



PRIME MINISTER  
AUBERGE DE CASTILLE, VALLETTA, MALTA

4th October 2022

Dunja Mijatović  
Commissioner for Human Rights  
Council of Europe

Excellency,

I refer to your letter dated 23 September 2022 regarding recent developments in Malta relating to media freedom and safety of journalists.

I want to begin by providing you with an update on the latest developments in the investigations on the assassination of Ms Daphne Caruana Galizia. **Last year saw the first conviction relative to the murder, as well as the indictment of the alleged mastermind, and the arraignment of two other persons who were charged with participating in the murder of Daphne Caruana Galizia.** The compilation of evidence against the latter persons is now nearing its end.

Following the conclusion of the compilation of evidence against the alleged mastermind last year, resulting in the indictment of the individual, the Criminal Court received the accused's preliminary pleas, and its judgement has been scheduled for 9 December 2022.

Moreover, **the Criminal Court has also appointed the trial by jury for the hearing of two other persons who were arraigned in 2017 relative to the murder of the case.** This was appointed following the delivering of judgement of the Criminal Court on additional preliminary pleas on 22 June 2022.

Following the publication of the report of the Public Inquiry into the assassination of journalist Daphne Caruana Galizia in July 2021, Government immediately undertook broad and inclusive consultations to ensure a swift and timely implementation of the Public Inquiry recommendations. Since your visit to Malta last October, I personally held meetings with several key stakeholders, including the family of the late Ms Daphne Caruana Galizia and their legal representatives, the Institute of Maltese Journalists (IGM) and members of international organisations, including Article 19. Government also made sure that the Organization for Security and Co-operation in



Europe (OSCE) Representative on Freedom of the Media, the European Commission, the European Parliament LIBE Committee, the Rule of Law and Fundamental Rights Monitoring Group (DFRMG) and the Council of Europe were kept abreast of developments.

The meetings were constructive, comprehensive, and essential in achieving common ground, especially on the aims and objectives of safeguarding the protection of journalists and the media in Malta. **The consultations led to three draft Bills being presented at the House of Representatives in January 2022, which draft Bills have since been publicly accessible.** Meanwhile, since then, Government remained available to listen and consider any feedback from any party.

As recommended by the Public Inquiry, a Committee of Experts on the Media was established and was tasked in the first place with providing the Government with feedback on the draft Bills, while concurrently working on the appropriate recognition of the journalistic profession. The Committee of Experts, chaired by Mr Justice Michael Mallia, who chaired the Public Inquiry itself, handed over its feedback on the draft Bills to Government, and I am glad that the vast majority of the recommendations made have all been taken on board, mostly as proposed. It is important to underline that the Committee of Experts worked independently from the Government and had the possibility of carrying out own consultations with journalists, civil society, and the public, which consultations I have been made aware were indeed carried out in the run up to the recommendations for the draft Bills. **It is also pertinent to note that concurrently to the work undertaken by the Committee of Experts, Government also sought the opinion of the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, whose conclusions were also taken into account.**

The feedback from the Committee of Experts and the three draft laws, together with proposals for the amendment of the Constitution were formally presented on 28 September 2022 by the Minister for Justice and were tabled in the House of Representatives right after the end of the summer recess. I will briefly outline the proposals Government presented below:

- **Establishing by law, a committee focused solely on the protection of journalists and other media professionals – and persons in public life.** This Committee will be chaired by the Permanent Secretary at the Ministry responsible for Security and will include the Police Commissioner, the Head of the Security Service, and the Commander of the Armed Forces. This Committee will not only evaluate the risks and threats faced by journalists, media professionals and persons in public life, but will also have the ability to intervene and implement both immediate and long-term measures.



- **An Act that amends various laws and introduces anti-SLAPP provisions in Maltese law.** This proposal will help to improve the Criminal Code, the Code of Organisation and Civil Procedure, as well as the Media and Defamation Act.
- The Criminal Code will adopt the principle that when a crime of bodily harm is committed on the person of a journalist, or other media actor, which is attributable to the present or past execution of their role, the crime will be considered to being an aggravated one and will be subject to increased punishment.

Regarding the Code of Organisation and Civil Procedure, amendments will provide that in the case of defamation actions presented in terms of the Media and Defamation Act, the payment of Court Registry fees will not be due by the defendant when the reply is filed, but liability to pay those fees will depend on the Court's final judgement. When it comes to the question of inheritance of civil defamation cases to heirs following the demise of the author or editor involved in the proceedings, the Media and Defamation Act now includes a clause whereby the Court, when deciding on the merits, shall not grant damages against the heirs of the deceased, the author or the editor. The Court will also be entitled to stop the proceedings where it considers that the determination as to whether there was defamation cannot be made in the absence of the deceased author or the editor.

**The Media and Defamation Act will include anti-SLAPP provisions.** The Government of Malta stands against this abusive paralysation of journalists, and I am glad that we will be one of the first EU Member States to implement legislation for the protection of journalists in this field. In defamation cases where at the beginning of the procedure, it results that the claim is manifestly unfounded, the Court will be entitled to stop the proceedings. When the defendant establishes *prima facie* that the case is manifestly unfounded, the burden of proof to the contrary will then be transferred to the claimant. Without prejudice to EU Laws and Treaties to which Malta is a party to, the Court will be given the right to determine whether a foreign judgement on defamation, for which enforcement is sought in Malta, followed from an action determined to be SLAPP. In such cases the Court will be entitled to:

- (1) limit the execution of the judgement such that the damages and expenses ordered to be paid are equivalent to what would have had to be paid according to Maltese law, and
- (2) reject the execution of the judgement if the Maltese Court determines that it violates the right for freedom of expression as protected in Malta.

- **Amendments to the Constitution.** The quintessence of these reforms will be the changes currently being proposed to Malta's Constitution. Several constitutional amendments will be made once approved by the House of Representatives. These are:



- (1) The inclusion of a new article in the Constitution that explicitly recognises media freedom and the role of the media as a public watchdog, together with the right to practice free journalism. This principle will be enshrined in the Constitution to ensure that the media is indeed recognised as the fourth pillar of our democracy.
- (2) In the same manner, the recognition of the protection of journalists and their sources will also be elevated to a constitutional level. The right to privacy will be widened by means of amendments to Article 38 of the Constitution, which will see this Article at par with key international conventions. The Protection of Freedom of Expression will also be enhanced, by means of changes to Article 41 of the Constitution that reflect Article 11 of the EU Charter of Fundamental Rights. These amendments will enshrine the duty to respect media freedom and pluralism, and the significance of the journalists' role in society in the Constitution.

As I had the opportunity to underline above, a wide-ranging consultation process was carried out, which process led to extensive amendments to the relevant laws whenever called for, including the Constitution itself, which is Malta's highest law. All this is taking place in an effort for the fulfilment of the main goal of this exercise which is that of ensuring the best protection ever given to the media and to journalists in Maltese history, thereby enhancing the right to freedom of expression. This is not the final stage of the process but the very beginning. Government will keep assessing not only the implementation of these proposed bills once they enter into force, but also amending different laws where necessary with a view to further guarantee the protection of journalists and the freedom of the media, as the need arises.

While the proposals presented in the draft Bills are ground-breaking and innovative also within the European context, and which once adopted, will guarantee a very high level of protection for journalists and other media actors, I am glad to inform you that important and encouraging feedback has already been received in this regard.

As I conclude this letter, I want to reassure you that we attach the utmost importance to holding the persons who commissioned and murdered Ms. Caruana Galizia accountable, and to continuing our work to ensure that the environment journalists operate within is free to exercise which is essential for their crucial role of scrutiny.

I remain at your disposal, and I extend my best wishes and regards.

Robert Abela  
Prime Minister