

Strasbourg, 11 May 2020

Dear Dr Grech,

I am writing in connection with a disturbing recent development in the case of Daphne Caruana Galizia. I refer to the resignation of Charles Mercieca, a lawyer working in your office, and his appearance in court the following morning as one of the lawyers of the suspected mastermind, Yorgen Fenech.

As I understand it, Mr Mercieca resigned unexpectedly on the evening of 5 May and appeared in court on behalf of Mr Fenech the following morning. The timing of this sequence of events indicates that Mr Mercieca was in contact with Mr Fenech and/ or his legal representatives whilst still employed by your office and had negotiated and agreed the terms on which he would be retained by Mr Fenech prior to tendering his resignation. One might also legitimately ask whether Mr Mercieca had respected his duty of confidentiality during this process.

Mr Mercieca's public LinkedIn profile states that he only completed his legal studies two years ago. Other than as a trainee or intern, his only professional experience was in your office. This gives rise to a strong suspicion that he was only retained by Mr Fenech because of his inside knowledge of the Office of the Attorney General. It is difficult to envisage what other advantage he could offer, as compared to the many established lawyers in Malta with far greater professional experience.

I note that the Ministry of Justice, Equality and Governance has issued a statement that Mr Mercieca did not work on the Caruana Galizia case, including the proceedings against Mr Fenech. This statement does not exclude the possibility that Mr Mercieca may have had access to the case files, whether or not he was authorised to do so. Nor can it exclude the possibility that he was privy to other sensitive information, for example on evidence and strategy: it would not be surprising if lawyers working on a case of such historical importance discussed it with colleagues whom they would assume to be trustworthy.

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cc. Mr Emanuel Mallia, Head of the Maltese delegation to the Parliamentary Assembly
Mr Joseph Filletti, Ambassador, Permanent Representative of Malta to the Council of Europe

Mr Mercieca's actions raise glaring issues of professional ethics and, potentially, of criminal liability. These issues will be for the responsible Maltese authorities to investigate, and I look forward to those authorities acting rapidly and decisively. I would further recall that in its 2014 evaluation report, the Council of Europe's Group of States Against Corruption (GRECO) reminded your office that "former prosecutors cannot engage in any post-employment activity which may cast doubts on their own integrity or that of the prosecutorial service... When discussing this matter during the on-site visit with the [GRECO Evaluation Team], the authorities admitted that it was not uncommon for former members of the AG office to join law firms later on. They themselves were of the view that this is an issue that they would like to see covered in a code of ethics for the prosecution service" (emphasis added).

Should Mr Mercieca have useful information on the Caruana Galizia case, irreversible harm could be done to the prosecution of not only Mr Fenech but also other suspects, whether already indicted or not yet charged. Immediate prophylactic action is now needed to prevent any risk of this happening, assuming it is not already too late. After a period during which some progress seemed to have been made, it would be an unconscionable and unforgivable failure on the part of the Maltese authorities to allow Mr Mercieca's disloyalty to undermine this hugely important case. More generally, his abrupt defection may also diminish public confidence in your office and its ability to ensure confidentiality.

In my capacity as rapporteur for follow-up to Parliamentary Assembly Resolution 2293 (2019) on the assassination of Daphne Caruana Galizia and the rule of law in Malta, I should therefore be most grateful if you could provide me at your earliest convenience with specific answers to each of the following questions:

- What is your view on the compatibility of Mr Mercieca's actions with the ethical standards applicable to members of your office, bearing in mind the position of the Maltese authorities in their discussions with GRECO (see above)?
- Do the ethical standards applicable to members of your office allow them to negotiate the terms of their retention as a defence lawyer by a private client, whilst still employed by your office?
- Do the ethical standards applicable to members of your office allow them to make preparations to act on behalf of a person currently being prosecuted by your office, prior to tendering their resignation and being retained by that person? Would this be considered a conflict of interest?
- What sanctions are available in case of breach of the ethical standards applicable to members of your office? Can a former employee of your office be required to cease acting on behalf a particular client in the event of a relevant breach of ethical standards?
- Is there any possibility that Mr Mercieca had access – whether or not authorised – to any material held by or known to your office of relevance to the Caruana Galizia murder case, including but not only the prosecution of Mr Fenech?
- Is there any possibility that Mr Mercieca discussed the Caruana Galizia murder case, including but not only the prosecution of Mr Fenech, with members of your office who were directly involved in that case?
- Do you personally consider that there is any risk that Mr Mercieca's actions, whether ethical or not, may harm your office's prosecution of the Caruana Galizia murder case?
- What measures are available to you in order to prevent such harm from occurring? Do you envisage applying any of these measures?

Yours sincerely,

Pieter Omtzigt

Rapporteur for follow-up to Resolution 2293 (2019) of the Parliamentary Assembly of the Council of Europe on the assassination of Daphne Caruana and the rule of law in Malta and beyond: ensuring that the whole truth emerges