly acted in a manner which seriously prejudiced her right to exercise her profession freely and safely whilst being instrumental that this level of risk to which she was being exposed increased exponentially.

15. The evidence shows conclusively that both elements in political power as well as in business who had the same interest that the effect of the strong writings of the assassinated journalist would be suppressed in some way. This does not mean at this stage, that there exists some proof of the involvement of the public administration as such in the execution of the assassination. There is no evidence in this regard and the Board needs to dismiss the allegations made in this context. The fact remains however that the denigratory campaign which demonised Daphne Caruana Galizia, in a scenario of impunity which created a climate favouring those

who wanted to eliminate her, could do so without the least consequence. The fact remains that As far as the Board is concerned, it was Daphne Caruana Galizia's writings regarding the intricacies between big business and politics which led to the assassination. The evidence acquired by the Board and that in the public domain points in this direction. On the basis of probability, the Board took this reality as the point of departure. In truth, none of the witnesses who testified before it contested his reality.

16. This denigratory campaign started prior to the 2013 election when the confrontation was just a political one. After that election, the confrontation became more ruthless and it became one between a journalist and the public administration besides still having the political element. At that time, Daphne Caruana Galizia started being subjected to attacks from elements within the public administration. Attacks which started increasing with the journalist's revelations of the alleged irregularities and scandals in the implementation of large development projects. It was at that time that the risk to the person and her property began to form and increase because it was obvious that she was taking it against the power of the State and the interests of big business. This risk escalated following the disclosure of the Panama Papers and more so following the facts regarding the

overseas company 17 Black. In the latter case, Daphne Caruana Galizia acted following a draft report of the FIAU which revealed an allegation of a close connection between the business and individuals within the public administration with a specific accusation of serious offences in the financial sector. From that moment onwards, it was obvious for everyone that the journalist was risking a strong reaction from the political power as well as the economic one besides the real and imminent risk which was maintained until the moment of the assassination.

17. As far as the Board is concerned, this was the moment when the need for Daphne Caruana Galizia to be restrained and silenced was fostered but not for a political reason but because she was taking it against strong financial interests planned and conceived in an incestuous marriage between elements in politics and in business.

18. What was obvious for everyone was not obvious for the Commissioner of Police, nor for the Secret Services and nor for the regulatory authorities who have the function to maintain public order, ensure good governance and require full compliance with the laws and regulations which govern the various sectors of

economic activity including financial activities. The institutions' lethargic inaction, not only in order not to investigate serious allegations of violation of the law, even criminal law, but also in order not to investigate other allegations of bad and illicit public administration is inexplicable and censurable. It cannot be explained as simple incompetence or indifference. The Board in such blatant circumstances also considered the net of control which was created in order that the public administration could counter these serious allegations. It cannot but conclude that there was an orchestrated plan in order that the investigative journalism work of the assassinated journalist would be suppressed. This was in order that first and foremost on the one hand the harm to political power would be limited and non the other hand the irremediable prejudice which the interested parties could suffer to develop the projects even for their own personal interests.

19. A plan which succeeded because it was centrally organised form the office of the Prime Minister and which led to the total isolation of the journalist at a time when she was also the target of the then leader of the opposition. Isolation which, linked to the reality of the impunity created due to the institutions' deliberate inaction to execute their duties, translated to a climate of great risk. A climate in which whoever wanted, attempted and succeeded to eliminate her found the

opportunity and the opportune moment to do so. Whoever planned and committed the assassination certainly felt or used to feel that they had the assurance that they were ging to be protected by those who were most interested to silence the journalist.

20. The Board is satisfied from the evidence that this is a murder executed for money and on commission. Whoever actually committed had no personal interest to eliminate her. They only had an interest to be paid for their abominable work. The Board was left astonished with the way Vince Muscat, “il-Koħħu”, as well as Melvin Theuma, the middleman who admitted his involvement such that he was given a presidential pardon, described in shocking details the cold blooded manner in which the murder was planned at length and then executed. These facts are still to be verified by the competent Courts and the Board did not make any pronouncement regarding the innocence or guilt of those who are allegedly involved. However, the Board was impressed and finds this of great relevance to this Inquiry, is the nonchalant and confident manner in which all those who were allegedly involved in the actual execution of the murder, were openly displaying the contacts they had with ministers, the Chief of Staff and other individuals at the centre of power. They could do so in their conviction, assuring them that ultimately,

they would find their support and get off lightly. Just the fact that this mentality existed at the organised crime level to the point 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 confidence of which they boasted due to the culture of impunity that reigned and through which they felt protected.

21. For the purposes of this Inquiry, it is enough that the Board establishes that there existed this culture of impunity, supported also by a net of control which was created to concentrate power in the hands of a few people. The Board understands that neither the corruption nor the impunity for the commission of crimes are a characteristic or a monopoly of the administration which is investigating. They always existed and shall continue to exist under any administration. Impunity, especially that which entails acquiring advantages or favours because of connections, friendships, familiarity and convergence of interests, is unfortunately characteristic of society.

This in truth is a feeble defence which several ministers as well as high-ranking public administration officials attempted to give, including Mr Alfred Camilleri, a respected and upright Permanent Secretary at the Ministry of Finance, among

others. The defence was in the sense that every large project undertaken by every government was always in some way tarnished with allegations of irregularities. However, there is a big and clear difference. The difference is that in other times, there were those who abused the system to gain unwarranted advantages. In certain cases, this involved some public officials. Generally, however, the regulatory institutions functioned, the abuses were investigated as soon as they were discovered and steps were taken against those who abused of the system. Obviously, not everything was perfect.

On the other hand, however, at the time in question, the system itself intended to provide checks and balances was undermined to prejudice good governance. The institutions in many instances did not function and no steps were taken in order that serious allegations being made would be investigated and so that whoever was allegedly responsible would be called upon to account for their conduct.

What is striking in this case is the gravity and extension of this impunity at the highest level which led to the executor of the crime to feel safe to commit it. The manner in which almost all the institutions of the country failed to react appropriately and effectively to counter this impunity as they were obliged to do,

a failing which for the most part can be actually attributed to the links that there were between their leaders and those who were advancing their own dubious interests is also striking.

22. The Board, as already stated, cannot reach this conclusion that the State, as it stands had any responsibility in the execution of the crime however the Board cannot but reach the following reality:

a. Whilst it is assured that the State entities in the most part fulfilled their duties with loyalty, dedication, professionalism and correctness, it is proven that in this case important element of officials in control of certain entities failed to execute their duties both before as well as after the homicide was committed.

b. For example, what stands out most in this regard is the inaction of the Commissioner and of some high-ranking Police officials to execute their duties primarily by investigating the allegations made by the assassinated journalist against high exponents within the administration and leading businessmen. This is in particular following the publication of the Panama Papers, the charges against Pilatus Bank and 17 Black. Similarly, the quasi total inaction of the regulatory

institutions such as the MFSA and the FIAU is censurable. There were occasions where officials within these institutions took the correct initiatives to investigate and verify but their efforts were ridiculed for some reason or another.

c. The lack of recognition for the value that the State should give to investigative journalism but also the hostile attitude against Daphne Caruana Galizia, mainly orchestrated by persons occupying positions in State entities including the office of the Prime Minister also stand out. This Board considers that this hostility was illicit conduct which vilified and demonised the journalist's person. This conduct must have contributed to the creation of a hostile environment and therefore an element of encouragement to whoever had the intention to commit the crime.

d. Daphne Caruana Galizia had the misfortune of taking it against political power and economic power at the same time. The Board emphasised that the evidence is all indicative that the homicide involved a small group of people who planned it and executed it for their own interests and by mandators who considered her as a threat for their plans, even future ones. This means that whilst there is a contributory element from State entities in the creation of an

environment that enabled homicide, it cannot be said that it was the State that planned it or enabled it.

e. On the other hand, this does not mean that the State fulfilled the positive obligation to take preventive operational measures to protect the journalist Caruana Galizia when she was clearly at risk of violent acts on her own person by criminals.

f. In its considerations the Board explained the State's failure to fulfil this positive obligation that should principally identify the failure of the responsible entities to act appropriately to actually protect the journalist's person as well as in default of this, to act in a timely manner to prevent the crime by investigating her allegations properly.

g. The particular characteristic of this case which aggravates the State's responsibility is the direct involvement for the creation of a climate of impunity and dehumanisation but also, and even worse, the allegations which are still to be verified, that there could have been individuals within the State entities who by

their actions, directly or indirectly, contributed to or enabled the commission of the crime.

h. In truth, the Board acquired a lot of evidence which together with that in the public domain, conclusively proved that following the murder, high-ranking officials in the police administration and in public authorities acted clearly in an illicit if not illegal manner or to favour and assist individuals who were suspected or of interest to the police investigation or to pervert their investigation by sending the journalists on a wild-goose chase away from what truly happened. One can reasonably conclude that this censurable attitude had its roots in friendships, admitted or revealed through electronic communications between these persons and those who had or are still of interest to the police in the crime investigation.

i. The Board is satisfied that the evidence led to the conviction that the State was ultimately responsible for the environment which enabled the commission of the crime both due to the inaction of the entities responsible as well as through the positive acts of vilification, name-calling and harassment by officials in high positions within the administration. However, if one eliminates, as the Board is required to do, the serious allegations which were made against leading figures

within the public administration like Dr Chris Cardona who denied them, regarding their alleged involvement in the homicide and/or their closeness to organised crime, as stated, one cannot but reach the conclusions that the elements of the evidence established to date qualify the crime to the juridical type of a homicide of the state. Italian jurists recognise this crime, even if it is not yet codified, where it transpires that the State was directly or indirectly involved in the planning and commission of the homicide. This has not transpired to date and the allegations are all denied by the persons involved some of whom are and may still be persons of interest to the police. This conclusion of the Board shall change if it transpires proven by the competent Court that any Minister or public official was implicated in the planning and commission of the assassination. In this case, the type "homicide of the State" would be applicable to the facts in question.

j. However, the Board reached the conclusion that the first term of reference was amply proven in that persons within the State entities established acts which were certainly illicit, if not illegal as well, to create an environment which facilitated the assassination. This was also by failing to execute their duty to act in a timely and effective manner to provide proper protection to the journalist. This aspect was amply discussed in several ways in the body of this report. Whilst there is no

evidence that some State entity was aware of the planning and commission of the crime, the Board is satisfied that the State entities were aware, or ought to have been aware that the assassinated journalist was exposed to a real and immediate risk which could have instigated criminal conduct. This was because there were individuals therein who created an environment wherein fostered the real risk which facilitated the homicide. This was amply discussed by the Board.

k. The Board also identified which action the entities responsible ought to have taken in the circumstances, such as the Police and the security services, the office of the Prime Minister and regulatory authorities to avoid or minimise that risk. It transpires proven that these entities practically took no action in this regard. Rather, as stated, some of them were instrumental to escalate that risk.

l. At this stage, the Board excludes, as it should, the unproven allegation that another attempt was being conceived to kill Daphne Caruana Galizia in 2014-2015. Even if this is eventually proven that this was going to happen, its motive could not have been the link between the public administration and organised crime. This was because the disclosure of the scandals resulting from this link began afterwards by the assassinated journalist. It is for this reason that the Board is convinced that

the real risk to which the assassinated journalist was exposed reached its highest degree with her publication of the Panama Papers and thereafter.

The Cabinet's collective responsibility

23. The Board reaches the conclusion that, premised that the crime was necessarily linked to Daphne Caruana Galizia's serious allegations in regard to take the necessary actions. Whilst one can in some way exculpate the Cabinet for not taking timely action when the Panama Papers against the Chief of Staff were published because Prime Minister Muscat assumed personal responsibility for Mr Schembri's conduct, the same cannot certainly be said when the specific allegations of crimes in connection with 17 Black were published. It is certain that at this stage no Cabinet member can exonerate themselves from the obligation that they had to assert their volition that, at that stage, whoever was involved no longer had a place in the Cabinet. It is emphatically stated that that situation made itself clear several months prior to the assassination and at the time when the violent attacks against the journalist were becoming more ruthless.

24. This inaction in the eyes of the Board is inexplicable if not because the Cabinet was more preoccupied with the creation of wealth which was in the hands

of a small group of trusted people, some of whom were implicated in the allegations being made, rather that acting to defend whoever was at grave risk because they were executing their duty. They did not even prioritise to ensure good governance and the rule of law. The Cabinet's position is compounded when one considers, that apart from some who expressed their disapproval with the Prime Minister for what was happening, they were undoubtedly aware that one of them, Minister Evarist Bartolo was openly and publicly critical of the inaction of taking steps timely. Days after their publication, Minister Bartolo qualified the Panama Papers in a tweet written on 10th May 2016 as “another case of a law for the Gods and another for animals". A shocking assertion by a member of the Cabinet that the rule of law in the country was collapsing.

25. Not only did the Government not take any action to remedy this situation, the Cabinet and all the parliamentary group continued giving their support with votes of confidence in parliament for the implicated individuals.

26. As far as the Board is concerned, this Cabinet inaction in these circumstances whereby they opted to look the other way or simply not to lose out on the wealth being generated and failed to demand as a government that steps should be taken

to ensure that the rule of law is observed, means that all the Ministers individually, some in one way and some in another, were endorsing and giving way to the Prime Minister's decision to press ahead. A decision which politically sent a strong signal that the sense of impunity which was being formed right at the heart of the administration had the silent approval, if not the blessing, of the whole Cabinet.

27. In the opinion of the Board, this fact, even if one disregards that it may not have been determining for the assassination, as the Board is of the opinion that it was, it is an act of serious omission and amounts to censurable unlawfulness. And a fact that the state of the law as it stands today, similar conduct is not liable for any legal sanction although in a country which respects democratic values, it should entail political sanctions. This is a relevant aspect for this Inquiry but it exceeds the strict limits of the terms of reference that this Board was given.

28. This failing of the Cabinet and the parliamentary group to give value to the investigations of the assassinated journalist to ensure the strengthening of the institutions and restore the rule of law, should also be considered in view of the denigratory campaign against her which was mainly orchestrated by elements within the office of the Prime Minister well before the 2013 election.

The responsibility of Prime Minister Joseph Muscat

29. The Board associated the former Prime Minister Joseph Muscat's responsibility for what happened, even if not direct, in the first instance for his decision not to take serious steps against his Chief of Staff and Minister Mizzi when they were implicated in the above-mentioned Panama Papers and more so, in the second instance, when he decided to retain his position even following the publication of the 17 Black report. Whilst Dr Muscat could justify his decision in regard to the Panama Papers by qualifying it as an incorrect political decision – a matter which the Board does not accept – he certainly could not do so in the case of 17 Black where an allegation was made of serious criminal conduct which implicated both of them.

These decisions of the Prime Minister together with the trust expressed by the Parliament, in the opinion of the Board, strengthened the culture of impunity in which all the persons involved in intricacies between public administrators and leading businessmen about whom Daphne Caruana Galizia wrote. An impunity on which the elements of organised crime rested, whoever they were, and which certainly facilitated the assassination.

In regard to the Second Term of Reference

30. In regard to the Second Term of Reference, the Board concludes that whilst the provisions of criminal law are generally adequate to provide for normal circumstances which may lead to a *de facto* state of impunity, there is room for their revisions to ensure a remedy for exceptional situations such as those which the Board considered in this Inquiry. Circumstances which led the Board to the conclusion that it cannot qualify the developments that occurred which almost led to a collapse of the country's institutions and the rule of law, as the creation of a State led by a mafia organisation. However, it concludes that there are serious indications that the events that occurred brought the country closer to such a situation and that it was going to get there if the assassination had not happened. The assassination was a cruel means to shatter the system which was eroding democracy in the country.

31. There are indications that measures are being taken to strengthen the institutions and to take steps to restore the rule of law. It is only thus that such serious crimes even against journalists can be avoided.

32. The Board acknowledges the legislative reforms made in the past few months to strengthen the institutions spurred by a strong reaction of civil society, attention from international media as well as the work and recommendations of the Venice Commission and others. However, it considers that these reforms in themselves and their extension are living proof of the level of erosion in the institutions generated by a state of governance that allowed serious unprecedented abuses to take place, both for their extension, the way they were organised as well as for the high degree of impunity that whoever committed them enjoyed. Abuses which were the focus of Caruana Galizia's investigative journalism.

33. It is good that reforms were made and are being done. It is necessary that they are done and improved. In the most part this is all unfortunately the direct positive effect of the tragedy experienced by the Caruana Galizia family that may find some solace in the fact that maybe she did not die for nothing.

34. On the other hand, the Board cannot understand why a journalist had to be killed for the reforms to be passed, the need for which has long been felt but the assassination made them even more urgent. The fact that reforms are passed does

not absolve the significant mistakes that were made. Whoever committed the crimes but also whoever abused of the power they had even within the administration to create the system or to make gains or to gain an advantage to the detriment of the wealth of the people should be investigated and made to pay for their deeds.

35. The responsibility of the Ministry of Justice is not only to ensure that reforms are adopted in the laws, but above all to guarantee the rule of law with the strong arm of justice reaching whoever breaks the law, regardless of who they are, regardless of the position they held, regardless of seniority, regardless of wealth and without any prejudice.

36. A *de facto* state of impunity develops in the first instance at an administrative level because the public administrator fails in his obligation to act correctly and according to the laws and regulations which are applicable equally with everyone. In this case, it is not the laws that are bad but the persons in a position of authority which should enforce them. These would either abuse of their position or would not be suited for the position that they hold or would even succumb to the corruptive behaviour or misconduct of third parties. In the eyes of the Board, the

root of the creation of a culture of impunity is the erosion of values which should guide the public administrator, regardless of who they are and no longer knowing good from bad, right from wrong.

37. Clearly, in this Inquiry, it was this reality that was revealed that the business culture motivated by personal profit and greed for money gained the upper hand over good administration in the interest of the common good. This was even by manipulating or avoiding the applied laws or regulations where necessary. In order to safeguard against this eventuality, it is not only necessary that strict ethical rules are in place which bind the public administrator especially when there is a conflict of interest but also an effective enforcement structure for these rules. In this regard, it is imperative that there are clear binding rules in the selection of individuals in positions of trust or appointments to public authorities or boards in order that as much as possible the improper contact between public administration and business is eliminated.

In regard to the Third Term of Reference

38. In regard to the Third Term of Reference, the Board concludes that the State did not fulfil the positive obligation it had to take preventive operational measures

to protect the life of the journalist Daphne Caruana Galizia. From the aspect of effective measures for the protection of her life, the Board concludes that the Police authorities and other authorities which had the function to protect her safety definitely were not aware, when they ought to have been aware, of the serious and imminent risk to which she was exposed, certainly from when the Panama Papers content was published and thereafter. The rudimental, ineffective and non-professional protection measures of the Police were withdrawn and limited only to elections and similar events. This Police conduct in the dramatic circumstances that the journalist was experiencing is inexplicable and unacceptable in the eyes of the Board. It is certainly an attestation of inefficiency and incompetence if not worse. Besides the fact that as the Board found, there is no protocol regarding how the Police should react to protect persons who are at a personal risk from criminal acts. Everything is still at 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.

Section VII

Recommendations

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Recommendations

The first recommendation that the Board needs to put forward is that the Police and any other regulatory authority involved should continue with their investigations to identify all the persons who are involved in the assassination in some way and ensure that they all answer for their deeds before the Courts. This Inquiry demonstrated that there is still more that needs to be investigated and not everything is certain and finalised. The Board understands that this is being done and the findings show this.

The Board has already made relevant recommendations for consideration of the second and third terms of reference as it was required in this task. At this stage it therefore limited itself to make the following recommendations in order to emphasise those measures which it deems should be taken. This is in order to restore the rule of law and avoid the possibility that tragic events which gave rise to this Inquiry re-occur.

1. The Board takes ownership of the recommendations made by the Venice Commission, the Greco Commission and the legal affairs committee of the European Parliament to strengthen good governance. In particular, in regard to the opinion of the Venice Commission adopted on 8/9th October 2020 regarding legislation proposed by the Government to implement recommendations made by the same Commission with its previous opinion on 19th June 2000. It also takes ownership of the recommendations of the legal affairs and human rights committee of the Parliamentary Assembly of the Council of Europe in the report dated 8th June 2019. The Board is aware of the authorities' commitment to implement these recommendations and the legislative steps which have been taken and which are being taken in this direction.

2. It is in this reform framework that amendments in criminal law should be introduced, those which regulate financial institutions and others in order to ensure that a *de facto* state of impunity does not develop which the Board established to have happened in this case. Amendments in the laws which may somewhat assist to counter the mentality that one may evade laws and even commit certain serious crimes because one is in a position of power, whether political or economic or because one would be part of a criminal organisation protected by this power. In

this regard it is essential that the laws provide that the policy of sanctioning of irregularities and illegalities would be reduced to the minimum and exceptional cases. Whoever breaks the law should suffer the consequences of their deeds, they should not have the expectation that with money they could remedy that which by law they did not have a right to it. It is this mentality prevalent in society which strengthens the arrogance of whoever has political and economic power. It is the seed which sows corruption.

3. That this legislative reform must be reflected and reinforced through administrative practices which regulate properly and effectively the relationships which may be forged between the public administration and businesspeople with whom the State entities necessarily need to deal in order to create wealth. In this regard, transparency and accountability are absolutely necessary. Above all it is necessary that enforcement of laws and regulations which already exist are amended as necessary in order that they become more rigorous and correctly applied in order to avoid abuse. Among others, the Board points out the consolidation of the Whistle Blower law, the Party financing law, the laws governing the award of contracts including tenders and direct orders.

Laws should ensure that there should not be any secret negotiations between the public administrator and people in business. In particular any contact with them on projected investment through non-governmental and official communication is to be prohibited. It is also essential that lobbying, especially when this involved contracts with investors and businessmen to promote initiative and projects should also be governed by law. The Board understands that this matter is already being given due attention by the competent authorities. Excessive closeness with businesspeople which could give rise to improper contacts should be regulated. The mentality that through personal contacts, friendships and familiarity if not a communion of interest, someone could obtain benefits to which one is not entitled, has to be eradicated.

The Board proceeds to make recommendations in two separate sections: **A:** Those that concern legislative measures intended to strengthen the rule of law; **B:** Measures to strengthen the protection of journalists and journalism.

A. Specific amendments for the introduction of new crimes and consolidation of existing laws

4. Whilst it is important that laws are updated to protect against this new reality in its extension and to avoid the risk that the State of impunity develops into a state with mafia-style connotations and whilst rigorous and effective enforcement of these laws is essential, it is perhaps even more important and difficult that the public administration makes an effort to change the mentality regarding how the common good should be managed. Direction in this context has to be provided from the top in the drafting of policies which should reflect these principles. This applies to the whole political sector and perhaps more strongly to those who manage it.

Recommendations for legislative reforms for the consolidation of the Rule of Law

a) A law is required to fight financial crime including bribery and corruption by means of "Unexplained Wealth Orders" which was discussed in the second term of reference.

b) A specific crime is introduced when a person holding a public position hinders or attempts to hinder the Police or other authorities in the execution of their duties including crime investigations;

c) The necessity to introduce a crime similar to Article 416 bis of the Italian Criminal Code that deals with the crime of "a mafia-style association";

d) To introduce in the Maltese Criminal Code a new crime of "Abuse of Office" which is committed by a public official or a person in charge of a public service in the execution of their duty or in the exercise of their functions;

e) The Attorney General law ought to be revised in order to fully implement the recommendations of the Venice Commission in regard to the full control of the investigation of serious crimes together with the Police as well as to initiate an investigation directly;

f) The witnesses before this Board express the necessity to introduce the crime of obstruction of justice in criminal law, similar to the "obstruction of justice" in several overseas codes. This would include appropriate sentences which also cover the attempt for perversion of justice;

g) Legislative provisions including in the Codes of Ethics are required to safeguard against improper conduct of public officials in the execution of their duties;

h) The best protection that should be provided to whoever is exposed to serious risk is that the Police are in a position to identify the cause of that risk in order to be able to provide protection against it. In the case of a journalist, this means, among others, a timely and effective investigation of the cause of that risk or risks.

In order for this to occur, there needs to be an ad hoc structure within the Police Corps.

B. Recommendations to strengthen journalism

In regard to the protection of the life of journalists and strengthening journalism

The Board concisely lists the following recommendations, also with reference to that which has already been discussed in its considerations regarding the third term of reference.

In regard to the protection of journalists

a) It is a necessity that within the Police there would be a formal structure through which they can, in a regular and sustained manner, identify which persons, and not just journalists, would be exposed to serious attacks of all kinds and for any reason which may escalate to physical violence. This assessment should not be, as it is still to date, reserved for the Commissioner of Police. There should be a specialised unit of trained personnel who are able to identify which persons are at risk, make an objective assessment of that risk, the causes which are creating it and how this related to the profession and/or work of the person at risk. This specialised

operational unit would be similar to others which are already in place within the Corps to provide protection to other categories of vulnerable persons.

b) It is necessary that within such a unit, there would be an element which focuses on journalists who may be at serious risk. An element which is able to assess the risk in virtue of the quality of the investigation being conducted by the journalist, what they would be publishing, the effect on the persons or organisations at the target of their investigation as well as the actual or potential risk that such a reaction could generate. This unit may serve as an immediate contact between the Police and the journalist who therefore would feel safe and protected to execute their duty freely.

c) Another operational measure that the Police need to take not only to reduce the element of risk but also to give value to the journalists' work as leading contributors in the fight against abuse and crime, is to timely investigate serious allegations which are being made as a result of the journalists' investigations.

The Board reached the conclusion that this failing of the Police, as well other regulatory authorities, that in a timely and efficient manner, they would intervene

to investigate allegations made by a journalist who was an open source to them, enabled the commission of the assassination. It is reasonable to assume that if the steps that should have been taken were taken at the opportune moment, the elements of the illicit or illegal acts which caused the escalation of the risk to the life of the assassinated journalist, would have been significantly reduced if not totally eliminated. It is a fact that for some reason the Police in this case failed to identify who was and what was the cause that created this serious and imminent risk.

Besides the measures that need to be taken, and one hopes that are already being taken, to protect against situations of dubious relationships and contacts between high officials and others within the Police Corps and regulatory authorities with elements in the public administration with big business. Situations which obviously prejudice their independence and correctness in the execution of their functions. It is necessary that the Corps is well aware of the role of the journalist as a guardian of democracy in the country and of the value of journalism as a valid collaborator with the law enforcement authorities to ensure the rule of law. Not only against organised crime but also against abuse of power and the illegality within the public administration. The Police and regulatory authorities are not there to defend those

that are in power or those who hide their deeds. Therefore, they should not consider journalists, especially those who dare to investigate conduct which appears to be improper or suspicious, as enemies. To the contrary, they should have sought to build bridges and means of communication between them and the journalists in order to wherever possible and within the allowed parameters, they would continue with their investigations to verify the credibility and veracity of the serious allegations which often emerge from journalists' investigations.

In order for this to take place, the Police Corps and in particular its specialised elements need to be well trained not only in the value of journalism but also in the knowledge of the technique used by the journalists in their investigations, the methods used to obtain results and which give value to the conclusions they reach from the analysis they conduct. The Police should do this in full observance of the independence and autonomy of the journalist whilst respecting their professional secret as well as the inviolability of their information sources.

In regard to strengthening journalism in the country.

During this Inquiry, as stated, members of the Caruana Galizia family and other journalists close to them contributed by not only providing evidence and very

useful, credible and relevant material because these originated from source who were very close to the assassinated journalist but also because, in looking to the future, they gave their opinion regarding what had to be done in order that journalism in the country and the fundamental right to freedom of expression would be protected and placed on solid foundations. Several leading editors and journalists did the same by offering their testimony voluntarily. Together with others, the submitted observation notes in this regard for the Board's attention. The Board considers that, whilst all this material is of the greatest interest to it even in the broad context of the terms of reference which it was considering, it cannot be said that it is necessary to determine whether any illicit act or omission by or within a State entity facilitated the assassination or failed to prevent it. However, it becomes relevant in the context of the fact that if journalism in the country was strong and had the means to react to safeguard against situations which the Board considered in this report, Mrs Caruana Galizia would have been in a position to find backing and support from a sector that would have been able to defend her from any kind of aggression and violence.

One must consider that this journalist was conducting an investigative campaign single-handedly without the support of a media house or any journalistic

organisation behind her. This was over the years and not simply at the time of the final aggression when she was killed. In this regard, the Board shall limit itself to mentioning and listing the main proposals which were made for the strengthening of journalism in the country whilst making full reference to the extensive observation notes made and which it deems that exceptionally they should be considered to be part of this report.

On a Constitutional Level

1. It should be considered whether there are grounds to amend the Constitution in order that in the articles concerning freedom of expression, free journalism is recognised as one of the pillars of a democratic society and that the State has the obligation to guarantee it and protect it. An amendment which should also recognise an individual's right to receive the information from the State and public administration, and that the State and the public authorities are obliged to provide such information. This would obviously be under caution and reservations which would be specified in the same provision.

2. It is suggested that in order to ensure the highest level of journalism and compliance, even from journalists, of the principles of ethics which govern the

profession, an independent Office of the Ombudsman or a Commissioner for Journalistic Ethics should be set up on the same lines as the Commissioner for Standards in Public Life. This authority would be fully autonomous and impartial and would have the function to implement laws and regulations intended to protect media freedom, the safety of journalists and the right to information. It would be a point of reference to journalists who would want direction or protection but also a means on how to ensure compliance by the journalists of the Rules of Ethics and good conduct in the exercise of their functions.

3. It is repeatedly emphasised that there are grounds for revision of the provision of the Constitution which establishes the Broadcasting Authority, even because it was submitted that public broadcasting has failed in its duty of impartiality when it had not correctly or adequately reported and discussed the serious allegations of corruption which were revealed as a result of investigative journalism. On the other hand, this impartiality to date was always incorrectly considered that it applied to the public service only but not to the political party stations which erroneously are considered to balance each other.

On a Legislative Level

1. It is necessary that the Freedom of Information Act (Chapter 496) is revised so that the instances where public administration may arbitrarily refuse to provide information which is of public interest and to which the public has a right should be limited. The culture of confidentiality and secrecy with the excuse of privacy or commercial prejudice has very little to do with democracy where this involved the administration of the common good which should always be transparent and accountable.

As has been explained during this report, the refusal to provide information or to provide limited and tardy information, especially to a journalist who is investigation a matter of public interest, only served to increase speculation and cultivate unnecessary conflicts. In the search for truth, there needs to be an open public administration to ensure a participatory democracy.

2. The Board has already mentioned the Media and Defamation Act (Chapter 579) in the conclusions to the third term of reference. The Act emphasised the necessity to address the problem of the possibility of the so-called SLAPP libel suits. There were also grounds for this Act to be revised to eliminate the possibility of

frivolous libel suits against journalists initiated by individuals who occupy public positions and who have the duty to defend the right to freedom of expression. It was also suggested that there was no place for libel suits against journalists continue after their well public officials would not be in a position to institute libel are terminated on the death of the prosecuted journalist.

From the Organisational Aspect

1. From the organisational aspect, all the Editors who testified before this Board complained regarding the precarious financial position in which the Media Houses had to operate. One can say that they all depend on advertising in order to cope and most of this originates from Government Departments and Public Authorities which regularly use the services of the newspapers to advertise their services to the public. They complain that the funds allocated for these advertisements, more often than not, are spent discriminatorily in the sense that preference is given to the public service or to those media organisations which lean towards the Government. This was an issue which required attention so that at least, where public funds are involved, the distribution of funds spent on advertising would be fair, equal and non-discriminatory. Until this is not done, the possibility will remain that journalists shall remain open to undue pressure, if not blackmail, by the

governmental agencies which point out to them that they may withdraw the funds if they do not follow Government policy.

Final Recommendation

A law to regulate the Journalists' profession

All the journalists to testified before this Board expressed their concern that the journalists' profession was not recognised by the State and even less so appreciated. It appears that there are grounds for a law which provides an organisational framework in which journalists may operate freely and totally independent from interference or undue pressure. A law that would reflect the important role that the media should have in a democratic society whilst providing a suitable structure which offers them protection in the exercise of their profession.

A law which should ensure that the journalists' profession would be self-regulated based on the same law that other laws regulate other professions such as accountants, architects, pharmacists, etcetera. It may also be entrusted with the safeguarding of the ethical standards of the profession with powers to also take disciplinary measures where necessary as indicated in the previous recommendations. In this context, it is important that any Board or authority which

has this function would be totally independent and autonomous even from the financial aspect. It is enough to say that the journalists all agreed that the Institute of Maltese Journalists, whilst being useful, is not suitable to service for the purpose of effective protection, does not have resources and relies on private financing. In fact, it transpires that for several years the IGM was reliant on its foundation with contributions by the "Tumas Foundation".

Establishment of a Committee of Experts

On consideration of the findings of this Inquiry, the Board is of the opinion that the State profoundly examines the state of journalism and the exercise of the fundamental right to freedom of expression with the purpose that the recommendations of this Board, among others, are implemented in a holistic and organic framework aimed also to give the journalists' profession the deserved recognition and that the work they undertake in the interest of democracy is valued. This is an exercise which may include amendments in the Constitution and in the Laws, aimed also to ensure suitable protection and support to the profession.

In the opinion of the Board, this exercise may be entrusted to a committee of experts comprising academics, experts in media law, journalists and Media House owners.

This study should lead to specific recommendations being made which are presented for the Parliament's consideration within an established short period.

The Board is of the opinion that it would be fitting that such a procedure is initiated under the auspices of His Excellency the President of Malta even as a part of the extension of the Presidency's project for Constitutional reform and to ensure good governance and the rule of law.

The State should acknowledge its failings

In light of the above-mentioned considerations, the Board recommends that in the first instance, the State, considering what the Board established in this Inquiry but also that which has been proven and which to date is still emerging in the public domain, formally and publicly acknowledges the serious failings in the public administration which surrounded the assassination of the journalist Daphne Caruana Galizia. Failings of omission and commission by certain State entities or

persons forming part thereof, certainly unique for their seriousness, extension and arrogance. Conduct which enabled the development of *de facto* impunity which could facilitate the execution of the crime.

The Government should consider taking 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.

Mr Justice Michael Mallia

Chairman

Chief Justice Emeritus Joseph Said Pullicino

Member

The Hon. Madam Justice Abigail Lofaro

Member