

RESILIO

Country Report

Malta



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RESILIO Country Report - Malta

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1. Introduction

The assassination of Maltese anti-corruption journalist Daphne Caruana Galizia on 16 October 2017 and the revelations that emerged from the murder investigation have focussed international attention on the state of the rule of law in Malta. A 2018 review of Malta's constitutional design by the Venice Commission¹ produced a set of recommendations that remain in large part ignored. Similarly, none of the recommendations that arose from a public independent inquiry instigated by the Maltese authorities to investigate Caruana Galizia's assassination have, at the time of writing, been implemented.

Since the introduction of the European Commission's annual Rule of Law report, Malta has been slow in implementing recommended changes and several issues are consistently carried forward from one report to the next.

In 2022 Malta ranked 54th with a score of 51 in the Transparency International Corruption Perceptions Index, down 11 places from a 43rd ranking with a score of 57 in 2012.² Malta ranks 30th in the overall WJP Rule of Law Index but it ranks 22nd in its region of 31 countries. It scores particularly poorly in Regulatory Enforcement (score of 0.59), Civil Justice (0.60), and Criminal Justice (0.63).³ Since 2019, Malta has been downrated from "Full Democracy" to the rank of "Flawed Democracy" by the Economist Democracy Index. Compared with a score of 8.39 in 2006, Malta's ranking was down to 7.57 in 2021, picking up slightly to 7.70 in 2022.⁴

Malta's willingness and ability to fight financial crime were called into question when the European Banking Agency and European Central Bank intervened to direct the Maltese authorities to reverse earlier decisions and shut down Pilatus Bank.⁵ Daphne Caruana Galizia had exposed the bank as a money laundering vehicle for kleptocrats from Azerbaijan, Angola, and other jurisdictions. Most of the bank's directors and senior officials have escaped prosecution, while the ongoing prosecution of the bank itself is faltering. Weaknesses in policing financial crime led to Malta's 'grey listing' by the Financial Action Task Force (FATF) in June 2021. Following the implementation of several administrative and legislative changes, however, Malta registered sufficient progress for its removal from the grey list one year later, in June 2022.

Constitutionally, Malta is a unicameral parliamentary democracy with clear separation between the judiciary and the other branches of government. It is a republic headed by a president with largely ceremonial functions, who is elected by members of parliament. Most power resides with the prime minister, the leader of the party enjoying a majority in the House. Since gaining independence from Britain in 1964, only candidates nominated by either of the two main political parties have been elected to parliament, effectively allowing the larger party a winner-takes-all access to power.

The prime minister appoints government ministers from within the ranks of the majority parliamentary group. Since the victory of the Labour Party in the 2013 general elec-

tions, it has become the practice for all members of the government majority to be employed or appointed to government positions. Since parliament is a part-time institution that compensates members with very small honoraria, positions for back-bench MPs are seen as an assurance of loyalty to the government. Indeed, very little legislative work is conducted by parliament itself as almost the entire agenda is occupied by the approval of legal texts that are prepared by the government. Parliamentarians, and in particular opposition MPs, have little time and no resources to review legislation or prepare informed opinions that might contribute to a debate. Parliament's scrutiny of government conduct is also minimal. MPs can ask ministers questions in a 30-minute procedure at the beginning of nearly every session of Parliament. A Public Accounts Committee is also chaired by the opposition and members can put questions to government officials on the back of reports prepared by the Auditor General. However, since Parliament is a part-time institution, the Committee is very ineffective due to the work backlog. Reports submitted to Parliament by the Ombudsman are habitually ignored. Recent amendments have abolished the required cross-party consensus in appointing the Commissioner for Standards in Public Life, which has reduced confidence in the independence of this institution. Following a case brought to the European Court of Justice by civil society NGO Repubblika, constitutional changes were introduced to remove the formerly exclusive competence of the prime minister when appointing or promoting members of the judiciary. This was in response to a governmental campaign between 2013 and 2019 of stuffing the judiciary with former senior officials of the ruling Labour Party or their associates.

The judiciary is endemically understaffed and under-resourced, making Malta's judicial system among the slowest in the EU. Malta's prosecution service is undergoing a transition to redeploy the prosecution of most crimes from the Police Department to the office of the Attorney General. The transition is behind schedule. The prosecution service has an abysmal success rate when prosecuting serious crimes. Most murder trials end in acquittal irrespective of the quality of the evidence.

Malta has further ignored the recommendation of the Daphne Caruana Galizia public inquiry to adopt anti-racketeering laws. Maltese institutions have consistently failed to prosecute or secure the convictions of politically exposed persons, whose involvement in criminal activities is publicly documented.

Moreover, despite the well-documented murder of Daphne Caruana Galizia six years ago, Malta has failed to adopt any legislative changes to protect journalists and ensure freedom of information.

2. Analysis of the country along the RESILIO model

2.1 Most important systemic factor: institutional resilience

Since 2013, Malta has witnessed a number of episodes of large-scale corruption, which were not prosecuted by the responsible institutions.

These include the privatisation of three public hospitals which has been reversed by the courts on the basis that it is fraudulent;⁶ the concession to build and operate a new power station granted to a consortium led by the owner of a Dubai company mentioned in filings at Mossack Fonseca in Panama as the source of funds for Panama companies set up in the names of the prime minister's chief of staff and for the minister for energy;⁷ the granting of a banking license to an Iranian national using a St Kitts & Nevis passport which was found by a European Banking Authority investigation to have been a systemic money laundering facility;⁸ and the fraudulent provision of severe disability pensions to ineligible citizens who used forged medical documents supplied by a government MP.⁹

In addition to the allegations of corruption by ministers and their associates, Maltese institutions are confronted by persistent allegations of covering up corruption or allowing the evidence to be lost or destroyed. Although Malta's Criminal Code bans bribery or the solicitation of bribes, the public inquiry into the killing of journalist Daphne Caruana Galizia¹⁰ found glaring gaps in its legal framework. The inquiry recommended the introduction of an anti-mafia law modelled on the Italian example, and the specific prohibition of the abuse of power and obstruction of justice by public officials. None of these recommendations have been taken up by the Maltese authorities. The inquiry further found significant legislative gaps in the criminal code, including the absence of a meaningful law against the abuse of power and the obstruction of justice by persons in public office.¹¹

Despite compelling evidence in the public domain, Malta's prosecution service, its police force, and judiciary have been unable or unwilling to secure convictions in even the most egregious corruption cases. Since the Labour Party's

electoral victory in 2013, it has become clear that Malta's institutions are largely unable to restrain any misconduct by members of the executive as long as that misconduct includes the complicity or at least the blessing of the prime minister. As such, corruption has been systematised and legitimised as part of the governing Labour Party's political programme. This impacts public procurement, public sector employment, and law enforcement (or lack of it) when suspects are politically connected. It also has an environmental impact, due to the effective deregulation of building permits and the disposal of public land to party funders. The disposal of public land – which, given Malta's small size comes at a considerable premium – is used to petrify political power structures and secure the advantage of private interests. In several instances, public land was assigned for development to private individuals at a fraction of its market value. The individuals turned out to be funders of political parties in arrangements that are widely perceived as *quid pro quos*.¹²

Two further aspects of government misuse of public assets in the interest of its retention of power are the granting of building permits, including permits which under normal circumstances would be considered undesirable and unlawful, and the recruitment of people in public sector jobs without any evidence of any business requirement for their employment. Both aspects are considerably accelerated in the months approaching general elections.¹³ In the Maltese context, where building space is at a premium, competition for land-use is very tough, and the landscape is extremely fragile, planning regulation is extremely vulnerable to pressures. The private funding of political parties and the transactional nature of electoral politics often over-ride the lawful enforcement of planning rules and regulation is short-circuited by informal and corrupt arrangements behind closed doors.

The Maltese Criminal Code contains provisions that can be applied to prosecute bribery or the solicitation of bribes. In the 2000s, these provisions were used to successfully prosecute judges in high-profile bribery cases.¹⁴ Nevertheless, a law setting up a Permanent Commission Against Corruption, which was adopted in the early 1990s, has had no effect in bringing about any convictions in the entire duration of its existence.¹⁵

2.2 Most important subsidiary factor: media resilience

Independent media in Malta are extremely underfunded organisations, where journalists have very poor job secu-

rity and high uncertainty about their employer's sustained viability. They are forced to work in skeleton structures and have very poor prospects of improving their income or career progression.

Beyond media owned or controlled by the government, there is very little trade union representation for journalists. The association of journalists, the *Istitut tal-Ġurnalisti Maltin* (IGM), is staffed by volunteers and has no external funding to sustain any meaningful operations.

Training in journalism and related subjects such as media studies is available at the University of Malta and the Malta College for Arts, Science, and Technology, but qualifications are not a requirement for entry into the profession. There is very little in-service training and even when this is offered through external funding sources, participation is low because of limited staffing.

The government exacerbates the financial pressures on independent media organisations by manipulating the market through its discretionary spending on advertising. Despite repeated calls for regulation of and transparency in government spending, including by the Daphne Caruana Galizia public inquiry, no such regulation exists yet. The government is able and willing to use spending and (the threat of) its withdrawal to create incentives and disincentives for loyal reporting. Similarly, the government allocated emergency funding to media houses during the Covid pandemic following private negotiations with the owners, actively discriminating against independent and critical media while depriving the public of sufficient information with which to formulate objections.

Among the many Caruana Galizia murder inquiry recommendations that the authorities have refused to adopt are the institution of protections from SLAPPs. In response to the government's proposals, the press freedom NGO Article 19 commented that 'the provisions are not clear and do not provide sufficient protection against SLAPPs. Indeed, the protections are only directed towards SLAPPs initiated in third countries, offering no protection against those initiated in Malta. Without protections in Malta, a SLAPP case from a third country could still be enforced in Malta according to national standards.'¹⁶

There is no commitment to allow public service media journalists a sufficient measure of autonomy to report in any manner that is critical of the authorities. This has a permanent and immutable chilling effect on their work,

which ranges from neutral to enthusiastically supportive of the government. Journalists employed by political parties saturate the media landscape with partisan propaganda in the space that democracy would normally reserve for independent and critical journalism.

There are currently two pending court cases brought by the author claiming violations of media freedom: (1) a complaint about the refusal of the prison and detention authorities to allow the author controlled access to detention facilities to verify and report on allegations of degrading conditions and treatment by state officials; and (2) a complaint about the chilling effect of an appeals court's libel verdict in a case of expression of opinion on a public and controversial matter.

Journalists also experience difficulties and threats when performing their work. As a representative example, the author's experience has included the physical assault of his spouse in a public space and the destruction of her mobile phone,¹⁷ explicit threats of violence over electronic media that led to court-mandated protection orders,¹⁸ anonymous threats that required physical police protection at home for several months, and the author's departure from Malta for several months for personal safety.¹⁹ This took place in the context of systemic mischaracterisation on party political media, including the unauthorised use of the author's face in general election campaign billboards by the ruling Labour Party, representing the author as a journalist and a figure of hate.²⁰ This experience is shared by other journalists who work on matters that are inconvenient to the authorities for whatever reason.

Independent media are sometimes forced to examine the viability of their continued existence, primarily due to financial pressures that make it increasingly difficult to survive and participate in a market where the state is an infinitely resourced competitor, and media owned by political stations invoice other channels to camouflage the illegal funding paid to the parties that own them. Individuals working in the sector are also discouraged by the time, financial, and human cost of defending themselves in court from lawsuits brought against them for strategic reasons. Court cases, even if manifestly vexatious from the outset, can last years and consume several days off work for defendants before they are vindicated by a final decision. The threat of being identified on political TV, particularly the ruling party's station, as some form of enemy for having reported on or criticised the authorities is ever present and has a very real chilling effect on journalists.

The example of the life and fate of Daphne Caruana Galizia remains a terrifying warning of the possible destiny of anyone who becomes a regular target of the ruling party's media.

In the context of a small country like Malta, notoriety earned on TV, however baseless in fact, is quickly reflected in open hostility on the street, which can make life for the journalist and their family difficult, and eventually dangerous. In addition to these real hazards, the fact that journalism is a grotesquely underpaid profession makes it ever harder for news organisations to recruit and retain talented and trained journalists.

2.3 Most important systemic factor: resilience of public discourse

Party leaders in Malta very rarely engage in discourse that could be perceived as incitement to hatred or violence. At the topmost levels, exchanges are heated but reasonably civil. There are exceptions to this, including recent ones. At the height of the controversy following the revelations of the Panama Papers, as well as decisions taken by then prime minister Joseph Muscat to retain senior politicians exposed for corruption, political discourse grew much harsher by local standards. The bulk of the viscous rhetoric was focused on then opposition leader Simon Busuttil.

On the second tier, mid-ranking politicians of the Labour Party have on several occasions used harsh and uncivil language to target political rivals, journalists, or critics of their party and government. This is topped by frenzied propaganda in Labour Party media that identifies targeted individuals as enemies of the people and mobilises online trolling and public heckling from their support base. In the wake of these organised hate campaigns, supporters have then used openly violent language, threats of violence, and in rare cases, physically or verbally assaulted targeted individuals. Often the victims of these assaults were not rival politicians but journalists and volunteer activists. This was particularly fierce in the case of campaigners for justice for Daphne Caruana Galizia.

Participants in the political process apply restraint in their conduct to the extent that there is very little physical violence or overtly unfair conduct during the electoral and political process. It should be said that behaviour that might elsewhere be considered as unfair and inappropriate is more widely accepted and considered fair play in the Maltese context. This includes "treating"²¹ voters, negotia-

ting publicly funded rewards in exchange for voting loyalty, using public assets for electioneering, and similar activities. The fact that these methods are not considered unduly unfair tends to preserve the peace on matters that could otherwise be the cause of heated disagreements.

Public broadcasting is systemically abused to the government's advantage. The ruling party uses government buildings and assets for electioneering. Rules on public sector recruitment or building permits are abandoned to secure individual voting support. Voters are systematically treated in breach of electoral laws. Around all this, however, there persists an unwritten code of conduct that restrains behaviour to an extent that allows the process to be free of violence. The language of public discourse is frequently uncivil. This would not be language normally used by the most senior political leaders, but ad hominem attacks and aspersions are the normal stock in trade for the ruling party's media and mid-ranking politicians.

It is normal for the opposition to have a diametrically opposed viewpoint to government policy or conduct. That opposing view is normally acknowledged, though given less weight in public service reporting. The dual nature of the discourse means that often nuanced, non-partisan analysis is treated with suspicion or excluded from the debate altogether. This helps isolate analysts such as Daphne Caruana Galizia. At different times, the media and supporters of both parties accused her of working for the other side, seemingly finding it impossible to compute the possibility that she was working for neither.

Public debate on any issues touched by political parties is almost certain to be highly polarised and binary. However, matters that are decided by ballot are normally settled for several decades if not permanently, and objections, however polemic, are usually dropped. This has happened in several high-profile debates such as the question on whether Malta should become an independent country (1964), whether Malta should become an EU member state (2003), or whether Malta should introduce divorce legislation (2009).

Political parties in Malta have traditionally operated daily or weekly newspapers, radio services since the early 1990s, and TV stations since the late 1990s. These media have contributed considerably to the confrontational and binary nature of public discourse by presenting both competing and mutually irreconcilable versions of facts. This has also contributed to a deeply rooted culture of choo-

sing a narrative based on the party that initiates it rather than any objective measure of its credibility. Both political parties, though certainly more so in the case of the Labour Party, have resorted to wilful misinformation or disinformation in their effort to discredit critics or figures from opposing political forces. These campaigns have included intentional misrepresentation in propaganda exercises thinly masked as news coverage carried by political party media. Less formal but no less effective campaigns to discredit critics, most famously in the case of Daphne Caruana Galizia, have included the wide circulation on social media of manipulated images misrepresenting quotes and falsely attributing them to the target of the disinformation campaigns.²² Several news and opinion websites, including the one operated by the author, have been subjected to misrepresentation through clones made to look like the original but categorically misrepresenting their views.²³

Given the distinctly polarised nature of the debate, discussion on most if not all policy matters is rarely nuanced and often reduced to mutual personality jibes, aspersions, and efforts to discredit the credibility of the other side. Issues are rarely debated in any depth including in parliamentary debates that are usually free of substantive content. Debate about nearly every subject in political discourse is polarised. The government frequently attempts to discredit any criticism it faces by describing it as 'political,' 'partisan,' or part of the 'political game,' exploiting the habitual polarisation to suffocate any nuanced opinion grounded in facts with the baseless accusation of a partisan motivation.

3. Impact of crises on the rule of law: the case of Daphne Caruana Galizia

On 16 October 2017, Malta's foremost investigative journalist Daphne Caruana Galizia was killed by a car bomb outside her home. Over the previous years she had exposed, documented, and analysed systemic corruption in the government of then prime minister Joseph Muscat.

It would later emerge that she was in possession of evidence that Yorgen Fenech, a lead partner in a consortium contracted by the Labour government to supply the state with energy for the next 18 years, also held a Dubai company which was in turn identified by companies in Panama owned by Joseph Muscat's chief of staff, Keith Schembri, and the minister responsible for energy, Konrad Mizzi,

as a source of income far in excess of their earnings as government officials. Mr Fenech was eventually charged with commissioning the murder of Ms Caruana Galizia and is awaiting trial. Prime Minister Joseph Muscat was a friend of Mr Fenech, having received expensive gifts from him, and through Keith Schembri, the two discussed Mr Fenech's intention of leaving Malta on the eve of his arrest.

The murder of Ms Caruana Galizia led to calls for justice for her, including for appropriate action to be taken against the perpetrators of the unlawful acts and corruption she had exposed, for which she was killed.

The Labour Party and its media had spent the previous three decades regularly targeting Ms Caruana Galizia as a figure of hate, an enemy of the Labour Party and the wider Maltese population. But the denigration did not stop with her murder as senior Labour officials, including officers of the office of the prime minister, and the Labour Party's media, sought to discredit any notion that Ms Caruana Galizia's death was in any way related to her work on exposing corruption, which, they argued, did not exist at all. Labour Party media also targeted civil society leaders and the victim's mourning relatives. Persons directly involved in the murder – her assassins and the person who hired them – have either admitted to her murder or are awaiting trial for it. However, there has been no prosecution of the corruption that Daphne Caruana Galizia exposed and for which she was killed.

There has also been determined resistance to implementing improvements to the eroded state of the rule of law, which was found by investigations that followed the murder. The government has ignored most of the recommendations made by the Venice Commission, the European Parliament, GRECO, the OSCE, and the European Commission, and has taken up none of the recommendations put forward by the public inquiry the government itself appointed.

The assassination of Daphne Caruana Galizia was found by the inquiry as being the most severe consequence of a silent but severe erosion in the rule of law in Malta. In the words of the inquiry:

‘what is striking in this case is the gravity and extension of this impunity at the highest level which led to the executor of the crime to feel safe to commit it.’²⁴ The findings of the inquiry should have been an opportunity to address those weaknesses in the rule of law. By design, the Maltese au-

thorities have ensured that such weaknesses are not addressed.

4. Conclusion

With limited exceptions, such as the removal of the power of the prime minister to stuff the judiciary with political cronies following a court case brought by NGO Repubblika in the European Court of Justice, Malta has failed to address the documented weaknesses in the rule of law that allowed for Daphne Caruana Galizia to be assassinated.

While it could be argued that the rule of law erosion before Caruana Galizia was assassinated may not have been perceptible to anyone but the closest observers, the murder sharpened everyone's immediate awareness of the severity of the situation.

Malta remains a dangerous place for journalists to do their work. That fact alone likely means that there is a chilling effect on the free flow of information, where citizens are less informed than they need to be to make democratic decisions.

This is coupled with severe weaknesses in the design of the political system, with political parties that are entirely dependent on private funding, systemic opacity in political funding, and the dominant presence of political parties in the media.

The police are the only agency in the country that can detain a person and bring them to justice. They have however proven frequently unwilling to take any action against persons of political influence or with access to political influence. The agency is both endemically under-resourced and heavily manipulated by direct political intervention, both contributing to a systemic failure in prosecuting politically engaged persons believed to have committed serious crimes.

This enables grand corruption which has the dual objective of privately enriching persons in public office and of perpetuating the retention of political power, ensuring there is no limitation on future enrichment.

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About the author

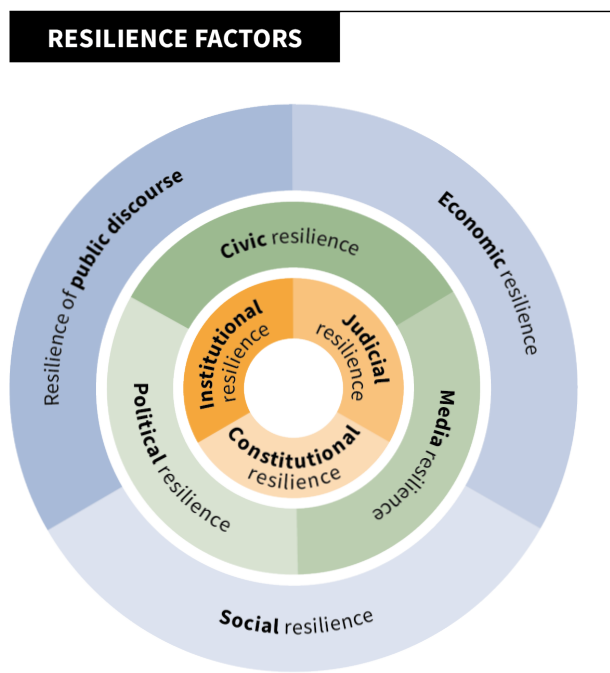
Emanuel Delia writes on manuedelia.com and The Sunday Times of Malta. He is one of the Founders of the rule of law NGO Repubblica. He holds an MSc in Comparative Politics from the London School of Economics.

About the project

RESILIO aims to identify institutional and societal factors that make the rule of law more resilient, thus adding a constructive contribution to academic and policy debates. It draws on a “thick” definition of the rule of law, understood as closely connected to democracy and fundamental rights. The resilience of the rule of law means that the rule of law can experience hazardous events or incremental threats without losing its core function, structure and purpose.

About the paper

This paper is part of the **RESILIO Country Report series**. It is a collection of compact analyses that assess the source of rule of law resilience in each EU member state by examining the most prominent resilience factors, using the analytical framework of the RESILIO model.



RESILIO offers a multi-layered model of the rule of law resilience. Systemic dimension (orange) reflects upon the resilience of the legal setup; subsidiary dimension (green) looks at the phenomena and tendencies present in societies as possible facilitators; and contextual dimension (blue) analyses the broader habitat, determined by structural and systemic variables like economic growth, social cohesion, and general political climate. RESILIO also takes into account the horizontal effects of unpredicted and unprecedented crises that can affect all dimensions of rule of law resilience with different intensity.

While each factor is necessary for a resilient rule of law, they are only sufficient in combination.

The considerations in this paper are compatible with the developed conceptual model of the resilience of the rule of law. They focus on **social resilience** as a contextual factor strengthening the rule of law.

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Resilience observatory
on the rule of law in Europe

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For more information, visit the project website: www.iep-berlin.de/en/projects/future-of-european-integration/resilio/

