

*Ir-Rappreżentant Permanenti tar-
Repubblika ta' Malta*



*The Permanent Representative of the
Republic of Malta*

29th July 2019

David Kaye

Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression

Michel Forst

Special Rapporteur on the situation of human rights defenders

OHCHR

Palais des Nations

1211 Geneva

Dear Special Rapporteurs,

JOINT COMMUNICATION FROM SPECIAL PROCEDURES

I refer to your letter AL MLT 1/2019 of 31 May 2019.

The Maltese Government's observations on the points raised in your letter are provided in the enclosed response from the Hon. Carmelo Abela, Minister of Foreign Affairs and Trade Promotion of Malta. The original will be sent to you as soon as it is received.

I hope the further detail set out in the annex addresses your concerns about the allegations that you have received. The Maltese Government reiterates its strong support for your mandates and the work of the Office of the High Commissioner for Human Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Christopher Grima'.

Christopher Grima

Enc.



29 July 2019

Office of the UN High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10

David Kaye

Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression

Michel Forst

Special Rapporteur on the situation of human rights defenders
Dear Mr Kaye and Mr Forst,

Thank you for your letter of 31st May 2019 on allegations of acts of intimidation during a UN high level event on 10th December 2018 in Marrakesh in Morocco. I hereby present the following observations on the matters raised.

The Maltese Government values and recognises the expertise that human rights defenders bring, and has committed itself to the effective implementation of A/RES/53/144, which Malta reiterated more recently (in 2017) through its co-sponsorship of A/C.3/72L.50/Rev 1, on the occasion of the twentieth anniversary and the promotion of the Declaration on Human Rights Defenders.

The Maltese Government regrets the incident of 10th December 2018. However, it also wishes to put on record that the Maltese official's reaction did not happen in isolation but was the direct result of what had transpired immediately before. This same Maltese official felt that the actions of Ms. Sarah Clarke immediately preceding his comments were undue and inappropriate. Notwithstanding this, and without prejudice to the sequence of events as they unfolded, the Maltese official referred to in your communication publicly clarified his comments and later issued a private apology directly to Ms. Clarke, offering his unreserved apologies, expressing regret for his choice of words and for having caused offence. The full text of the letter sent to Ms. Clarke is enclosed for record purposes.

It is to be noted that this particular case was taken up upon the complaint of a Maltese blogger/activist by the Maltese Commissioner for Standards in Public Life and investigated. The Commissioner issued an Opinion on the case. In that Opinion, the Commissioner considered that the making of a written apology by the Ministry official to Ms Clarke constituted sufficient remedial action and the case was subsequently closed.



The Maltese Government rebuts any allegation that human rights defenders and civil society organisations are subjected to acts of intimidation in Malta, either by the State or its agents. Organisations regularly organise public meetings, demonstrations, commemorative ceremonies, and similar activities without any interference. Such demonstrations have on several occasions taken place directly in front of the Office of the Prime Minister, the Courts of Justice, as well as the Police Headquarters and police stations, and in no way were they hindered.

The Maltese Government remains, of course, committed to investigate and take immediate action against any reported acts of intimidation or harassment that are brought to its attention.

The Maltese Government provides police protection when requested and appropriate- it grants police protection on a 24/7 basis to the family of Mrs Daphne Caruana Galizia. No records are held of any other requests for such police protection or of any reports of incidents in the nature of those implied by the wording of the question.

The Maltese Government continues to strongly and openly condemn, without reservation the barbaric murder of Mrs Daphne Caruana Galizia. The Government has on numerous occasions stated that it will leave no stone unturned and that it will not rest until justice is served. Malta firmly believes in, and abides by, the basic Constitutional right of freedom of expression and supports all measures that promote the protection and safety of journalists. Malta firmly believes that giving space to civil society, human rights defenders, as well as journalists to freely express themselves, ensures that the Government remains open and transparent. Their activity serves as a check on Government itself, thereby leading to the enhancement of the basic principles in any living democracy.

Over the past years, the Maltese Government has taken a number of measures and introduced a number of reforms to further strengthen good governance and to further enhance the separation of powers, the notion of the rule of law and the continued fight against corruption – thereby creating an enabling environment conducive to the undertaking of the legitimate work by human right defenders, Civil Society Organisations, as well as journalists. This has been done through, *inter alia*:

- the enactment of the Media and Defamation Act strengthening one's freedom of expression, and particularly the freedom of the media
- the safeguarding of whistleblowers,
- the enhancement and further improvement of the quality, independence and efficiency of the national justice system,
- the removal of the prescriptive period over corruption offences committed by politicians,
- the regulation of political party financing,
- the regulation of public appointments,
- the further regulation of judicial appointments and judicial accountability,
- the appointment of a Commissioner for Standards in Public Life, as well as
- through the joining in on the establishment of the European Public Prosecutor's Office (EPPO).



Through such reforms and measures, the Government of Malta has not only tangibly and therefore publicly shown its commitment to safeguard the right to freedom of expression but has also concretely delivered upon its continued efforts towards enhancing the rule of law across all organs of the State.

The Government of Malta is committed to safeguarding the right to freedom of expression. Article 10 of the European Convention on Human Rights and Case Law is the basis of modern Maltese media law, in particularly the Media and Defamation Act, which came into force on 15th May 2018. The European Convention on Human Rights has been incorporated in Maltese Law since 1987 and Article 41 was included in the Maltese Constitution in 1964.

The Media and Defamation Act was enacted after extensive consultations with the Representative of the Organisation for Security and Co-operation in Europe for the Freedom of the Media and which fully implements the instruments of international human rights law in freedom of expression and the media.

In essence, through this Act, all criminal libel cases which were pending at the time this new law entered into force have been terminated by the operation of the law. Apart from this, all criminal offences with reference to freedom of expression have been removed from the media law and the very few retained have been transported to the Criminal Code. A whole list of offences in the Criminal Code which affect freedom of expression have been removed.

Through this law, the protection of sources will apply to every editor, publisher, author, operator of a website or broadcaster and the Code of Organization and Civil Procedure has been amended in such a way as to prohibit the issuing of precautionary warrants in respect of actions for defamation. In establishing the amount of damages due, the Court will also be obliged to take into account the effect which the payment of the damages will have on the person ordered to pay. This measure aims at better safeguarding the principle of proportionality. Editors of websites have additional defences at their disposal which are different to those available to editors of the written press and to broadcasters – this due to the specific nature of websites which receive comments from the public. In drafting this historic Act, the Maltese Government underwent a thorough set of consultations both at national as well as at the international level.

Apart from all this, since 2013, the Government of Malta has embarked upon a very ambitious project, intended to reform the national Justice system through a multitude of vehicles, intended to address backlogs and to further facilitate access to Justice.

Moreover, a Constitutional Reform Committee, being chaired by the President of Malta is now appointed, with representatives nominated by the two major political parties in Parliament. This Constitutional Committee is composed of representatives nominated by the two major political parties in Parliament - three members are nominated by the party in Government whilst another three members are nominated by the party in Opposition. The Committee discussed the way forward and the methods by which a wider popular participation in this process can be achieved. All stakeholders agreed that meetings will proceed on a regular basis.

It is also important to highlight the fact that upon Government's initiative, the Venice Commission was invited to issue an Opinion on the Constitutional arrangement, separation of powers and the independence of the judiciary and law enforcement in Malta, in the second part of 2018.



Following the adoption of this Opinion, the Government of Malta promptly – ie: one day after the adoption of this Opinion - declared its agreement with the bulk of the recommendations and publicly committed itself to adopt the recommendations in the main.

Noteworthy is the fact that the Venice Commission Opinion did not only make a number of recommendations on the powers given to the three main organs of the State but also effectively commended Government for a good number of legislative changes enacted over the past few years - that is from 2013 onwards when the current administration took office, a matter which unfortunately often goes unmentioned.

Recent reforms undertaken by this Government were deemed by the Venice Commission to be “*positive*” and “*a step in the right direction*”.

Since the adoption of this Opinion, Government embarked on an internal consultation and planning process and within 100 days of the publication of the Venice Commission Opinion, the Cabinet of Ministers unanimously mandated Hon. Minister Bonnici, the Minister responsible for Justice, to prioritise work on two recommendations:

- the recommendations concerning matters dealing with the prosecution; and
- the recommendations concerning judicial appointments and judicial discipline.

On the 25th of March 2019, through Motion number 217 (Reform in the Administration of Justice (Attorney General) Bill), Government moved the first reading of the required legislative changes to be made in order to split the dual role of prosecutorial and advisory of the Attorney General, a role that has been held at least since 1936. On 2nd May 2019, the Hon. Minister for Justice published a Bill intended to separate the prosecutorial and advisory roles of the Attorney General through the creation of a State Advocate. The latter will serve as the Government’s primary consultant with respect to law and legal opinions. S/he will be obliged to act in the public interest and safeguard the legality of the state actions. The Bill was adopted by the House of Representatives on 10 July 2019 and will be published in the coming days.

The fact that Government acted on the changes suggested by the Venice Commission in less than 100 days from their publication is a clear sign of the commitment and the determination to ensure a legal set up fully in line with modern concepts of Rule of Law and separation of powers, which will in turn support the strengthening of an environment for democratic debate.

With regards to the setting up of a public inquiry, it has clearly always been stated that Malta does not oppose the launch of such an inquiry, but does not wish to bring about a situation whereby the current criminal proceedings and further investigations of the murder are obstructed or disrupted. Malta has therefore always insisted on the proper sequencing of such proceedings. Criminal procedures are ongoing against three men accused with the murder and on 16 July a bill of indictment was issued by prosecutors against the three men.

The Maltese Government remains committed to delivering further changes and reforms, which strengthen the enforcement of the rule of law and the separation of powers, thereby creating an enabling environment conducive to the undertaking of work by human right defenders, Civil Society Organisations as well as journalists.

Let us, therefore, assure you of Malta’s full commitment towards this end.



I hope the above addresses your concerns with regards to the allegations you received. The Maltese Government reiterates its strong support for the work of the Special Procedures Mandate Holders of the Human Rights Council and expresses its appreciation for their efforts.

Yours sincerely,

A handwritten signature in blue ink that reads "Carmelo Abela".

Carmelo Abela