

An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

Malta

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Table of Contents

1. Civic space developments in 2022	3
1.1. Legislative reforms on media protection and freedom of expression.....	3
1.2. Misuse of Freedom of Information (FOI) procedures to block or limit media access to information.....	4
1.3. Malta Struggles to Tackle Corruption Due to Lengthy Judicial Proceedings.....	5
2. Promising practice in 2022	7
2.1. Strengthening Access to Justice for Improved Human Rights Protection	7
3. Visa for human rights defenders.....	8
3.1. Entry and stay for human rights defenders (HRDs) at risk.....	8

1. Civic space developments in 2022

1.1. Legislative reforms on media protection and freedom of expression

Area	Freedom of expression and information
Topic	Media freedom
Impact	Major

In 2022, following the recommendations of a public inquiry into the assassination of the journalist Caruana Galizia, the Maltese government initiated legislative reforms on media protection and set up a Committee of Experts to analyse the amendments.¹

The legislative efforts resulted in three draft Bills, published in October 2022.²

The Bills have however received criticism both for their content and the inadequacy of the consultation process. In a letter addressed to the Prime Minister of Malta in September 2022, the Council of Europe Commissioner for Human Rights expressed concern over the lack of transparency and involvement of civil society and the journalism community in the reform process.³

Criticism also came from the President and General Secretary of the Institute of Maltese Journalists (IGM), part of the Committee of Experts established by the Government. In a letter addressed to the Prime Minister in October 2022, the two officials claimed that *“the most salient recommendations made by the Committee were ignored or seriously watered down in the Bills presented by government. Among these were the constitutional entrenchment of the media and journalism as the Fourth Pillar of democracy, and the proposed anti-SLAPP legislation.”*⁴ In response to the criticism of

¹ Malta, Government of Malta (2022), [Establishment of a Committee of Experts on Media, Information note](#), 11 January 2022.

² Malta, Parliament of Malta (2022), [Bill No. 17 Committee for the Recommendation of Measures for the Protection of Journalists, other Media Actors and Persons in Public Life \(Establishment\) Bill](#), [Bill No. 18 Constitution of Malta \(Amendment\) Bill](#), [Bill No. 19. Protection of the Media and Journalists \(Various Laws\) \(Amendment\) Bill](#), 4 October 2022.

³ Council of Europe, Commissioner for Human Rights (2022), [Letter to Mr Robert Abela Prime Minister of Malta](#), Malta, 23 September 2022.

⁴ Institute of Maltese Journalists (IGM) (2022), [Letter to Prime Minister Robert Abela](#), 10 October 2022.

national and international stakeholders, the Prime Minister agreed to freeze the Bills and scheduled a new Public Consultation happening in February 2023.⁵

1.2. Misuse of Freedom of Information (FOI) procedures to block or limit media access to information

Area	Freedom of expression and information
Topic	Access/right to information
Impact	Major

In August 2022, several media freedom organisations published a joint statement expressing support for *The Shift News* in its Freedom of Information lawsuits against the government of Malta.⁶ The legal proceedings started in 2021 when *The Shift News* submitted 40 Freedom of Information (FOI) requests to various public bodies to investigate public expenditures. After the requests were denied, *The Shift* turned to the Information and Data Protection Commissioner, who ordered the disclosure of the documents. However, all the concerned government entities appealed the Commissioner's decisions. According to media freedom groups, these ongoing lawsuits have the purpose of exhausting *The Shift's* resources and discouraging further FOI petitions.⁷

The Commissioner for Human Rights of the Council of Europe confirms that this incident is emblematic of wider issues on access to information in Malta.⁸ The Freedom of Information Act (Cap. 496) grants the public the right of access to documents held by public authorities but provides for ample exceptions. As a result, journalists and NGOs often face difficulties in accessing documents. According to the Commissioner, "their

⁵ Prime Minister of Malta (2022), [Letter to Judge Emeritus Michael Mallia](#), Times of Malta, 13 October 2022.

⁶ International Press Institute (2022), [Joint statement in support of The Shift News as it faces a freedom of information battle with the government of Malta](#), 8 August 2022.

⁷ *Ibid.*

⁸ Dunja Mijatović, Commissioner For Human Rights Of The Council Of Europe (2022), [Report following her visit to Malta from 11 to 16 October 2021](#), 15 February 2022, p. 11.

requests for information are often ignored or turned down, there have been unnecessary delays and, in some instances, diversionary tactics.”⁹ Similar concerns are highlighted in the Media Pluralism Monitor 2022 Report, published by the Centre for Media Pluralism and Media Freedom. The Monitor assesses the risk for violations of the Right to Information as a medium, with a score of 61%.¹⁰

1.3. Malta Struggles to Tackle Corruption Due to Lengthy Judicial Proceedings

Area	Access to justice
Topic	Legal Standing; Other: efficiency of the justice system
Impact	Major

In July 2022, the European Commission published the *2022 Rule of Law Report* describing the level of independence, quality, and efficiency of the Maltese justice system.¹¹ The report starts with a list of recommendations in which the Commission highlights different issues, including the excessive length of judicial proceedings. According to the report, the Maltese justice system continues to deteriorate due to poor services and lack of resources. In particular, the number of judges per capita in Malta remains among the lowest in the EU. The Association of Judges and Magistrates of Malta confirmed the data, which raised concerns over the lack of adequate space, the absence of a dedicated training programme for deputy registrars and clerks and the high turnover in these positions.¹² The government promised an increase in the number of deputy registrars and clerks but did not commit to a specific deadline.¹³

The Commission also emphasises the urgent need to address challenges related to the length of investigations of high-level corruption cases. Final decisions on complex proceedings are still pending, and “*the length of investigations remains a serious*

⁹ Dunja Mijatović, Commissioner For Human Rights Of The Council Of Europe (2022), [Report following her visit to Malta from 11 to 16 October 2021](#), 15 February 2022, p. 11.

¹⁰ Centre for Media Pluralism and Media Freedom (2022), [Monitoring media pluralism in the digital era: application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021. Country report: Malta](#), June 2022, p. 12.

¹¹ European Commission (2022), [2022 Rule of Law Report - Country Chapter on the rule of law situation in Malta](#), 13 July 2022.

¹² *Ibid.*, p.7.

¹³ *Ibid.*, pp. 6-7.

problem in Malta, not least because non-collected elements of evidence may deteriorate with time, which ultimately hampers the outcome of justice.”¹⁴

The European Commission based its recommendations on the 2022 EU Justice Scoreboard, which provides comparative data on Member States' justice systems. The Scoreboard shows that the estimated time needed to resolve litigious civil and commercial cases at first instance has increased since 2018.¹⁵ The Maltese courts also have the highest rate in the EU by a wide margin when dealing with cases regarding competition law (almost 3,500 days) and money laundering (over 1,200 days).¹⁶

These inefficiencies undermine public confidence in institutions, negatively affecting democracy and the rule of law. For instance, they result in a lack of accountability for corruption and money laundering cases, hindering the capacity of the Maltese civil society to fight illegality.

¹⁴ *Ibid.*, p. 10.

¹⁵ European Commission (2022,) [The 2022 EU Justice Scoreboard](#), Figure 7, p. 11, 19 May 2022.

¹⁶ *Ibid.*, Figure 17, p. 16, Figure 24, p. 19.

2. Promising practice in 2022

2.1. Strengthening Access to Justice for Improved Human Rights Protection

In January 2021, the Maltese NGO Aditus launched the two-year project to identify and address the main obstacles that affect access to justice for victims of human rights violations. The project targets institutions and individuals with powers to influence legislation and policies.¹⁷

During the first stage, the foundation carried out a literature review to avoid redundancies and consider existing research performed on the key issues. This stage concludes with a survey addressed to the stakeholders identified during the desk research to obtain suggestions on improving access to justice for vulnerable communities.

During stage 2, recommendations from the research findings were used to raise awareness among key stakeholders about the main issues and their impact on vulnerable communities, such as lack of enforcement mechanisms and inadequate protection of victims. Input papers provided the basis for bilateral meetings and were discussed at a public conference with keynote presentations by experts and working groups.

Stage 3 is the monitoring and evaluation component of the project. The monitoring process is on-going and consists of tracking advocacy progress in a database derived from the literature review conducted in Stage 1. The database contains all the laws and policies that need to be influenced to improve access to justice. At the end of the project, the information collected in the advocacy database will be used for the evaluation phase.

¹⁷ Aditus Foundation (2022), [Strengthening Access to Justice for Improved Human Rights Protection](#), 19 December 2022.

3. Visa for human rights defenders

3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	No

In Malta, there are no specific legal and practical avenues for Human Rights Defenders (HRDs) at risk. Immigration services require that most third country nationals hold a visa to enter Malta. Such visas include the Schengen Visa for short stays, the issuance of which is regulated by EU provisions, or the National Visa for periods that exceed 90 days.¹⁸ The latter visa is commonly granted for reasons of work, study, or family reunification. A third-country national or stateless person who arrives in Malta to escape high-risk situations will be referred by Maltese immigration services to the International Protection Agency (IPA) to be granted international protection.¹⁹ This includes HRDs at risk as eligible applicants for international protection.²⁰ Once the HRD files an application for international protection, the Office of the Refugee Commissioner of the IPA implements a single asylum procedure to determine whether the applicant meets the criteria for refugee status.²¹ In accordance with Article 8(1) of the International Protection Act of 2001, Malta will grant refugee status to a person who *“faces a well-founded fear of persecution in his country of origin or habitual residence.”*²² In the event that the Office of the Refugee Commissioner does not find the HRD eligible for refugee

¹⁸ European Parliament and Council of Europe (2009), [Regulation \(EC\) No 810/2009 -Visa Code](#), Brussels, Art. 5, 15 September 2009; European Parliament and Council of Europe (2009), [Regulation \(EC\) No 810/2009- Visa Code](#), Brussels, Annex VII, 15 September 2009.

¹⁹ Information request (2022), [Identity Malta](#), 16 December 2022.

²⁰ Information request (2022), [Identity Malta](#), 16 December 2022.

²¹ Ministry for Home Affairs (2022), [International Protection Agency](#), accessed 9 January 2023; Malta, Maltese Legislation (*Leġislazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), Art. 4 and 5, 11 December 2015.

²² Malta, Maltese Legislation (*Leġislazzjoni Malta*) (2001), [Chapter 420 - International Protection Act](#), Art. 8(1), 1 October 2001.

status, the IPA proceeds to establish whether subsidiary protection status may be granted.²³

During the refugee status application process, the applicant has the right to legal assistance and a decision regarding international protection status within a time limit of 6 months, possibly extendable for a maximum of 9 additional months.²⁴ Applicants also have the right to remain in Maltese territory until the International Protection Agency has made a decision.²⁵ If the applicant receives refugee or subsidiary protection status, the IPA will issue a certificate of confirmation. This certificate allows the applicant to apply for a residence permit through Identity Malta Agency.²⁶

Once an individual is granted international protection, they can enjoy the rights listed in Chapter 420 of the International Protection Act and Act XL of 2020.²⁷ These include receiving legal residence in Malta for a period of 3 years, which may be further renewed.²⁸ Legal residence also applies to immediate family. Additionally, those who have obtained refugee or subsidiary protection status shall receive documents allowing them to leave and re-enter Malta without a visa.²⁹ The individual will also enjoy the right to access social welfare benefits, access to employment, integration programmes, educational programmes and training, proper accommodation, and appropriate medical care.³⁰

Maltese authorities may repeal or reject international protection status if the HRD is found guilty of crimes against humanity, guilty of acts contrary to the principles of the United Nations or is found to be a danger to the community or national security.³¹

²³ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2001), [Chapter 420 - International Protection Act](#), Art. 17(1), 1 October 2001.

²⁴ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), Art. 6 (4) §2, 11 December 2015.

²⁵ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), Art. 16(1), 11 December 2015.

²⁶ Malta, Identity Malta (2023), [Expatriates Unit](#), accessed 9 January 2023.

²⁷ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2001), [Chapter 420 - International Protection Act](#), 1 October 2001; Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), 11 December 2015.

²⁸ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), Art. 20(1)(a), 11 December 2015.

²⁹ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), Art. 20(1)(c), 11 December 2015.

³⁰ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2015), [Act XL of 2020 - Procedural Standards For Granting And Withdrawing International Protection](#), Art. 20(1)(c), 11 December 2015.

³¹ Malta, Maltese Legislation (*Legiżlazzjoni Malta*) (2001), [Chapter 420 - International Protection Act](#), Art. 17A(2)(a)(b)(c)(d), 1 October 2001.