

Resolution 2293 (2019)¹

Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges

Parliamentary Assembly

1. Daphne Caruana Galizia, Malta's best known and most widely-read investigative journalist, whose work focused on corruption amongst Maltese politicians and public officials, was assassinated by a car bomb close to her home on 16 October 2017. The response of the international community was immediate. Within the Council of Europe, the President of the Parliamentary Assembly, the Secretary General and the Commissioner for Human Rights all called for a thorough investigation into the murder. Ms Caruana Galizia's murder and the continuing failure of the Maltese authorities to bring the suspected killers to trial or identify those who ordered her assassination raise serious questions about the rule of law in Malta.

2. Recalling the recent conclusions of the European Commission for Democracy through Law (Venice Commission) and of the Group of States against Corruption (GRECO) concerning Malta, the Assembly notes the following:

2.1. the Prime Minister of Malta is predominant in Malta's constitutional arrangements, sitting at the centre of political power, with extensive powers of appointment;

2.2. the Office of the Prime Minister has taken over responsibility for various areas of activity that present particular risks of money laundering, including online gaming, investment migration ("golden passports") and regulation of financial services, including cryptocurrencies;

2.3. senior officials in the civil service are appointed by the Prime Minister, which is problematic from the perspective of checks and balances. Large numbers of "persons of trust" are appointed to public posts through non-transparent procedures that provide for exceptions to merit-based appointments, which may be illegal, and is a danger to the quality of the civil service;

2.4. Malta's unicameral parliament consists of poorly remunerated part-time members, to many of whom (notably from the governing party) the government has given well-paid positions as contractors, as persons of trust or on public bodies, which – along with the fact that almost half of the governing party members are also ministers – contributes to the parliament as a whole failing to assure an effective control over the executive;

2.5. judges and magistrates are appointed by the Prime Minister, who exercises an unfettered discretion to choose from amongst formally qualified candidates and may even disregard the advice of the body established to determine whether candidates are qualified. This allows for potential political influence, which is incompatible with judicial independence and the rule of law;

2.6. the Attorney General is appointed by the Prime Minister and both provides legal advice to the government and prosecutes criminal offences, which is problematic from the perspective of democratic checks and balances and the separation of powers;

2.7. the recently proposed State Advocate Bill does not respond to all of the Venice Commission's recommendations and is inadequate to reform the office of Attorney General;

1. *Assembly debate* on 26 June 2019 (24th Sitting) (see [Doc. 14906](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pieter Omtzigt). *Text adopted by the Assembly* on 26 June 2019 (24th Sitting).



- 2.8. the Commissioner of Police is appointed and can be dismissed by the Prime Minister, who dismissed or saw four Commissioners resign between 2013 and 2016. This contributes to a public perception that the police force is not politically neutral in the service of the State when enforcing the law and protecting citizens;
 - 2.9. magisterial inquests as a means of investigating criminal offences improperly allow victims and alleged perpetrators of crimes to choose an avenue of investigation. They are poorly co-ordinated with police investigations, take an inordinately long time and tend towards confusion, inefficiency and ineffectiveness;
 - 2.10. the procedure for committing criminal cases to trial may be extremely slow, with serious consequences if it results in suspects being released on bail upon expiry of the preventive custody time limit;
 - 2.11. the effectiveness of the office of Parliamentary Ombudsman is undermined by the government's failure to provide information necessary for its work and the parliament's failure to act on cases where public authorities have rejected the Ombudsman's recommendations;
 - 2.12. the effectiveness of the office of Auditor General is undermined by a lack of means, resulting in delays to important audits;
 - 2.13. the Financial Intelligence Analysis Unit, Malta's specialist anti-money laundering body, has had its authority and reputation damaged through its role in various recent scandals. The European Banking Authority (EBA) found that the Financial Intelligence Analysis Unit breached European Union anti-money laundering standards in a way that pointed to general and systemic shortcomings;
 - 2.14. the office of Commissioner for Standards in Public Life, intended to prevent conflicts of interest among politicians and State officials, appears to lack the necessary means, including powers of investigation and sanction, to fulfil its role effectively;
 - 2.15. the Freedom of Information Act is undermined by many exceptions to the principle of access to official documents, with the result that public authorities systematically obstruct requests for official documents and the transparency of the administration is not guaranteed;
 - 2.16. the Protection of the Whistle-blower Act, although in many ways laudable, is undermined by a lack of protection for whistle-blowers who report to the media, by the role of the Attorney General and Commissioner of Police in granting immunity to potential whistle-blowers and by the fact that the reporting channel for external whistle-blowers is the Cabinet Office;
 - 2.17. the Permanent Commission Against Corruption is structurally flawed, utterly ineffective in practice and could be abolished, providing other necessary reforms are introduced.
3. The Assembly notes that these fundamental weaknesses have allowed numerous major scandals to arise and go unchecked in Malta in recent years, including the following:
- 3.1. the Panama Papers revelations concerning several senior government figures and their associates, which have still not been investigated, other than by a magisterial inquiry primarily into the Prime Minister, Joseph Muscat, and his wife, the full results of which have not been made public;
 - 3.2. the Electrogas affair, in which Konrad Mizzi, then Minister of Energy and Water Conservation, supervised a highly irregular procedure whereby a major public contract was awarded to a consortium. The consortium included the Azerbaijani State energy company, which also made large profits from a related contract to supply liquid natural gas at a price well above the market rate. Another member of the consortium owned a secret Dubai company, 17 Black, that was expected to make large monthly payments to secret Panama companies owned by Dr Mizzi and Keith Schembri, Chief of Staff of the Prime Minister. 17 Black received large sums of money from an Azerbaijani national and a company owned by a third member of the consortium. Despite being officially informed about the case by the Financial Intelligence Analysis Unit, the police have taken no action against Dr Mizzi or Mr Schembri;
 - 3.3. the Egrant affair, in which, nine months after presenting a report said to exculpate the Prime Minister, the inquiring magistrate, who had been appointed by the Prime Minister, was promoted to judge by the same Prime Minister. The Assembly calls on the Prime Minister to make good on his promise to publish the full inquiry report without further delay;
 - 3.4. the Hillman affair, in which Mr Schembri was allegedly involved in money laundering with Adrian Hillman, then managing director of Allied Newspapers. The police failed to act, despite a Financial Intelligence Analysis Unit report, and a magisterial inquiry is still ongoing two years later;

3.5. the “golden passports” affair, in which Mr Schembri received €100 000 from his long-standing associate Brian Tonna, owner of the accountancy firm Nexia BT, an agent for “golden passport” applicants. The Financial Intelligence Analysis Unit found that Mr Tonna had received this money from three applicants for golden passports. The police have declined to investigate and a magisterial inquiry is still ongoing two years later;

3.6. the Vitals Global Healthcare affair, in which Dr Mizzi, also Minister for Health at that time, awarded a major hospitals contract to a consortium with no prior experience in the field and to which the government had allegedly promised the contract before the bidding process began. Vitals Global Healthcare may have received as much as €150 million from the government, yet made negligible progress with promised investments in the hospitals, before being sold to a United States health-care company. The Auditor General is currently investigating this affair;

3.7. the fact that both Mr Tonna and his firm Nexia BT, who played key roles in the Panama Papers, Electrogas, Egrant, Hillman and “golden passports” affairs, received numerous lucrative government contracts, including after Mr Tonna came under investigation. The Accountancy Board has declined to take disciplinary action against them;

3.8. the role of Pilatus Bank, which was rapidly licensed by the Maltese Financial Services Authority, leading to significant concerns on the part of the European Banking Authority, and whose clients included mainly “politically exposed persons”, including Mr Schembri, and companies owned by the daughters of the President of Azerbaijan. The bank’s owner was connected to the Prime Minister and Mr Schembri, and was arrested by the United States authorities and charged with violating sanctions against Iran. Pilatus bank was subsequently closed by the Maltese Financial Services Authority and the European Central Bank.

4. The Assembly concludes that the rule of law in Malta is seriously undermined by the extreme weakness of its system 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 Prime Minister Muscat, for their involvement in the above affairs, the Assembly considers that recent events in Malta illustrate the serious damage that can result from its dysfunctional system. Despite certain recent steps, Malta still needs fundamental, holistic reform, including subjecting the office of 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 source of vulnerability for all of Europe: Maltese citizenship is European Union 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.

5. The Assembly therefore:

5.1. calls on Malta to implement as a matter of urgency the reform packages recommended by the Venice Commission and GRECO, in their entirety. Reforms should be designed and implemented as a coherent, co-ordinated package, through an open, widely inclusive and transparent process;

5.2. welcomes the Prime Minister’s initial pledge to implement all of the Venice Commission’s recommendations and encourages him to take a similarly positive approach to those of GRECO;

5.3. calls on the Maltese Government to publish a road map setting out substantive details of all relevant reform proposals and to seek the opinion of the Venice Commission on it;

5.4. encourages the Prime Minister to refrain from making further judicial appointments until the procedure has been reformed in line with the Venice Commission’s recommendations;

5.5. welcomes the Maltese authorities’ co-operation with the Council of Europe on reform of the committal procedure;

5.6. urges the Maltese law-enforcement bodies to end the prevailing climate of impunity by robustly investigating and prosecuting those suspected of being involved in or benefiting from the scandals exposed by Daphne Caruana Galizia and her colleagues;

5.7. recalls that evidence is not a precondition for launching a criminal investigation, but its possible result. To prevent impunity, investigations must be launched as soon as there is credible information, such as the Panama Papers, indicating that a criminal offence may have been committed.

6. The Assembly considers that the weaknesses of the rule of law in general and the criminal justice system in particular are also directly relevant to its analysis of the authorities’ response to the assassination of Daphne Caruana Galizia. It recalls that 18 months after they were brought to court, the three men suspected

of killing Ms Caruana Galizia have still not been put on trial. The custody time limit expires in two months, after which they will have to be released. No one has been arrested for ordering the assassination. A magisterial inquiry is still ongoing, with no news on its progress.

7. The Assembly notes a series of serious concerns over the investigation into the murder, including:
 - 7.1. the need to recuse a series of magistrates from various roles because of conflicts of interest;
 - 7.2. the need to remove the investigating police officer because of a perceived conflict of interest;
 - 7.3. the Prime Minister's decision to promote to judge the inquiring magistrate, thereby removing him from the inquiry after months of work;
 - 7.4. the failure of the authorities to request possible evidence from the German police;
 - 7.5. the failure of the police to interrogate Chris Cardona, Minister for the Economy, despite claims that he had had contacts with the suspects;
 - 7.6. the allegation that a police officer warned the suspects before they were arrested;
 - 7.7. false claims by the Minister of the Interior about progress in the investigation;
 - 7.8. inflammatory and misleading statements by persons close to the Prime Minister;
 - 7.9. the possibility that the Maltese security service may have had prior intelligence about the murder plot;
 - 7.10. the Director of Europol's complaint about co-operation with the Maltese police on the case.
8. In these circumstances, the Assembly calls on Malta to establish at the earliest opportunity, within three months, an independent public inquiry in order to ensure fulfilment of its obligations under Article 2 of the European Convention on Human Rights (ETS No. 5).
9. The Assembly resolves to continue following developments in Malta in relation to the above issues and encourages its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to address them in its periodic review of Malta.