

Legal environment and space of civil society organisations in supporting fundamental rights

Malta

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Contractor: The People for Change Foundation

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1 Five most significant civic space developments in 2020

1.1 Civil society protests

A series of protests took place in November 2019, following the arrest of businessman Yorgen Fenech for his alleged role in the murder of Daphne Caruana Galizia. Malta was shaken by a series of media revelations linking the murder to individuals in the government including a Minister, the Prime Minister's Chief of Staff and the Prime Minister himself. Significant groups led by civil society groups including Occupy Justice, Repubblika and blogger Manuel Delia protested on the streets of Valletta almost daily, demanding the resignations of then Prime Minister Joseph Muscat and other members of the government.¹ The anti-corruption protests continued in 2020.² On 5 January 2020, several NGOs organized a demonstration,³ on the theme of *New Republic New Malta*.⁴ A week after that protest Joseph Muscat resigned as Prime Minister. On 16 September 2020, protesters held a further anti-corruption demonstration in front of the Auberge de Castille (Office of the Prime Minister), arguing that government corruption is facilitated by ministers' failure to intervene against it.⁵ A month later, the NGO Occupy Justice displayed 16 banners in various locations to commemorate the 37 months since the murder of Daphne Caruana Galizia.⁶

The problem of press freedom and continuing intimidation of journalists in Malta has been highlighted different times in recent years by various organisations, notably following several incidents in which journalists have been prevented from doing their jobs freely. In February 2020, the decision on the anti-SLAPP Bill presented by the Nationalist Party in an attempt to provide more legal protection to journalists was postponed by the Parliament of Malta.⁷ The assassination in 2017 and its aftermath brought to light the question of how strategic lawsuits against public participation (SLAPP) have often been used in recent years to silence many critics and investigative journalists in Malta and other European countries.⁸

Civil society protests in 2020 also covered the construction sector and the environment. On 2 March 2020, the collapse of a building in Hamrun led to the death of Miriam Pace. Five days later, hundreds of protesters led by Moviment

¹ Times of Malta, ['The power of civil society to sow seeds of change'](#), 23 November 2020

² Aditus, [Our Island III: SABAR](#)

³ Malta Today, [Civil society assembles in Valletta for first national protest of 2020](#), 5 January 2020

⁴ Repubblika, [A new Malta, A New Republic](#), 1 May 2020

⁵ Times of Malta, ['See no evil, hear no evil' - surprise anti-corruption protest in Valletta](#), 16 September 2020

⁶ Malta Today, [Protest banners across Malta recall Daphne Caruana Galizia's assassination](#), 16 November 2020

⁷ Civicus, [SLAPP - a threat to free speech and the press](#), 3 October 2020

⁸ [Protecting civil society space: strengthening freedom of association, assembly and expression and the right to defend rights in the EU](#), October 2020.

Graffiti⁹ and people who lost their homes, due to building collapses, gathered in Hamrun to manifest against the "dictatorship" of the developers.¹⁰ Furthermore, on 31 October, environmental activists gathered in front of the Prime Minister's office to protest the decision to hand over the Miżieb and Aħrax woods to the hunting federation.¹¹

Malta also joined the global "Black Lives Matter" protests in June 2020. Hundreds of people took to the streets and gathered in front of Parliament to protest against racism and to demand justice for the murdered migrant Lassana Cisse, killed in a shooting in April 2019. A soldier is currently under trial for what investigators have described as a racially motivated murder.¹² These demonstrations were opposed by another group of protesters, made up of people who proclaimed themselves to be patriots and follow the slogan "All Lives Matter", which took to the streets with the aim of defending the right of the Maltese to enjoy their country.¹³ A number of racist remarks, including a nazi salute were reported in the counter-protest.

1.2 Censorship and SLAPP legislation

On 17 August 2020, the Institute of Maltese Journalists issued a press release condemning the Broadcasting Authority's controversial decision to "censor" journalists' questions during a press conference on COVID-19 held by Deputy Prime Minister and Minister for Health, Chris Fearne and Superintendent of Public Health Prof Charmaine Gauci. The Institute specified that State-sponsored censorship is a totally unacceptable act for a truly democratic society.¹⁴ The criticism was also repeated by the NGO Repubblika.¹⁵ The Broadcasting Authority justified its decision by citing a legal obligation to prevent "unexpected questions" which could turn a broadcast containing information of national importance into a platform for political statements.¹⁶ The Broadcasting Authority decision of 16 June 2020, came following a complaint filed by the Nationalist Party against public broadcaster PBS Ltd regarding a live broadcast of a press conference held by the Prime Minister along with two other government ministers on 8 June.¹⁷ The Nationalist Party complained that ministers used a partisan tone in their speeches and therefore abusive use was made of public broadcasts. In February, the National Party had filed draft legislation in parliament aimed at strengthening

⁹ Moviment Graffiti, [Protest – Down with the Developers’ Dictatorship](#), 4 March 2020

¹⁰ Times of Malta, [‘Liars and murderers’: Hamrun protest demands end to construction impunity](#), 7 march 2020

¹¹ Times of Malta, [Activists sit down in Castille Square to protest hunters' woodlands grab](#), 31 October 2020

¹² Malta Today, [Black lives matter: Malta joins worldwide anti-racism protest](#), 8 June 2020

¹³ The Malta Independent, [Watch - 'Black Lives Matter' vs 'All Lives Matter': Two groups of protesters in Valletta](#), 8 June 2020

¹⁴ The Institute of Maltese Journalists, [BA FORCES PBS TO CENSOR PRESS CONFERENCES](#), 17 August 2020

¹⁵ Repubblika, [Press Release PR 92/2020](#), 18 August 2020

¹⁶ Times of Malta, [BA defends controversial decision to 'censor' journalists' questions](#), 19 August 2020

¹⁷ Broadcasting Authority, [TVM - News Conference - 8 Ta' Ġunju 2020](#), 26 June 2020

journalists' protection from SLAPP (strategic lawsuits against public participation) and other actions that threaten a free press.¹⁸ On 17th October 2020, the Institute of Maltese Journalists Malta issued the second press release¹⁹ condemning a new censorship of public information by the Broadcasting Authority.

Moreover, a further development in relation to censorship occurred in December 2020. The executive chairperson of the National Book Council, Mark Camilleri, was asked to resign from his position by education permanent secretary Frank Fabri following a Facebook post in which Camilleri used a language deemed offensive and "inappropriate" for a public official. The post concerned aspects of the public inquiry on the murder of Daphne Caruana Galizia. The episode has further fueled the debate over censorship as the executive chairperson stated that such a decision hindered his freedom of speech. Meanwhile, his post has since been removed by Facebook over alleged "harassment", with Camilleri barred from posting.²⁰ On 18 December, it was reported that the Minister for Education, Justyne Caruana had withdrawn the request for resignation.²¹

1.3 Search and Rescue NGOs limitations

The COVID-19 pandemic has imposed numerous limits on personal freedoms in an attempt to stem the spread of the virus, but it has also been used as a pretext to limit the work of NGOs that carry out search and rescue (SAR) at sea. Whilst experts have called on governments to involve civil society and NGOs representing the most marginalized and therefore probably the most affected groups in decision making, it has also been noted that states, including Malta, have often used COVID-19 as an excuse for not guaranteeing the rescue and assistance of migrants at sea.²² In April 2020, the Maltese authorities decided to close the ports, declaring them unsafe,²³ and prevented the entry of SAR NGO vessels carrying rescued migrants and preventing their disembarkation.²⁴ For this reason, several NGOs operating in the Mediterranean were unable to coordinate and conduct their activities and were blocked off the Maltese coasts for days attempting to obtain permission to access Malta's ports.²⁵

¹⁸ Malta Today, [PN tables anti-SLAPP draft law aimed at protecting journalists](#), 26 February 2020

¹⁹ The Institute of Maltese Journalists, [Journalists' questions regarding COVID19 measures censored on TVM...again](#), 17 October 2020

²⁰ Malta Today, [Book council head told to resign over online tiff with Yorgen Fenech lawyer](#), 16 December 2020

²¹ Malta Independent, ['No hard feelings' – Education Minister on withdrawing Mark Camilleri resignation request](#), 18 December 2020.

²² [Protecting civil society space: strengthening freedom of association, assembly and expression and the right to defend rights in the EU](#), October 2020.

²³ European council on refugees and exiles, [Med: 150 Stranded at Sea as Malta and Italy Declare Ports "unsafe"](#), 20 April 2020

²⁴ Malta Today, [Malta tells Germany it will refuse disembarkation to rescued Sea-Eye migrants](#), 7 April 2020

²⁵ Times of Malta, [95 migrants drifting in Malta's SAR zone – NGO](#), 26 July 2020

Some NGOs have raised concerns for actions taken to prevent the arrivals of refugees and migrants by sea. In September 2020, Amnesty International published a report criticising Malta's change in approach in 2020 towards sea arrivals, arguing that the government has used dangerous and sometimes illegal measures to avoid assisting refugees and migrants, such as: arranging unlawful pushbacks to Libya, diverting boats towards Italy rather than rescuing people in distress, illegally detaining hundreds of people on ill-equipped ferries off Malta's waters, and signing a new agreement with Libya to prevent people from reaching Malta.²⁶

1.4 Civil society engagement with the proposed Equality Bill

The work on the Equality Bill has been ongoing since 2015.²⁷ The final version was introduced by the Honourable Helena Dalli, M.P., Minister for European Affairs and Equality, and read for the first time in Parliament at the Sitting of the 17th July 2019.²⁸ The Act prohibits discrimination in various spheres of life and promotes equality. It incorporates the most relevant provisions of the Council Directives implementing the principles of equal treatment between people irrespective of race or ethnic origin,²⁹ of equal treatment between men and women in the access to goods and services and their supply,³⁰ of equal opportunities and treatment of men and women in matters of employment and occupation,³¹ establishing a general framework for equal treatment in employment and occupation,³² and applying the principle of equal treatment between men and women engaged in an activity in a self-employed capacity.³³

The Bill has been welcomed by many local NGOs.³⁴ In November 2019, Aditus Foundation published recommendations to improve the safeguarding and equality of human rights under the proposed equality legislation. For example, the law must refer to Malta's international policy obligations under of the Charter of Fundamental Rights of the European Union and the European Social Charter; the definition of "health" and the relationship between the Act and the Equal Treatment in Employment Regulations, (Subsidiary Legislation 452.95) should be clarified.³⁵

²⁶ Amnesty International, [Malta: Illegal tactics mar another year of suffering in central Mediterranean](#), 8 September 2020

²⁷ Times of Malta, [One law to rule them all - Sandro Spiteri](#), 3 June 2018

²⁸ House of Representatives, [Equality Bill](#), 17 July 2019

²⁹ The Council of the European Union, [COUNCIL DIRECTIVE 2000/43/EC](#), 29 June 2000

³⁰ The Council of the European Union, [COUNCIL DIRECTIVE 2004/113/EC](#), 13 December 2004

³¹ The European Parliament and the Council of the European Union, [DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#), 5 July 2006

³² The Council of the European Union, [COUNCIL DIRECTIVE 2000/78/EC](#), 27 November 2000

³³ The European Parliament and the Council of the European Union, [DIRECTIVE 2010/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#), 7 July 2010

³⁴ See for example: Integra Foundation, [Support the Equality Bill](#), 10 October 2020

³⁵ Aditus Foundation, [Unfulfilled potential: human rights and the Equality Commission Bill and the Equality Bill](#), November 2019

Concerns over the Bill have been raised by some conservative and Catholic NGOs in 2020. Catholic Voices of Malta, for example, considers that some aspects of the Bill go beyond legitimate principles of equality and that it seeks to address equality by attempting to eliminate differences. The organisation's criticisms focused on the education system and the specificity of teaching, noting that the law does not allow religious schools and other public or private organisations to apply policies for teachers within educational establishments, whose ethos is based on a creed or a religion, and to require people who work for them to act in good faith and loyal to the organisation's ethics.³⁶ The Life Network Foundation Malta also expressed concerns about the impact that the new law may have on religious freedom and expression and pushed for the introduction of a clause on religious freedom and conscientious objection.³⁷ Doctors for Choice, on the other hand, completely opposed the inclusion of this clause in the draft equality law. The organisation believes that the conscientious objection clause may cause professionals to refuse to offer services to clients for vague moral reasons.³⁸ The Maltese non-profit organisation MGRM has also opposed the inclusion of a conscientious objection clause, deemed antithetical to the purpose of the law, because it could introduce significant loopholes by allowing people and institutions to discriminate against others.³⁹

1.5 Advocacy and engagement in public consultations:

In May 2020, a Working Group composed of experts from the government and civil society was established with the task of drafting the first Plan of National Action against Racism and Xenophobia (NAPRAX).⁴⁰ The Plan proposes effective and measurable actions in various areas of life to tackle racism, racial discrimination, intolerance, and xenophobia. The first step in this process was the publication of a public consultation by the Parliamentary Secretary for Equality and Reforms, Rosianne Cutajar. The document, published on 9th October 2020, contains a series of questions addressed to the public and identifies 11 key areas (knowledge and research; meeting places; debate and democracy, children, youth and education; employment; housing; criminal justice/law enforcement; public services; freedom from hatred; integration; international efforts) where concrete actions could help address racism and xenophobia and which could be further developed into concrete measures.⁴¹ Recently, the Maltese NGO Repubblica published an article in which it claims that the contents of the anti-racism consultation document are deeply inconsistent with the policies implemented by

³⁶ Catholic Voices Malta, [Catholic Voices Malta Position Paper on the Equality Bill and Parents' and Children's rights to a Catholic education, and other concerns](#), 13 June 2020

³⁷ The Life Network Foundation Malta, [At the mercy of equality](#), 16 September 2020

³⁸ Doctors for Choice, [The right to access healthcare](#), 8 September 2020

³⁹ MGRM, [The Equality Bill is a golden opportunity for Malta to enact a law that will improve our living together as a society based on democratic principles](#), 18th November 2020

⁴⁰ Times of Malta, [First national action plan against racism and xenophobia](#), 9 October 2020

⁴¹ Parliamentary Secretariat for Equality and Reforms, [Towards a National Action Plan against Racism and Xenophobia](#), 9 October 2020

the government, particularly regarding the rescue of migrants at sea and their integration, and with the discourse applied by public authorities, in particularly the Prime Minister. In light of these considerations, Repubblika suggests a series of initiatives to be considered in the context of the consultation, including: all residents of Malta, regardless of their place of birth or the place of birth of their parents, must have the right to participate in the country's democratic process; all long-term residents of Malta should be automatically placed on a path to citizenship; the detention of migrants undergoing proceedings to review asylum applications must be restricted to the shortest possible time.⁴²

On 12th of May 2020, the National Statistics Office (NSO) presented a public consultation on the Population and Housing Census which will take place on Sunday 10th October 2021. The public consultation on additional issues and questions that could potentially be included in the census is a part of the census process.⁴³ Several human rights NGOs issued a public statement, urging the authorities to ensure that the next census includes questions that capture Malta's rich diversity, in order to gather statistical information on race and ethnicity, faith, and gender diversity in particular, in addition to the information already gathered. The organisations also support the commitment of state institutions to social inclusion, reflected in the choice of its slogan "Everyone Matters", and express their willingness to further support and contribute to this process.⁴⁴

2 Example(s) of promising practice

2.1 Vitalita' ... mal-Volontarjat:

A series of twenty-six TV programmes entitled Vitalita' '... mal-Volontarjat was produced by the Malta Council for the Voluntary Sector and broadcast on the TVM channel from July to September 2020. These programmes aired every Monday and Friday afternoon at 6.10 pm. The main purpose of these broadcasts was to introduce and bring the Maltese public closer to the reality of volunteering. Indeed, in each programme, two volunteer organisations shared information and expertise related to their activity with viewers. A further objective of the information programmes was to raise public awareness by covering a wide range of topics: education, environmental protection, disability, immigration, inclusion of vulnerable groups, animal protection, etc.⁴⁵ Such an initiative could have a positive impact on a large segment of the population, leading not only to positively reconsider the world of volunteering, but also to encourage members of the public to become volunteers.

⁴² Repubblika, [Response to anti-racism consultation document](#), 19 October 2020

⁴³ National Statistics Office, [Census of Population and Housing 2021](#), 12 May 2020

⁴⁴ Jesuits in Malta, [Submission of Feedback towards Public Consultation on Census of Population and Housing 2021](#), 31 May 2020

⁴⁵ Malta Council for Voluntary Sector, [Vitalita'... mal-Volontarjat](#)

2.2 Civil Society Fund

On 1st April 2020, the Malta Council for the Volunteer Sector on behalf of the Parliamentary Secretariat, Ministry of Education and Employment, published the guidelines of the Civil Society Fund,⁴⁶ according to which selected applicants will be provided with financial assistance in order to facilitate their affiliation and participation in European groups, associations, federations, networks of European confederations and training related to EU policies/programs. The main purpose of this fund is to support the engagement of civil society organisations in activities with other organisations not only at the local level but also at the European level with the aim of encouraging the exchange of best practices, knowledge and information between organisations, of enabling CSOs to participate effectively in the decision-making process at European level and to better educate their members on EU matters related to their respective fields of competence.⁴⁷

The eligible candidates are: voluntary, self-governing organisations not subject to direction by public authorities, independent of political control and enrolled and compliant with the Commissioner for Voluntary Organisations in terms of the Voluntary Organisations Act; Social Partners or other CSOs with official recognition under some specific law or regulation or administrative act; and CSOs that are established for the specific purpose of meeting needs in the general interest or in the interest of their mission statement and not having an industrial or commercial character. The guidelines also specify that financial contribution from the Civil Society Fund will not exceed the amount of €6,000.00 and only activities carried out from 1st of July 2019 until the 31st of March 2020 are eligible.⁴⁸

⁴⁶ Malta Council for Voluntary Sector, [Civil Society Fund](#), 1 April 2020

⁴⁷ Malta Council for Voluntary Sector, [Civil Society Fund](#), 1 April 2020

⁴⁸ Malta Council for Voluntary Sector, [Voluntary Organisations Act](#), 11 December 2007

3 Any other developments

3.1 Financing of Civil Society Work (an emergency measure related to COVID-19)

On 18th June 2020, the Malta Council for the Voluntary Sector (MCVS) issued applications for the Operational Assistance Scheme for VOs (Voluntary Organisations), a one-time budget, which is being allocated to the Voluntary Sector in relation to the COVID-19 Pandemic. The Scheme is a fund managed by MCVS on behalf of the Parliamentary Secretary for Youth, Sports and Voluntary Organisations and supported by the Ministry of Finance. The primary purpose of this programme is to assist volunteer organisations that, due to the COVID-19 pandemic, may have encountered significant difficulties and challenges for their organisation, including job losses, or reduced operations which could result in the closure of the organisation or that could encounter difficulties in maintaining and restarting the operation in the post-pandemic phase. The total amount of funds allocated in the COVID-19 Assistance Plan for VOs will be € 3,000,000.00. The Scheme ran from 16th March 2020 to 30th September 2020.⁴⁹

3.2 Data protection and engagement of civil society

A news of a massive voter data breach surfaced on 1 of April 2020 in an article published by Times of Malta. The announcement was first posted on Twitter by the online monitoring service Under the Breach, which reported the breach of personal data of 337,384 voters who were freely available online and who had been left exposed by a Maltese IT company, the C- Planet IT Solutions Ltd. The leaked personal information included names, personal addresses, mobile and fixed phone numbers, dates of birth, and a numeric identifier that indicated each individual's political opinion (social democrat or conservative). According to the monitoring service, the data was available for anyone to access without a password or other authentication.⁵⁰

The Noyb organisation filed a complaint against C-Planet IT Solutions and requested the Maltese Data Protection Authority to issue a fine of up to €20 million, considering that the leaked database contained the personal data and political opinion of about 98% of the Maltese electorate.⁵¹ In addition, the civil society organisations Repubblika and the Daphne Caruana Galizia Foundation launched a cumulative action against C-Planet IT Solutions Limited, and against any other

⁴⁹ Malta Council for Voluntary Sector, [Operational Assistance Scheme for VOs](#), 18 June 2020

⁵⁰ Times of Malta, [Investigation after huge data leak leaves 337,000 voters' records exposed](#), 1 April 2020

⁵¹ Noyb, [Maltese voter data leaked online. noyb files complaint](#), 12 November 2020

entity, political party or individual who was involved, or has contributed towards, the violation of the protection of personal data.⁵²

3.3 Property control agreement:

On 9 October 2020, the Maltese government signed a three-year management agreement with the Federation for Hunting and Conservation (FKNK) over L-Aħrax and Mizieb woodlands, without issuing any press call for the event. Indeed, the government sent just a press release announcing that the Ministers of Transport, Environment and Gozo were present, together with Parliamentary Secretary for Lands and Construction, Chris Agius, at the signing of two agreements between the Lands Authority⁵³ and FKNK and between the Environmental Resources Authority⁵⁴ and the FKNK.⁵⁵ The government authorities have also specified that the two agreements introduced specific obligations for Federation for Hunting and Conservation, which include the maintenance, upkeep of cleanliness and general upkeep of the sites, health and safety on the sites and clear signage. Moreover, it has been assured that the sites will be accessible to the public outside hours of the hunting season.⁵⁶

The government's intention to sign the agreement with FKNK came under criticism from NGOs and civil society as early as May, when plans for signing it were initially exposed.⁵⁷ A coalition of about 60 NGOs, Spazzji Miftuħa, was created to lobby for the conservation of public spaces and to object the limitation of public access to places of natural amenity. In May 2020, the coalition launched a petition to stop the deal, collecting more than 26,000 signatures. When the news regarding the signing of the agreement leaked, 8 different NGOs filed a judicial protest against Transport Minister Ian Borg, Parliamentary Secretary Chris Agius and the Lands Authority, requesting them to cease handing over large parts of the countryside to the hunting organisation.⁵⁸ Some NGOs, including Moviment Graffiti and BirdLife Malta, criticised the signing of the secret agreement, saying it was done without inviting the media or NGOs, for fear of civil protest.⁵⁹

⁵² The Daphne Caruana Galizia Foundation, [Collective action against C-Planet data breach](#), 3 April 2020

⁵³ [Agreement on Management and Operation of the Mizieb and Aħrax Areas](#), 9 October 2020

⁵⁴ [Memorandum of Understanding \(MoU\) for the conservation of the natural environment of L-Aħrax and Il-Mizieb](#), 9 October 2020

⁵⁵ Times of Malta, [Government signs off Mizieb and Aħrax to hunters in private event](#), 9 October 2020

⁵⁶ The Malta Independent, [Government signs agreement with FKNK over L-Aħrax and Mizieb; no press call issued](#), 9 October 2020

⁵⁷ Times of Malta, [Coalition of NGOs to resist takeover of l-Aħrax and Mizieb](#), 7 May 2020

⁵⁸ The Malta Independent, [Government signs agreement with FKNK over L-Aħrax and Mizieb; no press call issued](#), 9 October 2020

⁵⁹ Times of Malta, [Government signs off Mizieb and Aħrax to hunters in private event](#), 9 October 2020