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

Comments by M Emmanuel Mallia in response to Information Note by Mr Pieter Omtzigt**

* Document declassified by the Committee on 15 November 2019

** AS/Jur/Inf (2019) 13 Rev

Issue	Comments
Publication of the full ‘Egrant report’ (Para. 3.3 of Resolution 2293 (2019))	Case is before the Constitutional Court. Magisterial Inquiry reports are drawn up to preserve evidence and are of a criminal law nature. They are not reports drawn up for publication (Vide Article 518 of the Criminal Code and our comprehensive reply in the letter dated 29 th October 2019, now before the Committee).
Implementation of Venice Commission (VC) recommendations:¹ (Paras. 5.1 & 5.2)	Most of the Venice Commission Recommendations require the approval of two-thirds of Parliament and talks for Constitutional change under the auspices and with the involvement of the President of Malta are ongoing. The issue that the Venice Commission Recommendations are ‘not binding’ was raised as a legal defence when the Government was sued by persons close to the Rapporteur for not implementing the Recommendations. That legal argument is correct. Government remains committed to implement Constitutional changes on the lines recommended by the Venice Commission but changes must be implemented in a way which safeguard the proper implementation of public duties. Paragraph 146 of the Venice Commission Opinion also recognises this “Very importantly, holistic constitutional changes should be accompanied by adequate transitional arrangements and adopted as the result of a process of wide consultation in society. It is important that the citizens have a chance to take ownership of these amendments.” (Vide our comprehensive reply in the letter dated 29 th October 2019, now before the Committee).
- reform of the judicial appointment procedure²	The reform of the system of appointments to the judiciary is one of the topics of the Constitutional Reform talks. It is unreasonable to expect that whilst those talks continue any judicial vacancies should be left unfilled. Nowhere did the Venice Commission recommend bringing the courts or certain parts of them to a standstill until the system of judicial appointments is reformed. The current system of judicial appointments includes checks and balances through a number of mechanisms including eligibility criteria, scrutiny of the Judicial Appointments Committee and an obligation of the Prime Minister to publicly give reasons when the candidate appointed has not been approved by the Judicial Appointments Committee (something which has never happened since the Prime Minister never by-passed or went against the Judicial Appointments Committee) and cannot be described as an arbitrary system which cannot even be resorted to whilst negotiations on Constitutional reform are ongoing. It should also be noted that this matter is before the Maltese Court which has decided to refer questions on the issue to the ECJ.

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, 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.

<p>- creation of a new public prosecutor's office (reform of the Attorney General's office)³</p>	<p>The composition of the Board of the FIAU falls under another law (the Prevention of Money Laundering Act) which is also in the process of being amended. The Venice Commission made no recommendation to the effect that the Office of the Attorney General should not contribute to the Board of Governors of the FIAU. Its remark at paragraph 46 of its opinion was the following:” attributing the chair of such a body to the AG, who has a key role in prosecution, seems problematic and even any appearance of incompatibility should be avoided”. The AG does not Chair the FIAU as a matter of law. It is intended to change the composition of the Board of the FIAU when the mandate of the current Board expires in the first quarter of 2020 so as to meet this particular remark.</p> <p>Legislation on the introduction of judicial review of decisions not to prosecute is in preparation. It would require a two-thirds majority in Parliament and therefore will have to form part of the Constitutional reform package negotiations. It must be pointed out that ‘nolle prosequi’ decisions are only issued by the Attorney General very rarely and are subject to an obligation to file a report thereon to the President giving reasons.</p> <p>To describe the division of the functions of the Attorney General as ‘inadequate’ on such relatively minor points is clearly unfair and gives the impression of extreme bias.</p>
<p>- strengthening the powers and position of the President⁴</p>	<p>The solutions proposed in the Venice Commission Opinion obviously have to be discussed in the context of Constitutional Reform. Not everything contained in the Venice Commission opinion report lends itself to wholesale importation. This is also in line with the Venice Commission opinion itself that recognises the need for further examination and discussion.</p>
<p>- strengthening parliament⁵</p>	<p>Same as above. We feel that is not within the remit of the Rapporteur to discuss whether Parliamentarians in Malta should be full-timers or otherwise. However, it is to be noted that Government and the Opposition are discussing the strengthening of Parliament and the introduction of more female participation in Parliament.</p>
<p>- reducing the Prime Minister's powers of appointment⁶</p>	<p>The State Advocate Act includes provision for an Appointments Commission to examine candidates and make recommendations when a vacancy arises in the offices of Attorney General and/or State Advocate.</p> <p>It is therefore incorrect to state that ‘no progress’ was made. Other issues in this matter form part of the Constitutional Reform negotiations.</p>
<p>Publication of a road-map of reform proposals</p>	<p>Constitutional Reform negotiations are in progress</p>

³ Ibid, paras 56, 61, 64, 67, 71, 73 & 145.

⁴ Ibid, paras. 106 & 145.

⁵ Ibid, paras. 88, 89, 90, 94 & 145.

⁶ Ibid, paras 106 & 145.

(Para. 5.3)	
Consultation of the Venice Commission on reform proposals (Para. 5.3)	Malta will consult the Venice Commission where necessary but first a package for reform has to be agreed domestically between the Government and the Opposition.
Implementation of GRECO recommendations (Paras. 5.1 & 5.2)	GRECO Recommendations are within the competence of the GRECO review mechanism. Malta has always substantially met the requirements of previous GRECO recommendations. The rapporteur has no competence to interfere with the GRECO process.
Investigation and prosecution of corruption scandals (Para. 5.6)	MONEYVAL Recommendations are being implemented according to a specific plan. Again this is a matter for MONEYVAL and not for the Rapporteur.
- 17 Black (secret offshore company expected to transfer funds to secret Panama companies owned by Mr Schembri and Mr Mizzi)	How can the Rapporteur state 'ex cathedra' that no progress was made in the investigation? He should explain his rush to this conclusion which presumes that he is privy or claims to be privy to the workings of the investigation.
- Financial transfers from Mr Schembri to Mr Hillman via offshore network	As stated by the Rapporteur the matter is subject to a Magisterial Inquiry.
- Financial transfers from 'golden passport' applicants to Mr Schembri	As stated by the Rapporteur the matter is subject to a Magisterial Inquiry. It should be noted that the role of a Magistrate in an Inquiry is to investigate a case and the Magistrate has full powers under the law to do so.
- Panama Papers	The timeline given by the Rapporteur himself does not justify a conclusion that no progress was made.
- Vitals Global Healthcare	As recognised by the Rapporteur himself the matter is before the Courts. The Rapporteur may not be privy to the fact that the latest Magistrate's decision has been appealed to the Criminal Court.
Progress of criminal proceedings against the three suspects of the murder (Para. 6)	<p>The AG;s reference of the case for trial before the Court of Magistrates (where the maximum penalty is nine years imprisonment (vide Article 3(2A) of the Prevention of Money Laundering Act) – something which the Rapporteur, if he has any sense of fairness at all, must have pointed out when describing this court as having 'much weaker sentencing powers') was in line with previous decisions in money laundering cases involving similar amounts.</p> <p>It is surprising that the Rapporteur states that the judge recused himself 'for unknown reasons'. The Rapporteur would certainly be aware of the attacks to which this judge was submitted both by the Rapporteur himself (since</p>

	<p>he was the magistrate in charge of the Egrant inquiry) and by persons close to the Rapporteur in Malta who kept on repeating that the Egrant Inquiry and presiding over this trial by jury were incompatible.</p> <p>Only one sitting of the trial was adjourned because of Constitutional challenge. The initial phase of the trial (when preliminary pleas are discussed) is in progress.</p>
<p>Establishment of an independent public inquiry into the murder (Para. 8)</p>	<p>The rapporteur spent months dismissing the idea that a public inquiry could prejudice the criminal proceedings or inquiries. Now he has and has not changed tack. He has not raised any objection to the term of reference specifying that the inquiry should be conducted in a manner that does not prejudice the criminal prosecution and investigation. He and persons close to him in Malta have however raised many unfounded issues about the integrity of the persons appointed to conduct the inquiry thereby exposing them to very unfair and uncalled for treatment.</p> <p>The Government has however recognised the need for the family of the deceased to be content with the choice of the persons conducting the inquiry and has engaged in a process of meetings which were positive and which are likely to lead to a solution.</p>