

COMBATING IMPUNITY FOR KILLINGS OF JOURNALISTS

Lessons to be learned from murders of Daphne Caruana Galizia and Jan Kuciak

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LLM Human Rights Capstone Thesis

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7 June 2020

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Introduction

*“Every journalist killed or neutralized by terror is an observer less of the human condition. Every attack distorts reality by creating a climate of fear and self-censorship.”*¹

Freedom of expression is a fundamental human right enshrined in Article 19 of Universal Declaration of Human Rights, Article 19 of International Covenant on Civil and Political Rights and Article 10 European Convention of Human Rights. In order to guarantee the protection of this fundamental right, it is essential to ensure safety of journalists and to combat impunity for crimes committed against them. Nevertheless, in today’s world, freedom of the media, work of journalist and media personnel is interfered with by increasing climate of fear and insecurity in the light of the attacks they face.²

It is not only that safety of journalists is threatened in conflict zones or in authoritarian regimes. In the period of last five years (from 2014 to 2018, for which data is available), the number of journalists killed outside of conflict zones has grown. This serves to show that the nature of attacks against journalists has alarmingly changed in the recent years, with more and more killings directed at journalists who worked on covering corruption, crime and politics and human rights violations.³ In recent years, the gravest form of attacks on journalists- murders, have spread to States/regions which have previously been considered safe for journalists and freedom of the media. In October 2017, journalist Daphne Caruana Galizia was killed in Malta and in February 2018, journalist Jan Kuciak was killed in Slovakia. Their murders showed that journalists are not safe in the European Union anymore either, and that reporting on crime and corruption can be deadly even in this region.⁴

What is particularly concerning is the culture of impunity which surrounds these attacks and, in particular, murders. As the index on killed journalists prepared and regularly updated by Committee to Protect Journalists shows, since 1992, 2033 journalists have been killed (with the number of killings in non- conflict zones increasing). Yet, in 89% of these killings, impunity prevails,

¹ Barry James, 'Press Freedom: Safety of Journalists And Impunity' (UNESCO 2007) <<https://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/press-freedom-safety-of-journalists-and-impunity>>.

² UNESCO, *Intensified Attacks, New Defences: Developments in The Fight To Protect Journalists And End Impunity* (United Nations Educational, Scientific and Cultural Organization 7, 2019).

³ Ibid, page 9.

⁴ Committee to Protect Journalists, 'Getting Away with Murder' (Committee to Protect Journalists 2019) <<https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice/>> accessed 5 April 2020.

and the cases have still not been resolved.⁵ In fact, in majority of them, no significant progress has been made.

It is for these particular reasons, that I have decided to conduct my research on the issue of killings of journalists with my research question focusing on how the states have responded to the high-profile killings of journalists and what were the contributing factors that have made them act.

Qualitative research method used in this project is the method of case studies. The two case studies on which this research project is based are murder of Daphne Caruana Galizia in Malta and murder of Jan Kuciak in Slovakia. These cases have been selected because they are relatively recent but with many significant developments and have the potential of demonstrating very well what factors are necessary to combat impunity in cases of attacks against journalists. Also, these cases have numerous similar and comparable components both in terms of facts of the case and the applicable legal obligations and human rights standards. The focal point of comparison is comparing how the two states responded to these murders, and also comparing the factors that had made them act.

These two cases are very specific because analysis of state response to these murders and the progress made to bring the perpetrators to justice shows how various factors other than state legal obligations can have a powerful impact on combating impunity and bringing the justice for the killed journalists. In the world where, currently, impunity prevails in 9 out of 10 cases of murdered journalists, these two cases can be regarded as positive examples. Thus, valuable recommendations for reform and lessons can be taken from these two cases, not necessarily for the willingness that states have expressed to combat impunity in these cases, but because of the external factors which have proven powerful enough to bring about the change. The underlying value of this research paper is that it provides comprehensive overview and comparative analysis of crucial factors which influenced the state responses in these cases and helped get closer to combating impunity. This is where the novelty of my research paper is, since there are yet no similar materials providing such comparative analysis on these two cases. It is also of great value

⁵Data kept by Committee to Protect Journalists in their Database of Attacks on the Press, available at: < <https://cpj.org/data/>>. Up-to-date data is also kept by UNESCO in its Observatory of Killed Journalists (1386 to 31.03.20) available at: < <https://en.unesco.org/themes/safety-journalists/observatory>>.

to research on these cases at this time, as major developments in both cases have taken place from November 2019, until May 2020.

This research project is limited only to murders of journalists, thus no other attacks will be analyzed. It also focuses only on journalists who have been targeted and murdered for their journalistic work, particularly investigative journalists who have worked on covering corruption and crimes committed by high-ranking politicians. Thus, this paper will not look into cases of journalists who have been killed on the ground, while conducting their job of covering for example, demonstrations or certain events, but whose murder has not been motivated by the investigative work they were covering.

The structure of this paper has the following outline: the first chapter is focused on indicating the problem; namely, why are killings of journalists so concerning and what are the effects that they produce. Second chapter is focused on the law, particularly international and regional human right legal obligations that Malta and Slovakia have in relation to killings of journalists. Third chapter is focused on analysis of the two case studies and Malta and Slovakia's responses to the murders of journalists. Fourth chapter of this paper provides comparative analysis of factors which influenced state responses in these cases. Finally, chapter 5 provides a list of legal and policy reform recommendations that can be derived from analysis of these two cases and that can serve to help ensure better protection of journalists' safety and more effective resolution of future cases.

Chapter 1: Indicating the problem

Freedom of expression is not only a fundamental human right in itself, but it is also essential for enjoying other human rights protected by international covenants and regional treaties. "Without a broad guarantee of the right to freedom of expression...there is no democracy"⁶. As the European Court of Human Rights has stated in numerous cases, freedom of expression "constitutes one of the essential foundations of democratic society and one of the basic conditions for its progress and for each individual's self- fulfillment"⁷. This is related to the rationale on citizen participation in a democracy or so- called "democratic self- governance". As Eric Barendt explains,

⁶ Jochen Abr. Frowein, 'Freedom Of Expression Under The European Convention On Human Rights' (Council of Europe 2020).

⁷ Lingens v. Austria (1986); Şener v. Turkey (2000); Thoma v. Luxembourg (2001); Marônek v. Slovakia (2001); Dichand and Others v. Austria (2002).

the purpose (of such strong protection of freedom of expression) “is to protect the right of all citizens to understand political issues in order to participate effectively in the working of democracy”⁸. This rationale has been the most influential theory in the development of modern law on freedom of expression. It has been followed by judicial authorities, both national and regional, in their freedom of speech jurisprudence. For instance, in the case *Lingens v. Austria*, European Court of Human Rights followed this rationale to state that freedom of expression is “one of the foundations of a democratic society”⁹. Moreover, in the landmark case of *Handyside v. UK*, the Court connected freedom of expression with “pluralism, tolerance and broadmindedness without which there is no democratic society”¹⁰.

Freedom of the media is a concept particularly important under freedom of expression. In relation to aforementioned rationale of democratic self-governance, media has often been referred to as “public watchdog”. In fact, in jurisprudence of the ECtHR, the first case where such a role of the press was emphasized was case of *Lingens v. Austria*¹¹. In this case, the Court has stressed that the essential role of the press is to impart information and ideas on political issues, but also in other areas which are of public interest. Moreover, not only does the press have the right to impart such information, the public has the right to receive them.¹² The Court has also reiterated in this case that “freedom of the press affords the public one of the best means of discovering and forming an opinion”¹³ especially in relation to political debate which the Court defined as core concept of democratic society.

Journalists report on issues of public interest and play an essential role in democracies by providing information to the general public. They perform the role of the *public watchdog* and this role is essential for democracy. In fact, “free, independent and pluralistic media is a core element of any functioning democracy.”¹⁴ Free press has the essential role in holding governments and powerful actors accountable and facilitating access to right to information. However, safety of

⁸ Eric Barendt, *Freedom Of Speech* (2nd edn, Oxford University Press 2005) p.18.

⁹ *Lingens v. Austria* (1986)

¹⁰ *Handyside v. UK* (1976)

¹¹ *Lingens v. Austria* (1986)

¹² *Ibid*, §41

¹³ *Ibid*. §42

¹⁴ Office of Council of Europe Commissioner for Human Rights, 'Protection Of Journalists From Violence' (Council of Europe 2011), p 4.

journalist is a precondition for free media because journalists that do not feel safe in the work they are doing, will not exercise their public watchdog role freely.

As the UN HR Committee has emphasized “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.”¹⁵ The right to freedom of expression implies the need for media which is free to comment on issues of public interest without censorship and restraints. Even more than that, not only does the media have the right to disseminate information, the public has the right to receive such information coming from free and uncensored media.

In the environment in which journalists face physical and other attacks, free flow of information and ideas is greatly endangered. Attacks, not just in the gravest form of the killings, but any attacks and threats directed at journalist can have severe chilling effect and lead to silencing of other journalists and eventually lead to self-censorship in those who do continue to report.

Thus, these attacks do not only result in violation of journalists’ right to freedom of expression and freedom of the media. They also infringe the right of the public to receive information and disrupt the free flow of information and ideas which are the foundation of democratic society. Therefore, any form of attacks on journalists and the media can deprive people of their fundamental right to seek, receive and impart information.¹⁶ It is for this reason that attacks on journalists are particularly significant issue.

In order to guarantee the protection of this fundamental right, it is essential to ensure safety of journalists and to combat impunity for crimes committed against them. Nevertheless, in today’s world, freedom of the media, work of journalist and media personnel is interfered with by increasing climate of fear and insecurity in the light of the attacks they face.¹⁷ As the index on killed journalists prepared and regularly updated by Committee to Protect Journalists shows, since 1992 to this day, 2033 journalists have been killed (with the number of killings in non-conflict zones increasing). Yet, in 89% of these killings, impunity prevails, and the cases have

¹⁵ *Marques v Angola (No 1128/2002)* [2005] UN Human Rights Committee (UN Human Rights Committee).

¹⁶ OSCE Representative on Freedom of the Media, ‘Safety Of Journalists, Why It Matters’ (OSCE 2011) <<https://www.osce.org/files/f/documents/1/9/101983.pdf>>.

¹⁷ UNESCO, *Intensified Attacks, New Defences: Developments In The Fight To Protect Journalists And End Impunity* (United Nations Educational, Scientific and Cultural Organization 7, 2019).

still not been resolved.¹⁸ In fact, in majority of them, no significant progress as to investigation has been made. Namely, in nine out of ten cases, perpetrators of attacks against journalists are never prosecuted. Impunity tends to create a cycle of hostility and violence against journalists and must be adequately addressed and combatted.¹⁹

Attacks on journalists are “met with insufficient efforts by relevant state authorities to bring the perpetrators to justice, which leads to a culture of impunity and can fuel further threats and violence and undermine public trust in the law”²⁰. Impunity in this sense refers to “failure by state authorities to identify, prosecute and punish all those, including the assailants and masterminds, responsible for crimes of violence against journalists.”²¹ Moreover, impunity raises suspicion of official collusion or tolerance of unlawful acts and undermines public confidence in the rule of law.²²

Impunity has become a key term associated with the attacks on journalists in many regions of the world, including Europe. “Impunity is the blatant neglect of human rights by the authorities, which allows the perpetrators to remain unpunished”.²³ In most cases of attacks against journalists, perpetrators, and especially the master minds behind the attacks, have not been punished. Objectively, this can be a result of many different issues, but very often it is the issue of lack of willingness of the authorities to disclose the truth. “Impunity creates more impunity. If murders, assaults and psychological violence against journalists prevail, media cannot be free, information cannot be pluralistic and democracy cannot function.”²⁴

Safety of journalists and the struggle against impunity for attacks against them are crucial for preserving the right to freedom of expression which is an individual right, that everyone should be free to individually enjoy, without fear of attack, but it is also a collective right which helps facilitate dialogue, participation and democracy.

¹⁸ Data kept by Committee to Protect Journalists in their Database of Attacks on the Press, available at: <<https://cpj.org/data/>>.

¹⁹ UNESCO, 'UN Plan of Action on safety of journalists and the issue of impunity' (1CI-12/CONF.202/6) <https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf>.

²⁰ Council of Europe, 'Democracy at risk: threats and attacks against media freedom in Europe' (Council of Europe 2019) p 15.

²¹ Ibid, p 15

²² Ibid, p 15

²³ Office of Council of Europe Commissioner for Human Rights, 'Protection Of Journalists From Violence' (Council of Europe 2011), p 11

²⁴ Ibid, p12

Without freedom of expression, and especially freedom of the press, it is impossible to have informed, active and engaged citizens who will make an informed decision. Attacks and particularly killings of journalists and impunity for these attacks are so significant precisely because they have much wider impacts on media freedom, since they create climate of intimidation and violence which leads to self- censorship.²⁵

Term “journalist” in this sense should be interpreted broadly and should thus not be limited only to those who are formally recognized as journalists but, should also cover community media workers, citizen journalists and others who are using new media to reach their audience.²⁶

Chapter 2: Outlining the legal obligations

Legal instruments are one of the strongest tools that can be used to ensure safety of journalists and to combat impunity. On the international level, these include internationally recognized and legally binding instruments such as the Universal declaration of Human Rights and International Covenant on Civil and Political Rights.²⁷ Additionally, regional human rights systems and legal instruments are very strong and powerful tool. They are often reinforced by monitoring bodies which monitor state compliance with their human rights obligations.

Considering that both States which are taken as comparators for the purposes of this research are Member States of the Council of Europe, the research question of this project will be analyzed through the lens of legal obligations that fall on Malta and Slovakia and which are established by International Covenant on Civil and Political Rights on international level and European Convention of Human Rights on regional level.

The issue of attacks against safety of journalists and particularly killings, have to be assessed both in regards to the right to freedom of opinion and expression and right to information, but even more primarily, they have to be analyzed through the lens of right to life and the obligation of the state to protect the life of those under its jurisdiction.

²⁵ UNESCO, 'UN Plan of Action on safety of journalists and the issue of impunity' (1CI-12/CONF.202/6) <https://en.unesco.org/sites/default/files/un-plan-on-safety-journalists_en.pdf>.

²⁶ Ibid.

²⁷ Further legal instruments on safety of journalists can be found on <<https://en.unesco.org/themes/safety-journalists/basic-texts>>.

In the legal context of Council of Europe region, binding provision which protects the right to life and which is applicable to both states, is Article 2 of the European Convention of Human Rights (the Convention/ECHR). As the Court has held in the case *Osman v. United Kingdom* in order for the State to be in breach of its positive obligation to protect the life under Article 2, it “must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk”.²⁸

Moreover, procedural limb of Article 2 imposes obligation on the States to conduct an effective investigation. In order to satisfy the Article 2 standard, investigation has to be prompt, thorough, independent, must be capable of identifying the perpetrators, and has to allow for the victim’s family to be involved.²⁹ In addition, the State also has procedural positive obligation to prosecute, convict and punish the perpetrators of the murder.

In the international legal context right to life is protected through Article 6 of the International Covenant on Civil and Political Rights (the Covenant). General Comment 36 on the Right to Life, prepared by UN Human Rights Committee provides further authoritative interpretation of this right in the context of the Covenant.

In international legal context, right to freedom of opinion and expression is protected by Article 19 of the International Covenant on Civil and Political Rights (Covenant). Article 19(1) protects the right to hold opinions without interference, while Article 19 (2) guarantees the right to freedom of expression, i.e., the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers.

Right to access information is an essential part of the right to freedom of expression and as such is protected by Article 19 (2) of the ICCPR. Individuals have the right to access information, and this extends to information in possession of all public bodies and authorities.

In the context of Council of Europe region, binding provision that provides for protection of freedom of expression is Article 10 of the European Convention of Human Rights. The States are under negative obligation not to interfere with freedom of expression. However, European Court

²⁸ *Osman v. the United Kingdom* (87/1997/871/1083) (1998), §115-116.

²⁹ *Assenov and Others v. Bulgaria* (90/1997/874/1086) (1998).

of Human Rights has established through its jurisprudence, that States have positive obligation to protect right to freedom of expression of journalists from attacks conducted both by state officials and private parties. Namely, as held in case of *Dink v. Turkey*, the State is under the obligation to create favorable environment for participation in public debate by all persons, enabling them to express their opinion and ideas without fear.³⁰

General Comment 34 of the Human Rights Committee, as authoritative interpretation of freedom of expression, provides significant insight into obligations that States have in respect of killings of journalists. Specifically, General Comment 34 states that journalists are often subjected to threats, intimidation and attacks, due to their work, and that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate form of redress”.³¹

Moreover, paragraph 27 of General Comment 36 lists journalists in the category of persons whose lives are placed at particular risk due to specific threats or pre-existing patterns of violence. Paragraphs 31 and 32 of this General Comment give guidelines on the particularities of investigation that State has the obligation to conduct in case of deprivation of life through criminal activity by state official or a private party.

Chapter 3: Malta and Slovakia’s responses to murders of journalists

3.1. Case study 1: Murder of Daphne Caruana Galizia in Malta

Daphne Caruana Galizia was a leading investigative journalist in Malta. She worked as journalist, columnist, editor and blogger for over 30 years and focused on exposing political and financial corruption. She was not only Malta’s first female columnist but also the first one who published in her own name, at the time when this was unheard of in Malta. She began her journalist career by writing for Malta’s *Sunday Times* in 1988 and in 1992 she assisted in establishing *The Malta Independent* as a columnist and associate editor.

However, Daphne was best known for her blog, *Running Commentary*, which was founded in 2008, and remains online even after her death. Her blog became one of the most popular web-

³⁰ *Dink v. Turkey* (2010), § 137.

³¹ UN Human Rights Committee, 'General Comment 34 On Article 19: Freedom Of Opinion And Expression' (United Nations 2011), § 23.

sites in Malta, attracting over 400,000 views per day, which is more than combined circulation of Malta's newspapers. Due to her work and the stories she was investigating, Daphne continuously received threats and was subjected to various forms of harassment throughout the years. Her house was set on fire twice and her three dogs were killed. Another form of intimidation used against her were libel suits filed against her almost exclusively by Government officials and opposition members of the Parliament.³² At the time of her death, there were still 42 ongoing defamation and libel cases against her.³³ In the last two years of her life, Daphne focused her work on "revelations of suspicious financial activities provided by the infamous *Panama Papers*"³⁴ which include 11.5 million of leaked documents with details on offshore tax avoiding entities. She was the first one to disclose the involvement of Maltese politicians in offshore tax regimes, and for this she received worldwide recognition. Daphne Caruana Galizia was assassinated by an explosive device planted under her car, outside her home in Bidnija, Malta, on October 16, 2017, at the age of 53.

3.2. Case study 2: Murder of Jan Kuciak in Slovakia

Jan Kuciak was a Slovak investigative journalist working for the news website Aktuality.sk. He focused mainly on tax evasion, committed by businessmen who were closely connected to important Slovak politicians³⁵ including the cases connected with ruling social-democratic party and the Prime Minister Robert Fico. He had also written about companies with suspicious ownership and suspected embezzlement from European Union funds. In addition, Kuciak cooperated with Organized Crime and Corruption Reporting Project (OCCRP) on investigation of connections between Italian organized crime syndicate 'Ndrangheta and its political influence in Slovakia.³⁶ On 28 February, several days after his murder, Aktuality.sk published Kuciak's last story, in its unfinished, draft version. In this story, Kuciak investigated activities of Italian busi-

³² 'Biography Of Daphne Caruana Galizia' (*The Daphne Caruana Galizia Foundation*) <<https://www.daphne.foundation/en/daphne/biography>> accessed 3 April 2020.

³³ 'Daphne Caruana Galizia: The Voice They Couldn't Silence - Archives - IFEX' (*IFEX*) <<https://ifex.org/faces/daphne-caruana-galizia-the-voice-they-couldnt-silence/>> accessed 3 April 2020.

³⁴ 'Daphne Caruana Galizia: Journalist Who Exposed Corruption In Malta' (*The Independent*) <<https://www.independent.co.uk/news/obituaries/daphne-caruana-galizia-journalist-who-exposed-corruption-in-malta-and-broke-panama-papers-a8007266.html>> accessed 3 April 2020.

³⁵ Rob Cameron, 'Slovakia grapples with murdered journalist's last story' (*BBC*, 28 February 2018) <<https://www.bbc.com/news/world-europe-43226567>> accessed 6 April 2020.

³⁶ 'Kuciak investigated links between politicians and mafia' (*Spectator.sme.sk*) <<https://spectator.sme.sk/c/20769558/kuciak-investigated-links-between-politicians-and-mafia.html>> accessed 6 April 2020.

nessman who had connections with organized crime settled in eastern Slovakia, and had embezzled European Union funds intended for development of the under-developed region, for years. He also investigated the connections of these businessman with high-ranking state officials. In the last article published, on 9 February 2018, only several days before his murder, Kuciak wrote about businessman Marian Kočner. Previously, Kuciak had written about how Kočner was involved in tax fraud scheme. After his story, Kuciak was threatened by Kočner and he even filed a criminal complaint against Kočner in September 2017, but law enforcement authorities allegedly failed to take any action.³⁷ Jan Kuciak was assassinated on 21 February 2018, at the age of 27, together with his fiancée, Martina Kušnírova, in their family home in Vel'ka Mača, Slovakia. He was the first journalist to be killed in Slovakia ever since the country gained independence.

3.3. Malta's response to the murder of Daphne Caruana Galizia

Soon after the explosion police investigators and forensics team arrived at the crime scene. The originally appointed head of the inquiry had previously brought criminal libel charges against Daphne in 2010-2011. Daphne's family managed to challenge this on the ground of conflict of interest, and several hours later a new head of the inquiry was appointed. Many suspected what Daphne was murdered because of her journalistic work, but this was not recognized, let alone publicly confirmed by the authorities, unlike in the murder of Jan Kuciak case. Daphne's family raised concerns over deteriorating rule of law situation in Malta and growing culture of impunity. Members of the (European) Parliament who subsequently visited Malta on a fact-finding mission expressed similar concerns. In particular, they expressed concerns about "high degree of unwillingness to investigate", a "failure to prosecute corruption and money-laundering", and incompetence of high-ranking law enforcement officials.³⁸

Prime Minister Muscat stated at the very beginning of the investigation, that the Government has requested help from US Federal Bureau of Investigation in investigating case of murder of

³⁷ 'UPDATED: Investigative journalist killed in his house' (*Spectator.sk*, 1 March 2018) <<https://spectator.sme.sk/c/20768866/investigative-journalist-and-fiancee-killed-in-their-house.html>> accessed 6 April 2020.

³⁸ Jennifer Rankin and Benjamin Haas, 'Serious concern over rule of law in Malta after murder of journalist' (*Guardian*, 15 November 2017) <<https://www.theguardian.com/world/2017/nov/15/eu-raises-serious-concerns-over-rule-of-law-in-malta-daphne-caruana-galizia>> accessed on 7 April 2020.

Daphne Caruana Galizia.³⁹ In addition, forensics team from Netherlands arrived to Malta to provide their assistance with the investigation and so did three EUROPOL officials.

On 4 December 2017, Prime Minister Muscat announced that ten suspects have been arrested. Three of these suspects, namely Vincent Muscat brothers George and Alfred Degiorgio, appeared in court and were charged with murder, criminal use of explosives, involvement in organized crime and criminal conspiracy.⁴⁰ All three suspects pleaded not guilty. It was announced in July 2019, that these three suspects would be sent to trial.⁴¹

Parliamentary Assembly of Council of Europe, on 26 June 2019, voted to adopt a report on case of murder of Daphne Caruana Galizia and the report called on Maltese authorities to set up an independent public inquiry into the murder. The government was given three months deadline to set up this inquiry⁴² and on 20 September 2019, only six days before the expiry of the deadline, Maltese government announced that they were launching a public inquiry. However, Daphne's family and many other actors have raised concerns over potential lack of impartiality of members of the inquiry.⁴³

In November 2019, many developments were achieved in this case. On 20 November 2019, well-known Maltese businessman Yorgen Fenech was arrested and charged with complicity in Daphne's murder. In the meantime, Prime Minister's Chief of staff Keith Schembri resigned from his government position on 26 November 2019 and was later arrested and brought in for interrogation by the police in relation to the investigation of Daphne's murder.⁴⁴ Fenech claimed that he had evidence which showed Schembri's involvement in the murder conspiracy. Middle-

³⁹ 'FBI asked to help investigate Caruana Galizia murder- Muscat# (*The Times*, 16 October 2017) <<https://web.archive.org/web/20171016203255/https://www.timesofmalta.com/articles/view/20171016/local/fbi-asked-to-help-investigate-caruana-galizia-murder-muscat.660582>> accessed on 7 April 2020.

⁴⁰ Jon Stone, 'Daphne Caruana Galizia murder: Three charged over killing of Maltese journalist who exposed Panama Papers corruption' (*The Independent*, 6 December 2017) <<https://www.independent.co.uk/news/world/europe/daphne-caruana-galizia-murder-three-charged-ten-arrested-video-footage-a8095166.html>> accessed on 10 April 2020.

⁴¹ 'Malta sends three suspects for trial on charges of killing anti-corruption journalist' (*Reuters*, 16 July 2019) <<https://www.reuters.com/article/us-malta-daphne/malta-sends-three-suspects-for-trial-on-charges-of-killing-anti-corruption-journalist-idUSKCN1UB1BR>> accessed on 10 April 2020.

⁴² The Shift Team, 'An independent public inquiry is more urgent than ever' (*The Shift*, 16 July 2019) <<https://theshiftnews.com/2019/07/16/an-independent-public-inquiry-is-more-urgent-than-ever-reporters-without-borders/>> accessed on 14 April 2020.

⁴³ The Shift Team, 'Hope was killed last night, Caruana Galizia family demands meeting with prime minister' (*The Shift*, 21 September 2019) <<https://theshiftnews.com/2019/09/21/hope-was-killed-last-night-caruana-galizia-family-demands-meeting-with-prime-minister/>> accessed on 14 April 2020.

⁴⁴ 'Malta Caruana murder: Resignations spark government crisis' (*BBC*, 26 November 2019) <<https://www.bbc.com/news/world-europe-50556578>> accessed on 14 April 2020.

man, who was later pardoned by the Prime Minister in return for cooperation, alleged the same. Fenech asked for immunity in exchange of revealing the information about the case that he had, but he was eventually denied this immunity.⁴⁵

Mass protests took place, calling for Prime Minister Muscat to resign from his position due to his suspected involvement with the murder of Daphne Caruana Galizia. Pieter Omtzigt, author of the Parliamentary Assembly of Council of Europe's report on the case of murder of Daphne Caruana Galizia, stated that Prime Minister Muscat could be implicated in the case. Likewise, UN Special Rapporteur on Freedom of Expression, David Kaye and UN Special Rapporteur on Extra-Judicial Killings, Agnes Callamard, called on Prime Minister to remove himself from the inquiry due to his links to those implicated in the murder.⁴⁶

In December 2019, due to the developments that have taken place in the case in November, EU Parliament sent a mission to Malta to review the rule of law situation, which also expressed its opinion that the Prime Minister should step down immediately.⁴⁷ After press reports indicating Prime Minister's direct connection to Yorgen Fenech, murder suspect in Daphne case, were released, numerous academics, MEPs and international press freedom organizations publicly called for Prime Minister's resignation.

Finally, in December 2019, Prime Minister Muscat announced that he will resign due to the political crisis (similarly to what happened in Slovakia). He formally resigned after 12 January 2020, when a new Labour Party leader was elected. EU Parliament approved a resolution⁴⁸ which called on the European Union to open a formal rule-of-law dialogue with Malta due to

⁴⁵ 'Daphne Caruana Galizia: Malta suspect will not get immunity' (*BBC*, 26 November 2019) <<https://www.bbc.com/news/world-europe-50598255> <https://www.bbc.com/news/world-europe-50598255>> accessed on 14 April 2020.

See also Sharon Braithwaite and Barbie Latza Nadeau 'Why murdered Maltese journalist Daphne Caruana Galizia is back in the news', (*CNN*, 30 November 2019) <<https://edition.cnn.com/2019/11/30/europe/daphne-caruana-galizia-qa-intl/index.html>> accessed on 5 May 2020.

⁴⁶ 'UN experts make fresh call for independent investigation into murder of Daphne Caruana Galizia' (*UN Human Rights Office of the High Commissioner*) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25381&LangID=E>> accessed on 15 April 2020.

⁴⁷ Crispian Balmer, 'EU Parliamentary mission head says Malta PM should stand aside now' (*Reuters*, 3 December 2019) <<https://uk.reuters.com/article/uk-malta-daphne/eu-parliamentary-mission-head-says-malta-pm-should-stand-aside-now-idUKKBN1Y717O>> accessed on 15 April 2020.

⁴⁸ European Parliament resolution on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia (2019/2954(RSP)) <https://www.europarl.europa.eu/doceo/document/B-9-2019-0240_EN.html> accessed on 16 April 2020.

concerns over how the State authorities were handling the murder investigation.⁴⁹ Finally, in January 2020, Robert Abela was appointed as the new Prime Minister of Malta.

3.4. Slovakia's response to the murder of Jan Kuciak

Unlike in the case of murder of Daphne Caruana Galizia, where the authorities were reluctant to recognize the true motive for the journalist's murder, in Slovakia, on the very same morning when the bodies of Kuciak and his fiancé were found, President of Slovak Police stated in a press conference that the murders "likely have something to do with Kuciak's investigative activities"⁵⁰. Slovak Government offered 1 million EUR for the information on those who committed the murders. Moreover, Prime Minister Fico stated that the an inter-agency task force consisting of members from General Prosecutor's Office, Special Prosecutor's Office, Ministry of Interior and the SIS will be employed in order to resolve the case as swiftly as possible.⁵¹

In Jan Kuciak's case, it took authorities only four days to make the initial arrest(s). Namely, four days after the bodies were found, armed units of the Slovak Police Corps' National Crime Agency (NAKA) raided several locations in eastern Slovakia and arrested Antonino Vadalà, Italian businessman who was mentioned in Kuciak's article. Authorities also arrested his two brothers Sebastiano and Bruno, cousin Pietro Caprotta and several other men.⁵² Nevertheless, due to lack of sufficient evidence, all suspects were released within 48 hours. Very concerning was the fact that on the day of initial arrest, police was given instructions not to disclose any further information or updates about the investigation to the press or the public, which raised many concerns about independence and effectiveness of the investigation.⁵³

⁴⁹ Lily Bayer, 'European parliament requests rule of law talks with Malta' (*Politico*, 19 December 2019) <<https://www.politico.eu/article/european-parliament-requests-rule-of-law-talks-with-malta/>> accessed on 18 April 2020.

⁵⁰ Daniel Boffey, 'Slovakian journalist investigating claims of tax fraud linked to ruling party shot dead' (*The Guardian*, 26 February 2018) <<https://www.theguardian.com/world/2018/feb/26/slovakian-journalist-investigating-claims-of-tax-linked-to-ruling-party-shot-dead>> accessed on 18 April 2020.

⁵¹ 'UPDATED: Investigative journalist killed in his house' (*Spectator.sk*, 26 February 2018), <<https://spectator.sme.sk/c/20768866/investigative-journalist-and-fiancee-killed-in-their-house.html>> accessed on 20 April 2020.

⁵² 'Polícia pri razii na východe Slovenska zadržala podnikateľa z Kuciakovho článku' (*Aktuality.sk (in Slovak)*, 1 March 2018) <<https://www.aktuality.sk/clanok/568661/policia-vykonava-raziu-na-vychode-slovenska-u-podnikatela-z-kuciakovho-clanku/>> accessed on 20 April 2020.

⁵³ 'More concerns about independence of Kuciak murder investigation' (*Spectator.sk.*, 1 March 2018.) <<https://spectator.sme.sk/c/20773539/more-concerns-about-independence-of-kuciak-murder-investigation.html>> accessed on 20 April 2020.

Subsequently, as a result of investigation, Slovak police was able to confirm aforementioned speculation that Kuciak had, in fact, been murdered because of his journalistic work and that his murder had been ordered.

In September 2018, authorities arrested eight suspects, although the police assumed that the person who had actually ordered the murder was not among these suspects. Around 200 individuals had been questioned prior to the arrests. Three of the eight suspects were subsequently charged with murder.⁵⁴ Tomáš Szabó was the alleged shooter assisted by his cousin Miroslav Marček, a former soldier who had carried out the killings. Zoltán Andruskó was believed to be the middleman, carrying out the orders of Alena Zsuzsová. Andruskó cooperated with the police and named Marian Kočner as the one who had ordered the killing.⁵⁵

Zoltán Andruskó, who acted as the middleman, was sentenced to 15 years of imprisonment on 30 December 2019, after he made an agreement with the prosecutors. Andruskó pleaded guilty to all charges and agreed to act as a witness in prosecution's case in trials of other defendants. On 13 January 2020, trial of Marián Kočner, Alena Zsuzsová, Tomáš Szabó and Miroslav Marček began. Marček confessed that he was the one who had carried out the killing of Jan Kuciak and his fiancé Martina Kučňirova. On 6 April 2020, he was sentenced to 23 years long imprisonment.⁵⁶

Murder of Jan Kuciak sparked shock and outrage with the public, which led to political crisis in Slovakia. Many opposition politicians accused the ruling Smer-SD party of being involved with Kuciak's murder. Crisis escalated on 4 March 2017, when President Kiska called on a live television broadcast for, either, radical change in the cabinet of the ruling party or early elections.⁵⁷

⁵⁴ 'Tři z osmi zadržených při razii v kauze Kuciak byli obviněni z úkladné vraždy' (*Irozhlas.cz (in Czech)*, 28 September 2018) <https://www.irozhlas.cz/zpravy-svet/novinar-jan-kuciak-kusnirova-ukladna-vrazda-slovensko-policie-vazba-zadrzeni_1809281429_pla> accessed on 21 April 2020.

⁵⁵ 'Obhajkyňa potvrdila: Andruskó označil Kočnera za objednávateľa vraždy' (*Aktuality.sk*, 4 October 2019) <<https://www.aktuality.sk/clanok/629321/obhajkyňa-potvrdila-andrusko-oznacil-kocnera-za-objednavateľa-vrazdy/>> accessed on 21 April 2020.

⁵⁶ 'Killer of investigative journalist sentenced to 23 years in jail' (*Al Jazeera*, 6 April 2020) <<https://www.aljazeera.com/news/2020/04/killer-investigative-journalist-sentenced-23-years-jail-200406161350049.html>> accessed on 21 April 2020.

⁵⁷ 'UPDATED: Fico won't step down, accuses Kiska of joining opposition' (*Spectator.sk.*, 13 March 2018) <<https://spectator.sme.sk/c/20773344/kiska-government-reshuffle-or-early-elections.html>> accessed on 23 April 2020.

Two days after the murder of Jan Kuciak, Slovak Minister of Culture resigned, stating that he could not cope with the fact that a journalist was killed during his tenure. In addition, Minister of Interior and Deputy of the Prime Minister, resigned on 12 March 2018.⁵⁸

On 14 March 2018, Prime Minister Fico announced his own resignation as well as the fact that his whole cabinet will step down, claiming that he was resigning in order to avoid early elections and to “solve the political crisis”⁵⁹. As early as on 15 March, the President accepted resignation of Fico and his entire cabinet and appointed a new cabinet to be led by Peter Pellegrini who took on the role of the new prime minister.

Chapter 4: Comparative analysis of the factors that influenced state responses

The research into these cases has shown that both cases had very important common external factors which influenced State responses. These can be grouped into four categories: journalist community movements; citizens’ movements i.e. protests; civil society and international NGOs and press freedom groups movement; and influence from international and intergovernmental organizations.

4.1. Journalist community movements

It was the movement and the action taken by journalist community that helped make incredible progress in the case of murder of Jan Kuciak. His murder outraged his colleagues in the world of journalism and led them to cooperation. The stories that Kuciak’s journalist colleagues wrote, sparked public outrage and helped take down high ranking Slovak politicians from their positions of power, and finally, they led to the conviction of the murderer and the mastermind behind the murder.

The message that the murder of Kuciak was supposed to send to journalist community was that the Kuciak was killed to prevent him from doing his work. This could have resulted in intimidation and self-censorship of his colleagues. On the other hand, however, it sparked outrage and

⁵⁸ Matej Dedinský, ‘Minister Kaliňák podáva demisiu’ (*Aktuality.sk (in Slovak)*, 12 March 2018) <<https://www.aktuality.sk/clanok/571728/minister-kalinak-podava-demisiu/>> accessed on 24 April 2020.

⁵⁹ Michaela, Terenzani ‘UPDATED: Fico is ready to resign tomorrow’ (14 March 2018) <<https://spectator.sme.sk/c/20781295/fico-is-ready-to-resign-tomorrow.html>> accessed on 24 April 2020.

movement of journalists to help bring justice for Kuciak. Journalists managed to obtain secret surveillance evidence collected by law enforcement officials in the investigation against Kocner. They used this evidence as a basis for reporting on corruption in Slovakia.⁶⁰ After Kuciak's death, Aktuality.sk, news outlet for which Kuciak was working, established an unofficial group called *All for Jan* to which other Slovakian news groups joined. The group aimed to complete reporting that Kuciak left behind. Moreover, these journalists teamed up and followed up on everything that was related to Kuciak's murder and brought it to the attention of the police. After seeing the results achieved by *All for Jan* group, journalists established the Slovakian Investigative Center of Jan Kuciak, which is now focused on investigating international collaborations and money laundering.

Similarly, after Daphne Caruana Galizia had been murdered, a group of 45 journalists from around 18 media organizations around the world cooperated to launch so called "The Daphne Project"⁶¹, which serves to continue her investigative work. The project was coordinated by *Forbidden Stories*, an organization established for the purposes of continuing the work of killed, imprisoned or incapacitated journalists. The project thus, included articles on connections between the Pilatus Bank in Malta, Azerbaijani politicians and high-ranking Maltese politicians to corrupt entities which include Italian organized crime and oil smugglers from Libya.

A very positive development from Jan Kuciak's case was that many journalists expressed their views that before the murder of Jan Kuciak, the environment for journalists in Slovakia was hostile and filled with distrust in the media, from the public as well as the politicians. But journalists in Slovakia believe that their efforts in bringing justice for Kuciak helped them regain this trust with the public, reclaim their power and reestablish themselves as watchdogs of democracy.⁶² Another factor which had influenced such remarkable movement of journalists in Kuciak's case, was the fact that Kuciak was murdered only four months after Daphne Caruana Galizia in Malta, whose murder had already shaken Europe and shown that not even EU is a safe harbor for journalists.

⁶⁰ Dino Jahic 'A win against impunity' (*VOA Bosnia Service*) <<https://projects.voanews.com/kuciak/>>accessed on 25 April 2020.

⁶¹ 'The Daphne Project' (*Forbidden Stories*) <<https://forbiddenstories.org/case/the-daphne-project/>>accessed 24 April 2020.

⁶² Dino Jahic 'A win against impunity' (*VOA Bosnia Service*) <<https://projects.voanews.com/kuciak/>>accessed on 25 April 2020.

Murders of Daphne and Kuciak have also brought changes to the way journalists conduct their work. Journalists have come to realize that investigating organized crime and political corruption presents a great risk to individual reporters, but that solidarity can go a long way. Thus, journalists have become inspired to collaborate more, and put aside competition for the sake of security and collaboration.

While the movement of journalists has admittedly not been that great in Malta or internationally, immediately, after the murder of Daphne Caruana Galizia, murder of Jan Kuciak which happened only a few months later, sparked journalists' movements not only in Slovakia, but also in Europe and worldwide. Journalists have been dissatisfied with lack of progress in the investigation and concerned about its independence in both cases. Therefore, journalists and press freedom advocates have, together with the public gathered supporters for thorough and independent investigations. In both Kuciak's and Daphne's cases, they have put pressure on EU officials and lawmakers.⁶³

4.2. Citizens' movements i.e. protests

Case of murder of Jan Kuciak is a great example of how powerful citizens' movements can be and how they can achieve actual change. Couple of days after the murder of Jan Kuciak and his fiancé, on 2 March 2017, around 25,000 people had already gathered on the streets of Bratislava to protest against the attacks on press freedom.⁶⁴ Protesters demonstrated against government corruption which they knew Kuciak was investigating. They also called for resignations of high-ranking politicians. Most importantly, however, they called on for an independent investigation into Kuciak's murder. On March 9, protests were already held in 48 cities across Slovakia and 17 cities across the world. Around 60,000 people gathered in Bratislava for a protest march, the largest protest march since the Velvet Revolution in 1989. Several universities in Slovakia and the Czech Republic, teachers, school associations, artists and non-governmental organizations

⁶³ Robert Mahoney, 'After murder of Kuciak and Caruana Galizia, investigative journalists band together for justice' (*Committee to Protect Journalists*, 15 March 2018) <<https://cpj.org/2018/03/after-murders-of-kuciak-and-caruana-galizia-invest/>> accessed 25 April 2020.

⁶⁴ 'Deloire: Bratislava is the capital of press freedom today' (*Spectator.sk.*, 2 March 2018) <<https://spectator.sme.sk/c/20772206/deloire-bratislava-is-today-the-capital-of-press-freedom.html>> accessed on 25 April 2020.

participated in the protests.⁶⁵ As the official inquiry started to get compromised by misconduct and detours, the public pressure grew stronger. The protesters would gather each Friday, all around Slovakia and demonstrated for “a decent Slovakia”, how the protests later came to be known.⁶⁶ Once the Prime Minister had stepped down, protest organizers announced that the protests “For a Decent Slovakia” were being suspended. Three days later, however, the protesters demanded that President of the police, Tibor Gašpar, be removed from the office. Subsequently, on 5 April 2018, 30,000 protesters gathered in Bratislava. The new prime minister and the President of Police declared that Gašpar will resign at the end of May, to calm the tensions.

On the other hand, it has to be said that in Malta protests were not that powerful nor did they achieve change so rapidly, as in Slovakia. Namely, in Malta, on 22 October 2017, several days after the murder of Daphne Caruana Galizia, Civil Society Network organized a protest for justice in Vellella, Malta. Thousands of people participated in the protests and demanded that the Police Commissioner and the Attorney General immediately resign.⁶⁷ However, it took much longer for the situation to change for the better in Malta and for the actual progress to be made in the proceedings. Nevertheless, in the case of Daphne Caruana Galizia, some other factors, like the following two have been much stronger and influential in achieving the results.

4.3. Pressure from civil society, international NGOs and press freedom groups

One year after Daphne’s death, many international NGOs and groups with the mission to promote and protect safety of journalists and freedom of the press, including PEN International, Committee to Protect Journalists, Reporters Without Borders and International Press Institute, sent a delegation to Malta. The delegation met with the Prime Minister and some other high-ranking politicians. They made numerous recommendations including that an independent public

⁶⁵ ‘Enough of Fico, thousands of people shouted at gatherings across Slovakia’ (*Spectator.sk*, 9 March 2018) <<https://spectator.sme.sk/c/20777059/enough-of-fico-thousands-of-people-shouted-at-gatherings-across-slovakia.html>> accessed on 25 April 2020.

⁶⁶ Ilya Lozovsky, ‘What Slovakia showed us’ (*OCCRP*, 4 March 2020) <<https://www.occrp.org/en/a-journalists-undying-legacy/what-slovakia-showed-us>> accessed on 2 May 2020.

⁶⁷ ‘Thousands demand resignation of Police Commissioner, Attorney General’ (*The Times of Malta*, 17 October 2017) <<https://web.archive.org/web/20171023052743/https://www.timesofmalta.com/articles/view/20171022/local/police-remove-mafia-state-banners-from-city-gate.661123>> accessed on 4 May 2020.

inquiry had to be established in the case.⁶⁸ Moreover, many international NGOs and press freedom groups submitted a report at the UN's Universal Periodic Review in 2018, where Malta's human rights record was reviewed. Again, they urged the State to hold a public inquiry into Daphne's murder.⁶⁹ This recommendation was, however, not accepted by Malta. Moreover, in May 2020, these organizations officially addressed Attorney General of the EU and requested that EUROPOL officially provides support to legal proceeding in the case of murder of Daphne Caruana Galizia.⁷⁰ In their call, the group relied on the fact that justice still has not been delivered in this case, and they also relied on the previous positive experience and valuable assistance that EUROPOL has provided in legal proceedings in Jan Kuciak murder case in Slovakia.

In the case of Jan Kuciak, both national and international NGOs and press freedom groups have issued regular joint statements, continuously putting pressure on Slovakian government and international community, similarly as they did for the murder of Daphne Caruana Galizia. They have called on the authorities to conduct independent investigation, have demanded answers as to whether authorities knew about the threats that Kuciak was receiving and what steps they took to protect him, in accordance with their human rights obligations, and have called on the authorities to take preventive steps and ensure safety of journalists in the future.⁷¹

4.4. Pressure from inter-governmental organizations

European Union has also put pressure on both Malta and Slovakia. In, Malta however, the progress was not as rapid or concrete as it was in Slovakia. It was only in December 2019, so more than two years after the murder, that the EU Parliament sent a mission to Malta, which called for immediate resignation of the Prime Minister. Subsequently, the Parliament approved a resolution

⁶⁸ 'International freedom of expression mission to Malta: preliminary statement of findings' (*PEN International*, 17 October 2018) <<https://pen-international.org/news/international-freedom-of-expression-mission-to-malta-preliminary-statement-of-findings>> accessed on 15 May 2020.

⁶⁹ Article 19, English PEN, the European Centre for Press and Media Freedom, International Press Institute, PEN International and Reporters Without Borders, *Joint submission to the Universal periodic Review of Malta* (29 March 2018) <<https://pen-international.org/app/uploads/Malta-UPR-Final-copy-web.pdf>>.

⁷⁰ 'Malta: PEN International joins call to Attorney General asking for EUROPOL support for murdered journalist Daphne Caruana Galizia' (*PEN International*, 5 May 2020) <<https://pen-international.org/news/malta-call-attorney-general-asking--europol-support-daphne-caruana-galizia>> accessed on 15 May 2020.

⁷¹ 'Call for justice and accountability of state authorities on the anniversary of the murder of Jan Kuciak' (*PEN International*, 20 February 2020) <<https://pen-international.org/news/call-for-justice-and-accountability-of-state-authorities-on-the-anniversary-of-the-murder-of-jan-kuciak>> accessed on 17 May 2020.

which called on the European Union to open a formal rule-of-law dialogue with Malta due to concerns over how the State authorities were conducting the murder investigation.⁷²

Parliamentary Assembly of the Council of Europe (PACE) had adopted a report on murder of Daphne Caruana Galizia which showed systematic problems with the rule of law in the State. Finally, PACE ordered Malta to set up an independent public inquiry into the murder, which the State finally did do, however only six days before the expiry of the deadline.

Finally, around 30 of civil defamation lawsuits which remained pending after Daphne's death were dropped after Dunja Mijatovic, Council of Europe's Human Rights Commissioner called for their withdrawal directly from the Prime Minister.⁷³ She also called on the amendment of legal provisions which allow civil defamation lawsuits to pass on the heirs of the defendant, since it can put families at risk, cause intimidation and chilling effect.⁷⁴ This was also underlined by press freedom groups in their 2018 UPR report but had not yet been repealed.

Moreover, Pieter Omtzigt, Parliamentary Assembly of Council of Europe's rapporteur on the case of murder of Daphne Caruana Galizia, as well as UN Special Rapporteur on Freedom of Expression, David Kaye and UN Special Rapporteur on Extra- Judicial Killings, Agnes Callamard, all called on Maltese Prime Minister to remove himself from the public inquiry, as he had a serious conflict of interest which could undermine the independence and impartiality of the inquiry, as well as to resign from his position as the Prime Minister.

In terms of assistance provided by the EU to the resolution of Jan Kuciak's case, EUROPOL had at the request of Slovakian authorities provided analytical and forensic support early on in the investigation. It had deployed staff to Slovakia, coordinated cross-border activities and provided support forensic support on organized crime.⁷⁵ EUROPOL's assistance in Jan Kuciak's case has

⁷² Lily Bayer, 'European parliament requests rule of law talks with Malta' (*Politico*, 19 December 2019) <<https://www.politico.eu/article/european-parliament-requests-rule-of-law-talks-with-malta/>> accessed on 18 April 2020.

⁷³ 'Commissioner calls on Maltese authorities to withdraw posthumous defamation lawsuits against the family of Daphne Caruana Galizia' (*CoE Commissioner for Human Rights*, 19 September 2019) <<https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-maltese-authorities-to-withdraw-posthumous-defamation-lawsuits-against-the-family-of-daphne-caruana-galiz-1>> accessed on 18 May 2020.

⁷⁴ See also: ARTICLE 19 'Global Expression Report 2018/2019: Corruption kills, Jan Kuciak murdered in Slovakia' (2019) <<https://www.article19.org/reader/global-expression-report-2018-19/regional-overviews/europe-and-central-asia-regional-overview/corruption-kills-jan-kuciak-murdered-in-slovakia/>> accessed on 12 May 2020.

⁷⁵ 'Arrests in Slovakia' (*EUROPOL press release*, 2 October 2018) <<https://www.europol.europa.eu/newsroom/news/arrests-in-slovakia>> accessed on 17 May 2020.

proved to be effective and had inspired the international community to urge Maltese authorities to request EUROPOL's assistance as well.

Moreover, European Commission had co-funded Media Freedom Rapid response team to support journalists under threat. This mechanism is conducted by various press freedom groups and led by European Centre for Press and Media in Leipzig. It is "designed to mitigate the consequences of the...deterioration of press and media freedom in EU Member States and Candidate Countries"⁷⁶. The project is co-funded by European Commission after European Parliament had expressed its intention to strengthen the protection of press and media freedom in the EU, inspired by the murders of Daphne Caruana Galizia and Jan Kuciak.

Furthermore, European Parliament has also passed a resolution on protection of investigative journalists in Europe: the case of Slovak journalist Jan Kuciak and Martina Kušnírová.⁷⁷ Additionally, an ad-hoc delegation to Slovakia was prepared and sent by European Parliament on short notice after the murder of Jan Kuciak. After several days of meetings with various stakeholders, including high-ranking politicians, law enforcement officials, journalists, civil society organizations, the ad-hoc delegation issued a comprehensive report indicating some fundamental rights related issues in Slovakia, such as distrust in the institutions, particularly law enforcement, concerns over access to justice, possibilities of jeopardizing independent investigation, hostile environment towards the press and lack of safety for journalists, among others.⁷⁹

The analysis of influence of these four different external factors in both cases shows that, while all four factors were present in both cases, the extent to which they had been successful is different. Namely, in the case of Jan Kuciak's murder, movements and actions taken by Slovak journalist community and the general public in the form of demonstrations, have taken much stronger form than in the case of murder of Daphne Caruana Galizia. One of the potential reasons for

⁷⁶ 'Rapid Response Mechanism marks a new start for press freedom' (*European Centre for Press and Media Freedom*, 2 March 2020) <<https://www.ecpmf.eu/rapid-response-mechanism-marks-a-new-start-for-press-freedom/>> accessed on 18 May 2020.

⁷⁷ European Parliament resolution on protection of investigative journalists in Europe: the case of Slovak journalist Jan Kuciak and Martina Kušnírová (2018/2628(RSP)) <https://www.europarl.europa.eu/doceo/document/B-8-2018-0186_EN.html> accessed on 17 May 2020.

⁷⁸ European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia (2018/2965(RSP)) <https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328_EN.html> accessed on 17 May 2020.

⁷⁹ European Parliament, *Report on the ad-hoc delegation to Slovakia 7- 9 March*, <https://www.europarl.europa.eu/cmsdata/140001/Ad%20hoc%20delegation%20to%20Slovakia_report_20180313.pdf> accessed on 18 March 2020.

this can be the fact that the murder of Jan Kuciak came shortly after Europe had already been shaken by the murder of Daphne Caruana Galizia and the public was already outraged and frightened, so their movement and outrage became stronger after they've seen how rapidly situation for democracy and media freedom is deteriorating in Europe.

The influence and pressure placed by international community, namely international organizations and international NGOs and press freedom groups, have been much stronger in the case of murder of Daphne Caruana Galizia. One of the reasons for this can be the fact that in Slovakia after the national outrage became so strong and brought about the political crisis, change and progress in the investigation so promptly, there was not as much need for the international pressure to get involved as there was in the case of Daphne's murder. Since the investigation of murder of Maltese journalist developed very slowly in the first two years since the murder, was marked with a lot of misconduct and hinderance of the investigation, international pressure put on the government had to be stronger.

Even though both of these states are bound by legal obligations to protect the lives of the people under their jurisdiction, and to conduct effective investigation, as well as to protect freedom of the media and the right of the public to receive information, as protected both by the Covenant and the European Convention, these two case demonstrate that in neither of these cases had the legal obligations placed such strong pressure and played such crucial role in moving towards justice as did the external factors discussed above. It can be said that had it not been for these factors, for public outcry, journalists and civil society movement, both on national and international level, murders of both Daphne Caruana Galizia and Jan Kuciak would have been just another of the impunity cases which seems to have become a pattern in the cases of killings of journalists.

Chapter 5: Legal and Policy Recommendations

As already stated, prevailing culture of impunity for attacks against safety of journalists creates suitable environment for their repetition. When justice fails in these attacks, it only empowers the perpetrators and undermines trust that journalists have in the authorities and their will to guarantee effective protection for the public watchdog.

Following the analysis of the cases of murder of Daphne Caruana Galizia in Malta and that of Jan Kuciak and Slovakia, certain lessons can be learned and legal and policy recommendations

drawn, which, if applied, could help the States prevent such grave attacks on journalists and could help ensure that these attacks are addressed more promptly and efficiently.

Thus, the recommendations to be drawn from these cases are the following⁸⁰:

0. Attack directed against journalists for the work that they are investigating or reporting on should be dealt with in the framework of protection of democracy. States should regard attacks on journalists not as regular attacks but as an attack on democracy because they put freedom of the media in jeopardy, and freedom of the media is one of the essential pillars of democracy.
1. States must respond early on to all (both verbal and physical) attacks against safety of journalists and should make clear public statements that all attacks on journalists are unjustifiable and that perpetrators will be held to account. Silence from authorities is particularly dangerous because it can be interpreted as tacit support of such acts of violence, which could in turn encourage the perpetrators and create fear and self-censorship in journalists.
2. Threatened journalists should have immediate and effective recourse to address competent authorities. Said authorities should be either law enforcement authorities or they should take form of specialized protection mechanisms. Moreover, these authorities should put in place concrete protection measures which are able to provide effective protection to endangered journalists.
3. States must carry out thorough, impartial, prompt, independent and effective investigation of all threats, acts of violence and verbal and physical attacks committed against journalists. In this respect, special investigative units for crimes against journalists should be established, which would be capable of carrying out effective investigation of these attacks.
4. States must bring to justice all perpetrators of crimes against journalists. Thus, States should convict those who command the crime, conspire to commit the crime, aid and abet in the commission of the crime, or cover up these crimes. In order for this recommendation to be carried, States should appoint specialized prosecutors and specific protocols for these crimes.

⁸⁰ Some of the recommendations were made with reference to this report ARTICLE 19, 'Ending Impunity: Acting on UN Standards on the Safety of Journalists' (2019) <<https://www.article19.org/wp-content/uploads/2019/11/SOJ-Web.pdf>> accessed on 25 May 2020.

5. States must adapt their legal system to above stated recommendations. Primarily, States should amend their criminal law with adequate provisions which would elevate the crimes against journalists to the level of crimes against democracy, if such provisions do not already exist.
6. States must implement relevant international human rights rules and regulations on the safety of journalists, and all other provisions which have the effect and benefit for ensuring safety of journalists.
7. States must provide adequate recourse for journalists to be able to get involved in the investigation of attacks against journalist. This would have two-fold benefit: on the one hand, journalists are able to obtain invaluable information that could assist the officials, and, on the other hand, such cooperation between law enforcement officials and journalists would send a societal message of solidarity and respect towards general protection of media freedom; it would send the message of support and would serve as antidote for fear that tends to grow among journalists, their community and families after an attack on one of them is committed.
8. Law enforcement officers, judges and any other relevant actors should receive adequate training and education on state's legal obligations and commitments on safety of journalists.
9. Journalists should keep putting pressure on the relevant authorities and calling for competent relevant authorities to assist with bringing of the justice in these cases. Even more so in these cases, they should perform their role of public watchdogs, and should carefully scrutinize all steps taken by the authorities and put pressure on them to carry out effective investigation, prosecution and conviction, and protect media freedom.
10. All international actors must feel obliged to put pressure on the Government and scrutinize the efforts that Government is putting in resolution of attacks against journalists cases, for the purposes of protecting democracy, freedom of the media and rule of law in the international community.

Conclusion

Freedom of expression is a fundamental human right essential not only in itself, but also necessary for enjoyment of other rights. It is the foundation of democracy and essential for each indi-

vidual's self fulfilment. In this respect, free, uncensored, and unhindered media is essential for ensuring freedom of expression and other human rights. It plays the essential role of holding the government accountable and facilitating access to information.

However, when journalists are subjected to constant violence, intimidation and attacks, this leads to severe chilling effect of the media. Thus, attacks on journalists have a severe impact not only on journalists' right of freedom of expression but also on the right of the public to receive information. It is for these reasons that attacks on journalists, and particularly, gravest form of attacks- murders, are so problematic. What makes this problem even more concerning is the fact that climate of impunity usually tends to surround cases of murders of journalists. According to index on killed journalists maintained by Committee to Protect Journalists, impunity prevails in 89% of these cases.

For my capstone thesis I have chosen to address the grave issue of killings of journalists through analysis of the cases of murder of Daphne Caruana Galizia in Malta and Jan Kuciak in Slovakia which happened at the end of 2017 and beginning of 2018, respectively, so only few months apart. Both of these journalists were investigative journalists working on stories which connect high ranking national politicians with corruption, and both were targeted for their journalistic work.

Relevant legal obligations that Malta and Slovakia have, and which come from the International Covenant on Civil and Political Rights and European Convention of Human Rights, are the same as they are both Council of Europe Member States and UN Member States which have ratified the Covenant. Even the analysis of the external factors which have influenced the state response showed that in both cases journalist community movements, citizens movements in the form of protests, NGO and press freedom groups pressure and pressure placed on the states by international organizations were the leading factors which influenced state response.

While it can be said that all four factors were present in both cases, it can be concluded that in the case of murder of Daphne Caruana Galizia, pressure placed on the state by intergovernmental and international organizations as well as NGOs and press freedom groups was more extensive than in the case of murder of Jan Kuciak. On the other hand, in the case of murder of Slovak journalist, journalist community movements and protests of the general public in Slovakia were much stronger and more effective factor.

This seems to have been the right time to analyze these cases and track the developments, as in both cases, major developments occurred from November 2019 onwards. While the progress in the murder of Slovak journalist was made much more rapidly, carried by political crisis that was caused by public outcry, in the case of murder of Daphne Caruana Galizia state authorities have managed to hinder the investigation for around two years, with progress only starting to take place in November 2019. Nevertheless, in both of these cases it can be observed how the pressure placed on the state by the public or international community can have strong influence and achieve progress towards justice. Thus, even though, particularly in the case of Daphne Caruana Galizia, justice still has not been achieved, it can be said that thus far, both of these cases show positive developments and give reasons for hope.

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