Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2451 (2022)[1]

The honouring of membership obligations to the Council of Europe by Malta

Parliamentary Assembly

1. Malta became the 18th member State of the Council of Europe in 1965. Recently it has been the focus of attention from the international community, including the Parliamentary Assembly, as a result of the assassination of anticorruption journalist Daphne Caruana Galizia, and the authorities' response to it. The Assembly reiterates its position taken in Resolution 2293 (2019) "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges". It welcomes the establishment, on its recommendation, of an independent public inquiry commission. It notes with concern this commission's findings, published on 29 July 2021, of malfunctioning democratic institutions in the country and in particular its conclusion that there is a culture of impunity and institutional *omertà* in Malta. The Assembly calls upon the Maltese authorities to continue their work and efforts to fully address the concerns and recommendations expressed in the report by the independent public inquiry commission.

2. The Assembly's report on Daphne Caruana Galizia's assassination, as well as the opinion of the European Commission for Democracy through Law (Venice Commission) on the constitutional arrangements for the separation of powers and independence of the judiciary, laid bare a systemic malfunctioning of democratic and rule-of-law institutions, and were a watershed moment for the country. The Assembly therefore sincerely welcomes the reforms initiated by the authorities to address the shortcomings and recommendations made in these texts, especially with regard to the independence of the judiciary and appointment procedures for official positions. While these reforms constitute marked progress, they only partially address the concerns and shortcomings that were noted. In the view of the Assembly, a comprehensive and holistic reform of Malta's democratic institutions and system of checks and balances is still urgently needed. This is all the more important in the context of the deeply rooted political and social polarisation in Malta, which permeates nearly all aspects of Maltese society and endangers the functioning of its democratic institutions.

3. The Assembly therefore welcomes the establishment by the President of Malta of a constitutional convention to design a reform of Malta's constitutional framework, which will help ensure that these reforms have wide support and acceptance in Maltese society. The Assembly encourages the authorities to ensure a broad and comprehensive consultation process and to provide the constitutional convention with a clear mandate and strict time frame to complete its work.

4. Malta's Parliament consists of part-time members of parliament. This undermines its capacity for legislative initiative and its capacity to provide proper parliamentary oversight of the executive. In addition, the need for members of parliament to have secondary employment increases the parliament's vulnerability to corruption and conflicts of interest. The Assembly therefore recommends a far-reaching reform of the Maltese Parliament with the aim of establishing a full-time parliament that can provide proper parliamentary oversight and regain legislative initiative. In addition, the Assembly invites the Maltese Parliament to:

4.1. considerably limit and circumscribe the possibility for, and types of, secondary employment by members of parliament;

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1. *Assembly debate* on 23 June 2022 (23rd sitting) (see Doc. 15546, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Bernard Fournier and Mr George Loucaides). *Text adopted by the Assembly* on 23 June 2022 (23rd sitting).

4.2. define and delimit by law the list of allowed secondary functions, including in Officially Appointed Bodies, for members of parliament;

4.3. abolish the constitutional requirement that stipulates that ministers must be members of parliament;

4.4. introduce public financing for political parties with a view to reducing their dependence on private donations, which have an inherent risk of conflicts of interest and corruption.

5. The Assembly welcomes the reforms that have been implemented with regard to the appointment process for judges and magistrates. These reforms have strengthened the system of checks and balances over this appointment process and reduced its vulnerability to politicisation. This is a step forward with regard to strengthening the judiciary. In this respect, the Assembly particularly welcomes the strengthening of the role of the president in the appointment process while reducing the extensive and discretionary powers of the prime minister. Given the increased powers of the president, his or her direct election by Maltese citizens should be explored.

6. The reform of the judicial appointment process and of the prosecution service, separating the function of State advocate from that of the attorney general and removing the attorney general from the Commission for the Administration of Justice are important steps to strengthen the independence and impartiality of the judiciary. Another welcome development in that respect has been to move the responsibility for prosecuting most crimes from the police to the attorney general. At the same time, the Assembly encourages the authorities to implement further reforms as recommended by the Venice Commission and the independent public inquiry commission. It reiterates that strengthening parliamentary oversight over the executive is essential in this respect. In addition, the Assembly recommends that the parliament adopt the required legislation to ensure that acts that have been declared unconstitutional by the Constitutional Court immediately lose their legal force.

7. Despite welcome reforms, the prime minister maintains considerable control over the civil service, which undermines the latter's independence from political forces. A key concern in this respect is the excessively high number of political appointees, also known as "persons of trust", in Malta's civil service, whose appointments bypass legal civil service appointment procedures. The high number of political appointees and lack of legal regulations governing these positions increases the vulnerability of Malta's civil service to conflicts of interest and cronyism. Recent reforms have not sufficiently addressed this issue and the Assembly therefore urges the authorities to implement additional reforms with a view to legally limiting the appointment of persons of trust to a small number of clearly defined and regulated positions.

8. The Assembly welcomes the recent reforms that have strengthened the position and independence of the office of the ombudsperson, which performs an important institutional oversight function over the authorities. However, it regrets the lack of enforcement of the right of information of the ombudsperson, and the limited follow-up given by the parliament and executive to the ombudsperson's reports, which weaken the efficient functioning of this important institution.

9. A key concern for the Assembly is the continuing vulnerability of Malta's public sector to corruption. Despite the high perception of corruption there has been little visible response and a coherent overall strategy to prevent corruption in public institutions is lacking. This has created a culture of impunity. Overcoming this culture of impunity and institutional *omertà* is one of the key challenges facing Maltese society and its democratic institutions and should be addressed as a matter of utmost priority. In this respect, the Assembly:

9.1. regrets the structural weaknesses that have limited the results and effectiveness of the Permanent Commission Against Corruption;

9.2. welcomes the establishment and efficient functioning of the office of the Commissioner for Standards in Public Life; it recommends that the authorities strengthen the powers and the resources given to the Commissioner for Standards in Public Life and consider the further streamlining of anticorruption institutions to avoid overlap and interference between them;

9.3. recommends that the authorities further strengthen the Protection of the Whistleblower Act to ensure that whistle-blowers who divulge their knowledge to the media are sufficiently protected, and change the requirement that external whistle-blowers have to report to the Cabinet of Ministers Office to be granted immunity from prosecution, which can act as a barrier to civil servants coming forward and reporting fraud and corruption;

9.4. deplores the structural lack of implementation and enforcement of the Freedom of Information Act that renders this law ineffective. This needs to be addressed as a matter of urgency. In this respect, it is important to underscore that a culture of transparency and openness cannot be achieved by legislation alone but also needs a commensurate change of behaviour and attitude;

9.5. is concerned about the vulnerability to corruption and money laundering of Malta's "citizenship by investment" programme and calls on Malta to abolish this programme.

10. The Assembly is deeply concerned about the polarised media environment and the challenges faced by the media, including direct threats to journalists, that negatively affect press freedom in Malta. It therefore welcomes the recent establishment of a committee of experts on media with a view to strengthening media freedom in Malta. The abuse of anti-defamation legislation and strategic lawsuits against public participation (SLAPPs) to silence journalists is an issue of increasing concern that needs to be addressed as a matter of urgency.

11. The Assembly is concerned that, despite considerable progress, gender inequality and stereotypes remain deeply rooted in Maltese society. Despite improvements in legislation, representation of women in politics and government is still low. The Assembly, however, welcomes the amendments to the constitution to put in place a mechanism to rebalance the gender distribution in parliament and its application following the general elections in March 2022 that resulted in 12 additional seats for women. The Assembly therefore welcomes the new draft equality law that is before the parliament and encourages the parliament to adopt it without delay. The Assembly notes that Malta is one of the very few Council of Europe member States to prohibit abortion entirely, including in cases of rape or danger to the life of the mother. Reproductive rights and health are a key aspect of women rights that need to be improved in Malta as a matter of priority.

12. The Assembly recognises that Malta is a frontline Mediterranean State with regard to irregular migrants and asylum seekers, whose numbers are very high in comparison to Malta's small population. The Assembly calls upon other European States to show commensurate solidarity with Malta in this respect. At the same time, it urges the Maltese authorities to ensure that their responsibilities and human rights obligations with regard to irregular migrants and asylum seekers are fully honoured and to step up efforts in this regard.

13. Malta faces important challenges to the functioning of its democratic and rule-of-law institutions, which, if left unaddressed, could affect the level of democratic consolidation in the country. The Assembly welcomes the efforts of the Maltese authorities in this respect, but further reforms, in particular with regard to its institutional checks and balances and the fight against corruption, are still needed. It invites its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to continue following the developments in the country and report back to the Assembly if the developments so warrant.