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Provisional version

## The honouring of membership obligations to the Council of Europe by Malta

### Report<sup>1</sup>

Co-rapporteurs: Mr George LOUCAIDES, Cyprus, Group of the Unified European Left and Mr Bernard FOURNIER, France, Group of the European People's Party

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<sup>1</sup> Assembly decision. Reference to committee: Reference 4447 of 12 April 2019.

## A. Draft resolution<sup>2</sup>

1. Malta became the 18th member State of the Council of Europe in 1965. Recently it has been in the focus of attention of the international community, including the Assembly as a result of the assassination of anti-corruption journalist Daphne Caruana Galizia, and the authority's response to it. The Assembly reiterates its position taken in [Resolution 2293 \(2019\)](#) on "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges". The Assembly welcomes the establishment, on recommendation of the Assembly, of an independent public inquiry commission. It notes with concern the findings by this commission of malfunctioning democratic institutions in the country, and in particular its conclusion that there is a culture of impunity and institutional omerta in Malta. The Assembly calls upon the Maltese authorities to fully address the concerns and recommendations expressed in the report by the independent public inquiry commission.

2. The Assembly's report on Daphne Caruana Galizia's assassination, as well as the Venice Commission's opinion on the constitutional arrangements for the separation of powers and independence of the judiciary, laid bare a malfunctioning system of democratic and rule of law institutions, which was a watershed moment for the country. The Assembly therefore very much welcomes the reforms initiated by the authorities to address the shortcomings and recommendations made in these reports, especially with regard to the independence of the judiciary and appointment procedures for official positions. While these reforms constitute marked progress, they only partially address the concerns and shortcomings that were noted. In the view of the Assembly, a comprehensive and holistic reform of Malta's democratic institutions and system of checks and balances is still urgently needed. This all the more important in the context of the deeply rooted political and social polarisation in Malta, which permeates nearly all aspects of the Maltese society and endangers the functioning of its democratic institutions.

3. The Assembly therefore welcomes the establishment, by the President of Malta, of a Constitutional Convention to formulate a reform of Malta's constitutional framework, which will help assure that these reforms have wide support and acceptance in the Maltese society. The Assembly encourages the authorities to ensure a broad and comprehensive consultation process, and to provide the Constitutional Convention with a clear mandate and strict timeframe to complete its work.

4. Malta's parliament consists of part-time MPs. This undermines the capacity of the parliament for legislative initiative as well as its capacity to provide proper parliamentary oversight over the executive. In addition, the need for MPs to have secondary employment increases the vulnerability of the parliament to corruption and conflicts of interest. The Assembly therefore recommends a far-reaching reform of the Maltese parliament with the aim of establishing a full-time parliament that can provide proper parliamentary oversight and regain legislative initiative. In addition, the Assembly calls upon the Maltese parliament to:

4.1. considerably limit and circumscribe the possibility for, and types of, secondary employment by members of parliament;

4.2. define and delimit by law the list of allowed secondary functions, including in Officially Appointed Bodies, for members of parliament;

4.3. abolish the constitutional requirement that stipulates that Ministers must be members of parliament;

4.4. introduce public financing for political parties with a view to reduce their dependency on private donations which have an inherent risk for conflicts of interest and corruption.

5. The Assembly welcomes the reforms that have been implemented with regard to the appointment process of judges and magistrates. These reforms have strengthened the system of checks and balances over this appointment process and reduced its vulnerability to politicisation. This is a step forward with regard to strengthening the judiciary. In this respect it particularly welcomes the strengthening of the role of the President in the appointment process while reducing the extensive and discretionary powers of the Prime Minister. Given the increased powers of the President, his or her direct election by the Maltese citizens should be explored.

6. The reform of the judicial appointment process, and the reform of the prosecution service, separating the function of state advocate from that of the Attorney General and removing the Attorney General from

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<sup>2</sup> Draft resolution adopted unanimously by the Committee on 24 May 2022.

Commission for the Administration of Justice are important steps to strengthen the independence and impartiality of the judiciary. Another welcome development in that respect has been moving the responsibility for prosecuting most crimes from the police to the Attorney General. At the same time, the Assembly encourages the authorities to implement further reforms as recommended by the Venice Commission and the Independent Public Inquiry Commission. It reiterates that strengthening parliamentary oversight over the executive is essential in this respect. In addition, the Assembly recommends that the parliament adopts the required legislation that ensures that acts that have been declared unconstitutional by the Constitutional Court immediately lose their legal force.

7. Despite welcome reforms, the Prime Minister maintains considerable control over the Civil Service, which undermines the latter's independence from political forces. A key concern in this respect is the excessively high number of political appointees, also known as persons of trust, in Malta's civil service, which are appointed bypassing the legal civil service appointments procedures. The high number of political appointees, and lack of legal regulations governing these positions, increases the vulnerability of Malta's civil service to conflicts of interest and cronyism. Recent reforms have not sufficiently addressed this issue and the Assembly therefore urges the authorities to implement additional reforms with a view to legally limiting the appointment of persons of trust to a small number of clearly defined and regulated positions.

8. The Assembly welcomes the recent reforms that have strengthened the position and independence of the Ombudsperson, who performs an important institutional oversight function over the authorities. However, it regrets the lack of enforcement of the right of information of the Ombudsperson, and the limited follow up given by the parliament and executive to its reports, which weaken the efficient functioning of this important institution.

9. A key concern for the Assembly is the continuing vulnerability of Malta's public sector to corruption. Despite the high perception of corruption there has been little visible response and a coherent overall strategy to prevent corruption in public institutions is lacking. This has created a culture of impunity. Overcoming this culture of impunity and institutional omerta is one of the key challenges facing the Maltese society and its democratic institutions and should be addressed as a matter of utmost priority. In this respect, the Assembly:

9.1. regrets the structural weaknesses that have limited the results and effectiveness of the Permanent Commission Against Corruption;

9.2. welcomes the establishment of the Commissioner for Standards in Public Life and the effective functioning of his office. The Assembly recommends the authorities to strengthen the powers and the resources given to the Commissioner for Standards in Public Life and to consider the further streamlining of anti-corruption institutions to avoid overlap and interference between them;

9.3. recommends that the authorities further strengthen the Whistle-blowers Act to ensure that whistle-blowers that divulge their knowledge to the media are sufficiently protected, and to change the requirement that external whistle-blowers have to report to the Cabinet of Ministers Office to be granted immunity from prosecution, which can act as a barrier for civil servants to come forward and report fraud and corruption;

9.4. deplores the structural lack of implementation and enforcement of the Freedom of Information Act that renders this law ineffective. This needs to be addressed as a matter of urgency. In this respect, it is important to underscore that a culture of transparency and openness cannot be achieved by legislation alone but also needs commensurate change of behaviour and attitude;

9.5. is concerned about the vulnerability to corruption and money laundering of Malta's "citizenship by investment programme" and calls on Malta to abolish this programme.

10. The Assembly is deeply concerned about the polarised media environment and the challenges faced by the media, including direct threats to journalists, that negatively affect press freedom in Malta. It therefore welcomes the recent establishment of a Committee of Experts on Media with a view to strengthening media freedom in Malta. The abuse of anti-defamation legislation and Strategic Lawsuits Against Public Participation (SLAPPs) to silence journalists, is an issue of increasing concern that needs to be addressed as a matter of urgency.

11. The Assembly is concerned that, despite considerable progress, gender inequality and stereo types remain deeply rooted in the Maltese society. Despite improvements in the legislation, representation of women in politics and government is still low. The Assembly therefore welcomes the new Equality law that is before the parliament and encourages the parliament to adopt it without delay. The Assembly notes Malta is one of

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the very few Council of Europe member States to prohibit abortion entirely, including in cases of rape or danger to the life of the mother. Reproductive rights and health are a key aspect of women rights that need to be improved in Malta as a matter of priority.

12. The Assembly recognises that Malta is a Mediterranean frontline State with regard to irregular migrants and asylum seekers, whose numbers are very high in comparison to Malta's small population. The Assembly calls upon other European States to show commensurate solidarity with Malta in this respect. At the same time, it urges the Maltese authorities to ensure that its responsibilities and human rights obligations with regard to irregular migrants and asylum seekers are fully honoured, and to step up efforts in this regard.

13. Malta faces important challenges to the functioning of its democratic and rule of law institutions, which, if left unaddressed, could affect the level of democratic consolidation in the country. The Assembly welcomes the efforts of the Maltese authorities in this respect, but further reforms, in particular with regard to its institutional checks and balances and the fight against corruption are still needed. It invites its Monitoring Committee to continue following the developments in the country and report back to the Assembly if the developments so warrant.

## B. Explanatory memorandum by Mr Georges Loucaides and Mr Bernard Fournier, co-rapporteurs

### 1. Introduction

1. Under its terms of reference as defined in [Resolution 1115 \(1997\)](#) (as modified), the Monitoring Committee is seized to carry out a regular periodic review of the compliance of the obligations entered into upon their accession to the Council of Europe by member States that are not already under a full monitoring procedure or engaged in a post-monitoring dialogue. Since the adoption of [Resolution 2261 \(2019\)](#), these periodic review reports are submitted for debate as separate reports accompanied by specific resolutions for each country. The order and frequency of the countries selected for periodic review are decided upon by the Monitoring Committee in accordance with its internal working methods based on substantive grounds, with the objective of producing, over time, periodic review reports on all member States.

2. On 6 March 2019, the Monitoring Committee selected four countries: France, Hungary, Malta, and Romania for periodic review. Following the Bureau's decision to revise the list of countries, which was opposed by the Monitoring Committee, the Committee on Rules of Procedure, Immunities and Institutional Affairs was asked for an opinion on the interpretation of the relevant rules. Pending clarification, the Monitoring Committee decided, on 16 May 2019, to suspend the preparation of the other periodic review reports, including on the one on Malta. The opinion of the Committee on Rules of Procedure was adopted in January 2020. On 16 January 2020 the Monitoring Committee decided to resume the preparation of the periodic review reports. Regrettably, the preparation of the report was further delayed by the outbreak of the global Covid-19 pandemic. In particular, pandemic conditions delayed the organisation of a fact-finding visit to the country, which is an essential part of the preparation process of any monitoring report.

3. On 22 June 2020, Mr Bernard Fournier (France, EPP/CD) and Ms Rósa Björk Brynjólfssdóttir (Iceland, UEL) were appointed rapporteurs. On 15 April 2021, Mr George Loucaides (Cyprus, UEL) was appointed rapporteur in place of Ms Brynjólfssdóttir, who had left the Assembly. As soon as the pandemic conditions allowed, a fact-finding visit was organised to Malta, which took place from 25 to 27 October 2021. We wish to express our gratitude to the Maltese parliament for the assistance provided with the organisation of this visit.

4. Malta joined the Council of Europe on 29 April 1965, when it became its 18<sup>th</sup> member State. Recently, Malta has received a considerable amount of attention from Parliamentary Assembly following the assassination of anti-corruption journalist Daphne Caruana Galizia on 16 October 2017, which was widely condemned by the international community. In the Assembly cumulated into the adoption, on 26 June 2019, of [Resolution 2293 \(2019\)](#) on "*Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges*" based on a report<sup>3</sup> prepared by Mr Pieter Omtzigt (Netherlands, EPP/CD) for the Committee on Legal Affairs and Human Rights.

5. In the course of the preparation of his report on the murder of Daphne Caruana Galizia, and the authorities' response to it, Mr Omtzigt outlined a series of serious shortcomings with regard to the functioning of Malta's democratic institutions. These findings with regard to the malfunctioning institutional framework in Malta were confirmed, and further elaborated, by the findings in the opinion of the Venice Commission on "*Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement [in Malta]*"<sup>4</sup> which had been requested by the Committee on Legal Affairs and Human Rights<sup>5</sup>. In this opinion, the Venice Commission concluded that the shortcomings encountered undermined the proper functioning of the system of checks and balances in the country as well as the independence of the judiciary from the executive.

6. The report of Mr Omtzigt and the subsequent Venice Commission opinion that laid bare a series of systemic shortcoming with regard to the democratic and rule of law institutions in Malta, were described by most of our interlocutors, including from the ruling majority and opposition, as a watershed moment for the country. A number of reforms with regard to the constitutional system of checks and balances, as well as with regard to the judiciary, were subsequently initiated by the authorities, in close consultation with the Venice Commission, to address these shortcomings. The assessment and recommendations with regard to these reforms will constitute an important part of this report, which will also look at the fight against corruption, the

<sup>3</sup> [DOC 14906](#).

<sup>4</sup> [CDL-AD\(2018\)028](#).

<sup>5</sup> Following the request of the Legal Affairs Committee the Maltese authorities, on 13 October 2018, the Maltese authorities also requested an opinion on "*Malta's legal and institutional structures of law enforcement, investigation and prosecution in the light of the need to secure proper checks and balances, and the independence and neutrality of those institutions and their staff whilst also securing their effectiveness and democratic accountability.*"

media environment and relevant Human Rights issues. While this report builds on several issues mentioned in Mr Omtzig's report, it is important to underscore from the outset that the investigation into Ms Daphne Caruana Galizia's assassination and the government's response to it, is not within the remit of this report. Nevertheless, we strongly encourage the authorities, and indeed all political forces in Malta, to fully address and implement the findings and recommendations made by the independent public enquiry commission in their report on the assassination of Ms Caruana Galizia, and the authority's response to it.

## 2. Democratic Institutions

7. As mentioned, the findings and conclusions of the Venice Commission opinion constituted a watershed moment that led to the initiation of a series of reforms of the constitutional and institutional framework in Malta. In the framework of the preparation and implementation of these reforms two additional Venice Commission opinions were requested by the authorities, one on "proposed legislative changes to address the Venice Commission recommendations<sup>6</sup>" and a second one on "ten acts and bills implementing legislative proposals subject of opinion CDL-AD(2020)006"<sup>7</sup>. In the following sections we will outline the state of play regarding the functioning of the main democratic institutions in Malta.

8. The establishment of a clearly defined and properly functioning constitutional set of checks and balances is all the more important in the context of the deeply rooted political and social polarisation in Malta, which permeates nearly all aspects of the Maltese society and endangers the functioning of its democratic institutions.

### 2.1 Parliament

9. Malta is a parliamentary Republic with a unicameral parliament. Its parliament of 79<sup>8</sup> seats is elected on the basis of a proportional system via a single transferable vote. Possibly also as a result of historical reasons, the political landscape is a *de facto* two-party system between the ruling Labour party and the Nationalist Party, which is currently in opposition. The current ruling party, the Labour party, has been in power since 2013.

10. In Malta the position of an MP is a part-time position and MPs generally need secondary jobs to cover their living costs. This limits the time MPs have available for legislative work and control of the government. As a result, as noted by the Venice Commission, the parliament is a rather weak institution and struggles to provide proper parliamentary oversight over the executive, especially in the current increasingly complex and interlinked society. This is further compounded by the fact that the Constitution requires that Malta's Ministers (currently 26 in number<sup>9</sup>) are also MPs. In addition, in order to complement their parliamentary salary, many MPs hold office in "Officially Appointed Bodies", for which appointment they depend on the Prime Minister. Given the small size of the Maltese parliament it means that more than a quarter of the MPs have offices in, and are financially dependent on, the same government bodies they are supposed to control. This weakens parliamentary oversight and increases the possibilities for conflicts of interests.

11. Parliamentary oversight is further weakened by the fact that the part-time function of MP also reduces the time they have available to prepare debates and draft legislation. During our visit we were informed that as a result, most, if not all, draft legislation is prepared by the government, weakening the legislative function of the parliament. We also note that a part-time parliament needs a considerable number of parliamentary support staff to conduct research and prepare debates and draft legislation, which is not available at this moment. The Venice Commission therefore recommended the increase parliamentary staff to assist the MPs in their work, as well as the establishment of a "Council of State" to advise the government and parliament on governance and legislation, a role currently fulfilled by the State Advocate. In the view of the Venice Commission, the establishment of such a Council would help increasing the quantity and quality of independent information available to MPs to execute their tasks<sup>10</sup>.

12. As mentioned in relation to the appointment of MPs in Officially Appointed Bodies, the fact that the position of MP is part-time in Malta makes the parliament, and indeed the Maltese system of governance as such, vulnerable for conflicts of interest and corruption. The fact that most MPs will have to work in gainful employment next to their job as parliamentarians, in a small society like Malta, considerably increases the chances for conflicts of interest and weakens parliamentary oversight even if the MP is not holding office in

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<sup>6</sup> [CDL-AD\(2020\)006](#).

<sup>7</sup> [CDL-AD\(2020\)019](#).

<sup>8</sup> As from the 2022 parliamentary elections, an increase of 12 seats in comparison with the previous parliament.

<sup>9</sup> This means that 26 of the current 37 ruling Labour Party MPs are also Ministers!

<sup>10</sup> *Idem* § 89 -91.

one of the “Officially Appointed Bodies”. A number of recent cases<sup>11</sup> have unfortunately shown that the vulnerability for conflicts of interest and corrupt practices is unfortunately not a strictly hypothetical question.

13. Regrettably, the recent reforms implemented by the Maltese authorities did not cover the Maltese parliament and its functioning. In our view far-reaching reforms of the parliament, with the aim of establishing a full-time parliament, are essential to ensure the proper functioning of the democratic institutions and system of governance in Malta. A full-time parliament will allow the parliament to ensure proper parliamentary oversight over the executive and allow it to regain its legislative initiative. In addition, the move to full-time and properly remunerated MPs would allow the parliament to considerably limit and circumscribe the possibility for MPs to hold secondary employment, as they are no longer financially dependent on it.

14. During our visit to Valletta, we noted that, while underscoring the need to take the particularities resulting from Malta’s relatively small society into account, there is widespread support among both ruling majority and opposition for the establishment of a full-time parliament. We have called upon all political parties to start the debate on the reform of the parliament without delay, utilising the current reform momentum. We were informed that the authorities intend to initiate the debate on this issue after the next parliamentary elections which is to be welcomed.

15. While supporting the establishment of a full-time parliament, a number of interlocutors expressed some hesitation with regard to across the board interdiction of secondary employment for MPs, which in their view, could result in suitable candidates reconsidering to run for parliament. We have some understanding for this and note that in several other parliaments in the Council of Europe geographical space MPs can hold certain secondary functions. However, the list of allowed secondary functions – including in so-called Officially Appointed Bodies, should be clearly defined and delimited by law, in order to avoid any conflicts of interest or vulnerability to corrupt practices. Such a list should already be established now, and not wait until the establishment of a full-time parliament<sup>12</sup>.

16. The establishment of a full-time parliament could also allow a debate on reconsidering the constitutional requirement that Ministers obligatorily are members of parliament. Abolishing this, could in Malta both strengthen parliamentary oversight and increase the pool of suitable candidates for ministerial functions.

17. The Council of Europe, and in particular the Venice Commission and the Parliamentary Assembly could play an important role in the above-mentioned reform of the parliament by providing advice and examples of best parliamentary practice in Europe.

18. Malta has a comprehensive legal framework on the financing of political parties. However, many interlocutors, including from both the ruling majority and opposition, mentioned party financing as an issue of concern. Currently there is no system of state funding for political parties which makes them dependent on private donations, especially from businesses and other economic interest. It is clear that such a dependence increases the possibilities for conflicts of interest and corruption. We urge the political forces to introduce public funding of political parties combined by a comprehensive set of regulations for party and campaign financing, in line with GRECO recommendations.

## 2.2 *President*

19. The President of Malta is elected for a five-year term by the Maltese parliament and has a largely ceremonial role. Until the recent reforms, the President was elected by simple majority. Similarly, until recently, the President could be removed by the parliament by simple majority, allowing, in effect, the appointment and removal of the President by the ruling majority. This lessened the possibility of the President to act as an independent counterweight against the executive power. The Venice Commission had therefore recommended that the President be appointed, and removed, with a qualified majority to diminish the dependency on the ruling majority. In response, in February 2020, constitutional amendments were adopted that stipulate that a qualified 2/3 majority in parliament is needed for the appointment or removal of the President. In case no 2/3 majority can be found to appoint a President the outgoing President shall remain in office until such a majority can be found. The Venice Commission has recommended that anti-deadlock

<sup>11</sup> [Times of Malta](#) [3 October 2021]. [Malta Today](#) [19 January 2022].

<sup>12</sup> While we realise that it will be more difficult to limit the types of secondary employment for MPs in a part-time parliament, the current situation is unsatisfactory and has led to a number of - some of our interlocutors would argue numerous - conflicts of interest. We therefore strongly recommend that even before a full-time parliament is stabilised clearer and more stringent regulations regarding secondary employment for MPs are adopted and strictly enforced.



Doc. ...

mechanism for the appointment of a president that is acceptable for all sides be found<sup>13</sup>. Nevertheless, the change has been a welcome strengthening of the appointment and dismissal procedure of the President.

20. Given the strengthening of the Presidential powers with regard to judicial appointments (see below), a number of interlocutors suggested that Malta should be moving towards a directly elected President. This would also strengthen the constitutional role of the President as an independent arbiter and additional check on the powers of the government. For all those reasons we would indeed recommend a change towards a directly elected President. However, we wish to underscore however that both direct and indirect election of a President are in principle in line with European standards.

21. The powers of the President are limited. However, his role in judicial appointments has considerably been strengthened, at the cost of those of the Prime Minister, in order to address the concerns of the Venice Commission expressed in its opinion on the "*Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement [in Malta]*". Until the adoption, on 29 July 2020, of 6 acts by the Maltese parliament to address Venice Commission recommendations, the president appointed judges and magistrates "*acting in accordance with the advice of the Prime Minister*". This meant in effect that the President appointed the candidate proposed by the Prime Minister.

22. In addition, until 2016, the Prime Minister was completely free in his recommendations. The first reforms to limit the powers of the Prime Minister in this regard were adopted in 2016. Following these reforms, all judge candidates, with the exception of the Chief Justice, were recommended to the Prime Minister by the Justice Appointments Committee, which is a Sub-Committee of the Commission for the Administration of Justice (the national council of the judiciary). The JAC was composed of the Chief Justice, the Ombudsperson, the Attorney General, the Auditor General and the President of the Chamber of Advocates. However, judicial vacancies were not published and instead the JAC created a rolling register of vetted candidates from among lawyers that have expressed interest to become a judge<sup>14</sup>. The JAC was not allowed to rank the candidates and the Prime Minister was free to select anyone he preferred from this list of vetted candidates when a vacancy arose.

23. In a welcome development, since the adoption of the reform of the appointment system in 2020, the JAC is now composed of the Chief Justice, the Auditor General, the Ombudsperson, the President of the Chamber of Advocates, as well as 2 judges and one magistrate elected by their peers. As a result, judges have a majority in the appointments commission, in line with European standards, which is a positive step forward. Moreover, in addition to the exiting public rolling call for judge candidates, individual vacancies will now be published. The JAC now selects a list of three candidates that will be directly, without involvement of the PM, sent to the President who can freely select from this list based on the merits of the candidates. The list of the three candidates will be published by the President, but only after the appointment of the judge. The Venice Commission had recommended the list would be published before the appointment was made but the authorities argued that this, in a small society like Malta, could lead to lobbying and speculation. The reformed appointment structure has given a considerable new power to the otherwise ceremonial function of the President while reducing the extensive and discretionary powers of the Prime Minister, and has strengthened the independence of the judiciary, in line with Venice Commission – and GRECO – recommendations.

24. The reforms also changed the appointment procedure for the Chief Justice, which is a key judicial function in the Maltese judiciary. In order to depoliticise the appointment procedure for the Chief Justice, which was recommended by the Venice Commission, the Chief Justice is now appointed by the President in accordance with a resolution of the Parliament, adopted with a 2/3 majority. However, while this ensures broad political support for the Chief Justice nomination, an anti-deadlock mechanism is missing. The Venice Commission has proposed appointing the Chief Justice on the basis of an election by the Supreme Court judges, in the event of a deadlock in the parliament.

### 2.3 Government

25. According to the Maltese Constitution, while executive power is formally vested in the President, the Cabinet and Prime Minister decide on the general direction and control of the government of Malta<sup>15</sup>. As noted by the Venice Commission's opinion<sup>16</sup>, the Prime Minister is at the centre of the political power of Malta and has far reaching and wide political powers.

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<sup>13</sup> [CDL-AD\(2020\)019 § 44](#).

<sup>14</sup> The criteria for appointment to be ascertained by the JAC are of a technical nature such as, inter alia, citizenship, minimum experience of 7 or 12 years of legal practice for appointment as a magistrate or judge, as well as control of assets, business involvement and other activities of the candidate.

<sup>15</sup> [DOC 14906 § 8](#).

<sup>16</sup> [CDL-AD\(2018\)028](#).



26. Until the adoption of the reforms in 2020 the Prime Minister, inter alia:
- a. appointed the Ministers from among the members of the House of Representatives.
  - b. recommended the candidates for the post of Attorney General, Chief Judges and Judges to the President of Malta.
  - c. appointed the Chief of the Police, the Police Governance Boards, the Security Commissioner, the Data Protection Commissioner, as well as other top public officers.
  - d. assigned the Permanent Secretaries to the government ministries. In this context it should be noted that the Chief Permanent Secretary according to the Public Administration Act “shall take instructions from the Prime Minister”.
  - e. Recommended to the President the members of the Central Election Commission, the Public Service Commission, the Broadcasting Authority, the Malta Financial Services Authority and the Permanent Commission Against Corruption.

27. In order to address recommendations of the Venice Commission, the Powers of Appointment Act has been amended and with a view to limiting the powers of the Prime Minister in the appointment of key institutional positions. According to these amendments the appointments of the Governor, the deputy Governor, and the directors of the Central Bank of Malta, the Chairman of the Malta Financial Services Authority, the members of the Board of the Arbitration Centre and the Information and Data Protection Commissioner are now appointed by the Cabinet of Ministers and no longer by the Prime Minister alone.

28. These recent reforms have, to some extent, reduced the powers and discretion of the Prime Minister in the appointment of key positions, but it remains a very powerful position that is still insufficiently counterbalanced by a proper set of institutional checks and balances. As we have mentioned above, key to establishing an effective counterbalance to these powers is establishing a system of proper parliamentary oversight by reforming the parliament into a full-time Assembly.

29. The Prime Minister has a very large margin of control over the Civil Service in Malta. Until the implementation of the reforms the Prime Minister appointed all the Permanent Secretaries, which are the highest civil servants at the different ministries, as well as the Chief Permanent Secretary. This is no longer the case. Following amendments to article 92 of the Constitution (which governs the position of Permanent Secretaries) the Chief Permanent Secretary is appointed by the President on the basis of advice of the Cabinet of Ministers and the Public Service Commission. The Permanent Secretaries should be appointed on the basis of a merit-based process. However, the Constitution continues to stipulate that the Chief Permanent Secretary shall act on instructions of the Prime Minister. Thus, through the Chief Permanent Secretary, who advises on the appointment of the Permanent Secretaries, the Prime Minister still maintains considerable control over the Civil Service which undermines its independence from political forces.

30. This is compounded by the excessively high number of political appointees in Malta’s civil service. These political appointees, or persons of trust as they are known in Malta, are appointed by the Prime Minister bypassing the normal civil service appointments procedures. A proper legal basis for these positions and their appointment is lacking and, as a result, many persons of trust are appointed on what are not considered to be political positions. While Malta has always had a relatively high number of political appointees in its civil service, this number has reportedly exploded under the current government. Reportedly, there are currently more than 1200 persons of trust which is clearly excessively high for a civil service of the size of Malta. In its report<sup>17</sup> on Malta in the framework of the fifth evaluation round, GRECO expressed its concern that the high number of political appointees, and lack of legal regulations governing these positions, would lead to, or at least give the impression of, cronyism. In response the authorities have introduced legal reforms with the aim of limiting the persons of trust “*to consultants to Ministers or Parliamentary Secretaries, staff in the Secretariats of Ministers or Parliamentary Secretaries and appointments of a temporary nature whenever a post remains vacant after repeated public calls are issued*”. However, these reforms still do not set a maximum number for such appointments nor their duration and still would allow appointments to non-political positions. During our visit many interlocutors underscored that despite these reforms, the use of persons of trust still remains widespread, amounting to a system of patronage with the evident risks of conflict of interest and corruption. We urge for additional reforms that would legally limit such persons of trust to a small number of clearly defined and regulated positions.

#### 2.4 Ombudsperson

31. The ombudsperson is established by the Maltese Constitution and performs an important institutional oversight function over authorities. Until the recent reforms the appointment and powers of the Ombudsperson

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<sup>17</sup> [GrecoEvalRep\(2018\)6](#).

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were regulated by ordinary law, the “Ombudsman Act”. The Venice Commission recommended that the appointment and powers would be raised to the Constitutional level, which was implemented by the authorities with the amendments to the Constitution in 2020. The ombudsperson is now appointed by the President acting in accordance with a resolution of the parliament adopted by 2/3 majority. A similar qualified majority is needed to request the President to remove the ombudsperson, which can only be done on the limited grounds of inability to perform his functions or for proven misbehaviour. These changes have strengthened the position and independence of the Ombudsperson.

32. Also, as a result of the above-mentioned Constitutional amendments, the right of the ombudsperson to conduct independent investigations has *de facto* been raised to the Constitutional level, which had been recommended by the Venice Commission. The ombudsperson can now refer potential evidence of corrupt practices directly to the Attorney general, although the threshold remains very high, too high according to a number of interlocutors. The “Ombudsman Act” now foresees that the ombudsperson reports annually, or as frequent as (s)he deems necessary, to the parliament which will place his report on the agenda in a dedicated session. During our meeting with the Ombudsman, we were however informed that, aside from his annual report, *ad hoc* and special reports of the ombudsperson in reality receive very little, if at all, attention of the parliament.

33. Several shortcomings remain in the legislation governing the ombudsperson that should be addressed. While the ombudsperson may start an investigation on his own initiative or following a written complaint, the wording of the law is very restrictive with regard to whom can file such a complaint, effectively limiting it to persons having an interest or being aggrieved by an action. A very strict interpretation of this clause could prevent for example Civil Society Organisations to file complaints. In addition, the right to receive information has not been raised to the Constitutional level and, as underscored by the Ombudsman himself on various occasions – including in his meeting with us – the lack of enforcement of the right to information of the Ombudsman by the Maltese authorities hinders the functioning of this institution and is of concern.

## 2.5 Constitutional Convention

34. While addressing a number of important recommendations of the Venice Commission, the reforms implemented in July 2020 were only partial and left a number of systemic shortcomings unaddressed, most prominently with regard to the functioning of the parliament and parliamentary control and oversight. In its opinion on the adopted reforms<sup>18</sup> the Venice therefore recommended that the authorities implement a “holistic” constitutional reform in close consultation with the Maltese society, something we wholeheartedly support.

35. The previous President of Malta therefore established a Constitutional Convention in order to formulate changes to the Constitution<sup>19</sup>. The current President of Malta, Mr George Vella who took office on 4 April 2019, has maintained the Constitutional Convention and in his meeting with us confirmed his strong support for this process.

36. The Constitutional Convention has no executive powers but makes recommendations to the parliament that, in the end, will be responsible for adopting any proposed changes to the Constitution. We were informed that the Convention consists of 150 members, approximately 40% of which from institutional bodies and the academia and the remaining 60% from civil society. However, the civil society representatives we met questioned how the members of this convention were selected, in particular those representing civil society, and complaint about a lack of consultation.

37. While reportedly a number of (online) consultations have taken place and citizens have been invited to make suggestions via a dedicated website, the work of the Convention has been mostly stalled by the ongoing Covid-19 pandemic and no tangible concrete results have been made.

38. As we outline in this report, comprehensive reforms of Malta’s democratic institutions and institutional system of checks and balances are still urgently needed. It is important that such far reaching reforms have the support and acceptance of the full Maltese society. A Constitutional Convention, if based on a broad and comprehensive representation and consultation process in the Maltese society, would indeed be an excellent vehicle to prepare these reforms. However, it is important that such a Convention has a clear mandate and is provided with a strict timeline to complete its task in order to ensure that the adoption of these reforms are not unduly delayed.

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<sup>18</sup> [CDL-AD\(2020\)019](#).

<sup>19</sup> We were informed that it is up to the Convention to decide if they wish to propose Constitutional amendments or a completely new Constitution, the latter option being reportedly controversial and therefore not favoured by the current President.

### 3. Rule of Law

#### 3.1 Reform of the Judiciary

39. The Venice Commission, the report by Mr Omtzigt, as well as the independent inquiry Commission set up by the Maltese authorities, have raised several questions with regard to the independence of the Judiciary in Malta and have expressed concern about its vulnerability for politicisation which, in turn, has affected its ability to efficiently fight corruption in Malta<sup>20</sup>.

40. The Judiciary in Malta consist of about 20 judges and a similar number of first instance magistrates. The Judiciary is headed by the Chief Justice. A key deficiency affecting the independence of the Judiciary has been the appointment procedure of judges and magistrates, and the excessive discretionary powers of the PM therein. This appointment procedure, and the changes made to address these deficiencies have been outlined in the previous section.

41. The Commission for the Administration of Justice is the main body governing the Judiciary in Malta. As per constitutional provisions it is composed of ten members: the President of Malta, who is also the Chair of the Commission, the Chief Justice, the Attorney General, two members elected from among the Judges of the Superior Courts, two members elected from among the Magistrates of the Inferior Courts (first instance), one member appointed by the Prime Minister and one member appointed by the Leader of the Opposition and the President of the Chamber of Advocates. The Chair only has a casting vote, as a result of which members appointed by the judiciary have the majority of votes on the Commission, in line with European standards. The Attorney General was removed from the Commission by the reforms adopted in July 2020.

42. The Committee of Judges and Magistrates, which is a Sub-Committee of the Commission for the Administration of Justice, is responsible for disciplinary proceedings. It can impose warnings or a pecuniary penalty for small violations, up to a suspension of a magistrate or judge for up to 6 months for more serious violations of the Code of ethics or Code of disciplinary rules. In order to remove a judge, the Committee has to report to the full Commission for the Administration of Justice. This Commission, until the implementation of recent reforms, could then propose to the parliament to remove a judge. A decision to remove a judge needed to have the support of a least a qualified 2/3 majority in Parliament. As it was highly problematic that a political body such as a parliament would play a decisive role in a dismissal procedure for a judge, this procedure was changed by the reforms adopted in July 2020. The final responsibility for the dismissal of a judge is now solely the responsibility of the Commission for the Administration of Justice.

43. The Constitutional Court “hears *appeals from decisions of other courts on questions relating to the interpretation of the Constitution and on the validity of laws, as well as appeals from decisions on alleged breaches of fundamental human rights. The Constitutional Court also decides on the validity of the election of members of Parliament and the termination of their mandate, and the validity of the election of the Speaker. It is composed of the Chief Justice and two other judges*”<sup>21</sup>. Laws or provisions that are found unconstitutional by the Constitutional Court are not automatically annulled or removed from the law. It is up to the parliament to amend the law following a Constitutional Court judgement. This does not always take place and unconstitutional provisions continue to be applied leading to repetitive cases before the Constitutional Court. As highlighted by the Venice Commission on various occasions in respect of different countries, the execution of Constitutional Court judgements is an essential requirement for the rule of law. The Venice Commission therefore recommended amending the Maltese Constitution to ensure that legal acts judged unconstitutional by the Constitutional Court lose their legal force. However, the authorities have argued that this is not in line with the legal tradition in Malta and that this would lead to numerous complications, especially with regard to the legal framework governing the protection of rents in Malta, which could lead to serious social consequences. While we do understand the importance of rent control, this should not abrogate the effects of a Constitutional Court decisions and we therefore urge the parliament to ensure that acts that have been declared unconstitutional automatically immediately lose their legal force, as recommended by the Venice Commission.

<sup>20</sup> The Maltese authorities have referred to the preliminary ruling of the CJEU in the case *Repubblika vs Prim Ministru* (Case C-869/19). In its preliminary ruling the CJEU concluded on 20 April 2022 that, after the implementation of the reforms, “*The second subparagraph of Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister*”. However, it did not express itself on the state of the independence of the judiciary in Malta, or its vulnerabilities, itself. In that respect we maintain our observation that numerous reports, including those of the Independent Public Inquiry Commission, have outlined and expressed concern about shortcomings with regard to the independence of the judiciary.

<sup>21</sup> [CDL-AD\(2018\)028](#) § 77 and 75.

44. Until recently, the vast majority of prosecutions in Malta were carried out by the police, which is competent for both investigations and prosecution in Malta. Only the most serious cases were prosecuted by the Attorney General. In its evolution report GRECO considered the central role of the police to be excessive<sup>22</sup>. In 2019 reforms were implemented with the effect that any crimes punishable by two years or more imprisonment are now prosecuted by the Attorney General's Office. Crimes punishable by less than two years of imprisonment continue to be prosecuted by the police, but the objective is to shift all prosecutions to the Attorney General's office in the near future, as soon as this office has acquired the necessary capacity to take over all prosecutions from the National Police. In the same reforms the functions of State Advocate and Attorney General were separated, in line with recommendations by the Venice Commission.

45. Until recently, decisions by the Attorney General not to prosecute could not be appealed, contrary to European norms and standards. Following the reforms of July 2020, a decision not to prosecute is now also subject to judicial review by the courts of justice of civil jurisdiction, as is the case for such decisions by the Head of the police in cases where the police is competent to prosecute. Such appeals can inter alia also be brought by the Ombudsperson, the Auditor General, the Permanent Commission Against Corruption (PCAC) and the Commissioner for Standards in Public Life which have been given the status of aggrieved parties.

### 3.2 *Fight against corruption*

46. As highlighted in GRECO's evaluation report on Malta in the framework of its fifth evaluation round<sup>23</sup>, as well as in the report of the Independent Inquiry into the murder of Daphne Caruana Galizia, the deficiencies in the system of checks and balances as well as its rule of law framework have made the Maltese public sector vulnerable to corruption. This is compounded by the relatively small size of Malta and the fact that Malta's economy is primarily geared towards the (offshore) financial services and online gaming sectors. Despite the fact that "*Malta has on paper an impressive arsenal of public institutions involved in checks and balances*"<sup>24</sup> the perception of corruption is high with little visible response to allegations of corruption which has created a sense of impunity for such actions and a coherent overall strategy to prevent corruption in public institutions is lacking<sup>25</sup>. To underline the extent and seriousness of the issue, the Independent Inquiry in its report concluded that in Malta there was "*a culture of impunity*" that together with, according to many interlocutors, an institutional omerta had resulted in a situation where, until the murder of Daphne Caruana Galizia, persons close to the political power in the country were practically untouchable. Overcoming this culture of impunity and institutional omerta is one of the key challenges facing the Maltese society and its democratic institutions.

47. In addition to the law enforcement structures, Malta has two dedicated institutional bodies to combat and prevent corruption: the Permanent Commission Against Corruption (PCAC) and the Commissioner for Standards in Public Life. These institutions are complemented by the Auditor General, who scrutinises the expenditure of public bodies and the Financial Intelligence Analysis Unit (FIAU) which is Malta's specialised anti-money laundering agency.

48. The Permanent Commission Against Corruption (PCAC) was set up in 1988 to advise ministerial bodies on anti-corruption matters and investigate alleged or suspected corrupt practices by public officials. It is composed of three members that since the 2020 reforms are appointed by the President: one on the basis of parliamentary resolution adopted by a 2/3 majority, one on recommendation of the Prime Minister and one on recommendation of the leader of the opposition. Previously its members were appointed by the President in accordance with the advice of the Prime Minister after consultation with the leader of the opposition, which weakened the independence of the Commission, especially in combination with the fact that it reports to the Minister of Justice. The reforms also gave the PCAC the right to report findings of corrupt behaviour directly to the Attorney General, which was not the case before the reforms<sup>26</sup>. In addition, the reforms have now clarified that trading in influence as well as accounting offences constitute to corrupt behaviour falling under the remit of the PCAC. As a result of these structural weaknesses, the PCAC has until now achieved little or no tangible results in fighting and preventing corruption in Malta. In its evaluation report on Malta GRECO noted that the PCAC is a weak body with investigation powers that are limited to a small number of criminal offences, and whose "*contribution to Malta's anti – corruption efforts have been negligible*"<sup>27</sup>. GRECO also expressed its concern about potential problems arising from the existence of parallel jurisdictions between the police and PCAC and considered that the PCAC could be abolished". The PCAC itself has argued that its dissolution may violate the Malta's obligations under the UN Convention on Corruption while pointing at the high level of

<sup>22</sup> [GrecoEvalRep\(2018\)6](#) §102.

<sup>23</sup> [GrecoEvalRep\(2018\)6](#).

<sup>24</sup> Idem §1.

<sup>25</sup> Idem §3.

<sup>26</sup> These issues were considered structural flaws by the Venice Commission that undermine the effectiveness of the PCAC ([CDL-AD\(2018\)028](#) § 72).

<sup>27</sup> [GrecoEvalRep\(2018\)6](#) §104-106.



evidence needed to prove individual cases of corruption as a reason for the relatively few prosecutions. We noted that the PCAC in its entirety consists of 3 members and one secretary which raises questions with regard to its suitability to contribute to fighting the widespread and engrained corruption in Malta that was highlighted by the report of the Independent Inquiry into the murder of Daphne Caruana Galizia.

49. In 2017, the Maltese parliament adopted the Act on Standards in Public Life. Subsequently in 2018 the Commissioner for Standards in Public Life was appointed for a fixed period of five years by the President of Malta based on a resolution by the parliament adopted with a 2/3 majority. The Commissioner is tasked with checking the declarations of interests and assets of Members of the House of Representatives (including Ministers), Parliamentary Secretaries and Parliamentary Assistants as well as certain other categories of public officials. In addition, the Commissioner investigates breaches of ethical standards and rules, and reports to the parliament about its findings; and monitors lobbying activities and advises the government regarding these matters. The Commissioner is obliged to report to the parliament at least annually about the work of his office.

50. The work of the Commissioner is overseen by the Committee for Standards in Public Life, which is composed of the Speaker of the Parliament, two members appointed by the Prime Minister and two members by the leader of the opposition. It is the Committee on Standards in Public Life that decides on any subsequent actions and sanctions on the basis of the reports received from the Commissioner. This was seen as an obstacle to the effectiveness of the work of the Commissioner as this Committee is by design a political body, with possible conflicts of interest. Since the 2020 reforms, the Commissioner for Standards in Public Life can directly report to the Commissioner of Police or the Attorney general in cases where from his investigations it appears "*prima facie that a criminal offence of corrupt practice has been committed*"<sup>28</sup>. During our visit the Commissioner underscored that the level of proof needed was that of "chance of probability" and not of "proof beyond reasonable doubt" which ensured that suspicions of corrupt behavior by the Commissioner can be properly investigated by the police. These changes address an important Venice Commission and GRECO recommendation.

51. In addition to its oversight function, the Commissioner can also issue guidelines and recommendations to the authorities, including on how the law should be interpreted when dealing with conflicts of interest and corruption. The current Commissioner considers this a very important element of the work of his institution that should be further strengthened and enlarged. The Commissioner for standards in public life is widely seen as an effective and efficient institution, not the least due to the impartiality and commitment of the current postholder, and several interlocutors argued that the Commissioner should be provided with enhanced powers and resources to further its work, and that it should absorb the PCAC. We would recommend that the authorities strengthen the powers and the resources given to the Commissioner and consider further streamlining of anti-corruption institutions to avoid overlap and interference between them.

52. Two important pieces of legislation are in place to aid the prevention and combat of corruption: the 2008 Freedom of Information Act and the 2013 Protection of Whistle-blowers Act. The Whistle-blowers Act is widely regarded as one of the best in Europe even if concerns remain, such as the fact that whistle-blowers that divulge their knowledge to the media are not (well) protected, as well as the fact that external whistle-blowers have to report to the Cabinet of Ministers Office to be granted immunity from prosecution, which, in the view of the Commissioner for Standards in Public Life can act as a barrier for civil servants to come forward and report fraud and corruption.

53. The implementation and enforcement of the Freedom of Information Act is an issue of concern as many of the provisions of the act are not enforced by the authorities or only partially and with such long delays that they render the information ineffective. Most of the Media and Civil Society representatives we met during our visit, as well as public institutions such as the Ombudsman, complained about the structural lack of follow-up to their requests for information. This is an issue of concern that should be remedied without delay. In this context it is important to stress that this cannot be achieved by amending legislation alone, but also need a commensurate change of behavior and a culture of transparency and openness.

54. Malta is a large international finance and banking centre that is highly vulnerable to money laundering<sup>29</sup>. In its fifth mutual evaluation report in 2019, the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Finance of Terrorism (Moneyval) and the Financial Action Task Force (FATF) expressed concern about Malta's capacity to effectively counter and prosecute Money Laundering, including due to a lack of available human and financial resources. Malta was placed under enhanced follow-up and risked being blacklisted if these concerns were not addressed by the next mutual evaluation. In its first enhanced follow-up report of 2021, Moneyval and the FATF considered that the Maltese authorities had made

<sup>28</sup> [CDL-AD\(2020\)019](#).

<sup>29</sup> Moneyval/Financial Action Task Force fifth round mutual evaluation report, executive summary, § 2.

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welcome progress in addressing the deficiencies noted in the fifth mutual evaluation report and was now complying or largely complying with the FAFT recommendations. While the risk of blacklisting was avoided, additional actions were deemed necessary to ensure full compliance with the recommendations. Malta remains therefore under enhanced follow-up.

55. A particular issue of concern in relation to money laundering and corruption has been Malta's so-called citizenship by investment programme, more commonly known as its golden visa scheme. This legislation allows wealthy investors to obtain Maltese citizenship and thus EU passports in return for considerable investments into the Maltese economy.

#### 4. Human Rights

56. Malta has a well-developed institutional and legal system for the protection of human rights. However, a number of Human Rights concerns have recently come to the forefront. The assassination of Daphne Caruana Galizia has put the spotlight on safety of journalist and media freedom in Malta, but concerns have also been raised with regard to the rights of women and gender equality as well as with regard to the treatment of irregular migrants and refugees. In addition, the already mentioned engrained culture of impunity<sup>30</sup> is undermining the protection of human right on several fronts, not in the least with regard to the media. This needs to be addressed as a priority.

##### 4.1 Freedom of the Media

57. Malta has a pluralist media environment, but most private media are connected to the two main political parties or their supporters and promote their political views. As a result, the media environment reflects the deep political polarisation in the Maltese society. This is compounded by the fact that the public broadcaster is widely seen as a mouthpiece of the government and biased in favour of whatever party is forming the ruling majority at that moment. At the same time, Malta has a well-developed IT infrastructure allowing the population a wide choice of different internet media.

58. Malta was ranked 81 out of 180 countries in the 2021 World Press Freedom Index by Reporters Without Borders (RSF). In its 2021 report on Malta RSF concluded, inter alia, that "*A political system that continues to muzzle press freedom, discrimination in accessing information, and an inefficient judicial process has continued to present obstacles to public interest reporting as well as threats to journalists' ability to do their job safely*"<sup>31</sup>, which is of deep concern to us. The Independent Inquiry set-up in the wake of the assassination of Daphne Caruana Galizia came to similar conclusions with regard to the freedom of the media and role of the authorities in this, which underscores the seriousness of the situation.

59. In her recent report on Malta, the Human Rights Commissioner called on the authorities to implement reforms with a view to strengthening the protection of journalists and to "*refrain from any conduct that encourages hate speech against them*"<sup>32</sup> Regrettably the media representatives we met during our visit reported that harassment of journalists, including threats to their life and safety and trolling on social media, continues unabated and is not seen as effectively investigated by the police. The Independent Inquiry Report had recommended that a special police unit would be established to investigate threats and attacks on journalists. The authorities have not followed this advice, but the police force itself has established a special contact point for journalists and has reportedly been more forthcoming in investigating threats, including those originating on social media. While this was welcomed by the media representatives we met, they also underscored that, given the graveness of the situation, such a contact point could not substitute the specialised police unit recommended in the Independent Inquiry report.

60. As outlined in the previous section, journalists in Malta face considerable obstacles in obtaining information from the authorities, with request for information under the freedom of information act often ignored or unduly delayed as to render them ineffective. Media play an essential role in ensuring transparency of governance which is essential for the functioning of democratic institutions and the fight against corruption. Amendments to the law on freedom of information should be adopted to close existing loopholes that are arbitrarily used by the authorities to reject request for public information.

61. The abuse of anti-defamation legislation to silence journalists is an issue of increasing concern. While defamation has been decriminalised since 2018, Maltese libel legislation is vulnerable to abuse including as a result of civil law provisions that allow civil defamation cases to be transferred to the heirs in the event of the

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<sup>30</sup> In their communications the current authorities have strongly denied that such a culture of impunity would exist.

<sup>31</sup> [Reports Without Borders](#), 2021 World Press Freedom Index – Malta.

<sup>32</sup> Council of Europe Commissioner for Human Rights, [Report](#) following her visit to Malta from 11 to 16 October 2021, p 4.



death of the person being sued, which has a chilling effect on journalists<sup>33</sup>. In addition, there has been a proliferation of the use of so-called SLAPPS (Strategic Lawsuits Against Public Participation) against journalist. SLAPPS are lawsuits filed with the intention to intimidate, and ultimately censor journalists through the high costs of defending themselves against litigation. Such SLAPPS are filed both in Malta as well as in foreign jurisdictions. It is clear that the use of SLAPPs is a threat against freedom of expression. The Maltese authorities reportedly intend to implement anti-SLAPPs legislation and wish to coordinate this at the European level given that this is a problem that transcendent national jurisdictions. At the same time, we urge the Maltese authorities to amend existing defamation legislation to prevent its abuse.

62. The report by the Independent Inquiry has outlined a number of recommendations to strengthen the safety of journalist and to safeguard the freedom of expression and the media in Malta. We urge the Maltese political forces to fully implement these recommendations without hesitation or delay.

63. In a welcome development, we were informed that a Committee of Experts on Media was established on 11 January 2022 which is currently chaired by former Chair of the Public Inquiry. Its tasks are to analyse the media environment in Malta and to advise on the draft changes to the legislation to enhance the protection of media freedom in Malta.

#### 4.2 *Women's Rights*

64. As reported by the Human Rights Commissioner in her recent report, despite considerable progress, gender inequality is deeply rooted in the Maltese society and paternalistic attitudes and stereotypes regarding the role of women in family and society remain. This is often seen as related to the socially conservative Maltese society, but this was discounted by the representatives of women's organisations we met, who pointed to the fact that Malta, in 2018<sup>34</sup>, with considerable support from the society, introduced LGTBI rights legislation and an action plan, that in many aspects is in line with European best practices.

65. Malta has signed and ratified most international human rights instruments that cover women's rights and gender equality, including the European Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its Baseline Evaluation Report<sup>35</sup> on Malta in November 2020. In this report GREVIO welcomed the legal measures and amendments to existing legislation adopted by the Maltese authorities but emphasised that considerably more efforts should be made to implement the convention in practice. In this respect, they noted that the Maltese gender-neutral approach of referring to "gender-based violence" in legislation did not recognise the disproportionate occurrence and effects of violence against women. GREVIO underscored that there is a need to strengthen the application of a gender perspective and to considerably improve the initial and continuous training of all professionals who interact with victims. They also pointed at the need to intensify inter-institutional cooperation. Regarding protection orders, GREVIO considered that they should be available independently from, or cumulatively with, other judicial procedures. Protection orders are problematic, as they are not a means of preventing offences and the burden of proof falls on the victim, which may expose him or her to a risk of victimisation.

66. The current legislation dealing with equality, the Law on Equality between Men and Women, dates from 2003 and according to many interlocutors needs to be strengthened. A draft for new Equality Bill and Human Rights legislation, including a bill to establish a Human Rights and Equality Commission, have been prepared and tabled but the adoption process has stalled. We were informed by both ruling majority and opposition that the adoption of these laws would take place in the new convocation of the Maltese Parliament after the upcoming elections that will take place on 26 March 2022. As a result of the legislation adopted, 12 seats for women were added to the Maltese parliament following these elections. The gender employment gap in Malta is large and representation of women in politics and government still low. In that respect we welcome the newly adopted legislation to increase the representation of women in the new convocation of the parliament, which reportedly should result in a parliament that is for at least 40% composed of women. This would be an important step forward and hopefully will be replicated on the level of the government that will be formed after the elections.

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<sup>33</sup> As an example: at the time of her death Daphne Caruana Galizia was facing 43 civil and 5 criminal lawsuits brought by Maltese political actors. As mentioned by the Human Rights Commissioner several of these cases continued, and in some cases continue posthumously against her family. We can only urge those that filed these lawsuits to drop them without delay.

<sup>34</sup> Continuing a process of strengthening LGTBI rights started in 2014.

<sup>35</sup> [GREVIO/Inf\(2020\)17](https://www.grevio.org/en/inf/202017).

67. Reproductive rights in Malta are an issue of concern. Malta has one of the strictest abortion laws in the world and is only one of the two Council of Europe member States to prohibit abortion entirely, including in cases of rape or danger for the life of the mother. Seeking or having an abortion is criminalised with prison sentences of up to three years although in practice this is not implemented. Performing or prescribing an abortion is criminalised with a prison sentence of up to four years and the possibility of losing one's medical license<sup>36</sup>. Seeking or obtaining an abortion abroad is not criminalised. A proposal to legalise abortion was tabled in 2021 by an MP from the Democratic Party<sup>37</sup>, but this proposal reportedly failed to gather support from the two main parties. The day-after anti-contraceptive pill has only been legal in Malta since 2016, but reportedly a number of pharmacies refuse to carry these pills on conscientious grounds. Without wishing to step into an ideological debate we do consider that the issue of reproductive rights and health needs to be improved and we hope that this will be addressed by the new parliament as a matter of priority.

#### 4.3 Migrants and Refugees

68. Malta is a Mediterranean frontline state with regard to irregular migration and asylum seekers, and the numbers that reach the Maltese shores are extremely high in comparison to the relatively small size of the Maltese population<sup>38</sup>. The Maltese authorities underscored that Malta alone could not deal with such numbers of migrants and asylum seekers and complained about a lack of solidarity within the European Union for Maltese predicament. While we urge other European States to show commensurate solidarity with Malta, this does not release Malta of its responsibilities and human rights obligations with regard to irregular migrants and asylum seekers, which was also highlighted in the recent report of the Commissioner for Human Rights.

69. Until recently new arrivals were as a rule detained until their case was decided upon. As a result of this and the arrival of an increasing number of migrants, a situation compounded by the Covid-19 pandemic, the migrant reception system, was overwhelmed. The Committee for the Prevention of Torture and Inhuman Treatment (CPT) carried out an *ad hoc* visit to Malta from 17 to 22 September 2020, where it found the reception centres to be on the verge of collapse. with especially safeguards to protect the vulnerable lacking. Specific measures to combat Covid-19 were found to be so problematic as to amount to inhuman and degrading treatment incompatible with Article 3 of the European Convention on Human Rights<sup>39</sup>.

70. While Malta has abolished mandatory detention of migrants, in practice many are still placed in detention centres and, despite considerable efforts by the authorities, the conditions in the reception and detention centres remain of concern. Further efforts are required in this respect.

71. In its most recent report on Malta ECRI<sup>40</sup> expressed concern about the high levels of hostility towards immigrants, the absence of a long-term integration strategy for refugees and beneficiaries of local forms of protection as well as the risks of migrants being exploited in undeclared jobs or given extremely low wages. ECRI also highlighted the very restrictive rules on family reunification which define as family members only spouses and unmarried minor children.

#### 4.4 Other Human Rights Issues

72. In its most recent report on Malta, GRETA<sup>41</sup> expressed concern that Malta remains one of the destination countries for victims of trafficking in human beings. It considered that the legal definition of trafficking in human beings should be amended and that the fact that the offence of trafficking is committed against a child should be introduced as an aggravating circumstance. Assistance and support to victims of trafficking should be put in place; training should be provided to all professionals responsible for the implementation of assistance and protection measures for victims of trafficking; and a comprehensive and coherent statistical system on trafficking should be developed.

73. In its report<sup>42</sup> ECRI expressed concern about hate speech and hate crimes. Hate speech is only punishable under the penal code for incitement to hatred or violence if the person(s) concerned are in Malta. This needs to be addressed.

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<sup>36</sup> Council of Europe Commissioner for Human Rights, [Report](#) following her visit to Malta from 11 to 16 October 2021.

<sup>37</sup> The Democratic Party is a new party formed in 2016, in the elections in 2016 it obtained 2 seats in the parliament which was the first time another party than the two main parties, the Nationalist Party and the Labour Party was elected into parliament. In October 2020 it merged the Democratic Alternative Party.

<sup>38</sup> In 2019, 3406 migrants arrived by sea, in 2020 2281. In 2021 these numbers reduced to approximately 600.

<sup>39</sup> [Council of Europe anti-torture Committee](#) urges Malta to improve treatment of migrants deprived of their liberty. (2020).

<sup>40</sup> [CRI\(2018\)19](#) - ECRI report on Malta (fifth monitoring cycle - 2018).

<sup>41</sup> [GRETA\(2017\)3](#). Report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Malta.

<sup>42</sup> [CRI\(2018\)19](#) - ECRI report on Malta (fifth monitoring cycle - 2018).

## 5. Conclusions

74. The developments following the assassination of Daphne Caruana Galizia brought to light a deeply rooted political and social polarisation in the Maltese society and a systemic malfunctioning of democratic institutions in the country. The opinion of the Venice Commission on the constitutional system of checks and balances and the independence of the judiciary, as well as the report of the independent public commission established by the authorities following Daphne Caruana Galizia's assassination were a watershed moment for the Country. The Maltese authorities and parliament reacted with the adoption of a series of welcome reforms to address the shortcomings in the democratic and rule of law institution. While these reforms constitute marked progress, they only partially address the concerns and shortcomings that were noted. A comprehensive and holistic reform of Malta's democratic institutions and system of checks and balances is still urgently needed. A key aspect of this reforms should be a far-reaching reform of the Maltese parliament, with a view to establishing a full-time parliament that can provide proper parliamentary oversight and regain legislative initiative. This would also allow Malta to address a series of important vulnerabilities of its political institutions to conflicts of interest and corruption.

75. We welcome the fact that the need for a holistic reform of Malta's democratic institutions, including its parliament, are supported by all the main political forces in Malta, and indeed by a considerable majority in Malta's society. In this report and resolution, we have outlined a number of recommendations for these reforms that should help guide the Maltese authorities and parliament in this important task. We are convinced that the Council of Europe, and specifically its Venice Commission can, and should, play an important role in assisting the authorities in drafting and implementing these much-needed reforms. The Assembly should continue to follow this process closely and we therefore suggest that the Monitoring Committee, in the not-so-distant future, but in our view not later than in five years, would agree to present its next periodic review report on the honouring of membership obligations by Malta to the Assembly.