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EUROPEAN CENTRE FOR  
PRESS & MEDIA  
FREEDOM

*Joint submission to the Universal Periodic Review of  
Malta by ARTICLE 19, English PEN, the European  
Centre for Press and Media Freedom, International  
Press Institute, PEN International and Reporters  
Without Borders.*

**For consideration at the 31st session of the Working  
Group in November 2018**

**29 March 2018**

## **Executive Summary**

1. The submitting organisations welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Malta. This submission, drafted primarily by PEN International with inputs from partner organisations, focuses on Malta's compliance with international human rights obligations with respect to freedom of expression (Article 19) and, in relation to the killing of journalists and the issue of impunity, the investigative duty under the right to life (Article 6) of the International Covenant on Civil and Political Rights (ICCPR) to which Malta is a state party. In particular it details our concerns relating to:

- 1. Legislative restrictions on freedom of expression;**
- 2. Safety of journalists and the issue of impunity for violence and the killing of journalists;**
- 3. Lack of media pluralism.**

Relevant recommendations are listed below each section.

2. During the last UPR cycle, no recommendations on freedom of expression or freedom of the press were submitted by states. Since 2013, however, press freedom has deteriorated significantly in Malta, culminating in the assassination of the country's best-known investigative journalist and anti-corruption campaigner, **Daphne Caruana Galizia**. Her brutal murder was followed by the flight of one of her sources to Greece, two of her sons to other countries in Europe, the intimidation of a whistle-blower with information that could corroborate Caruana Galizia's reporting and support ongoing investigations into her killing, and the self-censorship of all of the country's independent media houses after disproportionate threats of legal action through the use of Strategic lawsuits against public participation (SLAPPs) in the United Kingdom and the United States made by private corporations and individuals that obtained lucrative government contracts after the 2013 general election.

## **1. Legislative restrictions to freedom of expression**

### **A. Criminal Defamation**

### **B. Civil Defamation and Strategic lawsuits against public participation (SLAPPs)**

### **C. Blasphemy**

## **A. Criminal Defamation**

### Legal Framework

3. The coalition notes with concern that at the time of submission, defamation remains a criminal offence in Malta under Article 252 of the Criminal Code.<sup>1</sup> It is defined as offending a person "with the object of destroying or damaging" that person's reputation. The penalty is imprisonment for up to three months or a fine. However, when the defamatory content is "divulged or exhibited to the public" the maximum punishment increases to one year in prison. Defamation consisting of "vague expressions or indeterminate reproaches, or in words or acts which are merely indecent" is punishable only as a contravention.

4. Art. 256 of the Criminal Code states that defamation committed by means of the media is subject to the terms of the Press Act. Art. 11 of the Press Act, notes, "According to this provision, defamatory libel is punished with a fine. However, if a person seeks to prove the truth of the allegation, and cannot do so, a prison sentence of up to six months may be imposed (Press Act Art. 12)."<sup>2</sup>

5. Additionally, according to Criminal Code Art. 339, par. e, any person who "utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by his provocation" is guilty of a contravention.

6. It is also worth noting that Press Act Art. 7 punishes "obscene libel" – i.e., the use of expressions harming "public morals or decency" – with up to three months in prison and/or a fine.

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<sup>1</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>

<sup>2</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8743&l=1>

7. Under Maltese Criminal Code Arts. 255 and 373, and Press Act Art. 31, prosecutions for defamation are generally only at the behest of the offended party. The Press Act in Art. 32 sets a one-year limitation period for bringing either criminal or civil actions for defamation.

8. The coalition is furthermore concerned with the following laws which threaten freedom of expression in Malta:

- **Imputing misconduct to the government:** Anyone who, in a public speech or in comments at a public meeting, imputes misconduct to a person employed or concerned with administering Malta's government is guilty of a criminal offence under Art. 75 of the Maltese Criminal Code and faces up to one year in prison or a fine. This will be deleted under the proposed draft Media and Defamation Act.
- **Reviling judges and other public officials:** Criminal Code Art. 93 punishes "reviling" or threatening a judge, the attorney general, or a magistrate or juror with a prison sentence of nine to 18 months and a fine of €500 to €1,500. However, someone who seeks to "damage or diminish" the reputation of one of those people faces 12 months to two years in prison and a fine of €700 to €2,500. Art. 95 similarly punishes vilification of other public officials.
- **Defamation and insult of the president:** Under Art. 72 of the Maltese Criminal Code, "whosoever shall use any defamatory, insulting, or disparaging words, acts or gestures in contempt [of the President] or shall censure or disrespectfully mention or represent [the President] by words, signs, or visible representations" faces up to three months in prison or a fine (multa). This will be deleted under the proposed draft Media and Defamation Act.
- **Imputing ulterior motives to the president:** Whoever "shall impute ulterior motives [to the President of Malta]... or shall insult, revile, or bring into hatred or contempt or excite disaffection" against him or her via print or broadcast faces up to three months in prison or a fine of up to €465.87 under Art. 5 of the Press Act. This will be deleted under the proposed draft Media and Defamation Act.
- **Seditious libel:** Unlawful assembly with the intent, via speech or other means, to "excite hatred or contempt" toward the president or the government is an offence under Art. 73 of the Maltese Criminal Code. In addition, Art. 74 punishes conspiracy "to excite hatred or contempt toward the person of the President of Malta or towards the Government of Malta" with between six and 18 months in prison. This will be deleted under the proposed draft Media and Defamation Act.
- **Insulting or showing contempt for the Maltese flag** is an offence under Art. 5, par. 2 of the Press Act. The punishment is a fine not exceeding €465.87 or imprisonment for up to three months. This will be deleted under the proposed draft Media and Defamation Act.
- Art. 255 of the Maltese Criminal Code implies that it is possible for family members to file a claim for defamation when "the offence is committed against the memory of a deceased person". This will be deleted under the proposed draft Media and Defamation Act.

#### Application of Criminal Libel

9. The use of criminal libel laws is relatively common in Malta, including against the media.<sup>3</sup> Since the last UPR in 2014, Malta Independent columnist **Daphne Caruana Galizia** was the subject of several criminal libel actions. When Daphne Caruana Galizia died, there were 47 libel suits against her—42 in the civil courts, and 5 in the criminal courts. Most were filed by people in or close to the current government. In November 2016, Caruana Galizia was charged with criminally defaming a former Maltese Labour Party politician in a series of

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<sup>3</sup> <http://legaldatabase.freemedia.at/legal-database/malta/>

articles that noted the politician's alleged involvement in a plot to kill a former Libyan Prime Minister in Egypt in 1984. The court ruled that the allegedly defamatory statements were backed up by strong evidence and were the result of a careful investigation on Caruana Galizia's part.<sup>4</sup>

10. Whistle-blower **Maria Efimova**, who was one of Daphne Caruana Galizia's sources on corruption within the Malta-based Pilatus Bank, is currently being charged with the offence of criminal defamation under Article 252 of Malta's Criminal Code and is facing extradition to Malta from Greece after a European arrest warrant was issued based on this charge, among two other charges.<sup>5</sup> The coalition believe these charges to be purely political charges and are deeply concerned about both her safety and the independence of the legal process she would face should she be deported to Malta.

#### International Criticism

11. The United Nations Human Rights Committee, in its 2014 Concluding observations on the second periodic report of Malta, noted its concern about the criminalization of defamation and that the Press Act does not define libel or defamation.<sup>6</sup> It highlighted that the State party should guarantee freedom of expression and freedom of the press, as enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR) and developed at length in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. The State party should also consider decriminalizing defamation and should in any case restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment is never an appropriate punishment in such cases. The State party should consider repealing Title IV of the Criminal Code.

#### Positive steps towards decriminalisation

12. In February 2017, the Maltese government announced plans to repeal criminal libel.<sup>7</sup> On 17 February 2017, the OSCE RFoM received a letter from the Maltese authorities noting that there were ongoing legislative reforms in Malta, including the drafting of an Act on Media and Defamation. An official copy of the bill was shared with the RFoM, and the Government expressed a willingness to follow up with discussions on this subject. On 21 February the RFoM replied to the authorities welcoming that the draft would decriminalise defamation, a step she said that all governments of OSCE participating States should undertake. At the request of the Minister, the RFoM commissioned a review of the draft Media and Defamation Act, forwarded to the authorities on 28 February 2017. On 1 March 2017, the RFoM issued a public statement commenting on the legal review, welcoming several provisions of the draft law, which, if adopted, would offer increased protection for journalistic work and pointed to certain elements in the draft law that need further improvement.<sup>8</sup> If passed, the Media and Defamation Act would replace the current Press Act.

13. On 1 March 2017 the RoFM presented a legal analysis on the draft Media and Defamation Act commissioned by her Office.<sup>9</sup> Among other elements highlighted in the report, the analysis suggests to clarify some definitions in order to improve legal certainty. Furthermore, provisions granting special protection to public figures should be reconsidered, as well as the obligation for website editors to register before the Media Registrar. Source

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<sup>4</sup> <https://ipi.media/qa-the-abuse-of-libel-laws-in-malta/>

<sup>5</sup> <http://www.guengl.eu/news/article/maria-efimova-must-be-protected-from-deportation-threats-to-malta>

<sup>6</sup> CCPR/C/MLT/CO/2

<sup>7</sup> <http://www.independent.com.mt/articles/2017-02-14/local-news/Press-law-revamp-will-abolish-criminal-libel-civil-libel-fine-to-increase-to-20-000-6736170394>

<sup>8</sup> <https://www.osce.org/fom/66084>

<sup>9</sup> <https://www.osce.org/fom/358906?download=true>

protection should be granted not only to journalists but to those as well who engage in new forms of journalistic activities.

14. In a reply letter from the Permanent Representation of Malta to the Council of Europe, dated 16 Feb 2017, the government outlined the following, “With regards to pending criminal libel proceedings, a transitory provision in the Bill precludes the Court of Magistrates from imposing a sentence of imprisonment in whatever form.”<sup>10</sup> The effect of this statement would be that all existing criminal defamation cases initiated against Daphne Caruana Galizia prior to decriminalisation would continue to be prosecuted within the criminal system, with the caveat that the Court of Magistrates precludes a sentence on conviction of imprisonment, and therefore a fine would instead be handed down, along with a criminal record. In response to legal analysis commissioned by Harlem Desir,<sup>11</sup> the OSCE RFoM, the Maltese authorities sent the text of the new draft Media and Defamation Act to the Council of Europe Platform for the Safety of Journalists.<sup>12</sup> The new draft act removes this clause on existing cases. There were, however, no such existing cases after the death of Daphne Caruana Galizia.

## **B. Civil Defamation including Strategic Lawsuits against Public Participation (SLAPPs)**

14. Malta’s Press Act currently caps compensation for non-pecuniary damage at €11,646.87. However, there is no cap for the number of civil defamation cases one can take regarding the same article or alleged defamation. In this regard, on 8 February 2017, in the context of four libel cases brought by the Economy Minister, Chris Cardona, and his policy advisor, Jo Gerada, relating to the same article by Daphne Caruana Galizia, a court upheld the applicants’ requests to freeze the bank account of Galizia for more than €47,000. Dunja Mijatović, then the OSCE Representative on Freedom of the Media, (RFoM) issued a statement in response emphasizing that initiating libel lawsuits for the work of journalists can very quickly chill free public discourse in any society, and the very unusual move to freeze significant financial assets of Caruana Galizia already depicted her as guilty. The Representative also noted with concern media reports that on 4 February 2017, the Economy Minister sued another journalist, **Mario Frendo** from the media outlet *In-Nazzjon*, in connection with the same issue. She added that public figures must endure a higher threshold of criticism and scrutiny due to their public work.<sup>13</sup> The Council of Europe’s Media Platform issued a *Level 2* alert, requesting a response from the Maltese authorities.<sup>14</sup> In its response, the government justified the garnishee order by stating that Caruana Galizia ‘carries a hate blog in Malta’.<sup>15</sup>

15. In a Facebook post published on 10 May 2017, **Matthew Caruana Galizia**, the Pulitzer prize-winning journalist son of Daphne Caruana Galizia, described an actual offshore company structure set up by an accountant with close ties to the Prime Minister of Malta, Joseph Muscat and went on to describe a hypothetical scenario in which this could be used for laundering kickbacks from the sale of Maltese passports. That same day, Prime Minister Muscat, filed a defamation suit against Matthew Caruana Galizia in response to the Facebook post.<sup>16</sup> At the time of writing, Caruana Galizia, who is currently in exile in fear of his own life,

<sup>10</sup> <https://rm.coe.int/16806f41c3>

<sup>11</sup> <https://www.osce.org/fom/358906?download=true>

<sup>12</sup> [https://www.coe.int/en/web/media-freedom/all-alerts?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_pos=3&p\\_p\\_col\\_count=10&sojdashboard\\_WAR\\_coesojportlet\\_alertPK=30890736&sojdashboard\\_WAR\\_coesojportlet\\_mvcPath=%2Fhtml%2Fdashboard%2Fview\\_alert.jsp#fom-block-member-replies22997320](https://www.coe.int/en/web/media-freedom/all-alerts?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_pos=3&p_p_col_count=10&sojdashboard_WAR_coesojportlet_alertPK=30890736&sojdashboard_WAR_coesojportlet_mvcPath=%2Fhtml%2Fdashboard%2Fview_alert.jsp#fom-block-member-replies22997320)

<sup>13</sup> <https://www.osce.org/fom/299941>

<sup>14</sup> *Malta Economy Minister Issues four Libel Suits and Warrants Against Blogger Daphne Caruana Galizia*, CoE

<sup>15</sup> *Reply by the Government of Malta to the complaint submitted by the EFJ, IFJ, IPI, Index on Censorship and CPJ*

<sup>16</sup> <http://www.fairpress.eu/blog/2017/05/12/prime-minister-malta-announced-lawsuit-years-pulitzer-prize-winner-caruana-galizia-exercised-right-freedom-expression/>

is being compelled to return to Malta as the only witness summoned for the applicant, the Prime Minister. The coalition are concerned that this legal action is intentionally designed to target the son of Daphne Caruana Galizia as a reprisal for her critical writings about the Prime Minister and his cabinet. This action by the Prime Minister also places Matthew Caruana Galizia at significant risk for his personal safety.

16. The Maltese government, as part of a reform package that would see the repeal of the country's criminal libel laws, announced plans to increase the maximum amount to €20,000. The maximum amount was planned to be lower in cases in which the journalist apologises but the plaintiff continues to pursue legal action.<sup>17</sup> Following widespread criticism and legal analysis commissioned by Harlem Desir, this proposal was scrapped in November 2017.<sup>18</sup>

17. Since the last review, excessive use was made of SLAPP lawsuits by senior government figures and economically powerful individuals to harass and intimidate journalists into silence by forcing them to make repeated court appearances and pay highly exorbitant legal fees. The proposed amendments contained within the new draft Media and Defamation Act will have no impact on the use of SLAPP lawsuits.

- During the reporting period, firms including Pilatus Bank and Henley & Partners used threats of US and UK litigation to have stories modified or deleted from archived material.<sup>19</sup>
- In December 2017, Henley & Partners threatened media outlet The Shift News, founded in the wake of Daphne Caruana Galizia's assassination, with a SLAPP lawsuit following an article on irregular attempts to obtain diplomatic passports from Grenada, with the alleged involvement of the Grenadian authorities.<sup>20</sup>
- Before her death, Daphne Caruana Galizia was facing 42 libel cases in the civil courts. More than three quarters of them were filed by government or ruling party officials and donors, including the Prime Minister, Joseph Muscat and two of the cases were filed by Muscat's minister Christian Cardona, two by his aide Joe Gerada. Caruana Galizia's heirs still face an estimated 24 of these libel suits, 19 of which were filed by one individual over a single corruption allegation.<sup>21</sup>
- Fighting cases in court involves multiple financial costs and wasted time. There is no barrier in Malta to the number of cases one can file for libel on the same article. The number and frequency of cases suggests this was a calculated act of suppression.
- For the last years of her life, Caruana Galizia fought vindictive and abusive tax investigations triggered after she published an exposé on a tax office director with links to organised crime. At the time of her death, she was still contesting a baseless 101,000 euro tax assessment. No police or judicial investigation and no charges have yet been brought by the country's tax and law enforcement authorities against senior government officials implicated in her Panama Papers reporting.<sup>22</sup>
- The evidence of government-sponsored legal harassment is evidenced in the leaked email exchange showing that the Prime Minister, his chief of staff, justice minister, and head of Identity Malta conspired with business interests to cripple her financially

<sup>17</sup> <http://legaldatabase.freemedia.at/2017/06/09/trends-in-civil-compensation-for-defamation-in-europe/>

<sup>18</sup> <https://www.timesofmalta.com/articles/view/20171115/local/libel-penalties-to-remain-unchanged-as-government-unveils-revised-663195>

<sup>19</sup> <http://www.independent.com.mt/articles/2018-01-12/local-news/MEPs-call-on-EC-to-protect-investigative-journalists-and-stand-for-media-freedom-6736183522>

<sup>20</sup> <https://ipi.media/maltese-journalists-face-slapp-threat-even-as-criminal-libel-repeal-proceeds/>

<sup>21</sup> <http://theshiftnews.com/2018/03/01/reporters-without-borders-witness-proceedings-in-24-libel-cases-against-daphne-caruana-galizia/>

<sup>22</sup> <http://www.europarl.europa.eu/cmsdata/135961/report-mission-malta.pdf>

using threats of vexatious libel suits against her in foreign jurisdictions.<sup>23</sup> The country's economy minister, Christian Cardona, had her assets frozen as part of a defamation case in 2017. She died without access to her own bank account.

### C. Criminal Blasphemy

18. The coalition welcomes the fact that Malta repealed its criminal blasphemy provisions in 2016.<sup>24</sup>

#### Recommendations:

- The Maltese authorities should review the draft Media and Defamation Act, bring it in line with the recommendations outlined in the OSCE RFoM analysis<sup>25</sup> and enact it without further delay;
- Defamation should be decriminalised; and, in the interim, the Maltese authorities should ensure that excessive fines and other harsh penalties for criminal defamation should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement;
- The Maltese authorities should immediately and unconditionally make unequivocal public statements against firms who seek to use SLAPP measures against Maltese journalists through jurisdictions outside the EU;
- The Maltese authorities should publicly disclose information relating to the identities of those who abuse the practice of SLAPPs, which often bind their recipients to secrecy;
- The Maltese authorities should develop the capacity of the judiciary to more effectively identify, examine and where necessary, dismiss SLAPP lawsuits.

## 2. Safety of journalists and the issue of impunity

19. The threats and violence **Daphne Caruana Galizia**, Malta's most influential and widely-read journalist, was subjected to in the course of her life and lead up to her assassination were tolerated with impunity by the Maltese authorities. The coalition are firmly of the opinion that this impunity laid the way to her brutal assassination on 16 October 2017, which was in direct response to her journalistic activities in exposing corruption at the highest levels of the Maltese authorities. The tolerance of the authorities for this violence, and ultimately the assassination with impunity of such an important freedom of expression figure demonstrates key violations of freedom of expression in Malta since the last review and has profound implications for the right to freedom of expression of Malta as a whole. Further the widespread failures in the investigation into her murder are a particular cause of concern for the coalition, in particular in their implications for press freedom and the safety of journalists in Malta.

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<sup>23</sup><https://daphnecaruana galizia.com/2017/05/prime-minister-chief-staff-use-joseph-muscat-com-addresses-deal-secretly-henley-partners-chairman-addresses-keith-joseph-order/>

<sup>24</sup> <http://legaldatabase.freemedia.at/legal-database/malta/>

<sup>25</sup> <https://www.osce.org/fom/358906?download=true>

20. The facts of her case, the threats and violence she and her family received in the years preceding her murder, the assassination itself, and the investigation which has followed are laid out in detail below:

- Daphne Caruana Galizia was “the leading light of Maltese journalism” (The Guardian); “Malta’s most prominent investigative reporter” (The Washington Post); and “a one-woman Wikileaks, crusading against untransparency and corruption in Malta, an island nation famous for both” (Politico). Caruana Galizia was investigating Maltese members of government for their use of secret Panamanian companies, an Iranian-owned private bank with links to Maltese and international political figures, and the sale of Maltese passports to Russian oligarchs and strategic State assets to opaque buyers linked to the United States, Pakistan, India, China and Azerbaijan. Long a household name in Malta and with a growing international reputation through her work on the **Panama Papers**, her killing raised concerns globally about press freedom, corruption and the rule of law in Malta, a Mediterranean island that’s fast becoming a backdoor to the European Union, the eurozone and the Schengen area, of which it’s a member.
- The President of the European Parliament, President Tajani, made a statement following her death, in the presence of her family. He described her as, “.... A courageous woman and a fine journalist. She epitomised everything that is good about that profession: she sought out the truth, the facts, and refused to let anyone stand in her way. She was not afraid to do whatever was needed to fulfil her duty. In thirty years as a journalist, she never lost heart. She continued to shine light on darkness, to speak the truth, answering only to her readers, the only people to whom she felt accountable. Drawing on that inner strength, she published more than 20,000 articles denouncing abuses of power, corruption and the failings of governments.”<sup>26</sup>

#### Impunity for threats and violence against journalists

21. Before her death, Daphne Caruana Galizia was subjected to **systematic and escalating intimidation and threats by government officials and their aides and associates**. Unprotected by Malta’s institutions, including the police force, the attorney-general and the courts, and with only meek and wavering support from the country’s largest media houses, her killing became conceivable.

- Over three decades, Daphne Caruana Galizia was subjected to unrelenting and sustained intimidation, including two arson attacks on her home (1995, 2006) and routine denial-of-service attacks on her website. One of her dogs had its throat slit, its body lain across the doorstep of her family home. Other family dogs were poisoned or bludgeoned to death. There was complete impunity for these attacks - no charges were ever brought forward for any of these crimes.
- Malta’s response to a level 2 report to the Council of Europe Platform to promote the protection of journalism and safety of journalists, filed by four journalists’ organisation (EFJ/IFJ, CPJ, Index on Censorship, IPI), referred to Daphne Caruana Galizia as a

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<sup>26</sup><http://www.europarl.europa.eu/the-president/en/newsroom/statement-by-president-tajani-in-plenary-in-the-presence-of-the-family-of-daphne-caruana-galizia>



“hate blogger”, the same derogatory term used consistently in government propaganda aimed at isolating and dehumanising her.<sup>27</sup>

## 22. The assassination of Daphne Caruana Galizia and the investigative duty of the state

- As she drove away from her home on 16 October 2017, she was assassinated by a powerful remote-controlled bomb placed under her car seat. The assassination of Malta's foremost investigative journalist was *not* made to look like an accident. It was deliberately designed as a spectacular act of impunity in broad daylight.
- In December, three Maltese men unknown to Caruana Galizia were charged for their role in executing the crime. None have been offered a pardon to turn state's evidence. The commissioners and intermediaries of what's widely-viewed as a contract killing remain unidentified. Prominent subjects of Caruana Galizia's reporting, who may bear responsibility for her death, have not been placed under formal investigation.
- Neither has there been an inquiry into whether Caruana Galizia's assassination could have been prevented, into whether the state bears indirect responsibility for its failure to protect her, or into its role in fostering a hostile environment for critical and independent journalism. An attempt by an opposition MP to launch an inquiry into the main investigative strands of Caruana Galizia's work was defeated by the governing majority in Malta's parliament last December.<sup>28</sup>
- The coalition is concerned by [Malta's response to a level 1 report](#) to Council of Europe Platform to promote the protection of journalism and safety of journalists filed by six journalists' organisations (EFJ/IFJ, Article 19, IPI, AEJ, RSF, Index on Censorship) was a copy of the press release Muscat's government issued in the immediate aftermath of the assassination, likely delivered by email rather than by a diplomatic representative. Malta did not file a formal, direct reply addressed to the Council of Europe.<sup>29</sup>

23. The coalition is profoundly concerned that the investigation by the Maltese Authorities into the assassination of Daphne Caruana Galizia does not meet the standards of international human rights law to which the State is a party. A detailed legal analysis by leading international lawyers of the investigation into her assassination in relation to the procedural requirements of Article 2 of the European Convention on Human Rights (ECHR) to which Malta is a party concluded, “we are of the firm view that **Malta is in flagrant violation of the Article 2 investigative duty and thus in breach of its obligations under the ECHR.**”<sup>30</sup>

## International Standards

24. This analysis of Article 2 ECHR is directly relevant to any analysis under Article 6 of the ICCPR to which Malta is a State Party. Further guidance can also be found in the Draft General Comment on Article 6 of the ICCPR<sup>31</sup> and the Minnesota Protocol<sup>32</sup> which sets a

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<sup>27</sup> <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/22997320>

<sup>28</sup> <https://www.timesofmalta.com/articles/view/20171101/local/chris-said-calls-for-inquiry-into-every-allegation-caruana-galizia.661953>

<sup>29</sup> <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/29768461>

<sup>30</sup> [https://www.doughtystreet.co.uk/documents/uploaded-documents/Daphne\\_Caruana\\_Galizia\\_Advice\\_for\\_Family\\_FINAL.pdf](https://www.doughtystreet.co.uk/documents/uploaded-documents/Daphne_Caruana_Galizia_Advice_for_Family_FINAL.pdf)

<sup>31</sup> <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>

<sup>32</sup> <http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

common standard of performance in investigating potentially unlawful death or suspected enforced disappearance and a shared set of principles and guidelines for States, as well as for institutions and individuals who play a role in the investigation.

25. Malta is also co-sponsor of the 2016 UN Human Rights Council Resolution 33/2<sup>33</sup> on the Safety of Journalists. Paragraph 4 of that resolution “Urges States to do their utmost to prevent violence, threats and attacks against journalists and media workers, to ensure accountability through the conduct of impartial, prompt, thorough, independent and effective investigations into all alleged violence, threats and attacks against journalists and media workers falling within their jurisdiction, to bring perpetrators, including those who command, conspire to commit, aid and abet or cover up such crimes to justice, and to ensure that victims and their families have access to appropriate remedies.

26. The Article 2 ECHR legal analysis illustrates two of the immediate issues of grave concern in relation to the investigation, each of which is in clear and serious breach of the investigative duty.

*“(i) **Independence:** in order to be Article 2 compliant, the investigation must be independent and impartial, and conducted by individuals other than, and separate to, those who are or may be the subject of the investigation. The involvement in the investigation of Deputy Commissioner Silvio Valletta is in clear breach of this requirement, given that he and his wife were frequently the subject of stories on Ms Caruana Galizia’s blog and she had conducted substantial investigative journalism into alleged corruption in their areas of responsibility, and given that the investigation must consider whether appropriate steps were taken to protect Ms Caruana Galizia by the Deputy Commissioner and others. It is surprising and regrettable that he has refused to recuse himself and that the family has been forced to issue proceedings in the Maltese courts in order to remove him from the investigation, causing further distress and delay. Our view is that the Deputy Commissioner should immediately recuse himself or be removed from the investigation to avoid any further prejudice to it.”<sup>34</sup>*

*“(ii) **Involvement of the next of kin:** a further requirement of Article 2 is that the investigation involve the next of kin to the extent necessary to safeguard their legitimate interests. However, the family in this case have been learning of key developments in the investigation in grossly inappropriate ways, without any advance notice, including via twitter accounts of politicians and from newspaper headlines. They have repeatedly raised concerns about this, both in private correspondence and publicly, but have yet to receive a meaningful response. There must be an immediate and clear apology and commitment to radically alter how the police interact with, involve and update the family; 1.6 There is an additional issue which we note at this stage, also: securing evidence. Article 2 requires that reasonable steps must be taken to secure all relevant evidence concerning the death and its circumstances. The circumstances to be examined here are broader than simply the forensic detail of the*

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<sup>33</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/226/24/PDF/G1622624.pdf?OpenElement>

<sup>34</sup> [https://www.doughtystreet.co.uk/documents/uploaded-documents/Daphne\\_Caruana\\_Galizia\\_Advice\\_for\\_Family\\_FINAL.pdf](https://www.doughtystreet.co.uk/documents/uploaded-documents/Daphne_Caruana_Galizia_Advice_for_Family_FINAL.pdf)

*car bomb itself. We are concerned that the current investigation is failing to comply with this requirement.*<sup>35</sup>

27. The lawyers' concerns were echoed by a delegation of Members of the European Parliament ("MEPs") who travelled to Malta on a fact-finding mission in December 2017. The MEPs indicated that they arrived "seriously concerned" about the rule of law on the island, and they have left "even more worried" about deep rooted, systemic failures in the legal and investigative mechanisms. MEPs from the delegation have referred to an apparent reluctance to investigate and prosecute major cases which has created a "perception of impunity"; and an impression of "incompetence" on the part of the police.<sup>36</sup>

28. Owing to the profound concerns with the independence and professionalism of the judicial and the prosecutorial system in Malta, a number of the coalition members issued a joint call in March 2018, urging diplomats in Malta to monitor the trials and the investigation relating to the Daphne Caruana Galizia murder, stating "Your engagement in this case is setting a standard and precedent for what is permissible in the European Union."<sup>37</sup>

#### 29. Implications of impunity in the assassination of Daphne Caruana Galizia for the safety of journalists in Malta

- Since the 2016 Panama Papers stories broke implicating several senior Maltese government officials in suspected money laundering, no formal police investigations have been launched into their role. Neither have police investigations been launched into serious corruption allegations surrounding the country's citizenship-by-investment scheme.
- The failure of investigative reporting to translate into law enforcement action against those suspected of criminal activity has heightened the risks associated with independent and critical journalism in Malta.

#### **Recommendations**

- The Maltese authorities should ensure the independence of law enforcement and intelligence gathering bodies by delegating the authority to appoint their leadership to parliament or to the organisation itself, implementing governance structures that guarantee their operational independence, and by prescribing more specific and stringent criteria for candidates for leadership roles to guard against incompetence in law enforcement leadership.
- The Maltese authorities should invest in the training of law enforcement staff and develop greater resources to investigate and prosecute organised financial crime and corruption and to follow up on the work of investigative journalists.
- The Maltese authorities should hive off the prosecutorial role of the Attorney General from its government advisory role to ensure an independent public prosecutor capable of acting in cases of corruption implicating individuals holding public office.

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<sup>35</sup>[https://www.doughtystreet.co.uk/documents/uploaded-documents/Daphne\\_Caruana\\_Galizia\\_Advice\\_for\\_Family\\_FINAL.pdf](https://www.doughtystreet.co.uk/documents/uploaded-documents/Daphne_Caruana_Galizia_Advice_for_Family_FINAL.pdf)

<sup>36</sup> <http://www.europarl.europa.eu/cmsdata/135961/report-mission-malta.pdf>

<sup>37</sup><https://www.article19.org/resources/malta-open-letter-diplomats-regarding-daphne-caruana-galizia-murder/>

- The Maltese authorities should begin to view impunity for criminal activity as the greatest threat to the safety of journalists and the effective prosecution of criminal activity, including political corruption, as the only adequate form of protection for journalists investigating and reporting on such crime.
- The Maltese authorities should adequately address all concerns expressed by civil society organisations and Daphne Caruana Galizia's family related to the independence and effectiveness of the investigation into her assassination.

### 3. Media Freedom and Pluralism

30. Finally, the coalition expresses its concerns for Press Freedom and Pluralism in Malta. According to the preliminary findings of the 2017 Media Pluralism Monitor (MPM) issued by the Centre for Media Pluralism and Media Freedom (CMPF), the basic protection of journalists in Malta has deteriorated since 2016.<sup>38</sup> Most of the risk-increasing factors regarding media pluralism are related to the assassination of journalist Daphne Caruana Galizia, and to what the report described as deficiencies in the protection of journalists and whistleblowers.

31. The 2016 MPM report<sup>39</sup> highlights several indicators of “high risk” for media pluralism in the country, demonstrating that such concerns were present prior to the death of Daphne Caruana Galizia in October 2017:

- lack of political independence of media;
- lack of independence of public service media governance and funding;
- commercial and owner influence over editorial content;
- cross-media concentration of ownership;
- lack of media literacy.

32. Malta is the only EU country where political parties hold such extensive media ownership, while the appointment procedures for Malta's Public Broadcasting Service and the Broadcasting Authority do not guarantee independence from political interference.<sup>40</sup> Malta is also one of a handful of countries in Europe that to date have no policy on media literacy.

### Recommendations

- Malta should seek to ensure that a sufficient variety of media outlets provided by a range of different owners, both private and public, is available to the public, taking into account the characteristics of the media market, notably the specific commercial and competition aspects.
- Malta should consider the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets.
- The authorities responsible for the application of these rules should be vested with the powers required to accomplish their mission, in particular, the power to refuse an authorisation or a license request and the power to act against concentration

<sup>38</sup> <http://cmpf.eui.eu/conference-media-pluralism-monitor-2017-shows-deterioration-in-basic-protection-area-malta/>

<sup>39</sup> <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/malta/>

<sup>40</sup> <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/malta/>

operations of all forms, notably to divest existing media properties where unacceptable levels of concentration are reached and/or where media pluralism is threatened. Their competences could therefore include the power to require commitments of a structural nature or with regard to conduct from participants in such operations and the capacity to impose sanctions, if need be.

- Malta should ensure that existing public service media organisations occupy a visible place in the new media landscape. They should allow public service media organisations to develop in order to make their content accessible on a variety of platforms, notably in order to ensure the provision of high-quality and innovative content in the digital environment and to develop a whole range of new services including interactive facilities.
- Malta should encourage the development of other media capable of making a contribution to pluralism and diversity and providing a space for dialogue. The content of such media can be created mainly, but not exclusively, by and for certain groups in society, can provide a response to their specific needs or demands, and can serve as a factor of social cohesion and integration. The means of distribution, which may include digital technologies, should be adapted to the habits and needs of the public for whom these media are intended.