

**L-Atti tal-Inkjesta datata 19 ta' Novembru 2019, rigward skont it-Termini ta' Referenza ta' l-Inkjesta Pubblika dwar l-Assassinju ta' Daphne Caruana Galizia.**

**Seduta mizmuma llum il-Gimgha, 27 ta' Diċembru 2019, fid-9:00 a.m. fit-Tieni Sular, Awla 20, il-Qorti.**

*Chairman Judge Michael Mallia :*

**Andrew Caruana Galizia** son of Peter and the Late Daphne nee Vella born in Pieta` and residing in France states on oath in the English language.

*The Witness :*

I would like to start by saying that I find myself testifying as a new facts for emerging related to my mother's assassination which will have an impact on the weight .. may have an impact on the weight that I attach this certain parts of my testimony. So I would welcome the opportunity to testify again at a later stage if possible.

The people who conspired to murder my mother sought to make an example out of her, and it sought to make an example out of the most visible shield that the country had left against the abuse of power. They sought to prove that there was a price to integrity and that that price was death, and other was a reward for tolerating corrupt behaviour and that reward was protection and even prosperity in many cases. My hope for this Inquiry is that it will send the country down a different path, where the price for both tolerating and perpetrating corruption is disgrace and prison and the reward for integrity is respect.

I also hope that the Inquiry will make an example of the most powerful among those responsible for my mother's assassination and the conditions that led to it. Not an example out of the weakest, to send a message so strong that no one will ever draw the wrong lessons from my mothers' death; that corruption pays and that integrity is a death-wish.

In order for this message to translate into sustained change, I believe it will be necessary for the Inquiry to recommend the creation of specialised and effective anti-corruption bodies, including a separate and truly independent anti-corruption prosecutor with the powers and resources to investigate and bring to trial corruption and related crimes even those within our country's institutions especially those within our country's institutions.

The basis for this Inquiry is Article 2 of the European Convention of Human Rights, according to this the Maltese State has the positive duty to protect my mother's life, the negative duty not to take her life, and the systems duty to have in place effective systems of laws and law enforcement machinery to safeguard life.

Recent evidence points to possible involvement at the highest level of the executive in causing the risk to my mother's life, if true this constitutes a grave breach of Malta's obligations under Article 2's positive, negative, and systems duties.

I understand that all of these potential breaches under Article 2 must be and will be explored by the Inquiry.

I have sought to limit my testimony to the terms of reference to this Inquiry, but I am of course prepared to answer questions related to anything you might be interested in.

I will start with paragraph 3 of the terms of reference, which is ... Inquiry's with determining whether the State fulfilled its positive obligation that of providing protection to safeguard life.

I'd like to state from the outset that I believe protection should not be the Inquiry's primary focus. Police protection is essential to mitigate short-term risks faced by journalists and it also sends a powerful message that targeting a journalist protected by the state would be the same as targeting the state itself, with all the consequences that would bring upon the perpetrators.

So protection cannot be powerful as a tool to save the guard life, but should only be consider I believe as a short term measure. It cannot be a long-term solution. Even though this was never on offer in my mother's case, expecting journalists to live for a prolonged period with police protection, which not only affects their ability to work but also affects their ability to live a normal life, while corrupt politicians and their agents in organised crime thrive in full view of law enforcement authorities, would amount to a state sanctioned policy of coexistence between the corrupt and those seeking to hold them to account.

Even so, despite the limitations of protection as a long-term solution, the state still has a positive obligation to put in place operational measures to protect journalists' lives. The state clearly failed to do this in my mother's case and I believe it continues to fail to do this in the case of journalists who are currently at risk; especially those journalists are investigate what is statistically

the most dangerous subject which is the space between organised crime and politics.

In the wake of my mother's assassination, my family and I sought advice from the police. We saw the advice first from safety experts on what sort of measures we should put in place to protect our own lives. And then we wrote a letter to the Police based on the advice of these experts. Who work with journalist at risk. And in this letter which I'll presented .. inquiry we requested basic information on what measures the police put in place; whether they had carried out a threat assessment for example and whether they could provide this to us; so that we could take complementary measures ourselves. We never received a response to this letter. Instead, my father received a phone call from the Police Commissioner, who simply said, "Taf li ghandkom fixed point, hux hekk?" He offered a meeting, but we asked for a reply before meeting him. We never got a reply.

My belief is that the Police Force could not reply to the letter simply because it did not hold the basic information where we were requesting because it doesn't have protocols in place to assess the risks in a formal way. It didn't have these protocols in place while my mother was alive. I didn't put them in place after had death. And I believe this is still a problem, an ongoing problem which should be corrected.

From Melvin Theuma's testimony the deterrent effect of a police presence in the vicinity of an individual at risk became very clear to me. Theuma told the court that the assassination was delayed because the suspected hitmen encountered to a police roadblock close to my parent's home and turned back. The roadblock extended my mother's life by days or weeks. So just imagine what even a minimum level of police protection. For example the patrols that used to take place around my parents home before 2013 imagine what those could have done to prolong my mother's life without impacting on her, on her privacy without impacting on her daily life.

I therefore believe the Inquiry should investigate what protocols the police force has in place to assess the risks faced by journalists and a level of response required for each risk threshold. In the absence of formal protocols, the Inquiry should hear testimony from the current and last four police commissioners to determine how the threats facing my mother were assessed and why the level of protection provided fell in 2013 just as the risks she was facing increased.

Now I would like to move to paragraph 2 of the terms of reference, which is tasked with *establishing whether any act or mission by the State led to the creation of the fact state of impunity.*

My understanding is that this term relates to the necessary but insufficient conditions that preceded my mother's assassination. These are those conditions that must exist for a high-profile journalist like my mother to be assassinated particularly in the manner in which she was assassinated, but which in themselves are not sufficient or are not the immediate cause of the assassination. In contrast, where these conditions do not exist, the death of my mother or the the death that she suffered would have been not only unlikely but unimaginable.

These necessary but insufficient conditions, which I believe existed in their most dangerous form for at least a year before my mother's assassination, meant that her violent death was not only possible, but foreseeable and therefore should have been preventable. I say "should" because the institutions that were responsible for preventing her assassination or mitigating the risk that she faced were in themselves a primary cause of the risks that she faced, and therefore could never have been relied on to prevent her assassination.

In the case of my mother's assassination its crucial to establish what this set of necessary but insufficient conditions was that led up to my mother's death and to draw lessons from them. To be clear, I understand these conditions to be the flourishing system of cronyism and corruption, coupled with close ties between government and organised crime that leads to and depends on ineffective institutions, and thrives off weak independent media and poor civic engagement.

What is so striking about the conditions that led up to my mother's death is that they did not originate in a crisis and civil strife, or in a prolonged economic crisis for example. On the contrary, the government itself which was duty-bound to prevent crime, in particular crimes against journalists, and duty-bound to prevent the emergence of a "de facto state of impunity", played a leading role in promoting conditions ideal for both financial and violent crime, as well as the very conditions that made my mother's death not only probable, but as likely as possible. And then, according to sworn testimony, at least one leading government official did everything in his power to prevent full justice for her assassination.

The government's role in my mother's death has meant that my family and I have often been accused of being motivated by the need for revenge against the Labour Party rather than justice for my mother. This is an incorrect but partly understandable accusation. It is understandable because, as I trust at the Inquiry will also find, there is a striking overlap between the people playing leading roles in the current administration and the people who played leading roles in the corruption my mother uncovered and in her subsequent assassination, as well as leading roles in attempts to sabotage the murder

investigation, undermine attempts to establish this Public Inquiry into her death, and target activists honouring her memory.

Specifically, what serious breaches of the law that the authorities failed to investigate are relevant to my mother's death? My father and my brother Matthew have already covered some of this in their testimonies. It is incontestable in my view that my mother was murdered for her journalistic work. It therefore follows that the crimes she was actively uncovering were serious enough to take out a contract on her life. And yet almost four (4) years since she broke the Panama Papers in Malta and over two (2) years since her death, there has yet to be a single effective investigation into the criminal activity that she reported on. On the contrary, evidence suggests that the inquiries and police investigations related to her work that have taken place have been highly flawed and ineffective, including the Egrant Inquiry, which failed to make even passing reference to her death and a flight of one of its other principal witnesses.

All of this I hope is clear to the Inquiry in the sense that the crime is that my mother was reporting on put her at risk and that risk would have been mitigated if the law enforcement authorities had followed up on her work. Instead she was made.. she was the sole or rather killing her in the minds of the people who did it would be enough to stop any kind of investigation into the criminal activity. And its up to Inquiry to determine whether law enforcement authorities' failed in their responsibility through neglect, complicity or both.

The ultimate causes behind my mother's assassination, and the pressing need to resolve them and to restore the rule of law and improve the country's levels of public integrity, are among the main reasons my family and I persisted in having the state fulfil its duty in setting up this Inquiry. By examining the immediate causes of her death, more evidence emerges to support the assertion that institutional failure created the conditions that were necessary for my mother's death to occur.

The most immediate cause was the manner in which my mother was killed; a remotely-triggered car bomb. This is a device that unknown in continental Europe, and not seen in the United States for 50 years, but it was somehow familiar in Malta.

The men suspected of planting and triggering the bomb under the driver's seat of my mother's car had clearly done this before. They were permitted over several years, in a country otherwise at peace, to master the use of remotely-triggered car bombs, one contract-killing after another.

This fact betrays a prolonged and fatal failure on a part of Malta's law enforcement machinery to prevent serious crime, to the extent that the hitmen only requested a hundred and fifty thousand Euros (€150,000) for the contract. I view this as a clear indicate of the low risk they perceived they were exposing themselves to. It's in my view an absurd sum to request for the worst crime perpetrated in the country's history, and it's a dangerous country to live in where the country is most high profile journalist can be eliminated for that price.

By all accounts, the three men suspected of executing a crime should have been in prison decades ago. That the country's institutions were unable to successfully convict them of any previous crimes, when the technology and expertise to investigate them effectively for previous car bombings has existed elsewhere for several years, and the fact that they are not only escaped justice but actually prospered from crime - to the extent that Yorgen Fenech asked for them by name - is an indictment of Malta's law enforcement machinery and one of the ultimate causes of my mother's death.

There was the manner in which my mother's murder was arranged. Melvin Theuma, the confessed middleman, was only investigated for money-laundering after he was linked to my mother's death. Why? After his arrest it emerged that it was common knowledge that he ran a significant illegal gambling and loan-sharking operation, but was never effectively investigated for this, leaving him free to serve as the broker in my mother's contract killing. Even to walk right into the office of the Prime Minister for a job.

Melvin Theuma had no influential connections that I'm aware of until his friendship with Yorgen Fenech. The police's failure to investigate him is therefore more likely linked to the Economic Crimes Unit being under-resourced and technically unable and unmotivated to investigate the vast majority of economic crime underway in Malta. As the case of former police officer Daniel Zammit demonstrated, the Economic Crimes Unit is also subject to political pressure, and possible complicity in the type of criminal activity it is supposed to be working to suppress.

As an aside to this, which links back to the 3<sup>rd</sup> paragraph of the Terms of Reference, soon after my mother's assassination I found out that during the period she was reporting on the Zammit family, the father Ray Zammit, and his two sons Roderick and Daniel - an officer in the Armed Forces of Malta had taken to following my mother when off duty in order to check whether anyone else was following her. It was clear to this Army Officer, as it should have been clear to the authorities, that a police force being investigated by my mother for complicity in financial crime and the obstruction of justice in the murder of Neville Baldacchino, couldn't be relied on to protect her and

couldn't be relied on to lead an investigation into itself and thereby absorb the risks my mother was exposed to.

Moving up the chain of command to Yorgen Fenech, the same factors that enabled the Degiorgio brothers and Melvin Theuma to thrive from crime, enabled Yorgen Fenech to move seamlessly since at least 2013, but likely before, from legitimate business to financial crime and corruption, not because he needed to, but simply because he could because the risks presented by Malta's law enforcement machinery were so low - and he was likely encouraged along the way by powerful friends, like Keith Schembri, whose evidence suggests was a corrupt private businessman before becoming a corrupt public official.

If it weren't for my mother's murder, I have no reason to believe that any of the individuals charged in her case so far would have ever faced justice for their preceding crimes. And this concludes this part of my testimony; despite layer upon layer of widespread criminal activity at several levels and departments of government and the intersection between this criminal activity and organised crime, I cannot think of a single organised criminal conspiracy - from the lowest-level violent crime, to financial crime and corruption which has been effectively investigated and brought to a satisfactory conclusion. The only exception I came across were those three cases of corruption in the judiciary ten and six years ago.

These layers of uninvestigated crime are what fostered the impunity that led people with a motive to murder my mother to think they could get away with it, and to find the people willing to accept the contract to do it the first time they were asked.

The last part of my testimony relates to the first paragraph of the Inquiry's terms of reference: *to determine whether any wrongful action or omission by or within a state entity facilitate to the assassination or failed to prevent it.*

The Inquiry has no doubt heard Melvin Theuma's sworn testimony and will in due course hear the recordings he made and hear testimony related to Yorgen Fenech's interrogations under arrest. That there is potential state involvement in my mother's assassination, including attempts to protect the suspected perpetrators from facing justice, is increasingly clear.

But even before these new facts emerged and in addition to those facts covered under paragraph two (2) of the terms of reference, which no doubt caused a real and immediate risk to my mother's life in themselves, there was evidence that state actors were involved in attempts to turn my mother into a target.

That she was a government target is in my view is incontestable. My mother viewed her arrest on the night of the “Day of Silence” for example in March 2013 on the basis of a report by a Labour Party official as a message that not only can she expect not to receive any protection from the state but that the state was now under the control of people who wished to have her silenced. I witnessed her arrest that night; and I witnessed her refusal to be taken to the Police Head Quarters in Floriana. The bases for her refusal was clear; that she was afraid that armed with an arrest warrant the police could hold her for 48 hours, by which time the Labour Party would have won the elections and in her view, and I believe she was right, the country’s institutions would then be worthless. She had lived through that before when she was 19 and she had no intention of falling into the same trap again.

Following the 2013 elections, the government’s main strategy to curb my mother’s influence on the public was a continuation of the Labour Party’s strategy, except that many of the same people leading this work before were placed on the public payroll; people like Kurt Farrugia and Glen Bedingfield. The aim was to discredit my mother through what Boris Nemtsov’s daughter has called criminal propaganda. Boris Nemtsov was a Russian opposition leader who was assassinated; I think the same year as my mother. She called it.. Nemtsov’s daughter called it criminal propaganda because in her view it was so incessant, consistent, powerful that it created a real and immediate risk to her father’s life. And I believe that the propaganda targeted at my mother had the same affect. It was so powerful that people celebrated her assassination. These methods also included a Television broadcast of my parents’ home, the boundary wall they included photos of my mother, at cafés in certain places which she frequented regularly; and these footages and these photos it became clear in testimony where actually used to inform the suspected hitmen about where they likely to find my mother, and where they could .. what places they could use as a starting point to follow her. These risks expose by this criminal propaganda preceded and reinforced the legal and material threats that the government use to discourage my mother from informing the public. And these material and legal threats included libel suits and which escalate in the period proceeding near the elections in 2017; and also my determination of my posting in New Delhi.

In my view these threats marked the start of a new period, a period of escalation in the government’s efforts to silence my mother; and this period started in my mind in the wake of Panama Papers and escalated in the wake of my mothers’ reporting on Egrant. And I believe the reason that these threats escalated in this period is that she from a nuisance she became a direct threat to the feasibility of the several of the government’s corrupt schemes. Her reporting severely damaged Electrogas, it prevented Electrogas from attaining finance on international markets. Enforced Electrogas into dependence on a state gurantee. Her reporting severely damage the passports scheme, to the

extend that the European Commission is trying to do everything in its part to shut it down. Her reporting severely damaged the Vitals Global Healthcare, the fact the ability to finance the project. It also impacted the American University of Malta and of course Pilatus Bank. One of these has already been forced shut and the other three (3) will likely follow soon. Egrant, Hearnville, Tilgate, 17 Black, Marmoust, these were other companies that were shut in direct response to my mothers reporting.

My mother perceived the escalating libel suits she faced from cabinet ministers and other senior officials to have nothing to do with clearing their names and everything to do with discrediting her; including through the official government press releases that often accompanied libel action. The freezing of her bank account by Minister Cardona was only the most egregious example of this. None of the plaintiffs showed the slightest interest in pursuing these cases in presenting credible explanations or additional evidence to seek corrections before suing. This set my mother up for an interminable form of harassment which was likely at no private expense to the officials who sue them

This legal harassment also expose weaknesses in Malta's Libel Law; for which I believe the Inquiry should recommend corrections; one of these possible corrections could be a judicial test that would allow for independent review of libel action before the journalists; this forced to pay to respond pay for legal counsel and spent time in a court room defending her or himself while the people who brought the cases never show up.

The 2017 election marked the height of the government's efforts to silence my mother. The Labour Party's subsequent victory was described as a referendum on my mother and her work. After recent facts emerged, a news report a few weeks ago described it as a referendum on her life. Another thread linking the election result to my mother's death was the sudden termination of my diplomatic posting in New Delhi. On 28 June, shortly after the elections, I received an email from the Permanent Secretary of the Foreign Ministry stating:

*I wish to inform that in view of instructions that I have received, in terms of exigencies of the service, your posting in New Delhi is being terminated as of 15<sup>th</sup> July. You are thus kindly advised to make preparations to return to Head Office accordingly. I apologise for this short notice which is beyond my control.*

I spoke to the Permanent Secretary by phone the same day and was told not to speculate on the reasons for the termination of my posting. It was clear to me that it was just another way of increasing the pressure on my mother, even at the cost of sabotaging the government's own work. My mother stopped writing for two weeks after this, and I did everything I could to make her think

that this was a good thing for me and that she should continue writing. I told her I'm alive, I'm unhurt, that the threat is purely material and psychological and that as long as it remains that way I could turn this into something better, and I did, but she never lived to see it.

The effective end of my diplomatic career was the last serious threat my mother received before her assassination and the only one that compelled her to stop writing. Both are linked to the early elections, for which the public has never received a credible explanation and which I hope this Inquiry will also examine. I believe that by doing so the Inquiry will find that the conspiracy to assassinate my mother may grow wider, not narrower, at the top showing that her death resulted from a system, not a single individual seeking to protect its criminal interest.

***Chairman Judge Michael Mallia :***

I will ask you one question; when there was a change of police commissioner from John Rizzo to Peter Paul Zammit were you here in Malta first of all?

***The Witness :***

No, I was in Berlin.

***Chairman Judge Michael Mallia :***

You were not here.

***The Witness :***

No. I . the elections and then returned to Berlin.

***Dr T Comodini Cachia :***

This was 2013.

***Chairman Judge Michael Mallia :***

Ok.

***Judge A Lofaro :***

Now you mentioned that the threats .. that the whole situation became modicited and more dangerous to you mother about a year before the assassination, and did not amplify for that; was it somehow connected to the Panama Papers?

***The Witness :***

Yes. she ..

***Judge A Lofaro :***

Is that what you meant?

***The Witness :***

Yes. The way I understand is that she went from an opinionist, economist to an investigative journalist in that period; and that's for the threats really increased, because she was publishing evidence of criminal activity which was followed up by the authorities

***Judge A Lofaro :***

Was she being thretend at all?

***The Witness :***

She was in people used to .. when a / come to Valletta .. the propose use to blare her in the street that shout at her; I man there was intolerant / fear, so to the extend not she never hushed to leave the house unless it was absolutely necessary. She lived like that for at least .. at least a year and a half – two years before her death.

***Judge A Lofaro :***

I see. So there was change in her life stile too.

***The Witness :***

She was the ... I said that things really changed after the 2017 elections because she also lost ny last remaining popular support that she had; she was blamed for the defeat of the nationalist party in 2017; the election result in many people's mind discredited that her work completely; so there was no sort of institutional the last of institutional support you could say it was the opposition party. That was the only body that was actually following op on her work taking up her investigations, campaigning with them. After the defeat in 2017 not ended, she was completely isolated. I told her you should see this as a good thing. It means that you've done everything you could, it failed, its not your fault, you did more then anyone else to try to achieve justice for the crimes that you uncovered; and now you can simply..., you know, write focus on whatever you like, do whatever you like in life, and feel as responsible for the outcome of the elections, feel as responsible for everything you do. Obviously it wasn't in her nature to do that, so as soon as she received the information about the opposition leader she led a serious of investigative she led the investigative reporting on him. Should out expose obviously to more risks because it added to the isolation that she already felt and that people could obviously perceive.

***Judge A Lofaro :***

So she went on regardless.

***The Witness :***

She went on regardless ehe.

**Judge A Lofaro :**

Ok. thank you.

**Judge J Said Pullicino :**

I'll just make one comment; your evidence obviously is ... and that of other members of your family. Clearly they include a facts .. include opinions, and hypothesis; and therefore our task is to sift that apart of the facts. .. gives the direction of the way think should move even it is what. Naturally from now on .. your family .. your evidence was taking to the facts and that has to be clear even to the persons involved, the layers; because we are base on facts. In what it has to be based on that. Hypothesis and obviously it has to be taken into consideration and also arguments which lead to certain conclusions. And that has to made clear, ok?

**The Witness :**

Understood. My testimony is also based on facts, it's obviously my interpretation of those facts.

**Judge J Said Pullicino :**

Yes yes. I've just said it ....on facts and .. and the facts will be sifted.

**Dr T Comodini Cachia :**

I would like to ask him to clarify one thing, because at some point in your statement you referred to a person following your mother. And I wasn't quite sure what you meant by that. Was it following her for her protection? Following her to harass her? I wasn't quite sure what it was; and if you know who this person is.

**Judge J Said Pullicino :**

Can you name that person?

**The Witness :**

I know who this person is. I am happy to name him in camera; he might be willing to testify publicly, that's his decision.

**Judge A Lofaro :**

In camera, yes.

**The Witness :**

Yes. But he currently.. he is employed by the government.

**Dr T Comodini Cachia :**

....when you say "he was following her" in what way?

***The Witness :***

He was following her to check whether any people who might have put my mother at risk were following her; so it was almost like counter civilians.

***Dr T Comodini Cachia :***

So for protection.

***Chairman Judge Michael Mallia :***

You lawyers can discuss this thing with you and then you can call ..

***Judge A Lofaro :***

And did he do this of his own bat or ..?

***The Witness :***

Yes. He did it voluntary.

***Judge A Lofaro :***

I see; his initiative. His initiative.

***The Witness :***

It was his initiative. He was working in the Army as an Army Officer and there was clearly no institutional support for him to do this as part of his work. So he did it when he was off duty. Occasionally to check whether you know, he did run and checks to see if there any suspicious people trailing my mother.

***Judge A Lofaro :***

Now you also mentioned the car patrols.

***The Witness :***

Ehe.

***Judge A Lofaro :***

Did they immediately stop and did they stop for ever after the 2013 election?

***The Witness :***

Yes they stopped immediately and I never saw them again. Before I use to see them constantly, constantly.

***Judge A Lofaro :***

It was a complete stop.

***The Witness :***

There was a complete stop. The police patrols were regular, probably every hour, you know, I used to see them coming home, leaving home. They were

permanent presence which everyone could perceive and that completely disappeared.

***Judge A Lofaro :***

Completely.

***The Witness :***

There was also in the post 2013 period action the year when my mother was assassinated I believe there was a parliamentary question put by government backbencher MP about police protection.

***Judge A Lofaro :***

Yes yes.

***The Witness :***

And the reply was no, there is no police protection. So that must have been of great comfort to the people conspiring to murder my mother.

***Judge J Said Pullicino :***

But are you aware that your mother ever said .. told the police not to have protection?

***The Witness :***

I am not aware that it was ever offered. There was no contact between her and the police commissioners that replace John Rizzo. John Rizzo before used to take the initiative contact my mother. I believe that the communication started after the arson attack on my parent's home, and then they maintain regular contact because of course commissioner Rizzo was not under the illusion that the risk had disappeared

***Judge J Said Pullicino :***

And up at the time when commissioner Rizzo was there the ...continued; they stopped. When he stopped?

***The Witness :***

They continued for years under commissioner Rizzo and they stopped when he was replaced

***Judge J Said Pullicino :***

...ok.

***The Witness :***

Yes. He would be probably to testify in ..

***Judge A Lofaro :***

Yes of course.

***Judge J Said Pullicino :***

He will.

Din hija s-sustanza tax-xhieda ta' **Andrew Caruana Galizia** dettata minnu stess fil-prezenza ta' l-istess xhud.

Niddikjara li traskrivejt bl-ahjar hila tieghi x-xhieda ta' l-istess xhud.

Saviour Scicluna

Traskrittur