

Ref: CommHR/DM/sf 033-2019

Mr Joseph MUSCAT
Prime Minister of Malta

Strasbourg, 12 September 2019

Dear Prime Minister,

I am writing to you in relation to the defamation cases currently pending against the family of Daphne Caruana Galizia.

At the time of her death, Daphne Caruana Galizia was facing over 40 civil and criminal defamation suits. While the criminal defamation suits were closed, I note that under Maltese law, the plaintiff can decide whether to continue to pursue a civil suit against the defendant's estate. I have been informed that, as a result, some 30 civil defamation claims continue posthumously against the family of Daphne Caruana Galizia. This situation raises several issues of great concern not only to the Caruana Galizia family, but also to the protection of media freedom and, more broadly, to the rule of law in Malta.

Firstly, I understand that in accordance with Maltese law, in defamation suits the burden of proof lies with the respondents. In the case of Daphne Caruana Galizia, this means that her heirs could be expected to reveal information on her journalistic work and sources. In my opinion, this is not only an excessive and very complex burden for the respondents but may also constitute an undue interference with the right to protection of journalistic sources, a principle that is firmly entrenched in the case-law of the European Court of Human Rights. Moreover, several of the aforementioned claims originate in Daphne Caruana Galizia's investigative work dealing with allegations of corruption in Malta. It is my view that in cases involving matters of public interest such as those concerning corruption, Maltese legislation should permit the courts to take a more balanced approach and consider the reversal of the burden of proof.

Secondly, these cases put unwarranted psychological and financial pressure on the family of Daphne Caruana Galizia. Continuing these claims – many of which were lodged by public officials including yourself – is not only perceived as an intimidation of a family faced with the loss of their loved one but also raises questions regarding the Maltese authorities' commitment to finding and bringing the masterminds of this horrendous crime to justice.

Thirdly, the situation endured by the heirs of Daphne Caruana Galizia stands, I am sure, as an ominous warning to all journalists in Malta. I believe that the current legal provisions which allow the passing of defamation cases to heirs put journalists and their families at risk and have a chilling effect on investigative journalism in particular. I urge your authorities to take measures to repeal these provisions which represent a real threat to journalistic freedom in your country.

To conclude, I believe that amending the above-mentioned legislation and withdrawing the pending defamation claims will be a sign of your commitment and the commitment of your government to fully respecting the right to freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights, and to safeguarding the rule of law in Malta.

Yours sincerely,


Dunja Mijatović