



**Replies to questions made to the Government of the Republic of Malta in the context of the Mandates of the Special Rapporteur on extrajudicial summary or arbitrary executions; the Independent Expert on the Effects of Foreign Debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders**

**Question 1**

The Government of Malta (the Government) finds that the allegations, (apparently based on the Introductory Memorandum to the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe entitled "Daphne Caruana Galizia's assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges" drawn up by Rapporteur Mr Pieter OMTZIGT, Netherlands, from the Group of the European People's Party which in turn drew upon another report drawn up for the Caruana Galizia family in November 2017 called 'The Caruana Galizia Rule of Law Report') as very lacking in objectivity and based on connections between unconnected facts.

One cannot ignore the fact that the late Ms Daphne Caruana Galizia was not only an investigative journalist but was also a protagonist in the harsh criticism which traditionally goes on between people loyal to the two main political parties in Malta. Her writings often crossed the line of what is ethical and what is not ethical such as purely personal attacks on persons associated with the Labour Party (Partit Laburista) and this both when that party was in Government and before. These personal attacks included the daily publishing of private photographs in paparazzi style, celebratory articles on the day of the death of leading labour figures, an accusation that the Prime Minister's Chief of Staff was terminally ill with cancer (which later resulted that it was fake) and occasionally went on to urge people to hang labour figures in the middle of the square. At the end of her career she also turned her writing against the newly installed Leader of Opposition whom she profoundly disliked.

Such columnists exist in various presentations on both sides of the main political divide in Malta and they tend to feed on the party faithful perception that 'the other side' are evil, corrupt, ignorant, unfaithful to their partners and have a number of other similar attributes. The exchange of insults or of daring allegations in this context is not uncommon and this sometimes leads to the filing of libel cases which however have become less common since a more open-minded approach (based mainly on the case law of the European Court of Human Rights) has been adopted by the courts. The new Media and Defamation Act which came into force on the 14<sup>th</sup> May 2018 has legislated to further strengthen the authority of that case law and its principles in Maltese media law.

It must be said that the cross-party competition referred to above is essentially harmless competition although it can sometimes get sour and lead to minor incidents but never to crimes such as murder.

The correlation made in the allegations between incidents which occurred years before the murder and the murder itself is therefore misplaced. Nor can it be concluded that those incidents were strictly related to her political involvement.

The allegations with regard to the conduct of investigations into the murder, which are conducted with the assistance of the FBI, EUROPOL and the Netherlands Forensic Institute are also very biased and are aimed only at depicting a scenario of sham investigation and cover-up.

The incidents concerning the recusal of the Magistrate originally in charge of the case (who was assigned the case automatically by roster) and the case filed in respect of the involvement in the investigation by Deputy Commissioner Valletta show that Malta has a functioning legal system which respects the rule of law and access to the courts in order to claim one's rights. The issue of whether Deputy Commissioner Valletta should be removed from the investigation on account of the fact that the murder victim had criticised him in her writings (whilst as a public officer he correctly never reacted to that criticism) is a matter which is currently before the Constitutional Court but the Deputy Commissioner has in the meantime asked to be relieved of this investigation.

It is not understood what is exactly meant by the expression of concern about the alleged proximity of leading Government officials and actors with major commercial or financial interests who were subjects of Ms. Caruana Galizia's investigative reporting. It is the Government's view that allegations carrying such serious innuendo should not be made in this vague and undocumented manner but should be specific. Otherwise anyone could be exposed to such innuendo.

The allegations also refer to the alleged 'lack of progress in the investigation'. Apart from the fact that this is absolutely not the case, the investigations have already led to the charging of three persons and are continuing at pace both at the level of a police investigation and through a judicial inquiry which are mutually supportive.

The allegations about Magistrate Vella being appointed a Judge in order to delay the investigation are also unfounded. A magistrate is not in any way obliged to accept an appointment as a Judge and Magistrate Vella had been the sitting Senior Magistrate for a number of years and was an obvious candidate for a judgeship. His replacement is an equally capable and reputable Magistrate.

Concerning the pending civil lawsuits in libel, the allegations fail to refer to the fact that the new Media and Defamation Act has removed the criminal action in libel and that all pending criminal cases were dropped as a matter of law.

The criminal action also stops automatically upon the death of the accused but civil actions are transmitted to the heirs who accept the inheritance and therefore all assets and liabilities in the inheritance. The heirs are not obliged to accept an inheritance and this is not a system unique to Malta but a matter of generally accepted principles of civil law.

It is not correct to assume that all actions in libel made in respect of Ms. Caruana Galizia's writings were frivolous. Any journalist who makes allegations of the nature and at the rate at which she used to make them is bound to incur a number of actions in libel if the persons bearing the sting of those allegations feel that they are untrue and decide to go to court to protect their reputation.

The new Media and Defamation Act has in fact excluded the possibility of obtaining precautionary warrants to cover a claim in libel or slander even though this may mean treating claimants in libel cases differently from other civil claimants.

The Act also includes provisions which render futile the filing of numerous libel cases on what is essentially the same allegation or on allegations made in the same context. The Act also adopts the 'single publication rule' whereby the time limit for filing an action in libel in respect of an allegation starts from the date when that allegation was first published with a similar degree of prominence.

The allegations 'concerning harassment and threats against Ms. Caruana Galizia and her family' also lack objectivity in that they ignore the context of mutual criticism which characterises certain levels of the political scene and also by referring to the personal political activities of persons who have some

sort of contract of service with the Office of the Prime Minister as though they were actions of the Office of the Prime Minister.

The string of incidents alleged in the list included in the section about harassment is not referenced and is written in a manner which unfairly implies that these alleged incidents were the work of Government.

The Government has never stopped or retaliated against any member of the Caruana Galizia family or against any other person for claiming his or her rights in court and the innuendo to the effect that the Government branded anyone as an enemy of the State for opening a Constitutional case is totally unfounded. Court cases are filed and heard regularly and the judgements are always respected.

As regards the comments on 'issues related to illicit financial flows' the Government must point out that the finding of a 'systemic failure' by the European Banking Authority was based only on one case in respect of which a rather dismissive and summary procedure was adopted in relation to the Financial Analysis Intelligence Unit (FIAU).

The FIAU has nevertheless cooperated fully with the EBA and has invested heavily in increasing its resources and in preparing a plan of action to improve its capacity in cooperation with the EBA.

As regards the Egrant Inc Magisterial Inquiry it must be pointed out that this was requested by the Prime Minister himself in 2017 and has turned out to be the most expensive and one of the most exhaustive inquiries ever conducted in Malta. The principal findings have been published by the Office of the Attorney General and have found, *inter alia*, that the allegation made by Ms Caruana Galizia that Egrant Inc was owned by the Prime Minister's wife were based on documents certified to be false by different foreign and reputable forensic experts. The rest of the report was not made public since it is considered that such a step would violate the privacy of third parties who are mentioned and whose banking information is included incidentally in the report and could also prejudice further investigations which have yet to take place. The report reveals that the Government was at the wrong end of a *modus operandi* typical of fabricators of fake news against the Government of Malta and its officials.

The Government is not interfering in the investigation of Ms. Caruana Galizia's murder or in any way harassing the Caruana Galizia family.

As regards the impromptu memorial to Ms. Caruana Galizia, Government's position is that this memorial cannot be allowed to unilaterally take over an important national monument in the centre of Valletta on a permanent basis and this is why the said monument was cleaned from time to time and is currently in need for restoration. Government has always allowed public manifestations and posters in support of the Caruana Galizia family's cause even when these took place on the very steps of the Office of the Prime Minister or in the square in front of that office and were spread over a number of days. Should a section of the population request that a memorial for Ms Caruana Galizia be set up, there are the correct procedures which need to be duly followed.

Government therefore considers the criticism levelled at it in the allegations as highly unbalanced, artificial and unjust.

## Question 2

The Caruana Galizia investigation is continuing at pace both at the level of a Magisterial Inquiry conducted by a Magistrate with the assistance of court experts of his own choice and of the Police and at the level of a police investigation which is conducted as one with the Magisterial Inquiry. The FBI has provided valuable assistance particularly in call identification analysis and current work on the investigation is ongoing with EUROPOL.

### **Question 3**

Civil actions in libel are not normally filed in an official capacity but in a personal capacity. The majority of pending lawsuits in libel against Ms. Caruana Galizia were filed by a commercial operator. Minister Christian Cardona recently discontinued his civil actions in libel against Caruana Galizia. He was immediately labelled to be 'guilty as charged' by the family for doing this. Government does not encourage the continuation of such actions but it is not in a position to compel the plaintiffs to withdraw them. The attitude of the family has unfortunately not helped in this regard.

### **Question 4**

Foreign judgments on defamation are in fact judgments in tort and if delivered within the European Union such judgments would be enforceable in Malta in accordance with and within the limits of European Union regulations. Judgments given by Courts outside the European Union are subject to an *exequatur* procedure to be enforced in Malta are unlikely to be enforced if the Maltese defendant did not participate in the foreign proceedings.

The question of legislating to restrict SLAPP was discussed at Parliamentary Committee stage during the debate on the Media and Defamation Act and legal advice obtained from various lawyers on the subject was made available to the Parliamentary Committee.

It appears that in default of a European Union initiative on the matter it would be very risky for one Member State to legislate to exclude the enforcement of a judgment given in another Member State in the matter of defamation.

The Government is still however open to proposals on this question.

### **Question 5**

Investigations such as those mentioned in this question fall within the remit of the Police, the Financial Intelligence Analysis Unit and the Malta Financial Services Authority. Many such allegations are also the subject of judicial inquiries. One inquiry regarding the allegation made by Ms. Caruana Galizia that the Prime Minister's wife owned a Panama company called Egrant Inc and received a large sum of money in it from a PEP from Azerbaijan was recently concluded with the allegations resulting to have been based on documents which were false.

### **Question 6**

There is no State sponsored harassment or intimidation of Ms. Caruana Galizia's family or of her memory. Given that she was a highly controversial figure it is true that she is not particularly endeared to certain sectors of the population. However all breaches of the law (including crimes resulting from harassment and intimidation) are actionable and the Police will take action accordingly if these are committed in respect of Ms. Caruana Galizia's family or in the context of her memory. Ms. Caruana Galizia's family currently have round the clock police protection at their home which is a level of protection not even granted to high level State officials. The participation of the President of the Republic and of other high State officials from the Government side at Ms. Caruana Galizia's funeral was refused by the family and a wreath sent by the Speaker of the House of Representatives was

immediately disposed of. Government has never obstructed events held to commemorate Ms. Caruana Galizia or to criticise Government about the handling of any matter related to her or her murder.

### **Question 7**

As stated above, the FIAU has over the last years increased its human and other resources in order to be able to strengthen its ability to supervise and defend the financial sector from the threats of money laundering and financing of terrorism. FIAU activity, often undertaken in partnership with the MFSA has increased significantly on a yearly basis. The FIAU acts in accordance with the FATF principles and is a member of the Egmont group and is also subject to periodic evaluations by MONEYVAL. Its independence is guaranteed by the Prevention of Money Laundering Act under which it has extensive powers to investigate, to collect intelligence which will then form the basis of Police investigations and to ensure compliance with anti-money laundering laws through the imposition of fines. Malta has implemented the EU Anti-Money Laundering directives and is currently in discussions with the European Commission in order to determine whether any other changes are necessary.

### **Question 8**

The framework for regulatory and supervisory authority for financial and banking institutions in Malta is in line with European Union regulation.

The framework is established through the Malta Financial Services Authority Act, the Banking Act, the Financial Institutions Act (which regulates non-banking financial institutions), the Investment Services Act, the Insurance Business Act, the Insurance Intermediaries Act, and supporting legislation such as the Prevention of Market Abuse Act and the Prevention of Money Laundering Act.

These laws are supported by extensive subsidiary legislation, rules and licence conditions.

Malta has had a regulatory framework in the financial sector since 1994 and in the Banking sector since 1968.

### **Question 9**

Journalistic freedoms and protection of journalists' sources are guaranteed by the Media and Defamation Act. The Protection of the Whistleblower Act provides extensive protection to whistleblowers in the context of employer-employee or employer-contractor relations which also includes immunity from legal proceedings for making the disclosure and a possibility for the reduction or the non-application of punishment in the case where the whistleblower has himself participated in the commission of a criminal offence.

Any person who is in need of physical protection can request this to the Police who provide such protection either through physical presence of police officers or through frequent patrols near the residences or places of work of the protected persons.

Threats, intimidation, harassment and the induction of fear of violence are actionable criminal offences under the Maltese Criminal Code and can be prosecuted upon a report being made to the Police. Also,

as a measure of checks and balances, any person has the right to challenge the Commissioner of Police before the courts for failing to act upon a report being made to the Police.