



TEXTS ADOPTED

P9_TA(2019)0103

The Rule of Law in Malta, after the recent revelations around the murder of Daphne Caruana Galizia

European Parliament resolution of 18 December 2019 on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia (2019/2954(RSP))

The European Parliament,

- having regard to Articles 2, 4, 5, 6, 7, 9 and 10 of the Treaty on European Union (TEU),
- having regard to Article 20 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 6, 7, 8, 10, 11, 12 and 47 of the Charter of Fundamental Rights of the European Union,
- having regard to the opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement in Malta, adopted by the Venice Commission at its 117th Plenary Session (Venice, 14-15 December 2018),
- having regard to the report of 23 January 2019 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘Investor Citizenship and Residence Schemes in the European Union’ (COM(2019)0012),
- having regard to its resolution of 16 January 2014 on EU citizenship for sale¹ and to the joint press statement of 29 January 2014 by the Commission and the Maltese authorities on Malta’s Individual Investor Programme (IIP),
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights² and to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights³,

¹ OJ C 482, 23.12.2016, p. 117.

² OJ C 215, 19.6.2018, p. 162.

³ Texts adopted, P8_TA(2018)0456.

- having regard to its resolution of 15 November 2017 on the rule of law in Malta¹,
 - having regard to its resolution of 3 May 2018 on media pluralism and media freedom in the European Union²,
 - having regard to the report of 11 January 2018 on the visit to Malta of 30 November to 1 December 2017 by the ad hoc delegation of the Committee on Civil Liberties, Justice and Home Affairs and the Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (PANA),
 - having regard to the report of 16 November 2018 on the visit to Malta and Slovakia of 17 to 20 September 2018 by the ad hoc delegation of the Committee on Civil Liberties, Justice and Home Affairs,
 - having regard to the hearings and exchanges of views carried out by the Democracy, Rule of Law and Fundamental Rights Monitoring Group since it was set up by the Committee on Civil Liberties, Justice and Home Affairs on 4 June 2018,
 - having regard to the letter of the Prime Minister of Malta dated 13 March 2019,
 - having regard to Council of Europe Parliamentary Assembly Resolution 2293 (2019) of 26 June 2019 entitled ‘Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond – ensuring that the whole truth emerges’,
 - having regard to the question to the Commission on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia³,
 - having regard to the ad hoc delegation of the Committee on Civil Liberties, Justice and Home Affairs to Malta of 3 to 4 December 2019,
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and whereas these values are universal and common to the Member States;
- B. whereas the rule of law, respect for democracy, human rights and fundamental freedoms and the values and principles enshrined in the EU Treaties and international human rights instruments are obligations incumbent on the Union and its Member States and must be complied with; whereas, in accordance with Article 2, Article 3(1) and Article 7 of the TEU, the Union is empowered to act in order to protect the common values on which it was founded, and whereas the rule of law mechanism should be applied with equal strength to all Member States;
- C. whereas the Charter of Fundamental Rights of the European Union is part of EU primary law; whereas freedom of expression and freedom and pluralism of the media are enshrined in Article 11 of the Charter of Fundamental Rights and Article 10 of the

¹ OJ C 356, 4.10.2018, p. 29.

² Texts adopted, P8_TA(2018)0204.

³ Question for oral answer O-000015/2019 to the Commission – B8-0017/2019).

European Convention on Human Rights (ECHR);

- D. whereas the independence of the judiciary is enshrined in Article 19(1) of the TFEU, Article 47 of the Charter of Fundamental Rights and Article 6 of the ECHR, and is an essential requirement of the democratic principle of separation of powers;
- E. whereas the systematic refusal of one Member State to comply with the fundamental values of the European Union and the Treaties to which it has freely acceded affects the EU as a whole;

Investigations

- F. whereas the Maltese anti-corruption investigative journalist and blogger Daphne Caruana Galizia was assassinated in a car bomb attack on 16 October 2017;
- G. whereas the murder investigations led by the Maltese authorities, assisted by Europol, have so far led to the identification and arraignment of several suspects and one potential mastermind behind the murder, namely the owner of the Dubai-based company 17 Black Ltd., who was arrested on 20 November 2019 in an apparent attempt to escape Malta on his yacht;
- H. whereas one of the alleged accomplices and the alleged mastermind have implicated the Prime Minister's former Chief of Staff in the planning and funding of the murder;
- I. whereas these revelations have led to numerous large demonstrations and civil society protests in Malta, calling for justice, accountability and respect for the rule of law;
- J. whereas the Prime Minister's Chief of Staff was privy to information in security briefings by the police and the Maltese Security Service; whereas he resigned on 26 November 2019 after being interrogated by the police over the Daphne Caruana Galizia case; whereas since then he has been re-arrested, questioned and released without charge several times by the police;
- K. whereas the Minister for Tourism also resigned on 26 November 2019; whereas the Minister for the Economy suspended himself from ministerial duties the same day, but was reinstated on 1 December 2019;
- L. whereas the Maltese Prime Minister has announced that he will resign after a party leadership election to be held on 12 January 2020 amid the growing political turmoil surrounding the murder investigation;
- M. whereas the Maltese Government announced the establishment of a 'public independent inquiry into the murder of Daphne Caruana Galizia' on 20 September 2019; whereas, following substantive criticism by the Caruana Galizia family and by international observers, the Prime Minister appointed two new members to the board and changed the scope of the inquiry to a significant extent which now satisfies all parties;
- N. whereas the suspect presumed to be the middleman in the murder was granted a presidential pardon on 25 November 2019 at the Prime Minister's sole discretion in exchange for information that leads to the mastermind, provided that all information is corroborated by evidence; whereas the suspected mastermind, whose lawyer stated publicly that he could provide information about the murder plot and corruption involving individuals close to the Prime Minister, including the former Chief of Staff

and the former Minister for Tourism, had his request for a pardon turned down by the Prime Minister acting alone once and by cabinet a second time following the advice of the Police Commissioner and the Attorney General;

- O. whereas dozens of civil society organisations, media agencies, student organisations, and unions and professional associations such as Malta Employers' Association, the Chamber of Commerce and Industry and the Chamber of Advocates have made public calls for the Prime Minister to resign with immediate effect;
- P. whereas serious concerns persist regarding the fight against corruption and organised crime in Malta; whereas this threatens to undermine citizens' trust in public institutions, with could potentially result in dangerous interconnections between criminal groups and public authorities;
- Q. whereas, despite repeated calls by the European Parliament and other international institutions, no solution was found regarding the makeshift memorial in Valetta, as the laws and government approach remain unchanged and remembrance items are being disposed of by employees of the public administration on a near-daily basis;

Media freedom

- R. whereas the family of Daphne Caruana Galizia is still facing hate campaigns and numerous libel suits, including from members of the Maltese Government, and whereas several government officials, including the Prime Minister, have indicated that they do not see why these libel suits should be withdrawn;
- S. whereas Reporters Without Borders' World Press Freedom Index 2019 ranks Malta in 77th place, dropping down from 65th place in 2018 and 47th in 2017;¹
- T. whereas Malta's civic space rating has moved from 'open' to 'narrowed' in the CIVICUS Monitor 2019; whereas CIVICUS describes the environment for journalists as 'increasingly hostile, particularly for those reporting on corruption' and states that 'impunity after the killing [...] of [...] Daphne Caruana Galizia has created the space for the state to intimidate and harass activists and those advocating for justice';²
- U. whereas journalists, and in particular investigative journalists, but not exclusively, are increasingly faced with so-called 'Strategic Lawsuits Against Public Participation' (SLAPP) against them, intended purely to frustrate their work;
- V. whereas following a press conference in the Prime Minister's office on 29 November 2019, journalists were temporarily prohibited from leaving the room and the building; whereas a lack of safety for journalists and narrowing space for civil society as a result of harassment and intimidation are undermining oversight over executive power and eroding the civic engagement of citizens;

Money laundering/corruption

- W. whereas five magisterial inquiries are ongoing into allegations of corruption, namely an inquiry into Pilatus Bank, an inquiry into an amount of money that was transferred between the Prime Minister's former Chief of Staff and the auditor of Nexia BT, an

¹ <https://rsf.org/en/malta>

² The Civicus Monitor, People Power Under Attack 2019.

inquiry into kickbacks between the Primer Minister's former Chief of Staff and Adrian Hillman from the Times of Malta, an inquiry into 17 Black Ltd. and two other companies, Tillgate and Hearnville, and an inquiry into Vitals;

- X. whereas between May 2016 and November 2019 the Prime Minister's Chief of Staff and Malta's Minister for Tourism and former Minister for Energy were the only acting high-ranking government officials in any EU Member State to be found to be beneficial owners of a company exposed in the Panama Papers;
- Y. whereas one of the alleged masterminds behind the murder is the owner of the Dubai-based company 17 Black Ltd. and former member of the board of the company Electrogas Malta Ltd. involved in the implementation of the long-term agreement to supply gas from Azerbaijan to Malta;
- Z. whereas in its report of 12 September 2019 the Council of Europe's anti-money laundering body, MONEYVAL, called on the Maltese authorities to strengthen the practical application of their measures to combat money laundering and the financing of terrorism, decided to apply its enhanced follow-up procedure and invited Malta to report back in December 2020; whereas, according to the report, the law enforcement authorities are currently not in a position to effectively and in a timely manner pursue complex high-level money laundering cases related to financial, bribery and corruption offences¹;
- AA. whereas the Council of Europe's anti-corruption body, GRECO, concluded in its report of 22 March 2019 that the effectiveness of public institutions involved in checks and balances is being called into question as the country has faced an unprecedented wave of controversies in recent years concerning the integrity of senior government officials up to the highest level²;
- AB. whereas the Commission mentioned in the 2019 European Semester Report on Malta (SWD(2019)1017) that the anti-corruption institutional framework has shortcomings, and there exists a risk of conflict of interest at various levels of government;
- AC. whereas a Commission report of September 2019 shows that Malta has the highest rate of tax evasion in Europe by a wide margin and reveals that Maltese nationals owe extensive offshore wealth and stow their assets overseas³,
- AD. whereas a European Central Bank report issued in summer 2019 reportedly indicated severe shortcomings that could have allowed money laundering or other criminal activities to continue over the years in the Bank of Valletta despite repeated warnings;
- AE. whereas GRECO further concluded that the Permanent Commission Against Corruption can hardly be seen as a specialist body meant to facilitate the investigation of corruption

¹ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Anti-money laundering and counter-terrorist financing measures - Malta - Fifth Round Mutual Evaluation Report, July 2019.

² GRECO, Fifth Evaluation Round - Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies - Evaluation Report - Malta, 3 April 2019.

³ European Commission, Taxation Papers, Working Paper No 76 - 2019 - Estimating International Tax Evasion by Individuals, September 2019.

and that its contribution to Malta's anti-corruption efforts has been negligible¹;

Investor citizenship and residence scheme

- AF. whereas at least five cases were reported in 2019 in which customers of the Maltese 'investor citizenship and residence scheme' were being accused of serious financial crimes;
- AG. whereas a representative of the passport agent Chetcuti Cauchi Advisors Ltd. suggested in an undercover interview by the French TV programme 'Enquete exclusive' that his personal connections with the Prime Minister, the Justice Minister and the Parliamentary Secretary for Reforms, Citizenship and Simplification of Administrative Processes might have beneficial effects on the application process, also for clients with criminal precedents; whereas these revelations raise serious doubts about the reliability and scrutiny of the Maltese citizenship and residence programmes;
- AH. whereas on 8 November 2019 the Maltese Government published a report by the Office of the Regulator of the Individual Investor Programme (IIP) regarding an investigation into Chetcuti Cauchi Advocates in its capacity as agent of the IIP; whereas this report states in the executive summary that the analysis 'has not uncovered any red flags which support, in all or in part, the purported allegations'²;
- AI. whereas Chetcuti Cauchi Advisors Ltd. filed the first successful application under the newly established Individual Investor Programme in Malta and was promoted to the privileged 'Approved Agent' status in 2016, 'having satisfied the quality, reliability and volume requirements established by Identity Malta'; whereas a promotional video for the company was shot in Auberge de Castille, the office of the Prime Minister, also featuring the parliamentary secretary for citizenship; whereas the government suspended Citizenship Agent Licences No IIP 001 and No IIP 124 on 23 September 2019 on the grounds that the company had disseminated 'misleading information';
- AJ. whereas the use of 'investor citizenship and residence schemes' by EU Member States poses serious risks to the fight against money laundering, undermines mutual trust and the integrity of the Schengen area, allows for the admission of third-country nationals merely on the basis of accumulated wealth rather than on the basis of useful knowledge, skills or humanitarian considerations, and constitutes the actual sale of EU citizenship; whereas the Commission has explicitly stated that it does not endorse the Maltese investor citizenship and residence schemes;

Constitutional reform

- AK. whereas the Venice Commission, in its opinion on Malta adopted at its 117th Plenary Session of 14-15 December 2018³, set out a series of proposals for constitutional reforms;

¹ GRECO, Fifth Evaluation Round - Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies - Evaluation Report - Malta, 3 April 2019.

² Office of the Regulator of the Individual Investor Programme, Analysis of IIP Applications presented by Chetcuti Cauchi Advocates, 8 November 2019.

³ Malta - Opinion on Constitutional arrangements and separation of powers, adopted by the Venice Commission at its 117th Plenary Session (Venice, 14-15 December 2018).

- AL. whereas Malta has started discussions on a process of constitutional reforms, under the supervision of its President, in which different political forces and civil society are involved, and most of which will require a two-thirds majority in Parliament to be implemented; whereas a reform process is underway addressing the controversial constitutional role of the Attorney General and the current system of judicial appointments;
- AM. whereas the European Parliament and several other international institutions have repeatedly expressed concerns over the impartiality of law enforcement, the separation of powers and the independence of the judiciary in Malta, especially with regard to the politicisation and lack of transparency in selection and appointment processes, such as for the position of Chief of Police;
- AN. whereas on 17 July 2019 the Commission published a communication on ‘Strengthening the rule of law within the Union – A blueprint for action’ (COM(2019)0343) following several widely supported European Parliament resolutions¹ proposing a comprehensive and independent mechanism to monitor the situation as regards democracy, the rule of law and fundamental rights (DRF) on an annual basis in all Member States;
1. Is deeply concerned about the integrity and credibility of the investigations into the assassination of Daphne Caruana Galizia; notes the widespread negative perceptions of the government’s actions in this regard, as well as the declining trust and credibility in the institutions; underlines that undisputed confidence in the investigative process, both by Maltese citizens and by the European community, is of paramount importance; acknowledges the progress in the investigations into the murder of Daphne Caruana Galizia; underlines, however, that the case is still open as investigations are ongoing;
 2. Stresses that any risk of compromising the investigations, whether perceived or real, must be excluded by all means; further stresses that this risk persists for as long as the Prime Minister remains in office;
 3. Is highly concerned that numerous other investigations into related cases of money laundering and corruption have not advanced or have not even been launched, especially with regard to the former Chief of Staff of the Prime Minister and the former Minister for Tourism; calls on the Maltese authorities to launch and advance such investigations;
 4. Reiterates its call for the full and continuous involvement of Europol in all aspects of the murder investigation and all related investigations; calls for Europol’s involvement to be reinforced as it yields results;
 5. Deeply regrets that developments in Malta in recent years have led to serious and persistent threats to the rule of law, democracy and fundamental rights, including freedom of the media, the independence of the police and judiciary, and the freedom of peaceful assembly; regrets the lack of appropriate constitutional guarantees with respect

¹ Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights – OJ C 215, 19.6.2018, p. 162; resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights – Texts adopted, P8_TA(2018)0456.

to the separation of powers;

6. Regrets that the Commission in recent years has refrained from taking any concrete measures against the Maltese Government despite repeated calls by the European Parliament; urges the new Commission to enter into dialogue with the Maltese Government in the context of the Rule of Law Framework without further undue delay;
7. Notes that a reform process addressing the controversial constitutional role of the Attorney General and the current system of judicial appointments and career development, as proposed by the Venice Commission, is in the final stages; urges the Maltese Parliament and Government to fully implement all remaining recommendations of the Venice Commission and GRECO in due time;
8. Acknowledges Commission Vice-President Jourová's comments, stating that Malta's failure to enact judicial reforms could serve as a basis for triggering an Article 7 procedure;
9. Notes that the protection of investigative journalists and whistleblowers is in the vital interests of society; calls on the Maltese authorities to ensure at all times and at all costs the protection of journalists' and whistleblowers' personal safety and livelihoods and therefore their independence;
10. Calls on the United Arab Emirates (UAE) to cooperate with the Maltese and European authorities and to ensure that funds frozen in the bank accounts of 17 Black remain frozen until a thorough investigation has been conducted; calls on the Commission and the Maltese authorities to use all tools at their disposal to ensure the cooperation of the UAE authorities and proper legal assistance in all investigations;
11. Reiterates the imminent need for an EU mechanism on democracy, the rule of law and fundamental rights as proposed by Parliament in the form of an interinstitutional pact for DRF consisting of an annual independent, evidence-based, non-discriminatory review assessing, on an equal footing, all EU Member States' compliance with the values stipulated in Article 2 of the TEU, with country-specific recommendations (the European DRF Report) to be followed by an interparliamentary debate, and a permanent DRF policy cycle within the EU institutions¹; reiterates its call on the Commission to present proposals to prevent so-called 'Strategic Lawsuits Against Public Participation' (SLAPP);
12. Reiterates its call on the Government of Malta to terminate its investor citizenship and residence schemes, and to commission an independent, international investigation into the impact of this sale of citizenship and residence on the Maltese anti-money laundering enforcement capabilities, on further cross-border crime and on the integrity of the Schengen area; calls on the Commission to continue monitoring and assessing all existing investor citizenship and residence schemes and to take appropriate steps, as

¹ Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights – OJ C 215, 19.6.2018, p. 162; resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights – Texts adopted, P8_TA(2018)0456.

proposed in previous resolutions; calls on the Council to discuss the matter¹;

13. Calls on the Commission to use all tools and procedures at its disposal in order to ensure full compliance with EU law vis-à-vis the fight against money laundering (especially in the areas of anti-money laundering investigation and enforcement and the independence of competent authorities), banking supervision, judicial independence, public procurement and planning and urban development; calls on the Maltese authorities to comply with all MONEYVAL recommendations;
14. Laments that, despite repeated calls, the government has made no progress in finding a solution for the makeshift memorial calling for justice for Daphne Caruana Galizia; calls on the Prime Minister to put an immediate stop to the near-daily destruction of the makeshift memorial in Valletta;
15. Welcomes the endorsement by the Bureau of Parliament of the creation of a ‘European Daphne Caruana Galizia prize for investigative journalism’, to be awarded annually for outstanding investigative journalism in Europe, and calls on the Bureau to finalise the necessary arrangements as soon as possible;
16. Instructs its President to forward this resolution to the Commission, the Council, the governments and parliaments of the Member States, the Council of Europe and the President of the Republic of Malta.

¹ European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance, Texts adopted, P8_TA(2019)0240; European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia – Texts adopted, P8_TA(2019)0328; European Parliament resolution of 16 January 2014 on EU citizenship for sale – Texts adopted, P7_TA(2014)0038.