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Committee on Legal Affairs and Human Rights

Daphne Caruana Galizia's assassination and the rule of law, in Malta and beyond: ensuring that the whole truth emerges

Information note

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* Document declassified by the Committee on 15 November 2019.

Issue	<i>Information of note</i>	Situation in June 2019 when PACE Resolution 2293 adopted	Substantive progress since June 2019	Recommendation implemented?
Publication of the full 'Egrant report' (Para. 3.3 of Resolution 2293 (2019))	<i>July 2018: Prime Minister (PM) published conclusions (49 pages) of report (1500 pages); promised to publish full report</i> <i>March 2019: PM repeated promise to publish full report once court proceedings concluded</i>	July 2018: leader of the opposition asked the courts to order the Attorney General to provide him with the full report May 2019: first instance court rejected request 18/11/19: Constitutional Court hearing	None	No
Implementation of Venice Commission (VC) recommendations:¹ (Paras. 5.1 & 5.2)	<i>November 2018: during VC visit, PM promised to implement VC recommendations</i> <i>December 2018: VC opinion published</i> <i>December 2018: government announced it would implement VC recommendations "in the main"</i> <i>March 2019: PM said the government would implement one-third of VC recommendations</i> <i>April 2019: PM said VC recommendations "not binding" and that Malta could adopt "different systems to safeguard the rule of law"</i>	March 2019: Minister of Justice (MoJ) announced five bills to reform the Attorney General's (AG) office (see below), the Ombudsman, ² the civil service (appointment of permanent secretaries and appointment on 'positions of trust'), ³ independent commissions and the police; ⁴ only the first of these was published. "The Government aims to make these changes by the end of the current calendar year"	-	-

¹ CDL-AD(2018)028. The present document does not address all of the VC recommendations, instead concentrating on those described as "main" conclusions as examples. PACE called for implementation of VC recommendations "in their entirety". The VC opinion resulted from similar requests made by both AS/Jur and the Maltese government.

² Ibid, para. 101. N.b. the VC recommended raising key regulatory provisions to constitutional level, which does not seem possible by ordinary legislation.

³ Ibid, paras 119-120, 128-129.

⁴ Ibid, paras 132-134.

<p>- reform of the judicial appointment procedure⁵</p>	<p><i>March 2019: MoJ informed European Commission that this would be dealt with “imminently”</i></p> <p><i>April 2019: PM appointed three new judges and three new magistrates under old system</i></p> <p><i>April 2019: NGO Republikka brought a court case challenging these appointments</i></p> <p><i>04/11/19: court referred case to European Court of Justice. AG announced that he would appeal</i></p> <p><i>07/11/19: AG announced that he would not in fact appeal</i></p>	<p>No progress</p>	<p>None</p>	<p>No</p>
<p>- creation of a new public prosecutor’s office (reform of the Attorney General’s office)⁶</p>	<p><i>PACE criticised the ‘State Advocate Bill’: it “does not respond to all of the Venice Commission’s recommendations and is inadequate to reform the office of Attorney General”; in particular, it does not remove the AG from the board of the financial intelligence unit, make decisions on prosecutions subject to judicial review or give magistrates’ powers of inquiry to the AG</i></p>	<p>March 2019: ‘State Advocate Bill’ presented to create a new office of government legal adviser (‘State Advocate’), separate from the Attorney General’s office, which would otherwise remain unchanged</p>	<p>July 2019: bill enacted into law</p>	<p>Inadequately</p>
<p>- strengthening the powers and position of the President⁷</p>		<p>No progress</p>	<p>None</p>	<p>No</p>
<p>- strengthening parliament⁸</p>		<p>No progress</p>	<p>None</p>	<p>No</p>

⁵ Ibid, paras 44 & 145. The VC also made recommendations concerning judicial discipline (para. 53). PACE encouraged the PM to refrain from further appointments until the procedure has been reformed.

⁶ Ibid, paras 56, 61, 64, 67, 71, 73 & 145.

⁷ Ibid, paras. 106 & 145.

⁸ Ibid, paras. 88, 89, 90, 94 & 145.

- reducing the Prime Minister's powers of appointment ⁹		No progress	None	No
Publication of a road-map of reform proposals (Para. 5.3)		March 2019: MoJ wrote to the European Commission announcing the five bills (see above) and the 'imminent' reform of the judicial appointments procedure	None	No
Consultation of the Venice Commission on reform proposals (Para. 5.3)		May 2019: government informally contacted VC secretariat and was advised to request a formal opinion; no follow-up by the government	None	No
Implementation of GRECO recommendations (Paras. 5.1 & 5.2)	April 2019: GRECO report published Early 2021: GRECO will review implementation	No information	None	No
Investigation and prosecution of corruption scandals (Para. 5.6)	July 2019: MONEYVAL concludes that Malta has a "low level of effectiveness" for money-laundering investigation and prosecution ¹⁰		-	-
- 17 Black (secret offshore company expected to transfer funds to secret Panama companies owned by Mr Schembri and Mr Mizzi)		March 2018: police received financial intelligence unit report November 2018: police confirmed that they were investigating November 2018: MoJ confirmed existence of magisterial inquiry	None	Indeterminable/ no information

⁹ Ibid, paras 106 & 145.

¹⁰ MONEYVAL, "Malta: Fifth Round Mutual Evaluation Report", MONEYVAL(2019)5

<p>- Financial transfers from Mr Schembri to Mr Hillman via offshore network</p>		<p>May 2017: magisterial inquiry opened</p>	<p>None</p>	<p>Indeterminable/ no information</p>
<p>- Financial transfers from 'golden passport' applicants to Mr Schembri</p>		<p>May 2017: magisterial inquiry opened February 2018: police confirmed that they were <u>not</u> investigating</p>	<p>None</p>	<p>Indeterminable/ no information</p>
<p>- Panama Papers</p>		<p>April 2016: police received financial intelligence unit report July 2017: magisterial inquiry opened at request of leader of the opposition January 2019: appeal court overruled decision to open a magisterial inquiry April 2019: judge ordered preservation of the Panama Papers evidence for consideration by the 17 Black inquiry</p>	<p>None</p>	<p>Indeterminable/ no information</p>
<p>- Vitals Global Healthcare</p>		<p>January 2018: Auditor General opened investigation</p>	<p>July 2019: magistrate accepted request to open an inquiry October 2019: judge overruled magistrate's decision; judicial decision challenged and new request made November 2019: magistrate accepted new request; the three ministers involved again appealed against this decision</p>	<p>Indeterminable/ no information</p>

<p>Progress of criminal proceedings against the three suspects of the murder (Para. 6)</p>	<p><i>October 2019: AG refers two of the suspects' money-laundering case to the lower criminal court, which has much weaker sentencing powers</i></p>	<p>December 2017: suspects charged</p>	<p>16/07/19: suspects indicted</p> <p>October 2019: trial judge recused himself for unknown reasons</p> <p>October 2019: suspect Vince Muscat's lawyer withdrew from case for unknown reasons</p> <p>October 2019: trial adjourned pending constitutional challenge to phone-tap evidence</p>	<p>n/a</p>
<p>Establishment of an independent public inquiry into the murder (Para. 8)</p>	<p><i>20/09/19: terms of reference and composition of an "independent public inquiry" announced</i></p> <p><i>30/09/19: AS/Jur issued critical public statement on the proposed inquiry</i></p> <p><i>October 2019: PM met family to discuss inquiry composition and terms of reference</i></p>	<p>N/a</p>	<p>15/11/19: revised terms of reference and composition announced</p>	<p>Yes</p>