

Proposal for the establishment of a  
Truth and Justice Commission in the  
assassination cases of Karen Grech;  
Raymond Caruana and  
Daphne Caruana Galizia

Partit Demokratiku  
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# Foreword

The assassinations of Karen Grech, Raymond Caruana and Daphne Caruana Galizia are three of the most painful moments of the First Republic.

Each case raises serious questions: What caused these killings? Could our State do more to stop these killings? Did the political climate surrounding the murder serve as an encouragement to commit these crimes? There are thousands of these and other questions that need to be answered.

In each case need to get truth, justice and lasting change.

We need a collective and honest effort to answer these questions and achieve the goals of truth, justice and lasting change so that these heinous crimes will not repeat themselves again.

Partit Demokratiku is therefore proposing the establishment of a Truth and Justice Commission pursuant to an amendment of the Inquiries Act. We propose that the Commission be overseen and presided by the Commissioner for Human Rights of the Council of Europe in order to ensure a truly independent inquiry. We want the Truth and Justice Commission to be completely free from political interference.

The Commissioner for Human Rights would be able to set the terms of reference of each inquiry and appoint the boards that will conduct the inquiry. Each member of the Truth and Justice Commission will have the same security of tenure as that given to judges.

We want the families of each victim to be adequately represented in the proceedings too.

We believe that only a Truth and Justice Commission can truly deliver on two levels (1) truth and justice to Karen Grech, Raymond Caruana and Daphne Caruana Galizia and their families and (2) the kind of truth, justice and lasting change that our country needs.

Godfrey Farrugia  
**Leader**  
**Democratic Party**

# Our Proposal

We are proposing today that the Maltese Parliament invite the Commissioner of Human Rights Council of Europe set up a truth and justice commission (the **Truth and Justice Commission** or the **Commission**) to:

1. investigate the circumstances of the assassination of Karen Grech, Raymond Caruana and Daphne Caruana Galizia;
2. establish, in each case, whether any responsibility may be attributed to the state (including by way of negligence) and whether the state failed (intentionally or negligently) to prevent these crimes and protect the lives of the victims;
3. advise whether there has been a breach of the human rights of the victims of these crimes and/or their relatives; and
4. make recommendations (including drafts of new laws) to strengthen the Maltese political environment and freedom of expression, including the journalistic protection.

The terms of reference of the Commission shall be drawn up by the Commissioner of the Council of Europe Human Rights following consultations with the relatives of each victim and consultations with a legal panel composed of the Chief Justice and the two senior most judges (other than the Chief Justice).

The terms of reference of the Commission will determine its general objectives, the composition of the board or boards that will be established under the aegis of the Commission to carry out the inquiry and the powers of the Commission and of each board.

In order to guarantee independence and the Commission's impartiality, no member of any board established by the Commission with may have a connection with the current or previous government or served or is a serving public official or otherwise held a constitutional office in Malta. Each member of the Commission shall have the same security of tenure as members of the judiciary.

The Commission would have the power to call witnesses or to seek the collaboration of the Maltese investigative authorities, including intelligence and police services.

The Commission would be empowered to determine whether the proceedings should be held in public or in secret, according to the evidence being heard.

The Commission would publish a report on its work at the end of each case, that is, a total of three reports.

Please refer to the Annex to this overview for a draft of the legal amendments that we propose Parliament agrees upon.

## What is a Truth and Justice Commission?

A Truth and Justice Commission is a commission of inquiry set up for special and exceptional purposes. Perhaps the most famous example of a truth commission was the one established by president of South Africa, Nelson Mandela just after his election to investigate the abuses of apartheid. Other inquiries which took the form of a truth commission are investigations that have been established following the end military dictatorships in Latin American countries or the commission established in Canada to investigate historic human rights abuses against the First Nations.

## Why is there a need for a Truth and Justice Commission in the cases of Karen Grech, Raymond Caruana and Daphne Caruana Galizia?

The cases of the murder of Karen Grech, Raymond Caruana and Daphne Caruana Galizia shocked Malta at the time they happened. Each incident took place against the backdrop of a febrile political climate. Each case had a high profile and attracted significant media attention. Besides ensuring that the criminal investigations in each case are completed, we need to see if the State failed to protect the right to life of these three individuals and draw lessons to ensure that these case not occur once again.

Although a truth commission is usually established following periods of civil war or dictatorship, it is necessary to set up a truth commission in Malta for the following reasons:

1. The three cases carry social and possibly political implications. The Commission needs to handle these cases with the utmost sensibility, seriousness and professionalism;
2. There is a burning sense of injustice in each of the three cases that remains unresolved. None of these victims deserved the cruel way in which they died. While the successful criminal prosecution of these crimes may bring some justice, it may not be sufficient to bring justice and closure for the relatives of the victims;
3. Each case carries the same fundamental human rights question: Did the state do enough to protect the victim's right to life?.

# The Gallagher QC and Murphy standard

Gallagher QC and Murphy, two human rights experts, have issued legal advice to the Maltese Government on behalf of the Caruana Galizia family where they recommend the establishment of a public inquiry into the assassination of Daphne Caruana Galizia. They argue that such inquiry should be truly independent of Maltese politics, government and the police and be made up of individuals who have no connection with any political party or government, such as for example international judges.

Such inquiry should operate on transparent and comprehensive terms of reference. The public inquiry will protect all witnesses and strive to create a balance between public access and secrecy, so as not to hem in ongoing police investigations. There should also be involvement of relatives of victims.

Gallagher QC and Murphy make these recommendations after examining the case law of the European Court of Human Rights in recent years to show how the state has responsibility for the life of every citizen and therefore there should be an inquiry into the circumstances surrounding the assassination of a citizen under pursuit to what case law and legal literature refers to as the investigative duty.

We believe that the advice Gallagher QC and Murphy represents a progressive guideline of how a justice and truth commission should work in the Maltese context. We should apply these guidelines to the cases of Karen Grech, Raymond Caruana and Daphne Caruana Galizia.

## Why the Human Rights Commissioner of the Council of Europe?

The [Commissioner of Human Rights of the Council of Europe](#) is an independent institution set up by the Council of Europe in 1999 to, among other, promote the protection of human rights in member states of the Council of Europe. Malta is a member of the Council of Europe. The role of the Commissioner of Human Rights of the Council of Europe is a role of regional importance and prestige. The Commissioner of Human Rights of the Council of Europe is elected by the Council of Europe Parliamentary Assembly from a list of three candidates known as experts in the field of human rights.

The involvement from the beginning to the end of the Commissioner Human Rights of the Council of Europe, assisted by an advisory panel composed of senior judges should guarantee the independence and impartiality of the Truth and Justice in the eyes of everyone.

# Sources we have considered

In preparing our proposal, we have considered various sources, including:

1. recommendations of the International Center for Transitional Justice on the establishment of Truth Commissions;
2. legal advice Gallagher QC and Murphy issued in August 2018 and November 2018;
3. Resolution (99) 50 of the Council of Europe on Human Rights establishing the office of the Commissioner for Human Rights; and
4. examples of truth commissions worldwide.

# Annex - Proposal for Amendments to the Inquiries Act to establish Truth and Justice Commission

*In Maltese*

Att li jemenda l-Att dwar l-Inkjesti, Kap 273 tal-Liġijiet ta' Malta.

1. It-titlu fil-qosor ta' dan l-Att hu l-Att tal-2018 li jemenda l-Att dwar l-Injesti u għandu jinqara u jinftiehem haġa waħda mal-Att dwar l-Inkjesti, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

2. Id-definizzjoni ta' "Bord" f'artiklu 2 ta' l-Att prinċipali għandha tiġi sostitwita b'dan li ġej:

““Bord” tinkludi kull kummissjoni, kumitat jew korp ieħor ta' persuni u tinkludi wkoll persona li taġixxi bħala Bord jew awtorita bħal dak u l-Kummissjoni għall-Verita u Ġustizzja mwaqqfa skond l-artiklu 4A ta' dan l-Att.”

3. Minnufieh wara artiklu 3(ċ) għandu jiżdied dan li ġej:

(d) limitament għall-Kummissjoni għall-Verita' u Ġustizzja mwaqqfa permezz ta' artiklu 4A ta' dan l-Att, iċ-ċirkostanzi tal-qtil ta' Karen Grech, Raymond Caruana u Daphne Caruana Galizia, skond l-għanijiet tal-Kummissjoni għall-Verita' u Ġustizzja msemmija f'dan l-Att u skond terms of reference determinati skond dan l-Att mill-president permanenti tal-Kummissjoni għall-Verita' u Ġustizzja.

4. F'artiklu 4 tal-Att prinċipali għandu jiżdied dan is-sub-artiklu immedjatament wara s-sub-artiklu 4(4):

“(5) il-provvedimenti ta' artikli 4(1) sa 4(3) (inklużi) ma japplikawx għall-Kummissjoni tal-Verita' u Ġustizzja u l-bordijiet imwaqqfa minnha taħt artiklu 4A ta' dan l-Att.”

5. Minnufieh wara artiklu 4 għandu jiżdied bħala artiklu 4A dan li ġej:



“4A. (1) Għandha titwaqqaf kummissjoni speċjali sabiex tinvestiga ċ-ċirkostanzi tad-delitti ta’ Karen Grech, Raymond Caruana u Daphne Caruana Galizia, liema kummissjoni għandha tissejjaħ “Kummissjoni għall-Verita’ u Ġustizzja”.

(2) Il-Kummissjoni għall-Verita’ u Ġustizzja mwaqqfa skond artiklu 4A(1) ta’ dan l-Att għandha:

(a) tinvestiga ċ-ċirkostanzi tal-assassinju ta’ Karen Grech, Raymond Caruana u Daphne Caruana Galizia;

(b) tiddetermina jekk l-awtoritajiet ta’ pajjiżna kenux jafu, jew kellhomx ikunu konxji ta’ riskju reali u immedjat għal ħajjet Prof Edwin Grech u qrabatu, Raymond Caruana u qrabathu u Daphne Caruana Galizia u qrabatha u jekk il-miżuri li ħadu l-awtoritajiet f’kull wieħed minn dawn il-każijiet kienux adegwati biex jiproteġu ħajjet il-vittmi u qrabathom;

(ċ) teżamina jekk kienx hemm responsabilita’ tal-istat (kemm jekk intenzjonata kif ukoll jekk b’negliġenza) li jevita dawn id-delitti u jiproteġi ħajjet il-vittmi u qrabathom;

(d) tikunsidra jekk id-drittijiet umani tal-vittmi ta’ dawn id-delitti u qrabathom ġewx miċħuda;

(e) tagħmel rakkomandazzjonijiet għal miżuri sabiex issaħħaħ l-ambjent politiku Malti u l-liberta’ tal-espressjoni, inkluż il-protezzjoni ġurnalistika, fosthom, liġijiet u regolamenti ġodda u b’hekk jiġi impedit li jinqatlu aktar ċittadini.

(3) (a) Il-persuna li tokkupa l-kariga ta’ Kummissarju tad-Drittijiet Umani tal-Kunsill tal-Ewropa għandha tinħatar bħala president permanenti tal-Kummissjoni għall-Verita’ u Ġustizzja.

(b) Il-president permanenti tal-Kummissjoni għall-Verita’ u Ġustizzja ma jista’ jitneħħa għall-ebda raġuni.

(4) Għandu jitwaqqaf kumitat legali kompost mill-Prim Imħallef u ż-żewġ imħallfin l-aktar anzjani dak iż-żmien (apparti l-Prim Imħallef) bl-iskop li jagħti pariri legali lill-president permanenti tal-Kummissjoni għall-Verita’ u Ġustizzja.

- (5) Għandu jitwaqqaf kumitat konsultattiv kompost minn rappreżentant tal-qraba ta' Karen Grech, rappreżentant tal-qraba ta' Raymond Caruana u rappreżentant tal-qraba ta' Daphne Caruana Galizia bl-iskop li jirrappreżenta l-interessi tal-vittmi tad-deliitti fil-proċedimenti kollha rilevanti qabel l-istess Kummissjoni għall-Verita' u Ġustizzja.
- (6) (a) Il-president permanenti tal-Kummissjoni għall-Verita' u Ġustizzja għandu jfassal it-*terms of reference* u l-proċeduri ta' kif għandha taħdem il-Kummissjoni għall-Verita' u Ġustizzja wara konsultazzjoni mal-kumitat legali mwaqqaf permezz ta' artiklu 4A(4) u l-kumitat tar-rappreżentanti tal-qraba tal-vittmi mwaqqaf permezz ta' artiklu 4A(5).
- (b) It-terms of reference imfassla skond artiklu 4A(6) għandhom ikunu mfassla sabiex jliñqu l-għanijiet tal-Kummissjoni għall-Verita' u Ġustizzja f'artiklu 4A(2) u għandhom jitqiesu bħala ekwivalenti għal regolamenti magħmula minn ministru li jitqegħdu fil-mejda tal-Kamra tar-Rappreżentanti, salv li ma ajjplikawx l-ebda diżpożizzjonijiet tal-liġi għal dibattiti parlamentari jew emendi parlamentari dwar liġijiet sussidjarji u regolamenti.
- (ċ) Proċedimenti ġudizzjarji dwar it-tfassil tat-terms of reference imsemmija f'artiklu 4A(6)(a) jistgħu jinfetħu biss direttament qabel il-Qorti Ewropea tad-Drittijiet tad-Drittijiet tal-Bniedem minn persuni naturali u fuq allegat ksur tad-Drittijiet tal-Bniedem u Libertajiet Fundamentali.
- (7) (a) Il-president permanenti tal-Kummissjoni għall-Verita' u Ġustizzja għandu s-setgħa li jwaqqaf bordijiet bħla parti mill-kummissjoni.
- (b) kull membru ta' bord imwaqqaf mill-Kummissjoni għall-Verita' u Ġustizzja għandu jintagħżel mill-president permanenti tal-kummissjoni skond kriterji stabbiliti mill-istess president permanent tal-kummissjoni fit-terms of reference msemmija f'artiklu 4A(6).
- (ċ) l-ebda membru tal-Kummissjoni għall-Verita' u Ġustizzja (inluż membru ta' bord tal-kummissjoni) ma jista' jkun uffiċjal pubbliku, membru tal-Kamra tad-Deputati jew eks membru tal-Kamra tad-Deputati jew b'xi mod ikun qarib jew sħab kummerċjali jew ikollu kunflitt ta' interess bi kwalunkwe mod (kemmi dirett kif

ukoll indirett) ma' membru tal-Kamra tad-Deputati, ufficjal pubbliku, jew membru tal-korp tal-pulizija jew l-armata ta' Malta.

(d) I-ebda membru tal-ebda bord tal-Kummissjoni għall-Verita' u Ġustizzja ma jista' jitneħħa għajr skond il-proċeduri stabiliti u għar-raġunijiet mogħtija taħt artiklu 97 tal-Kostituzzjoni ta' Malta.

(e) I-ebda deċiżjoni ta' I-ebda bord imwaqqaf mill-Kummissjoni għall-Verita' u Ġustizzja ma tista' tiġi appellata għajr lill-president permanenti tal-Kummissjoni għall-Verita' u Ġustizzja jew bord tal-appell imqabbad minnu, dejjem skond it-terms of reference u l-proċeduri determinati mill-president permanenti tal-Kummissjoni għall-Verita' u Ġustizzja.

(8) (a) Il-Kummissjoni għall-Verita' u Ġustizzja għandha s-setgħa tiddetermina l-proċedura tagħha, inkluż meta l-proċedimenti qabel wieħed mill-bordijiet għandhom jinstemgħu bil-magħluq, jekk:

(i) tali bord jidhirlhu li s-smiġħ ta' evidenza fil-miftuħ tista' tkun ta' ħsara għall-finijiet tal-ġustizzja; jew

(ii) l-Avukat Ġenerali jagħmel applikazzjoni qabel il-president permanenti tal-Kummissjoni għall-Verita' u Ġustizzja billi jagħmel intervent fil-proċedimenti qabel l-istess bord u l-bord fuq raġunijiet li s-smiġħ ta' tali xhieda jkun ta' ħsara għall-finijiet tal-ġustizzja.

(b) Id-deċiżjonijiet ta' bord dwar smiġħ ta' xhieda huma finali u mhumiex appellabbli qabel l-ebda tribunal jew qorti.

(ċ) Bord stabbilit mill-Kummissjoni għall-Verita' u Ġustizzja għandu s-setgħa jsejjaħ xhieda f'isem il-Kummissjoni għall-Verita' u Ġustizzja skond artiklu 6 ta' dan l-Att.

(d) Bord stabbilit mill-Kummissjoni għall-Verita' u Ġustizzja għandu s-setgħa jitlob parir mill-kumitat legali stabbilit taħt artiklu 4A(4) jekk għandhiex tingħata maħfra presidenzjali lil xhud jew xhieda għall-interessi tal-ġustizzja.

- (e) Il-president permanenti tal-Kummissjoni għall-Verita u Ġustizzja għandu s-setgħa jittlob maħfra presidenzjali lil xhud jew xhieda dejjem jekk il-parir tal-kumitat legali msemmi f'artiklu 4A(8)(e) jkun wieħed pożittiv.
- (f) (i) il-kumitat tal-vittmi mwaqqaf skond artiklu 4A(5) ta' dan l-Att għandu s-setgħa jsegwi u jintervjeni fil-proċedimenti kollha ta' kull bord imwaqqaf mill-Kummissjoni għall-Verita' u Ġustizzja billi jagħmel mistoqsijiet kemm lill-istess bord kif ukoll lix-xhieda.
- (ii) id-diżpozzjonijiet ta' artikli 4, 6, 7, 10, 12, 13, 14, u 14A tal-Att dwar il-Vittmi tal-Kriminalita' għandhom japplikaw għar-relazzjonijiet bejn il-kumitat tal-vittmi u l-Kummissjonijiet għall-Verita u Ġustizzja kull bord imwaqqaf minn tali kummissjoni.
- (9) (a) Kull bord imwaqqaf mill-Kummissjoni għall-Verita u Ġustizzja għandu jipprepara rapport wara li temm l-inkjesta dwar id-delitt partikolari li jaqa' taħt ir-responsabbilta tiegħu.
- (b) Ir-rapport preparat minn bord imwaqqaf mill-Kummissjoni għall-Verita' u Ġustizzja għandu jagħti rendikont ta' xogħol l-istess bord inkluż is-sejbiet tal-bord u jissuġġrexxi rimedji, inkluż proċedimenti ta' natura ċivili jew kriminali, abbozzi ta' liġijiet godda u miżuri oħra li għandhom jittieħdu sabiex jintlaħqu l-għanijiet tal-Kummissjoni Għall-Verita u Ġustizzja.
- (ċ) Il-kumitat tal-vittmi mwaqqaf skond artiklu 4A(5) ta' dan l-Att għandu s-setgħa jaqra u jikkummenta dwar rapport mikutb minn bord mwaqqaf mill-Kummissjoni għall-Verita' u Ġustizzja qabel dan ir-rapport jiġi ppubblikat. Kull kumment għandu jiġi ppubblikat flimkien mar-rapport tal-istess bord.
- (d) Il-vittmi u persuni oħra b'interess ġuridiku għandhom id-dritt jifflu proċeduri ċivili inkluż proċeduri għal danni fuq is-saħħa tar-rapport finali ta' bord imwaqqaf mill-Kummissjoni għall-Verita' u Ġustizzja.
- (e) Il-pulizija eżekuttiva u l-Avukat Ġenerali għandhom is-setgħa jwaqqfu proċeduri kriminali skond il-Kodiċi Kriminali fil-konfront ta' individwi u entitajiet msemmija f'rapport finali ta' bord imwaqqaf mill-Kummissjoni għall-Verita' u

Ġustizzja, salv li ma jistgħux jinfetħu proċeduri kriminali fil-konfront ta' individwi li tkun ingħatat lilhom il-maħfra presidenzjali skond dan l-artiklu 4A.