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Is the Press Truly Free?
A Comparative Analysis of the Relationship Between the Rule of Law and the Freedom of the Press in Malta, Slovakia and Italy

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"Quam similia sint latrociniis regna absque iustitia."

Aurelius Augustinus Hipponensis, De Civitate Dei Contra Paganos

"The state without rights is a gang of bandits."

Saint Augustine, The City of God against the Pagans

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Introduction

Last summer I interviewed Matthew Caruana Galizia, Daphne Caruana Galizia's son. We were talking about the current situation in Malta after the murder of his mother, and he said something crucial: murders like that eventually lead to the general erosion of the Rule of Law besides fundamentally violating the fundamental rights – notably the right to life – of the targeted individual. These words remained stuck in my head. In 2018, another similar case happened: investigative journalist Ján Kuciak was murdered in Slovakia with his fiancée. As a result, I decided to focus my final dissertation on the relationship between the Rule of Law and the Freedom of the Press, the former being a fundamental value of the European Union and the latter a crucial right to be protected in any country where the Rule of Law is deemed respected. The Role of the Freedom of the Press is fundamental in a democratic context. It makes information available to people that they otherwise wouldn't have. The white paper on a European Communication Policy, presented by the Commission in 2006, stated that both the right to information and freedom of expression are at the heart of democracy in Europe. These rights are analysed in the EU Treaties and in the European Charter of Fundamental Rights. According to the Commission, these rights are also the starting point to create a new strategy for Communication Policy in Europe. Moreover, the Commission demanded for more Freedom of the Press, plurality and citizens' participation in communication. In the EU it is commonly accepted that the Freedom of the Press, pluralism and participation are considered pillars of democracy. Hence, it is important to support and protect them. However, even if stated many times, the Member States of the European Union implement the Freedom of the Press in different ways, as they have different economic, political and social backgrounds.

As pointed out by Ran Hirschl (2005, p. 126), there are four different ways to deal with case selection in comparative public law cases. The first one deals with single-country studies, mistakenly characterised as comparative only by virtue of dealing with any country other than the author's own; (2) comparative reference, aimed at self-reflection through analogy, distinction, and contrast; (3) comparative research, aimed at generating "thick" concepts and thinking tools through multi-faceted descriptions; and (4) studies that draw upon controlled comparison and inference-oriented case selection principles in order to assess change, explain dynamics, and make inferences about cause and effect through systematic case selection and analysis of data. It is possible to say that the following analysis is a mix of category three and four described by Hirschl. Specifically, it is based on the concept that a good theory shall be based not only on clarifying concepts, but also offering causal explanations for observed phenomena (Hirschl 2005, p. 131). As a result, the study will be divided into four main chapters. The first chapter will provide a comprehensive theoretical framework on the Rule of Law, to define its main features. The analysis employs the definitions by scholars such as A.V. Dicey, Mortimer Sellers, Roberto Bin and Lord Tom Bingham. Once the main features of the Rule of Law are identified, the focus shifts to the Freedom of the Press, which is closely linked to the Rule of Law. It is a right that postulates other rights, such as the possibility to receive

pluralistic and diversified information. Thanks to the Freedom of the Press, people are not only able to gather information, but also to establish critical thinking. The Freedom of the Press is a *condicio sine qua non* to establish a functioning democracy. Subsequently, anytime it is impaired it ends up menacing the stability of the Rule of Law.

Moreover, journalism as a job is considered a mean to keep power in check. This is the reason why journalists are often harassed while investigating and even murdered. In order to test this thesis from a practical perspective, the other three chapters of this dissertation will analyse three distinctive cases, both from the perspective of both the Rule of Law and the Freedom of the Press. Chapter II analyses Malta and the murder of investigative journalist Daphne Caruana Galizia. Specifically, it aims at giving a comprehensive understanding of the Maltese Constitutional history, together with a focus on the enforcement of the Rule of Law and the enhancement of the Freedom of the Press. In order to do so, there will be an insight on the citizenship by investment scheme, allegedly employed to sell European citizenship as if it were any other consumer good. Moreover, there will be a focus on the different affairs that involved leading figures of the Maltese Labour Party, such as former Prime Minister Joseph Muscat, his Chief of Staff Keith Schembri and the Energy Minister Konrad Mizzi. The research will be corroborated by the interview with Matthew Caruana Galizia, Daphne Caruana Galizia's son, journalist and activist for the enforcement of the Rule of Law in Malta.

Chapter III will focus on Slovakia and the murder of journalist Ján Kuciak. After an analysis of the Slovakian Constitution and its development, the focus shifts on how the Freedom of the Press is actually guaranteed. The analysis considers both the perspective of the Constitution and studies on media concentration in the country, as well as report by GRECO Evaluation Team on corruption. Subsequently, the Chapter deals with the murder of Ján Kuciak and his fiancée Martina Kušnírová and the effects it had on public opinion and Slovak politics. Finally, Chapter IV analyses the current status of the Rule of Law in Italy and the issue of journalists living under police protection. The Chapter is based on studies of the Italian Constitution proposed by major scholars in the field, such as Paolo Barile, Piero Calamandrei, Paolo Murialdi, Valerio Onida and Maurizio Pedrazza Gorlero. The theoretical perspective is corroborated by interviews with journalists who are currently living under police protection, such as vice director of AGI Paolo Borrometi. Conclusions will pull the strings of the case, trying to answer the research question: whether if the Press is truly free. In other words, it will try to determine whether a recurring pattern actually exists in the three cases analysed.

Chapter I- The Rule of Law

"It is preferable for the law to rule rather than any one of the citizens, and according to this same principle, even if it be better for certain men to govern, they must be appointed as guardians of the laws and in subordination to them."

Aristotle, Politics

1.1.1 Defining the Rule of Law

In order to develop our analysis on the relationship between the Freedom of the Press and the Rule of Law, it is crucial to define what the Rule of Law is. As pointed out by the well-known scholar and jurist A.V. Dicey, the Rule of Law is the supremacy of the law in a certain polity (Dicey 1915, p. 145). In his work *Introduction to the Study of the Law of the Constitution*, Dicey clarified that there are three fundamental meanings of the concept of the Rule of Law. First of all, "No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary Courts of the land" (Dicey 1915, p. 146). In other words, the government is not based on the boundless arbitrary power of a single individual or on the discretionary power a group of people that pursue their private interests. On the contrary, in a state in which the Rule of Law exists and is enforced, the government fosters the interests of a community as a whole. From this first point, stems the second distinctive feature of the Rule of Law: "Every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals" (Dicey 1915, p. 149). The Rule of Law establishes that every man is subject to ordinary law, which is administered by ordinary tribunals. The main takeaway here is that no individual is above the law. Every member of society is subject to it. Therefore, each individual has to follow what the law prescribes. As a result, public officials are at the same time monitoring agents and subjects to laws. This second aspect is particularly interesting, and it is going to acquire further importance especially analysing our case studies.

Finally, there is the third remarkable feature of the Rule of Law, according to which judicial decisions are the basis of constitutional rights. As Dicey wrote: "The general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts" (Dicey 1915, p. 150). In other words, constitutional rights such as personal freedom and freedom of assembly were more protected, if they were judge-made, rather than the product of a legislation (Kirby 2019, p. 10). Here Dicey clearly refers to the common law system. However, even though this last feature is linked to a particular family of laws, the inheritance of Dicey is still extremely important to define in the present days what the Rule of Law actually is. The concept of Rule of Law developed by Dicey at the end of the 19th century is the milestone from which our idea of Rule of Law stems from. To this end, it is important to make a comparison with a present-day scholar. In this way, it is possible to

see how the concept evolved over time. The following part of the analysis is going to investigate the concept of the Rule of Law illustrated by professor Mortimer Sellers in "Democracy and Rule of Law in the European Union".

As pointed out by Sellers, the Rule of Law is "the empire of laws and not of men" (2016, p. 5). In other words, it implies the existence of a subordination of the arbitrary power and of the will of the public officials to the guidance of laws prescribed to protect the public good of the whole community. Hence not only the law controls people that do not have a role as public officials, but also public officials have to follow the purpose of law. In this context, the purpose of law is the common good of society as a whole, and not the private benefits of public officials (Sellers 2016, p. 5). In case we have a legal system that aims at preserving the common good of the whole society, then the Rule of Law exists (Sellers 2016, p. 6). To this end, the Rule of Law has certain requirements both for public and private powers. First of all, both private and public powers should be determined by law (Sellers 2016, p. 6). As a result, it is possible to say that in the context of the Rule of Law, public power is regulated by impartiality (Sellers 2016, p. 6). To act otherwise would mean to erode the Rule of Law. In this way, the Rule of Law obliges the guardians of the law to pursue the interests of the law. As a result, they pursue the interest of the society as a whole, avoiding privileging any particular faction (Sellers 2016, p. 6).

This first point made by Sellers is clearly linked with the first two characteristics of the Rule of Law identified by A. V. Dicey. In particular, it reinforces the second feature of the Rule of Law, i.e. the fact that: "Every man is subject whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals" (Dicey 1915, p. 149). The operation made by Sellers is extremely important. He does not merely repeat what Dicey already stated, but he modernized it, adding new interesting aspects. The notion of impartiality and the fact that the Rule of Law requires an active role by both public and private actors give us the idea of an institutional arrangement in which individuals are able to participate in a concrete manner.

Moving to the second aspect, Sellers shifted the focus to the citizens' perspective. The Rule of Law requires them to act in the name of public interest when the law expressly compels them to do so (Sellers 2016, p. 6). It does not mean that individuals cannot pursue their private interests. Individuals are allowed to pursue their private interests, as long as they do not act at the expense of their public duties (Sellers 2016, p. 6). In this second aspect, Sellers highlighted that individuals in a society have responsibilities towards other members of society. They can pursue their own interests, as long as they do not compromise their duties in respect to their fellow individuals. It might be taken for granted, but in reality it is not. In order to have a functioning society it is very important that every member contributes to a certain extent, according to what the law prescribes.

The third requirement of the Rule of Law concerns is focused on the laws. The Rule of Law requires that the laws are made and enforced only to serve their proper purpose, i.e. the common good of society as a whole. From an idealistic perspective, the Rule of Law stems from the human nature, because all people pursue- or at least claim to pursue- the rule of justice through law (Sellers 2016, p. 7). It follows that the law claims to serve justice, rather

than the interests of those in authority (Sellers 2016, p. 7). The historical Rule of Law tradition is the mechanism through which lawyers, governments and nations had enforced and preserved the Rule of Law (Sellers 2016, p. 7). Thanks to this millenary tradition, it is possible to compare and evaluate existing legal systems. This third point is crucial to define what the role of the law should be when the Rule of Law is in place. From this perspective it is clear that the aim of the law is fostering the interests of a society as whole, rather than the particular interest of those who are in power. In this way it is possible to avoid the dictatorship of the arbitrary power of the few over the multitude.

Another interesting perspective is provided by Roberto Bin in his book *Lo stato di diritto*. According to Bin, the Rule of Law is a dream as ancient as political thought (Bin 2017, p. 6). As Aristotle pointed out in *Politics*: "It is preferable for the law to rule rather than any one of the citizens, and according to this same principle, even if it be better for certain men to govern, they must be appointed as guardians of the laws and in subordination to them" (Politics, III, 16, 1287a). From an idea so ancient and yet extremely present in our culture, we obtain the idea of the Rule of Law, which is intrinsically linked to the birth of the modern state (Bin 2017, p. 12). Plus, the idea of modern state is connected to the idea of sovereignty. Sovereignty is the claim of a certain political organization towards a determined territory (Bin 2017, p. 12). According to Bin, the Rule of Law is characterized by three principles: the authenticity principle, the exclusivity principle and the effectivity principle (Bin 2017, p. 12). The authenticity principle holds that the authority derives from the state itself, and it is not derived from any other source (Bin 2017, p. 12). The exclusivity principle it is the claim of concentrating in the State the power of establishing laws, excluding any other authority not clearly recognized (Bin 2017, p. 12). The effectivity principle entails the fact that the States acquires the monopoly over the use of force, employed as a tool to foster the law over its territories (Bin 2017, p. 12).

Furthermore, the Rule of Law is characterized by the division of powers. In order to have the Rule of Law correctly established it is important to have the three powers executive, legislative and judiciary independent from one another (Bin 2017, p. 23). The separation of powers in the Rule of Law is crucial, as it entails the fact that State's activities are compartmentalised and delimitated in their contents (Bin 2017, p. 23). Every power acts in a precise way, which can be through laws, decrees or judgements (Bin 2017, p. 23). The legislative power has the power to establish general norms, valid for the society as a whole (Bin 2017, p. 23). The law is therefore not intended to have a direct impact on the private sphere of the people. On the one hand, the Rule of Law establishes the framework within which individuals can choose how to act and define their contractual relationships (Bin 2017, p. 23). On the other hand, it established the starting point from which the different powers act in different spheres (Bin 2017, p. 23). The Executive power has to apply the law to a particular and concrete situation. It has to take practical decision for the society as a whole that will have consequences on the people or on his/her properties (Bin 2017, p. 24). The judicial power is rigidly separated from the others. Its objective is guarantying an objective judgement. Hence, it has to be absolutely neutral (Bin 2017, p. 24).

According to Bin, the second pillar of the Rule of Law is the Legality Principle. Considered also in Rule of Law Checklist drawn up by the European Union, the Legality Principle is able to fit perfectly the division of powers system (Bin 2017, p. 26). The Legality Principle states that the exercise of public power is legitimate if and only if it is regulated by a preventive juridical norm (Bin 2017, p. 26). Hence, every possibility of exercising an absolute power, without any limitation, is rejected. Furthermore, the Legality Principle entails a certain degree of predictability and certainty (Bin 2017, p. 27). Law stems from political will, but it is not merely it. Between political will and the law there is a certain procedure that should be followed and the debate between who is in favour and who is against the law (Bin 2017, p. 27).

Another feature of the principle of the Legality Principle is Completeness of the legal system. The laws that actually limit freedoms are exceptions to the general and residual rule of freedom. As a result, every behaviour is subject to a rule of freedom, apart from the cases in which there is an explicit limitation (Bin 2017, p. 28). The Rule of Law implies a system in which the duties of the State are defined by laws (Bin 2017, p. 29). The law defines the competences of every organ of the State and in such system of competences public powers accomplish their functions (Bin 2017, p. 29). According to Article 2 of the Declaration of the Rights of Man and of the Citizen: "The goal of any political association is the conservation of the natural and imprescriptible rights of man". And according to Article 5: "The law has the right to forbid only actions harmful to society. Anything which is not forbidden by the law cannot be impeded, and no one can be constrained to do what it does not order." The executive power is linked to the law. At the same time, judges are linked to the laws that the people can use to verify the legitimacy of the actions of the executive power (Bin 2017, p. 29). The system is coherent and is able to function if it follows certain rules (Bin 2017, p. 29). The first one concerns the nature of laws, that should be general and abstract. The second rule concerns the way in which rights and freedoms of the citizens are conceived (Bin 2017, p. 29).

Bin does not merely provide an evolution of the concept of Rule of Law through time, he also provides a more substantial perspective focused on the idea of social justice. After World War II a process of redesign of rights took place. It was crucial to finally give political rights also to the proletarian masses (Bin 2017, pp. 62-63). As a result, it was possible to give crucial rights to a group of people that was historically excluded from the decision-making process and did not have any possibility to take part in the political discourse of the country (Bin 2017, pp. 62-63). This decision had a significant impact over the future of the Rule of Law, especially in countries that after World War II came out of dictatorship such as Fascism and Nazi (Bin 2017, p. 63). In Germany, Italy and France the ideological and compromises were extremely different from those that were the basis of the liberal state (Bin 2017, p. 63). Universal suffrage had lasting consequences both on the perspective of recognition of liberal and social rights. For Example, the German Constitution employs the term *Rechtsstaat*. In Italy there is not a precise term, rather a practical application in the constitution. The State not only recognizes formal equality of citizens in Article 3, it is also committed to achieve substantial equality among its citizens. In order to do so, the Italian State is committed: "To remove those obstacles of an economic or social nature which constrain the

freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country" (Italian Constitution 1948).

Another issue arises when the right to private property and the right to economic initiative are recognised (Bin 2017, p. 65). Opposed to such initiatives there are need to respect the interests of the community as a whole (Bin 2017, p. 65). Together with "classics liberties" that protect people from any limitations of their persons, of their house, of their religious beliefs, of their expression, there are also other crucial guarantees. Among them stands out the advancement of rights to social solidarity (Bin 2017, p. 65). In other words, the right to health, to welfare, to security and education. Together with social solidarity there is also protection and promotion of work, which is considered the property of those who do not own any other property (Bin 2017, p. 65). Combining the Rule of Law and the Welfare State has consequences for the Rule of Law. In this way, the Rule of Law is no longer separated from the Welfare State. As a result, the state is obliged to intervene to modify social order, to settle differences and guarantee to everyone to be at the same starting point (Bin 2017, p. 66). The law cannot ignore differences stemming from different social conditions. The state should regulate its intervention according to every particular case (Bin 2017, p. 66). At this point, the law is bound to the Constitution and has to ensure its enforcement. When the universal suffrage gave its real meaning to parliamentary representation, the Constitution becomes an absolute limit for the law (Bin 2017, p. 67).

Some argued that the introduction of a more "social perspective" in the Rule of Law was detrimental, as the protection of social rights and the fulfilment of social equality were incompatible with the principles of the Rule of Law (Bin 2017, p. 67). If the law has to intervene to remove the obstacles that impede social equality, it cannot be general and abstract. On the contrary, it should refer to a particular and specific case in order to solve it (Bin 2017, p. 67). Social rights such as the right to work, the right to social assistance and healthcare and the right to education cannot be directly assured in the relationship between private citizen and the State (Bin 2017, p. 67). They cannot be directly applied by judges as they would enforce norm to protect private property. Different administrative apparats are required in order to foster social rights (Bin 2017, p. 68). Furthermore, all these rights that are part of the category of social rights require a progressive fiscal system that redistributes the wealth (Bin 2017, p. 68). However, some might perceive the process of redistribution as a mechanism to expropriate the wealthiest members of society (Bin 2017, p. 68). At this point the contrast between the Rule of Law and the Welfare State does not exist only from a theoretical perspective. When the two intertwine, the so-called negative freedoms are not absolute anymore (Bin 2017, p. 68). The owner is no more the ultimate owner of his goods. Now he/she has to take into account the limits stemming from social interests (Bin 2017, p. 69). The entrepreneur is not free to negotiate contractual conditions with his employees, as he has to follow the rules established by the State (Bin 2017, p. 69). At the very beginning the constitution was considered to programmatic, in the sense that it was conceived to be a root for the legislator to gradually implement laws according to it (Bin 2017, p. 69). In

order to have a more straightforward implementation of positive rights it is crucial the role played by Constitutional courts (Bin 2017, p. 71).

Another important perspective that should be acknowledged is the one brought about by Lord Tom Bingham. In his book *The Rule of Law*, Lord Bingham derives his definition of Rule of Law form what was previously stated by A.V. Dicey. Furthermore, he says that the definition is linked to the quote by John Locke in 1690: "Wherever law ends, tyranny begins" (Bingham 2010, p. 27). In his work, Lord Bingham identifies eight main characteristics of the Rule of Law: accessibility; law not discretion; equality; exercise of power; human rights; dispute resolution; fair trial and compliance with international law. The first feature of the Rule of Law is accessibility, in the sense that: "The law must be accessible and so far as possible intelligible, clear and predictable" (Bingham 2010, p. 78). This is true for three reasons. First of all, if someone has to be prosecuted, everyone should be able to know which actions may lead to criminal penalty (Bingham 2010, p. 78). The reason is that many crimes are less straightforward than robbery. As a result, people need to understand what a crime is and how to avoid committing it (Bingham 2010, p. 79). The second feature of accessibility is that if we have to claim the rights that civil law gives us, or we have to perform our obligations, it is important to know both our rights and our duties (Bingham 2010, p. 79). Otherwise we would not be able to perform our duties and claim our rights in an appropriate manner. The third reason is that in order to have a functioning economic environment, it is vital to have a body of accessible rules regulating commercial rights and obligations (Bingham 2010, p. 80). Nobody would like to invest a discrete amount of money in a country in which rules are vague and obligations are not clear to the parties involved (Bingham 2010, p. 80).

The second feature of the Rule of Law according to Bingham is that the law is not discretion. As he pointed out: "Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion" (Bingham 2010, p. 100). Likewise, Dicey was against discretionary powers conferred to public officials, as he believed that this might lead to arbitrariness (Bingham 2010, p. 100). Considering civil cases, judges are required to make judgements which involve no exercise of discretion (Bingham 2010, p. 100). They might be called upon to make judgements that do not involve discretion (Bingham 2010, p. 100). It is important to bear in mind the fact that the Rule of Law does not want to strip from the official and the decision-makers all discretion. The aim of Rule of Law is that discretion should not be unconstrained, hence arbitrary (Bingham 2010, p. 113).

The third feature that according to Bingham characterises the Rule of Law is equality: "The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation" (Bingham 2010, p. 114). It would be extremely easy to consider such principle only from an antiquarian perspective. Of course, it is unrealistic, as it is known that nationals have more rights in their country, compared to non-nationals (Bingham 2010, p. 119). In order to understand in depth the idea behind the equality principle, it is crucial the read the observation made in 1949 by the Justice Jackson in the Supreme Court of the United States: "I regard it as a salutary doctrine that cities, states and the Federal Government must exercise their powers so as not to discriminate between their

inhabitants except upon some reasonable differentiation fairly related to the object of regulation. This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation" (Bingham 2010, p. 122).

The fourth feature of the Rule of Law is the exercise of power. "Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably" (Bingham 2010, p. 123). Even though this principle might seem the natural consequence of the principle of equality and the principle of non-discretionally laws, yet it deserves attention. As Bingham pointed out: "Nothing ordinarily authorizes the executive to act otherwise than in strict accordance with those laws" (Bingham 2010, p. 124). The process thanks to which it is possible to check the compliance of laws with the Constitution is called judicial review and it is exercised by judges. It is a task that pertains to judges as the other branches of power do not have the same expertise. At the end of the day, they are merely auditors of legality (Bingham 2010, p. 125). Furthermore, a power should be exercised in order to maintain its fairness, as it is expressed that the State should treat every citizen in a fair way (Bingham 2010, p. 127). Considering the idea of natural justice, the mind of the decision-maker should not be driven by personal interest or any kind of bias. Furthermore, anyone who is accountable to have an adverse decision made against him should have a right to be heard (Bingham 2010, p. 128).

The fifth crucial principle of the Rule of Law is human rights: "The law must afford adequate protection of fundamental human rights" (Bingham 2010, p. 135). This is a more substantial perspective that however is not widely shared. For example, it has been said that Dicey did not share this perspective (Bingham 2010, p. 135). Raz pointed out that: "A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies … It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law … The law may … institute slavery without violating the rule of law" (Bingham 2010, p. 136). However, both the Universal Declaration of Human Rights and other international legal instruments considered protection of human rights as an integral part of the Rule of Law (Bingham 2010, p. 136). Bingham believes that when: "A state which savagely represses or persecutes sections of its people cannot in my view be regarded as observing the Rule of Law, even if the transport of the persecuted minority to the concentration camp or the compulsory exposure of female children on the mountainside is the subject of detailed laws duly enacted and scrupulously observed" (Bingham 2010, p. 137). There are certain rights that should heavily considered when we are talking about the Rule of Law.

Considering the European Convention on Human Rights for example the right to life, the prohibition to torture, right to liberty and security, and the right to freedom of expression. I would like to focus a bit on the Freedom of the Press and the freedom of Expression. As pointed out in McCartan Turkington Breen v Times Newspapers Ltd, "The proper functioning of a modern participatory democracy requires that the media be free, active, professional and "inquiring"" (2001 2 AC 277, para. 1). Hence, it is impossible to doubt the importance of Article 10(1) of the European Convention on Human Rights, that underlines the importance of the right to Freedom of Expression (Bingham 2010, p. 159). Article 10 follows: "This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises" (European Convention on Human Rights 1953).

The sixth point underlined by Bingham is the dispute resolution. According to him: "Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve" (Bingham 2010, p. 173). It might seem obvious that the law should protect everyone and that everyone should be able to go to court to have his/her rights enforced (Bingham 2010, p. 173). However, in a state where the Rule of Law is not enforced, it should not be taken for granted. Certain social classes might not have access to justice. Hence, they cannot have their rights enforced in court. From the sixth point directly stems the seventh feature of the Rule of Law: fair trial. "Adjudicative procedures provided by the state should be fair" (Bingham 2010, p. 183). Needless to say, the right to a fair trial is a crucial aspect for the Rule of Law to be in place. Considering fairness, there are three different characteristics. First of all, fairness is a characteristic shared by both parties, not only by one (Bingham 2010, p. 184). In other words, the procedure followed has to give equal opportunities. Conducting a trial in such way that the dices are loaded in favour of one party is not fair. A trial should not be prejudicial. Second, it is important to keep in mind the fact that the idea of fairness is not a froze concept. It can change and evolve over time (Bingham 2010, p. 184). This is especially true considering criminal trial. Finally, the constitution of a modern democracy in which the Rule of Law is enforced, judicial independence is guaranteed (Bingham 2010, p. 186).

The eighth characteristic of the Rule of Law is compliance with the international legal order. As pointed out by Bingham: "The Rule of Law requires compliance by the state with its obligations in international law as in national law" (Bingham 2010, p. 224). Even though international law encompasses a distinct set of rules and institutions, it is to be considered as complementary to national laws of individuals states (Bingham 2010, p. 225). International laws should not be considered in opposition to national laws. They are not apart. They rest on similar principles and share similar ends (Bingham 2010, p. 225). Following the Rule of Law is important not only from a national perspective, but also from an international one (Bingham 2010, p. 225). As pointed out by the Secretary-General of the United Nations: "It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It

requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency" (UN Report 2004).

1.1.2 The importance of the Rule of Law

As the Universal Declaration of Human Rights holds: "It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law." When we consider the health of a state from the perspective of law, the existence and the enforcement of the Rule of Law are crucial, as they are the only means that can at the same time secure justice, by preventing tyranny and oppression (Sellers 2016, p. 8). Even if the Rule of Law is so valuable for societies, yet it has to fight against those governors who seek to expand their discretionary power and put forward their own interests, at the expense of those of the whole society (Sellers 2016, p. 8). Here it is possible to understand why the Rule of Law is so valuable and has to be preserved. The Rule of Law is crucial because it is able to limit the arbitrary power of those in power (Sellers 2016, p. 9). In this perspective it is easier to see how the Rule of Law implies also the establishment of constitutionalism (Sellers 2016, p. 9). As the constitutionalist James Madison underlined, the Rule of Law is crucial, because it is the only device that entails "the formation of good and equal laws, an impartial execution, and faithful interpretation of them, so that citizens may constantly enjoy the benefits of them, and be sure of their continuance" (Madison 1788).

The concrete issue does not arise when we have to define what the Rule of Law is and whether it is valuable or not. The real issue consists in securing the Rule of Law from a practical perspective (Sellers 2016, p. 9). As said before, the final aim of the Rule of Law is to establish a system in which the laws rule in the interest of the society as whole, avoiding any particular faction taking over with their own private interests. John Adams clarified the issue holding that "in establishing a government which is to be administered by men over men," the most significant issue "lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself" (Adams 1787, p.128). In order to have a functioning system, it is vital to have a "well-ordered constitution" that allows justice to prevail "even among highwaymen," by "setting one rogue to watch another," so that "the knaves themselves may in time, be made honest men by the struggle" (Adams 1788, p. 505). In other words, there is an intrinsic link between the Rule of Law and the establishment of a well-functioning constitutional government (Sellers 2016, p. 10). However, it is important to bear in mind the fact that the existence of this link does not imply that all the states can or decide to adopt the same constitutional arrangements.

The Rule of Law is best secured by stable constitutional government, because a well-developed constitution alone possesses the very idea of controlling the governors themselves (Sellers 2016, p. 10). Assuming that the only legitimate purpose of the government is to foster the common good and to establish justice, then procedures are needed for two main reasons (Sellers 2016, p. 10). First of all, procedures are necessary to identify what common good is in practice and adjudicate between competing ideas of public welfare (Sellers 2016, p. 10). To this end, a

Rule of Law constitution organizes public institutions in such a way that they are not able to monopolize public power with their own interests (Sellers 2016, p. 10). The establishment of this system has a two-fold objective. On the one hand, to secure the public officials, while on the other one, to make them rule well (Sellers 2016, p. 10). The two aspects are related, but they do not always follow from the other. The inevitable fallibility of human judgement has been widely acknowledged both by constitutionalism and the Rule of Law (Sellers 2016, p. 10).

The first feature that the Rule of Law requires is an independent judiciary (Sellers 2016, p. 10). Judges should be able to apply the law impartially, without fear or favour any faction (Sellers 2016, p. 10). Furthermore, the law itself should have as aim the enforcement of justice. The work of judges should not be limited to the correct application of laws, the process of legislation itself should have the aim of fostering justice (Sellers 2016, p. 10). At this point we see that the Rule of Law adopt a theory of law that separates law form the free will of those who are called to apply it (Sellers 2016, p. 10). In order to achieve the Rule of Law, it is necessary to adopt certain rules that establish a legislative procedure that will generate a legislation aimed at fostering the public good, rather than the private interests of a small powerful segment of society (Sellers 2016, p. 10). It follows that the Rule of Law establishes a division between the empire of laws and the government of men, where equal laws serve all those subjects to their control.

At this point it is vital to understand how to determine laws that can be considered both good and equal. As a result, it is required to establish a legislative system characterized by representative governments and checks and balances in order to have good and equal laws (Sellers 2016, p. 10). Of course, the major menaces to the Rule of Law may vary according to time and place, but the fundamental principle remains. The aim of the Rule of Law is to establish a separation between the law and arbitrary power (Sellers 2016, p. 13). Usually the more societies are developed, the more they devise written statues in order to preserve the integrity of the Rule of Law (Sellers 2016, p. 13). The ultimate advance toward the establishment of the Rule of Law exists when judges are able to protect their independence from the executive and the legislative power (Sellers 2016, p. 13). Even if it seems extremely easy to define what the Rule of Law entails, it may be extremely difficult to establish and to secure it (Sellers 2016, p. 13). After the Rule of Law has been established and a system to protect it has been devised, it is crucial that the governments continue to pursue it. In order to do so, governments have to foster liberty against aggression and secure the social goods that necessitate of considerable collective action (Sellers 2016, p. 13).

1.2 Defining the Rule of Law in the European Union Context

In order to go further in our analysis, it is important to define the Rule of Law in the European context. As said before, the Rule of Law is the empire of laws and not of men. It entails the existence of a subordination of the arbitrary power and the will of the public officials to the guidance of what laws prescribe to protect the common good of the whole community. Starting from this definition, the analysis will proceed investigating how it is possible to apply this definition in the European context, where different legal traditions co-exist all together. The European Union (EU) was able to build a community based on the Rule of Law. The whole process was based

on integration through law (Closa 2016, p. 16). Substantially, community actions are conducted through legally valid and legitimate proceedings (Closa 2016, p. 16). Due to the fact that there is no specific EU implementation and judicial structures at national level, it is up to the domestic structures of each state to set up specific institutions that are going to deal with the domestic implementation and compliance of laws (Closa 2016, p. 16). In order to achieve this aim, each Member State has to recognise that the courts set up by other Member States are as valid as their own (Closa 2016, p. 16). Each Member State is bound to do so - or at least assume - that other Members States have the same present the same qualities in terms of governance, democracy and Rule of Law standards (Closa 2016, p. 16). Thus, it is possible to say that the community law rests on the idea of mutual recognition between Member States (Closa 2016, p. 16).

Mutual recognition is extremely important, because is stems from mutual trust. It means that all the members of the community trust the other members and their legal systems (Closa 2016, p. 16). As the European Commission (Commission) pointed out in 2014: "The way the Rule of Law is implemented at national level plays a key role in this respect. The confidence of all EU citizens and national authorities in the functioning of the Rule of Law will only be built and maintained if the Rule of Law is observed in all Member States". The Rule of Law as such is a substantial tool to regulate the exercise of public powers (European Commission 2014, p. 4). The Rule of Law has been identified as a core value of the EU thanks to the case law of the Court of Justice of the European Union and the European Court of Human Rights (ECtHR) and the documents drafted by the Council of Europe, based on the competences of the Venice Commission (European Commission 2014, p. 4). The codification of these standards was developed in accordance with Article 2 TEU.

The Rule of Law in the European Union is described in Article 2 of the Treaty on the European Union. Article 2 states that: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the Rule of Law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail" (Art. 2 TEU). Analysing Article 2 emerges that the Rule of Law is one of the founding values of the Union. Furthermore, the concept of Rule of Law is linked to other fundamental values that are key to be part of the Union. First of all, the legality principle, which entails a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition to the arbitrary exercise of executive power. Thanks to Article 19 TEU and Case C-72/15 Rosneft, where the Court of Justice stated that: "The very existence of effective judicial protection is of the essence of the Rule of Law", it is possible to include also judicial protection by independent and impartial courts and effective judicial review. Similarly, respect for fundamental rights, separation of powers and equality before the law can be added due to the European Commission communication to the European Parliament and the Council (2014).

The existence of the Rule of Law in the European context has been pivotal in order to establish a long-lasting cooperation between Member States, gradually building an area of freedom, cooperation and stability

(Commission 2019, p. 2). Here a framework of solid and equitable rules together with a system of effective judicial remedies protects Members States, citizens and business (Commission 2019, p. 2). Thanks to these characteristics, it is possible to create an ecosystem in which democracy can prosper, peace is protected, and business can expand, allowing the states to consolidate their relations. The EU membership rights are conditioned upon the adherence to the values previously listed for two main reasons. First of all, if a state breaches such values threatens the legitimacy of the EU decision-making system as a whole (Hillion 2016, p. 60). It can even affect the lawfulness of future EU decisions (Hillion 2016, p. 61). Second, breaches of the Rule of Law may compromise the whole EU legal order. As pointed out before, the system is based on mutual legal interdependence and mutual trust among its members (Hillion 2016, p. 61). Furthermore, deficiency in the functioning of the Rule of Law may have negative consequences on the economy, since deficiencies entail the lack of an anti-corruption framework and sound financial policies (Commission 2019, p. 3).

Not only the Rule of Law requires to be respected, but it also demands to be fostered and actively promoted (Hillion 2016, p. 61). Article 3(1) TEU states: "The Union's aim is to promote peace, its values and the well-being of its peoples." Similarly, Article 13(1) TEU pointed out: "The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions." It is possible to conclude that fostering the Rule of Law within the Union is not merely a judicial task (Hillion 2016, p. 62). All the European institutions have to cooperate to achieve this aim.

When we consider the idea of the Rule of Law in the context of the European Union, we are considering a system in which different states are jealous of their own normative sovereignty (Palombella 2016, p. 38). As a result, the Rule of Law in the EU context can be translated in the ultimate aim of establishing a community based on law, well established, effective and obeyed (Palombella 2016, p. 38). This conception makes a paradigmatic shift, moving the attention from the Rule of Law to the respect for the laws of a legal system (Palombella 2016, p. 39). It is important to bear in mind the fact that the concept of the Rule of Law cannot be reduced to the self-referentiality of a legal order (Palombella 2016, p. 39). The risks of this perspective can be observed in *Kadi*, in which the Court of First Instance decided that the Rule of Law, prevailing in the International Law jurisdiction, required the European Institutions to abide by the UN Security Council resolutions depriving Mr Kadi of his rights to defence, to a judge and to property. The resolution failed to consider the Rule of Law an independent criterion for examining the international legal order (Palombella 2016, p. 39). The perspective offered by Gianlugi Palombella it is extremely interesting. According to him, the Rule of Law requires the capacity to extend beyond the limits of efficient legal standards (Palombella 2016, p. 40). It cannot be merely reduced to a jurisdictional system. The Rule of Law should belong to the international realm, as much as its international feature can afford (Palombella 2016, p. 40). The true meaning of the Rule of Law goes far beyond that the compliance with rules (Palombella 2016, p. 40). In general, the Rule of Law is focused only on pure legal features. It does not claim to

dictate the internal form of the realm of power. The Rule of Law can be translated as the respect for a legally desirable situation (Palombella 2016 p. 42).

Another perspective that can be employed to understand the Rule of Law is the Fundamental Rights Perspective. If we assume that the essence of the Rule of Law debate entails protecting the values which, according to Article 2 TEU are shared by the EU and its member states (Toggenburg and Grimheden 2016, p. 152). Reding carefully Article 2 TEU, it is possible to see that the Rule of Law is one among many different elements listed. The provision lists both the values on which the Union is founded upon and the values that are shared thanks to the national constitutional systems (Toggenburg and Grimheden 2016, p. 152). These values constitute the normative backbone that links the national level with the EU level and offers a guidance in both directions (Toggenburg and Grimheden 2016, p. 152). Too often the debate about the Rule of Law have been moved toward three different directions. First of all, from a country specific Article 7 emergency context, to a shared concern on how uphold common values in all EU Member States (Toggenburg and Grimheden 2016, p. 152). Second of all, the approach shifted from a reactive containment, to a proactive attitude of the Union to actively promote its values (Toggenburg and Grimheden 2016, p. 152). Third, the debate adopted a wider perspective, shifting the focus from the Rule of Law alone, to a more inclusive perspective, considering also the other shared values listed in Article 2 TEU, (Toggenburg and Grimheden 2016, p. 152).

Thanks to this approach, if we make a comparison between the Charter of Fundamental Rights of the European Union and Article 2 TEU, it is possible to see that there are many similarities.

Values as listed in Article 2 TEU	Equivalence in the Charter (shaded Charter titles cover the corresponding Article 2 values only partly)
Human dignity	Human dignity (Title I)
Freedom	Freedoms (Title II)
Democracy	Citizens' rights (Title V)
Equality	Equality (Title III)
The Rule of Law	Justice (Title VI); Citizens' rights (Title V)
Respect for human rights	All titles of the Charter
Rights of persons belonging to minorities	Equality (Title III)
Pluralism	Equality (Title III)
Non-discrimination	Equality (Title III)
Tolerance	Equality (Title III)
Justice	Justice (Title VI)
Solidarity	Solidarity (Title IV)
Equality between women and men	Equality (Title III)

Figure 2 Comparison between Article 2 TEU values and the Charter of Fundamental Rights of the European Union.[27]

Principles such as dignity, equality between women and men, freedom and non-discrimination can be considered more specific expression of the value "respect for human rights" (Toggenburg and Grimheden 2016, p. 154). Other values such as the Rule of Law and democracy, next to the respect for human rights, seem to encompass other Article 2 principles, like justice, equality, pluralism and tolerance (Toggenburg and Grimheden 2016, p. 154).

Often it has been said that these three elements of the Rule of Law are like the three-legged stool, "If one is missing, the whole is not fit for purpose" (Toggenburg and Grimheden 2016, p. 154). Furthermore, even if indirectly, the protection and promotion of fundamental rights helps prevent systemic Rule of Law crises (Toggenburg and Grimheden 2016, p. 155). It is possible because a reliable system that already fosters the fundamental rights of its residents and citizens can be considered one of the societal conditions considered crucial by the Advisory Council of International Affairs for a functioning state in which the Rule of Law exists.

1.2.1 Characteristics of the Rule of Law: the Rule of Law Checklist

The establishment of a comprehensive framework to measure the Rule of Law among different states has always been a primary concern in and outside the EU. In the 2005 Outcome Document of the World Summit, all the Members of the United Nation expressed the "need for universal adherence to and implementation of the Rule of Law at both the national and international levels" (Venice Commission 2016, p. 5). In 2011, during its 86th meeting the Venice Commission ratified the Report on the Rule of Law. The scope of that report was identifying the characteristics shared by the Rule of Law, *Rechtsstaat* and *Etat de droit* (Venice Commission 2016, p. 5). Even at the time, the main idea was facilitating the interpretation of the notion of the Rule of Law, especially from a practical perspective. The final aim was creating a "checklist for evaluating the state of the Rule of Law in single countries" (Venice Commission 2016, p.7). On 2 March 2012, the Venice Commission hosted a conference on The Rule of Law as a practical concept, during which it was finally decided to draw a list of all the underlying features of the Rule of Law. In 2014, following the Conclusions of the Council of the European Union and the Member States meeting within the Council on ensuring respect for the Rule of Law, it was established that the Council of the European Union and its Member States "commit themselves to establish a dialogue among all Member States within the Council to promote and safeguard the Rule of Law in the framework of the Treaties" (Council of the European Union 2014, p. 1). This decision entailed a renewed commitment in safeguarding the Rule of Law. The ground-breaking point for the Rule of Law in the European Union was in 2016, when the Venice Commission adopted the Rule of Law Checklist during its 106th Plenary Session.

In the preamble is highlighted the fact that the Rule of Law is an element of universal validity (Venice Commission 2016, p. 5). Plus, it is reinforced the idea already presented in the preamble to the Statue of the Council of Europe, where the Rule of Law is defined as one of the three "principles which form the basis of all genuine democracy", together with individual freedom and political liberty (Venice Commission 2016, p. 6). Moreover, Article 3 clarifies that the Rule of Law is a precondition to join the EU. (Venice Commission 2016, p. 6). The European Court of Human Rights highlighted the link between the Rule of Law and Human Rights with a variety of expression, such as "democratic society subscribing to the Rule of Law", "democratic society based on the Rule of Law" (Venice Commission 2016, p. 6). The Rule of law is a value shared by the major documents of international law, such as the in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as a founding principle of European democracies in Resolution Res(2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ), and as a priority objective in the Statute of the Venice Commission (Venice Commission 2016, p. 6). Even though the Council of Europe documents did not clearly

defined the Rule of Law, the Council of Europe acted in many respects, with the aim of strengthening the Rule of Law thanks to bodies, remarkably ECtHR, the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of Judges of Europe (CCJE), the Group of States against Corruption (GRECO), the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights and the Venice Commission (Venice Commission 2016, p. 6).

The Rule of Law Checklist is a crucial document not only because it reinforces the fact that the concept of Rule of Law is deeply rooted in the European judicial tradition, but also because it establishes a practical system to understand if the Rule of Law is correctly enforced, or potentially eroded. It is built upon the perspective of constitutional and legal structures, legislation in force and the existing case law. The final aim of the checklist is to enable and objective and transparent assessment (Venice Commission 2016, p. 8). The main focus of the checklist is assessing legal safeguards. Another important aspect that should be taken into account is the proper implementation of the law (Venice Commission 2016, p. 8). For this reason, the checklist includes some benchmarks concerning practical cases. (Venice Commission 2016, p. 8). However, it is important to bear in mind the fact that these benchmarks are not entirely exhaustive. Every parameter requires certain standards of verification. On the one hand, legal parameters will be verified by the law enforced, together with the legal assessments thereof by the European Court of Human Rights, the Venice Commission, Council of Europe monitoring bodies and other institutional sources (Venice Commission 2016, p. 8). On the other hand, considering more practical requirements, multiple sources will be employed, such as the CEPEJ and the European Union Agency for Fundamental Rights (Venice Commission 2016, p. 8).

The Checklist is conceived to be a tool for different organisations who would like to carry out an assessment based on reliable benchmarks. Such organizations might be parliaments or other State authorities that are called to make a legislative reform, or regional organizations, such as the Council of Europe (Venice Commission 2016, p. 8). According to the Checklist, the establishment of the Rule of Law is a sequential mechanism, made by successes levels, achieved in a progressive manner, from the basic level to the most complex level (Venice Commission 2016, p. 8). It is important to bear in mind the fact that the achievement of the Rule of Law cannot be considered completed. It is an on-going process, that requires constant attention from judicial authorities.

Another key thing to remember is the fact that not all the parameters of the Checklist are required in order to have a positive final assessment (Venice Commission 2016, p. 8). The assessment has to take into account which parameters are not respected and to what extent, in what combination (Venice Commission 2016, p. 8). To this end, it crucial a constant review, because the situation can be extremely fluid and ever-changing. Furthermore, the Checklist itself can change, as it might cover new aspects that were not included before. Hence, the Venice Commission committed to make regular updates of the Checklist (Venice Commission 2016, p. 9). In this way, the Rule of Law creates further standards to which the Member States have to comply with. States have to guarantee that individuals under their jurisdiction can access to effective legal means to enforce the protection of

their rights, especially when private actors may infringe them (Venice Commission 2016, p. 9). It is crucial that every State establishes a strong political and legal culture to foster and spread the Rule of Law mechanisms and procedures (Venice Commission 2016, p. 10). As clearly state by the Checklist: "The Rule of Law can only flourish in a country whose inhabitants feel collectively responsible for the implementation of the concept, making it an integral part of their own legal, political and social culture" (Venice Commission 2016, p. 10).

It is vital to take into account the fact that sources of law, which enshrine legal certainty, are not identical in all countries (Venice Commission, 2016, p. 10). Some States might adhere to statute law, while other might follow common law. Furthermore, States may also employ different means and proceedings (Venice Commission, 2016, p. 10). For example, concerning the fair trial principle regarding criminal proceedings (Venice Commission, 2016, p. 10). Some States can prefer and adversarial system, while others may opt for an inquisitorial system. Likewise, other aspects that are instrumental to guarantee a fair trial, as in the case of legal aid and other legal facilities, can be rendered in different ways. Another aspect that can influence the assessment is the distribution of powers among the different States institutions (Venice Commission, 2016, p. 10). In order for the Rule of Law to function, there should be a system of checks and balances. Moreover, the exercise of both legislative and executive power shall be object of revision for constitutionality by an independent and impartial judiciary (Venice Commission, 2016, p. 10). As said before, a well-functioning judiciary is crucial to correctly enforce the Rule of Law (Venice Commission, 2016, p. 10).

After having explored how the Checklist was conceived from a theoretical perspective, it is important to shift the focus on a more practical aspect: the benchmarks. As said before, the Checklist tries to operationalize the Rule of Law, identifying certain indicators that allow to measure it. These indicators are conceived in an extremely practical perspective. There six macro categories: Legality; Legal Certainty; Prevention of Abuse of Powers; Equality Before the Law and Non-discrimination; Access to Justice and Examples of Particular Challenges to the Rule of Law. Additionally, each macro category is characterised by certain features. For example, in the case of Legality, its features are: supremacy of the law, compliance with the law, relationship between international and domestic Law, law-making powers of the executive, law-making procedures, exceptions in emergency situations, duty to implement the law and private actors in charge of public tasks. For each feature, there are boxes filled with questions that can help the organization or the state entity that is carrying out the assessment.

Is supremacy of the law recognised?

i. Is there a written Constitution?
ii. Is conformity of legislation with the Constitution ensured?
iii. Is legislation adopted without delay when required by the Constitution?
iv. Does the action of the executive branch conform with the Constitution and other laws?[17]
v. Are regulations adopted without delay when required by legislation?
vi. Is effective judicial review of the conformity of the acts and decisions of the executive branch of government with the law available?
vii. Does such judicial review also apply to the acts and decisions of independent agencies and private actors performing public tasks?
viii. Is effective legal protection of individual human rights vis-à-vis infringements by private actors guaranteed?

(Venice Commission p. 11)

The box is followed by a brief comment on how the Rule of Law should be visible in these circumstances. In the case of Legality, we read that: "State action must be in accordance with and authorised by the law. Whereas the necessity for judicial review of the acts and decisions of the executive and other bodies performing public tasks is universally recognised, national practice is very diverse on how to ensure conformity of legislation with the Constitution. While judicial review is an effective means to reach this goal, there may also be other means to guarantee the proper implementation of the Constitution to ensure respect for the Rule of Law, such as a priori review by a specialised committee" (Venice Commission p. 11). Here the practical intent of the Rule of Law Checklist is tangible. After a proper introduction, it is possible to have the tools to study and assess if the Rule of Law is properly implemented. In the third part of the Checklist there are the selected standards, that relate to hard law and soft law, providing a detailed list of references for those who might want to analyse in depth how the indicators and the benchmarks were selected.

The Rule of Law Checklist as it is framed is fundamental to establish a starting point form which analyse the compliance of each Member State with values that are considered fundamental to be part of the European Union. Nevertheless, the Checklist alone cannot achieve any ground-breaking result. In order to have the Checklist serving its purpose, it is also required a tight adherence by Head of States to the core values of the European Union. Otherwise, it would be impossible to have them check on certain requisites. Unfortunately, the EU has experienced recently what does it mean having Member States that do not comply with its fundamental values. For example, the cases Hungary that will be analysed in the next subparagraph.

1.2.2 Advantages and Disadvantages of a Common Framework for the Rule of Law

The establishment of a common framework for the Rule of Law like such as the Rule of Law Checklist is crucial, as it gives to all the Member States the same instruments, allowing them to conform to certain requirements. Another important feature of the Rule of Law Checklist is the fact that the European Union has once again renewed its will to implement and foster the Rule of Law as one of the founding values of the Union. The problem is represented by the fact that once certain principles are considered as prerequisites to join the EU, it is crucial not only to enforce a system to which all the Member States have to comply with, but also establish a system able

to prosecute effectively the states that actively violates the Rule of Law. From this perspective, the European Union is more focused on prevention of infringement of the Rule of Law, rather than on sanctioning violations. This happened mainly because there are disagreements on which role should the Union have in such situations (Hillion 2016, p. 74).

In order to foster the preventive aspect, there is Article 7(1) TEU, which appeared for the first time in the 2003 Treaty of Nice. According to it, the EU can act in case it faces a "clear risk of a serious breach by a Member State of the values referred to in Article 2" (TEU 2012). The procedure can be activated by a submission from the Commission, the European Parliament or from one third of the Member States, of a reasoned proposal to the Council. The Council, before going on with the procedure, "shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure The Council shall regularly verify that the grounds on which such a determination was made continue to apply" (TEU 2012). The purpose of this procedure was to give the Union the ability to prevent a clear risk of a serious erosion of common values (Hillion 2016, p. 75). As a result, there was an enhancement of the operational character of the means already available under the Amsterdam Treaty, which allowed only for remedial actions, when the breach had already occurred (Hillion 2016, p. 75).

Going back to the text of Article 7 TEU, once the substantive and procedural requirements demand for the Council to establish Werther there is a clear risk and to make recommendations. However, the Council does not act in vacuum. The submitting of a "reasoned proposal" by the Commission or the European Parliament is a crucial element. Article 13(1) TEU stated: "The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions. The Union's institutions shall be: the European Parliament; the European Council; the Council; the European Commission; the Court of Justice of the European Union; the European Central Bank; the Court of Auditors" (TEU 2012). As a result, the role played by the Commission or by the European Parliament within the procedure established by Article 7(1) TEU fulfils the value-promotion mandate expressed in Article 13(1) TEU (Hillion 2016, p. 75).

After the implementation of the Treaty of Nice, the Commission stated that the new paragraph established a legal basis for the creation of a regular monitoring of Member State compliance with the founding principles of the Union, then enshrined in Article 6(1) TEU (Hillion 2016, p. 75). In the 2003 Communication issued by the Commission to amend Article 7 TEU, it pointed out that the provision "confers new powers on the Commission in its monitoring of fundamental rights in the Union and in the identification of potential risks, adding that it intends to exercise its new right in full and clear awareness of its responsibility (Hillion 2016, p. 76). The Commission also stated that Article 7 TEU "places the institutions under an obligation to maintain constant surveillance" (European Commission 2003). Furthermore "the legal and political framework for the application of Article 7 based on prevention, requires practical operational measures to ensure thorough and effective

monitoring of respect for and promotion of common values (European Commission 2003). Notwithstanding the effort of the Commission, this aspect of Article 7(1) TEU was never truly developed (Hillion 2016, p.76). As a result, even though Article 7 TEU has extremely promising starting points, it is not truly able to fulfil its role.

Article 7 TEU is not the only instrument in the EU that can be used to prevent breaches of the Rule of Law. In the Commission's *EU Framework to Strengthen the Rule of Law*, there is a slightly different approach in the preventions of breaches of EU values (Hillion 2016, p. 78). The Framework developed in 2014 introduced a different method, from the one proposed by Article 7 TEU. The 2014 Framework avoids renewing the idea of Article 7 TEU of enforcing a monitoring mechanism. It sets out a three-stage structured dialogue, that shall begin in case of "clear indications of a systemic threat to the Rule of Law in a Member State" (European Commission 2014). During the first stage of the process, the Commission sends a "Rule of Law opinion" to the Member State that breached the Rule of Law. At this point, the Member State verifies the Commission's concerns and allows its national authorities to answer (Hillion 2016, p. 78). If the Commission is not satisfied with the answer of the Member State, it can issue a "Rule of Law recommendation". The recommendation differs from the opinion, as the in the former the Commission not only clarifies its concern, it also offers possible solution to the Member State and sets a time framework within which the situations should be solved (Hillion 2016, p. 78). Furthermore, the Member State shall inform the Commission of the steps it intends to follow in order to amend the breach to the Rule of Law (Hillion 2016, p. 78). If the Commission is not completely satisfied with the efforts of the Member State, it can decide to activate the procedure devised by Article 7 TEU.

The true aim of the 2014 Framework is to establish a solid dialogue between the Commission and the Member State that breached the Rule of Law before the situation requires the activation of Article 7 TEU (Hillion 2016, p. 78). The Framework is not conceived as an alternative to Article 7 TEU. It should be considered as an additional pre-preventive procedure operating between the classic infringement procedure and the mechanism set out in Article 7 TEU (Hillion 2016, p. 79). Both the Commission and the Council are committed to promote the EU values. In the case of Poland, the Commission activated the Rule of Law Framework in relation to Poland (Hillion 2016, p. 79). Furthermore, they suggested that prevention could also take new roots, apart from the mechanism devised by Article 7(1) TEU (Hillion 2016, p. 79).

At this point, it is clear that there are two different approaches: the one pursued by the Commission and the one pursued by the Council. One the hand, the Commission devised a framework not only to reinforce the Rule of Law, but also to "resolve future threats to the rule of Law in Member States before conditions for activating the mechanism of Article 7 TEU would be met" (European Commission 2014, p. 3). On the other hand, the Council and the Member States established a dialogue in order to "promote a culture of respect of the Rule of Law (Hillion 2016, p. 80). Furthermore, the two approaches present substantial differences in their nature. While the Commission proposes a dialogue in an EU-driven process, between itself and the Member State who infringed the Rule of Law, the Council propose a different perspective (Hillion 2016, p. 80). In the approach proposed by

the Council there is a dialogue between peers, rather an EU-driven process. As a result, the EU is less involved (Hillion 2016, p. 80). Furthermore, the Communication suggests that the Commission actually has the competences to establish a framework to strengthen the protection of the Rule of Law. While the Council cannot establish a dialogue among peers, as it is not considered competent enough to do so (Hillion 2016, p. 80).

Hence, it is possible to say that there is an agreement on the idea that European institutions must promote the Rule of Law as a founding value of the Union, there is a strong divergence considering the extent and nature of this preventive role, both in the framework devised by Article 7(1) TEU and outside of it (Hillion 2016, p. 81). Definitely the interinstitutional mutual and sincere cooperation called for in Article 13(2) TEU, to ensure fundamental rights and values, clearly linked to Article 13(1) TEU, does not really exists at the moment (Hillion 2016, p. 81). Even if Article 7(1) TEU was helpful to sanction Austria in 2000, because its government idealised certain features of the Nationalist Socialist past, it is clear that even though there is a common framework that should help strengthening and preventing breaches of the Rule of Law, the situation is far from being solved.

Another interesting case for understanding the advantages and the disadvantages of having a common framework for the Rule of Law, can be the case of Hungary. The first question is whether Hungary represents an illiberal regime and if it is a serious or even persistent breach of Article 2 (Bugarič 2016, p. 87). Bugarič believes that all those provisions that systematically undermine or even remove the independence of the judiciary, media and other independent bodies, represent an erosion of the Rule of Law in Hungary (2016, p. 87). As Jan-Werner Müller pointed out, in Hungary and in other Western democracies "something new is emerging: a form of illiberal democracy in which political parties try to capture the state for either ideological purposes or, more prosaically, economic gains" (2014, p. 932). According to Müller there is a pattern of similarity between what is happening in Eastern Europe and what already happened in Moscow under Putin's "managed democracy": "Like Moscow, the governments of these countries are careful to maintain their democratic façades by holding regular elections. But their leaders have tried to systematically dismantle institutional checks and balances, making real turnovers in power extremely difficult" (Müller 2014, p. 392).

Despite the fact that Hungary clearly violates Article 2 TEU, the EU institutions failed so far to employ the mechanism set out in Article 7 TEU (Bugarič 2016, p. 90). This happened for a variety of reasons. First of all, it was due to the fact that when the European Parliament contemplated the possibility to activate Article 7 TEU, the European People's Party manifested his reluctancy to follow such path (Bugarič 2016, p. 90). Even if Orbán's Hungary was willing to reintroduce death penalty, the European People's Party was more focused on Hungary as an economic driving force, rather than a threat to the Rule of Law in Europe (Bugarič 2016, p. 90). The opposition of the European institution to use the Article 7 procedure shows how difficult is in practice to use a mechanism that is essentially political (Bugarič 2016, p. 91). One of the mail limits of Article 7 procedure is that it requires the unanimity for triggering the sanctioning mechanism (Kumm 2012). On other hand, other scholars believe that it would be wrong and dangerous if only a tiny majority could trigger Article 7 mechanism (Bugarič 2016, p. 91). In

this way, in order to have a functioning sanctioning procedure, it would be better to have a supermajority, rather than unanimity (Bugarič 2016, p. 91). In order to protect the Rule of Law is crucial to have a sanctioning mechanism that works smoothly. Observing Article 7 as it is right now, it is clear that it is extremely demanding from a political perspective (Bugarič 2016, p. 91).

1.3 The Relationship between the Rule of Law and the Freedom of the Press

1.3.1 Defining the Freedom of the Press

In order to proceed further in our analysis, it is crucial to define the other variable of our study: the Freedom of the Press. The Freedom of the Press shall be analysed from three different perspectives: the law perspective, the historical development in different context and the indicators defined to measure it through time. Traditionally, the Freedom of the Press is defined as "an absence of state intervention in media activities" (Czepek et al. 2009, p. 9). The first Freedom of the Press Act was adopted in Sweden in 1766. It was developed following the idea of the Finnish Enlightenment ideologue Anders Chydenius (Hallberg and Virkkunen 2017, p. 67). According to Chydenius, coercive power was necessary to achieve the common good. More specifically, he believed that coercive power had to be used not to pursue particular interests, rather to ensure peace, security and private property for all (Hallberg and Virkkunen 2017, p. 68). Chydenius stressed the importance of freedom, conceived also as freedom to write and print whatever the person wanted (Hallberg and Virkkunen 2017, p. 68). In other words, it is left to the people to be legally responsible of possible abuse of intellectual freedom (Hallberg and Virkkunen 2017, p. 68). Chydenius pursued a fair perspective on the Freedom of the Press on which a free system of governance can be developed upon (Hallberg and Virkkunen 2017, p. 68). If these freedoms are not in place, those who govern do not dispose of sufficient knowledge to enact good laws or supervise their implementation upon (Hallberg and Virkkunen 2017, p. 69). Considering the perspective of the people, if the Freedom of the Press is not guaranteed, they do not have the adequate knowledge to act by law (Hallberg and Virkkunen 2017, p. 69). The idea of freedom delivered by Chydenius is that enlightened citizenry would prevent the estates in assembly to act in a high-handed manner (Hallberg and Virkkunen 2017, p. 69).

For more than two centuries, the Freedom of the Press was linked to the Freedom of Expression (Zeno-Zencovich 2009, p. 6). The 1791 First Amendment of the US Constitution stated: "Freedom of speech and of the press." This not the only document that connects the concepts. Similarly, the 1789 Declaration of Rights of Man and the Citizen first pointed out that: "The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write and print with freedom." Taking into account more recent legislative developments, the European Charter of Fundamental Rights (ECFR) pointed out in Article 11(2): "The freedom and pluralism of the media shall be respected" (Zeno-Zencovich 2009, p. 6). Another interesting aspect that should be highlighted is the relationship between the Freedom of the Press and the freedom to print. As underlined by Zeno-Zencovich, the First Amendment of the US Constitution refers to the Freedom of the Press, not the freedom to print (2009, p. 8). At the time the press was conceived as a continuing activity of disseminating ideas, rather than the mere perspective of typographic production. The founding fathers were focused on the idea of press as an integrating part of the democracy they were establishing at the time (Zeno-

Zencovich 2009, p. 8). Of course, the model adopted in the US is not the same that is in place in continental Europe (Zeno-Zencovich 2009, p. 9). In the US model the primacy of the press is linked to a system of checks and balances, moderating its power and subordinating it to disciplines of reasonableness and balance (Zeno-Zencovich 2009, p. 9). When we consider the European perspective on the press to spread ideas some caveats are needed. It seems that there is a persistent desire to control the Press (Zeno-Zencovich 2009, p. 9). It is possible to see that from many perspectives: press laws, registration requirements penalties for the 'underground' press and for so-called press offences in general (Zeno-Zencovich 2009, p. 9).

Another important aspect that should be kept in mind is the fact that the Freedom of the Press and the Freedom of Expression are not exactly the same. Although they are often analysed together as if they were interchangeable, there is a subtle difference. Notwithstanding the fact that the Freedom of the Press alone is not always openly mentioned in many constitutions, yet it plays a crucial role. In a democratic context, if a government is checked by a free press is more accountable and less likely to be corrupt (Dworkin 1996, pp.199-200). It happens generally because it is the press that can shed the light on those in power and on their actions (Lamer 2018, p. 23). Considering the individual right to Freedom of Expression, it does not automatically lead to the access to public institutions. If the Freedom of the Press exists, it can make information available to people, that otherwise they wouldn't have. (Lamer 2018, p. 23). On the one hand, if one person expresses a divergent opinion towards a government decision, as an exercise of his or her freedom of the speech, it is unlikely that things are going to change. On the other hand, if the mass media publicize the same topic, the government might feel more compelled to take action (Lamer 2018, p. 23). Yet the Freedom of the Press and the Freedom of Expression are considered together because they are perceived to be one the extension of the other.

Analysing the Freedom of the Press in more recent legal documents, the Freedom of the Press is mentioned in Article 19 of the UN Universal Declaration of Human Rights. According to Article 19: "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers." The words of Article 19 are extremely important. However, they need to be substantiated in two different ways (Behmer 2009, p. 24). First of all, the content of Article 19 has to be shaped in a more accurate way and translated into other international conventions (Behmer 2009, p. 24). Then, it should be highlighted the fact that Article 19 does not make any reference about protecting the press or the media. In Article 19 the focus is shifted on allowing every individual to have the right to express themselves freely (Lamer 2018, p. 17). Such integrations can be found in Article 10 of the 'European Human Rights Convention' of the European Council (1950), the Helsinki Final Act of the Conference for Security and Co-Operation in Europe (now OSCE) from 1975, the UN Millennium Development Goals, the Conventions of the World Trade Organisation WTO, the International Telecommunication Union (ITU) and other UN sub-organizations, especially the various media declarations made by the UNESCO (Behmer 2009, p. 24). Another important aspect that is quite clear is that is extremely difficult to get a general consensus over the content of Article 19 (Behmer 2009, p. 24). Especially between the Seventies and the Eighties, the main

problem concerned choosing between unconditional freedom of information, vis-à-vis a better-balanced worldwide view of information, supported by a 'New World Information and Communication Order' (Behmer 2009, p. 24).

According to Behmer, Article 19 can be enforced also in the context of national law (2009, p. 24). As Christian Tietje pointed out: "Just as in the jurisdiction of the international system in general, so it is in the areas of communication law, the states still being the protagonists as to jurisdiction and its enforcement" (Tietje 2002, p. 17). From this, it is possible to infer that freedom of communication is considered a basic right and it is part of the majority constitutions of states (Behmer 2009, p. 24). In 1994 Christina Breunig carried out a survey in which she analysed the texts of the constitutions of 160 states. From his analysis emerged that 143 states assured – or at least they do at the time- one or more freedom(s) of communication in their constitutions (Behmer 2009, p. 24). In 16 constitutions freedom of speech was assured explicitly; in 21, the freedom of speech and opinion; in 58, the freedom of the press; in 60, the freedom of information; and in 103, freedom of opinion (Breunig 1994, p. 308). Having said that, it is important to highlight the fact that quantity should not be confused with quality. Even though the Freedom of the Press is not clearly stated, it does not mean the Freedom of the Press doesn't actually exists in a certain country (Behmer 2009, p. 24).

Going back to a purely European perspective, the white paper on a European Communication Policy, presented by the Commission in 2006, stated that both the right to information and freedom of expression are at the heart of Democracy in Europe (Commission 2006, p. 5). These rights are analysed in the EU Treaties and in the European Charter of Fundamental Rights. According to the Commission, these rights are the starting point to create a new strategy for Communication Policy in Europe (Commission 2006, p. 5). Moreover, the Commission demands for more Freedom of the Press, plurality and citizens' participation in communication (Czepek et al. 2009, p. 10). In the EU it is commonly accepted that the Freedom of the Press, pluralism and participation are considered pillars of democracy. Hence, it is important to support and protect them (Czepek et al. 2009, p. 10). However, even if it was stated many times, the Member States of the European Union implement the Freedom of the Press in different ways, as they have different economic, political and social backgrounds.

Another important aspect that should be highlighted is the effort of international organizations to protect and foster the Freedom of the Press. In particular, the efforts of the Council of Europe between 2013 and 2014. The Council of Europe is an international organization founded in 1949. It counts 47 members states, 27 of which are members of the EU. The main objectives of the Council of Europe are the protection human rights, democracy and the Rule of Law. In December 2013, the Council of Europe presented a discussion paper on "the safety of journalists, further steps for the better implementation of human rights standards". Even though it does not directly refer to the Freedom of the Press, as it is more focused on the Freedom of Expression, yet it offers some useful insights. First of all, it reinforces the importance of the Freedom of Expression and the necessity of international standards to foster it (Council of Europe 2013, p. 2). It identifies it as a *condicio sine qua non* in order

to establish a genuine democracy (Council of Europe 2013, p. 2). However, all the standards established remain inadequate without an implementation of an effective right to safety for journalists, that plays a crucial role in democratic society. Thanks to journalists it is possible to spread information about topic of public interest (Council of Europe 2013, p. 2). However, the situation it is not always that smooth, not even in the European Union. OSCE reported that since 1992, more than 100 journalists were murdered in Europe while they were working, and even more were physically attacked. (Council of Europe 2013, p. 2). Threats to the safety of journalists and other persons involved in communicating in the name of public interest express a more problematic issue: the lack of sufficient Freedom of Expression (Council of Europe 2013, p. 3). Moreover, it suggests that state officials "wish, tolerate or condone their physical attacks, harassment and killings" (Council of Europe 2013, p. 3).

As a result, the Council of Europe encouraged to address the causes of such situation, in order to solve it once for all (Council of Europe 2013, p. 3). To achieve this aim, the Council of Europe advised to create an enabling environment for journalists, following what the European Courts of Human Rights previously stated. "States should create an environment which allows full participation in open debates, enabling everyone to express their opinions and ideas without fear, even if they are contrary to those defended by authorities or by an important share of public" (Council of Europe 2013, p. 3). In order to do so, the Council of Europe advised the Committee of Ministers to resort to four possible lines of action: instruct the Steering Committee on Media and Information Society to develop guidelines for the protection of journalism and the protection of journalists; promote the sharing of best practices among Member States on the effective protection of journalist, in order to prevent any form of violence against them; allow the secretariat to find different ways to undertake joint action with other international partners in order to set up a rapid response mechanism to fight any threat against journalists; address the specific issues that affects women journalists in the course of their work (Council of Europe 2013, p. 6).

In 2014 further progresses were achieved. It was decided to set up an Internet-based platform to facilitate the compilation, processing and dissemination of information of concern about media freedom and the safety of journalists, in line with what prescribed by Article 10 of the European Convention on Human Rights (Council of Europe 2014). Partner organizations such as International Federation of Journalists (IFJ), Association of European Journalists (AEJ), Reporters Without Borders (RWB), Article 19, International News Safety Institute, (INSI), Open Society Institute (OSI-Media) will be able to post updates about the current situation of journalists around the world (Council of Europe 2014). The Council of Europe will not edit posts. The Council of Europe may also post information on action taken by the Council of Europe's organs or institutions in response to serious concerns about media freedom and safety of journalists (Council of Europe 2014). It is important to bear in mind the fact that the platform was not set up as a monitoring mechanism. The Council of Europe highlighted that: "It will not duplicate or interfere in any way with the work of the European Court of Human Rights, national jurisdictions or the work of the Commissioner for Human Rights and the OSCE Special Representative on Freedom of the Media" (Council of Europe 2014). Rather than a monitoring mechanism, the platform should be considered as "a tool for enhanced co-operation and co-ordination between Council of Europe bodies and institutions as well as with

international partners such as the OSCE Special Representative on Freedom of the Media, the European Union and the United Nations" (Council of Europe 2014). Thanks to the platform it is possible to alert in a more systematic way the Council of Europe bodies and institutions. Hence, they will act more promptly to solve any issue linked to media freedom and journalists' safety (Council of Europe 2014). Furthermore, thanks to the platform, the Secretary General will identify trends and propose adequate policy actions in the field of media freedom (Council of Europe 2014).

Finally, it is important to analyse the indexes that were developed by different NGOs to understand more in depth the development of the Freedom of the Press. It is important to bear in mind that the scores alone are not enough to have a comprehensive view of the Freedom of the Press in a certain country. They have to be part of a broader analysis the entails a focus on the current status of the Rule of Law and political issues in a determined country. The two most popular scores are the one developed by Freedom House and the one by Reporters Without Borders. Starting from the former, Freedom House is an NGO founded in 1941. It is a U.S.-based and a U.S. government-funded NGO. The main aims of Freedom House are researching and advocacy in the field of human rights, democracy, and political freedom. Yearly, Freedom House issues its report on the situation of freedom in the world. In order to asses freedom, the NGO employs a score made up by several indicators. Each country receives a numerical score over 100. The higher the score, the freer is the country. In order to fill the score, there are two categories that needs to be satisfied: Political Rights and Civil Liberties. In the former we find: the Electoral Process, Political Pluralism and Participation, Functioning of Government, while in the latter we have: Freedom of Expression and Belief, Associational and Organizational Rights, Rule of Law, Personal Autonomy and Individual Rights. There is a series of question for each category that allow the country to acquire from zero to four points per category.
Considering the category of the Freedom of Expression and Belief, the questions are:

1. Are there free and independent media?
2. Are individuals free to practice and express their religious faith or nonbelief in public and private?
3. Is there academic freedom, and is the educational system free from extensive political indoctrination?
4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?

Considering the Rule of Law, Freedom House asks four questions:

1. Is there an independent judiciary?
2. Does due process prevail in civil and criminal matters?
3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?
4. Do laws, policies, and practices guarantee equal treatment of various segments of the population?

The other NGO that investigates media freedom is Reporter Without Borders (RSF). RSF is a French NGO that safeguards the right to the freedom of information. Its advocacy is founded on Article 19 of the UN Declaration

of Human Rights that we have already analysed at the beginning of the chapter. Based in Paris, Reporters Without Borders is an independent NGO with consultative status with the United Nations, UNESCO, the Council of Europe and the International Organization of the Francophonie (OIF). Its foreign sections, its bureaux in ten cities, including Brussels, Washington, Berlin, Tunis, Rio de Janeiro, and Stockholm, and its network of correspondents in 130 countries give RSF the ability to mobilize support and spread influence both on the ground and in the ministries and precincts where media and Internet standards and legislation are drafted (RSF website). Every day, RSF issues a variety of reports in different languages about the state of the freedom of information in the world and how it is violated (RSF website). The aim is rising awareness of world leaders both on individual and general issues.

The most prominent tool through which RSF pursues its advocacy is the World Press Freedom Index. The World Press Freedom Index is a survey published annually since October 2002 (Czepek et al. 2009, p. 28). Compared to the survey run by Freedom House, the perspective is narrower. RSF is focused on the endangerment of journalists at work in different countries of the world (Czepek et al. 2009, p. 28). RSF does not disclose the identity of the journalists that took part in the survey to safeguard them (Czepek et al. 2009, p. 28). The survey is made up of 50 questions. The first 13 questions focus on the number of journalists that were murdered, put in jail, tortured or threatened (Czepek et al. 2009, p. 28). These questions receive a score from 49 to 122 points, which is the worst score. Considering the other 37 questions, which are yes or no questions, they are more focused on the enforcement of laws, censorship, the state's possession of media and its influence (Czepek et al. 2009, p. 28). Considered together, both the Freedom of the Press and the World Press Index can be useful as starting point to understand the current situation in terms of the Freedom of the Press and which countries might be observed closer.

1.3.2 Why systemic infringements of the Freedom of the Press are intrinsically linked to the erosion of the Rule of Law

As observed in in 1.3.1, the Freedom of the Press is not a monadic right that stands alone in a vacuum. It is not merely the freedom of printing and spreading whatever ideas the owner of newspaper and journalists would like to spread. In reality, the Freedom of the Press has a deeper meaning. It postulates other freedom and rights, not only for the people but also for the state itself. On the one hand, in a state where the Freedom of the Press exists and is enforced, people have the possibility to receive pluralistic and diversified information. People are allowed to choose from which newspaper or television channel retrieve information without fearing the interference of the government. In a society in which the Freedom of the Press is well established, the Freedom of Expression and the Freedom of Speech are guaranteed. In other words, people are not only able to gather information from a diversified and pluralistic media system, but they are also able to express their personal opinions. In such context, journalists are able to work safely, without fearing the interference or possible threats by the government. Journalists do not for their lives while working on field investigations. People do not doubt on the real intent of the media, as they are not under government control.

Nonetheless, when all the features previously listed are missing, not only the Freedom of the Press is impaired, but also the Rule of Law is eroded. It is possible observe this phenomenon thanks to the characteristics outlined at the beginning of the chapter in section 1.1.1, section 1.1.2, section 1.2.1 and section 1.3.1. Quoting what was already stated in 1.1.1 by A.V. Dicey, the Rule of Law is characterised by situation in which the government is not based on the boundless arbitrary power of a single individual or on the discretionary power a group of people that pursue their private interests. In a context where the Rule of Law is established, nobody is above the law. Everybody has to follow what the law prescribes. Hence, public officials are at the same time monitoring agents and subjects to laws. Furthermore, considering what Sellers wrote, the laws are enforced in the name of the common good. In the name of a society as a whole, not to favour any particular faction or party. The guardians of the law, as Sellers called them, have to pursue the law in the interests of the community as a whole. Thus, the guardians of the laws – or the public officials – have a precise duty towards the people. To act otherwise would mean to erode the Rule of Law. Similarly, the people themselves have to act following the purpose of the law. Moreover, Bingham drawn eight principles of the Rule of Law. Among these principles there are accessibility; law not discretion; equality; exercise of power; human rights; dispute resolution; fair trial and compliance with international law. Here it is important to focus on exercise of power and human rights. Considering the exercise of power, Bingham highlighted that public officers at all levels shall exercise the power conferred upon them without exceeding the limits of such powers. Plus, the decisions of those in powers should not be driven by personal interests. They should be focused on fulfilling public good. As a result, when public officials employ their powers to prevent the media from acting according to the Freedom of the Press, they are not only infringing the Freedom of the Press. They are also eroding the Rule of Law, as they are abusing their role. Considering human rights, Bingham stated that: "The Law must afford adequate protection of fundamental human rights" (Bingham 2010, p. 135). He pointed out a series of rights that are essential in order to enforce the Rule of Law. Among these rights, Bingham highlighted the importance of the Freedom of Expression. The Freedom of Expression is crucial as a modern participatory democracy requires the media to be free. Furthermore, as stated in McCartan Turkington Breen v Times Newspapers Ltd, "The proper functioning of a modern participatory democracy requires that the media be free, active, professional and "inquiring"" (2001 2 AC 277, para. 1). Hence, when the media are not free and journalists are not able to inquiry in security, the very Rule of Law is dramatically at stake.

Summing up what was stated in 1.1.2, the Rule of Law is fundamental, as it is the device the protects the rights of the citizens from the oppression of tyranny. Furthermore, analysing the health of a state in its complex, it is impossible not to consider the existence and the enforcement of the Rule of Law. They are the only means that can at the same time secure justice, preventing tyranny and oppression. Here, it is possible to highlight a fundamental similarity with the Freedom of the Press. Its existence is crucial to prevent tyranny and oppression. The very existence of a free press is a sign of the fact that the state we are considering is not a tyranny and people are not oppressed. As said before, from a free press stems the possibility of freely sharing personal opinions and accessing a pluralistic media system. Another similarity that is possible to draw between the Rule of Law and the Freedom of the Press, it is the fact that in order to secure the Rule of Law, according to Sellers, is needed a stable

constitutional government. In such a context, fair justice is guaranteed, and public officials foster the common good of the society as a whole. It is possible to say that such conclusion quite close to the one reached by Bingham.

Considering instead 1.2.1, it is possible to see a real effort by the Council of the European Union and its Member States in committing themselves to establish a dialogue among all Member States within the Council to promote and safeguard the Rule of Law in the framework of the Treaties. In order to achieve such aim, they devised a common and comprehensive framework for operationalise the Rule of Law and allow the Member States to make assessments of its current status, namely the Rule of Law Checklist. It is a pivotal moment, as it links to the concept of the Rule of Law many characteristics that can be finally employed to foster it and protect it. Thanks to this categorization, it is possible to understand the Rule of Law in a more concrete way. Adding characteristics to the Rule of Law such legality; legal certainty; prevention of abuse of powers; equality before the law and non-discrimination; access to justice and examples of particular challenges to the Rule of Law, allows to link it to other fundamental rights. Hence it is makes easier to understand whether systemic infringements of collateral rights ultimately lead to the erosion of the Rule of Law.

As pointed out by the Council of Europe in 1.3.1, the Freedom of the Press is a *condicio sine qua non* to establish a genuine democracy. Notwithstanding this, the situation in the EU is still extremely difficult, as journalists not only were killed, but experienced violence and physical harassment while working. Hence, taking into account context in journalists are murdered because of their inquiries, the media are not pluralistic, but controlled by the government and the judicial power is not fully independent, not only the Freedom of the Press is impaired, but the Rule of Law itself is at stake. The moment in which such violations exist, and the State does not intervene as it should, it means that the issue does not concern merely the Freedom of the Press, but the very institutional framework of the State. Thus, if the Freedom of the Press is somewhat put at stake, it affects the stability of the Rule of Law. It is possible to observe it in different cases. For example, if a journalist is murdered and the government decides to cover up the murder, as it was commissioned by some member of the government itself. As a result, not only the Freedom of the Press is not preserved because a journalist was murdered. Moreover, public officials are not pursuing anymore the common good, but their particular interest. As a result, the Rule of Law is eroded.

Considering the Freedom of the Press, another aspect that should be taken into account is the evolution of the journalistic profession together with the development of the internet. Even though it will not be a crucial aspect of this dissertation, yet it is important to keep it in mind to have a complete knowledge of how multi-layered the information world is. From an historical perspective, journalism is perceived as the profession able to fight power abuse (Mills and Sarikakis 2020, p. 297). Journalism was entrusted with the ability to hold the State accountable for its decisions (Mills and Sarikakis 2020, p. 297). Over the years, journalism as a profession faced many different challenges, both from the inside and the outside (Mills and Sarikakis 2020, p. 299). On the one hand, the rhythm of the profession increased. As a result, journalists are required to produce more contents, when the resources

provided to them are consistently reduced (Mills and Sarikakis 2020, p. 299). Together with the advent of user-generated content and new forms of journalism such as advocacy and civil journalism, journalism evolved. Furthermore, political factors, public trust in the media and the integrity of journalism was eroded (Mills and Sarikakis 2020, p. 299). Thanks to the advent of the internet, news was able to travel faster all over the world. The same time-constraints that were true for the printed world, did not hold anymore for an internet-based system. However, together with this ground-breaking innovation there was also a major issue of nowadays information: fake news. Fake news is defined as "news articles that are intentionally and verifiably false, and could mislead readers" (Allcott and Gentzkow 2017, p. 213). The issue not only concern the content of fake news, but also how to control them. Fake news represents a crucial problem both for journalists and for people, who ultimately will consume the news. One the one hand, journalists not only have their competences challenged, but they also need to respond to critiques and attacks on their legitimacy (Carlson and Lewis 2015). On the other one, people are not sure anymore on which sources are actually reliable and which are not. Hence, faith in the press is slowly eroded.

Chapter II- Malta: Ius Pecuniae and Power Concentration

"There are crooks everywhere you look now. The situation is desperate."

Daphne Caruana Galizia

2.1 Brief analysis of the Maltese Constitution

2.1.1 History and rationale

The Maltese Constitution came into force in 1964. Also known as the Independence Constitution, it is a post-colonial constitution (Xuereb 2019, p. 142). In the Sixties the Maltese Constitution spoke of the Queen of the United Kingdom as the Head of State of what was a new independent state and member of the British Commonwealth (Xuereb 2019, p. 142). As Prime Minister George Borg Olivier at the Chatham House Independence Conference of 1963 pointed out: "The Constitution which we envisage incorporates the principle of responsible parliamentary government based on a tested democratic system. It safeguards the interests of the nation and the fundamental rights and freedoms of the individuals composing the nation. It secures the independence of such organs and authorities as must be outside political influence. It reaffirms the political sovereignty of the electorate by ensuring the holding of free elections at fixed intervals" (Today Public Policy Institute 2014, p. 11). The 1964 Constitution followed the recommendations for a Constitution issued by the Sir Hilary Blood Commission (Today Public Policy Institute 2014, p. 11). In over fifty years, its evolution was quite stable.

In 1974 it was amended by Act LVIII, shifting the form of government from a monarchy to a republic within the Commonwealth of Nations (Xuereb 2019, p. 142). Subsequently, the first Maltese (non-executive) president was appointed. On the one hand, it was decided to adopt the Westminster model of cabinet government. It was also decided to opt for a written constitution characterized by a comprehensive bill of rights inspired by the European Convention on Human Rights of 1950 (ECHR). Furthermore, it was decided to put in place certain limitations on parliamentary sovereignty. A status of active neutrality was enforced thanks to an amendment made by Act IV of 1987. In order to join the EU, further adjustments were needed. These changes aimed neither to modify any fundamental part of the constitutional system, nor to make these changes permanent. The EU acquis was incorporated thanks to the 2003 European Union Act. Yet no sovereignty clause over any other law was present in the Maltese Constitution. The ultimate political sovereignty implicitly laying with the people (Xuereb 2019, p. 142).

Similarly to other constitutions of the new Commonwealth, the new Maltese Constitution does not want to leave any aspect to discretion (Xuereb 2019, p. 142). Since it is an independence constitution that became a republican constitution, it enforces the supreme law of the land. The underlying idea behind the Constitution was twofold.

First of all, it aimed at establishing statehood and sovereignty. Second, the Constitution wanted to limit the exercise of public power. The locus of the ultimate political power is left unstated, apart from the fact that the people are sovereign every five years, because of obligatory general elections. Malta is a sovereign state and a national polity. Considering state sovereignty, Malta is sovereign from two different perspectives. It enacts laws that are binding over its own the territory. Plus, it enacts extra-territorial legislation. Moreover, Malta has its own sovereign national institutions which are responsible (Aquilina 2018, p. 35). Malta characterized by democratic political institutions that are not specifically subject to the Rule of Law, which is one of the funding values of the EU. Furthermore, Maltese political institutions are not even under the control of an independent judicial system called to enforce the Constitution and the laws stemming from it (Xuereb 2019, p. 143).

The Maltese Constitution points out sovereignty in international law, organises the state and limits the exercise of power internally thanks to constitutional rights and liberties and the use of checks and balances, together with international obligations (Xuereb 2019, p. 143). Contrary to the UK institutional asset, the Maltese Parliament is not supreme. The Parliament is subject to the Constitution as *suprema lex* of the country. As pointed out by professor J.J. Cremona and professor Kenneth Wheare, the supremacy of the Constitution over the institutions is crucial, as it not merely regulates the institutions, but it is the device that controls the government. Article 6 of the Maltese Constitution states that: "If any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void" (Maltese Constitution 1987, p. 8). According to professor Cremona (1994), Article 6 essentially restates this principle that otherwise would remain implicit. Cremona believes that restating the supremacy clause is potentially dangerous as the specific article can be amended. Another important aspect of the Maltese Constitution is the importance of international law. Together with that there is also the respect of human rights. International law is more developed than the Maltese Constitution for what concerns the respect of human rights. The Constitution established the separation of powers. Moreover, it sets out their relationship (Aquilina 2018, p. 34). Yet, there is room for improvement in the field of checks and balances and separation of powers (Xuereb 2019, p. 143). It is currently under scrutiny to what extent the model of cabinet government can actually evolve.

Even though there was no actual need to amend the Constitution before Malta joined the EU, it was decided to amend Article 65(1). The article was modified as follows: "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally accepted principles of international law and Malta's international and regional obligations in particular those assumed by the treaty of accession to the European Union signed in Athens on the 16th April, 2003" (Xuereb 2019, p. 144). Article 65 was reshaped by the European Union Act, Act V of 2003, Art. 7. Thanks to this modification, Malta was able to become party to other treaties, including the Lisbon Treaty in 2007. It is crucial to bear in mind that Article 65 does represent a permanent commitment to membership of the Union. This is true because Article 65(1) can be amended by the majority of the Members of the House, as stated by Art. 66(5) of the Maltese Constitution (Xuereb 2019, p. 144). It was likely decided that the Constitution had to contain some

mention to the EU since joining was a much-debated political issue. In particular, it was questioned the transferring of certain powers to the EU institutions and the limitations on legislative powers imposed by the EU upon the future of Maltese legal order. Yet ultimate sovereignty is retained in the Constitution. Subsequently, the Constitution was amended by Parliamentary majority, followed by a non-binding referendum about the EU membership (Xuereb 2019, p. 144). The Constitution was amended by Act No V of 2003, titled the European Union Act of 2003.

2.1.2 Limitations to the Rule of Law

As observed, the Maltese Constitution is characterized by a series of fundamental rights, with analogous actions for enforcement. The main list of fundamental rights is drawn in the 1964 Constitution, and it was combined with the 1950 ECHR (Xuereb 2019, p. 152). Article 32 states: "individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely – (a) life, liberty, security of the person, the enjoyment of property and the protection of the law; (b) freedom of conscience, of expression and of peaceful assembly and association; and (c) respect for his private and family life, the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest" (Maltese Constitution 1964). In this preamble it is possible to see that there are precise limitations for each right. Many provisions speak about "reasonably required" and "reasonably justifiable in a democratic society", which is a standard extremely similar to the one brought about by the ECHR (Aquilina 2018, p. 38). It is interesting to note that even though the Rule of Law constitutes the very basis of a democratic constitution, it is not clearly mentioned even once in the Maltese Constitution (Xuereb 2019, p. 152). Even if the Rule of Law is not directly mentioned, it was enforced in several occasions. For example, when between 1972 and 1974 there was a reaction against the non-appointment of Constitutional Court judges. As a result, now the Constitution contains an automatic mechanism for the constitution of the Court in default of specific nominations, as provided by Art. 95(5) (Xuereb 2019, p. 152). Other issues included access to justice, the hierarchy of the courts and the system of appeals.

As stated in Chapter I by A.V. Dicey, Wade and Lords Denning and Bingham, there is a group of features that characterise the Rule of Law. As pointed out by Aquilina, if these features have to be applied to the Maltese case, a key takeaway is that from a theoretical standpoint "the Rule of Law is fundamental to the governance of the state and that the Rule of Law can be implied from a reading of the Constitution's provisions, not because the Constitution, by express words, states so but because this can be deduced by necessary intendment" (Aquilina 2018, p. 33). Considering fundamental rights, access to justice becomes right of action safeguarded by the Constitution and available for the protection and enforcement of the rights listed in Arts. 33 to 45 (Bingham 2011). These rights are also covered by the European Convention Act 1987. It is worth noting that this right is available

also in the case of potential breaches of fundamental rights. The provision in Art. 46(2) reads: "Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this sub-article in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law" (Maltese Constitution 1964).

Yet, there is an aspect that is not so clear. As one of the main authors of the 1964 Constitution, Professor J.J. Cremona, pointed out the loyalty to the Rule of Law provides for the proper functioning of the Constitution (Xuereb 2019, p. 153). The main takeaway is that the Rule of Law is not guaranteed due to a certain document. The point is that the Rule of Law will be guaranteed so far as vigilant people will use the Constitution to foster the proper law-making, independence of the judiciary, hierarchy of the courts or human rights provisions to guarantee the Rule of Law in practice. Moreover, Art. 39 of the Constitution, focused on the right to the protection of the law, guarantees also access to justice, a fair trial, enforcement of civil rights by an impartial and independent tribunal, and other key elements of the impartial application of law and administration of justice. They are part of Maltese supreme law thanks to the 1987 European Convention Act. Furthermore, the Constitution establishes that laws come into effect only when published. However, the Parliament is able to make laws that are retroactive (Xuereb 2019, p. 153).

Considering Art. 72: "(1) The power of Parliament to make laws shall be exercised by bills passed by the House of Representatives and assented to by the President. (2) When a bill is presented to the President for assent, he shall without delay signify that he assents. (3) A bill shall not become law unless it has been duly passed and assented to in accordance with this Constitution. (4) When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect" (Maltese Constitution 1964). Even though the Parliament is able to make retroactive laws, Art. 39(8) claims that: "No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed" (Maltese Constitution 1964).

Shifting the focus to economic freedoms and eventual clashes with classical rights, they may arise in Maltese context if and only if there is a divergent interpretation. For example, in case of abortion, which is considered as an assault on life, hence it is an offence under Maltese law (Xuereb 2019, p. 154). As a result, any attempt to provide it in Malta or attempt to facilitate it outside, has to be prosecuted. Moving forward to social rights, Malta defines itself in Art. 1 of the Constitution as "a democratic republic founded on work and on respect for the fundamental rights and freedoms of the individual" (Maltese Constitution 1964). In particular, in Chapter III the Constitution states that it aims at protecting social principles by declaration. Hence, it establishes a very strong bond with these principles, maintaining that each legislation should steak to them (Xuereb 2019, p. 154). As a

result, the Maltese courts have to ensure a fair balance between economic aims and rights, and social aims and individual rights (Aquilina 2018). Notwithstanding this, a group of NGOs has recently issued recommendations to the Government, as second generation and third generation rights are not enforced as they should be. To be clear, second generation rights refer to economic, social and cultural rights, and were spread after World War II. For example, they include the right to be employed in just and favourable conditions, housing and healthcare, social security and unemployment benefits. Third generation rights try to overcome the framework of individual rights to focus on more collective issues. For example, right to self-determination, right to economic and social development, right to natural resources, right to communicate and communication rights. Going back to Maltese Constitution, third generation rights are not even mentioned by the Constitution. It is interesting to note that no public debate took place when the European Arrest Warrant Framework Decision was implemented or during the adoption of the EU Data Retention Directive (Xuereb 2019, p. 166).

According to Art. 65 of the Constitution and Art. 3 of the Ratification of Treaties Act of 1983 as amended, Malta is a dualist state (Xuereb 2019, p. 174). Even though no real debate occurred, it is true that some other Member States adopted a monist stance, at least for what concerns the relationship with the EU (Xuereb 2019, p. 174). As said, there was no formal proposal to leave the dualist system, in favour of a monist one. However, Malta is informed about the fact that the European Union Act 2003 has the effect of making 'directly applicable' EU law in Malta. It is important to bear in mind that this is not a strict dualist position. Nevertheless, EU law is recognised as not ordinary international law. "Constitutional constructs and doctrines apply as modified and transformed in the EU membership context" (Xuereb 2019, p. 174). Moreover, it is crucial to understand that the EU and its legal order have a sui generis nature. Only understanding such concept will help truly explain Maltese constitutionalism. Often it was requested a more *ex ante* role in the field of foreign affairs by the Maltese Parliament. Considering its role in implementing international commitments, there are two key examples of the *ex ante* scrutiny or the *ex post* challenge of Commission proposals/ adopted legislation for compliance with the principle of subsidiarity (Xuereb 2019, p. 175). Considering holding referendum on international organizations or international treaties, the Maltese Constitution does not have a position. The fact that there is no clear position, it does not entail that it is impossible to hold a referendum. It means that the referendum would not have a binding effect from a constitutional perspective. It would only be binding from a legislative perspective. An example of this situation is the 2003 referendum that concerned Malta's future in the EU.

A debate that was followed with close attention was the one about the referendum establishing a Constitution for Europe. The social dimension of the Treaties is crucial for Malta (Xuereb 2019, p. 175). In particular, Malta underlines the accountability of the institutions and of all the decision-makers, especially for what concerns the economic sphere and the European regulators. It would a good initiative to clearly express the principles and liabilities, together with appropriate investigative mechanisms EU (Xuereb 2019, p. 175). In this way, it would be possible to mirror political accountability under national constitutions. Another interesting aspect concerns the system of checks and balances that are in place in Malta. The Constitution maintains that the executive authority

is vested and shall be exercised by the President (Maltese Constitution Art. 78). On the other hand, its Cabinet, made by the Prime Minister and its ministers, will developed the general direction and control of the Government of Malta" (Maltese Constitution Art. 51).

According to the Venice Commission the powers exercised by the Prime Minister are "clearly the centre of political power" (Omtzigt 2018, p. 8). Specifically, the Prime Minister can appoint government ministers from amongst members of the House of Representatives; assign Permanent Secretaries to government ministries and giving instructions to the Principal Permanent Secretary; appoint judges and magistrates, including the Chief Justice; appointing the Attorney General; appoint the Commissioner of Police and the members of the Police Governance Board, which defines the police force's long-term strategy; appoint the Security Commissioner responsible for supervising the Maltese Security Service; the Security Commissioner reports to a Security Committee, composed of the Prime Minister, two other ministers and the leader of the opposition; appoint the Data Protection Commissioner; appoint members of the Electoral Commission, the Public Service Commission, the Broadcasting Authority, the Malta Financial Services Authority and the Internal Audit and Investigations Department, as well as the Permanent Commission Against Corruption (Omtzigt 2018, p. 8).

Under the Muscat government, further competences were placed directly under the supervision of the Office of the Prime Minister (Omtzigt 2018, p. 8; Briduglio 2019). Among these competences there were: both regulation and promotion of Malta's gaming industry (consisting mainly of online gaming and lottery companies licenced in Malta); Malta's Individual Investor Programme and Malta Visa Residence Programme by Investment schemes, said to generate over €200 million per year, which have been described as posing a high money-laundering risk; and the Malta Financial Services Authority, which regulates the financial sector (Omtzigt 2018, p. 8). It is important to note that the financial sector constitutes a crucial part of Maltese GDP, about 12% (Omtzigt 2018, p. 8). Moreover, it is associated with money laundering and terrorist financing (Omtzigt 2018, p. 8). Another issue that might raise concern over the condition of the Rule of Law in Malta is the link of Prime Minister's Chief of Staff Keith Schembri and Economic Minister Chris Cardona to allegations of money-laundering (Omtzigt 2018, p. 9).

Law-enforcement bodies rest on the will of the Prime Minister, they might be discouraged to proceed on investigations on certain activities closely linked to him (Omtzigt 2018, p. 9). The Venice Commission underlined that: "It is striking that while a Minister has responsibility for his or her department, it is the Prime Minister who appoints the Permanent Secretary for that department. The Prime Minister thus has a very strong impact on the work of his or her Ministers. From a viewpoint of check and balances, the role of the Prime Minister in deciding on Permanent Secretaries in all Ministries seems problematic ... Permanent Secretaries should not be political appointees, but independent and permanent, high-level, civil servants, who should be able to serve any Government" (Omtzigt 2018, p. 9). Considering the appointment of 700 "persons of trust", appointed employing arbitrary or irregular procedures, the Venice Commission maintained that: "Any exception to procedures that provide for appointments on merits are a danger to the quality of the civil service, which is the backbone of a

democratic state under the rule of law. ... without a constitutional and real legal basis this practice is illegal" (Omtzigt 2018, p. 9).

As pointed out by Omtzigt (2018, p. 9) in his report for the Council of Europe, the power of the Prime Minister to appoint civil servants, coupled with the practise of appointing persons of trust, can seriously undermined the integrity and the independence of Maltese civil service. Omtzigt reinforced that: "In a well-functioning democracy governed by the Rule of Law, the civil service should be politically impartial, provide independent advice to ministers and ensure continuity across administrations" (2018, p. 9). Today Public Policy Institute underlined the importance of re-balance the distribution and exercise of power by the Executive (Today Public Policy Institute 2014, p. 16). As a result, greater checks and balances could be enforced and a higher level of transparency and accountability of the Executive could be achieved (Today Public Policy Institute 2014, p. 16). From a practical perspective, Maltese Prime Minister is more than a *primus inter pares*. From a political perspective, his figure became more presidential in nature (Today Public Policy Institute 2014, p. 16). He is able to appoint and dismiss ministers at will and runs the country with full 'presidential' powers, even though his Cabinet is ultimately answerable to Parliament (Today Public Policy Institute 2014, p. 16).

Another aspect that should be closely analysed is the Maltese House of Representatives. It is a unicameral parliament. The Venice Commission expressed its concerns also for this feature: "The impact of having only one legislative chamber is significant from a constitutional perspective, because it prevents the upper house from providing a check to the legislature's decision-making and enables the Prime Minister to exercise greater power through enforcing party discipline on parliamentarians" (Omtzigt 2018, p. 9). Analysing the composition of the Maltese Parliament it is possible to see that there are 67 members of the Parliament: 37 from the Labour Party, 28 from the Nationalist Party (the official opposition) and 2 from the Democratic Party (Omtzigt 2018, p. 9). The part-time salary of an MP is not enough to sustain (Omtzigt 2018, p. 9). As a result, MPs need outside income (Omtzigt 2018, p. 9). Interesting enough, all 15 Labour MPs were appointed as "persons of trust" (Omtzigt 2018, p. 9). The Venice Commission concluded that: "The possibilities of backbenchers controlling Government are seriously reduced if MPs have financial incentive to seek offices at the disposal of the administration that they are supposed to control". Hence, the House of Representatives, right now, cannot guarantee effective control over the government (Omtzigt 2018, p. 9).

As stated in Chapter I, one of the main features of the Rule of Law is the independence of the judiciary. In Malta the members of the judiciary are 24 judges and 22 magistrates. They are appointed by the President, following the advice of the Prime Minister (Omtzigt 2018, p. 9). In 2016 it was set up a Judicial Appointments Commission (JAC). The JAC was made by the Chief Justice and the Attorney General (both appointed by the Prime Minister), the Auditor General and the Ombudsman (both appointed by a two-thirds majority of parliament) and the President of the Chamber of Advocates (Omtzigt 2018, p. 9). According to the Venice Commission the JAC: "is not in conformity with European standards". Moreover, this composition of JAC is instrumental: "to identify a

pool of candidates for the judiciary from whom the Prime Minister has an uncircumscribed statutory discretion to appoint judges and magistrates" (Omtzigt 2018, p. 10). Another problematic aspect is that the JAC power is eroded by the fact that the Prime Minister can actually ignore its advice. The Maltese authorities defended this feature, as they consider it a mean to overturn discriminatory act.

However, the Venice Commission is not on the same page. "The principle of independence of the judiciary requires that the selection of judges and magistrates be made upon merit and any undue political influence should be excluded. The Prime Minister should not have the power to influence the appointment of Justices and Judges-Magistrates. This would open the door to potential political influence, which is not compatible with modern notions of independence of the judiciary" (Omtzigt 2018, p. 10). Lately this idea was compromised by the fact that the Prime Minister Joseph Muscat decided to appoint many persons a little bit too close to the Labour Party (Omtzigt 2018, p. 10). Among them there were a former Labour Party deputy leader, a former Labour MP, three former Labour candidates, the chief of staff of a Labour minister, the husband of a Labour MP, the sister of a Labour minister (previously considered unsuitable by the Commission for the Administration of Justice, the JAC's predecessor, over concerns relating to unprofessional conduct), two daughters of former Labour MPs, and the daughter-in-law of the lawyer of the Labour Party and the Prime Minister (Omtzigt 2018, p. 10). As pointed out by the European Court of Human Rights, the composition of a court shall offer sufficient guarantees to exclude any legitimate doubt in respect of its impartiality" (Omtzigt 2018, p. 10). Considered the composition of JAC and the Maltese judicial system it is questionable their way of acting in regard to politically involved cases (Omtzigt 2018, p. 10).

The functioning of the criminal justice system shall be analysed. In Malta the Attorney General is involved in prosecutions. However, it is the police that initially prosecute. The Attorney General advices the police upon request (Omtzigt 2018, p. 11). Moreover, he or she is the one that decides if the case will be brought to the lower of upper criminal court. It is crucial to underline that is the Prime Minister who appoints and eventually dismiss the Attorney General (Omtzigt 2018, p. 11). Considering Muscat's government, he is now at his fifth Commissioner of Police. John Rizzo was the first one and served for 12 years. He was preparing charges against John Dalli. Dalli was a former European Commissioner. In 2013, when Muscat became Prime Minister, he decided to dismiss Rizzo and appoint as Attorney General the Labour supporter Peter Paul Zammit (Omtzigt 2018, p. 11). The following year Zammit was obliged to resign, as he refused to proceed against one of his former clients. However, he was never prosecuted. Instead, he received a new position at the Prime Minister office as "person of trust" (Omtzigt 2018, p. 11).

Subsequently Raymond Zammit became the third Attorney General under Muscat's government (Omtzigt 2018, p. 11). Yet his career as Attorney General was quite brief. He had to resign after the attempt to cover up a shooting incident involving the driver of his cousin, the Interior Minister Emmanuel Mallia. His successor was Michael Cassar. Even though he resigned due to health reasons, he also received a report from the Financial Intelligence

Analysis Unit concerning corrupt payments to Energy Minister Konrad Mizzi. Nonetheless, Cassar was hired once again as security advisor by the government (Omtzigt 2018, p. 11). The fourth commissioner was Lawrence Cutajar. He was appointed in 2016 and resigned in 2020. GRECO pointed out that Cutajar was "the frequent target of public criticism for his rapid promotions, lack of leadership and sympathies for the Prime Minister expressed on his blog" (Omtzigt 2018, p. 11). The last commissioner is Carmelo Magri, appointed right after the resignations of Cutajar. Now Cutajar is object of investigation as he is considered to be linked to Daphne Caruana Galizia's murder (Garside 2020). He allegedly interfered with the 2017 investigation (Garside 2020). Cutajar denied any involvement (Garside 2020).

From a theoretical perspective, police forces are supposed to act according to the legality principle, according to which they have to bring charges when there is a prima facie case (Omtzigt 2018, p. 11). However, there is a widespread perception of the fact that the Maltese police is not able to fulfil its duties. GRECO noted that: "the Maltese Police is currently confronted with allegations of ineffectiveness and political obedience/subjection to the government" (Omtzigt 2018, p. 11). Among such failures it is possible to include the impossibility of Financial Intelligence Analysis Unit (FIAU) reports to analyse corrupt payments to Labour ministers and to take proper actions against Pilatus Bank. The issue does not concern cases linked to politics (Omtzigt 2018, p. 11). It was observed that only seven people were found guilty of murder in last ten years, notwithstanding the fact that since 2008 70 murders were reported. Considering the data gathered by the Eurobarometer on corruption in 2017, it emerged that 44% of those who participated in the survey believe that abuse of power and bribery are widespread in Maltese police force (Omtzigt 2018, p. 11). This number is significantly larger compared to the European Union average. Even though the Venice Commission highlighted that: "it is important that in a democratic society the Police Force has the confidence of the general public and is perceived as politically neutral in the service of the State and the professional, unbiased, enforcement of the law and the protection of the citizen" (Omtzigt 2018, p. 11), the situation in Malta is significantly the opposite.

Other important aspect that should be considered in the Maltese context are the other Rule of Law bodies: the Ombudsman, the Auditor General, the Financial Intelligence Analysis Unit and the Commissioner for Standards of Public Life. Starting from the Ombudsman, he or she is elected by a five-year term, renewable through the assent of two-thirds of the Parliament (Omtzigt 2018, p. 13). The Ombudsman presents an annual report to the Parliament. However, it is not mandatory for the Parliament to take it into account and further question it (Omtzigt 2018, p. 13). Notwithstanding the fact that the current Ombudsman Anthony Misfud tried to assert his independence, the government and the Parliament were not willing to co-operate with him (Omtzigt 2018, p. 13). The Venice Commission highlighted that the request of information by the Ombudsman information "are frequently not complied with. ... Widespread refusal by the administration to provide the information needed for the work of the Ombudsman is inadmissible. The Ombudsman cannot be made dependent on enforcing his/her requests for information in the courts in each case" (Omtzigt 2018, p. 13). Recently the Ombudsman remarked that: "a number of final opinions have been sent to ... the House of Representatives following negative response

from the public authorities to requests to implement our recommendations. ... To date none of these referrals have been actively considered by the House. There has been no response whatsoever. One can safely conclude that this statutory procedure provided for in the Ombudsman Act, which was meant to be a final safeguard to provide redress against injustice to aggrieved citizens, is proving to be ineffective. This needs to be remedied" (Omtzigt 2018, p. 13).

Another figure concerning the Rule of Law that should be observed closely is the Auditor General. This figure is appointed in the same way as the Ombudsman (Omtzigt 2018, p. 13). The Auditor General leads the National Audit Office (NAO). NAO has to check on expenditures of both national and local public bodies (Omtzigt 2018, p. 13). GRECO states that NAO is "a respected, independent institution whose recommendations are reportedly largely complied with and implemented". Yet, its potential effectiveness is impaired by the lack of proper means to act. GRECO noted that: "it took more than three years to audit ... the controversial and overpriced deal concluded for the supply of gas to Malta" (Omtzigt 2018, p. 13). The third Rule of Law body that should be explored further is the Financial Intelligence Analysis Unit (FIAU), the Maltese anti-money laundering body (Omtzigt 2018, p. 13). FIAU gathers reports and shares information that can lead to prosecution (Omtzigt 2018, p. 13). It is chaired by the Attorney General.

However, the current Attorney General said to Omtzigt that he never took place into any operational matter (Omtzigt 2018, p. 13). The Venice Commission highlighted that: "attributing the chair of such a body to the AG, who has a key role in prosecution, seems problematic and even any appearance of incompatibility should be avoided" (Omtzigt 2018, p. 13). Moreover, the FIAU was linked to Malta's several scandals. As a result, its authority and its reputation were eroded. In 2016 there were many leaks about FIAU staff, director included. As a result, half of the staff, together with the Director, resigned between 2013 and 2017. The police repeatedly failed to act on the reports issued by the FIAU (Omtzigt 2018, p. 13). In 2018, the European Banking Authority (EBA) found out that FIAU breached EU law in many different ways concerning the supervision of Pilatus Bank. The EBA underlined: "to general and systemic shortcomings in the FIAU's application" of AML standards and that the FIAU's recent Action Plan was "not enough to be satisfied that the deficiencies that led to a breach of Union law have been resolved" (Omtzigt 2018, p. 13). In November 2018 the European Commission addressed the FIAU issue stating that wide-ranging and encompassing measures in order to finally comply with AML standards.

In 2018 the first Commissioner for Standards in Public life was appointed (Omtzigt 2018, p. 13). The role of the Commissioner consists of review and verify the declarations of income, assets and other benefits (Omtzigt 2018, p. 13). GRECO underlined that: "the extent of the controls, and the means allocated to the Commissioner are unclear at the moment. It would also appear that the result of a false declaration or failure to file a declaration does not trigger an investigation as is the case for breaches of ethical duties and other statutory obligations. The relevant statutory provisions merely refer to the issuance of "recommendations in the form of guidelines" (Omtzigt 2018, p. 13). GRECO is actually concerned with effectivity of the sanctions that the Commissioner can employ. This

aspect is extremely worrying, especially considered the ongoing allegations against the government in relations to off-shore constructions (Omtzigt 2018, p. 13).

The Venice Commission stated that: "In the constitutional arrangements currently in force in Malta, the Prime Minister is predominant. This, in itself, could be unproblematic if a solid system of checks and balances were in place. However, ... these other actors are not sufficiently strong to contribute significantly to the system of checks and balances. The predominance of the Prime Minister and the concentration of powers enabled by the Constitution shows that the system of checks and balances needs to be reinforced" (Omtzigt 2018, p. 15). GRECO reached similar conclusions on the inadequate enforcement of the Rule of Law: "There is also a clear perception in Malta that political support often prevails over the enforcement of the law and the general interest. This is of course facilitated by the current institutional overweight of the government and especially the Prime Minister, in particular when it comes to appointments (and dismissals) in many essential State bodies. This is not compatible with an effective system of checks and balance" (Omtzigt 2018, p. 15). Considering the current situation, Malta requires to reform and strength its institutions. In particular, it should subject the office of the Prime Minister to a well-functioning system of checks and balances, protect judicial independence and strengthen Rule of Law bodies. Even though the Labour Party promised constitutional reforms during 2013 and 2017 political campaigns, no concrete progress was achieved. Many recommendations were made, but none of them was implemented.

In June 2020, the Venice Commission released Opinion No. 986/2020 on proposed legislative changes in Malta. It reinforced the importance of a structured dialogue with civil society, parliamentary parties, academia, the media and other institutions in order to guarantee an open debate over future reforms (Venice Commission 2020, p. 18). Moreover, it restated the importance of a transparent process of reforms, open to public scrutiny, media included (Venice Commission 2020, p. 18). When such crucial reforms for society are carried out, the participation during consultations is pivotal. The Venice Commission hoped for the enforcement of a Constitutional Convention that will pave the way for reforms (Venice Commission 2020, p. 18). The Venice Commission suggested reforms in ten points. In particular: providing that the President of Malta be elected and dismissed with a qualified majority (with an anti-deadlock mechanism for election); enabling the President to exercise discretion, without advice from the Government, for the choice among the three candidates proposed for judicial appointment; supplementing the existing system of a rolling public call for judicial vacancies with public calls for individual vacancies; making public the names of the three qualified candidates directly proposed to the President by the JAC; raising provisions dealing with the appointment, removal and suspension of the Ombudsman to the constitutional level and providing for the mandatory obligation for Parliament to debate the annual report of the Ombudsman (this obligation should be extended to important in exceptional cases); shifting the powers of appointment from the Prime Minister to the Cabinet for: (i) members of the Employment Commission, (ii) the Governor, the deputy Governor and the directors of the Central Bank of Malta, (iii) the Chairman of the Malta Financial Services Authority, (iv) the members of the Board of the Arbitration Centre, (v) the members of the Permanent Commission Against Corruption, and possibly (vi) the Information and Data Protection Commissioner (Venice

Commission 2020, p. 19). All these provisions are crucial to solve the institutional concentration that was observed in different context over the years. Another aspect questioned was the possibility to acquire Maltese citizenship through investment, an aspect that will be further analysed in 2.2.

2.1.3 Lack of Constitutional Protection of the Freedom of the Press

Let us have a closer look to where the Freedom of the Press is in the Maltese constitution. Considering Chapter IV Art. 34: "Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
(b) freedom of conscience, of expression and of peaceful assembly and association; and
(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest" (Maltese Constitution). Article 34 is supposed to guarantee fundamental rights and freedoms of individuals. It is crucial and it encompasses certain rights that are included also in the ECHR. Focusing on the issue of the Freedom of the Press, it is possible to say that in the Maltese Constitution it is not clearly stated. However, there is the Freedom of Expression. As observed in chapter 1, in many contexts the Freedom of the Press is assimilated to the Freedom of Expression.

In 2008 the Freedom of Information Act was promulged. The Freedom of Information Act establishes that all governments documents are available upon request (Omtzigt 2018, p. 13). However, certain bodies are excluded. Among them we have the Public Service Commission, the Office of the Ombudsman, the Attorney General's Office and the Security Service. The Act defines even certain grounds for refusal access (Omtzigt 2018, p. 13). However, any refusal shall be motivated, and the applicant can appeal to the Information and Data Protection Commissioner. Many complaints were filed to GRECO concerning "bad practices, systematic obstruction etc. which required too often to challenge a negative decision. ... Similar observations were made [about requests for documents] concerning the negotiation/conclusion of large public contracts in particular, in the energy sector ... Similar controversies arose in relation to the recent reform of Identity Malta (a company which handles citizenship matters and the sale of passports) including the appointment of the management without public calls. ... The ample exceptions to the communication of information, which are drafted in broad terms ... could prevent the disclosure of important information of public interest if the exceptions are not interpreted and applied in a restrictive manner, in line with the spirit and overall objectives of the freedom of information legislation" (Omtzigt 2018, p. 13). Many journalists complained about the difficulties of obtaining access to certain documents. The Venice Commission

commented that: "The Freedom of Information Act should be up-dated, using available international models, to guarantee the transparency of the administration vis-à-vis the media and the citizens" (Omtzigt 2018, p. 14).

In 2013 it was adopted the Protection of the Whistle-blower Act. The aim of the Act is to establish a system of reporting that will enable people to disclose act of corruption (Omtzigt 2018, p. 14). The Act provides a series of measures that protect whistle-blowers. In particular, immunity from criminal proceedings can be granted by the Attorney General in joint decision with the Police Commissioner. Ironically, the Act is considered one of the act that provides the more comprehensive whistle-blower protection in Europe. However, it is not possible to say that the Act is without flaws. For example, there is no protection for whistle-blowers who report on media (Omtzigt 2018, p. 14). Moreover, if external whistle-blowers seek immunity from prosecution, he or she has to report all the information in his or her possession to the Cabinet Office. This is exactly what happened to Jonathan Ferris, a former police officer, dismissed after the leak of information in May 2017 of FIAU reports (Omtzigt 2018, p. 14). The same goes for the government whistle-blower Valery Atasanov, fired by the Maltese Gaming Authority in 2015, after questioning supervision over malpractice (Omtzigt 2018, p. 14). When he asked for whistle-blower protection, his request was rejected. When he shared his concerns publicly, the Maltese Gaming Authority accused him of defamation (Omtzigt 2018, p. 14).

Moreover, political parties are allowed to own and operate broadcast media outlines and take a considerable share of the newspaper as well. The fact alone is perhaps the most convincing explanation for the extreme polarization within the country (Bonini, Delia and Sweeny 2019, p. 88). At the time the labour (PL) administration imposed a draconian state monopoly over broadcast media (Bonini, Delia and Sweeny 2019, p. 88). It was so strict that even owning a walkie-talkie or an amateur radio could be an entry ticket for jail (Bonini, Delia and Sweeny 2019, p. 88). As a result, the government was able to exploit the state broadcasting (Bonini, Delia and Sweeny 2019, p. 88). A clear example of this situation is the fact that the name of the opposition leader, Eddie Fenech Adami, was banned both from radio and TV (Bonini, Delia and Sweeny 2019, p. 88). To solve this situation, the opposition decided to set up in Sicily its own amateur TV, in order to make its voice heard (Bonini, Delia and Sweeny 2019, p. 88). The host Richard Muscat was told that he could be arrested once back to Malta (Bonini, Delia and Sweeny 2019, p. 88). In the end, he ended up in a sort of exile, waiting for things to change (Bonini, Delia and Sweeny 2019, p. 88).

The actual evolution took place in 1987. When the PN came to power, it wanted to be sure that such situation of exclusion would not repeat again. The PN decided to open its own radio and TV stations and to. Moreover, in order to ensure pluralism, the PN handed to the opposition its first broadcast licences (Bonini, Delia and Sweeny 2019, p. 88). However, the result was not the one expected. The public broadcaster continued to be dominated by the government party, while on the other hand the parties owned a TV station acting like a mean for propaganda (Bonini, Delia and Sweeny 2019, p. 88). In 1991 Malta applied to join the EU. However, countries like Sweden, Finland and Austria were given precedence over it, and were able to join the Union in 1995. At this point both

Malta and Cyprus were linked to Eastern Europe democracies. As a result, they had to wait to join the EU. Consequently, the PL started to rise doubts on the opportunity for Malta to become part of the EU (Bonini, Delia and Sweeny 2019, p. 88). At the time Muscat was the host of the TV programme that strongly campaigned against Malta's accession (Bonini, Delia and Sweeny 2019, p. 89). When Muscat became leader of PL, he conveniently changed his mind.

According to the report by the Centre for Media Pluralism and Media Freedom (CMPF), the perceived risk for media freedom in Malta evolved over time. In 2016, when the first report was issued, the risk for Malta was considered overall medium (Nenadic 2016, p. 3). In order to assess the level of risk, there are four thematic areas, which represent the main areas of risk for media pluralism and media freedom: Basic Protection, Market Plurality, Political Independence and Social Inclusiveness. The results are based on the assessment of 20 indicators - five per each thematic area (Nenadic 2016, p. 1). In 2016 it was observed that there is a higher risk of concentration of media ownership in small markets, especially because data on revenues are neither available nor collected by national authority (Nenadic 2016, p. 3). As observed before, political influence in the media is present, especially from the party in government, over public service media (Nenadic 2016, p. 3). Moreover, journalists are not fully equipped in order to intervene against political and commercial interference in their editorial autonomy (Nenadic 2016, p. 3).

The report highlighted that no specific mechanisms are put in place in order to protect journalists in case of changes of ownership or editorial line (Nenadic 2016, p. 6). Plus, there is no specialized trade union that represents and protects journalists and their interests. Moreover, no laws make incompatible media ownership and government. As a result, the two main political parties are allowed to own and run nationwide television and radio services (Nenadic 2016, p. 6). Specifically, Nationalist Party owns NET TV, Radio 101, daily newspaper In-Nazzjon Taghna (Our Nation) and weekly Il-Mument (The Moment), while the currently governing Labour Party owns One TV, One Radio and weekly Kulhadd (Everybody) (Nenadic 2016, p.7). It is crucial to note that Malta is the only EU country were media ownership by political parties is so pervasive. Other risks for media pluralism come from the appointments of the board members of the Broadcasting authority that regulate radio and television broadcasting in the country (Nenadic 2016, p. 5). The chairperson of the Broadcasting Authority is appointed according to the agreement among the party in government and the opposition (Nenadic 2016, p. 5). The main task of the Broadcasting Authority is regulating the Public Broadcasting Services and check that is doe not interfere with the activities of the two other broadcasting providers Net TV and Radio 101 (Nationalist Party), Super One Radio and ONE TV (Labour Party) (Nenadic 2016, p. 5).

In the 2017 report the situation did not improve. Actually, it became even worse, especially due to the murder of Daphne Caruana Galizia. In particular, it was assessed a medium level of risk in the area of Basic Protection (Nenadic 2017, p. 3). This aspect is particularly relevant, as it is the area that entails all the conditions that allow journalists to work safely and protects whistle-blowers (Nenadic 2017, p. 3). In particular, the highest risks were

underlined in the field of: political independence of media, in particular of public service media; commercial and owner influence over editorial content; cross-media concentration of ownership; access to media for minorities and for people with disabilities; and media literacy (Nenadic 2017, p. 3). Moreover, editorial authority is not protected, neither from a political nor commercial influence. As observed before, the Freedom of Expression is protected by the Maltese Constitution. Moreover, Malta ratified conventions that enhance the Freedom of Expression, even though with restrictions (Nenadic 2017, p. 4). In particular, restrictions on the political activity of aliens, and the preclusion of public officers from political discussion or other political activity during working hours or on the premises.

Considering the Protection of the right to information, the study shows that there is a medium risk (Nenadic 2017, p. 4). From a theoretical perspective, the access to information should be guaranteed by the Constitution and by the Freedom of Information Act (Nenadic 2017, p. 4). The Act was enacted in 2008 and subsequently enforced in 2012 (Nenadic 2017, p. 4). The delay was. Probably caused by the Maltese habit to withholds information, rather than sharing them. MPM investigations shown that journalists can have issues accessing government information (Nenadic 2017, p. 4). Moreover, requests and appeals are not effective, especially for media outlets that work on daily basis. Plus, the Freedom of Information Act limits the possibility to request access to information (Nenadic 2017, p. 4). Considering the transparency of media ownership there is a medium risk. The risk exists not because the public is not aware of media ownership, rather because there is no explicit legal obligation for media companies to publish their internal structures (Nenadic 2017, p. 6).

The Broadcasting Authority can obtain any type of information it considers necessary from the license holders (Nenadic 2017, p. 6). Yet, the Authority does not publish this information on its website (Nenadic 2017, p. 6). Also, the media ownership concentration is pretty high (Nenadic 2017, p. 6). The Broadcasting Act contains clear limitations to horizontal media ownership in the audio-visual sector. However, data show that in Malta there is a high concentration in the media market. Especially, the Top4 media owners in the larger media sectors, have more than 50% of the audience share (Nenadic 2017, p. 6). Moreover, the print market is not regulated enough and there is no data collection concerning newspapers' circulation and concentration. The Broadcasting Authority shall take into account media concentration when it grants licenses (Nenadic 2017, p. 6).

However, there are no clear provisions that allow the authority to enforce competition rules in such way considers the specification of the specific media sector (Nenadic 2017, p. 6). The category with the higher risk is commercial and owners' influence over editorial content, which is about 79% risk (Nenadic 2017, p. 6). It is important to understand that there are no specific mechanism granting protection to journalists in case of change of ownership or editorial line. Plus, no specialized union protect journalists' interests and working conditions (Nenadic 2017, p. 6). Moreover, there are no legal safeguards that protect from commercial influence over the appointments or dismissal of editors-in-chief (Nenadic 2017, p. 6).

As Matthew Caruana Galizia noted in a comparison between the infringement of the Rule of Law in Hungary and in Malta: "The problems in the countries are different, yet very similar. In Hungary, everything that the government does is because of a sovranist façade. Orban's government is acting in a certain noble way because he is doing what he is doing to defend Hungarian values. He is very populistic. In this sense, he is supported by quite a lot of Hungarians. Perhaps not the majority, but certainly an important part. what the Maltese government did, especially under Joseph Muscat, is different. The government tried to sugar-coat what he did, exactly the opposite of what Orban did. But it carried out the same crimes: kleptocracy, widespread corruption, loss of independence in the judiciary. All of these problems are very similar. Malta was very careful to keep the European Commission on sight. This was the main difference. The Hungarian government was seen as an enemy of the European values. With Joseph Muscat, he introduced legislation for civil marriages, he was seen as an upholder of European values. Hence, he was worthy of respect. Once my mother was murdered, I believe that his sort of façade fell apart. Politicians at European level could see what the reality actually was" (Private Interview, see Appendix).

2.2 Ius Pecuniae and its relationship with the Rule of Law

2.2.1 Defining the Ius Pecuniae

Granting nationality was always considered a prerogative of a sovereign state (Bålman 2015, p. 7). In an age of globalization and increase of interconnection between different countries and different cultures, it is not surprising that there was the development of demand for different kinds of goods. Nowadays, it is even possible to talk about a global market for citizenship (Džankić 2019, p. 9). This situation might be problematic in the context of the EU for a variety of reasons. After Malta decided to introduce it, the EU-Parliament during the plenary session on the 15th of January 2014 openly condemned it. In particular, it stated that Individual Investor Programme (IIP): "undermines the very concept of European citizenship", which "implies the holding of a stake in the Union and depend on a person's ties with Europe" (Bålman 2015, p. 8). The Parliament "[acknowledged] that matters of residency and citizenship are the competence of the Member States' but called on the member states "to take possible side effects into account." The Parliament stressed the principle of sincere cooperation enshrined in the TEU. Hence, the EU- Parliament "[called] on the Commission, as the guardian of the Treaties, to state clearly whether these schemes respect the letter and spirit of the Treaties" (Bålman 2015, p. 8).

The sale and purchase of citizenship is not entirely new. Let us consider Latini, subjects of the Roman Empire, but not yet citizens. If they served the army and bought a house in Rome, they can be granted with full citizenship (Džankić 2019, p. 9). Considering the time and the context we are living in, the global market for citizenship is expanding fast due to globalisation. This process was possible because of the decoupling of the concept of citizenship at different levels. First of all, the internal dimension of citizenship is becoming detached from the external one. On the one hand, the internal dimension of citizenship refers to individuals as part of a democratic community, that exercise their rights and duties thanks to their citizenship. Due to these elements, it is possible to establish democratic legitimacy and continuity to the polity. On the other hand, the external dimension of citizenship has two main focuses: a promise of recognition of the state's passport by other countries and a promise

of the right to return diplomatic protections to citizens abroad (Džankić 2019, p. 11). The price of a citizenship is conditioned by the advantages it offers to its holder externally. For example, freedom of movement; consular protection; non-extradition of citizens and so on. Nowadays, possessing the status of citizens is not the only way to enjoy all the rights stemming from citizenship. The status of economic migrant is a clear example.

Considering the idea of citizenship both from a practical and a scholarly perspective, it is possible to see that it is characterized by three main aspects, often defined as the citizenship triad (Bellamy 2004; Carens 1992; Joppke 2010). According to this theory, citizenship contains three dimensions: (1) legal status; (2) rights and obligations and (3) identities and practices. Conversely, each of these dimensions responds to a number of questions based on the position of the individual and those based on the perspective of the state. Considering the liberal tradition, the pillars of the liberal citizenship were established by the 1789 French *Declaration of the Rights of Man and of the Citizen*. There, the notion of citizenship was part of the rights of the individual. The rationale behind the declaration stemmed from Lockean philosophy. According to it, the social contract is a tool to safeguard the natural liberties of human beings (Džankić 2019, p. 61). Mindus and Prats (2018, p. 246) underlined that the status civitatis cannot be made the subject of a legal transaction. Since we are considering a normative system that regulates naturalisation, it would be better to address the issue considering it as golden naturalisation (Mindus and Prats 2018, p. 246).

Following the statement of Ong (2005, p. 627): "Nation-states seeking wealth-bearing and entrepreneurial immigrants do not hesitate to adjust immigration laws to favour elite migrant subjects, especially professionals and investors." Notwithstanding different philosophical perspective, in reality there are two arguments in favour of ius pecuniae: citizenship as a club good and citizenship against birth right lottery. The first perspective considers citizenship as a club good. As a result, it is available to the members of the same community that contributes to collective well-being. In such system, the sale of citizenship would be permitted because it might be considered state revenue. Hence, all new members can contribute to the wealth of the state and in exchange receive the benefits of citizenship, in the same way as the membership to a club (Džankić 2019, p. 66). As Buchanan (1965, p. 8) pointed out: "The bringing of additional members into the club also serves to reduce the cost that the single person will face." Analysed in a broader context, this argument established that the conditions for naturalisation entail some pecuniary criteria, in order to allow an individual "to join the club". On the contrary, those who are already member of the state do not need to satisfy any criteria. The reason behind such disparity is that only those that can contribute to decrease the shared costs of members should have the opportunity to be naturalised (Džankić 2019, p. 67). This perspective is also shared by Reich (1991, p. 18) when he holds that: "The citizens of a nation share responsibility for their economic well-being".

Since the market operation within the polity include a plurality of actors, such as individuals, companies and other states, in order to maximise economic security, the state aims at allowing naturalisation only to those individuals who will not be a financial burden or an economic hazard (Džankić 2019, p. 67). The same idea is sustained by those who seek to naturalise investors. As Frey (2000, p. 6) pointed out: "The optimal size of a club is reached

when the marginal utility received corresponds to the marginal cost induced by an additional member." Moreover, the contribution by investors is increasingly higher compared to those who are citizens of a given state at birth. Considering the citizens' perspective, citizenship might be perceived not as a public good, rather as "an exclusive set of rights and privileges attainable through a significant contribution to the community from membership" (Džankić 2019, p. 68). Following this idea, states are just like clubs. Hence, they can accept new members according to their interests.

The second argument has a slightly different starting point. It considers citizenship as an arbitrarily attributed legal status. The majority of individuals received it at birth (Džankić 2019, p. 66). As a result, they received different life opportunities, conditioned by global inequalities. The practice of investor citizenship would increase opportunities for those who were not lucky with the birth right attribution of citizenship. The second perspective is often endorsed by those scholars that highlight the decline of the notion of citizenship (Joppke 2010; Spiro 2016). Following the argument of the birth right lottery, it is possible to see that usually citizenship is obtained through two main process: inheritance form our parents (ius sanguinis), in relation to our birthplace (ius soli). Hence, we acquire citizenship through a non-voluntary process. The very idea behind citizenship is a strong link with the sovereign states. Supporters of investor citizenship programmes argue that citizenship can contribute to reinforce global inequalities, as it makes static certain socio-political dynamics (Džankić 2019, p. 69).

As Kochenov (2018) pointed out: "The main purpose of citizenship has been upgraded: from a neo-feudal mechanism of sexist and racist governance, it is turning into one of the core instruments of preservation and justification of global inequality, hiding its functionality behind the old façade of political self-determination, which had been effective to brush away women and minorities before." As a result, this argument maintains that the sale of citizenship can be able to eliminate certain injustices around the globe. Kochenov supports this argument with an examination of Branko Milanović's study on global inequality (Džankić 2019, p. 69). Moreover, Kochenov (2019b) believes that the Report on Investor Citizenship and Residence Schemes in the European Union released by the Commission in January 2019 presents the matter in an unfair way. Specifically, the EU citizenship law is misrepresented, as the report states that it is based on nature and genuine links. According to him, such standpoints are not valid. Kochenov is against the term "passport trade". He holds that the term is inappropriate in the context of the EU, as it does not involve faking official documents (Kochenov 2020). Considering the EU, acquiring a residence and/or citizenship follows the rule established by national and European law in exchange for investment is different. Especially because the term was coined by a fact-finding commission in which there was no expert on citizenship (Kochenov 2020).

The argument that investment citizenship violates the idea of genuine links and cause the abuse of rights was used in several different cases. It appeared for the first time in 1955 Nottebhom decision of the ICJ. The issue revolved around a German citizen who resided in Guatemala for years, after the break-out of World War II. Meanwhile, Mr Nottebhom was able to obtain the citizenship in Liechtenstein, a state with whom he had very little, if at all,

relations (Džankić 2019, p. 73). The ICJ maintained that the state was the one who could decide who should become citizen. Moreover, the ICJ defined nationality as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties' (ICJ 1955, 1, 23). The genuine connection was described as the reason because the individual is 'more closely connected with the population of the State conferring nationality than that of any other State' (ICJ 1955, 1, 23). According to Robert Sloane (2009, p. 31), talking about the genuine link in a globalized world is outdated. Migratory flows increased so much that individuals are easily attached to more than one country. Considering the definition of genuine link provided by the ICJ, Sloane (2009, p. 31) stated that: "The international regulation of nationality should be responsive to the function that nationality serves in context." Having a closer look to the context, it is easy to see how problematic the concession of citizenship to investors is, especially in cases in which all other requirements for naturalisation are not considered as a primary issue. The situation is different when the conditions to maintain the status of resident and citizenship are connected and detailed (Džankić 2019, p. 74).

Starting from the opinion expressed by Kiss (1992, p. 4), Sloane pointed out that an abuse by the state is perpetrated when: "a State exercising a right either in a way which impedes the enjoyment by other States of their own rights or for an end different from that for which the right was created, to the injury of another State". Considering that the injury of another state might or may not occur in case of citizenship by investment, it is possible to state that admitting new members can be considered an abuse of rights, as the rationale behind the right was compromised (Džankić 2019, p. 74). Following these two principles, it is possible to perceive a twofold situation. Idealistically, when a state decides to grant citizenship to a new member, it aims at ensuring that there is an actual connection between the individual and the state. As a result, usually, naturalisation is conditioned by a series of parameters. Generally, among such conditions we find: the residence, i.e. the individual physical link to the state, language and culture tests; absence of criminal record and proof of income (Džankić 2019, p. 74). The aim of these parameters is ensuring that "the boundaries of membership reflect (and protect) its content". On the other hand, this situation might be exploited by states to favour naturalisation of a determined category if applicants (Džankić 2019, p. 74). For example, family links and ethno-cultural affinities.

The idea behind these kinds of facilitations is that these individuals have already established a relationship with the polity (Džankić 2019, p. 74). It is possible to see a discrepancy, if we consider this idea coupled with investor citizenship programmes. States might want to maintain the principle of the genuine ties, thanks to the naturalisation criteria. At the same time, it is true that the state has the supreme authority on who should be eligible to have its citizenship. Yet the sale of citizenship is questionable, as it has an impact on the legitimacy and the quality of the citizenship policy (Džankić 2019, p. 75). Hence, it is possible to say that citizenship by investment programmes result to be problematic, as individuals may not have any other ties with the polity, aside from their investments. According to the data gathered by the Global Citizenship Observatory, over two-thirds of the countries all over the world foster naturalisation on the basis of special achievements (GLOBALCIT 2017).

Discretion exercised by states has different levels. On the other hand, exceptional naturalisation is used only in a very narrow variety of cases. Needless to say, such way of acting rises attention, as it might affect the genuine link principle (Džankić 2019, p. 75). In this case, it is assumed that the investor in possession of the citizenship of St Kitts and Nevis, the Commonwealth of Dominica, Antigua and Barbuda, Malta or Cyprus. However, he or she does not have the obligation to reside in the country. Hence, their level of genuine link with the polity is considerably lighter than the one established by an ordinary citizen. This stems from the notion that residing in a determined country allows the individual to establish certain kinds of bonds, both from a personal and linguistics perspective, that allow him or she to relate to the polity (Džankić 2019, p. 76). However, the idea that lies behind the notion of genuine ties basically says that there is a physical connection with the state through residence. Plus, there is also the establishment of social links and personal connections. Notwithstanding those aspects that are extremely personal, yet it is a state prerogative to decide the mechanisms that regulates the admission of new citizens (Džankić 2019, p. 76).

It is possible to say that there is an opposition between the contemporary vision of citizenship and the naturalisation policies that are actually enacted (Džankić 2019, p. 76). As Laura Johnston (2013, p. 5) pointed out: "the act of exchanging a higher-value good (citizenship) for a lower value good (money) destroys the value of citizenship and corrodes public trust in that institution in a way that naturalisation on other bases does not". Yet, it is important to keep in mind the fact that the ethical issue of ius pecuniae differs across countries. The ethical issue of ius pecuniae was addressed in the case of countries that provide investors with a privileged path to citizenship. In such context, states have a wider margin of discretion to whom accord citizenship. For example, in the cases of Cyprus and Malta, conditions are extremely light and entirely formal residence conditions (Džankić 2019, p. 78). In particular, both in Cyprus and Malta, those who obtain citizenship are not obliged to actually live in the country.

The key requirement to become citizens is the registration of residence (ORiip 2017, p. 31). This leads to a phenomenon that can be called the disruption of the equality of the membership. The equality of membership is extremely crucial to understand why investor citizenship programmes can potentially erode democracy and the Rule of Law (Džankić 2019, p. 79). According to Stern (2012, p. 13), they challenge equality and establish mechanisms to commodify citizenship. If citizenship becomes like as any other good that can be sold and both states and investors aim at maximizing their performances, investor programmes are a clear sign of infringement of democracy (Mindus and Prats 2018; Džankić 2019). These programs are able to alter our comprehension of citizenship as "communities of character" (Walzer 1983; Carens 1987), in which we assume that privileges are granted on the basis of wealth, historically one of the main sources of citizenship. To put it in another way, the original distortion that was at the basis of citizenship has re-emerged through the investment schemes (Džankić 2019, p. 79). In modern democracies, were the idea of equality among citizens is crucial and transcends the idea that the distribution of rights is inextricable from wealth and social class. As a result, some argue that citizenship

through investment schemes are openly in contradiction with the notion of modern democracy (Džankić 2019, p. 79).

2.2.2 The Impact of the Ius Pecuniae on the European Union

Analysing more in depth ius pecuniae in the context of the EU, it is important to understand what the EU citizenship entails. As Patricia Mindus pointed out, there are three dimensions of EU citizenship: political, legal and social. In contemporary debate, the three dimensions continue to live side by side. They offer different perspectives on the same topic and they should be considered together (Mindus 2008, p. 11). Here it is possible to see how the notion of citizenship differs across Member States. Plus, every state has a different method to attribute citizenship. Over the years even the wording of the articles concerning EU citizenship changed. The first steps in order to establish EU citizenship took place in the Seventies. After the 1972 Paris Summit, it was decided to reinforce European identity in order to achieve a deeper integration (Mindus 2017, p. 8). As the chair of committee Xavier Ortoli pointed out, the absence of European identity was one of the weaknesses of the European community. The following year, during the Copenhagen and the Paris summits, the situation became more urgent. As a result, it was decided to proceed with drafting a document on European Identity (Mindus 2017, p. 8). The document highlighted the fact that Member States shared common cultural heritage. Of course, it did not merely have a social aim, but also a political one. During the summit in Paris the idea of fostering integration through common status civitatis started to take form (Mindus 2017, p. 8).

In 1975 the Tindemans Report was issued. It reinforced the notion that certain rights should be given to the citizens of the Member States (Mindus 2017, p. 8). Among these rights there were the right to vote, stand in the elections for the European Parliament, the creation of a European Passport, which would ultimately enforce the passport policy. Yet, the Tindemans Report did not state that such rights were a prerogative of EU citizenship. Rather, it stated that these rights were necessary for a "Europe of citizens". When Tindemans delivered his report, the Commission started analysing the issue concerning special rights. At this point, a problem arose due the protection of special rights (Mindus 2017, p. 9). The fact is that EU citizenship would enjoy rights not only in their states, but also in the other EU Member States. To put it in another way, EU citizens would be subjected to the issue of naturalisation. As a matter of fact, when someone acquires citizenship in another state, he or she would lose his or her original citizenship (Mindus, 2017, p. 9). The Commission believed that there might be a case of adverse discrimination, in which EU citizenship received more protection compared to the citizenship of the state. Hence, it was decided that special rights would have a limited impact (Mindus, 2017, p. 9).

At this point, the Treaty of Maastricht was crucial to establish the rights of the European citizens (Bålman 2015, p. 17). In the section 18-21 TEC there is a focus on the rights stemming from citizenship. Thanks to this section, it is established the right to free movement within the Union (Article 18 TEC; now TFEU Article 21), the right to vote and stand in elections both at the local and at the European level at the same conditions as first country nationals (Article 19 TEC; now TFEU Article 22). The Treaty established also consular protection by member

states in a third country where the right-holder's home state is not represented (Article 20 TEC; now TFEU Article 23). Moreover, it contains the right to petition to the EP and the possibility of appeal to the European ombudsman in cases of maladministration (Article 21 TEC; now TFEU Article 24). Finally, the provision in Article 22 TEC (TFEU Art. 25) clarifies that the provisions are crucial to strengthen or to add the rights previously listed. Patricia Mindus (2017, p. 11) pointed out that the rights listed are not exhaustive of the status of EU citizens. The reason why is not only because following treaties such as the Amsterdam Treaty, the Charter of Nice and the Lisbon Treaty. Moreover, numerous legal stances were connected over time to EU citizenship in the case-law of the ECJ. Ultimately, rights stemming from EU citizenship are shaped by the legal acts, listed in Article 288 TFEU, including regulations, directives, decisions, recommendations and opinions (Mindus, 2017, p. 11).

It is crucial to understand that the European citizenship is different from nationality conferred by unitary states and dual citizenship usually conferred by federal states. According to Mindus (2017, p. 11) reasons are structural. At the very beginning, the recognition of the legal status of individuals within a Community was not different for the process of recognition of subjects in the context of International Law. Yet, European Union Law did not follow the same path of International Law. As a result, it had a different impact on individuals (Mindus 2017, p. 12). Specifically, the rules enforced by the EU are find direct application on individuals. Individuals may use Court of Justice of First Instance, even without the intervention of state organs. Moreover, it is possible to claim rights not only against the EU, but also against private persons and bodies (Mindus 2017, p. 12). Hence, the main difference between EU Law and International Law is that in the former people can have direct access to the justice system. As a result, it is possible to have more insights on the aim to introduce EU citizenship. Analysing more in depth the common provision in Title I, it reads that Treaties are "resolved to create a citizenship common to the nationals of their countries" and "to strengthen rights of the nationals of their member states through the introduction of a citizenship of the Union" (Mindus 2017, p. 12).

Another important aspect that should be highlighted is the very nature of EU citizenship: it is derivative. In other words, an individual gains access to the EU citizenship due to the fact that he or she is a national of an EU Member State (Mindus 2017, p. 15). According to Article 20 TFEU: "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship" (TFEU). This statement was further reinforced by the Declaration n. 2 annexed to the Treaty of Maastricht. The Declaration reads: "The question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned" (Declaration n. 2 Maastricht Treaty). In other words, Member States have the competences to establish the requirements to acquire or lose their nationality (Mindus and Prats 2018, p. 248). Moreover, to obtain the EU citizenship, it is necessary to previously acquire the citizenship of one of the EU Member States. Hence, the fact that the EU citizenship is derivative gives to it a complementary status different from the nature of dual citizenship attributed in the context of federal states (Mindus 2017, p. 15). However, even sovereign states have constraints in the area of naturalisation (Mindus and Prats 2018, p. 248). As suggested by the doctrine and before

the ECJ (AG Poiares Maduro in the Rottman case), the principle of loyal cooperation is a constraint on the discretion of states in matters of citizenship.

Considering substantial aspects of EU citizenship, it is crucial to note that Art. 20 TFEU was changed. At the very beginning, the Treaty of Maastricht referred to the European citizenship as something derivative to national citizenship (Mindus 2017, p. 16). Subsequently, the Treaty of Amsterdam established that EU citizenship is not only derivative, but also complementary. After the enforcement of the Treaty of Lisbon, the EU citizenship became additional. This change happened mainly because of the development of case-law. Namely, the fact that EU Member States have actually limits in stripping their own national of nationality, as they might violate Community law (Mindus 2017, p. 16). In particular, the issue concerned if an individual possesses the nationality of a Member state is no longer based only on national law. Hence, nationality is determined not only on the ground of national law, but also on EU Law (Mindus 2017, p. 16). There is supranational scrutiny on the discretion of Member States on citizenship policies. When the Treaty of Lisbon was enforced, a court ruling by the German Constitutional Court reinforced this view. Specifically, the *Bundesverfassungsgericht* maintained that citizenship laws are to be considered core sovereignty (Mindus and Goldoni 2012).

Yet, such distinction brought about several different consequences. The first one that should be noted is that: "Union citizen is a national of a member state for the purposes of European law" (Mindus 2017, p. 16). The choice of words in Art. 20 allows Member States to have freedom of manoeuvre to influence indirectly the scope of application of Community legislation, using the application of their nationality laws. This demonstrates why notwithstanding the fact that national citizenship gives also EU citizenship, yet there are citizens of Member States that are not EU citizens (Mindus 2017, p. 17). Let us analyse the case of the Faro Islands. The inhabitants of Faro Islands are Danes, but do not received the EU citizenship. Specifically, the Danish government decided to add a protocol in which it is clarified that: "the Danish nationals of the islands were not nationals for the purposes of Community law" (OJ L 73 163). In other words, nationality of a Member State is necessary, yet not sufficient to acquire Union citizenship. In order to be sufficient, there should be no further clarification on the relationship between national and EU citizenship (Mindus 2017, p. 17).

It is possible to see that the definition of national interest provided in this case separates naturalisations based on money from those based on merit and talent (Džankić 2019, p. 81). The point of acquiring citizenship through the discretionary powers of the state can make think about the violation of sphere boundary of money and unlocking of blocked exchanges (Walzer 1983, pp. 100– 103). In other words, they way can be opened to practices such as tax evasion money laundering and corruption related to investor citizenship (Džankić 2019, p. 81). In a multilevel system, such as the one of the EU, the effects of the citizenship by investments can be extremely problematic for a variety of reasons. Malta joined the EU on the 1st of May 2004. Citizenship by naturalisation in Malta is explained in detail in Chapter III Part V of the Maltese Constitution. In 2013, Malta decided to allow wealthy persons to become Maltese citizenship, investing €650,000 (MAL 10(9)b, Legal Notice 48/2014). As a

result, becoming Maltese citizens, grants access to the European citizenship and all its benefits (Džankić 2019, p. 171).

Maltese decision was not unnoticed. It sparked the debate not only at domestic level, but also at supranational level (Džankić 2019, p. 171). In such context, the effects of the principle of loyal cooperation were discussed. Specifically, the Commission DG Justice initiated an infringement procedure against Malta. Commission Vice-President Viviane Reding declared EU citizenship inalienable in January 2014. Subsequently, the EP adopted the Resolution on EU citizenship for sale (2013/2995): "Malta has recently adopted a programme that automatically involves the sale of the EU citizenship, without imposing any residence requirements." The Resolution reinforced the fact that citizenships are under exclusive competences of Member States (2013/2995[RSP]). However, when regulating citizenship matters, Member States have to foster the values that are crucial to the Union, especially for what pertains EU citizenship (2013/2995[RSP]). As a result, the case was politically resolved introducing a residence criterion of 12 months prior to the application (Article 10(1)) (Mindus and Prats 2018, p. 248). From a constitutional point of view, the case is sensitive because it concerns the division of competences. It was the first time that a Member State chose to amend its nationality law following an infringement procedure. Malta's citizenship by investment programme would not be so contested if together with the Maltese citizenship would not sell also the European one (Džankić 2019, p. 172). Hence, allowing free access to the European market and all the other benefits granted to those who have European citizenship.

Giving a closer look to the European citizenship, it is possible to see that interacts with its unique features, the role of European institutions, the limits of EU law, the features of different member states and the different interests that shape policies linked to citizenship (Džankić 2019, p. 172). There is a complex relationship between investor citizenship programme and EU citizenship due to the relation between national and EU citizenship. On the one hand, there is the European citizenship that was introduced with the Maastricht Treaty in 1992 as a means to strengthen European identity. Thanks to the Treaty of Amsterdam and the Lisbon Treaty, the right granted trough EU citizenship comprehend also the rights of free movement, diplomatic protection, linguistic rights, and rights of direct representation in the municipal and European Parliament elections (Džankić 2019, p. 172). Nonetheless, the Dutch Rejection originated the fact that the supranational citizenship is complementary to national citizenship. The fact that the EU citizenship is not federal was reinforced by Article 9 and 20 of the TFEU. Hence, the citizens of any other EU state can claim all the rights associated with the EU citizenship (Bålman 2015, p. 20). It is important to keep in mind the fact that the relationship between the supranational citizenship and the national citizenship is not static. It actually evolves over time. As Dora Kostakopoulou (2007, 2018), pointed out that certain judgements rendered by the ECJ made the EU citizenship something concrete, able to be part of the wider system that comprised the free market and political institutions.

When citizens are able to benefit from their status of EU citizens, they can decide to activate the rights linked to it (Kostakopoulou 2007). This possibility of activation is another aspect that differentiate EU citizenship and

national citizenship. It is possible to make a comparison with federal states. When we consider federal states, the majority of rights are available for any individuals at any given time. Considering the EU context, rights stemming from citizenship are enforced through mobility. In other words, when the individua moves across the borders of its state. Moreover, rights stemming from EU citizenship can be invoked both within and outside the Union (Džankić 2019, p. 176). As said before, it is due to the benefits offered by additional rights, enforceable beyond states' borders, that acquiring the citizenship of a certain state become more appealing. Needless to say, this approach was heavily criticised to alter the meaning of citizenship both form a national and European perspective (Džankić 2019, p. 176). Specifically, it was hold that the sale of passports put at stake the core values of the EU citizenship (Shachar and Bauböck 2014). As a matter of fact, the EU citizenship was not conceived as a tool to enhance arbitrarily only the rights of certain people who were able to pay for them. The opposite is true: the aim of the EU citizenship was enhancing cooperation and trust among fellow Member States (Džankić 2019, p. 176).

Considering the Maltese case, when IIP was first introduced it was heavily criticized both from domestic and EU perspective (Džankić 2019, p. 195). The notion behind Maltese IIP is the revenue associated with investor programmes. The Minister of Interior Emmanuel Mallia stated: "Not only is this contribution paid by the applicant non-refundable, but this will also help attract quality individuals to become Maltese citizens" (Maltese Community 2013, online). Likewise, Henley & Partners, the company that took part in the creation of the system, highlighted the fact that it is irreversible (Camilleri 2013, online). Henley & Partners has a long history in the market for citizenship. It defines itself as "the global leader in residence and citizenship planning. Our clients are wealthy individuals and families, as well as their advisors worldwide, who rely on our expertise and experience in this specialized area. Our highly qualified professionals work together as one team in over 20 offices around the world" (Henley & Partners 2013, p. 4). The passports continue to belong to the Maltese government. The role played by Henley & Partners is basically giving its know-how in the overdue process.

In its flayers, Henley & Partner highlights all the benefits of obtaining Maltese citizenship: Citizenship from a well-respected and stable EU country; Reasonable contribution and efficient application process; World's strictest due diligence standards and vetting of applicants, thus ensuring only highly respectable applicants will be admitted; Visa-free travel to more than 160 countries in the world, including the USA; EU citizenship gives right of establishment in all 28 EU countries and Switzerland; Malta is an attractive place to live or to own a second home and is strategically located with excellent air links (Henley & Partners 2013, p. 3). In November 2013, Malta decided to modify IIP. The Act LN of 2013 amended the Maltese Citizenship Act, Cap 188. Moreover, together with IIP, it was decided to adopt more extensive criteria in order to obtain both Maltese and EU citizenship. The criteria added in the amendment included either the possession of property in the value of €350,000, or the rental of property for at least €16,000 per year (Article 4); and an additional investment of €150,000 into a project determined by the state authorities (Article 5). The amendments did not include other obligation from the investors, only increasing the amounts of their contributions according to certain rates (Džankić 2019, p. 196). The amendments authorized a limit of 1800 successful applicants.

The amendments led to generalized discontent among the EU Member States, as they believed that the programme implemented by Malta might threat the security of the EU, leading to an influx of wealthy criminals (Džankić 2019, p. 196). Hence, the implementation of the IIP was delayed for several months. As a result, it became the main topic of the EP debate that took place in January 2014. In the end, the EP reinforced its stance that "that this way of obtaining citizenship in Malta, as well as any other national scheme that may involve the direct or indirect outright sale of citizenship, under- mines the very concept of European citizenship" (M1 in EP resolution 2013/2995(RSP)). As a result, Malta had to revise once again its scheme in order to bring it "into line with the EU's values" (M12 in EP resolution 2013/2995(RSP). Brussels signalled in an extremely clear manner that the IIP. However, no amendments were made immediately after the debate took place (Carrera 2014). At this point, the Directorate General Justice considered opening the infringement proceedings for incompatibility of what the EU law prescribes. In the end, during the meeting between the representatives of Malta and DG Justice in late January, they finally reached an agreement (Džankić 2019, p. 197). As a result, the scheme had to include a residence requirement as genuine ties with the country.

In February 2014, Malta finally amended IIP adding the clause of one-year effective residence, in order to test the link between the applicant and the country (Džankić 2019, p. 197). However, this last requirement does not entail that the applicant has to be actually in Malta. The applicant can be meet following the presentation of"(a) flight ticket printouts, stubs, boarding passes, entry and/or visa stamps on one's passport and also (in some cases) through a declaration made by the agent in question ascertaining presence in Malta; (b) local hotel bookings spanning different time periods and covering the main applicant and/or his/her dependents; (c) transportation services (taxi or car rental)" (ORiip 2017, 32). Other types of relationship that can be considered are philanthropic activities, purchase of additional property, local services (phone, internet bills), or tax receipts (ORiip 2017, 32). Further criteria kept into account are due diligence, proof of the applicant's moral standing, a clean criminal record, health certificate and insurance, and an oath of allegiance. Importantly, the programme is not open to everybody. Citizens of Afghanistan, Iran, the Democratic People's Republic of Korea or individuals with critical ties to such countries are not allowed to make application. Also, countries subject to a travel ban are not allowed to apply for the programme (Džankić 2019, p. 197).

Contrary to other programmes proposed by Cyprus and Bulgaria, Malta's one perfectly fits the global market for citizenship. Giving a closer look to data, it is possible to see that thanks to it, between 2014 and 2017 over 1100 people decided to apply for it (ORiip 2017). As pointed out before, Maltese programme was the result of cooperation with Henley & Partners (Džankić 2019, p. 198). Initially, Henly & Partners had an extremely prominent role. The requests at the beginning had to be sent through the concessionaire. Moreover, the due diligence is managed by Maltese authorities, rather than the concessionaire. Yet, it maintains crucial importance in the implementation of IIP. Both the Maltese government and the representatives of the so-called citizenship industry believe that delegating the management of the programme to a non-public authority is crucial to foster

transparency (Džankić 2019, p. 198). Yet, IIP is perceived as heavily controversial. Together with the other issues highlighted at the beginning of the chapter, other problematics were noticed.

In 2018, OECD classified Malta together with Cyprus in the list of 21 countries whose citizenship by investment scheme could "be potentially misused to hide their assets offshore by escaping reporting under the OECD/G20 Common Reporting Standard (CRS)" (OECD 2018). Moreover, the identity cards obtained through such schemes can be misused to endanger the proper functioning of the Common Reporting Standard due diligence procedures (OECD 2018). As a consequence, the EU became concerned. In particular, the Justice Commissioner Věra Jourová stated that the programme was "problematic" and "unfair" (Džankić 2019, p. 198). The statement of Jourová expressed also the fear of Europe's intelligence agencies. In particular, they were afraid that the so-called "golden passport scheme" might allow people with enough economic capabilities to easily buy UK and EU citizenship (Garside and Osbourne 2018a). Moreover, in the report issued by the Commission in 2019 it was discovered that there is very little legislation concerning how the actual process works (EU Commission 2019, p. 12).

In Malta checks are made by Maltese authorities and in the country of origin concerning the criminal background of the applicant (EU Commission 2019, p. 12). The Maltese authorities consult INTERPOL and Europol databases as part of a four-tier due diligence process covering: know-your-client due diligence checks by the agent and the Malta Individual Investor Programme Agency; clearance by the police authorities; a check for completeness and correctness of the application and verification of the documents submitted; and an outsourced due diligence check whereby the Malta Individual Investor Programme Agency to present evidence that they have commissions two reports from international companies on every IIP application (EU Commission 2019, p. 12). The study carried out by the Commission highlighted that there are numerous grey zones in relation to security checks. In particular the margin of discretion regarding those who apply to receive the citizenship (EU Commission 2019, p. 12). People can make application even though they do not meet certain requirements. According to Maltese requirements, applicants are supposed to have a clean criminal record not to be the subject of a criminal investigation and not to be a potential national security threat (EU Commission 2019, p. 12). However, such circumstances can easily be circumvented. Moreover, it is not necessary to make application in person: it can be submitted by agents (EU Commission 2019, p. 12).

The second main concern stemming from citizenship by investment scheme is the possibility of money laundering. From a formal perspective there is no compulsory requirement to establish a mechanism to check on the origin of funds (EU Commission 2019, p. 16). In practice, Identity Malta, the agency in charge, confirmed that it follows the fourth Anti-money Laundering Directive. However, when a national money laundering risk assessment was carried out in 2017, the potential risks associated to citizenship by investment scheme were not included (EU Commission 2019, p. 16). The third issue concerns the circumvention of EU law. Citizenship by investment scheme may be a privileged route for third country nationals to circumvent certain requirements to obtain EU

citizenship. Another issue is whether tax incentives coming from citizenship by investment schemes drive the demand for such facilitation scheme (EU Commission 2019, p. 16). Even though the establishment of such scheme does not directly lead to tax evasion, yet individuals might benefit from existing privileged tax rules (EU Commission 2019, p. 16). Moreover, there might be room for abuse, stemming from the misuse of benefits.

2.3 The Murder of Daphne Caruana Galizia: how the Rule of Law was compromised in Malta

2.3.1 The Role of the Labour Party

On the 16th of October 2017, the journalist Daphne Caruana Galizia was murdered by a bomb in her car. The murder took place in Bidnija, in the northern part of Malta. Caruana Galizia was one of the most famous Maltese journalists. Her investigative journalism was perceived as an attack towards the Labour government led by PM Joseph Muscat. In 2008 Caruana Galizia opened her blog Running Commentary, in which she published her investigations. She became well-known thanks to her participation on the Panama Papers inquiry. The Guardian defined it as "an unprecedented leak of 11.5m files from the database of the world's fourth biggest offshore law firm, Mossack Fonseca" (Harding 2016). She was the first one who reported the involvement of Konrad Mizzi and Keith Schembri. The former was the Minister of Tourism, while the latter was the Chief of Staff of Joseph Muscat. On the 22nd of February Mizzi was obliged to reveal the existence of his New Zealander trust the *Rotorua Trust*. Subsequently, Schembri had to do the same with his Panamanian trust. Meanwhile, Caruana Galizia's bank accounts were frozen. Moreover, the Minister of Economy Chris Cardona filed libel suits against her, due to her report in which she revealed that he went to a brothel with his consultant, during an official trip to Germany (Council of Europe 2017). Considering the affairs on which Caruana Galizia was investigating we have the Electrogas affair, the Egrant affair, the Vitals Global Healthcare affair and the issue of Pilatus Bank.

Focusing on the Electrogas affair, Konrad Mizzi was the mastermind behind an illegal procedure in which a public contrast was awarded to a consortium (Omtzigt 2018, p. 4). Among the enterprises in the consortium there was also the Azerbaijani State energy company and 17 Black. The former was known for making profits by selling liquid natural gas to a price well above the market price. The latter made large monthly payments to secret Panamanian companies owned by Mr Mizzi and Mr Schembri (Omtzigt 2018, p. 4). Moreover, 17 Black received a considerable amount of money from an Azerbaijani national and a company owned by a third member of the consortium (Omtzigt 2018, p. 4). Notwithstanding its awareness of the issue, the FIAU and the police did not take any action neither against Mr Mizzi nor Mr Schembri. Another affair that was object of Caruana Galizia's investigation was the Egrant affair.

The problematic aspect is that nine months after issuing a report that would absolve the Prime Minister, the inquiring magistrate, appointed by the Prime Minister himself, became a judge thanks to the Prime Minister (Omtzigt 2018, p. 4). Then there is the Hillman affair, in which Mr Schembri was involved in money laundering with Adrian Hillman, the managing director of Allied Newspapers (Omtzigt 2018, p. 4). Despite a report by FIAU and a magistral inquiry, yet the police was not able to act properly. Moreover, Caruana Galizia investigated the so-called golden passports affair. She discovered that Mr Schembri received €100 000 from his long-standing associate

Brian Tonna. Mr Tonna is both the owner of the accountancy firm Nexia BT and an agent for the golden passport applicants (Omtzigt 2018, p. 4). The police did not investigate on the money received by Tonna. Two years later, a magisterial inquiry is still going on. Another case that was brought about by Caruana Galizia is the one concerning the Vitals Global Healthcare affair. In this case, Dr Mizzi gave a major hospital contract to a consortium that have no previous experience whatsoever in the field (Omtzigt 2018, p. 4). Vitals Global Healthcare received €150 million from the government.

It is important to highlight the fact that Mr Tonna's firm Nexia BT played a role not only in the Panama Papers, but also in the Elctrogas, Egrant, Hillman and golden passport affairs (Omtzigt 2018, p. 4). Tonna was able to receive many lucrative governments contracts, even after becoming object of investigation (Omtzigt 2018, p. 4). Another issue that Daphne Caruana Galizia was able to highlight was the one of Pilatus Bank. Pilatus Bank is owned by the Iran born Seyed Ali Sadr Hasheminejad. Daphne Caruana Galizia was one of the first ones that, using her blog, shed the light on the fact that Pilatus Bank played a key role in facilitating money laundering in Malta. In the 2018 Omtzigt Report underlined that the Maltese Financial Services Authority (MFSA) licensed Pilatus Bank. Among the clients of Pilatus Bank there were many "politically exposed persons", such as Keith Schembri and companies owned by the daughters of the President of Azerbaijan (Omtzigt 2018, p. 5). Seyed Ali Sadr Hasheminejad was connected to Jospeh Muscat and Keith Schembri. Recently, he was arrested in the United States and charged with violating sanctions against Iran. As a result, the MFSA and the European Central Bank closed the bank (Omtzigt 2018, p. 5).

Two weeks before her death, Daphne Caruana Galizia filed a police report saying she was being threatened (Council of Europe 2017). Living under constant threat became a feature of her life, as she was an investigative journalist on a small island with very strong reputation in the field of money laundering (Bonini, Delia and Sweeny 2019, p. 17). Daphne Caruana Galizia was also the object of retaliation against her inquiries. Since she published pictures of public people in semi-private context, they decided to make her taste her own medicine (Bonini, Delia and Sweeny 2019, p. 20). For example, when she published the pictures of a magistrate partying with politicians whose libel complaints she was deciding, a judge sentenced to prison for corruption having a business meeting in a restaurant (Bonini, Delia and Sweeny 2019, p. 24). Hence, the OPM Neville Gafà felt entitled to share pictures of Caruana Galizia with her husband while they were doing shopping (Bonini, Delia and Sweeny 2019, p. 24).

On the 16th of October she was going to the bank, in order to solve the issue. However, she never made it to the bank. Someone put a bomb in her car that exploded around 3 o'clock in the afternoon of the 16th of October. Notwithstanding the fact that Caruana Galizia heavily criticized PM Muscat on her blog, he stated that: "The murder of Daphne Caruana Galizia shocked and outraged me. Allegations of organized threats or harassment against Daphne Caruana Galizia or her family are wholly false. This murder does not reflect on the Maltese people who enjoy a liberal, open, and democratic society" (Baqué, Garside, Giraudat and Topham; 2018). In the statement released by his office, Muscat highlighted that: "I am shocked by what happened today. (…) I condemn, without

reservations this barbaric attack on a person and on the freedom of expression in our country. Everyone is aware that Ms Caruana Galizia was one of my harshest critics, politically and personally, as she was for others too. However, I can never use, in anyway this fact to justify, in any possible way, this barbaric act that goes against civilization and all dignity" (Press Release by the Office of Prime Minister 2017). The fellow blogger Manuel Delia praised Caruana Galizia as "the only ethical voice left. She was the only one talking about right and wrong" (The Economist 2017, p. 52). The President of the European Parliament Antonio Tajani called the incident a "tragic example of a journalist who sacrificed her life to seek out the truth" (Times of Malta 2017). Also, Malta's Archbishop Charles J. Scicluna highlighted that: "The killing of a journalist was the killing of democracy. Journalists must be protected. They must not be made to feel afraid. Their duty to discover and reveal the truth should not be compromised by the fear of personal consequences" (Bonini, Delia and Sweeny 2019, p. 42).

The three men charged with her murder are George Degiorgio, his younger brother Alfred and their friend Vincent Muscat. All the three pleaded not guilty and denied any wrongdoing (Bonini, Delia and Sweeny 2019, p. 20). Thanks to a pre-trial hearing it was possible to demonstrate that Caruana Galizia was under surveillance during the weeks before her death. The three men were trying to establish a pattern for her movements, in order to understand when to strike (Bonini, Delia and Sweeny 2019, p. 20). During the pre-trial hearing, it was stated that either Alfred Degiorgio or Vincent Muscat were watching Caruana Galizia's home at 2:30 pm on Monday afternoon (Bonini, Delia and Sweeny 2019, p. 24). The spotter signalled that she was finally leaving her house. It was time. The triggerman was George Degiorgio. His job was extremely easy. He had to send a message an SMS that would detonate the bomb on Caruana Galizia's car (Bonini, Delia and Sweeny 2019, p. 27). After the murder, even though he had with him three phones, he used his personal one to call a friend. Moreover, he was being investigated by Malta's security service, due to his involvement in unrelated criminal activities (Bonini, Delia and Sweeny 2019, p. 27). Caruana Galizia had never written about George Degiorgio, Alfred Degiorgio or Vincent Muscat. Hence, it is hard to believe that they had any actual reason to kill her (Bonini, Delia and Sweeny 2019, p. 27).

The magistrate on duty that day was Consuelo Scerri Herrera. Her private life in 2011 attracted Caruana Galizia's attention. In a post on her blog she wrote: "The fact is this Consuelo: the law is the law. Being a magistrate, you should know that. But you also know that you shouldn't be socialising with plaintiffs and defendants in cases you're hiring, and you still do it. You know that you shouldn't preside over a criminal case in which the defendant is the brother of the ma you're secretly sleeping with (though not secretly enough), and still you did it. You know that as a magistrate, you shouldn't have sex (though not secret enough) with a police inspector, and still you did it" (Bonini, Delia and Sweeny 2019, p. 27). The man to whom Caruana Galizia is referring to is Robert Musumeci. Former Nationalist Party (NP) mayor who switched sides and became a senior advisor of Muscat's government (Bonini, Delia and Sweeny 2019, p. 33). His relationship with Scerri Herrera was no secret. Moreover, Musumeci ran an online campaign hashtagged galiziabarra, which means Galizia out in Maltese (Bonini, Delia and Sweeny 2019, p. 33). Even after the murder of Caruana Galizia, Musumeci never stopped campaigning against her and the

protesters who seek truth and justice (Bonini, Delia and Sweeny 2019, p. 33). The close scrutiny of Scerri Herrera's personal life and the ties to the Labour Party, Herrera promotion to a judgeship was delayed (Bonini, Delia and Sweeny 2019, p. 33). Nine months after Caruana Galizia's murder, Scerri Herrera was appointed judge by Joseph Muscat (Bonini, Delia and Sweeny 2019, p. 33).

In 2010, she had to leave her position of deciding libel suits involving politicians, as she was not considered reliable (Bonini, Delia and Sweeny 2019, p. 33). The lawyer Jason Azzopardi, who was also the shadow justice minister, asked Scerri Herrera to leave the inquiry (Bonini, Delia and Sweeny 2019, p. 34). From a superficial perspective, Muscat was doing everything required from his position as Prime Minister. Yet the situation was much more complicated than that. Whenever he had the possibility, he expressed his condolences to Caruana Galizia's family. At the same time, he reinforced the fact that he was a victim of her investigations (Bonini, Delia and Sweeny 2019, p. 86). Caruana Galizia was the first one to share the news that Muscat wife received bribes from the Azerbaijani president's family and hidden money in illegal offshore structures (Bonini, Delia and Sweeny 2019, p. 86). When the story came out Muscat decided to deny it and set up a magisterial inquiry (Bonini, Delia and Sweeny 2019, p. 86). According to him, the story damaged his reputation in such was that compromised the political stability of the country (Bonini, Delia and Sweeny 2019, p. 86). As a result, he called for early general elections that he won.

2.3.2 Daphne Project: how to Raise Awareness on the Infringement of the Freedom of the Press and the Erosion of the Rule of Law in Malta

"The best way to honour the memory of a journalist is continuing his or her work" (Daphne Project). This is the reason why 18 newspapers decided to come together and create Daphne Project, a consortium of newspapers that will continue investigating on Caruana Galizia's stories (Foschini 2018). Repubblica is the only Italian newspaper. Together with Repubblica there are New York Times, The Guardian, Reuters, Süddeutsche Zeitung, Die Zeit, NDR (Norddeutscher Rundfunk), WDR (Westdeutscher Rundfunk), France 2, Le Monde, Premières Lignes Télévision, Radio France, Direkt 36, OCCRP (Organized Crime and Corruption Reporting Project), Tages-Anzeiger and The Times of Malta. For years, Caruana Galizia shed the light on the fact that Malta was the heart of European money-laundering (Foschini 2018). Malta was the hub of money transfer coming from shady offshore organizations all over the world (Foschini 2018). Forty-five journalists coordinated by the French organization Forbidden Stories tried to keep alive Caruana Galizia's work (Foschini 2018).

2.3.3 Recent Developments

Even though three years passed, the struggle between the government and protestors who seek the truth continued. In January 2020 a court established that the government's orders to remove any tribute to Caruana Galizia's memorial was against the activists' right to freedom of expression (RSF 2020). The decision of continuously cleaning the memorial was not by chance. It was a precise strategy of the Justice Minister in order to deepen divisions and burying calls for justice (RSF 2020). The weakness of the Rule of Law and the threats over journalists were documented in several reports of prominent European institutions, ranging from the Parliament to the Council of Europe (RSF 2020). Maltese journalists from six independent media house reported to the

European Parliament Civil Liberties Committee that they were working in an environment full of intimidation and fear (RSF 2020). Media threats persisted over the years. Journalists were denied access to information and events, together with illegal detention of national and international press members (RSF 2020). Moreover, media ownership continues to be in the hands of the two main political parties, leading to polarization and misinformation (RSF 2020).

In 2019, George Degiorgio, his younger brother Alfred and Vincent Muscat were indicted. It was Muscat himself that provided evidence against the Degiorgio brothers (Omtzigt 2019, p. 1). Moreover, he shared the name of the alleged middleman Melvin Theuma. Muscat's request of pardon in exchange of information was denied (Omtzigt 2019, p. 1). Theuma was arrested on the 14th of November for money laundering. Subsequently, he shared information about the mastermind of the murder: Yorgen Fenech. Fenech is a businessman, owner of a secret off-shore company, connected to the secret off-shore companies owned by Keith Schembri and Konrad Mizzi. Caruana Galizia reported it many times on her blog. In her posts she underlined the fact that there was evidence of corruption in major governments contracts (Omtzigt 2019, p. 1). A few days later Prime Minister Muscat promised to Theuma conditional pardon. The day after, Fenech was arrested, while trying to leave the island on his yacht. Inquirers find out that there were frequent contacts between Fenech and Schembri. They even had a brief conversation before the arrest. Later it was discovered that Fenech was under surveillance for 15 months before the arrest. Moreover, Fenech claimed that Schembri and his doctor Adrian Vella planned his getaway with the yacht (Omtzigt 2019, p. 1). Matthew Caruana Galizia, the eldest of Caruana Galizia's sons, underlined that: "It is important to bear in mind that the arrest of Yorgen Fenech is not a result. It is not the arrest itself that says something about the Rule of Law. It actually says a lot about the ability of a state to secure justice. An arrest is not justice. There is still a very long to go to actually achieve justice" (Private Interview see Appendix).

A few weeks later Fenech mentioned that Schembri was connected to him and Theuma. On the same day, Economy Minister Chris Cardona, another crucial person in Caruana Galizia's post, was questioned by the police (Omtzigt 2019, p. 1). In 2017 he filed a libel suit against Caruana Galizia over allegations he went to a brothel during an institutional meeting in Germany (Omtzigt 2019, p. 1). Moreover, it was discovered that he had contacts with both Degiorgo brothers and Vincent Muscat. On the 25th of November, when Theuma received a conditional pardon, Schembri and Mizzi resigned, while Cardona suspended himself (Omtzigt 2019, p. 1). The day after, Schembri was questioned by the police and arrested. The reason behind it was that Fenech provided evidence of his connection to many cases of corruption. Moreover, Schembri's name came up in many conversations between Fenech and Theuma (Omtzigt 2019, p. 1). On 28th of November, Fenech accused Schembri of being responsible for the murder. However, a few hours later, Schembri was able to walk the street of Malta without charge (Omtzigt 2019, p. 1). On the following day, Prime Minister Joseph Muscat stated that Fenech would not receive a pardon (Omtzigt 2019, p. 1). Moreover, Muscat reinforced that he would maintain his position as Prime Minister until the end of the investigation (Omtzigt 2019, p. 1). However, Muscat resigned on the 13th of January 2020. After his resignations, Robert Abela became Prime Minister. In the last few months there was an escalation of confessions

that lead to a series of arrests. As said before, the former police chief Lawrence Cutajar was arrested in June 2020 (Garside 2020). Cutajar is suspected to have interfered in 2017 investigations on Caruana Galizia's murder (Garside 2020).

2.3.4 How the European Union reacted

One month after the murder of Daphne Caruana Galizia, the EP made a resolution on the Rule of Law in Malta. In the resolution the EP "regrets that developments in Malta in recent years have led to serious concerns about the Rule of Law, democracy and fundamental rights, including freedom of the media and the independence of the police and the judiciary" (2017/2935(RSP)). Moreover, it asked to the Commission to establish a dialogue with the Maltese government on the Rule of Law and to foster European values and check compliance with the third AMLD and the Capital requirements directive (2017/2935(RSP)). The EP called on Maltese authorities to join the European Public Prosecutor's Office (EPPO), in order to cooperate against fraud and financial crimes affecting EU's financial interests (2017/2935(RSP)). Moreover, it asked the Maltese judiciary authority to investigate further on the Pilatus Bank. In particular for what concerns the proper management of bodies of financial institutions (2017/2935(RSP)). Plus, the EP asked to investigate the compliance of Nexia BT with the AMLD (2017/2935(RSP)). The EP reinforced its concern toward the citizenship by investment scheme and called Malta to make clear who actually benefit from the programme. (2017/2935(RSP)). Last but not least, the EP reinforced the commitment of Malta and of the other Member States to fight against tax evasion and to dedicate time and resources to it (2017/2935(RSP)).

In 2018 the Committee on Civil Liberties, Justice and Home Affairs (LIBE) conducted an inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion. The mission was organized after the Conference of Presidents decision to create an *ad hoc* delegation made by 8 members, preferably from the LIBE and the Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA). The objective of the mission was modelled after the resolution adopted by the EP on 15 November 2017 on the Rule of Law in Malta ((2017/2935(RSP)) (LIBE and PANA 2018, p. 2). Among the key findings, it was reinforced once again the importance of strengthening independence, transparency and accountability for all institutions (LIBE and PANA 2018, p. 26). It was stated the need to address the potential conflict of interests for key public or elected offices and the unclear separation of powers which has been the source of the perceived lack of independence of the judiciary and law enforcement authorities (LIBE and PANA 2018, p. 26). Other concerns were exerted towards the need to reform the office of the Attorney General and the establishment of the office as an independent unity (LIBE and PANA 2018, p. 26). Specifically, the Attorney General office should be decoupled from the role of government consultant (LIBE and PANA 2018, p. 30).

The mission report underlined the need to reform the selection and appointment of the judiciary and other crucial public officials (LIBE and PANA 2018, p. 26). If their appointment is completely in the hands of the government

it can undermine the independence of the judiciary and the process of law enforcement (LIBE and PANA 2018, p. 26). Moreover, it should be challenged the perception that the police is highly politicised. The method of appointment should be focused on merits, rather than personal connections and "people of trust" (LIBE and PANA 2018, p. 26). In order to achieve this aim, there should be a selection board with a clear composition. Linked to the issue of police independence there is also the issue of impunity. There is a low number of investigations and prosecutions in case of money laundering and corruption allegation. In other words, the inaction linked to the Panama Papers and the FIAU reports (LIBE and PANA 2018, p. 26).

It was discovered that there was no police investigation on the hypothetic corruption and money laundering by Keith Schembri and Konrad Mizzi (LIBE and PANA 2018, p. 26). Moreover, there is the perception of a strong culture of fear that escalated with the murder of Daphne Caruana Galizia. As a result, it is required to properly enforce the law and ensure that proper investigation take place (LIBE and PANA 2018, p. 26). Plus, there should be proper protection of investigative journalists and whistle-blowers. At the end of the report is was asked to the Commission "to assess whether Maltese authorities are fully compliant with the European Anti-Money Laundering Directive and the Capital Requirements Directive, especially regarding the application of customer due diligence provisions" (LIBE and PANA 2018, p. 29). It was asked to the European Banking Authority to check if the Maltese Financial Services Authority is adequately equipped and free to perform its role (LIBE and PANA 2018, p. 29. Moreover, the European Baking Authority shall supervise the lack of action towards the Pilatus Bank and Nexia BT cases. Ultimately, "The European Commission should assess the implications of the IIP which Malta sells European citizenship and Schengen Residence permits, for distortion of the Internal Market and attempt against the security of the European Union, fomenting corruption, importation of organized crime and money laundering. The Commission should also assess fiscal incentives which treat local income of individuals or corporations differently than international income" (LIBE and PANA 2018, p. 29).

In September 2019, LIBE decided to renovate the mandate of its working group, expanding it even further. As a result, the mandate of the committee was modified as such LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG) (LIBE 2019a). The mandate of the group will last until the end of 2021, after which a mid-term review will be carried out (LIBE 2019a). For the third time after the murder of Daphne Caruana Galizia, the EP decided to send a new fact-finding delegation in Malta (LIBE 2019a). The delegation stated that keeping his position before stepping down, the Prime Minister lost his trust (LIBE 2019b p. 2). As a result, the perception of the Maltese people was that the authorities were undermined (LIBE 2019b p. 2). Furthermore, the delegation stated that the population feared that the investigation might be inaccurate and one-sided (LIBE 2019b p. 2). It was highlighted that, even though the investigation evolved in past few weeks, the problems linked to corruption and financial crimes, revealed by Panama Papers and Caruana Galizia's inquiries, were not properly addressed (LIBE 2019b p. 2). Yet it was recognised the police force did not appreciate the fact that EUROPOL was still investigating on the murder of Ms Caruana Galizia (LIBE 2019b p. 2).

Another primary task of the committee was to review the current issues related to the Rule of Law for example the restrictions to the right for demonstration, hate campaign against supporters of the murdered journalist, attacks to media freedom, notably with the persisting libel cases against Caruana Galizia's family and intimidations against journalists (LIBE 2019b p. 2). It was observed that the recommendations of the Venice Commission were not properly implemented, especially for what concerns the Attorney General and the system of judicial appointments (LIBE 2019b p. 12). Once again, the Committee asked to the Commission to reinforce the need to open dialogue on these issues without any further delay (LIBE 2019b p. 2). Considering the case of corruption allegations, investor citizenship, residence schemes and visas, the delegation considered that the Commission should act in order to preserve the integrity of the Schengen system (LIBE 2019b p. 2). Moreover, the Commission should seriously engage to fight against cross-border crimes perpetrated by those member states that do not comply with the standards (LIBE 2019b p. 2). Ultimately, the delegation asked again the Commission to establish a dialogue with the Maltese government in order to continue to monitor the situation in accordance with the Rule of Law Framework, as stated by the EP resolution of 28 March 2019 on the Rule of Law and the fight against corruption in the EU, referring to Malta and Slovakia (LIBE 2019b p. 12).

Chapter III- Slovakia: Lack of Transparency and Misuse of European Union Funds

"This tragic event's impact on Slovakia is comparable to the shock of the 9/11 attacks in the United States: it was a historic turning point, the effects of which will be felt for years to come."

Milan Bubak

3.1 Brief Analysis of the Slovakian Constitution

3.1.1 History and Rationale

The current Slovak Constitution was enforced on the 1st of January 1993, when the Czech and the Slovak Federal Republic split in two sovereign countries (Vikarská and Bobek 2019, p. 837). The draft of the Constitution was a crucial moment for Slovak emancipation, started in 1992 (Stein 1997, p. 45). The instructions from the highest quarters were to follow the 1920 Constitution of the First Republic (Stein 1997, p. 57). Even though in the end the model was more or less replicated, there were certain modifications. The final modifications are the result of a compromise between the Prime Minister's demand for a completely free economy and the social concerns expressed by the Left (Stein 1997, p. 57). Considering the internal legal point of view, the split of the two states derived from unilateral secession of Slovakia. On the 17th of July 1992, the Slovak National Council adopted the declaration of sovereignty. The document reinforced the natural rights of states to self-determination and declaring the independence of the Slovak Republic (Vikarská and Bobek 2019, p. 837).

The declaration was pivotal to foster the adoption of the Constitution. Considering the constitutional influence and the fact that for a long time have been a federation, the Slovak Constitution was heavily influenced by the Czechoslovak tradition. The Constitution represents the foundation of the Slovak legal states and it is at the top of the legal system (Vikarská and Bobek 2019, p. 847). The separation of powers is clearly established, together with a system of checks and balances. Following the categorization made by Besselink (2006), the Slovak Constitution is made by "a legal character, with detailed rules and enforceability in courts" (Vikarská and Bobek 2019, p. 837). Considering the different forms of state, Slovakia decided to adopt an "essentially classical parliamentary form", in line with the Czecho-Slovak tradition (Stein 1997, p. 49). The Slovak Legal system is based on a commixture of Roman law with historical influences from the German, Austrian and Hungarian traditions of law (Školkay 2014, p. 118). Moreover, there was a process of assimilation of the continental system of law with the Anglo-Saxon system of common law in Slovakia (Svák, 1996). It means that there is certain degree of "precedence", especially in the case of the Supreme Court (SC) and in the case of the Constitutional Court (CC).

The Constitution is quite detailed, made by 156 articles. It is divided into the prologue plus nine parts. The preamble stated: "We, the Slovak nation" and the ending: "We the citizens of the Slovak Republic" addressed the abstract debate on the national vs the civic principle (Stein 1997, p. 45). Notably, the source of power are not people, as for example in the United States Constitution. The reason why probably is the "allergy" developed by

post- communist societies for a term often abused by the previous communist regime (Stein 1997, p. 58). The first part (Artt. 1-10) is focused on general provisions. In particular, Art. 1 established the existence of the Rule of Law and the sovereignty of the Slovak Republic: "The Slovak Republic is a sovereign, democratic, and law-governed state. It is not linked to any ideology or religious belief" (Slovak Constitution 1992). Limitations to state power are listed in Art. 2(2): "State bodies can act only on the basis of the Constitution, within its limits, and to the extent and in a manner defined by law" (Slovak Constitution 1992).

The second one (Artt. 11-54) presents a full catalogue of fundamental rights and freedoms. Art. 11: "International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties" (Slovak Constitution 1992). Moreover, Art. 12(2) states that such rights and freedoms are guaranteed to everyone (Slovak Constitution 1992). The strongest way to enforce such rights is through judicial protection in ordinary courts. A Constitutional Court is the ultimate guarantor of these rights (Stein 1997, p. 52). In particular, Art. 127(1) states that the Constitutional Court: "shall decide on complaints by natural persons or legal persons objecting to violation of their basic rights and freedoms ... unless another court shall make decisions on the protection of such rights and freedoms". Fundamentals rights and freedoms are protected by the Constitution thanks to the Prosecutor's Office of the SR (by virtue of Arts. 149–151) and by the Ombudsperson (by virtue of Art. 151a). Economic and social rights were reinforced upon request of the Democratic Left. The Constitution strengthened certain features of the 1991 Federal Charter. In particular, it specified the requirements on protection of the living environment and cultural heritage. Moreover, improvements were made in the field of satisfactory working conditions (Stein 1997, p. 52). The third part (Artt. 55-63) is focused on the economy in the Slovak Republic. Specifically, Art. 55(2) established that the Slovak Republic protects and promotes economic competition (Slovak Constitution 1992).

The fourth part (64-71) addresses legal self-governing bodies. Even though the separation of powers is not directly established, it is indirectly provided in the fifth, sixth and seventh part (Stein 1997, p. 49). In particular, the fifth part (Artt. 72-100) describes the legislative power. According to Art. 72: "The National Council of the Slovak Republic is the sole constituent and legislative body of the Slovak Republic" (Slovak Constitution 1992). Moreover, "The validity of the election of deputies is verified by the National Council of the Slovak Republic (Art. 76 Slovak Constitution 1992, p. 16). Differently from past constitutions, no other state organ has the power to issue norms of legislative character when the Parliament is unable to convene. Another crucial duty of the National Council is electing the President (Stein 1997, p. 49). The sixth part (Artt. 101-123) is focused on the executive power. Art. 108 states that: "The Government of the Slovak Republic is the supreme body of executive power" (Slovak Constitution 1992). According to Art. 110: "The prime minister is appointed and recalled by the president of the Slovak Republic. (2) Any citizen of the Slovak Republic who can be elected to the National Council of the Slovak Republic can be appointed prime minister (Slovak Constitution 1992, p. 16). It is worth noticing the relationship between the executive branch and the legislative branch. Their relationship is different from the traditional

established in continental parliamentary system (Stein 1997, p. 50). Together with the power to start the impeachment procedure, the National Council can remove the President for political reasons.

The seventh part (Artt. 124-148) analyses the judicial power. According to Art. 124: "The Constitutional Court of the Slovak Republic is an independent judicial body charged with protecting constitutionality" (Slovak Constitution 1992). Judges are appointed following the advice of the government for a four-year term, at the end of which they can be elected for life (Stein 1997, p. 52). The eighth part (Artt. 149-151) talks about the office of the public prosecutors in the Slovak Republic. Art. 149 holds that: "The Prosecutor's Office of the Slovak Republic protects rights and the legally protected interests of natural and juridical persons and the state" (Slovak Constitution 1992). Finally, the ninth part (Artt. 152-156) is characterised by transitory provisions. In particular, Art. 152 deserves attention. "Constitutional laws, laws, and other generally binding legal regulations remain in force in the Slovak Republic unless they conflict with this Constitution. They can be amended and abolished by the relevant bodies of the Slovak Republic. (2) Laws and other generally binding legal regulations issued in the CSFR become invalid on the 90th day after the publication of the ruling on their invalidity by the Constitutional Court of the Slovak Republic. This ruling must be published in a manner established for the promulgation of laws. (3) Decisions on the invalidity of legal regulations are made by the Constitutional Court of the Slovak Republic at the proposal of persons listed in Article 130. (4) The interpretation and application of constitutional laws, laws, and other generally binding legal regulations must be in harmony with this Constitution" (Slovak Constitution 1992).

Considering the sources, Elster (1992, pp. 15-16) stated that possible sources of post-Communist constitutions were contemporary European models; the pre-Communist past; the more recent Communist past; and the subsequent reaction to Communism. Stein (1997, p. 68) reinforced the influence of European parliamentary systems, the Constitutional Courts and indirect election of the President. Moreover, the Communist past is visible in the figure of the President politically accountable to the Parliament. Then, the revulsion against the past is epitomized in the abolition of the Soviet-type presidium over the legislature (Stein 1997, p. 68). Last, but not least, the widening of economic and social rights was heavily influenced by the will of the Movement for Democratic Slovakia and the Party of the Democratic Left.

3.1.2 Limitations to the Rule of Law

Art. 13 of the Slovak Constitution set out the limits on rights and imposing duties. In particular, it states that: "Duties may be imposed (a) by statute or on the basis of a statute, within its limits, and while complying with basic rights and freedoms, (b) by international treaty pursuant to Art. 7, par. 4 which directly establishes rights and obligations of natural persons or legal persons, or (c) by government ordinance pursuant to Art. 120, para. 2. (2) Limits to basic rights and freedoms may be set only by a statute under conditions laid down in this Constitution. (3) Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions. (4) When restricting basic rights and freedoms, attention must be paid to their essence and meaning. These restrictions may only be used for the prescribed purpose" (Slovak Constitution 1992). Hence, rights limitation

clause is quite vigorous. It contains a set of limitations usually associated with German-styled rights limitation clause (Vikarská and Bobek 2019, p. 853). Specifically, Art. 13(1) and 13(2) provide for *Gesetzesvorbehalt*. In other words, the fact that limitations to rights and possible duties are allowed only by a statue, i.e. an Act of Parliament.

Apart from Art. 7(4) and Art. 120(2) that are clearly mentioned by Art. 13 there are also more specific limitations. For example, Art. 17 on detention conditions, Art. 25(1) on compulsory military service, Art. 42(1) on school attendance and Art. 54 on restrictions on entrepreneurial activities and restrictions on the right to strike. However, limits are further restrained. Art. 2(2) states that: "State bodies may act only on the basis of the Constitution, within its limits, and to the extent and in a manner which shall be laid down by law" (Slovak Constitution 1992). As a result, the State cannot impose limits over fundamental rights and freedoms without the entitlement of the Constitution or of the law (Vikarská and Bobek 2019, p. 853). Importantly, the Constitution contains a procedural limit to change the constitutional system. Art. 93(3) provides that: "Basic rights and liberties, taxes, levies, and the state budget cannot be the subject of a referendum" (Slovak Constitution 1992). Hence, at least from a theoretical perspective it is impossible to adopt provision limiting rights and liberties as a result of a referendum.

Shifting the focus toward the Rule of Law, as stated before, Art. 1(1) holds that the Slovak Republic "is a sovereign, democratic state governed by the Rule of Law" (Slovak Constitution 1992). The concept is really close to the German notion of *Rechtsstaat* (Vikarská and Bobek 2019, p. 854). Even though the features of this notion are not outlined in the Constitution, often courts refer to the Rule of Law principle in their reasoning. In this case it is an umbrella concept including legal certainty, legitimate expectations, the prohibition of retroactivity. Moreover, the Slovak Constitutional Court rendered it into detailed constitutional principles. In PL. ÚS 3/00, the Slovak Constitutional Court clarified that the Rule of Law principle also includes the citizens' trust in the legal order. In principle, it is necessary to protect the trust that the legal consequences that follow from unchanging factual circumstances are recognised (and remain recognised). However, the protection of such trust does not apply in cases where trust in a certain legal state would not be substantively justified, i.e. the rule of law principle does not protect a citizen from every subjectively perceived loss of trust or from every disappointment" (SCC 2001). Plus, in PL. ÚS 17/08, the Slovak Constitutional Court prescribes a material notion of the Rule of Law: "The material rule of law concept includes a requirement of substantive quality and value quality of a legal norm, which is to ensure that the legal instrument, as implemented in the chosen legislative regulation, is adequate in relation to the legitimate aim pursued by the legislator, and that the chose" (SCC 2009).

Considering judicial protection, Art. 46 provides the right to access to a court. Specifically: "(1) Everyone may claim his right in a manner laid down by law in an independent and impartial court and, in cases laid down by law, at another body of the Slovak Republic. (2) Anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision re-examined, unless laid down otherwise by law. The re-examination of decisions concerning basic rights and freedoms may not, however, be excluded from the court's authority. (3) Everyone is entitled to compensation for damage incurred as

a result of an unlawful decision by a court, or another state or public administration body, or as a result of an incorrect official procedure. (4) Conditions and details concerning judicial and other legal protection shall be laid down by law. This article was interpreted in a variety of ways. Since the beginning it was linked to the Rule of Law. For example, in I. ÚS 4/94, the Court stated: "the right to judicial protection is not exhausted by a victory in a civil dispute; the right to judicial protection also means that the courts are bound by law, both procedurally and substantively" (SCC 1994). Moreover, in I. ÚS 6/97: "the practice of a judicial institution, which acts in accordance with substantive and procedural provisions of law, cannot establish a breach of a fundamental right embedded in Art. 46(1) of the Constitution" (SCC 1997). Judges are formally considered independent in the decision-making process (Školkay 2014, p. 118). There are explicit duties concerning the jurisprudence of ECtHR. This duty was reinforced by the CC. however, it is not always followed by lower courts.

Even though formally the judiciary is enhanced by the constitution, it still presents many flows. It is a widespread conception among scholars and the Slovak population that it is highly dysfunctional. A legal system can be defined functional, inter alia, by the quality of legislation and/or the quality of the implementation of the law by courts, public servants and authorities (Čollák, 2011; Murín, 2010). In the Slovak case, the quality is poor due to the lack of transparency of the legislative process. Specifically, changes in the law are considered as minor additions to acts and regulations. Moreover, provisions are contradictory. Such features are typical of countries in transition that need to adjust to a completely new political and legal asset in a very short time framework (Capíková 2005, p. 602).

Usually inappropriate implementation is linked to clientelist, patronage and low professional competences (Školkay 2014, p. 117). At the same time, the Slovak judiciary shows a high degree of judicial independence compared to other East European Countries (Guarnieri and Piana, 2011). Kosar pointed out that authoritarian tendencies re-emerged and judges were able to avoid any mechanism of accountability and transparent decision-making process (Školkay 2014, p. 117). According to Voigt (2008; p. 95) "fully independent judges could behave in an inefficient or corrupt way or apply the law inconsistently." Drawbacks in the Slovak judicial systems are particularly evident in cases related to the enhancement of human rights such as the Freedom of Expression, the right to privacy, the right to honour, the right to human dignity, and so on in a media environment.

In February 2019, the Constitutional Court was paralysed as 9 out of 13 of mandate of constitutional judges simultaneously expired. According to the Constitution, the parliament selects twice as many candidates as the number of vacancies by a simple majority. Then it is up to the president appointing candidates from this list (Učeň 2020). Yet during the term of former president Kiska, the parliament was not able to fulfil its task. As a result, simple majority was employed. In September the full number of candidates was a selected under the presidency of Čaputová. Finally, the six judges were appointed in October. The most problematic aspect of this situation was that the Constitutional Court was incomplete for almost eight months. Hence there were important delays with cases resolutions.

As pointed out by the GRECO Evaluation Team (GET) (2019, p. 9), the President of the Slovak Republic has a primarily ceremonial role. He/ She is not directly involved in the day-to-day exercise of governmental functions or in advising the government on such functions. Article 108 states that it is the government that is the supreme executive body of the country. Even though the President has some formal functions, they are actually delegated to the government or influenced by it, the National Assembly or other bodies. Moreover, the President can express his/her opinion on specific political issues, yet it does not impact the decisions made by the government. As a result, the President of the Slovak Republic does not exercise top executive functions (GET 2019, p. 9).

Moreover, there are other issues concerning the role of state secretaries, as considered as a category on their own. They are neither ministries, nor civil servants. They are expressly mentioned as a category to which the Conflict of Interest Act (applicable to officials such as ministers) would normally apply (GET 2019, p. 11). Nevertheless, they are considered "civil servants in public functions" for the purpose of the Civil Service Act. Yet, not all provisions apply to them. Such sui generis status generates a grey zone that might generate confusion. As a result, GET advised to introduce an unequivocal standard to apply to them. Moreover, they grey zone expands, considering that state secretaries are appointed by the government to a particular ministry on the proposal of the minister in charge (GET 2019, p. 11). They play a crucial executive role within the remit that they are given by this minister. Even though ministers shall enjoy a certain degree of freedom in choosing their collaborators, yet it is crucial to formalize criteria of selection to appoint state secretaries.

Establishing a general system might be beneficial both from a formal perspective, but also from the perspective of accountability and transparency towards the population. It was heavily stressed to introduce unambiguous integrity criteria such potential conflicts of interest linked to their interests and/or those of their dependents, liabilities, secondary activities, links with lobbyists or third parties seeking to influence decision-making (GET 2019, p. 13). Moreover, GET suggested to clarify the positions of political advisors in three main aspects: i) advisers, including those working in advisory boards which may influence political decision-making, should undergo an integrity check as part of recruitment and; (ii) the names of all advisers, their functions and remuneration linked to government tasks should be systematically published on governmental websites.

3.1.3 The importance of Art. 26: the establishment of the Freedom of the Press

The third part of the Slovak Constitution is focused on Political Rights and it opens with Art. 26 of the Freedom of Expression. "(1) The freedom of speech and the right to information are guaranteed. (2) Everyone has the right to express his views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to licensing procedures. Enterprise in the fields of radio and television may be pegged to the awarding of an authorization from the state. The conditions will be specified by law. (3) Censorship is banned. (4) The freedom of speech and the right to seek out and spread information can be restricted by law if such a measure is unavoidable in a democratic society to protect the rights and liberties of others, state security, public order, or public health and

morality. (5) State bodies and territorial self-administration bodies are under an obligation to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution will be specified by law" (Slovak Constitution 1992). Hence, at least from a theoretical perspective, the Freedom of Expression and the Freedom of the Press are ensured by the Slovak Constitution.

In order to understand the development of the Freedom of the Press in Slovakia, it is crucial to go back to its shared past with Czech Republic. After World War II, there was a short period of political independence for Czechoslovakia, as well as Hungary. Following the 1948 Communist invasion, censorship was reintroduced in both countries. The regime adopted the Leninist theory and practice of press. In other words, the press and other available media were owned by state organizations that employed them as a tool of propaganda (Bajomi-Lázár and Simek 2003, p. 386). As a result, supply was determined by the Party's objectives, rather than the actual audience's requests. Media were strongly politicized. Even entertainment was not immune to this. Formally the press presented a certain degree of plurality. In reality, the situation was quite different. Newspapers delivered more or less the same messages with the similar words (Bajomi-Lázár and Simek 2003, p. 386).

Moreover, self-censorship of journalists increased. Their selection and appointment were linked to their political affiliation and loyalty. In this sense, it is possible to see a resemblance with the Italian Fascist regime analysed in Chapter IV. In the Soviet context, the journalist was perceived as "the Party's soldier" and "the architect of the soul" who had to make up for the legitimacy deficit of the regime caused by the lack of power-holders' democratic mandates (Bajomi-Lázár and Simek 2003, p. 386). Journalists that were loyal to the system received a comparatively higher salary. They were not allowed to work on current issues concerning Western Europe. Even though journalists tried to justify any move of the regime and glorify it, the discrepancy between their articles and reality was evident. Their credibility was challenged by radio stations, such as the BBC, which gave a completely different account of the reality of Soviet countries. Thanks to the accessibility of foreign media, it was possible to challenge state's monopoly over information.

The first legal change strictly related to the press was the amendment of the Press Law in March 1990. The Press Law originally passed in 1966 and was modified twice in 1968 (Johnson and Školkay 2005, p. 70). The 1990 amendment reintroduced de iure individual freedom to publish the printed press. Moreover, the amendment cancelled the institutional ownership of all media. Before the liberalisation local authorities' permission was needed. However, liberalisation still had some flaws. For example, it lacked any sanctions against state institutions that refused to give information to those who sought it and the failure to guarantee the right to editorial secrecy (Johnson and Školkay 2005, p. 70).

The political transformation completely freed Slovak printed press. State-owned newspapers were privatized, and new titles flourished (Bajomi-Lázár and Simek 2003). The most important newspapers were Novy čas (New Time), Pravda (The Truth), Šport, Sme (We Are), ÚjSzó (New Word, in Hungarian), and Národná obroda (National

Resurgence Revival). The majority of nationwide newspapers were owned by Swiss and German media companies like Bertelsmann, Verlags-gruppe Passau, and Ringier. The Federal Broadcasting Act (Law 468/199) established the basis of a dual broadcasting system. In 1993 the it was replaced after nine years by Law 166/1993. Thanks to it, it was possible to set actual conditions for develop a dual system (Johnson and Školkay 2005, p. 70). Moreover, it splits the frequency spectrum between the Czech Republic and Slovakia.

Broadcasting is managed by the Council for Broadcasting and Retransmission (RVR), which allocates broadcasting licenses and checks on ethical and legal standards. However, the Slovak media market still lacks transparency. Moreover, there is no public body that actually checks in-depth map of the Slovak media market (Sampor 2020, p. 9). Act on the Register of Public Sector Partners can actually disclose ultimate owners of major media. Yet media that did not deal with the state or that are not publicly owned are not included in the list. As a result, it is only a partial perspective. As a result, benefits from this Act in the field of money laundering are limited (Sampor 2020, p. 9). Considering transparency of media ownership, it has the high-risk score of 81% MPM 2020. Even media score concentration is high, showing a lack of clarity in the overall media market. Media legislation entails precise thresholds and specific limitations to prevent a high degree of horizontal concentration. Due to the fact that neither the Broadcasting Council nor the Ministry of Culture actually measure the media market, it is complicated to assess efficiency and media concentration. There are no specific rules considering online platforms concentration and competition enforcement. Notably, there is a lack of protection for journalists in case of change in ownership or in editorial line. Moreover, appointments and dismissals of editors-in-chief insuring that these are not influenced by commercial reasons, it is ensured only by provisions of Labour Law (Sampor 2020, p. 9).

Together with the two channels of public service Slovak Television, i.e. STV 1 and STV 2, private commercial channels have also been broadcasting since 1996 (Bajomi-Lázár and Simek 2003). Markíza is the most popular private television and it is owned by Pavol Rusko, the minority owner being Central European Media Enterprises. Successively Rusko founded the political party Aliancia Nového Občana (New Citizens Alliance), which led to the intense politicization of TV Markíza's news programs. He is also involved in the publishing newspapers such as including Narodna Obradaand Magazin Markíza and is linked to Radio Okey. Considering commercial counterparts there are TVJOJ (Czech entrepreneurs) and TA3 (Millenium Electronics Limited, a British company). Moreover, there are the Czech TV Nova, RTL Klub and the Hungarian Television, watched especially by the Hungarian minority living in Slovakia. Public service broadcasting is financed through a mechanism of fees, state-subsidies and advertisements. Nevertheless, it is heavily underfunded and characterized by significant losses in recent years (Bajomi-Lázár and Simek 2003). As result, political elites can exert pressure in its programs. Shifting focus to Public Service Slovak Radio broadcasts through six circuits. The main station is Rádio Slovensko. Its additional channel is Rádio Net and broadcasts also online. Major nationwide commercial radios include Rádio Rock FM, the commercial station of public service radio, and several private stations, such as RadioOkey, FUN Radio and Radio Twist. There is a total of 24 private radio stations in Slovakia, including regional and local broadcasters; all of the important stations are owned by Slovak investors.

It was observed that the publishing line of television channels and radio stations were heavily influenced by the political class, especially during electoral campaigns due to the fact that governing councils are appointed on political basis. In order to understand the context, it shall be stressed that during the first decade after Communism, Slovakia was led by Prime Minister Vladimir Mečiar. He decided to employ nation's media as his own personal public relations and election campaign organization (Shanor 2003, p. 139). After he was defeated in 1998 elections, the winning centre-right coalition decided to change media laws in order to give journalists more independence and freedom. During his mandate Mečiar used to fire journalists who did not share his ideas. Moreover, he eliminated independent and privately-owned newspapers through punitive taxation. He hired secret police to threat journalists (Shanor 2003, p. 139). For this reason, he was often compared to Serbian leader Slobodan Milošević. Luckily, Slovak democracy was not completely destroyed by its misuse against minorities. When Mečiar was running for elections in 1998, the campaign "completely abandoned any pretence of providing voters with fair, accurate, and balanced coverage" (Shanor 2003, p. 140).

He knew that the 84% of voters watched government TV channels. As a result, he broadcasted 75% of his campaign on these channels (Shanor 2003, p. 140). However, the two leading private stations Radio Twist and Markiza television leave space for his opponents Mikuláš Dzurinda and Rudolf Schuster. As a result, they were able to stress the issues of Mečiar's demagoguery. Specifically, Slovakia falling behind in EU and NATO membership. They organized campaigns against dominant media fostering accurate and impartial media coverage. Even though nationalists were not in office anymore, they kept on fight to regain their previous role. However, independent media sharply contrasted them. For example, National Party leader Jan Slota gained less than 3% consensus during 1999 presidential elections. His situation was not improved by the drunken speech he delivered spread nationwide by Radio Twist (Shanor 2003, p. 140).

Considering the current status of Slovak creative industry, it occupies a rather small fraction in the total economy of the country (Sampor 2020, p. 7). Shifting the focus on broadcasting, the system is made by the public service media company and two major private players, the TV Markiza Group and the TV JOJ Group. The situation is similar in the case of radio broadcasting. Even in this case, the public media owns the majority of both TV and programming service. Major radio stations are Radio Expres and Fun Radio. There are also minority and municipal media, yet they do not have the same entity of market share (Sampor 2020, p. 7). Due to language barriers, consumption of foreign-based media is still quite limited. Czech-based media still play a crucial role due to their shared past and language similarities. The most important regulatory authority is the Council for Broadcasting and Retransmission. It is both in charge of content regulation and it is in charge of licensing, with some shared competencies with the Regulatory Authority for Electronic Communications and Postal Services (formerly the Telecommunication Office) (Sampor 2020, p. 7). Self-regulation is controlled by the Slovak Advertising Standards Council. The main industry in the policy field is the Creative Industry Forum. Media market is regulated by general competition laws with non-standing monitoring mechanism.

Ethics in journalism is supervised by the Print Digital Council of the Slovak Republic, the executive body of the Association for the Protection of journalistic ethics (APJE). Specifically, the Print Digital Council addresses complaints concerning alleged violation of ethical code, as well as motions about restraining journalists' access to information (TRSR 2020). The Association for the Protection of journalistic ethics in the Slovak Republic was signed on the 2nd of October 2001 by representatives of the Slovak Syndicate of Journalists and Slovak Press Publishers' Association. Due to the challenges faced by online reporting, the original founders of the APJE invited the Internet Association IAB Slovakia to join them.

Even if generalization shall be avoided, it was observed that judicial decision-making in cases concerning the freedom of speech, access to information and the protection of personal rights in the field of media was considered rather problematic. It happened especially in lower courts outside Bratislva (Školkay 2014, p. 119). The same goes for regional courts and by some members of the Supreme Court (SC). Specifically, the SC shown inconsistency on the same matters. Even the Constitutional Court (CC) was not fully consistent with its judgements on the same kinds of disputes. However, it is also true the fact that a more liberal stance was adopted by the SC and the CC. It is possible to observe deficiencies in case where there are concurring rights such as libel and defamation (Školkay 2014, p. 119). Financial compensation is present usually when a politician or a judge is involved. The justification for granting large amounts of compensation for non-pecuniary damages is often troublesome (Kováčechová, 2012). Even if all courts claim to consider all the specificities of all the case they analyse, yet there is a certain degree of partiality toward the protection of one's dignity or honour cases involving the media. Moreover, lower courts tend to focus on the public interest mission of the media i.e. the fact that media shall provide information in public interest. Plus, Courts do not take into account that media act in good faith (Školkay 2014, p. 119).

The only court in Slovakia that has as principles the Freedom of Expression and the Freedom of Information is the CC (Procházka 2010, p. 40). This is why it received special attention over the past few years in such matters. Usually, the majority of cases entailing the breach of Art. 10 ECHR were submitted by natural persons, generally politicians. Recently, the situation changed. Nowadays cases are brought in courts by publishers and journalists. Probably it is due to the fact that the CC is now more prone to apply the jurisprudence of the ECtHR. However, problems persist as the judge of CC in particular, and of lower courts in general, take decisions who are inconsistent with previous ones. As pointed out by a judge of the CC, the CC changes its legal opinion unpredictably and unexpectedly, without any notification of change, and often without giving any explanation (Drgonec 2008a, p. 34).

Another important legislative piece that regulates Press Freedom in Slovakia is the Whistle-blower Protection Act No. 307/2014. It provides protection to persons in case of unjustified sanctions in employment relationships as well as in case they want to report a crime or anti-social activity (GET 2020, p. 17). The Act regulates also the subsequent obligations of the State in the field of prevention of anti-social activity and anti-corruption education

and training. According to section 10 and section 11 of the Act, ministries have to designate a person responsible for receiving reports and subsequently verifying them (GET 2020, p. 17). However, the GET discovered that the Act did not prove effective. People never felt truly empowered to reveal what they knew and being protected by the law. Moreover, a study published in 2017 by the National Human Right Centre demonstrated that people were not actually aware of the existence of the Act (GET 2020, p. 17). As a result, a new Whistle blower Act was adopted on the 31st January 2019. However, it is too soon to assess its performances.

Another aspect that shall be considered it is the high degree of misinformation spread by social media. The 2019 by Reuters Institute Digital News Report shown that misinformation on social media is fostered especially by two aspects. The first one is the exposure of PR agency running campaigns for politicians and firms creating fake social media accounts heating discussion on purpose (Reuters Institute Digital News Report 2019, p. 106). The second issue concerned the repeated failure of Facebook to remove posts and block accounts reported due to hate speech and false identities. Moreover, neither Facebook nor Google has a fact-checking mechanism for Slovakia. As a result, people cannot truly on news shared via social media. Tensions continued between staff and management at RTVS about the ability or will of top management to shield programme-makers from political pressure. A consistent number of people resigned from news and current affairs complaining of a toxic working atmosphere (Reuters Institute Digital News Report 2019, p. 106).

3.2 The Murder of the Investigative Journalist Ján Kuciak and the Implications for the Erosion of the Rule of Law

3.2.1 The Murder and Political Reactions

On the 26th of February 2018 Ján Kuciak and his partner Martina Kušnírová were found dead in their house in Veľká Mača. Both were shot at close range with a 9 mm calibre handgun. It was reported that after days of calls unanswered, Kušnírová's mother called the police. Kuciak was an investigative journalist and worked for the online newspaper Aktuality. He worked on a series of political sensitive cases, such as the Panama Papers, economic crime, potential fraud in distributing EU funds on the national level, VAT fraud and carousel schemes. His colleagues believed that he was a very talented journalist with a great potential (European Parliament 2018b, p. 3). As soon as Kuciak was declared dead, attention shifted to Slovak businessman Marian Kočner. He was linked to local mafia and at the time was under investigation for a possible VAT-returns fraud and carousel speculations. Moreover, he was the owned an apartment in Bonaparte, the same complex where the PM Robert Fico used to live and the Interior Minister Denise Saková owns a flat. Apart from the alleged fraud concerning the apartment, Kuciak investigated on his speculative trading practices. As a result, Kočner threatened Kuciak, who sent a criminal complaint to the Police (European Parliament 2018b, p. 3). The journalist shared a post on his Facebook profile, stating that after 44 days after the submission of the complaint "my case doesn't even seem to have been assigned to any police officer to deal with". When journalists questioned the Interior Minister about Kočner's threats to Kuciak, he replied that: "He is one of those who only looks for the dirt, like yourselves" (European Parliament 2018b, p. 3). Subsequently, the case closed with no hearing.

Canadian journalist Tom Nicholson, who lived in Slovakia for twenty years, published an article in the online newspaper Politico, where he suggested the Kuciak was in the final phase of his investigations on Italian 'Ndrangheta in Slovakia. The hint was confirmed by Actuality, who published Kuciak's last article even though it was unfinished. Journalist Rodovan Branik suggested that Kuciak was murdered due to his investigations on corruption at the Highest Court in Slovakia. However, this version was denied by the publisher aktualne.sk (European Parliament 2018b, p. 3). Since the revelation, protests were held not also locally, but also globally. Commemorative events were hold. Participation at these events was compared to the November 1989's Velvet Revolution (European Parliament 2018b, p. 4). PM, Interior Minister and the Police expressed their commitment in investigating the case since the murder was made public. Subsequently, Kuciak's murder resulted in a political crisis. Prime Minister Fico stated that the political opposition was exploiting the situation. At the same time, some members of the opposition accused the ruling party Smer-SD of being indirectly involved in the murder. Veronika Remišová, from the opposition party OL'aNO, compared the murders to what happened to Róbert Remiáš. He was a police officer murdered in 1996. Remiáš was allegedly murder by the Slovak Mafia upon the orders of Prime Minister Vladimír Mečiar.

In February, Freedom and Solidarity and OL'aNO asked for the resignation of Interior Minister Robert Kaliňák and Police President Tibor Gašpar. On Tuesday 27th of February, the PM offered 1 million euro to those who could provide the police with information. Notwithstanding public pressure on the Interior Ministry and on the head of Police to resign, the insisted that their priority was to investigate on the murder. On the following day, the Minister of Culture Marek Mad'arič resigned: "as a culture minister, I can't cope with the fact that a journalist was killed during my tenure." After Mad'arič's resignation, the Slovak President called for either a major government reshuffle or early elections (European Parliament 2018b, p. 3). At this point, Fico accused him of joining the opposition. Moreover, he accused to president to conspire with George Soros to make a coup d'état.

One week later, the Slovak police questioned 7 Italian nationals, allegedly member of 'Ndrangheta operating in Slovakia. Subsequently they were released. The Interior Minister stated that experts from the FBI, Scotland Yard and Europol co-operated on the investigations. In a video shared by Aktuality.sk, the Saková stated that: "In criminal law one applies the law in force at the time of the crime, so this (amending the legislation to allow for JITs) will not help us now" (European Parliament 2018b, p. 4). Hence, the Europol team will join the investigations only partially. It will not have complete access to all the files. Kušnírová's mother believed that the participation of international authorities in the investigations was crucial. She publicly stated her mistrust in the investigations led by the Slovak police. A public petition on Changenet.org called for investigation to be completely opened to experts from abroad (European Parliament 2018b, p. 4). On the 12th of March 2018, the Minister of Interior Robert Kaliňák resigned.

During the ad-hoc mission set up by the EP information Office in Bratislava and the Slovak Ministry of Foreign Affairs many problematics were highlighted. It was repeatedly mentioned that there is a high distrust in the

institutions and a perceived lack of protection for journalists. Moreover, it was underlined that journalists' murders are often connected to top level politicians (European Parliament 2018b, p. 5). NGOs held that law enforcement was concerning. The results of anti-corruption forces investigations were poor. Considering laws on public procurement, it was mentioned that the Slovak legislation is in line with EU legislation, but the enforcement is problematic. Other problematics were noted in the field of Rule of Law, access to justice and prosecutions. Conflict of interests exists, for example between the General Prosecutor Office and the Organs which should check on their activities, or the fact that Minister of Interior can dismiss the head of Police and the fact that there is not real independent inspection. As a result, it was suggested to improve the transparency process of selection and nomination of the judiciary and law enforcement (European Parliament 2018b, p. 5). In this way, it would be possible to reduce perceived distrust in their actions.

It was analysed that both journalists and NGOs and threatened. Prime Minister Fico repeatedly attacked journalists. Moreover, the lack of real dialogue between the representatives and civil society is a sign of societal dysfunctionality. NGOs shared examples of cases in which there were criminal charges against journalists for sharing information obtained thanks to access to information legislation (European Parliament 2018b, p. 5). There is a widespread fear that information can be jeopardised. Considering financial regulation, it was highlighted that in the register of companies where you can check the financial performance of the companies, some companies do not upload their financial statements; the fact that in the register of contracts, substantial parts of the contracts are covered, not being visible; the fact that this practice is also applied to contracts involving EU money where important parts are blackened (European Parliament 2018b, p. 5).

Slovakia was not perceived to be so problematic before what happened to Ján Kuciak. The role of organised crime in the country was analysed. Especially linked to the misuse of EU funds in the hands of oligarchs. According to the NGOs, the problems that Slovakia is facing right now are essentially political in nature. Even though journalists and civil society are constantly pointing at where the problem is, there are no actual improvement. For example, no important resignation happened after major corruption scandals or after the murder. Moreover, it was highlighted that the situation does not involve merely the political parties in power, but also the opposition parties.

Journalists asked for guarantees that Kuciak case would be monitored. They reinforced that they could not believe that such a thing can happen in their country (European Parliament 2018b, p. 8). It was restated that journalists were threatened before and charges were pressed against online media platforms. Two years ago, the situation was different. Now journalists live under constant threat. Concerns were raised also in the independence of media and the issue of media ownership. In this regard it was noted that media ownership is not so transparent. There are several situations in which the oligarchs own the media, hidden like minority holders (European Parliament 2018b, p. 8). Oligarchs are not alone. Also financial groups own media groups. As a result, some journalists decided to leave their jobs. Moreover, independent media rejects party advertisement. Considering the presence of Italian Mafia in the country, Italian Anti-Mafia authorities warned Slovakian authorities in 2017 about the presence of

Mafia on Slovak territory, especially in the Eastern part of the country. Journalists stressed the close relationship between the Prime Minister and people connected to organized crime. It was often mentioned that for Slovakia the problem is not the legislation in place, rather the fact that is not properly enforced. For example, no one among the top official was put into jail notwithstanding numerous allegations of corruption. Even though media legislation was copied from German legislation, it is not enough to assure media independence. Independence does not depend merely on laws, there are other concurring factors.

The presence of organized crime groups is linked to the misuse of EU funds. Journalistic inquiries established the connection between the two. For example, in case of agricultural subsidies paid via APA, conditions are extremely vague. There are no precise criteria to be fulfilled such as ownership of land or if the land is cultivated (European Parliament 2018b, p. 9). EU funds were possibility as an opportunity for corruption. Moreover, the practises employed by Italian mafia are now used by organised crime in Slovakia. It was also noted that EU funds play an important role in crucial bargaining. Yet they do not deliver much independence or transparency.

During the meeting with the government it was underlined by at the time President of the Slovak Republic Andrej Kiska that he is very proud of his country and is confident that the investigators will find out the reason behind the killings. The investigators need trust and time and he as President wants to make sure that the situation in the country keeps calm and quiet. He announced his intention to sign the next day a memorandum on the situation and how to solve it (European Parliament 2018b, p. 9). Ms Gräßle underlined the lack of trust towards the state institutions, especially towards the police and the law enforcement institutions, which was expressed throughout the meetings of the morning with the representatives of civil society and journalists. She was very concerned by these allegations which are in contrast to the perspective from Brussels where Slovakia was simply passing under the radar. Confronted with allegations that EU money "is stolen" or seen as a gift, she is alarmed and willing to ensure an appropriate follow-up. Kiska replied that even though the people distrust the government, it is his duty to help start a new process. Moreover, it appears that Slovakia is the Member State with the lowest trust in Justice in the EU. Hence it is crucial to show to people that there is a real change in government (European Parliament 2018b, p. 10).

Considering the allegedly stolen EU fund, the President stressed that things have started moving in the right direction, for instance in the Ministry of Justice. However, more needs to be done to regain trust. Notably the political mechanisms of control will have to be reinforced and consequences need to be drawn whenever something went wrong (European Parliament 2018b, p. 10). Minister of Finance, Peter Kažimír, shown the structure management of EU funds by various Slovak bodies and stated that Slovakia follows closely the EC recommendations regarding audit standards.

Prime Minister Robert Fico stated that the very idea the Mafia might have an interest in eastern Slovakia is absurd because there is nothing out there, but he admitted that the possibility to buy agricultural land and to take direct

payments under the agricultural policy might be interesting for some. He raised the question whether it is right to take subsidies for non-cultivated land which might give ground for speculation (European Parliament 2018b, p. 13). Considering the lack of a positive reply to the request by Mr Kuciak, Fico explained that his request was linked to a recorded phone call with a businessman, but what has been recorded did not meet the criteria of a criminal offense and could not be considered as a thread of violence. On the reproach that the police did not do anything for 44 days on the late journalist's request, Mr Kaliňák clarified that it took the prosecution 22 days to refer the matter to the police, but that this is not in his hands since the prosecution is entirely independent in Slovakia and not submitted under the control of the Minister of the Interior (European Parliament 2018b, p. 14).

Shifting the focus on Mafia activities in Slovakia, Fico pointed out that Slovakia was not mentioned at all in a comprehensive report of 2013 describing the attitudes of the Mafia all over Europe. According to Fico, if there are Mafiosi in Slovakia, they do not actually practice organised crime (European Parliament 2018b, p. 14). There are four families known for being linked with Italian 'Ndrangheta. Yet, Fico argued that it does not mean that they are part of Mafia. In conclusion, the Prime Minister reinforced his commitment to make sure that what happened will never occur again and offered to make available to the delegation the report detailing all the anti-corruption measures adopted during the past three years (European Parliament 2018b, p. 14).

3.2.2 The Reactions of the European Union

After the murder of Ján Kuciak and of his partner Martina Kušnírová, the EU decided to send an ad-hoc fact-finding mission to examine the investigations on the murders of journalists and the way these are progressing, and on the status of the Rule of Law and corruption in the country. The mission is under the same group who analysed Malta: LIBE. According to the journalists met by the delegation, public debate in Slovakia is becoming increasingly aggressive, allowing to basically attack journalists (LIBE 2018, p. 4). Moreover, a public campaign reinforced the idea that protests were organised by international forces. The government was not truly interest in root for a change. After the murder "high toxic persons in the government were replaced by less toxic persons" (LIBE 2018, p. 4). As no major change occurred, journalists shared their disappointment in different occasions. Considering the former chief of police Mr Gašpar, he became advisor of the Ministry of Interior Jan Hamáček in Czech Republic. Róbert Krajmer resigned from his position as head of the National Anti-Corruption Police unit. He currently works as advisor at the Ministry of Interior. Protection of journalists is a highly debated topic. Yet, no one took practical measures to ensure it. Considering the murder investigations, errors were done since the very beginning. Actual political will to prosecute the investigations was questioned (LIBE 2018, p. 4).

In October 2019 Gašpar pursued a hate-filled communication campaign aimed at the editor-in-chief of Aktuality.sk Peter Bardy, journalist Monika Tódová from Dennik N and Jana Šimíčková from the weekly Plus 7. He targeted the journalists investigating on the murder of Kuciak's murder (COE 2019b). The police were investigating the role of the ex police chief. He was suspected of unlawfully gathering information on journalists, Kuciak included. In September 2019 he published a post on Facebook after that Peter Bárdy and Martin Turček

implied that his official social media profiles were not managed by himself, but by a professional social media manager. Even though they provided evidence sustaining this hypothesis, Gašpar accused them of "the biggest lies", of a bias against him, and of replacing journalistic ethics by "targeted propaganda" (COE 2019b). In another status, he stated that there was a conspiracy against him led by George Soros' Open Society Foundation and including Slovakia's "liberal media".

Shifting the focus to the seizure of Ms Holcová, it was stated that the police took her phone without following the procedures. In particular, the phone was not sealed in a separate envelope. Allegedly, the Slovak police stated that Europol did not have enough capacity to analyse the content of the phone (LIBE 2018, p. 4). Journalists said that their impression was that Europol did not want to touch a phone belonged to an investigative journalist. It was noted that investigations took eight hours and that three investigators were in charge. Inquirers seemed more interested in journalists' conversations, rather in actual solving the case (LIBE 2018, p. 5). Moving forward to RTVS and the people that decided to leave public service TV, it was noted that editorial protection was not fully ensured and that journalists were advised not to be too critical. After they left, changes in quality was perceived, as in the case of public protests that were completely ignored.

Some argued that public service media became governmental media (LIBE 2018, p. 5). Moreover, some believe that an erosion of truth is happening, public trust in the media is diminishing and journalists are obliged to be as neutral as possible. Specifically, when it comes to democratic values, there is widespread fear that they have to be so neutral that they are not respecting them. Considering the society, the atmosphere dramatically worsened, as corruption increased, and EU is not perceived in a positive way. EU subsidies are considered as gift. Moreover, people believe that money are stolen from the EU, but they do not perceive this money as their (LIBE 2018, p. 5). The role of opposition in Slovakia supporting protection of journalists is not perceived as truly genuine. Journalists do not perceive any kind of support from any side of politics.

During the meeting with Andrej Kiska, President of the Slovak Republic, different topics were analysed. First of all, he reinforced that restoring trust in the government is crucial. The appointment of a new government will not solve all tissues connected to corruption journalists' protection. In particular, the President Kiska focused on police and the nomination of judges of the Constitutional Court (LIBE 2018, p. 5). He held that a change in police is required, especially for what concerns independent police inspections. Moreover, he stated that when the new government was formed, he opposed to the appointment of the Ministry of Interior, as he believed that he would not be beneficial for the development of the police (LIBE 2018, p. 5). Considering a fixed term of seven years for the head of police, it would be detrimental for possible structural changes. For example, if appointed, two years before the elections, he might foster the current structure of the system. The new Minister of the Interior can have problem introducing changes. As a result, the President stated that he was in favour of introducing a fixed-term for the position of head of police.

Considering the murder of Ján Kuciak and his partner, Kiska stated that he is not allowed to get information from inside the investigations. The President believed that, due to the importance of the case, competent authorities will work to reach a conclusion as soon as possible. Considering the relationship between Slovak police and Europol, the President declared that he is not particularly aware of it (LIBE 2018, p. 6). Moving forward to the nomination of judges, the President stated that the Constitutional Court is formed by 13 judges appointed for a 12 years term. In 2018, nine new members had to be appointed. Eighteen persons were initially selected for the role by the Parliament. However, the President believed that the judges selected did not have enough experience for the role. At the moment there are discussion about revising the selection process (LIBE 2018, p. 6). When asked about the situation of journalism in the country, the President refused any comparison with Hungary. He believed that the situation in the two countries is completely different. In Slovakia is still possible for the opposition to publish and broadcast information. However, he is concerned with the increasing influence of oligarchs on media (LIBE 2018, p. 6). Moreover, he is concerned with the influence of pro-Russian forces in the country.

LIBE asked Europol to clarify if they had access to information extracted from Ms Holcová's phone, which was seized by the police. Europol that they were asked to co-operate in extracting information from the phone. Moreover, they stressed that they have a good relationship with Slovak authorities (LIBE 2018, p. 8). Considering the role of the FBI, Europol representatives stated that they are benefitting from USA expertise, including the FBI (LIBE 2018, p. 8). Moreover, it was stated that the investigation started with some mistakes. Following initial negotiations, Europol joined the investigations. Asked about possible sabotages, Europol replied that representatives could not whether they could see or suspect people trying to sabotage or slow down the investigation. They renewed their support to Slovak authorities.

Europol representatives underlined that they have never been so involved with Member States as in the case of Kuciak and in the case of Caruana Galizia. Europol believes that there is a difference in the two cases, as the Slovak situation is more complicated (LIBE 2018, p. 8). Considering powers that the agency needs and still does not have, Europol representative pointed out the possibility of identifying safe heavens in the case of organised crime can be useful. However, Member States are not ready for this step yet. Moreover, criminal organizations can choose for third as safe heavens. As a result, Europol could not investigate, as its mandate does not concern third countries. Moreover, the EU shall develop an organisation to identify crucial individuals involved in organised crime. Even though FIAUs share information, it is important to implement legislation on the same topic.

3.2.3 Recent Developments

The murder of Ján Kuciak and Martina Kušnírová had an important impact on Slovak politics. Its effects still endure in many different aspects of Slovak public life, ranging from national democratic governance, independent media, civil society, the judiciary, to the issue of corruption. The murder obliged the dominant coalition Smer-SD, SNS, and Most-Híd in a defensive mode (Učeň 2020). The scandal of corruption was extremely difficult.

Moreover, the scenario was complicated by the anti-Soros discourse brought about by conspiratorial movements. Investigations had an impact also on the hierarchy based on loyalty and opportunism who easily collapsed (Učeň 2020). In January 2020 started the trial of those accused of murdering Ján Kuciak and Martina Kušnírová and two of the defendants Miroslav Marček and Zoltán Andruskó were found guilty (RSF 2020b). Moreover, it was discovered a link between Marian Kočner, the controversial businessman accused of masterminding Kuciak's murder, and key political and judicial figures, including judges and the former prosecutor-general.

Prosecutors suspected Kočner of asking to trusted associate Alena Zsuzsová to arrange Kuciak's murder. Hence Zsuzsová contacted a middleman Zoltán Andruskó, who then in turn hired a pair of cousins, Tomáš Szabó and Miroslav Marček, to carry out the deed (ECPMF 2020). In January 2020 Marček pled guilty. As a former soldier he shot Kuciak twice in the chest when he opened the door. Then he explained that the murder of Martina Kušnírová was completely unplanned. He killed her after she saw his face. Marček was sentenced to 23 years in prison in April. In December, Andruskó confessed and decided to cooperate with prosecutors. Then he was sentenced to 15 years of prison. Letely he emerged as key prosecution witness, as revealed Zsuzsová showed him photographs of Kuciak and later paid him 50,000 euros in cash for the murder (ECPMF 2020). Meanwhile, the analysis of Kočner's mobile phone revealed the conversation Kočner and Zsuzsová had planning the murder. Another crucial witness is the former intelligence agent Peter Tóth. He testified that Kočner hired him to monitor Kuciak's movements. Moreover, Kočner expressed his desire to eliminate Kuciak. Nevertheless, on the 3rd of September 2020 Kočner and Zsuzsová were acquitted due to lack of evidence. The Commissioner for Human Rights Dunja Mijatović: "More than two years and half after the killing of Ján Kuciak and Martina Kušnírová, the court decision of today shows that there is still work to do to ensure justice and prevent impunity. This is owed to the families and colleagues of both victims, as well as to Slovak society at large."

Kočner is even responsible of having under surveillance three dozens of journalists, employing personal data from police databases (RSF 2020b). The operation was conducted between March 2017 and February 2018 by a former intelligence agent, Peter Tóth (COE 2019a). A report published by SME revealed that an organised group worked with Tóth. The group closely monitored personal lives and daily activities of journalists. It is widespread belief that the information gathered by Tóth's group were used to carry out Kuciak's murder. (COE 2019a). Meanwhile, former Prime Minister Robert Fico, together with his fellow Smer-SD member Luboš Blaha, repeatedly attacked journalists. Specifically, he used websites specialized in disinformation.

The opposition, along with civil society and independent media considered the murder as "a culmination of the corrupt system introduced and cultivated by Smer-SD since its ascent to power in 2006" (RSF 2020b). It was implied that at least from a moral perspective, the ruling coalition was accountable for the murder. This triggered mass protests all over the country. People did not merely demand public oversight for the investigation but also put forward openly political calls for the resignations of the Prime Minister and Minister of Interior. Political polarization increased over the year, especially after it was discovered that former prime minister Robert Fico's

wing of the ruling Smer-SD party was linked to many anti-systemic actors inside as well as outside the Parliament. Moreover, he tried to "constitutionalize" political crisis, in order to avoid his decisions being overturned by the opposition of a future majority (Učeň 2020). Another interesting aspect, it is the sustained growth in political pluralism. Two new political parties joined the political discourse. Progressive Slovakia (PS) appealed to the interests of frustrated progressive voters, while For the People, led by former president Andrej Kiska, aimed to capture the opposition constituency's disappointment with the performance of established anticorruption parties (Učeň 2020). These new political parties played an important role ahead 2020 elections.

Specifically, the rise of these parties underlined that Slovak voters are eager to support non-traditional parties to express their rejection toward traditional political parties (Učeň 2020). Even in presidential pole there was an interesting change. In 2019 Zuzana Čaputová of PS became president of Slovakia. Čaputová sudden rise is connected to the turbulence occurring in the country since the death of Ján Kuciak and his fiancée. As pointed out by the Roman Catholic priest Milan Bubak: "This tragic event's impact on Slovakia is comparable to the shock of the 9/11 attacks in the United States: it was a historic turning point, the effects of which will be felt for years to come" (Kalan 2019). PS started to acquire more and more importance in the second half of 2019 and started playing a crucial role in the political discourse (Učeň 2020). Štefan Harabin is another political candidate who gained thanks to the decline of traditional political parties. He is former justice minister and two-term chief justice of the Supreme Court, who capitalized heavily on radical anti-system rhetoric and won third place with 14 percent of the vote as an independent (Učeň 2020). Moreover, considering the European Parliament elections, parties actually campaigning on European issues had finally the possibility to emerge. Alongside PS stand the Euroskeptic People's Party–Our Slovakia (L'SNS). Nevertheless, the process was altered by legislative mistakes that temporarily denied her a seat.

Meanwhile, civil society organizations (CSOs) continued anticorruption protests begun in 2017 to pressure the state to continue the Kuciak murder investigation. At the same time, some ruling politicians tainted their reputation through a denigrating campaign. Considering media concentration and ownership, in 2019 companies previously owned by leading international media were acquired by local oligarchs. For example, Markiza was acquired by an investment group owned by Petr Kellner. Namely, one of the wealthiest Czech businessmen (RSF 2020b). The independence of the public radio and TV RTVS was often questioned when in 2018 a consistent number of journalists decided to leave due to the ultranationalist lead close to the SNS party. As a result, they were replaced by younger and less experienced professionals. Notably, the murder of Ján Kuciak was crucial to reinvigorate the press. Media outlets urged the authorities to continue with the investigations. The publication of leaks shown that together with other systemic pathologies, there was the will to eliminate the Rule of Law and the system of checks and balances (Učeň 2020).

In this context, the ruling party decided to launch a heavily criticized initiative: revive the practice of right to reply. From a practical perspective, it requires the media to publish rebuttals from public officials and politicians every

time they were mentioned in the press. This would imply a return to a provision first introduced in the Press Act in 2008, which was subsequently repealed in 2011 following strong domestic and international opposition. "I am concerned that these amendments will represent a regression of the legal environment of Slovakia's media, which currently enables them to report freely and without political pressure on matters of public interest," said Harlem Désir, the OSCE Representative on Freedom of the Media. "I call upon the authorities of Slovakia to take into account the objections raised, and I hope the parliament will eventually abandon these amendments, thus protecting media freedom and investigative journalism. Political actors must accept a higher level of scrutiny and criticism, and the press must be allowed to remain free to exercise its function without facing financial threats" (OSCE 2020).

Hence, in March 2019 Désir provided Slovak authorities with a legal review of proposed amendments. Based on the OSCE and EU standards, it was stressed the importance of Article 8 that restricts the right of reply of political leaders and public figures, extends the restriction to political and public legal entities, and to preserve the right only in response to "false, incomplete or truth-distortive" factual statements (OSCE 2020). Moreover, he advised the Parliament to revise Art. 8 in view of full compliance with Slovakia's commitments and obligations to comply with international human rights instruments. "We urge the Slovak president to use her power of veto and to reject these amendments, which could lead to abuses," said Pauline Adès-Mével, the head of RSF's European Union and Balkans desk. "It is vital, at time when the media are still revealing information about Ján Kuciak's murder that could affect certain politicians, that none of them should be able to obstruct the freedom to inform" (RSF 2019). The Slovak Press Publishers' Association (AVT) defined the proposal "Unnecessary. We do not know of any case when a politician would not be offered a relevant space for response. On the contrary, politicians are often unwilling to answer the questions they receive, and this is frequently the case with high state officials and Smer representatives" (International Press Institute 2019). The election of the new President Zuzana Čaputová of the emerging political party Progressive Slovakia was considered a ground-breaking moment for Slovak politics. Yet she allowed the right to reply reform to pass. As a result, the situation went back to as it was before the 2011 reform.

The Slovak justice system experienced significant issues resulted from investigations in Ján Kuciak murder. The investigations shed the lights on the fact that there were close ties between members of the judiciary and organized crime (Učeň 2020). Moreover, animosity between the ruling majority and former president Kiska paralysed the Constitutional Court for the first part of the year. The problem with the Court was solved right after the elections of Čaputová. Nevertheless, the judiciary still needs to eliminate the "judicial mafia" which had allowed for a long-time access to the justice system. Due to both internal and external pressures, a self-cleaning process started at the end of 2019. Following the same path, the fight against corruption progressed in 2019. A positive trend was observed in the activities of the Supreme Office of Control and the Office for Public Procurement. Specifically, it begun carrying out their mandate pursuing actual independence. They published protocols from inspections

critical to the proceedings of ministries, agencies and companies. Plus, they send police in case of alleged illegal activities (Učeň 2020).

Another important aspect is the issue of corruption. On that matter GET issued a report with recommendations to achieve improvements. First of all, it suggested to prevent operational corruption through an action plan based on an action plan focused on persons with top executive functions, and includes particular steps to mitigate risks identified in respect of them (GET 2019, p. 56). A code of ethic for people with top executive functions shall be adopted and made public. In this way it will be possible to provide accessible guidance in case of conflicts of interest and possible related manners. Moreover, there shall be rules regulating (i) contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision- making process and (ii) the disclosure of such contacts and the subject-matters discussed. Ad hoc disclosures shall be introduced considering ministers state secretaries and all advisers, regardless of their status, in situations of conflicts between private interests and official functions (GET 2019, p. 56). Plus, rules on gift and other benefits shall be strengthened through practical guidance.

Considering law enforcement agencies, GET suggested to strengthen fight against corruption within the Police Force (i) establishing an operational anti-corruption strategy on the basis of risk assessments identifying risk areas and measures to mitigate such risks and (ii) determining concrete measures for its implementation. Moreover, the Code of Ethics was updated in order to extensively cover all crucial matters such as conflict of interest, gifts, contacts with third parties, outside activities, the handling of confidential information (GET 2019, p. 58). A risk management shall be established in order to properly assess corruption risks and emerging threats. On the one hand, police officers shall be strained on integrity matters applicable to the police be strengthened and better connected to their professional development. On the other, investigators shall specialise in corruption cases. Ultimately, a council shall be established to provide councils on ethical matters. The safeguards of complain mechanism shall be enhanced, in order avoid police misconduct and foster transparency. Such rules are crucial to enhance transparency and limit risks of conflicts of interest.

Leaks of information related to the investigation on Ján Kuciak's murder prioritized and politicized the issue of corruption in the country (Učeň 2020). As a result, the government established in February 2019 the Office for the Protection of Whistleblowers with clearly established powers. Moreover, the Supreme Audit Office (NKÚ) fulfilled its mission contributing significantly to the cause. The NKÚ as well as the Public Procurement Office (ÚVO) worked closely with other institutions to take care of cases that were largely ignored by previous governments. Specifically, NKÚ dealt with an extremely specific public-private partnership (PPP) contract between the state and the private company SkyToll, which operates Slovakia's highway toll system (Učeň 2020). After careful investigations, it was discovered that the company was keeping the majority of revenues. Hence causing a loss in state budget of hundred million of euros.

Thanks to the investigations carried out by Kuciak when he was alive, corroborated by additional investigations, it was discovered the fraudulent scheme behind EU subsidies fund. Landowners benefitting from political connection were able to profit from the schemes, sustained by the tacit assent of the political class (Učeň 2020). As a result, the Commission launched an investigation. Moreover, small farm owners who felt threatened by the scheme decided to create a political party and run for elections. Public procurement and EU subsidies were under investigation in the SNS-led defence and education. In November the government merged the Research and Innovation Operational Program with the Integrated Infrastructure Slovakia program in order to take it away from SNS. The merge was considered as a failure of the Education Ministry at managing its own finances. According to the Transparency International's 2019 data, there was a low degree of corruption. Yet, enduring scepticism persists considering the fight on corruption. As a result, Slovakia kept its 50 score, but fell in 59th place in the 2019 Corruption Perceptions Index (CPI) (Učeň 2020). 2019 Eurobarometer revealed public trust in the legal system actually increased from 25 to 33 since Kuciak's murder. Notably, it is the highest level ever scored in Slovakia. However, it is still fourth form the last among EU member states for general trust in the legal system.

Even though the situation seemed to improve, there are still episodes concerning the integrity of Press Freedom (Mapping Media Freedom 2020). On the 25th of June 2020, investigative journalist Peter Sabo find a pistol bullet in his mailbox in Bratislava. Sabo works for Actuality.sk, the same newspaper for whom used to write Kuciak before his death. The murder weapon was a pistol. Peter Bárdy, editor-in-chief of Aktuality, stated: "If they think they will intimidate us, they are wrong" According to him, the pistol bullet was mean to intimidate Sabo due to his investigations on sensitive topics. Specifically, he was investigating the completion of a power plant and cases involving former Minister of Justice Gábor Gál (Mapping Media Freedom 2020). Sabo joined Actuality in 2018 and ever since wrote about tax fraud and local crimes. This was the first time he was threatened. Police was informed immediately as well as the Minister of the Interior, Roman Mikulec, and Police President, Milan Lučansk. An investigation was opened, and it is still on going.

Analysing closely Kuciak's murder and Caruana Galizia's one it is possible to find certain similarities. The most evident is that they were both investigative journalists inquiring on issues concerning the government and businessmen. Respectively the Panama Papers, economic crime, potential fraud in distributing EU funds on the national level, VAT fraud and the citizenship by investment scheme. When they were harassed, both Slovak and Maltese police minimized their complaints. Moreover, Caruana Galizia had her bank accounts frozen. When it comes to governments in office at the time of the murders, they both conducted propagandist campaigns against them. To such campaigns civil society answered with street demonstrations to force the government to continue investigations. In both cases the masterminds behind the murders were two businessmen, respectively Marian Kočner and Yorgen Fenech. Both of them hired middlemen to carry out the murders. Yet, their middlemen were not careful enough while sharing information. As a result, it was possible to discover their identities and trace them back to Kočner and Fenech. Such similarities suggest that there might be a recurring path in murdering journalists working on inquiries on organised crime and potentially illicit business in which leading political feature

play a key role. Hence, more attention shall be paid when such similarities occur in order to avoid other journalists murdered while they were simply doing their job.

In conclusion, it is possible to say that the current situation of media in Slovakia shall be considered with close attention for different reasons. Notwithstanding the existence of a Constitution and a system that shall foster also all the other crucial values characterising the Rule of Law, yet it is not fully enforced. The murder of Ján Kuciak and the control over the media are clear indicators of this. Considering the misuse of EU funds, widespread corruption, 'ndrangheta infiltration in country and oligarchs owning media outlets, the picture does not improve. The case of Peter Sabo is a blatant example of the fact that harassment against journalists continued. Even though the newly elected President Zuzana Čaputová seemed like the perfect person to finally give a new direction to the country, the situation did not improve. Finally, the fact that the mastermind of Kuciak's murder entrepreneur Marian Kočner and his right-hand Alena Zsuzsová were fully acquitted shows that the even the judicial system presents problematics that shall be solved as soon as possible in order to enforce justice and, conversely, the Rule of Law.

Chapter IV- Italy: Between Police Protection and Media Concentration

"As provided for in Article 21 of our Constitution, the journalist has the rights and duties to inform, just as the citizen has the right to be informed."

Paolo Borrometi

4.1 Brief analysis of the Italian Constitution

4.1.1 History and rationale

The Italian Constitution adopted by the Constituent Assembly in 1947 reflects the main trends of the European tradition at the time and adopts the principles which consolidated in continental Europe between World War I and World War II (Onida et al. 2013, p. 34). It is part of the constitution that Mortati (1973, p. 22) defined as "the constitutions born from the Resistance". In other words, it is one of constitutions stemming from the will to depart from the set of values of a previous era (Martinico et al. 2019, p. 494), that of the Fascist period. Other constitutions that are part of this category are for example the French Constitution of the Fourth Republic and the German Basic Law. The main feature of this category is openness towards the international legal system. Constitutions born from the Resistance are the result of a political compromise among different democratic forces (Martinico et al. 2019, p. 495). Their common point is the rejection of the totalitarian experience. Plus, they are characterized by a very strong programmatic character that aims at detaching from the previous regime and reinforces the need for a completely different society (Martinico et al. 2019, p. 495). Moreover, these constitutions call for the need of new societal models. This is crucial, as there is a strong adherence to principles sustaining and reinforcing the importance of human rights. As a result, they are full of declarations of principles, in opposition with the totalitarian past. As Piero Calamandrei (1965, p. 553) pointed out, some of these principles remained on paper. The programmatic perspective implied the need of a turning point on how values were conceived in different aspects of social life (Pisaneschi 2018, p. 39).

As said before, one of the most remarkable features about the Italian Constitution is that it is the product of a political compromise among the three most important forces that played a major role in the constituent phase: the liberal, the Christian Democrats and the Socialist-Communist (left-wing) traditions (Martinico et al. 2019, p. 495). These forces converged in the National Liberation Committee (CLN) and tried to reach a compromise based on anti-fascism (Martinico et al. 2019, p. 495). In the Italian case, the role played by antifascism and the CLN was crucial. It was crucial because at the end of World War II Italy was a country devastated by the civil war (Cheli 2012, p. 27). As a result, it was established a tacit agreement that brought about a clear distinction between the constitutional question and the then ongoing political struggle (Cheli 2012, p. 27). Compared to the German case, the Italian Constitution is probably less known abroad. However, it is considered more genuine as there was less interference of foreign influences in writing the Constitution than in Germany or Japan, for instance (Martinico

et al. 2019, p. 495). Scholars agreed that the Italian Constituent Assembly was able to create "an autogenous product" (Martinico et al. 2019, p. 496).

The Italian Constitution was finally enforced on the 1st of January 1948. It is made up by 139 articles. The first 12 articles focused on the Fundamental Principles, such as the fact that Italy is a Republic founded on labour, the principle of inviolability of rights and equal before the law, without distinction of sex race, language, religion, political opinion, personal and social conditions. Part I, focused on the 'Rights and Duties of Citizens', including the right to personal liberty, Freedom of Movement, Freedom of Association, Freedom of Religion and Freedom of the Press. They are characterised by more precise guarantees linked to the welfare state. This aspect is particularly interesting, especially because the term is not clearly mentioned as in the 1949 German *Grundgesetz* (Onida et al. 2013, p. 34).

Considering Part II, it focuses on the separation of powers and each specific branch. Namely, the Houses and the Legislative Process; the President of the Republic; the Government; the 'Judicial Branch'. Moreover, Part II contains a section called Constitutional Guarantees which explains the structure, the composition and the functioning of the Constitutional Court (Arts. 134–137) and includes the relevant provisions concerning 'Amendments to the Constitution and Constitutional Laws' (Arts. 138–139). According to the Case law of the Italian Constitutional Court (ItCC), the Republican formula included in article 139 encompasses most of the supreme principles included in the first twelve articles of the Constitution (Martinico et al. 2019, p. 496). As a result, the following logic is that any changes to such principles represents a sort of constitutional "revolution" (Martinico et al. 2019, p. 496). These principles represent the heart of the Constitution. Hence, altering them would result in altering all its meaning.

The Italian Constitution shares the feature of contemporary liberal constitutions. It is the highest source of law, as expression of a democratic constituent power (Pisaneschi 2018, p. 39). It was approved by the Constituent Assembly, directly elected by the people. Relatedly, an important characteristic of the Italian Constitution that should be considered is its rigidity (Lanfranchi 2006, p. 7; Pisaneschi 2018, p. 39). On the one hand, considering the textual perspective, it requires a special, reinforced, procedure to be amended (Art. 138 Italian Constitution). On the other hand, it is the anthropological and cultural premises that allows the State to develop (Lanfranchi 2006, p. 8; Pisaneschi 2018, p. 39). The Italian Constitution is long as it does not merely state classical liberties and the form of government. It entails both social and political rights. The former regulates the relationship between the State and citizens, while the latter disciplines the relationship between citizens. Moreover, it is also a social democratic constitution due to the fact that its norms aim at bringing social changes through State intervention (Pisaneschi 2018, p. 39).

It is interesting to note that, even if the core concepts of the Rule of Law are part of the Italian Constitution, the Rule of Law is never explicitly mentioned (Martinico et al. 2019, p. 504). However, at least two conceptualizations

can be found in scholarly literature. Usually, such concept refers to the Rule of Law using the term Stato di diritto, which is similar to Rechtsstaat; État de droit (Martinico et al. 2019, p. 504). Moreover, there is a more subjective perspective of the rule of Law connected to the access to courts and to the right of defence. It is possible to find in the first part of the Constitution in Title I, focused on civil rights. Specifically, Article 24 states: "All persons are entitled to take judicial action to protect their individual rights and legitimate interests. The right of defence is inviolable at every stage and level of the proceedings. The indigents are assured, by appropriate measures, the means for legal action and defence in all levels of jurisdiction. The law determines the conditions and the means for the redress of judicial errors" (Italian Constitution). Furthermore, the right to judicial review is stated in Article 25: "No one may be withheld from the jurisdiction previously ascertained by law" (Italian Constitution). In this way, it is established by law that tribunals are independent and impartial (Martinico et al. 2019, p. 505). The second conceptualisation that can be found in the Italian Constitution is the so-called "principio di legalità" (legality principle). According to the legality principle, there is a hierarchy of norms that subordinates administrative acts to parliamentary statutes (legge) (Martinico et al. 2019, p. 505). The latter is considered an expression of what the Rousseaunian tradition called the *volonté générale*. Hence, imposing personal obligations, administrative charges and taxation is possible on the basis of parliamentary statute, according to Article 23. Considering criminal law, the principle of legality is linked to the principle of non-retroactivity is strictly connected to the principle of *nulla poena sine lege*. In other words, no one should be punished except by a law that is enforced before the offence is committed (Martinico et al. 2019, p. 505).

It is important to note the role of the Constitutional Court within the Italian Judiciary system. The ItCC is conceived as guarantor of the Constitution, exercising a form of control and support towards judges of lower courts. As a result, it shall be completely independent both from the legislative and the executive branch (Dengler 2001, p. 367). According to Art. 134 of the Constitution, the ItCC has four main functions. Apart from its role as guarantor of the Constitution, it supervises the constitutional review of legislation and acts having force of law, jurisdictional disputes between branches of government within the State and jurisdictional disputes over allocation over the State and sub-national entities. The Court delivers judges on accusations against the President of the Republic (Ferrari 2008, p. 194).

4.1.2 Challenges to the Rule of Law in Italy

As seen in Chapter I, the Rule of Law is characterized by the separation of powers, the independence of judiciary and a situation in which no one is above the law. Hence, public officials are at the same time monitoring agents and subjects to laws. Public officials have a precise duty towards the citizens. Considering the eight principles of the Rule of Law stated by Bingham, we have to look closely to accessibility; law not discretion; equality; exercise of power; human rights; dispute resolution; fair trial and compliance with international law. Comparing such principles with the Italian Constitution, it is possible to highlight some interesting aspects. Considering accessibility, potentially law is accessible to anyone. Law is not discretionary and detailed not only in the Constitution which is "the Supreme Law of the Land", but also in the civil and penal code.

Equality is clearly established in Art. 3 of the Constitution that reads: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country" (Italian Constitution). This article is particularly important, as it maintains that the State plays an active role in allowing the citizens to have the same possibilities in the society. Considering the exercise of power, the Italian Constitution provides that division of powers exists, as stated in the organization of the Republic. More specifically, the Government exercises the executive power, the Parliament exercise the legislative power. The Judiciary is independent from the other branches, but there are a number to checks and balances in place.

Moving forward to human rights, they are listed in the first part of the Constitution. Specifically, Art. 2 reads: "The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled" (Italian Constitution). In this Article it is recognised the inviolability of the person. Art. 13 reinforces the right to liberty and security: "Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law" (Italian Constitution). Article 14 reinforces the right to private and family life: "The home is inviolable. Personal domicile shall be inviolable. Home inspections, searches, or seizures shall not be admissible save in the cases and manners complying with measures to safeguard personal liberty. Controls and inspections for reason of public health and safety, or for economic and fiscal purposes, shall be regulated by appropriate laws" (Italian Constitution). Freedom of confidentiality is established by Art. 15. and freedom of movement by Art. 16. Plus, are listed also freedom of religion (Art. 19), freedom of assembly (Art. 17), and freedom of expression and Freedom of the Press, that will be further analysed in 3.1.3.

Fair trial is ensured first of all by Art. 101: "Justice is administered in the name of the people. Judges are subject only to the law" (Italian Constitution). According to Art. 102: "Judicial proceedings are exercised by ordinary magistrates empowered and regulated by the provisions concerning the Judiciary. Extraordinary or special judges may not be established. Only specialized sections for specific matters within the ordinary judicial bodies may be established, and these sections may include the participation of qualified citizens who are not members of the Judiciary. The law regulates the cases and forms of the direct participation of the people in the administration of justice" (Italian Constitution). Moreover, Art. 104 states that: "The Judiciary is a branch that is autonomous and independent of all other powers" (Italian Constitution). Last but not least, the Italian Constitution complies with international law as stated by Art. 10: "The Italian legal system conforms to the generally recognised principles of international law" (Italian Constitution).

Even though the Constitution seems to be quite exhaustive on certain matters, in his book *Lo stato di diritto*, Roberto Bin questioned whether it is still possible to talk about the Rule of Law in Italy? Bin holds that even though many lawyers, journalists and magistrates act in the name of the Rule of Law, their requests often conflicted. As a result, it seems that the real meaning is simply instrumentalized (Bin 2017, p. 112). The Rule of Law is often brought about in many different contexts, ranging from judicial cases to parliamentary debates. It seems like that the Rule of Law is a war cry. According to Bin, politics in Italy always had little, if any, respect toward constitutional institutions. Laws and judgements become hatches. As a result, many elements of the Rule of Law are under pressure (Bin 2017, p. 113). This perspective leads us to analyse the three main issues concerning the Rule of Law in Italy: the relationship between politics and the judiciary, the conflict of interests and the compression of social rights and the treatment of foreigners.

Considering the first point, it is crucial to bear in mind the importance of the separation of powers principle. In order to have the Rule of Law correctly enforced, the judiciary shall remain independent. It is not optional: if it is not present, then it is impossible to talk about judge (Bin 2017, p. 143). The judge should be a third party. He/she shall not pursue any other objective from the enforcement of laws and the principle of legality. The impartiality of judges is an objective that all the systems try to enforce. Yet, there are different solutions that can be employed to achieve it. Shifting the focus to the nature of the judicial power, in a motion approved by the Senate on the 5th of December 2001, with the aim of undermined the ruling condemning Cesare Previti (ItCC no. 225/2001), it was stated that the jurisdiction shall be "understood as a function attributed to the individual judges duly constituted and who together form an autonomous and independent order and not a power of the State, since it is neither directly nor indirectly emanating from popular sovereignty, with the granting of a mandate expressed in free elections by the citizens" (Bin 2017, p. 145).

The idea that the powers of the state are only those that come from the circuit of representation, whose decisions, therefore, must be imposed on any other body, is a crude idea that, as we have seen, is against all the principles of the Rule of Law (Bin 2017, p. 145). Both the circuit of politics and the circuit of justice take their cue from the citizen. He is the one who elects his political representatives because he hopes that they will take care of his interests through the laws; and he turns to the judge to obtain the application of those laws to anyone who violates them and therefore compromises his interests (Bin 2017, p. 145).

However, the two circuits run in opposite directions. The citizen elects representatives who are not bound by an "imperative mandate"; in fact, as Art. 67 Const. reaffirms, they represent the entire nation, and not the specific interests of their electors; the laws are elaborated far from the citizens, they dispose in a general and abstract way, and then they are applied through the behaviour of private individuals and the increasingly capillary branches of the public administration (Bin 2017, p. 146). Faced with the application of the law to matters concerning him, the citizen can activate the other circuit. He turns to the judge, who is a body spread throughout the territory, asking him to ensure the protection of his interest through respect for the law; the citizen's action can trigger a path, all

within the circuit of legality, which could culminate in a ruling of constitutional illegitimacy of the law in question by the Constitutional Court (Bin 2017, p. 146). The point is that the judge shall not interpret weather laws are fair or not. His/her duty is interpreting them in such a way that they are coherent with the judicial system and not against the Constitution. If the arts of interpretation are not enough, it is to the Constitutional Court that the judge must go to ensure that the laws are consistent with constitutional principles (Bin 2017, p. 147).

As said before, political power tends to be centralized in elected assemblies and executives. The prerogatives of individual parliamentarians, such as the unquestionability of opinions or immunity from arrest, are not privileges granted directly to them, but a reflection of the prerogatives of the unitary collegial body to which they belong. By protecting its individual members, the collegial bodies make itself immune from interference from other powers (Bin 2017, p. 147). Judicial power, on the other hand, is widespread, polycentric, placed close to the social nucleus, whose values it must partly interpret. For example, when it comes to morality or common decency. Fragmentation could weaken the independence of the judge. As a result, our system decided to establish the Superior Council of the Judiciary, a central body whose task is precisely to unify the protection of the independence and autonomy of individual magistrates and the power to which they belong (Bin 2017, p. 147).

The Supreme Judicial Council is at the centre of all the friction between the political and legal circuits, and not only because of its "mixed" composition (Bin 2017, p. 150). The Council has to cooperate with the Minister of Justice both for the judiciary procedure and for the assignment of the offices. This cooperation exists because the Minister of Justice is responsible not only for disciplinary action, but also for the "organisation and functioning of justice services" (Bin 2017, p. 150). Hence, in the organization of judicial offices there is therefore a double key control system that seems to be made to create short-circuits. Plus, over the years different governments allowed the magistrates to expand into offices of the Ministry himself. As a result, there was a clash with the magistrates and the CSM, pushing it to act as a "counter power", in the sense of assuming the political defence of the judges and of their order (Bin 2017, p. 151).

The second issue concerns conflict of interest. It rises especially in the relationship between the public prosecutor and the judge. Considering the citizen's perspective, dealing with a public prosecutor who shares the culture of the judges is a guarantee as regards the carrying out of the preliminary investigations, which are carried out by the Judicial Police under its direction and control (Art. 327 c.p.c.). However, it might be problematic before the judge, because the common culture and the fact that they are colleagues can appear suspicious to him. In other words, factors of corporate solidarity that obscure the equality of arms between the parties, the defence and the prosecution (Bin 2017, p. 154). Our judicial system does not fully recognize the position of the prosecutor as a party to the proceedings. His role is extremely similar to the defence, apart from the fact that he maintains the function of guarantee and search for the truth, for a truth that is not merely procedural.

As stated by the Constitutional Court in the Judgement 111 of 1993: "The public prosecutor is an independent magistrate belonging to the judiciary who does not assert any particular interest but acts exclusively in the general interest and compliance with the law". While the defendant's lawyer or the plaintiff's lawyer have a particular interest to defend, that of their client, the prosecutor is called upon to protect legality (Bin 2017, p. 154). Would the citizen - both the accused and the victim of a crime - feel more guaranteed by a politically appointed prosecutor? The countries that have traditionally adopted this solution are not so satisfied. As a result, reform proposals are very frequent. It is crucial to maintain the independence, objectivity, impartiality of the public prosecution. If it is linked to the executive, it might lead to "political pollution". Hence rules are needed to sterilize it and to ensure its absolute autonomy. In all legal systems, the prosecutor pursues two different "missions". As stated by the Council of Europe, the prosecutor is the authority responsible for the application of the law taking into account both the rights of individuals and the necessary efficiency of the criminal justice system (Bin 2017, p. 155). This is the reason why he needs to act free from political interference, in a neutral manner, typical of those who defend legality.

In the Nineties the situation became increasingly complicated due to the spread of corruption of the political class, the public administration and business corporations. As a result, the judiciary basically dismantled an entire political class through criminal proceedings and convictions (Rye et al. 2019, p. 39). Subsequently, new political elements emerged, such as Silvio Berlusconi, who was able to both rule the country and owning a large share of national media. This controversial situation will be further analysed in 4.1.4. Yet, it provides an insight on how the situation concerning the Rule of Law and the Freedom of the Press in Italy was and still is highly controversial. Berlusconi was able to spread an anti-judicial rhetoric. Due to the fact that he was convicted for a series of crimes, a vicious cycle was established. On the one hand, he presented himself as a martyr, blaming the judiciary for being obsessed by him. On the other, media outlets continued to make him the protagonist of the public discourse due to arguable laws he passed (Rye et al. 2019, p. 40). This situation heavily affected the development of the Rule of Law in Italy even after the end of Berlusconi's governments.

Interestingly enough, a very similar path compared to Berlusconi's one was followed by another party that declared to be outside the system and ended up fitting it perfectly: the Five Stars Movement (M5S). Together with the far-right party Lega, they stressed that the only source of legitimacy was the will of the majority. In a modern democracy that fosters the Rule of Law, consensus and representation are the only means that legitimise the exercise of power. The liberal debate against the dictatorship of the majority shall remind us that political power should not be above the law (Bin 2017, p. 131). Moreover, nobody should believe that political responsibility substituted completely juridical responsibility. Otherwise, it would be a plebiscitarian democracy. In other words, it would mean denying the Rule of Law.

The third issue that recently challenged the Rule of Law in Italy is migration. Between 2015 and 2016 Italy and EU received an enormous flow of migrants due to the Arab Spring and the destabilization in North Africa.

Consequences of these events are still visible today considering the measures undertook to solve the situation (Rye et al. 2019, p. 48). This is why there are concerns about the current status of the Rule of Law. This wave of migration was followed by the spread of a toxic narrative depicting migrants as invaders, willing to exploit Italian resources (Rye et al. 2019, p. 48). The enforcement of basic rights was put at stake, as migrants' rights were seriously impaired. Specifically, migrants were held in detention centres. Hence it is possible to see a clear breach of Lord Bingham's eight characteristics of the Rule of Law. According to him, basic protection of human rights is crucial to the enforcement of the Rule of Law. Holding people in detention centres, letting them live in precarious hygienic conditions is definitely in conflict with Lord Bingham's criteria.

Moreover, the anti-migration stance was reinforced under the coalition government made by Lega and M5S. The so-called yellow-green coalition enforced two decree-laws that were particularly controversial from a constitutional perspective (Rye et al. 2019, p. 51). Specifically, Decree-Law no. 113 of 2018 and Decree-Law no. 53 of 14 June 2019. The two decree-laws are problematic for a variety of reasons. First of all, they violate Article 3 of the ECHR and Article 4 of the EU Charter, concerned with offering decent living conditions. Plus, they represent an abuse of emergency decree in front of the Parliament. They lack extraordinary circumstances of necessity and urgency (Art. 77 Italian Constitution). Moreover, they shall comply with Article 10 of the Constitution i.e. with International Law obligations. Article 1 of the Decree-Law no. 113 of 2018 basically repeals national provisions on 'humanitarian protection', which is another crucial aspect of the Rule of Law (Rye et al. 2019, p. 52). The Decree-Law makes impossible for asylum seekers to who see their application rejected to obtain a residence permit. Even humanitarian reasons are excluded. Moreover, the special protection mentioned by the Decree-Law, has a very limited scope of application. Specifically, it can only be claimed by those who cannot be repatriated, and it has an extremely limited extension of time (Rye et al. 2019, p. 52). Just like other permissions, it lasts only six months. Plus, asylum applicants who receive a temporary residence permit can reside in the Italian territory but can no longer register at the municipal registry office. This pre-condition is crucial to exercise other rights such as the one to education, to access the national health care system and being assisted by other social services.

Secondly, the Decree-Law seems to be in sharp contrast with Art. 13 of the Constitution ensuring inviolability of personal liberty and the Geneva Convention. Migrants are held in the hotspot more than the thirty regulatory days. Only the people who have been granted the refugee status and subsidiary protection and unaccompanied minors are hosted now in ordinary reception centres (Rye et al. 2019, p. 53). As said before, asylum seekers are hosted in placed excessively below decent standards of living. Thirdly, if an asylum seeker is under criminal investigations that led to the exclusion or the revocation of international protection, even though the appeal is still pending. Hence, the person can be expelled. It is a clear violation of Article 3 ECHR and of Article 19 of the EU Charter and of the basic procedural guarantees of trials and of the right of defence. As a result, it is possible to say that the Rule of Law in Italy was - and still is- quite under stress.

4.1.3 The importance of Art. 21: the establishment of the Freedom of the Press

Article 21, fostering the Freedom of the Press was approved on the 21st of April 1947 as part of the new democratic Constitution. Art. 21 reads: "Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship. Seizure may be permitted only by judicial order stating the reason and only for offences expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offences. In such cases, when there is absolute urgency and timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately and in no case later than 24 hours refer the matter to the Judiciary for validation. In default of such validation in the following 24 hours, the measure shall be revoked and considered null and void. The law may introduce general provisions for the disclosure of financial sources of periodical publications. Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law" (Italian Constitution).

Compared to the Albertine Statute, in the republican constitution the protection of the Freedom of the Press is much more extensive. Art. 28 of the Albertine Statute reads that: "The press will be free, yet a law will limit any abuse". The freedom of thought was indirectly protected by the freedom of assembly (Barile 1975, p. 4). Going back to Art. 21, it favours the active profile of the Freedom of Expression as an individual right to freedom. Perhaps underestimating the fact that the media are among the most powerful social instruments (Clementi et al 2018, p. 145). Moreover, it is possible to see the existence of a hendiadys. In other words, Art. 21 fosters both the Freedom of Expression and the right to freely express your thoughts using any possible mean (Barile 1975, p. 7; Pedrazza Gorlero 1988, p. 154). According to Barile, these rights shall be considered together, as there is the instrumental necessity that links the two rights (Barile 1975, p. 7). Not only one shall be free to express his/her own thoughts. Everyone shall have the possibility to employ the appropriate means to do so (Calamandrei 1950, p. 149; Barile 1975, p. 7). Moreover, the freedom to share one's thoughts makes sense only if the thought is considered through its external manifestations such as speaking. As a result, it was concluded that the right to spread one's thought was an extension of the Freedom of Expression (Calamandrei 1950, p. 149; Barile 1975, p. 7).

Pedrazza Gorlero (1988, p. 154) underlined that Art. 21 provides two different kinds of freedoms. On the one hand there is a substantial freedom, that concerns express one's thoughts. On the other, there is a more instrumental freedom that concerns using the means to express one's thoughts. Hence, Art. 21(1) aimed at fostering the freedom to express one's thoughts. While, when it said "any other form of communication", it wanted to protect the possibility to share one's own thoughts (Pedrazza Gorlero 1988, p. 155). As a result, he reinforced that Art. 21 guarantees three different aspects of the Freedom of Expression: the freedom of express one's own thoughts through words and written means; the freedom of sharing one's own thoughts; the free use of the means of communication for those who actually own them (Pedrazza Gorlero 1988, p. 159). The dominant doctrine identified an instrumental relationship between the manifestation of thought and the free use of the

means of communication (Pedrazza Gorlero 1988, p. 159). Hence, terms between the freedom of diffusion and the free use of the means for communication change. Another aspect that shall be considered it is that it is difficult to distinguish between facts and opinions comments (Constitutional Court, Decision No. 105/1972). Yet, the right of information as considered by the courts has some limitations, such as the truth of the facts described, the need to meet an effective social interest by making these facts known, and the correctness of declarations (Decision No. 5259/1984 of the Supreme Court). There are further limitations concerned sharing details about private lives of individuals and their families, as provided for by Nos 575/1996 and 576/1996. Specifically, for what concerns disclosure personal information by journalists only if it is vital for public interest. Moreover, journalists have to follow a special ethical code established by the Press Association and enforced by the Independent Authority (Onida et al. 2013, p. 299).

Art. 21 is focused on the protection on the mere expression on thought. It does not cover behaviours that might influence actions (Onida et al. 2013, p. 299). This is the reason why the Constitutional Court decided that such behaviours like criminal incitement shall not be protected by Art. 21 (Decisions No. 16/1973 and 65/1970). There is only one explicit restriction to Freedom of Expression and it is the respect of *buon costume*, e.g. sexual decency (see Constitutional Court, Decisions No. 1063/1988, and 293/2000) (Clementi et al 2018, p. 150). However, this kind of restriction cannot be imposed in the field of art and science, especially due to the liberty provided for such subjects by Art. 33 (Onida et al. 2013, p. 299). Even though the only explicit limitation concerns sexual decency, there is an implicit limitation to the Freedom of Expression: public order in a material sense (Onida et al. 2013, p. 299). In other words, "to express one's thought freely in the middle of the night with a loudspeaker at full volume" and the need to make arrangements for public meetings and speeches which can be rescheduled if and where necessary (Decisions No. 168/1971 and 138/1985). In order to have a comprehensive perspective, the Freedom of Expression shall consider other values that play a pivotal role in the Constitution, such as the right to privacy and respect for secrets aiming at protecting constitutional values (Onida et al. 2013, p. 300). In other words, Freedom of Expression shall be equitable with other constitutional rights that need the same degree of protection.

Art. 21 made a short insight to which means shall be used to express thought: "By word of mouth, in writing, and by all other means of communication" (Italian Constitution 1947). Hence, a short note about press, radio and television shall be added (Calamandrei 1950, p. 149; Onida et al. 2013, p. 300). The Constitution established that the press cannot be subject either to authorization, i.e. discretionary measures taken in advance by the public authorities, or to censorship, as supervision of the content of documents (Calamandrei 1950, p. 149; Onida et al. 2013, p. 300). Here the selection power exercised by citizens is clear. Seizure is the only repressive mean allowed. It can be ordered by the judiciary or the police when there is an actual urgency and it is not possible to enforce the forty-eight hours ratification (Onida et al. 2013, p. 300). Seizure is possible only when there is a clear infringement of press law, or when there is a violation of the provisions listed in Law No. 47/1948. Moreover, the Constitution established that: "by means of provisions of a general nature, that the financial sources of a periodical publication be made known". The aim behind this provision to provide the readers with transparency for what

concerns possible interests of the newspapers. Apart from the issue of transparency, the Constitution does not say anything more for what concerns publishing. After the establishment of monopolies in the Eighties, its role will be more prominent in assessing transparency and avoid media concentration, as analysed in 4.1.4. Radio and television broadcasting are not taken into consideration by the Constitution (Onida et al. 2013, p. 300).

Some scholars believe that Art. 21 not only refers to Press Freedom, but also to Freedom of Information (Pedrazza Gorlero 1988, p. 160). According to this perspective, Freedom of Information is a particular aspect of the Freedom of the Press. Specifically, it is the right of a private citizen, member of a political community, that aims at obtaining information on everything that might affect his relationship with the political community itself. Thanks to the information gathered, individuals are able to determine their own opinions in a free and responsible manner. Importantly, individuals are able to responsibly determine their politically relevant decisions. However, Pedrazza Gorlero (1988, p. 161). believed that the primary task of Art. 21 aims at guarantying to the subject Freedom of Thought to satisfy the need to develop one's personality. Hence, Art. 21 is not merely connected to the political sphere, as it has a more personal dimension (Pedrazza Gorlero 1988, p. 161). On the one hand, Art. 21 guarantees any kind of freedom to manifest one's thought. On the other, the functionalization of freedom assumes that Art. 21 is focused merely on political thoughts and opinions. Notably, the denial of the functional aspect of Art. 21 does not mean that Art. 21 does not have a social function as well (Pedrazza Gorlero 1988, p. 163).

To conclude, Pedrazza Gorlero (1988, pp. 168-170) held that Art. 21 established that the content and the beneficiaries of the freedom of the press are:

a) *the freedom of expression of thought through the press*. It pertains to the publishing entrepreneur who exercises it through the detection of the information address; the freedom to express the thought of the editor and the ordinary or occasional editors of the publication, who, in compliance with the information policy, exercise it through the performance of an intellectual activity that consists in the narration of facts and other people's opinions on the facts, as well as their own evaluations on the same; the director and the ordinary or occasional editors the freedom not to express a thought other than that considered subjectively true;

b) *the freedom of diffusion for everyone*, understood as the right not to be hindered by public authority in setting up new publishing companies.

c) *the free use of the means of diffusion of the press; to the publishing entrepreneur.* The right to freedom of the press has an individualistic nature, such as the generic Freedom of Thought. It is a particular feature of the latter, as it is not functionalised either to the preservation and development of the democratic order or to the truthful information of the members of the political community. The latter will benefit from freer and wider information, the more guaranteed and extended the freedom of the press will be guaranteed. Once the means of financing the periodical press have been made known, the community will be able to know the forces that influence information.

4.1.4 From Censorship to Media Concentration

Considering the current situation of media in Italy, it is crucial to bear in mind the evolution from the censorship of the Fascist era to the concentration that developed since the Eighties. Censorship started spreading in Italy in 1923, one year after the *Marcia su Roma* (March on Rome). During that year, there was a new wave of widespread violence against the newspaper that supported the opposition (Murialdi 2006, p. 131). Subsequently, Mussolini tried to strengthen his grip on the press allowing the prefects can distrust the head of newspapers, after the opinion of a magistrate and other journalists (Regio Decreto 12 Luglio 1923). Moreover, he employed many other instruments typical of a dictatorship: boycotts, aggressions, abductions and intimidations against journalist and anyone who tried to fight for a free press (Murialdi 2006, p. 132). Liberal newspapers tried to spread their idea against the Prime Minister, reinforcing the importance of the Albertine Statute (Murialdi 2006, p. 134). Among these newspapers there were Corriere della Sera, La Stampa, Il Gazzettino, Il Mattino. Mussolini reinforced further the measure of the RD, allowing prefects to seize newspapers even without the affirmative opinion of a magistrate. As a result, the Federation of the Press decided to rebel against the RD.

Even though many newspapers, such as Corriere della Sera, La Voce Repubblicana, La Stampa e L'Avanti! tried to rebel against him, Mussolini was still able to proceed with the "fascistization" of the press. He was not focused on the ownership of media outlets, rather on their power of spreading news and channeling a determined image of Italy (Murialdi 2006, p. 141). Mussolini used to be a journalist himself. As a result, he was well-aware of the mechanisms the regulated the press. Mussolini's actual trustees were the editors-in-chief of the newspapers. Hence, in only three years of time the head of the most important newspapers were substituted with trustee of the regimes. For example, considering Corriere della Sera there were Pietro Croci, Ugo Ojetti and Maffio Maffii. Ojetti and Maffii contributed heavily to the fascistization of the press (Murialdi 2006, p. 142).

However, Ojetti was accused of being too tender, as he did not make a complete epuration of the dissidents from the newsroom (Murialdi 2006, p. 142). As a result, Mussolini replaced him with Maffii. Moreover, thanks to the RD 18th of June 1931 the already tiny Press Freedom was restricted even further. In particular, it was possible being journalist only acting in conformity with the interest of the nation (Barile 1975, p. 5). In other words, it was prohibited to express opinion in contrast with the policies adopted by the Regime. Doing so would have make impossible subscribe to the Professional Order of Journalists, an essential requirement to work (Barile 1975, p. 5). The ban on printing was extended to all these documents against the political order, damaging the State prestige and authority and offensive toward national sentiment (Barile 1975, p. 5).

On the 21st of April 1947 the final version of Art. 21 was approved (Murialdi 2006, p. 202). Thanks to the new Constitution, the Freedom of the Press and the Freedom of Expression were finally protected in a more comprehensive way. However, the situation was not as smooth. After twenty years of censorship, the situation in Italy evolved toward a different direction. At this point, the focus shifted toward media ownership and media concentration. Media ownership is crucial in a society, as "a number of potential harms may result from concentrated media ownership, including the abuse of political power by media owners or the under-

representation of some viewpoints" (Doyle 2002, p. 171). In the post-war period, media contributed to the enforcement of democratic values, ideas and processes (Scannell 1989; Monteleone 2003; Hibberd 2004). Specifically, broadcasting played a key role in safeguarding fundamental principles including freedom of speech and expression and promoting new forms of dialogue (Hibberd 2007, p. 881). Recently, there was a shift in policy in favour a system establishing a market-driven broadcasting industry. This new approach might seem perfectly in line with changes that are making the broadcasting industry more global (Doyle and Hibberd 2003). The key change that can be observed is the high degree of cross-media ownership present in many countries. As a result, an intense policy debate started on how to how best to safeguard pluralism and freedom of expression in the multi-media environment.

Pluralism in media is considered a central feature. "Pluralism is generally associated with diversity in the media; the presence of a number of different and independent voices, and of differing political opinions and representations of culture within the media" (Doyle 2002, p. 11). Pluralism can be divided in two parts: external and internal. On the one hand, external pluralism is linked to the diversity of ownership within a specific market. It is achieved when there is a plurality of broadcasters and outlets in a sector. On the other, internal pluralism refers to the diversity of output. It exists when media outlets achieve extensive coverage and diversity of programming (Hibberd 2007, p. 883). However, restrictions on media ownership are not sufficient in themselves to ensure diversity of views and ideas. Other policy instruments shall be employed to guarantee internal pluralism (Doyle 2002, p. 12; Venice Commission 2005, p. 11).

From a theoretical perspective, the concept of pluralism is well established in Italian media law. In particular, electoral laws (*Par Condicio*) established that broadcasters have to give the same airtime during news bulletins during election period (Hibberd 2007, p. 883). Moreover, both media legislation and Constitutional Court used pluralism as a key term to define one of the crucial principle of media law (Hibberd 2007, p. 883). Television and radio broadcasting dominated the Italian media environment. Other traditional media weakened right after World War II. Historically, the Italian press industry always had a regional character. This situation prevented the development of a mass readership (Hibberd 2007, p. 884). As a result, Italy represents an unseen case compared to other European countries, in which broadcasting takes a far larger share of advertising revenue than newspapers (Balassone and Guglielmi 1993, p. 12; Andreano and Iapadre 2005).

In the post-war period, RAI, the public service broadcaster, held a monopoly over broadcasting services until the mid-seventies (Hibberd 2007, p. 884). In this timeframe, the Christian Democrats, the main party in government, exerted its influence over RAI. In particular, news programmes were controlled until 1963. Then the situation changed when the Socialist joined government coalition. Nevertheless, the real change took place in 1974 and 1976 with two decisions by the Constitutional Court (Hibberd 2007, p. 884). In 1974, judgement 225 reinforced the legitimacy of the national and local terrestrial monopoly, citing Article 43 of the Constitution, due to technical scarcity of frequencies. Moreover, Art. 43 reinforces that in the light of general utility, "The law may reserve to

the state, to the public institutions, or to worker or consumer associations, ab initio, or transfer to them by expropriation, subject to identification, certain undertakings or category of undertakings involving essential public services . . . important to the community" (Esposito and Grassi 1975a, pp. 44–5).

Two years later, judgement 226 established that the monopoly could not be in place vis-à-vis cable and foreign based channels, following Art. 21 of the Italian Constitution. Specifically: "Everyone shall have the right to express freely his own thoughts in words, writing or any other medium" (Italian Constitution). As a result, judgement 226 paved the way for a new phase in the history of Italian broadcasting. Many of these arguments were incorporated in the 1975 Italian Broadcasting Act. The responsibility of the overseeing of broadcasting shifted from the executive to the Parliament, together with the power to appoint RAI's Administrative Council (Hibberd 2007, p. 884).

In spite of the good intentions of the Constitutional Court, the political control over RAI did not diminished as expected (Hibberd 2007, p. 884). The Christian Democrats were able to keep their influence due to the fact that they were the largest party in the parliament (Hibberd 2007, p. 884). The 1975 Broadcasting Act maintained that RAI shall be split in two separate networks (Esposito and Grassi 1975b, p. 53). The division in two networks led to the establishment of two ideological camps. On the one hand there was the Catholic culture, while on the other one there was a lay culture (Hibberd 2007, p. 884). Subsequently, both networks became under control of politics (English 2003). RAI was partitioned among different political ideals. Raiuno was under the Christian Democrats, while Raidue was under the Socialists (Hibberd 2007, p. 885). When in 1979 Raitre was established, it went under the wing of the Italian Communist party.

The 1975 Broadcasting Act played a crucial role in filling RAI with political parties, the so-called *lottizzazione* (allocation) (Hibberd 2007, p. 885). It was extremely negative for a variety of reasons. Not only it was overwhelmingly costly, it also created disputes between the three networks (Hibberd 2007, p. 885). Allegedly it had a negative impact also on the quality of tv programmes offered to the audience. Nevertheless, the system was still able to guarantee a certain level of both external and internal media pluralism. As noted by Hallin and Mancini (2004, p. 108): "The system was actually a complex mixture of external pluralism – in the sense that the different political forces had their 'own' channels – and internal pluralism, both in the sense that RAI was governed by a common body and in the sense that each channel still had personnel from a variety of different parties. News programmes on each channel reflected the full spectrum of Italian politics".

A few years later, the Constitutional Court decided to liberalise local television broadcasting through Decision No. 202/1976. The process opened the way to the end of the State monopoly in the broadcasting sector (Onida et al. 2013, p. 301). Due to the lack of detailed legislation on media concentration, in less than ten years one single group of national private channels became dominant e.g. Fininvest, owned by Silvio Berlusconi (Onida et al. 2013, p. 301). In 1980 Berlusconi bought Canale 5. The following year acquired Italia 1 and in 1984 Rete4 (Hibberd 2007,

p. 886). As a result, establishing a *de facto* duopoly. The existence of the duopoly was legitimized by the Decree Law 694, also known as the Berlusconi Decree. It was the first decree maned after the recipient, rather than after the object (Hibberd 2007, p. 886; Onida et al. 2013, p. 301). The decree was introduced by the Socialist Prime Minister Bettino Craxi, Berlusconi's friend (Hibberd 2007, p. 886). The Berlusconi Decree is a clear example of clientelism between commercial media and the government, defined as "a pattern of social organisation in which access to resources is controlled by patrons and delivered to clients in exchange for deference and various kinds of support" (Hallin and Mancini 2004, p. 135). The duopoly was finally sanctioned in August 1990 (Law No. 223, 6 August 1990). According to the Minister for Post and Telecommunications, Oscar Luigi Mammì, the law was "the best that was possible at the time" (Hibberd 2007, p. 886). However, the best arrangement was still not enough. According to Art. 15, no group shall control more than 25% of national channels (Law No. 223, 6 August 1990).

The law did not specify the number of national channels. In August 1992 twelve licenses were allotted, formally reinforcing the monopoly status" (Hibberd 2007, p. 886). As a result, both RAI and Mediaset, the Fininvest company that became the owner of the broadcasting division, kept their three channels. One crucial moment for the duopoly arrived in December 1994. The Constitutional Court maintained that the ownership of three channels as allowed by Art. 15 of the 1990 Law altered the competition in the broadcasting industry. In other words, it impaired Art. 21 of the Constitution. As a result, the Court decided that Mediaset shall loose one channel (Hibberd 2007, p. 887). The decision finally declared the monopoly unconstitutional. However, the issue of monopoly was far from being over. The centre-left coalition failed to implement the changes needed before losing power to the Berlusconi government.

After Berlusconi openly entered the political arena, many criticisms raised due to conflict of interest (Hibberd 2007, p. 888). His channels were used to target swing voters and move their final decisions favouring Berlusconi's party Forza Italia. According to the report made by the University of Pavia during the 1994 political elections, Raiuno and Raidue offered the most balanced coverage to different political parties. Right behind them, there were Raitre and Canale5. The most targeted channels were Italia1 and Rete4 (Hibberd 2007, p. 889). On the one hand, Italia1 attracted a younger audience, while on the other one Rete4 attracted an older audience. As a result, they were able to influence two different segments of the population. In particular, on Rete4 Forza Italia had 68.4 per cent of all news coverage, compared to ex-communist party PSD, who gained simply 11.6 per cent, notwithstanding the fact that it was the largest parliamentary party (Hibberd 2007, p. 889). The case of Rete4 is remarkable as its news director was Emilio Fede was extremely devoted to Silvio Berlusconi.

After his first election, Berlusconi was able to assert his dominance also over RAI. He introduced crucial reforms in the public service broadcaster, including the dismantling of the system of *lottizzazione* (Hibberd 2007, p. 889). Moreover, the Berlusconi government blocked RAI's reconstruction plan to fix its enormous amount of debts. Berlusconi's control over private and public media did not prevent his coalition from collapse after nine months

(Hibberd 2007, p. 890). As a result, during his second government between 2001 and 2006, Berlusconi pursued a more careful approach towards RAI. In 2002, a centre-left dominated administrative council was replaced by a centre-right dominated one, led by Antonio Baldassarre. Political opposition mainly merged in Raitre and apparently RAI was allowed to maintain a certain level of political pluralism. However, in 2002 Berlusconi picked on RAI senior journalists Enzo Biagi and Michele Santoro and the comedian Daniele Luttazzi, as they were making "criminal use of RAI". Criticisms by politics was nothing new. However, all of them were removed from RAI schedule in Autumn 2002 (Hibberd 2007, p. 891).

In January 2005, a Rome Court condemned RAI for the exclusion of the three. As a result, Santoro reappeared on tv. The opposite was true for Biagi, as he decided to semi-retire (Biagi and Mazzetti, 2005). Many feared Berlusconi's attacks on RAI. Especially after *ad personam* laws that basically established his immunity from prosecution while in office, crucial freedoms were undermined (Hibberd 2007, p. 892). Concerns within and outside Italy provoked the reaction of the at the time President of the Republic Carlo Azeglio Ciampi. As a result, in July 2002 he sent an open letter to the Parliament (Hibberd 2007, p. 892). In the letter he underlined the importance of the key aspects of pluralism and impartiality. Moreover, he reinforced the importance of mass media in a democratic society (Ciampi 2002). The latter was a clear-cutting remark to Berlusconi's government. The Administrative Council was changed in February 2003. Senior journalist Lucia Annunziata was elected president. In 2004 she resigned due to political pressures (Hibberd 2007, p. 892).

Two more laws concerning the Freedom of the Press shall be further analysed. These laws are respectively the Gasparri Law (Law 249) and the Frattini Law. President Ciampi refused to sign the as it was problematic. In particular, Art. 15, which is focused on ownership and cross-media ownership rules (Hibberd 2007, p. 893). According to the Venice Commission Report (2005, p. 19): "Larger companies will enjoy greater purchasing power in a wide range of activities such as programme acquisitions, and will enjoy significant advantages over other national content providers. They can also enjoy an unlimited share of the audience if this scheme is put in place. An individual company could enjoy extremely high degrees of revenue shares in individual markets, whilst at the same time remaining below the 20 percent threshold for the whole sector". The Venice Commission held that Art. 15 was not an appropriate indicator of diversity. Moreover, in Italy: "the status quo has been preserved even though legal provisions affecting media pluralism have twice been declared anti- constitutional and the competent authorities have established the dominant positions of RAI and the three television channels of Mediaset" (Venice Commission 2005, p. 5).

The second law that was ratified on the same year is the so-called Frattini Law (Law No. 215/2004). The importance of the Frattini Law was that for the first time conflict of interest was defined in a statute (Hibberd 2007, p. 896). Nevertheless, a category was excluded. According to 1(4) the provisions does not apply to publicly elected representatives, members of government and holders of judicial office (Law No. 215/2004). Moreover, the law states the incompatibility between the management of a company and public office, and not between

ownership and public office. Hence, only the company managers, not the owner (Venice Commission 2005, p. 32). The Commission concluded that: "The Frattini law is unlikely to have any meaningful impact on the present situation in Italy" (Venice Commission 2005, p. 32).

Broadcasting market is now regulated by Legislative Decree No. 177/2005. In order to ensure competition and pluralism, the act designed a mechanism to regulate the so-called switch-off, e.g. the transition from analogic to digital broadcasting (Onida et al. 2013, p. 301). However, the increase of channels' number did not prove any added value to the system in terms of pluralism. In 2002, the directives of the EU Commission and of the Court of Justice of the European Union tried to make the Italian system more competitive (Onida et al. 2013, p. 301). Specifically, according to the Court of Justice, the Italian system represented a violation of EU rules because it did not entail an objective, transparent, non-discriminatory and proportionate standards through which assign frequencies (case Centro Europa 7 C.J. 31 January 2008 No. 380/2005). Moreover, the Commission opened an infringement procedure against Italy, because its broadcasting television system violated the European directives on electronic communications. As a result, the Parliament approved the Law No. 101/2008 on the Electronic communication code. However, it is still not codified how to deal with the allotment of frequencies (Onida et al. 2013, p. 302).

Even though the Italian media market suffered due to market concentration, it is for certain aspects active (Brogi 2016, p. 2). Considering consumption, the audio-visual media are the main source of information in the country. Newspapers are relatively less important, compared to online news (Brogi 2016, p. 2). In 2016 the centre-left Renzi government proposed many reforms that affected the media sector. For example, the reform of the governance of Public Service Media (PSM), the reform of the law on freedom of information and the introduction of a Freedom of Information Act (FOIA), the reform of press public funding, and the introduction of a "fund for pluralism" (Brogi 2016, p. 2). FOIA was implemented by Decree Law n. 97 2016. With the FOIA legislation, the Italian law recognizes the freedom to access information held by public administrations as a fundamental right (Presidenza del Consiglio dei Ministri). The principle that guides the entire legislation is the preferential protection of the cognitive interest of all subjects of civil society: in the absence of obstacles attributable to the limits set by law, the administrations must give precedence to the right of anyone to know and access information held by the public administration (Presidenza del Consiglio dei Ministri). Journalists, non-governmental organizations, companies, Italian and foreign citizens can request data and documents, so as to play an active role of control over the activities of public administrations. The aim of the standard is also to promote greater transparency in the relationship between institutions and civil society, and to encourage an informed public debate on issues of collective interest (Presidenza del Consiglio dei Ministri).

Considering the media market, in 2016 Cairo Communication, led by Urbano Cairo, acquired the RCS MediaGroup S.p.A., the holding that owns the most read Italian newspaper, Il Corriere della Sera (Brogi 2016, p. 2). La Repubblica and La Stampa, the second and third most read papers in the country now belong to the same

group, GEDI S.p.A, owned by John Elkann. Moreover, GEDI S.p.A owns L'Espresso, Limes and several radio networks such as Radio Deejay, Radio Capital and m2o. John Elkann is the grandson of Gianni Agnelli. Agnelli used to be the second most important media owner back in the Nineties together with Berlusconi (English 2003, p. 633). In March 2016, the Italia Competition authority allowed the acquisition by Mondadori of RCS Books. It is important to note that Mondadori is controlled by Fininvest Group, owned by Berlusconi (Brogi 2016, p. 2).

Nowadays, according to the 2020 Report of RSF, there are approximately 20 journalists under police protection due to threats or murder attempts by mafia (RSF Freedom Index 2020). It was observed that the level of threats is constantly growing, especially in Rome and in the south of Italy (RSF Freedom Index 2020). Specifically in Rome, reporters were verbally and physically assaulted while working by members of neo-fascist groups and members of the Five Star Movement (M5S), part of the coalition government (RSF Freedom Index 2020). Overall, it is possible to say that politicians are less hostile towards journalists as in the past years (RSF Freedom Index 2020). Yet, journalism risks to be weakened by government decisions, such as the reduction of state fund for the media (RSF Freedom Index 2020).

4.2 Journalists under police protection: how this phenomenon affects the Rule of Law in Italy

4.2.1 Criteria to assign police protection: the establishment of UCIS

Before the establishment of the *Ufficio Centrale interforze per la Sicurezza Personale,* central inter-force office for Personal Security, (UCIS) the mechanisms for assigning, confirming or withdrawing escort and protection services depended jointly on the decisions of the provincial committees for public order and safety and on the ministerial ratification of these decisions. The Public Order Office was responsible for the implementation of such decisions. The analysis of the ministerial directives on the protection of persons at risk shows how the administration has constantly had to contend with requirements that are difficult to reconcile. On the one hand, to ensure effective protection for persons deemed to be in danger. On the other, it aims at avoiding the abnormal use of police personnel. Since 11 September 2001, the issue became even more serious because of the growing threat of international terrorism and the multiplication of sensitive objectives to be protected (Private Interview).

The law allows the Minister of the Interior to adopt measures and issue directives for the protection and protection of persons exposed to particular situations of risk of a terrorist nature or related to organized crime, trafficking in drugs, weapons or parts of them, including nuclear, radioactive material and aggressive chemical or biological or biological or related to intelligence activities of foreign subjects or organizations (UCIS website). In order to effectively counteract situations of danger and threat, the UCIS was established within the Department of Public Security (UCIS website). The latter deals with the overall management of the protection apparatus through the collection and coordinated analysis of information relating to personal situations of risk (UCIS website). Hence, the UCIS is the office through which the Department of Public Security, in the specific sector of the protection of subjects at risk, assists the Minister of the Interior in his function of National Authority of Public Security. The UCIS is located in Rome. It is composed of three sections: Witnesses of Justice, Collaborators of Justice and Journalists Protection.

From a technical perspective, the UCIS was established by Law Decree no. 83 of May 6, 2002, converted with amendments into Law no. 133 of July 2, 2002. Art. 1 provides that the Minister of the Interior, as the National Authority of Public Security, adopts the measures and issues directives for the protection of national and foreign institutional figures, as well as persons subject, for functions or other proven reasons, to the specific dangers or threats identified by the regulation (UCIS 2016). To carry out these tasks, the Minister of the Interior uses the Department of Public Security. The latter ensures, exclusively and in a coordinated manner, the adoption of protection and surveillance measures, in accordance with the directives of the Chief of Police - Director General of Public Security (UCIS 2016). Thanks to the Decree of the Minister of the Interior of 28 May 2003, the afore mentioned Art. 1 of Law no. 133 of 2 July 2002 was implemented. As a result, it was possible to reorganize the system of protection measures in order to guarantee the maximum procedural certainty and speed, the optimal development of the information circuit, the full effectiveness of decisions (UCIS 2016).

The internal organization of the UCIS is regulated by the Inter-ministerial Decree of 19th September 2002. The direction is assigned on a rotating basis among Superior Executives of the State Police and Generals of the Carabinieri Brigade (UCIS 2016). The direction of the Central Office is entrusted to a Prefect or General Manager of the Public Security, or to a General of the Carabinieri Corps of an equivalent level (UCIS 2016). The office is assigned to a member of the State Police, the Carabinieri Corps and the Civil Administration of the Interior. It can also be assigned to the Guardia di Finanza Corps, of any other civil and military administration of the State, as well as two experts appointed by the Minister of the Interior (UCIS 2016).

The UCIS co-operates with Internal Information and Security Agency (AISI), Information and External Security Agency (AISE) and the Law Enforcement Agencies to collect and analyse all the information relating to risky situations. Specifically, UCIS will identify and plan methods, means and resources to implement the protection devices. It also deals with the training of the agents assigned to this service. On the territory it is present in the Cabinets of each Prefecture through a provincial office for personal security, which collects and analyses local information on personalities at risk and then proposes to the UCIS the assignment of protection. The final evaluation is the responsibility of the Central Consultative Commission for the adoption of personal security measures composed of the UCIS Director and representatives of the Police Forces, AISE and AISI. In addition, there is a magistrate attached to the Ministry of Justice for matters relating to the protection of judges. The Commission supervises the protection and surveillance measures and, if necessary, may order their revocation (Private Interview). There are different levels of protection, depending on the risk and threats to which the person is exposed. They range from dynamic surveillance, fixed surveillance of the subject's home, to the mobile escort for which the following measures are foreseen.

Level I: assignment of 2 or 3 armoured vehicles with 3 agents;
Level II: 2 armoured vehicles with 3 agents each;

Level III: one armoured car with 2 agents;
Level IV: one non-armoured vehicle with 1-2 agents (Private Interview).

4.2.2 Development of UCIS and political reactions

In 2014, 543 individuals were under police protection. Among them there were 270 magistrates and 36 persons with fixed surveillance, divided into 4 levels of increasing protection according to the level of risk. The agents involved were 1879, among 263 financiers, 690 Carabinieri, 836 policemen and 90 members of the Prison Police. Furthermore, 28 individuals were protected by decision of the Prefects, again under Law 133 of 2002. Numbers are substantially confirmed in 2018 by an article in the Roman edition of the Corriere della Sera that lists with a wealth of details the protections assigned by UCIS. 2,072 agents are engaged in the protection of 585 personalities, divided between 910 policemen, 776 carabinieri, 290 financiers and 96 officers of the Penitentiary Police. Specifically:
15 peoples - I level - 171 operators deployed;
57 peoples - II level - 383 operators deployed;
276 peoples - III level - 823 operators deployed;
237 peoples - IV level - 695 operators deployed.

People under police protection are magistrates (277), politicians (69), business executives (43), journalists (21), government representatives (18). 221 operators, prevalently Italian Army personnel, followed by Carabinieri and State Police, carry out 38 fixed surveillance services. The largest amount of people under police protection is concentrated in Lazio (31.6%), Sicily (21.9%), Calabria (12.5%), Campania (12%), Lombardy (7.2%) (Private Interview). Currently, 21 journalists live with a police escort, defended by armed police, due to credible death threats. The police protect a further 167 with less comprehensive "protection and vigilance" measures (ECPMF 2018, p. 4).

Linked to the establishment of UCIS, there is the strong presence of Mafia in Italy. Italy is not the only country affected by this problem. Yet, it is the one who sought remedies and tried to develop effective remedies to fight it (ECPMF 2018, p. 4). Journalists and the Italian media are those who have suffered and continue to suffer because of intimidations and pressures by the Mafia. At the same, time journalists are the ones who have accumulated the most experience on the most efficient ways to monitor threats and other attacks on journalists. Moreover, journalists accepted the high risks that this entails, such as violent reprisals, heavy financial problems and, to a considerable extent, the vexatious libel proceedings, the weak legal status of journalists and other shortcomings in legislation (ECPMF 2018, p. 4). The complicated situation that Italian journalists face every day was described by the senator Pietro Grasso, a former Head of the National Antimafia Directorate: "It is sad to admit that in Italy there are regions in which the journalist who describes the unvarnished reality of power risks his life. I say: describing 'power', not just the Mafia. (...) There are regions in which a daily battle is fought between the passion, the duty to inform and the pressure to be silent that expresses itself with violence, intimidation, death threats that

materialise in bullets received by post or bullets that break window panes or hit the front doors of their houses, or threatening letters, or car tyres ripped or cars burned" (ECPMF 2018, p. 4).

It was estimated that between 2016 and 2018 more than 3,721 Italian journalists, bloggers, video operators and photojournalists - each one listed with name and surname - were targets of threats, intimidation, assault, damage, targeted theft, serious abuse of rights (especially vexatious criminal complaints and lawsuits for unsubstantiated libel) and obstructed access to information that is evident but cannot be prosecuted by judicial means (ECPMF 2018, p. 5). According to the data published by Ossigeno per l'Informazione, about 38% of these attacks are due to the publication of news on the Mafia. As for the methods, about half were violent, 40% involved legal and judicial abuses and the remaining 10% were informal (pressure, exclusion from press conferences and other discriminatory acts) (ECPMF 2018, p. 5). As journalist Nello Trocchia pointed out: "The newspapers avoid dealing with these issues first of all because it is more convenient to keep quiet about them, but also because they are afraid. The fear is due to the large number of direct or indirect threats, intimidation and physical attacks on newspapers and journalists. If you add to all this job-insecurity, you understand why in the end information is not complete" (ECPMF 2018, p. 6). Fear of retaliation is well-founded. During recent trials, some Mafia defendants claimed the right to resort to such violent reactions and have even asked the judges to punish the reporters they threatened. According to their logic, the reporters who denounced their illegal activities damaged their business. Hence, they were entitled to the use of violence. This episode is crucial to understand how the Mafia way of thinking works and why it is extremely dangerous for those who try to fight it and denounce it. Moreover, the very principle of the Freedom of the Press is completely against the Mafia code of silence. Lirio Abbate added that: "Those who live and work in the suburbs, in the provinces, have to be more courageous if they want to talk about Mafia and corruption, if they want to practise journalism and fully respect the ethical standards" (ECPMF 2018, p. 9). According to Marco Delmastro, Director of the Economic Statistics service of the AgCom, local reports run more risk because "local information exerts an enormous influence on local politics because it acts as a real arm of control on politics" (ECPMF 2018, p. 9).

In the report issued in 2017 by AgCom, the Italian Communication Authority, it was underlined that journalists face two major problems: threats and job-insecurity. It also estimated that in Italy more than one in ten journalists (out of a population of 115,000 registered by the professional association) received threats. Furthermore, AgCom stated that Italian media did not share much about these facts. On the same year the Co-ordination Centre for the Defence of Press Freedom was established by at the time Minister of Interior Marco Minniti. The body was in charge of creating a confidential exchange of information between the Minister and officials of the Interior Ministry and representatives of the FNSI (the National Federation of the Italian Press) and of the Order of Journalists. It was created after the attacks on the journalist Daniele Piervincenzi and the video operator Edoardo Anselmi, who were attacked in Ostia by members of the gypsy mafia Spada. In 2018, the National Anti-Mafia Directorate started monitoring Mafia-related threats targeting journalists (ECPMF 2018, p. 6).

As the Vice-president of the National Council of the Order of Journalists, Elisabetta Cosci, pointed out: "The Mafia plays a very active role, but we must not forget that many threats have a very different origin. For example, the political world. Just think about how political power has acted towards the press in recent times. This aggressive attitude is a dangerous new arrival that damages press freedom. It is no coincidence that our President of the Republic, Sergio Mattarella, has deemed it appropriate to intervene numerous times" (ECPMF 2018, p. 16). Trocchia added that: "The high number of intimidations and violence against journalists is explained not only by the Mafia it is due to a more general problem: the de-legitimisation of the role of the journalist by the political and business worlds. The social role of journalists is recognised less and less. This explains, for example, the case of a colleague of mine who was publicly slapped by a politician for asking simple questions" (ECPMF 2018, p. 16).

Focusing on the aggressive attitude of certain politicians against journalists, it is emblematic the case of Roberto Saviano and Matteo Salvini. Mr Saviano is a well-known journalist, famous all-over the world for his best-selling book Gomorra that talks about organized crime in Italy. More specifically, about Camorra and the Casalesi clan. He has lived under police protection since 13th of October 2006. In May 2019, Italian Deputy Prime Minister and Minister of the Interior Matteo Salvini published a video on Facebook in which he threatened Saviano (Council of Europe alert 62/2019). Specifically, Salvini posted a video where he said: "A kiss to Saviano. I'm working on a revision of the criteria for the escorts that every day in Italy commit more than two thousand law enforcement workers" (Council of Europe alert 62/2019). Already in 2017 Salvini stated he wanted to assess: "whether there was any risk" justifying the security measures for Saviano, "in order to see where the Italians' money was going" (Council of Europe alert 62/2019). According to CoE, Salvini's threat can be considered as "intimidation to be attributed to the State" (Council of Europe alert 62/2019). As a result, it became part of those threat of maximum danger for the safety of journalists listed by the CoE (Council of Europe alert 62/2019). The Permanent Representative of Italy, Michele Giacomelli, replied to the Council of Europe that: "The Italian Minister of Interior informs that the adoption of provisions regarding personal protection are regulated by the Decree of the Ministry the Interior of 28 May 2003 and that Roberto Saviano is still under police protection" (Giacomelli 2019).

4.3 Being under special surveillance: Federica Angeli, Lirio Abbate and Paolo Borrometi

4.3.1 Federica Angeli: Fighting the Gypsy Mafia in Your Backyard

Federica Angeli is a journalist that started her career in 1998 working for La Repubblica. Since the very beginning she was focused on crime and legal news. In 2011, the Rome Public Prosecutor's Office opened an investigation following the investigation carried out by Federica Angeli together with Marco Mensurati who testified, with video and audio recordings, beatings and acts of hazing carried out by a group of leatherheads in the barracks of the Nucleo Operativo Centrale di Sicurezza (NOCS) in Spinaceto (Angeli and Mensurati 2011a). The investigation reveals that the group had previously been involved in the blitz for the liberation of the textile entrepreneur Giuseppe Soffiantini, after which special agent Samuele Donatoni had lost his life (Angeli and Mensurati 2011b). It follows the trial in the courtroom, the sentence of first instance and the consequent statements of two soldiers on what allegedly happened the day of Stefano Cucchi's arrest (Angeli 2015).

In 2013 she carried out an inquiry with fellow journalist Carlo Bonini on the relationship between organized crime in Ostia and public administration. The inquiry paved the way to an actual judicial investigation that reached its climax with maxi police operation called Nuova Alba (New Dawn). Over 51 persons belonging to the Fasciani, Triassi and Cuntrera-Caruana clans were arrested. The accusations ranged from corruption, infiltration in the administrative bodies and the allocation of social housing, stealing of commercial activities from the victims of usury and possible connections with the murder of Giuseppe Valentino. He was killed on 22nd of January 2005 in his bar at Porta Metronia in the San Giovanni district in Rome (Savelli 2013).

Angeli's interest in local gypsy mafia made her object of several threats from Fasciani and Spada families. As a result, since 17th of July 2013 has been living under permanent police protection. Everything started in May 2013, when she went to the bathhouse Orsa Maggiore in Ostia to make some questions about its societal status. "Together with two collaborators of Repubblica I introduced myself at the entrance of the bath. We had the camera. My staff kept it on, but pointed downwards, as not to give the impression that we were recording. I qualified as a journalist and asked to speak with Spada. They said there was no one there named Spada. But I recognized one of the men in front of me. It was Armando Spada. While I was talking, they noticed that the camera was on and they got upset. Armando Spada ordered me to hand over the tape immediately. He said that if I didn't do it, he would "shoot me in the head" and added that if he said it, I had to believe him" (Angeli 2018).

"I didn't know what to say. I tried to play it down, took my time. But those men blocked my operators and - separated us. Armando Spada and another man dragged me into a small room at the plant in a brusque manner. They searched me, asked me a thousand questions. They wanted to know what I really wanted from them. I didn't know how to get out of that situation. I felt with anguish the responsibility of having put my young collaborators in that situation too. I tried to reassure those people who exerted a strong psychological pressure on me that kept me prisoner. I reassured them about my intentions. I said I would hand over the recording and that would be the end of it. That interrogation lasted two endless hours, until I finally managed to calm them down. They took me back to my operators and I told them to cancel the recording. My staff managed to make them believe that, due to a technical error, they did not record anything. So they let us go. Actually, the guys were able to the footage. They even recorded the threats A few days later we published that video on Repubblica.it." (Angeli 2018).

Angeli reported the episode to the head of the online news service who supervised her work and, in agreement with him, continued the investigation, reserving the right to denounce the facts later. "Two days after Spada's threats I interviewed Paolo Papagni, partner and brother of the president of Assobalneari, the company that represents the managers of the bath. I asked him, in front of the camera, if it was true that he had favored the passage of the concession in favor of Spada. Some sources had told me that he could be the one behind the five arsonists set up at various bathing establishments in the area. At that point Papagni asked me to turn off the camera, told me to let it go and threatened me. He said that if I published the images from that interview, using

his powerful knowledge, he would make me lose my job at Repubblica. The next day he repeated the same intimidating phrases over the phone" (Angeli 2018). At this point, she decided to report the threats against her.

"On the 30th of May I went to the Carabinieri station in Ostia and lodged a formal complaint for both threatening incidents. As evidence I handed over a copy of the video recordings. I still remember the phone call I received from a convicted felon who knew me. He knew that I went to the station and asked me why I had denounced Papagni. How did he know?" (Angeli 2018). On 15th of July repubblica.it published the two videos of Federica Angeli for which she was threatened. On the very same day outside the Italy Pocker gambling den in Ostia, exponents of two of the mafia clans who contended for the racket of the factories faced each other with knives and pistols. Federica Angeli was an eyewitness by pure chance (Angeli 2018). "I was at home. I heard outside a man screaming, "Don't shoot, stop!". Then I heard two gunshots echoing. I looked out onto the balcony, like so many other people, and saw the scene. There were men running in the street. On one side two men from the Sword clan, on the other side two men from the Triassi clan. There was Marco Esposito, known as 'Barboncino' (Poodle), a convicted felon belonging to the former Fasciani battery. It turned out that he had been stabbed in the shoulder, lung and jugular and had exploded two gunshots, wounding Ottavio Spada, who was accompanied by Romoletto Spada, in the calf. The Triassi had had the worst of it. I immediately alerted the Carabinieri and police. A few hours later I was summoned to the station of the Cc of Ostia. They asked me to report what I had seen. On July 16th the Carabinieri asked me to return to the station to ask for further details and to sign the report. That day on Repubblica there was my article on the shooting in Ostia."

After these episodes, UCIS assigned her permanent police protection. "On the afternoon of that July 16th, when I reached the editorial office of my newspaper, I stood at my desk and burst into tears. The colleagues came around me and I let off steam with them. I said that I was very worried about my personal safety. The head of my editorial staff, the Rome chronicle, immediately understood the seriousness of the situation and represented it to the Prefect, who shared that assessment. On the morning of 17th of July I was assigned the escort, who has accompanied me every step since then. Since that day my life has changed. I am no longer as free as before and this weighs on me. But I never had the slightest doubt that I could have behaved differently. I couldn't help but publish what I had ascertained or say what I had seen with my own eyes" (Angeli 2018).

Angeli's work was crucial to shed the light on the evolution of rackets in Ostia. The journalist also suffered further intimidation in the following months while under escort. "In October 2013, Ottavio and Romoletto Spada, who had ended up under house arrest after the shooting in July, were back free by the time limits. On October 16, they showed up under the balcony of my house and toasted ostentatiously, looking towards me, who was looking out onto the balcony to smoke a cigarette. Sometime later, in the middle of the night, I heard people in the street shouting towards my window: 'Infamous, the infamous die!'. I'd sold my old car to a private person for a couple of months. A few days later, the new owner told me it had been set on fire. I filed a complaint about this incident

as well. One day Romoletto Spada met my son and made an intimidating gesture in front of him: he made the sign of the cross" (Angeli 2018).

Notwithstanding the fact that she has been living under police protection for seven years now, tensions never loosen. "The last intimidation I suffered was on March 11 of this year. I was in a bar in Ostia with two friends. Member of the escort were outside. At a certain point, while I was talking with my friends, I felt my blood freeze. Inside the bar there was Romolo Spada staring at me. When I got up to get out of the bar, he blocked the road and stood in front of me with his arms folded. It was a way to tell me that he always knows where I am and that, if he wants, he can get close to me. It's been a year since I received my first threats. The people who threatened me move around freely. I hope this ends. Let those who threatened me stand trial. I hope that this situation will unblock, and I can return to my freedom. This condition weighs heavily on me, but I don't regret anything. If I went back I would do exactly what I did" (Angeli 2018).

On 21st December 2015 she was awarded the title of Officer of the Order of Merit of the Italian Republic by President Sergio Mattarella for her commitment in the fight against the mafias. On 25 January 2018, operation Eclisse led to the arrest of 32 people belonging to the Spada clan in Ostia charged for mafia. On February 19, 2018, accompanied by the director of La Repubblica Mario Calabresi and the deputy director Sergio Rizzo, Angeli testified in the trial against Armando Spada. On the same year the anti-mafia association Noi was established to continue what Angeli did for Ostia to free it from mafia.

Angeli reinforced that the press and journalists have a precise duty towards citizens. "The press has the task of discovering negative social activity of general public interest and making it known whilst it is taking place, of reporting on these activities before they can produce worse problems. In my case, in 2013, when I described as 'Mafia' that criminal phenomenon that I discovered in action at Ostia, there were still no trials or judgements to prove it. Only in 2018, finally, what I discovered and dared to call by its name was also recognised as such by the judiciary in Rome."

4.3.2 Lirio Abbate: from Provenzano's arrest to Mafia Capitale

Lirio Abbate is an Italian journalist. In 1990 he began his collaboration with Giornale di Sicilia, writing about crime and judicial news. In 1997 he is called to the Palermo editorial office of ANSA, reaching the qualification of deputy head of service, where he mainly deals with judicial news. Since 1998 he has been correspondent for La Stampa in Sicily until 2008. On April 11th 2006, he was the only journalist present on the scene, following the investigators, during the arrest of the fugitive mafia boss Bernardo Provenzano. In September 2007 he started receiving death threats due to his investigations. During the same year, an attack organized in front of his house was foiled. In October of the same year, the boss Leoluca Bagarella, during the hearing of a trial, launched an intimidating proclamation to Abbate for news published by Ansa. As a result, Abbate was transferred to Rome.

For these facts he also had the solidarity of the then President of the Republic Giorgio Napolitano, who received him at the Quirinale. In 2009 he left La Stampa and Ansa and became correspondent for L'Espresso. In 2012 he exposed the existence of an organized crime group nick-named Mafia Capitale. Here Abbate denounced Massimo Carminati's clan. From that moment on, Carminati's clan started threatening him, as confirmed by Carabinieri's wiretaps. In the same period, Abbate published several investigations on corruption.

One year later, he wrote the book Fimmine Ribelli (Rebel women), to tell the stories of women who decided to fight 'ndrangheta in Calabria. In 2014, To unveil the background of the mysterious robbery of the vault in the bank of the judicial city of Rome he wrote the book La Lista - Il ricatto alla Repubblica by Massimo Carminati. In May 2014 he staged with Pierfrancesco Diliberto (aka Pif) a theatrical performance that makes fun of the mafia and the bosses. During the same year, the international organization RSF included him in the list of "100 heroes of information in the world" with this motivation: "The death threats and his presence on the blacklist of Cosa Nostra did not intimidate him" (RSF 2014). In 2015, the Index on Censorship association in London named him among the 17 people in the world fighting for Freedom of Expression. The President of the Republic with motu proprio in 2015 awarded him the honour of Officer of the Order of Merit of the Italian Republic. In January 2016 he became editor-in-chief of the Inchieste and Attualità sections of L'Espresso. In 2016 he was coordinator of the team that created for L'Espresso the protected RegeniLeaks platform in collaboration with the Hermes Center for Transparency and Digital Human Rights. The aim of the platform is collecting whistle-blower testimonies on torture and human rights violations, to demand justice for Giulio Regeni and for all victims of the Egyptian security services.

4.3.3 Paolo Borrometi: "The Mafia does not forget"

Paolo Borrometi is an Italian journalist who has been living under police protection since 2014. In October 2019 he became Deputy Director of the Italian Journalistic Agency (AGI). He began his journalistic activity in 2010 collaborating with the Giornale di Sicilia, and then moved on to AGI and Tv2000. In December 2017 he became president of Articolo 21. In February 2019 he became advisor of the National Press Federation. In 2018 it was made public the fact that an attack was plotted against him. According to the police, the attack was organized by the Cappello clan upon request of Giuliano di Pachino's clan (Cavallaro 2018). On April 16, 2014 Borrometi attacked by hooded men. The aggression causes him serious damages to the mobility of his shoulder (Pipitone 2016). In December 2017, the Deputy Prosecutor of the District Anti-Mafia Directorate of Catania issued a further warning about the risks to Borrometi's life. Specifically in an interview with Fan Page, he stated that: "If there's one journalist risking his life in Italy, it's Paolo Borrometi." As a result, AGI transferred him to Rome.

However, the situation in Rome did not improve. Even in Rome, he was threatened several times on social media. Solidarity was expressed to him by the highest offices of the State, such as the President of the Republic, Sergio Mattarella, who received him at the Quirinale and the President of the Senate of the Republic, Pietro Grasso, who repeatedly expressed his closeness to the journalist, as well as the then Prime Minister, Paolo Gentiloni. On 29th

of April 2018, following the attack on Borrometi, Pope Francis received the journalist in private audience, expressing his solidarity.

His inquiries were mainly focused on the receivership of Italgas for Mafia the Fruit and Vegetable Market of Vittoria (the largest in southern Italy), road transport managed by the Casalesi from the Fruit and Vegetable Markets. And then again, the Mafia presence in the Sicilian South-East, until a journalistic investigation on the "drug routes from the Port of Gioia Tauro to the province of Ragusa" disclosed their trafficking. Since 2016 Borrometi addressed public investigations on Syracuse Mafia crime. Other investigations concerned the Mafia and political relations, as in the case of the Municipality of Pachino and Avola. In 2018, Borrometi was a finalist of the Press Freedom Awards of Reporters Without Borders. He is part of the press group of the Caponnetto Foundation and of the National Cgil Legality Council. The Cgil recognized him the honorary card at the 2019 Congress, as well as the Uil.

When in February 2019 police protection was revoked for the investigative journalist Sandro Ruotolo, Borrometi stated that: "I was extremely concerned for Sandro. I have a relationship of trust and respect with him, I was among the first to know of the threat of Zagaria, of the enforcement of police protection and also of its withdrawal. I felt anger and concern, for a very simple reason. During the maxi-trial, it was asked to Tommanso Buscetta (collaborator of justice and former member of Cosa Nostra) how it was possible that after so many years, the Mafia had killed a person he had denounced in the past. he replied: "The Mafia does not forget. The condemnations of the Mafia are not like those of the State, they never fall within the statute of limitations." The Mafia, when it cannot hit you immediately, simply wait for the right moment. Therefore, I have great concern for this. Either someone tells us that Zagaria has repented, and therefore Sandro does not take risks, or if, as we know, Zagaria has not repented, then the decision to revoke it becomes very worrying. I hope that those who denounce the mafias, doing any kind of work, will not be left alone" (Matteini 2019).

Considering his personal situation: "I never asked for it (police protection *ndr*), but they attacked me and tried to burn my house down when I wasn't under police protection. In these years of protection, at least two attacks were discovered. I tell you the truth: in the past few months there was a car bomb ready for me, so the danger remains. I hope to live in a normal State, where police protection is revoked because the State team has made all the right assessments and the right steps. I have always believed in the State and I would never make controversy, just as I am not making it about Sandro, but I ask that there is the right attention to those who report the mafias. I hope one day to be free again and I hope that when this day comes all the necessary verifications will have been made" (Matteini 2019).

4.3.4 What does the number of journalists under police protection tell us about the state of the Rule of Law in Italy

Before addressing the issue of journalist living under police protection it is crucial to note two more aspects of the Freedom of the Press in Italy. The first takeaways that came from previous analysis is that, even though the

Freedom of the Press is a right enshrined in the Constitution (Art. 21), yet some issues remain. Considering television, Italy has a very low level of pluralism. It has a duopolistic market in which RAI and Mediaset share the six main channels. The situation was never properly solved. Moreover, the duopoly did not prevent Mediaset owner Silvio Berlusconi from standing in elections, even though there was a clear conflict of interest. Shifting the focus to newspapers, the situation is still compromised, as there are a few larger groups who actually own a variety of smaller newspapers.

However, pluralism is not the only issue affecting the Freedom of the Press in Italy. Shifting the focus to the situation of journalists under police protection, and people under police protection in general, it is crucial to note the role played by the Mafia. The majority of these people live under police protection because they decided to stand up against it. As a result, the Mafia sought to permanently eliminate them. At this point it is possible to note the creation of vicious circle. Journalists are threatened by the Mafia for their inquiries. The State decides to protect them through police protection. Hence, journalists are protected, yet they cannot work freely as they did in the past. Moreover, the State protects journalists, but it is not completely able to eliminate the organization that threats them. Considering the case of Federica Angeli, even though the majority of the Mafia clan who threatened her in the past was arrested, yet other members are able to menace her and make them feel at risk.

Making an overall assessment to the system of protection employed in Italy, there is a large consensus on the fact that it is actually quite good. As Cosci pointed put: "Compared to that of other countries the Italian system is the best. Just think about what happened in Malta. It seems that there were no adequate protective measures there. And what happened in Slovakia is another confirmation" (ECPMF 2018, p. 18). Senator Grasso holds that: "It is among the best. Even considering the number of subjects to be protected." Giving a closer look to statistics, it is possible to see that 55% believe that this system is adequate to current needs. 10% consider it imperfect as it is difficult to access it. 10% consider it incomplete, because it adequately addresses only the problems of journalists at higher risk. 25% hold no view (ECPMF 2018, p. 18).

Prosecutor Federico Cafiero De Raho stated that: "It not only provides for the management and allocation of police protection to journalists who ask to be protected, but also an active role for the investigative apparatus to discover and foil plans for retaliation and revenge attacks against journalists. For example, in the case of Michele Albanese, as in other cases, the Public Prosecutor's Office immediately informed the competent Prefect of the threats to the journalist that the investigators had discovered by listening to a wiretap the Prosecutor's Office informed the Prefect without waiting for that information to be used in the criminal proceedings for which it was obtained. At the same time, the Public Prosecutor's Office requested appropriate protective measures to be adopted urgently, as indeed happened" (ECPMF 2018, p. 18).

Lirio Abbate pointed out: "The main merit of the Italian protection system is that it is based on risk prevention and has proved to be effective. However, it can be improved, at various levels. We must always improve the

selection of the subjects who deserve this protection" (ECPMF 2018, p. 18). Borrometi added that: "It saved my life. Yet, it did not prevent that, after the first threats, I was assaulted and beaten and that they set fire to my house. In that first phase, the authorities had assigned me so-called dynamic vigilance. Therefore, I would say that the current system of protection is effective, but it is difficult to have access to it. Some individuals remain excluded: I name someone as emblematic for everyone, Nello Trocchia" (ECPMF 2018, p. 18). Trocchia himself underlined the disparity assessment of the UCIS: "The assignment of protection should not depend on the subjective assessment of individual prefects, as happens now". In order to solve the issue, he proposed the establishment of a common objective method. Even Marilù Mastrogiovanni, a journalist under threat from Puglia, argues that the protection measures called "dynamic vigilance" are not very effective. One of the limitations is that: "The journalist is protected but not his family members, who are the weaker party. There is little hope for an upgrade since the law enforcement system does not even have the money to make photocopies."

Journalists Maria Grazia Mazzola pointed out that: "When some of my colleagues who are threatened and under police protection go on TV they make triumphalist statements. They said: 'Everything is okay because the state protects me'. And who protects everyone else? All those reporters who work in areas where there is a strong Mafia presence and forced to remain silent - who defends them? Let's face it: for one individual who is well protected by the state there are a hundred others that are not protected at all. Many things could be done. For example, put observers alongside journalists who conduct investigations into the Mafia who accompany them, even from a distance. They could be observers from NGOs. It is very important for a reporter to know that he is not alone when he goes into certain areas" (ECPMF 2018, p. 19).

To sum up, it is possible to say that the situation in Italy is quite conflicting. On the one hand there is a clear path established by the Constitution, especially by Art. 21, while on the other there is a much shadier reality. Considering the Freedom of the Press, it is crucial to note the increasingly high number of journalists living under police protection due to their investigations on Mafia. As a result, they could not freely do their job. Plus, media pluralism is seriously endangered by a de facto duopoly in the television market controlled by RAI and Mediaset and a still limited pluralism considering newspapers. Shifting the focus on the Rule of Law, it is endangered in Italy by three main issues: the relationship between politics and the judiciary, the conflict of interests and the compression of social rights and the treatment of foreigners. All these factors exert a considerable influence over the current institutional asset, creating a vicious cycle.

Hence, there is a dysfunctional relationship between the Freedom of the Press and the Rule of Law. No matter how much the State tries to allow journalists to keep doing their job it, it will not solve the situation until it properly addresses the two main things that threaten it: the absence of media pluralism and the Mafia. If the State does not properly address them, it will be extremely difficult to establish the Freedom of the Press, hence the Rule of Law. The same goes for the other concurring issues that do not strictly stem from the Freedom of the Press and yet

affect the Rule of Law. If not addressed properly, the problem might spread to other features of the Rule of Law, endangering the situation even more and the State cannot afford it.

Conclusions

The title of this final dissertation asks an extremely precise question: "Is the Press Truly Free?". Of course, giving a yes or no answer to such question would be simplistic and ineffective. After analysing the current situation of the relationship between the Freedom of the Press and the Rule of Law in three different countries, it is clear that the situation is much more complicated than this. When the Freedom of the Press is threatened, the Rule of Law is eroded as well. There are numerous signs that corroborate this hypothesis. In all the three countries, it is possible to observe that for any kind of threat to the Press, there are crucial impairments to the Rule of Law. Notably widespread corruption, a poorly functioning judicial system, excessive media-concentration and a lack of media pluralism.

Moreover, considering Malta and Slovakia, there are some specific similarities in the murders of Daphne Caruana Galizia and Ján Kuciak. They were both investigating on illicit business involving entrepreneurs and crucial political figures. When they were harassed, both Slovak and Maltese police dismissed their complaints. Moreover, Caruana Galizia had her bank accounts frozen. When it comes to the governments in office at the time of the murders, they had both conducted propaganda campaigns against them. To such campaigns civil society answered with street demonstrations to force the government to continue investigations. Moreover, the masterminds behind the murders were two businessmen, respectively Marian Kočner and Yorgen Fenech. Both of them hired middlemen to carry out the murders. Nevertheless, their middlemen were not sufficiently scrupulous while sharing information. As a result, it was possible to discover their identities and trace them back to Kočner and Fenech. Such similarities suggest that there might be a recurring path in murdering journalists investigating on organised crime and potentially illicit business in which leading political feature play a key role. Therefore, more attention should be paid when such similarities occur in order to avoid other journalists murdered while they were simply doing their job.

Italy represents a case in itself. Notwithstanding a long-lived constitution that extensively fosters the Rule of Law and the Freedom of the Press, the State fails to let journalists safely conduct their jobs. Moreover, evidence suggests that it has a high level of media concentration. Which is quite problematic, as it makes it complicated for people to receive a pluralistic and comprehensive media coverage on different topics. It reinforces the idea that the State and the Freedom of the Press have a dysfunctional relationship. If the State does not decide to deal with certain issues, the situation might become even more compromised in the future.

The lowest common denominators of the countries I decided to analyse is that damages to the Freedom of the Press are symptoms of a more profound crisis of the Rule of Law as we know it. As Matthew Caruana Galizia pointed out: "The worsening trend of Freedom of Expression, and conversely the Rule of Law does not come out of nowhere. It's not caused by a lack of tolerance for different views and opinions. It's caused by weak institutions and weak Rule of Law." Such institutions are strong on paper, yet it does not guarantee having strong

institutions in reality. In order to have a state that fosters the Rule of Law it is crucial to have a functioning system of checks and balances.

Malta, Slovakia and Italy are only three of the 27 EU Member States. However, it does not follow that the current status of the Freedom of the Press and conversely the Rule of Law are experiencing a better period in the rest of the EU. Viktor Orbán became Hungary's Prime Minister and was able to transform the country for the worse. The pro-government media foundation KESMA has a dominant position in the media landscape and contributes to spread misinformation. Independent journalists are banned from freely asking questions to politicians (RSF 2020c). Orbán adopted major constitutional reforms, emptying the independent bodies of their powers. The case of the Constitutional Court is blatant. A similar scenario is happening in Poland. The Warsaw daily Gazeta Wyborcza is the leading target of government lawsuits (RSF 2020d). Courts are employing Article 212 of the criminal code to sentence journalists for defamation. Plus, the judicial system is completely subjugated by the government (RSF 2020d). As a result, Poland is moving away from the Rule of Law, to acquire characteristics much more similar to those of an illiberal state than to those of a liberal democracy.

Lithuania is certainly another country that presents the same problems. In 2019 it strengthened its legislation on broadcasting, providing further restrictions on the Freedom of the Press (RSF 2020e). Due to the amendments on the Law on Provision of Information to the Public, it is now possible to suspend a radio or TV programme for 72 hours if it is considered a threat to public security. The Television Commission can take such decision without bringing it to a court (RSF 2020e). In May the Constitutional Court tried to stop any other attempt of the ruling party Lithuanian Farmers and Greens Union (LFGU) to restrict the Freedom of the Press (RSF 2020e). The Court ruled that the investigation led by LFGU on the public broadcaster LRT violated the freedom of speech. Yet, LFGU did not stop. It established the Media Support Fund. In theory, it is supposed to fund media project. In reality, it is employed as a tool to delegitimized media outlets disliked by the ruling party. As a result, the establishment of the Fund led to the establishment of de facto censorship. During the same year, the Defence Ministry proposed to furtherly limit media freedom deciding that some information was for official use only (RSF 2020e). As a result, journalists would be banned from accessing information on government decisions. Following public indignation, the Ministry withdrew the amendment.

What happened in Malta and Slovakia and what is happening in other Eastern European Countries shall not be perceived as something episodic. Some might say that Malta is just a tiny island, with different socio-cultural and judicial history. The same goes for Slovakia, who has the youngest constitution compared to Italy and Malta. However, this is not entirely true. Italy shall not believe to be immune to what happened in Malta and Slovakia. All the warning signals are already there, and it would be foolish not to consider them. If we truly believe in the importance of the Union of which we are part, in the Freedom of the Press and the Rule of Law, it is crucial to take decisions to counteract mischief and the spread of corruption. Not only in Italy, but also in all the other EU Member States that do not feel they are part of the problem. The Rule of Law seems like a set of values that can

withstand shocks easily, yet this analysis demonstrated that this is not the case. A thin crack can make an entire system collapse. As a result, there should be a renewed effort by the Member States of the EU to foster both the Rule of Law and the Freedom of the Press. They are two founding values of the Union. Because of this, they should never be taken for granted.

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Appendix: Interviews

Matthew Caruana Galizia, journalist and activist, Daphne Caruana Galizia's son.

1. **What were the reaction of the Maltese population towards the murder and towards the actions undertook by the government?**

I believe that there is a widespread perception that the government is not doing enough to find out how the murder actually went. At the same time, I think that they share the desire of the government for the investigation not going any further. Even though a consistent part of the population was shocked by the murder, I think that the government was doing its best to let people forget about it.

2. **On the other hand, there are journalists that are doing whatever they can to keep the memory alive. How do you think that this can help the cause?**

In the absence of the state in undertaking proper investigations, then the work has to fall onto journalists to continue it. My mother was murdered for her investigations. As a result, continuing her investigations would lead to the people who murdered her.

3. **When we talked the first-time last summer the situation in Malta was quite different. What changed in a year?**

The simplest thing is that Yorgen Fenech was arrested. He was the mastermind behind my mother's murder. He was caught while he was escaping Malta on his yacht.

4. **What does it mean this arrest for the purpose of your advocacy and for the current situation of the Rule of Law in Malta?**

The main issue was that the investigations on my mother's murder were not done seriously. There was and still is a lack of resources. Corruption was not investigated properly. There was a lack of resources on the murder investigations. These were our main concerns. It is important to bear in mind that the arrest of Yorgen Fenech is not a result. It is not the arrest itself that says something about the Rule of Law. It actually says a lot about the ability of a state to secure justice. An arrest is not justice. There is still a very long to go to actually achieve justice.

5. **Another issue in Malta is that not only justice is not enforced correctly, but also the role of the Prime Minister is extremely central for what concerns the appointment of roles that are very close to justice**

There are structural problems within our justice system. It's slow, it's ineffective. There is design problem within the system itself. Then, there are other problems on the top of that. For example political interference.

6. **Your mother was not the only journalist who was murdered in Europe. In Slovakia was murdered Jan Kujack Do you believe that the Freedom of the Press in EU is in danger? If it so, which policies shall be enacted?**

I think that the Rule of Law in Malta is in danger and that a weak Rule of Law leads to an endangering environment overall. The worsening trend of Freedom of Expression, and conversely the Rule of Law does not come out of nowhere. It's not caused by a lack of tolerance for different views and opinions. It's caused by weak institutions and weak Rule of Law. Specifically in Malta, the situation is worse because we do not have a proper system of checks and balances and the government did seriously abused it.

7. **Do you believe that if not kept on track, the political situation in Malta might escalate to the same extent that escalated in in Hungary and Poland?**

The problems in the countries are different, yet very similar. In Hungary, everything that the government does is because of a sovranist façade. Orban's government is acting in a certain noble way because he is doing what he is doing to defend Hungarian values. He is very populistic. In this sense, he is supported by quite a lot of Hungarians. Perhaps not the majority, but certainly an important part. what the Maltese government did, especially under Joseph Muscat, is different. The government tried to sugar-coat what he did, exactly the opposite of what Orban did. But it carried out the same crimes: kleptocracy, widespread corruption, loss of independence in the judiciary. All of these problems are very similar. Malta was very careful to keep the European Commission on sight. This was the main difference. The Hungarian government was seen as an enemy of the European values. With Joseph Muscat, he introduced legislation for civil marriages, he was seen as an upholder of European values. Hence, he was worthy of respect. Once my mother was murdered, I believe that his sort of façade fell apart. Politicians at European level could see what the reality actually was.

8. **There were at least to official mission of the EU in Malta to check if investigations were conducted in a proper way. How do you think that the EU Commission shall act in this regard?**

In the short term there should be pressure over the Maltese government to be a proper democracy were the Rule of Law is respected and were politicians do not have influence over prosecutors, where corruption becomes a punishable offence. At the same time, in the long term the Commission should reconsider its system of checks and balances to make sure that it does what is needed against those member states sliding in the same behaviour.

Paolo Borrometi, vice-director at AGI, living under police protection since 2014.

1. **Ci troviamo difronte ad un gap logico. Lo stato mette sotto scorta i giornalisti che riesce a mettere sotto scorta per permettergli di fare il loro lavoro, dall'altra però la questione per cui venite messi sotto scorta rimane. Non sembra ci sia una lotta a sradicare la criminalità organizzata.**

Il tema è un po' più complesso. Che non ci sia una grande attenzione verso la criminalità organizzata è noto da tempo. Non una grande attenzione, anche solo un'attenzione. Non è certamente tra i primi punti dell'agenda non di questo o di quel governo, ma proprio dell'agenda politica. Purtroppo, l'attenzione verso la criminalità organizzata in questo paese è andata sempre ad ondate. È stata sempre legata a fatti di carattere terroristico. Le grandi stragi sono sì mafiose, ma sono innanzitutto degli atti terroristici, mirati a provocare il terrore. Quegli atti eclatanti hanno risvegliato le coscienze sopite e quindi hanno fatto comprendere quale fosse l'entità dello scontro tra le mafie e lo stato. Questo chiaramente ha costretto lo stato, quanto le istituzioni a prendere posizione. Un caso eclatante è quello di Daniele Pervincenzi. La collega Federica Angeli denuncia da anni il clan Spada. Il clan Spada ha vissuto alterne vicende. Le denunce di Federica Angeli sono rimaste per lungo tempo senza risposta. Il collega Daniele Piervincenzi fa un servizio sulla palestra di Ostia gestita da Roberto Spada. Si becca una testata che gli spacca il setto nasale. La forza dell'immagine viene proiettata su tutti i Tg del mondo, non solo quelli italiani. La forza dirompente di quel video, la violenza, porta alle istituzioni a prendere posizione. Il capo della polizia disse al TG1 che "non ci possono essere zone franche dello stato." Da questo momento in poi il clan Spada nel brevissimo volgere di qualche mese è stato annientato. Nessuno del clan Spada è a piede libero ad Ostia. L'attenzione alla criminalità organizzata è legata al fatto di terrore. Questo fatto costringe gli inquirenti a dare una risposta quanto più immediata possibile. Di conseguenza, la politica deve prendere posizione.

2. **Daphne Caruana Galizia prima di essere uccisa aveva denunciato più volte non solo i suoi detrattori, ma anche veri e propri casi di illegalità. Nessuno in Europa si è accorto di cosa stesse succedendo a Malta prima che Daphne venisse assassinata. Ritiene che ci sia un pattern ricorrente in questi casi?**

Il discorso si può molto allargare. Pensa al terrorismo sic et simpliciter. Va a ondate. Nessuno lo considera fino a quando non avvengono degli attentati. A quel punto, il gruppo terroristico viene reso anche dai media un soggetto che provoca terrore. Gli stati, i governi e le popolazioni hanno quell'indignazione che porta ad una levata di scudi e quindi alla lotta al terrore. Questo vale ancor più per le mafie. Soprattutto nel nostro paese, perché in Europa gli attentati terroristici non hanno portato un'attenzione vera e propria. Basti pensare alla strage di Duisburg, dove né prima e né purtroppo dopo, le autorità tedesche si resero conto che la 'Ndrangheta fosse penetrata nella Repubblica Federale Tedesca. Questo vale anche per la povera Daphne. Non bastò l'autobomba che la uccise per risvegliare la coscienza dei maltesi che ancora oggi si dividono sulla sua morte, come se Daphne fosse un avversario politico da demonizzare e da distruggere, piuttosto che la vittima di un orribile atto terroristico. Molto spesso si legge che se Daphne non avesse scelto di indagare su certi temi non si sarebbe presentato il problema e sarebbe ancora viva.

Questo è un ragionamento pericolosissimo che viene fatto su di me, su di noi, su qualsiasi persona si esponga in qualsiasi campo. A questo proposito faccio sempre l'esempio di Giovanni Falcone e della bomba dell'Addaura. Estate il 1989. Scoprirono che avevano posizionato una bomba nella casa che Falcone aveva preso in affitto con la moglie Francesca Morvillo. Quella bomba venne scoperta. Giovanni Falcone andò qualche giorno dopo in televisione dicendo "Questo è un paese strano. Un paese in cui se scoprono una bomba sotto casa tua e quella bomba non scoppia, significa che te la sei messa tu." Penso che sia un discorso che si possa fare anche in modo più allargato, ma rimaniamo a casa nostra, In questo paese, con l'esempio che ti ho appena fatto dell'Addaura, purtroppo, ognuno di noi non solo ha preoccupazione ad esporsi, ma prova anche fastidio per chi si espone. Mette in luce le tante nostre mancanze, anche nei piccoli gesti quotidiani.

Noi abbiamo veramente tante mancanze, senza arrivare alla criminalità organizzata, che sicuramente è estremamente grave, la mentalità media che alla fine viene sottolineata. Come quando Saviano ha scritto Gomorra e i compaesani si sono offesi perché non metteva in luce la bellezza della Campania.

È assolutamente così. Poi chiaramente Roberto fece un'opera di straordinaria importanza, in un momento in cui si parlava poco. Mettendo in luce un gruppo che di fatto non era conosciuto, ne parlavano solo i cronisti locali. È un ottimo esempio per incorniciare il discorso che stiamo facendo. È chiaro che spesso della mafia c'è anche la cultura mafiosa. La cultura mafiosa nasce da un gap culturale. Quindi innanzitutto con il tentativo di incrementare quello che è il livello culturale medio di questo paese e poi anche con il richiamo verso chi ha responsabilità pubbliche, verso chi si impegna a rappresentare i cittadini, ad una maggiore coerenza e sensibilità nelle loro dichiarazioni perché nell'epoca dei social, nel momento in cui pubblichi qualcosa, soprattutto se hai un discreto seguito, influenzi chi ti segue. Questo può rappresentare un passo in avanti se il messaggio che vuoi far passare è un messaggio reale. È invece un gran problema se lo riempi di basso populismo. Nel nostro paese il problema della scorta è il costo della vita sotto scorta, non il costo di una vita sotto scorta per chi è costretta a viverla e cosa significa.

3. **Almeno una volta al giorno dedica un post a qualcuno che è stato vittima della criminalità organizzata o semplicemente vittima di un sistema. Che riscontro ha quando pubblica queste storie?**

La maggior parte delle storie che pubblico sono ai più sconosciute. Basti pensare che il 21 marzo in occasione della giornata del ricordo delle vittime innocenti di ogni mafia leggiamo una lista di nomi che consta quasi di mille nomi e cognomi. Questo ti fa capire quanti nomi sconosciuti ci siano ancora. Il mio tentativo è far conoscere queste storie. Banalmente perché se non le fai conoscere la mafia ha vinto. Abbiamo voglia di piangere il giorno della morte, ma poi nei fatti ha vinto la mafia che è riuscita ad eliminare il problema. Io cerco di fare il grillo parlante. So che è una cosa scomoda, so che non fa piacere. Qualcuno dice che è arrivato il momento di non commemorare più, io invece penso che le commemorazioni sono il ricordo fattivo e reale di una storia e di un impegno. Allora ricordare è fondamentale perché ho sempre pensato che non ci possa essere presenza nel futuro senza il ricordo

e senza la possibilità di imparare dal passato. La seconda parte della risposta è che a me non interessa il riscontro che ho. Se ho un like, 10.000 like. A me non interessa quello che è il risultato. A me interessa fare il mio dovere di cittadino innanzitutto e poi quello ovviamente di giornalista, cercando di illuminare quelle storie, ciò che qualcuno ha voluto interrompere.

4. **Parliamo di esposizione mediatica. Il caso di Daphne Caruana Galizia, almeno in Europa, ha ricevuto molta attenzione mediatica. Il caso di Ján Kuciak, per certi versi, è passato quasi in sordina. Secondo lei perché?**

Perché hanno ucciso Daphne Caruana Galizia? Perché hanno ucciso Ján Kuciak? Perché vogliono ammazzare Federica Angeli? Non perché siano belli o brutti ma per una ragione molto più profonda, legata al loro impegno. Questa è la cosa che va sottolineata. Ho contatti quotidiani con centinaia di familiari di vittime e alcuni di loro mi dicono una frase molto amara ma reale: "Ci vuole fortuna anche nel morire". Purtroppo è triste come cosa, ma è così. Ci sono casi che ricevono più attenzione di altri. In questi giorni in Sicilia ci sono due casi che hanno travolto l'opinione pubblica. Uno è quello di Gioele e della mamma, un altro p quello di Evan, morto nel siracusano. Sono entrambi tragici, ma per assurdo, la storia di sofferenza di Evan non è superiore a quella di Gioele, perché poi vedremo come è morto Gioele. Non voglio dire che un caso sia più grave dell'altro. È che a volte c'è un'attenzione mediatica che ha coinvolto giustamente il caso e la morte tragica di Gioele, mentre Evan è finito più volte in ospedale con dei vistosissimi segni sul corpo perché veniva malmenato. Lui è morto perché malmenato, ma pensiamo alla sofferenza che c'è stata in tutti questi mesi. È stato un vero e proprio calvario, una via crucis. Tutto questo dovrebbe portare anche questa storia sulle prime pagine dei giornali. Invece, la storia di Gioele è giustamente sulle prime pagine dei giornali. La storia di Evan incredibilmente manca. Come dicono i familiari di vittime di Mafia: "Ci vuole ancora fortuna nel morire." Nel caso di Daphne ci sono stati i familiari e i colleghi che hanno fatto così tanto rumore e lo hanno fatto diventare un caso mondiale. E questo caso mondiale ha coinvolto l'opinione pubblica che ha fatto da cassa di risonanza. Banalmente l'anno scorso ho preso un premio a New York e sono andato a parlare con dei colleghi e portavo i due casi. Di Daphne sapevano molto, di Ján Kuciak non ne sapevano abbastanza. O comunque non in modo sufficientemente esaustivo per poi informare l'opinione pubblica.

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Summary

Introduction

The aim of this final dissertation is to demonstrate that there is a relationship between the Rule of Law and the Freedom of the Press in the European Union and its Member States. Specifically, the fact that when the Freedom of the Press is impaired, the Rule of Law is eroded. In order to do so, the analysis will be structured in four chapters. Chapter I will focus on establishing the theoretical basis to understand the core features of the Rule of Law and of the Freedom of the Press. This will set the basis to further analyse their relationship. The following chapters have a more practical perspective, adding a case study to the theoretical scheme underlined in Chapter I. Chapter II analyses the current situation in Malta, both from a constitutional perspective and considering the murder of investigative journalist Daphne Caruana Galizia and the citizenship by investment scheme employed in Malta. Chapter III focuses on the situation in Slovakia, with a particular focus on the murder of journalist Ján Kuciak and his fiancée Martina Kušnírová. Chapter IV analyses the relationship between the Freedom of the Press and the Rule of Law in Italy. The situation in Italy is different, as the issue concerns the high number of journalists leaving under police protection due to their investigations on Mafia. Finally, conclusions try to summarize the answer to the initial question: whether the press is truly free and whether the Rule of Law is eroded by potential damages to the Freedom of the Press.

Chapter I- The Rule of Law

Chapter I provides the theoretical basis for analysing the Rule of Law. In order to do so, it uses the definition drawn by the most important scholars in the field, such as A.V. Dicey, Mortimer Sellers, Roberto Bin and Lord Tom Bingham. Summing up their positions, it is possible to see that the Rule of Law is crucial for a modern and functioning democracy. Plus, it is a concept intrinsically linked to the birth of the modern state. The Rule of Law is based on the fact that every man is subject to the law of the land. As a result, everyone is subject to it, no matter his or her social status or his role. This concept is linked to the idea brought about by Sellers, i.e. the fact that the Rule of Law "is the empire of laws and not of men." The aim of the Law is bringing the common good to society as a whole, and not just for the few who actually detain power. Moreover, Sellers calls for an active role of the citizens, who should pursue their private interests, as long as they do not act at the expense of their public duties. This aspect is extremely modern and crucial to have a functioning society.

According to Bin, the Rule of Law is characterised by three main principles: the authenticity principle, the exclusivity principle and the effectivity principle. Plus, the Rule of Law is characterised by the division of powers. If the Rule of Law is correctly established, the State's activities are compartmentalised and delimitated in their contents. After World War II, together with classical liberties other guarantees were added, such as the right to health, to welfare, to security and education. Plus, the Rule of Law became strictly connected to the welfare state. Another crucial insight on the Rule of Law is the one of Lord Bingham in his book *The Rule of Law*. Bingham derives his concept of the rule of Law from the previous guidelines established by A. V. Dicey. In his work, Lord

Bingham identifies eight main characteristics of the Rule of Law: accessibility; law not discretion; equality; exercise of power; human rights; dispute resolution; fair trial and compliance with international law.

It is underlined by many pieces of national and international law, such as the Universal Declaration of Human Rights, that the Rule of Law is essential to protect human rights from tyranny and oppression. As the Rule of Law is extremely valuable for society, it is crucial to preserve it. The Rule of Law is best secured under a stable constitutional government. Moreover, there should be in place all the specific characteristics afore stated. Namely, laws rule in the interest of the society as whole, avoiding any particular faction taking over with their own private interests, a stable constitutional government, an independent judiciary. After the Rule of Law has been established and a system to protect it has been devised, it is crucial that the governments continue to pursue it. In order to do so, governments have to foster liberty against aggression and secure the social goods that necessitate of considerable collective action.

Another crucial pillar for the dissertation is to define the importance of the Rule of Law in the European Union context. The EU was able to build a community based on the Rule of Law. The whole process was based on integration through law. Due to the fact that there is no specific EU implementation and judicial structures at national level, it is up to the domestic structures of each state to set up specific institutions that are going to deal with the domestic implementation and compliance of laws. Mutual recognition is extremely important, because is stems from mutual trust. It means that all the members of the community trust the other members and their legal systems. The Rule of Law is considered as a core value of the Union thanks to the ECtHR and the documents drafted by the Council of Europe, based on the competences of the Venice Commission. The Rule of Law is codified by Article 2 of the Treaty on the European Union.

The establishment of a comprehensive framework to measure the Rule of Law among different states has always been a primary concern in and outside the EU. After previous attempts in 2005 Outcome Document of the World Summit and the 2011 Report on the Rule of Law ratified by the Rule of Law, it was time establish a checklist made up by elements that could be operationalised and controlled. Finally, Rule of Law Checklist was adopted in 2016 during its 106th Plenary Session. The Checklist is a crucial document not only because it reinforces the fact that the concept of Rule of Law is deeply rooted in the European judicial tradition, but also because it establishes a practical system to understand if the Rule of Law is correctly enforced, or potentially eroded. The main focus of the checklist is assessing legal safeguards. Another important aspect that should be taken into account is the proper implementation of the law.

The Checklist tries to operationalize the Rule of Law, identifying certain indicators that allow to measure it. These indicators are conceived in an extremely practical perspective. There six macro categories: Legality; Legal Certainty; Prevention of Abuse of Powers; Equality Before the Law and Non-discrimination; Access to Justice and Examples of Particular Challenges to the Rule of Law. Additionally, each macro category is characterised by certain features. For example, in the case of Legality, its features are: supremacy of the law, compliance with the law, relationship

between international and domestic Law, law-making powers of the executive, law-making procedures, exceptions in emergency situations, duty to implement the law and private actors in charge of public tasks. For each feature, there are boxes filled with questions that can help the organization or the state entity that is carrying out the assessment.

The establishment of a common framework for the Rule of Law like such as the Rule of Law Checklist is crucial, as it gives to all the Member States the same instruments, allowing them to conform to certain requirements. In order to foster the preventive aspect, there is Article 7(1) TEU. According to it the EU can act in case it faces a "clear risk of a serious breach by a Member State of the values referred to in Article 2" (TEU 2012). The purpose of this procedure was to give the Union the ability to prevent a clear risk of a serious erosion of common values (Hillion 2016, p. 75). As a result, there was an enhancement of the operational character of the means already available under the Amsterdam Treaty, which allowed only for remedial actions, when the breach had already occurred (Hillion 2016, p. 75). Article 7 TEU is not the only instrument in the EU that can be used to prevent breaches of the Rule of Law. In the Commission's *EU Framework to Strengthen the Rule of Law*, there is a slightly different approach in the preventions of breaches of EU values (Hillion 2016, p. 78). The 2014 Framework avoids renewing the idea of Article 7 TEU of enforcing a monitoring mechanism. It sets out a three-stage structured dialogue, that shall begin in case of "clear indications of a systemic threat to the Rule of Law in a Member State."

The Freedom of the Press is the second crucial variable of the analysis. It shall be considered from three different perspectives: the law perspective, the historical development in different context and the indicators defined to measure it through time. The Freedom of the Press can be traced back to the Freedom of the Press Act was adopted in Sweden in 1766 and the 1791 First Amendment of the US Constitution. Considering more recent legal arrangements, the Freedom of the Press is mentioned in the ECFR. Another important aspect that should be kept in mind is the fact that the Freedom of the Press and the Freedom of Expression are not exactly the same. Although they are often analysed together as if they were interchangeable, there is a subtle difference. Notwithstanding the fact that the Freedom of the Press alone is not always openly mentioned in many constitutions, yet it plays a crucial role. In a democratic context, if a government is checked by a free press is more accountable and less likely to be corrupt. When we consider the European perspective on the press to spread ideas some caveats are needed. It seems that there is a persistent desire to control the Press. It is possible to see that from many perspectives: press laws, registration requirements penalties for the 'underground' press and for so-called press offences in general.

The Freedom of the Press is not a monadic right that stands in a vacuum. It postulates other freedom and rights, not only for the people but also for the state itself. On the one hand, in a state where the Freedom of the Press exists and is enforced, people have the possibility to receive pluralistic and diversified information. People are allowed to choose from which newspaper or television channel retrieve information without fearing the interference of the government. In a society in which the Freedom of the Press is well established, the Freedom of Expression and the Freedom of Speech are guaranteed. In other words, people are not only able to gather

information from a diversified and pluralistic media system, but they are also able to express their personal opinions. In such context, journalists are able to work safely, without fearing the interference or possible threats by the government. Journalists do not for their lives while working on field investigations. People do not doubt on the real intent of the media, as they are not under government control. Nonetheless, when all the features previously listed are missing, not only the Freedom of the Press is impaired, but also the Rule of Law is eroded. It is possible observe this phenomenon thanks to the characteristics previously outlined.

Chapter II- Malta: Ius Pecuniae and Power Concentration

Malta has a post-colonial constitution enforced in 1964. In 1974 it was amended by Act LVIII, shifting the form of government from a monarchy to a republic within the Commonwealth of Nations. Malta has the Westminster model of cabinet government. It was also decided to opt for a written constitution characterized by a comprehensive bill of rights inspired by the European Convention on Human Rights of 1950. The locus of the ultimate political power is left unstated, apart from the fact that the people are sovereign every five years, because of obligatory general elections. Even if the Rule of Law is not directly mentioned, it was enforced in several occasions. For example, when between 1972 and 1974 there was a reaction against the non-appointment of Constitutional Court judges. As a result, now the Constitution contains an automatic mechanism for the constitution of the Court in default of specific nominations, as provided by Art. 95(5). Other issues included access to justice, the hierarchy of the courts and the system of appeals. The main takeaway is that the Rule of Law is not guaranteed due to a certain document. The point is that the Rule of Law will be guaranteed so far as vigilant people will use the Constitution to foster the proper law-making, independence of the judiciary, hierarchy of the courts or human rights provisions to guarantee the Rule of Law in practice. Moreover, Art. 39 of the Constitution, focused on the right to the protection of the law, guarantees also access to justice, a fair trial, enforcement of civil rights by an impartial and independent tribunal, and other key elements of the impartial application of law and administration of justice.

The Venice Commission underlined that the Powers exercised by the Prime Ministers are "clearly the centre of political power". His or her powers range from appoint government ministers from amongst members of the House of Representatives to appoint the Data Protection Commissioner; appoint members of the Electoral Commission, the Public Service Commission, the Broadcasting Authority, the Malta Financial Services Authority and the Internal Audit and Investigations Department, as well as the Permanent Commission Against Corruption. Under the Muscat government, further competences were placed directly under the supervision of the Office of the Prime Minister. Law-enforcement bodies rest on the will of the Prime Minister, they might be discouraged to proceed on investigations on certain activities closely linked to him. As a result, many crucial aspects of the Rule of Law are impaired, such as the principle of independence of the judiciary, the separation of powers, the functioning of the criminal justice system.

As if the situation was not compromised enough for a Member State of the EU, Malta shown considerable issues with the enforcement of the Freedom of the Press. Even though it is fostered Article 34 of the Maltese Constitution, the 2008 the Freedom of Information Act and the 2013 Protection of the Whistle-blower Act, yet some issues persist. For example, political parties are allowed to own and operate broadcast media outlines and take a considerable share of the newspaper as well. The fact alone is perhaps the most convincing explanation for the extreme polarization within the country. Plus, according to the report by the CMPF, the perceived risk for media freedom in Malta evolved over time. In 2016, when the first report was issued, the risk for Malta was considered overall medium. Moreover, Malta does not put in place any mechanism to protect journalists in case of changes of ownership or editorial line. There are no specialized trade unions and no laws make incompatible media ownership and government. Plus, Malta is the only EU country were media ownership by political parties is so pervasive. Other risks for media pluralism come from the appointments of the board members of the Broadcasting authority that regulate radio and television broadcasting in the country.

Malta does not have issues merely with the Freedom of the Press, but also with its popular citizenship by investment scheme. Since 2013 it is possible to acquire the Maltese, hence the EU citizenship, investing €650,000. As a result, the Commission DG Justice initiated an infringement procedure against Malta. Subsequently, the EP adopted the Resolution on EU citizenship for sale (2013/2995). The Resolution reinforced the fact that citizenships are under exclusive competences of Member States (2013/2995[RSP]). However, when regulating citizenship matters, Member States have to foster the values that are crucial to the Union, especially for what pertains EU citizenship (2013/2995[RSP]). As a result, the case was politically resolved introducing a residence criterion of 12 months prior to the application (Article 10(1)). From a constitutional point of view, the case is sensitive because it concerns the division of competences. It was the first time that a Member State chose to amend its nationality law following an infringement procedure. Malta's citizenship by investment programme would not be so contested if together with the Maltese citizenship would not sell also the European one. The amendments led to generalized discontent among the EU Member States, as they believed that the programme implemented by Malta might threat the security of the EU, leading to an influx of wealthy criminals. In February 2014, Malta finally amended IIP adding the clause of one-year effective residence, in order to test the link between the applicant and the country. However, this last requirement does not entail that the applicant has to be actually in Malta.

According to the Commission citizenship by investment scheme may be a privileged route for third country nationals to circumvent certain requirements to obtain EU citizenship. Another issue is whether tax incentives coming from citizenship by investment schemes drive the demand for such facilitation scheme. Even though the establishment of such scheme does not directly lead to tax evasion, yet individuals might benefit from existing privileged tax rules. Moreover, there might be room for abuse, stemming from the misuse of benefits.

On the 16th of October 2017, the journalist Daphne Caruana Galizia was murdered by a bomb in her car. Caruana Galizia was one of the most famous Maltese journalists. Her investigative journalism was perceived as an attack towards the Labour government led by PM Joseph Muscat. She was the first one who reported the involvement

of Konrad Mizzi and Keith Schembri. The former was the Minister of Tourism, while the latter was the Chief of Staff of Joseph Muscat. Due to her investigations, Mizzi was obliged to reveal the existence of his New Zealander trust the *Rotorua Trust*. Subsequently, Schembri had to do the same with his Panamanian trust. Caruana Galizia investigated on major affairs such as the Electrogas affair, the Egrant affair, the Vitals Global Healthcare affair and the issue of Pilatus Bank. All her investigations were revealed a widespread criminal attitude in the country, stemming primarily from the most important members of the Labour Party. Caruana Galizia often denounced the threatening she was subjected to, but nothing was done. Even after her murder, her family accused the Maltese government of not carrying out the investigations' on Caruana Galizia's murder properly. After the death of Daphne Caruana Galizia a group of fellow journalists from18 newspapers decided to join together following the investigations left open following her death. Among them it is possible to count Repubblica, the New York Times, The Guardian, Reuters, Süddeutsche Zeitung, Die Zeit, NDR (Norddeutscher Rundfunk), WDR (Westdeutscher Rundfunk), France 2, Le Monde, Premières Lignes Télévision, Radio France, Direkt 36, OCCRP.

Maltese journalists from six independent media house reported to the European Parliament Civil Liberties Committee that they were working in an environment full of intimidation and fear. Media threats persisted over the years. In 2019, George Degiorgio, his younger brother Alfred and Vincent Muscat were indicted. Finally, after years of investigations, both the middleman and the mastermind were discovered: Melvin Theuma and the entrepreneur Yorgen Fenech. Fenech is a businessman, owner of a secret off-shore company, connected to the secret off-shore companies owned by Keith Schembri and Konrad Mizzi. In January 2020, Muscat decided to resign. As a response, the EU decided to send the LIBE to conduct an inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion. Among the key findings, it was reinforced once again the importance of strengthening independence, transparency and accountability for all institutions. It was stated the need to address the potential conflict of interests for key public or elected offices and the unclear separation of powers which has been the source of the perceived lack of independence of the judiciary and law enforcement authorities. It was discovered that there was no police investigation on the hypothetic corruption and money laundering by Keith Schembri and Konrad Mizzi. Plus, in 2019 the situation did not consistently improve. The delegation asked again the Commission to establish a dialogue with the Maltese government in order to continue to monitor the situation in accordance with the Rule of Law Framework, as stated by the EP resolution of 28 March 2019 on the Rule of Law and the fight against corruption in the EU, referring to Malta and Slovakia.

Chapter III- Slovakia: Lack of Transparency and Misuse of European Union Funds

Slovak Constitution is the youngest constitution compared to the Maltese and the Italian one. It was enforced in 1993 following the fall of the USSR and the partition of Slovakia from the Czech Republic. The Constitution represents the foundation of the Slovak legal states and it is at the top of the legal system. The separation of powers is clearly established, together with a system of checks and balances. Even though from a formal point of view the Rule of Law is established, GRECO Evaluation Team underlined some problematics. First of all, the fact that the

President of the Slovak Republic has a primarily ceremonial role. He/ She is not directly involved in the day-to-day exercise of governmental functions or in advising the government on such functions. Article 108 states that it is the government that is the supreme executive body of the country. The status of state secretaries is in a grey zone, as they play a crucial executive role within the remit that they are given by this minister. Even though ministers shall enjoy a certain degree of freedom in choosing their collaborators, yet it is crucial to formalize criteria of selection to appoint state secretaries.

Article 26 of the Slovak Constitution formally established the Freedom of the Press in the country. After the period of censorship under the communist regime, the situation was supposed to improve. Yet, certain problems exist even in a supposed democratic reality. The Federal Broadcasting Act (Law 468/199) established the basis of a dual broadcasting system. In 1993 the it was replaced after nine years by Law 166/1993. Thanks to it, it was possible to set actual conditions for develop a dual system. Moreover, it splits the frequency spectrum between the Czech Republic and Slovakia. The study underlines that Broadcasting is managed by the Council for Broadcasting and Retransmission (RVR), which allocates broadcasting licenses and checks on ethical and legal standards. However, the Slovak media market still lacks transparency. There is no public body that actually checks in-depth map of the Slovak media market. Considering transparency of media ownership, it has the high-risk score of 81% MPM 2020. Even media score concentration is high, showing a lack of clarity in the overall media market. Media legislation entails precise thresholds and specific limitations to prevent a high degree of horizontal concentration. Due to the fact that neither the Broadcasting Council nor the Ministry of Culture actually measure the media market, it is complicated to assess efficiency and media concentration. There are no specific rules considering online platforms concentration and competition enforcement. Notably, there is a lack of protection for journalists in case of change in ownership or in editorial line. Moreover, appointments and dismissals of editors-in-chief insuring that these are not influenced by commercial reasons, it is ensured only by provisions of Labour Law.

It was observed that the publishing line of television channels and radio stations were heavily influenced by the political class, especially during electoral campaigns due to the fact that governing councils are appointed on political basis. In order to understand the context, it shall be stressed that during the first decade after Communism, Slovakia was led by Prime Minister Vladimir Mečiar. He decided to employ nation's media as his own personal public relations and election campaign organization. After he was defeated in 1998 elections, the winning centre-right coalition decided to change media laws in order to give journalists more independence and freedom. During his mandate Mečiar used to fire journalists who did not share his ideas. Moreover, he eliminated independent and privately-owned newspapers through punitive taxation. He hired secret police to threat journalists. When Mečiar was running for elections in 1998, the campaign "completely abandoned any pretence of providing voters with fair, accurate, and balanced coverage".

Another aspect that shall be considered it is the high degree of misinformation spread by social media. The 2019 by Reuters Institute Digital News Report shown that misinformation on social media is fostered especially by two aspects. The first one is the exposure of PR agency running campaigns for politicians and firms creating fake social media accounts heating discussion on purpose. The second issue concerned the repeated failure of Facebook to remove posts and block accounts reported due to hate speech and false identities. Moreover, neither Facebook nor Google has a fact-checking mechanism for Slovakia. As a result, people cannot truly on news shared via social media. Tensions continued between staff and management at RTVS about the ability or will of top management to shield programme-makers from political pressure. A consistent number of people resigned from news and current affairs complaining of a toxic working atmosphere.

On the 26th of February 2018 Ján Kuciak and his partner Martina Kušnírová were found dead in their house in Veľká Mača. Analysing closely Kuciak's murder and Caruana Galizia's one it is possible to find certain similarities. The most evident is that they were both investigative journalists inquiring on issues concerning the government and businessmen. Respectively the Panama Papers, economic crime, potential fraud in distributing EU funds on the national level, VAT fraud and the citizenship by investment scheme. When they were harassed, both Slovak and Maltese police minimized their complaints. Moreover, Caruana Galizia had her bank accounts frozen. When it comes to government in office at the time of the murders, they both conducted propagandist campaigns against them. To such campaigns political opinion answered with street demonstrations to force the government to continue investigations. In both cases the masterminds behind the murders were two businessmen, respectively Marian Kočner and Yorgen Fenech. Both of them hired middlemen to carry out the murders. Yet, their middlemen were not careful enough in sharing information. As a result, it was possible to discover their identities and trace them back to Kočner and Fenech. Such similarities suggest that there might be a recurring path in murdering journalists working on inquiries on organised crime and potentially illicit business in which leading political feature play a key role. Hence, more attention shall be paid when such similarities occur in order to avoid other journalists murdered while they were simply doing their job.

In conclusion, it is possible to say that the current situation of media in Slovakia shall be considered with close attention for different reasons. Notwithstanding the existence of a Constitution and a system that shall foster also all the other crucial values characterising the Rule of Law, yet it is not fully enforced. The murder of Ján Kuciak and the control over the media are clear indicators of this. Considering the misuse of EU funds, widespread corruption, 'ndrangheta infiltration in country and oligarchs owning media outlets, the picture does not improve. The case of Peter Sabo is a blatant example of the fact that harassment against journalists continued. Even though the newly elected President Zuzana Čaputová seemed like the perfect person to finally give a new direction to the country, the situation did not improve. Finally, the fact that the mastermind of Kuciak's murder entrepreneur Marian Kočner and his right-hand Alena Zsuzsová were fully acquitted shows that the even the judicial system presents problematics that shall be solved as soon as possible in order to enforce justice and, conversely, the Rule of Law.

Chapter IV- Italy: between Police Protection and Media Concentration

The Italian Constitution was enforced in 1947. It is part of the constitution that Mortati defined as "the constitutions born from the Resistance". In other words, it is one of constitutions stemming from the will to depart from the set of values of a previous era. The main feature of this category is openness towards the international legal system. Constitutions born from the Resistance are the result of a political compromise among different democratic forces. Namely the liberal, the Christian Democrats and the Socialist-Communist (left-wing) traditions. It is interesting to note that, even if the core concepts of the Rule of Law are part of the Italian Constitution, the Rule of Law is never explicitly mentioned. It is important to note the role of the Constitutional Court within the Italian Judiciary system. The Italian Constitutional Court is conceived as guarantor of the Constitution, exercising a form of control and support towards judges of lower courts. As a result, it shall be completely independent both from the legislative and the executive branch.

Even though the Constitution seems to be quite exhaustive on certain matters, in his book *Lo stato di diritto*, Roberto Bin questioned whether it is still possible to talk about the Rule of Law in Italy. Bin holds that even though many lawyers, journalists and magistrates act in the name of the Rule of Law, their requests often conflict with one another. As a result, it seems that the real meaning is often used for one's own benefit. The Rule of Law is often brought about in many different contexts, ranging from judicial cases to parliamentary debates. It seems like that the Rule of Law is almost a war cry. According to Bin, politics in Italy always had little, if any, respect toward the actual constitutional institutions. Laws and judgements become hatches, in his own words. As a result, many elements of the Rule of Law are today under pressure. This perspective leads us to identify the three main issues concerning the Rule of Law in Italy: the relationship between politics and the judiciary, the conflict of interests and the compression of social rights and the treatment of foreigners.

Considering the Freedom of the Press in Italy, it is enforced by Article 21 of the Constitution. Compared to the Albertine Statute, in the Republican Constitution the protection of the Freedom of the Press is much more extensive. As Clementi pointed out, Art. 21 favours the active profile of the Freedom of Expression as an individual right to freedom. Perhaps underestimating the fact that the media are among the most powerful social instruments. Art. 21 fosters both the Freedom of Expression and the right to freely express your thoughts using any possible mean. Pedrazza Gorlero held that Art. 21 established that the content and the beneficiaries of the freedom of the press are: the freedom of expression of thought through the press; the freedom of diffusion for everyone; the free use of the means of diffusion of the press; to the publishing entrepreneur.

It is crucial to stress that in Italy there is a duopoly in the broadcasting market. On the one hand there is RAI, the public service, while on the other one there is Mediaset, owned by Fininvest. The issue that can be underlined there is that not only there is a strong political control over RAI that no law was actually able to eliminate. Moreover, notwithstanding the fact that Berlusconi was the owner of Mediaset, he could run in elections. His

channels were used to target swing voters and move their final decisions favouring Berlusconi's party Forza Italia. After his first election, Berlusconi was able to assert his dominance also over RAI. He introduced crucial reforms in the public service broadcaster, including the dismantling of the system of *lottizzazione*. Moreover, the Berlusconi government blocked RAI's reconstruction plan to fix its enormous amount of debts. Nevertheless, Berlusconi's control over private and public media did not prevent his coalition from collapse after nine months.

Considering the media market, in 2016 Cairo Communication, led by Urbano Cairo, acquired the RCS MediaGroup S.p.A., the holding that owns the most read Italian newspaper, Il Corriere della Sera. La Repubblica and La Stampa, the second and third most read papers in the country now belong to the same group, GEDI S.p.A, owned by John Elkann. Moreover, GEDI S.p.A owns L'Espresso, Limes and several radio networks such as Radio Deejay, Radio Capital and m2o. John Elkann is the grandson of Gianni Agnelli. Agnelli used to be the second most important media owner back in the Nineties together with Berlusconi. In March 2016, the Italian Competition Authority allowed the acquisition by Mondadori of RCS Books. It is important to note that Mondadori is controlled by Fininvest Group, owned by Berlusconi.

Nowadays, according to the 2020 Report of RSF, there are approximately 20 journalists under police protection due to threats or murder attempts by mafia. It was observed that the level of threats is constantly growing, especially in Rome and in the south of Italy. Specifically in Rome, reporters were verbally and physically assaulted while working by members of neo-fascist groups and members of the Five Stars Movement, part of the coalition government. Overall, it is possible to say that politicians are less hostile towards journalists as in the past years. Yet, journalism risks being weakened by government decisions, such as the reduction of state funding for the media.

The *Ufficio Centrale interforze per la Sicurezza Personale,* central inter-force office for Personal Security, (UCIS), UCIS was established by Law Decree no. 83 of May 6, 2002, converted with amendments into Law no. 133 of July 2, 2002. Art. 1 provides that the Minister of the Interior, as the National Authority of Public Security, adopts the measures and issues directives for the protection of national and foreign institutional figures, as well as persons subject, for functions or other proven reasons, to the specific dangers or threats identified by the regulation (UCIS 2016). To carry out these tasks, the Minister of the Interior uses the Department of Public Security. There are different levels of protection, depending on the risk and threats to which the person is exposed. They range from dynamic surveillance, fixed surveillance of the subject's home, to the mobile escort for which the following measures are foreseen.

Level I: assignment of 2 or 3 armoured vehicles with 3 agents;
Level II: 2 armoured vehicles with 3 agents each;
Level III: one armoured car with 2 agents;
Level IV: one non-armoured vehicle with 1-2 agents

Linked to the establishment of UCIS, there is the strong presence of the Mafia in Italy. Italy is not the only country affected by this problem. Yet, it is the one that sought remedies and tried to develop effective ones to fight it. Journalists and the Italian media are those who have suffered and continue to suffer because of intimidations and pressures by the Mafia. At the same time, journalists are the ones who have accumulated the most experience on the most efficient ways to monitor threats and other attacks on their category. Moreover, they accepted the high risks that this entails, such as violent reprisals, heavy financial problems and, to a considerable extent, the vexatious libel proceedings, the weak legal status of journalists and other shortcomings in legislation.

In the report issued in 2017 by AgCom, the Italian Communication Authority, it was underlined that journalists face two major problems: threats and job-insecurity. It also estimated that in Italy more than one in ten journalists (out of a population of 115,000 registered by the professional association) received threats. Furthermore, AgCom stated that Italian media did not share much about these facts. On the same year the Co-ordination Centre for the Defence of Press Freedom was established by at the time Minister of Interior Marco Minniti. The body was in charge of creating a confidential exchange of information between the Minister and officials of the Interior Ministry and representatives of the National Federation of the Italian Press and of the Order of Journalists. It was created after the attacks on the journalist Daniele Piervincenzi and the video operator Edoardo Anselmi, who were attacked in Ostia by members of the gypsy mafia Spada. In 2018, the National Anti-Mafia Directorate started monitoring Mafia-related threats targeting journalists.

It is possible to say that the situation in Italy is quite conflicting. On the one hand there is a clear path established by the Constitution, especially by Art. 21, while on the other there is a much shadier reality. Considering the Freedom of the Press, it is crucial to note the increasingly high number of journalists living under police protection due to their investigations on Mafia. As a result, they could not freely do their job. Plus, media pluralism is seriously endangered by a de facto duopoly in the television market controlled by RAI and Mediaset and a still limited pluralism considering newspapers. Shifting the focus on the Rule of Law, it is endangered in Italy by three main issues: the relationship between politics and the judiciary, the conflict of interests and the compression of social rights and the treatment of foreigners. All these factors exert a considerable influence over the current institutional asset, creating a vicious cycle.

Hence, there is a dysfunctional relationship between the Freedom of the Press and the Rule of Law. No matter how much the State tries to allow journalists to keep doing their job it, it will not solve the situation until it properly addresses the two main things that threaten it: the absence of media pluralism and the Mafia. If the State does not properly address them, it will be extremely difficult to establish the Freedom of the Press, hence the Rule of Law. The same goes for the other concurring issues that do not strictly stem from the Freedom of the Press and yet affect the Rule of Law. If not addressed properly, the problem might spread to other features of the Rule of Law, endangering the situation even more and the State cannot afford it.

Conclusions

What happened in Malta and Slovakia and what is happening in other Eastern European Countries shall not be perceived as something episodic. Some might say that Malta is just a tiny island, with different socio-cultural and judicial history. The same goes for Slovakia, who has the youngest constitution compared to Italy and Malta. However, this is not entirely true. Italy shall not believe to be immune to what happened in Malta and Slovakia. All the warning signals are already there, and it would be foolish not to consider them. If we truly believe in the importance of the Union of which we are part, in the Freedom of the Press and the Rule of Law, it is crucial to take decisions to counteract mischief and the spread of corruption. Not only in Italy, but also in all the other EU Member States that do not feel they are part of the problem. The Rule of Law seems like a set of values that can withstand shocks easily, yet this analysis demonstrated that this is not the case. A thin crack can make an entire system collapse. As a result, there should be a renewed effort by the Member States of the EU to foster both the Rule of Law and the Freedom of the Press. They are two founding values of the Union. Because of this, they should never be taken for granted.