



International Freedom of Expression Mission to Malta
Statement of Findings
19 October 2018¹

From 15-17 October 2018, we conducted an international freedom of expression mission to Malta, comprised of the Committee to Protect Journalists (CPJ), the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), the International Press Institute (IPI), PEN International, and Reporters Without Borders (RSF), to raise concerns about a lack of justice a full year after the murder of investigative journalist Daphne Caruana Galizia, and to assess press freedom conditions in the country.

We met with senior government officials, including Prime Minister Joseph Muscat, Minister for Justice, Culture and Local Government Owen Bonnici, and Attorney General Peter Grech. We also met with a wide range of journalists and civil society representatives to understand their views about the atmosphere for journalism and about the rule of law in Malta following Caruana Galizia's assassination on 16 October 2017. We also monitored hearings in defamation lawsuits that continue posthumously against Daphne Caruana Galizia.

While we appreciated the chance to have frank and open conversations with officials here, our visit has reaffirmed our concerns that Malta, a democracy and member of the European Union and the Council of Europe, is not living up to its obligations to guarantee and safeguard freedom of expression and press freedom as required by Maltese law and international instruments including the European Convention on Human Rights. We are deeply concerned that an apparent lack of progress in the investigation into Caruana Galizia's murder is having a chilling effect on public interest investigative reporting.

¹ A preliminary version of this statement was delivered at a press conference in Valletta, Malta, on 17 October 2018.

As a result of the assassination, Malta's international image has been severely negatively impacted. The only way to start to repair this reputational damage will be to achieve full justice for Daphne Caruana Galizia and her family.

Summary of preliminary findings

Daphne Caruana Galizia murder investigation

The delegation was extremely concerned that there had been no meaningful result in the investigation beyond arraigning three suspected hitmen 10 months ago, which has given rise to widespread doubt about the investigation's commitment to bringing the masterminds of the attack to justice. Unfortunately, our conversations with officials in Malta did not assuage those doubts.

While we welcome the initial arrests, we received no indication that any additional progress has been made towards identifying those who ordered the assassination. The government did not indicate any urgency toward completing the investigation and officials offered no information on when they expected it to be completed. Indeed, both the prime minister and the attorney general expressed satisfaction with the investigation so far - a jarring sentiment given the apparent lack of advancement.

We are also profoundly troubled that, despite repeated assurances that those leading the investigation would be allowed to pursue all leads, including those related to high-level political and business figures who were the subjects of Caruana Galizia's coverage of corruption and other forms of wrongdoing, there is no indication that this is the case. On the contrary, our conversations in Malta revealed that numerous relevant individuals have not been interviewed, both in terms of subjects of her reporting as well as colleagues who might be able to shed light on relevant dynamics. We are left to conclude that the Maltese authorities are not seriously considering the possibility that Caruana Galizia was murdered for her scrutiny of political and/or business issues.

Public inquiry

As a point of priority, the delegation urged the prime minister to immediately establish a public inquiry into whether the assassination of Daphne Caruana Galizia could have been prevented, in line with the legal opinion of Doughty Street Chambers and Bhatt Murphy Solicitors on behalf of the Caruana Galizia family.²

In his meeting with the delegation on 15 October, Prime Minister Muscat stated repeatedly that it was "not a matter of whether, but when" a public inquiry would be established. Muscat refused our request to immediately establish a public inquiry, and said the government had been advised not to do so until the criminal investigation into Caruana Galizia's murder had been

²[https://www.doughtystreet.co.uk/documents/uploaded-documents/Legal Opinion in Support of Public Inquiry-TPM20180808201224364_\(002\).pdf](https://www.doughtystreet.co.uk/documents/uploaded-documents/Legal%20Opinion%20in%20Support%20of%20Public%20Inquiry-TPM20180808201224364_(002).pdf)

concluded, as doing so could lead to a “miscarriage of justice” for the three suspects who have been arraigned in relation to the case.

The delegation notes that the current investigation appears focussed only on establishing individual criminal culpability for carrying out the murder, not into the questions a public inquiry would address: whether the Maltese authorities knew, or ought to have known, of a real and immediate risk to Caruana Galizia’s life; whether her assassination could have been prevented; and whether any changes to law, policies, or practices are required in order to protect the lives of journalists in Malta.

Attacks on Daphne Caruana Galizia and removal of protest material

It is of particular concern that public officials continue to publicly denigrate the legacy of Daphne Caruana Galizia. The vilification campaigns by authorities, including by members of the Office of the Prime Minister and the chair of Valletta 2018, against Caruana Galizia, both before and after her death, are deeply disturbing. Despite widespread national and international condemnation, in our meeting, the prime minister did not fully commit to PEN International’s call for the resignation of Jason Micallef, Chair of Valletta 2018.

We raised our profound concerns about the repeated destruction of the protest memorial to Daphne Caruana Galizia in front of the Great Siege monument, another part of this manufactured hate. The memorial, a form of peaceful protest against her assassination and a demand for justice, has been destroyed more than 20 times. In September 2018 the memorial was removed and the monument boarded up by the Ministry for Justice, Culture, and Local Government. On 14 October, our delegation laid flowers, candles, and photos in front of the boarded-up monument. They were cleared by the following morning. In our meeting, we received no assurance from the prime minister that the protest memorial would be protected.

While the prime minister said he would welcome an application for a permanent memorial, this is a separate and distinct issue.

Climate for journalism

Journalists told the delegation that they feel pressured as a result of a number of systemic challenges. One aspect is economic, which includes not only challenging industry conditions for the media in general, but also what they characterised as the preferential and politicised allocation of government advertising subsidies to media outlets with links to, or supportive of, the ruling party.

Journalists undertaking sensitive investigations often work in isolated and/or marginalised positions, and cited that an unhealthy polarisation exists within the journalist community. Media diversity should be promoted. Notably, the media landscape in Malta reflects the political factions that divide the country, and journalists attempting to avoid these divisions said they find

it difficult to obtain interviews and secure economic stability. Nearly every journalist the delegation spoke to referred to divisions in the media community and a lack of solidarity.

Defamation lawsuits

The delegation found that defamation lawsuits have been used excessively to target independent journalists in Malta. Most of the journalists the delegation spoke to cited past or present cases of civil and/or criminal defamation lawsuits filed against them, often by public officials, including the prime minister's chief of staff, Keith Schembri, and Minister of Tourism Konrad Mizzi. Such lawsuits were described as deterrents to journalists who might otherwise be more willing to take up critical investigations or sensitive reporting.

The delegation notes with concern the fact that Prime Minister Joseph Muscat continues to pursue a civil defamation lawsuit against Caruana Galizia posthumously, as well as a suit against her son, Matthew Caruana Galizia. When the delegation asked Muscat about these two lawsuits, he stated that the case he had filed against Daphne Caruana Galizia was the only time he had initiated defamation proceedings against a journalist in his entire career, and that the suit against her son was because Matthew had repeated the content in question published by his mother.

On 15 October, the delegation monitored hearings in five of the 30 total defamation lawsuits that continue posthumously against Daphne Caruana Galizia.³ In all five cases, persons who were scheduled to appear for questioning failed to appear in court - including the prime minister's chief of staff, Keith Schembri, and Minister of Tourism Konrad Mizzi, both plaintiffs in ongoing cases against Caruana Galizia - which was reported to the delegation as typical in such cases, wasting both the court and the defendants' time.

The delegation considered the pursuit of such lawsuits against a journalist posthumously to be vexatious, and notes that international human rights bodies have spoken out against the practice.⁴

Several journalists the delegation spoke to also cited instances of receiving letters from local and foreign firms threatening legal action if content was not removed or edited (commonly referred to as Strategic Lawsuits Against Public Participation - SLAPPs). Such threats have resulted in censorship of the content in question, and had the longer-term impact of contributing to journalists' self-censorship.

³ At the time of her death, Caruana Galizia was facing 42 civil and five criminal defamation suits. Under Maltese law, criminal defamation suits (prior to the decriminalisation of defamation in April 2018) were automatically closed upon the defendant's death, but in civil suits, it is the plaintiff's decision whether to continue to pursue a case against the defendant's estate.

⁴ See, for example, the opinion of the OSCE Representative on Freedom of the Media dated 15 May 2018: <https://www.osce.org/representative-on-freedom-of-media/381355>.

The new Media and Defamation Act, adopted in April 2018, decriminalised defamation in Malta, which the delegation regarded as a positive step.

Online harassment and trolling

Trolling and online vitriol have become a de facto part of everyday journalism. Journalists with whom we met appeared to accept this as part of their professional routine. Reports of secret Facebook groups being used to coordinate attacks on individual journalists and stories raise profound concerns about the environment in which journalists work. One investigation of six pro-government sites found that several high-level officials were members of these groups, failed to condemn attacks on journalists in closed discussions, and revealed fake accounts that were used to harass individual journalists and counteract journalistic reporting.⁵

Access and the free flow of information

Access to information and enabling the free flow of information, including from public officials and institutions, is a core component of press freedom and helps ensure transparency and accountability. The importance of journalists' being able to question and interview the prime minister is in the public interest. Although the prime minister regularly conducts press availability during public events and does Facebook live interviews, this is not equivalent to a press conference with unscripted questions and does not enable an adequate level of public scrutiny. Journalists from multiple media houses told our delegation that they had not been granted an interview with the prime minister for at least two years.

The delegation was also concerned by the use of "commercial sensitivity" as grounds to not comply with freedom of information requests. Journalists report that restrictions on access to information have been a perennial challenge in Malta, but said the problem has worsened under this administration. In the past, journalists said they would at least receive acknowledgement, but now their requests often go unacknowledged.

Recommendations to the Maltese authorities:

- Ensure a full and comprehensive investigation into the murder of Daphne Caruana Galizia that includes identifying and holding accountable the masterminds;
- Establish without delay a public inquiry into whether Daphne Caruana Galizia's assassination could have been prevented, and to learn lessons for the future. The public inquiry should have comprehensive and transparent terms of reference; ensure meaningful involvement of the deceased's family; ensure the protection of sources; and include public hearings;
- Fulfill the commitment made during the meeting with the international delegation to implement the forthcoming recommendations of the Venice Commission;
- Guarantee full, regular access and interviews to the independent media;

⁵ <http://theshiftnews.com/2018/05/14/investigating-joseph-muscats-online-hate-machine/>

- Ensure a safe and enabling environment for freedom of assembly and the right to protest, in particular at the site of the protest memorial to Daphne Caruana Galizia at the Great Siege monument in front of the Courts of Justice, until such time as full justice in her case has been achieved;
- Prohibit the passing of future liabilities to heirs or successors in defamation cases;
- As public officials, hold themselves to a higher standard of scrutiny and refrain from taking punitive and retaliatory action against journalists and media outlets, including online; and
- Enhance efforts to guarantee freedom of information in accordance with international standards by complying with both the letter and the spirit of the Freedom of Information Act.