idpc. INFORMATION AND DATA PROTECTION COMMISSIONER

Information and Data Protection Commissioner

[redacted]

[redacted]

vs

[redacted]

COMPLAINT

1. On the 3rd May 2025, [redacted] (the "**complainant**") lodged a data protection complaint with the Information and Data Protection Commissioner (the "**Commissioner**") in terms of article 77(1) of the General Data Protection Regulation[1] (the "**Regulation**"), alleging that [redacted] (the "**controller**") "*published a series of articles and Facebook posts naming me* [the complainant], *providing personal details and uploading pictures and videos without my permission. This followed the fact that I was in Great Siege Square placing a candle in front of the monument.*". The complainant submitted links to the following articles, which were published on the website of the controller [redacted] at the time the complaint was received:

a. [redacted]

b. [redacted]

c. [redacted]

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

INVESTIGATION

2. On the 27th May 2025, the Commissioner sent a copy of the complaint, along with the supporting documentation, to the controller and provided the controller with the opportunity to submit any information which he deems relevant and necessary to defend himself against the allegation raised by the complainant.

Submissions of the controller

3. On the 23rd June 2025, the controller submitted the following arguments for the Commissioner to consider during the legal analysis of this case:

   a. that the complainant, the [redacted] alleged that the controller published his photographs and uploaded video footage of him placing candles at the Siege monument in Valletta on the 1st May 2025;

   b. that the events in question occurred in a public place, namely, the Great Siege Monument, a site located in the heart of Valletta and frequently visited by locals and tourists alike and the actions of the complainant were conducted in broad daylight, in full view of numerous passersby, and were part of a broader trend involving the informal transformation of the monument into a shrine for the late journalist Daphne Caruana Galizia;

   c. that the complainant as a senior public official representing a national institution, the participation of the complainant in this activity raises matters of public interest;

   d. that the European data protection jurisprudence is clear, images and recordings taken in public spaces, particularly where public figures are involved in public action, do not in themselves constitute breaches of data protection law;

   e. that, moreover, the publication of such material is protected under the right to freedom of expression and is permissible when it serves a journalistic or public interest function;

   f. that the complainant has chosen to pursue a complaint aimed at curtailing scrutiny and the controller fears that this may reflect an attempt to use data protection legislation not as a shield for privacy, but as a sword to silence public criticism and independent reporting; and

g. that, as a summary, the controller submitted the following: (i) the content was recorded in a public space; (ii) the complainant was acting visibly and openly; (iii) no sensitive or private data were disclosed; (iv) the purpose of the publication was public interest commentary; and (v) the action does not, in the controller's view, fall within the scope of unlawful data processing.

Submissions of the complainant

4. As part of the internal investigative procedure of this Office, the Commissioner provided the complainant with a copy of the submissions presented by the controller and enabled the complainant to rebut the arguments of the controller. On the 14th July 2025, the complainant submitted the following arguments:

a. that it is well established that the right to the freedom of expression under article 10 of the European Convention on Human Rights is qualified, and must be balanced against the rights and freedoms of others, particularly, the right to privacy and data protection under article 8 of the European Convention on Human Rights, article 7 and 8 of the Charter of Fundamental Rights of the EU, and the Regulation;

b. that the European Court of Human Rights has emphasied in *Von Hannover vs. Germany (No. 1)* (2004) and *Peck vs. United Kingdom* (2003) that the publication of imagery even in public spaces – does not automatically override the individual's right to privacy, especially where the individual is not a public figure, and the expression does not contribute to a matter of public interest;

c. that the complainant is a private individual with no public profile and at the outset, it is clarified that the [redacted] operates with institutional and operational independence;

d. that the complainant's formal role within the [redacted] as the [redacted] does not qualify him as a public figure at law – as may be said of senior figures within the [redacted], such as the Governor, Deputy Governors and Board Members – but rather, it qualifies the complainant as a public service employee;

e. that, in this regard, reference is made to the judgment of the European Court of Human Rights (First Section) in the case of *Standard Verlags GmbH v Austria (no.3)* of the 10th January 2012, wherein the European Court (in a similar case where it was required to consider balancing the right to journalistic freedom of expression against an individual's right to privacy) agreed with the findings of an Austrian court in that, a senior employee of a fully state-owned regional bank in Austria, was not considered a "*public figure*";

f. that the complainant was photographed and, or filmed while engaging in a quiet personal act of remembrance, and that, as a result, the complainant held as follows: (i) [redacted] identified the complainant personally, including by linking him to his place of work (the timeline of events appears to suggest that a concerted effort was made to identify the complainant after preliminary posts published by the controller clearly alluded to the fact that the complainant's identity was, as yet, unknown to the controller at the time and that it was the controller's intention to publicise the identity of the complainant – this further reaffirms the fact that the complainant was not, and is not, a public figure); and (ii) promoted online criticism and reputational harm (this was a result of various posts which pre-dated and post-dated the complaint of the complainant, all of which were likewise published by the controller and which manifested an element of vilification coupled with the exposure of personal information intended to identify and single-out the complainant. These posts also contained an explicit call for the complainant's resignation from his current employment;

g. that the publication served no journalistic, educational, or democratic purpose and the image/s and context were certainly not used to inform public debate but rather to name and shame the complainant for what appeared to be a perceived belief or conviction, and in this regard, the complainant humbly asserted that this is accordingly not an expression deserving of heightened protection under article 10;

h. that the controller's processing of personal data, specifically the publication of the photograph and accompanying information identifying the complainant lacks a lawful basis under article 6 of the Regulation, and further infringed article 5(1)(a), article 5(1)(c) and article 9 to the extent that the image and context implied political or philosophical beliefs;

i. that the exemption under article 85 of the Regulation relating to journalistic or artistic expression does not apply here because: (i) the controller is not a professional journalist or media organisation; (ii) the context of publication was not journalistic in nature; and (iii) the harm to the data subject's rights and freedoms is not substantiated as per the balancing test required by both article 85 and recital 153 of the Regulation;

j. that the combination of the image and reference to the complainant's place of employment (also in the context of earlier publications disclosing details relative to the complainant's family member and former town of residence) rendered them readily identifiable and the outcome of this has resulted in online abuse against, and harassment of, the complainant which have, in certain instances, also translated to veiled threats;

k. that this goes far beyond the regulatory parameters of protected speech and well into the territory of data misuse with the intent of causing reputational harm, precisely the type of situation the Regulation was designed to prevent;

l. that as the ECtHR held in *Benedik vs Slovenia* (2018), even anonymised data can trigger article 8 protection if the individual can be identified – here, the identified was not only possible but explicit and deliberate;

m. that, in view of the above, the controller requested the Commissioner to consider the following: (i) the controller processed personal data without a valid lawful basis; (ii) that the defence of the freedom of expression does not apply in this case, given the absence of public interest and the disproportionate harm to the data subject; and (iii) that the controller is in breach of articles 5 and 6 of the Regulation and should be subject to appropriate corrective measures and/or sanctions, including the erasure of the photo and related content if necessary; and

n. that, on a concluding note, the complainant deems it pertinent to emphasise that the controller accused the complainant of intimidation in subsequent publications for having filed the captioned complaint to begin with and the complainant is of the view that such unwarranted allegations may have the effect of acting as an undue deterrent on citizens who may feel that a complaint with the Commissioner's office is warranted.

Final submissions of the controller

5. On the 30th July 2025, the controller submitted the following final arguments for the Commissioner to consider during the legal analysis of this case:

a. that the controller rejected the allegations made by the complainant, namely, the claim that he has violated the data protection rights of the complainant;

b. that the photographs and the video footage in question were captured in public space, specifically, the Great Siege Monument in Valletta during daylight hours, when the complainant engaged in visible conduct with symbolic and political overtones;

c. that the actions of the complainant were public, deliberate, and visible to all passersby, including government employees, tourists, and citizens;

d. that the footage was not secretly obtained, but it was captured by third parties in a public setting, and shared widely across multiple public platforms, including social media;

e. that numeours individuals completely unrelated to the controller published and disseminated the same or similar footage and photographs, yet the complainant singled out the publication of the controller;

f. that the complainant is not an ordinary private citizen, and he is a [redacted] the [redacted] heading a key department that liaises with the [redacted]

g. that the conduct of the complainant, especially when it carries political or symbolic meaning is, and should be, subject to public scrutiny;

h. that, in fact, the ECtHR has affirmed in judgments, such as, *Axel Springer AG v. Germany* and *Observer v. United Kingdom* that public officials must tolerate a greater degree of public commentary and exposure, especially when engaging in conduct that may be interpreted as political and symbolically charged;

i. that the complainant argued that he is not a public figure, however, the reality is that senior decision-makers in national financial institutions do not enjoy the same degree of anonymity or protection from public interest coverage as private individuals, and this is further supported by recital 153 of the Regulation, which allows processing of personal data for journalistic purposes when the public interest is served;

j. that the publication of the material in question is protected under article 10 of the ECHR and article 41 of the Constitution of Malta, both of which guarantee the right to freedom of expression, and furthermore, article 85 of the Regulation recognises that Member

States must reconcile data protection with freedom of expression and information, including for journalistic and public commentary purposes;

k. that the balancing test between privacy and expression, as affirmed in *Von Hannover v. Germany* does not apply to this case in the manner claimed by the complainant as the complainant was not in a secluded area, nor was he engaged in any act reasonably protected by privacy rights;

l. that there is no expectation of privacy when public official conducts deliberate acts at a well-known political memorial in Valletta, and there is no evidence that any of the commentary published by the controller was defamatory, false, or made with malicious intent; and

m. that it is worth highlighting that although the same images and footage were shared widely across social media, only the controller has been singled out, and this reinforces the perception that the complaint is not driven by genuine concern for data protection rights, but rather by a political motive to silence or intimidate the controller.

LEGAL ANALYSIS AND DECISION

Content of the articles published on the website of the controller and the related social media posts

6. For the purpose of the investigation of this complaint, the Commissioner proceeded to assess whether the publication of the articles in relation to the complainant on the website [redacted] and subsequent Facebook posts, were lawful and compliant with the applicable data protection legislation.

7. As a preliminary step, the Commissioner proceeded to assess the content of the articles in question which were published on the website [redacted] in order to determine whether the publication of the articles contains any personal data relating to the complainant within the meaning of article 4(1) of the Regulation. This assessment was undertaken in light of the submissions of the controller dated the 23rd June 2025, in which the controller argued that "*no sensitive or private data was disclosed*" as a result of the publication of the articles. The Commissioner respectfully submits that the term "*private data*" is not a term that is recognised in terms of the Regulation. Instead, the Regulation refers to the definition of "*personal data*", which in accordance with article 4(1) of the Regulation, is defined as any information in relation to an identified or identifiable natural person.

8. In the present case, the complainant published photographs and a video recording of the complainant, including the full name of the complainant, therefore, leaving no doubt as to the identity of the complainant. Notably, the article titled [redacted] reveals more information pertaining to the complainant: "[redacted]". In addition, the article titled "[redacted] discloses information about the employment of the complainant: "[redacted] Therefore, by means of the publication of the articles, the controller publicly disclosed and published not only the full name of the complainant, but also information pertaining to his employment, his hometown, and the name and profession of his father.

9. In the *Lindqvist*[2] judgment, the Court of Justice of the European Union (the "**CJEU**") confirmed that the act of uploading personal data onto a website constitutes a processing operation within the meaning of article 4(2) of the Regulation. This was subsequently reaffirmed in the *Google Spain vs AEPD* judgment, where the CJEU held that:

> "*As regards in particular the internet, the Court has already had occasion to state that the operation of loading personal data on an internet page must be considered to be such 'processing' within the meaning of Article 2(b) of Directive 95/46.*"[3].

Therefore, after examining the content of the articles, the Commissioner confirmed that the act of publishing the personal data of the complainant on the website [redacted] and on social media, both of which are accessible to an indefinite number of users, constitutes a processing operation that falls within the material scope of the Regulation.

The interpretation of the term "*journalism*"

10. The complainant argued in his submissions that the controller could not rely on the journalistic freedom exemption, and this is because the controller is neither a professional journalist nor a media organisation. However, the Commissioner notes that it is firmly established that the

[2] C-101/01, *Bodil Lindqvist*, Judgment of the 6th November 2023.
[3] Case C-131/12 *Google Spain SL and Google Inc v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* Judgment of the 13th May 2014.

notion of "*journalism*" must be interpreted broadly to safeguard the fundamental right to freedom of expression in a democratic society. Recital 153 of the Regulation stipulates that:

> "*In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.*".

11. The case-law of the CJEU, even prior to the entry into force of the Regulation, consistently interpreted the term "*journalism*" in a broad manner. The CJEU has affirmed that journalistic activity is not confined to the traditional media professionals or organisations but extends to any individual engaged in the collection and dissemination of information to the public, particularly, in light of the rise of online platforms that facilitate communication to an unlimited audience. In fact, the CJEU in the *Satamedia* case provided a broad definition of the term "*journalism*":

> "*It follows from all of the above that activities such as those involved in the main proceedings, relating to data from documents which are in the public domain under national legislation, may be classified as 'journalistic activities' if their object is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them. They are not limited to media undertakings and may be undertaken for profit-making purposes.*"[4].

12. In the case of *Buivids*, the CJEU reaffirmed that the notion of "*journalistic purposes*" must be interpreted broadly. The case concerned an individual who recorded a video inside a police station and subsequently published it on YouTube, with the aim of informing the public about the conduct of police officers and the conditions within the station. The CJEU held that such activity could fall within the scope of journalistic purposes, even though the person was not a professional journalist. What is decisive, the Court explained, is not the formal status of the person publishing the information, but whether the publication intends to disclose information, opinions, or ideas to the public. In fact, the CJEU concluded as follows:

> "*...where a video clip was recorded showing police officers at a police station in the course of a person giving a statement in a case and where*

[4] C-73/07, *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy*, Judgment of the16th December 2008.

that video clip was published on a website where users can upload, view and share video clips – may constitute processing of personal data exclusively for journalistic purposes within the meaning of that provision, ***in so far as it is apparent from the video clip that the sole purpose of recording and publishing the video clip was to disseminate information, opinions or ideas to the public****, which is a matter for the referring court to determine."*[5] [emphasis has been added].

13. After assessing recital 153 of the Regulation, including the relevant case-law of the CJEU, the Commissioner concludes that although [redacted] is not a journalist by profession, this fact on its own is not conclusive to determine that his actions, namely the publication of content through a dedicated online blog where information is imparted with the intention of informing the public, do not fall within the scope of "*journalistic purposes*".

Article 9 of the Data Protection Act (Cap. 586 of the Laws of Malta)

14. The Commissioner refers to article 85 of the Regulation, which enables the reconciliation of the right to the protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes. It is widely recognised that these two rights are of equal value, expressly excluding that one right is innately privileged. To this end, article 85(2) of the Regulation enables Member States to provide for exemptions or derogations from the provisions of the Regulation as necessary to reconcile the two rights. Additionally, in its judgments in *Lindqvist*, *Satamedia*, and *Buivids*, the CJEU made it clear that the reconciliation exercise must be carried out at the national level.

15. Accordingly, the Data Protection Act (Cap. 586 of the Laws of Malta) which further specifies the provisions of the Regulation, provides journalists with exemptions from complying with certain obligations under the Regulation. This is in view that pursuant to recital 4 of the Regulation, the right to the protection to personal data is not an absolute right and it must be considered in relation to its function in society and be balanced against other fundamental rights.

16. The proviso to article 9(1) of the Regulation provides that "*when reconciling the right to the protection of personal data with the right to freedom of expression and information, the controller shall ensure that the processing is proportionate, necessary and justified for reasons*

[5] C-345/17, *Sergejs Buivids* v. *Datu valsts inspekcija*, Judgment of the 14th February 2019.

of substantial public interest.". Therefore, the exemption should not be treated as a blanket exemption that automatically absolves journalists from data protection obligations. Rather, it is conditional upon the journalist *qua* a controller being able to demonstrate that the processing of personal data for journalistic purposes satisfies all three (3) cumulative conditions: (a) proportionate; (b) necessary; and (c) justified for reasons of substantial public interest. In relation to the latter condition, the legistator intentionally uses the wording "*substantial public interest*" as opposed to merely "*public interest*". Naturally, this demonstrates that the law seeks to impose a higher threshold for justification, and as a result, the controller must be able to show that there is a compelling reason tied to pressing societal needs. In light of this, the Commissioner emphasises that individuals who publicly impart information via websites and any other public platforms, must exercise caution, as the content remains permanently accessible and can potentially reach an indefinite number of people.

17. The reconciliation exercise should be done in conformity with the case law of the European Court of Human Rights (the "**ECtHR**"). Over the years, the ECtHR has developed a substantial body of jurisprudence addressing the balancing of the right to respect for private life under article 8 of the European Convention on Human Rights (the "**ECHR**") with the right to freedom of expression under article 10. In doing so, the ECtHR has established well-defined criteria that serve as guiding principles for conducting such a reconciliation exercise. These include, *inter alia*, the following considerations:

    a. the contribution to a debate of public interest;
    b. the official functions and public profile of the person concerned, and subject of the report;
    c. the subject of the news report;
    d. the method of obtaining the information and its veracity/circumstances in which, in case, of pictures, the photographs were taken; and
    e. the content, form and consequences of the publication.

The contribution to a debate of public interest and how well known is the person concerned

18. The first ground is that the publication of information will be in the public interest where it contributes to a debate of public interest. This is viewed as the prevailing rationale adopted by the ECtHR. This principle is rooted in the idea that free expression is essential in fostering democratic debate and participation.

19. To this end, the Commissioner notes that the controller had invoked the argument that the publication serves the purpose of public interest commentary on the basis that the complainant

"[a]*s a senior public official representing a national institution,* [redacted] *participation in this activity raises matters of public interest. European data protection jurisprudence is clear: images and recordings taken in public spaces, particularly where public figures are involved in public actions, do not in themselves constitute breaches of data protection law*.".

20. Whereas the controller did not specify the judgment(s) relied upon, the Commissioner refers to the landmark case of *Von Hannover vs. Germany (No. 1)*[6], which concerns Princess Caroline of Monaco. In this case, the applicant challenged the publication of photographs taken by paparazzi that captured the applicant in both private and semi-public settings. The ECtHR held that the publication of photographs in a gossip magazine, intended solely to satisfy the curiosity of a particular readership about the private life of the applicant, did not contribute to any debate of general interest to society, even though the applicant is a well-known public figure. In such case, the ECtHR held that the applicant exercised no official function at the time the photos were taken, and the photos and articles related exclusively to details of her private life. This therefore led the ECtHR to conclude that the public does not have a legitimate interest in knowing where the applicant is and how she behaves generally in her private life even in non-private places.

21. The case-law of the ECtHR does not per se define "*public interest*", however, over the years, it came up with the concept that what interests the public is often presented as the counterpart or even the opposite of public interest. This concept has been further explored in the judgment *Mosley*[7], which demonstrates how the ECtHR distinguishes from the notion of "interest" and the notion of what is simply "interesting".

22. According to the controller, the justification in favour of public interest is based on the senior position held by the complainant, namely that the complainant occupied the role of the [redacted]. The controller stated that there exists a legitimate public interest in informing the public about the act of the complainant, namely, the placing of a candle at the Great Siege Monument in Valletta on 1st May 2025, which the controller contends that such site is being used for partisan or symbolic purposes.

23. The matter revolves as to whether the subject-matter of the articles contributes to a debate of general public interest, particularly in light of the right of the public to be informed, which is an essential requirement in a functioning democratic society. In this regard, based on the settled

[6] App. no, 59320/00, *Von Hannover v Germany* App no 59320/00, Judgment of the 24th June 2004.
[7] App. no. 48009/08, *Mosley v United Kingdom* App no 48009/08, Judgment of the 10th May 2011.

case-law of the ECtHR, the Court clarifies that the public interest pertains to issues that affect the public to such a degree that is reasonable for the public to take an interest in them, capture the attention of the public, or concern the public in a significant manner. This is particularly relevant in relation to matters which impact the well-being of citizens or the life of the community in general. Similarly, public interest extends to subjects that may instil significant controversy, relate to important societal issues, or involve problems about which the public has a legitimate interest in being informed[8].

24. Over the past few years, the Commissioner has observed that the Great Siege Monument in Valletta has become a focal point for ongoing controversy linked to the journalist, Daphne Caruana Galizia after her assassination in October 2017. This controversy has ignited debates concerning the right to freedom of expression of the protestors, as well as the efforts to preserve the memory of Daphne Caruana Galizia. These arguments have been met with opposing views, most notably that the site should not serve as a protest memorial and should remain dedicated solely to commemorating the Great Siege. For years, the matter attracted significant attention, particularly after flowers, candles and photos placed at the Valletta's Great Siege monument were cleared away. This ultimately culminated in the filing of constitutional proceedings by a civil society activity and blogger against the former Minister of Justice over the persistent dismantling of the makeshift memorial to Daphne Caruana Galizia. **Therefore, the Commissioner agrees that the matter concerning the monument itself attracts significant public interest, and in fact, this controversry has been widely reported by various media outlets since 2017.**

25. However, any reporting related specifically to a person that interferes with the right to the protection of personal data must be weighed against the question developed by the ECtHR: **How well known is the person concerned?** The ECtHR reiterates in its case-law that the role or function of the data subject concerned, as well as the nature of the activities in the news report, are key factors to be considered when conducting the reconciliation exercise between the right to privacy and the right to freedom of expression. The degree to which a person has a public profile or is widely recognised also significantly affects the extent of protection granted to the private life of such person. The ECtHR outlines the following considerations in relation as to whether a person is considered to be well known:

[8] App. no.40454/07, *Couderc and Hachette Filipacchi Associes vs France*, Jugdment of the 10th November 2015.

> *"118. It is therefore necessary to distinguish between private individuals and persons acting in a public context, as political figures or public figures. A fundamental distinction needs to be made between reporting details of the private life of an individual and reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example (see Von Hannover, cited above, § 63, and Standard Verlags GmbH and Krawagna-Pfeifer v. Austria, no. 19710/02, § 47, 2 November 2006).*
>
> *119. Thus, depending on whether or not he or she is vested with official functions, an individual will enjoy a more or less restricted right to his or her intimacy: in this regard, the right of public figures to keep their private life secret is, in principle, wider where they do not hold any official functions (even if, as members of a ruling family, they represent that family at certain events; see Von Hannover, cited above, §§ 76-77) and is more restricted where they do hold such a function (see, for example, Lingens v. Austria, 8 July 1986, § 42, Series A no. 103, and Ojala and Etukeno Oy, cited above, § 52)."*[9].

26. Consequently, as ruled by the ECtHR, there is a significantly higher and legitimate expectation of protection of the fundamental right to the protection of personal data pertaining to a private person. Private individuals are afforded stronger protection compared to public figures, such as, politicians, individuals who have willingly placed themselves in the public eye, or other individuals who have gained prominence in public matters.

27. In the present case, the Commissioner observed that the articles in question and the Facebook posts concern a private individual who is neither publicly known nor widely recognised. In fact, the controller had to provide additional information to enable the identification of the complainant. To this end, the controller published information, such as, the complainant is from [redacted] his father is the [redacted] and the complainant occupies the role of [redacted] If a person is already publicly known, there would have been no necessity to disclose additional information in relation to such person.

[9] ibid. 6.

28. The Commissioner referred to the judgment '*Emanuel Delia vs Minister for Justice et*'[10] delivered by the First Hall, Civil Court, where the court in its constitutional jurisdiction has recognised that the placing of candles, flowers and photos forms part of the right to protest, which is integral to the right to freedom of expression. The Court ruled as follows:

> "***Il-Qorti hija tal-ferma konvinzjoni, li hija fondata fuq l-assjem tal-provi akkwiziti fil-kawza odjerna, li r-rimozzjoni tal-oggetti tal-protesta saret bil-hsieb u l-intenzjoni specifika li jixxekkel il-jedd tar-rikorrent, u ta` ohrajn li jahsbuha bhalu, li jesprimi l-fehmiet tieghu liberament b`dak il-mod, u minn dak is-sit u cioe` post sitwat faccata tal-bieb principali tal-bini tal-Qrati.***" [emphasis has been added by the Court].

In addition, the Court held that the State had infringed the right to freedom of expression, as enshrined in article 10 of the ECHR and article 41 of the Constitution, by ordering the removal of the flowers, candles and photos placed at the site. The Court concluded as follows:

> "*Il-Qorti m'ghandhiex l-icken dubju li r-risvolti tal-protesti jdejjqu lill-Istat.*
>
> *Idejjqu wkoll lil dawk mill-opinjoni pubblika li la jikkondividu l-iskop tal-protesta u lanqas il-metodu ta' kif din tkun espressa.*
>
> *Dan is-sentiment pero' mhuwiex bizzejjed Sabiex irrendi t-tnehhija tal-oggetti ta' protesta necessarja f'socjeta' demokratika.*
>
> ***Il-Qorti ssib li r-rikorrent garrab vjolazzjoni tal-jeddijiet fundamentali tieghu hekk kif imharsa bl-Art 10 tal-Konvenzjoni u bl-Art 41 tal-Kostituzzjoni.***"[11] [emphasis has been added by the Court].

29. Therefore, the Commissioner cannot accept that **singling out a private individual** for placing a candle at the monument can be considered as a matter which contributes to a public debate. If the matter had indeed attracted substantial public interest as claimed by the controller, it would be reasonable to expect that the matter would have been broadly covered by media outlets.

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[10] Court application number: 93/18 JZM, delivered on the 30th January 2020.
[11] ibid 3, pages 84 and 85.

30. The Commissioner assessed the judgment of the ECtHR in *Standard Verlags GmbH vs Austria (No.3)*[12], which the complainant cited to support his claim that he is not a public figure. The complainant emphasised that, in that case, the Austrian courts found that a senior employee of a fully state-owned regional bank in Austria was not considered a "*public figure*". To this end, the Commissioner proceeded to examine this judgment, particularly, paragraph 39 of the judgment, which reads as follows:

> "*In the present case, both the Vienna Regional Criminal Court and the Vienna Court of Appeal found that the claimant,* ***as a senior employee of the bank in issue, was not a "public figure"****, nor did the fact that his father had been a politician make him a public figure. The Court agrees with this assessment. It does not consider either that the claimant can be considered to have entered the public scene.*" [emphasis has been added].

31. In his assessment, the Commissioner also considered the ECtHR judgments cited by the controller in his final submissions, wherein he claimed that "*cases such as Axel Springer AG v. Germany and Observer v. United Kingdom that public officials must tolerate a greater degree of public commentary and exposure, especially when engaging in conduct that may be interpreted as political or symbolically charged*". The Commissioner examined the judgment of *Axel Springer AG v. Germany*[13], wherein the ECtHR held that the applicant qualified as a public figure by reason of his status as a well-known actor and the nature of the reporting, which concerned his arrest and the ensuring criminal proceedings. Additionally, the Commissioner considered the other judgment cited by the controller, namely *Observer and Guardian v. The United Kingdom*[14]. However, it is noted that the ECtHR did not, in that case, directly address the issue of public officials. This led the Commissioner to conclude that the judgment *Axel Springer AG v. Germany* cited by the controller confirms that the determination of whether a person qualifies as a public figure requires that the person must be widely recognised or well-known. **In the present case, the Commissioner reiterates that the complainant is not widely recognised or well-known.**

32. Additionally, the Commissioner examined the ECtHR judgment *Peck v United Kingdom*[15], particularly in view of the controller's argument that the "*events in question occurred in a public place-namely, the Great Siege Monument, a national site located in the heart of Valletta*

[12] App. no. 39378/15, *Standard Verlagsgesellschaft GmbH v. Austria (No. 3)*, Judgment of the 7th December 2021.
[13] App. no. 39954/08, *Axel Springer AG v. Germany*, Judgment of the 7th February 2012.
[14] App. No. 13585/88, *Observer and Guardian v. The United Kingdom*, Judgment of the 26th November 1991.
[15] App. No. 44647/98, *Peck v United Kingdom*, Judgment of the 28th January 2003.

and frequently visited by locals and tourists alike". This judgment of the ECtHR is highly relevant as the court affirmed that the right to respect for private life under article 8 of the ECHR may still be engaged even when individuals are filmed or photographed in public spaces. In *Peck v United Kingdom*, the applicant was recorded on a CCTV device in a public space, yet the ECtHR held that the subsequent disclosure and broadcasting of this footage constituted an interference with the applicant's right to respect for private life under article 8 of the ECHR. This ECtHR judgment highlights the fact that even if an individual is present in a public space, it does not, in and of itself, negate the applicability of the right to privacy. Therefore, the fact that a person is in a public space does not exonerate the controller from complying with the provisions of the Regulation.

33. Furthermore, the EDPB Guidelines 3/2019[16] and the *Rynes*[17] judgment delivered by the CJEU, clearly emphasise that the mere presence of a data subject in a public space does not grant the controller an automatic right to process personal data of the data subject. In fact, the *Rynes* judgment confirms that if the processing covers even partially a public space, the controller must conduct such processing within the parameters of the Regulation. Accordingly, the reliance of the controller on the argument that the photographs and videos of the complainant were captured in a public space is insufficient to justify the publication of such material.

34. The Commissioner clarifies that everyone is entitled to freely express his opinion in a democratic society. While the controller has the right to use his website and social media platform as a means to publicly share ideas and impart information as an exercise of his right to freedom of expression, the complainant equally has the right to freely hold his opinions.

35. Therefore, the Commissioner is of the view that the controller has failed to demonstrate that the complainant is a well-known or widely recognised individual or that the publication contributes to a meaningful public debate. In fact, the comments posted on Facebook, which the complainant submitted as supporting documents with his complaint, do not reflect any meaningful public debate, but rather consist largely of disparaging comments from individuals.

The method how the photographs and videos were obtained

36. In addition, in his consideration, the Commissioner also assessed the method how the photographs and videos were obtained, and subsequently, uploaded by the controller on his

[16] European Data Protection Board, *Guidelines 3/2019 on processing of personal data through video devices* (10th July 2019).
[17] C-212/13, *Rynes v Úřad pro ochranu osobních údajů*, decided on the 11th December 2014.

blog and on social media. The ECtHR places considerable weight to the method of how the controller obtains the information and emphasises that the method needs to respect the principle of fairness. To this end, the ECtHR in its landmark judgment '*Couderc and Hachette Filipacchi Associés v. France*'[18] held as follows:

> "*132. **The fairness of the means used to obtain information** and reproduce it for the public and the respect shown for the person who is the subject of the news report (see Egeland and Hanseid, cited above, § 61) are also essential criteria to be taken into account.*" [emphasis has been added].

37. The controller in its final submissions argued that the "*footage was not secretly obtained. It was captured by third parties in a public setting, and shared widely across multiple public platforms, including social media*". The Commissioner reiterates that the complainant is a private individual who was not performing any public tasks or exercising any official functions at the time the photographs and videos were taken without his knowledge, and subsequently, shared with third parties. The Commissioner concludes that, given the circumstances and context in which the personal data of the complainant were collected, the complainant could not have reasonably expected his personal data to be processed for the purpose of online publication, and as a consequence, to be made available to an indefinite number of people.

The nature of the personal data

38. Additionally, the Commissioner refers to the nature of the personal data published by the controller. In the submissions of the controller, where the controller stated that "*no sensitive or private data was disclosed*". It is being presumed that by the word "*sensitive*", the controller intended to argue that the data in question does not disclose a special category of personal data, as held in article 9(1) of the Regulation, which includes data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, health data, or data concerning a person's sex life or sexual orientation.

39. However, the Commissioner argues that the processing of special categories of personal data can also arise in those situations where the data can be inferred. In particular, it is noted that information pertaining to political opinions may be inferred from contextual information or the

[18] App. no. 40454/07 *Couderc and Hachette Filipacchi Associés v France*, Judgment of the 10th November 2015.

specific circumstances of the case. This means that, while the data in question may not explicitly disclose the political opinions or views of a data subject, it may nonetheless, by way of deduction, association or implication, reveal personal data falling within the scope of article 9(1) of the Regulation.

40. The CJEU in *OT v Vyriausioji tarnybinės etikos komisija*[19] held that the term "*special categories of personal data*" must be interpreted broadly, in particular, because the law intends to guarantee a high level of protection of the fundamental rights and freedoms of natural persons. In this case, the CJEU ruled that the disclosure of a spouse's name indirectly reveals the sexual orientation of a natural person, and therefore, this constitutes a special category of personal data.

41. Similarly, the EDPB adopted the same position in its guidelines. For instance, in the Guidelines 8/2020[20], the EDPB provides practical examples where, by way of inference, the data qualifies as a special category of personal data:

> "*Assumptions or inferences regarding special category data, for instance that a person is likely to vote for a certain party after visiting a page preaching liberal opinions, would also constitute a special category of personal data. Likewise, as previously stated by the EDPB, "profiling can create special category of data by inference from data which is not special category of data in its own right, but becomes so when combined with other data. For example, it may be possible to infer someone's state of health from the records of their food shopping combined with data on the quality and energy content of foods* "".

42. In this specific case, the complainant's act of placing a candle in memory of the late journalist Daphne Caruana Galizia, who was publicly known to be aligned with specific political opinions and views, may by way of association indirectly link the complainant to similar political opinions and views. Such an inference brings the data published by the controller within the scope of article 9(1) of the Regulation. In fact, the controller in his final submissions held that "[redacted][the complainant] ***engaged in visible conduct with symbolic and political overtones***" and "[h]*is conduct especially* ***when it carries political or symbolic meaning*** *is, and should be, subject to public scrutiny* [emphasis has been added].

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[19] Case C-184/20, *OT v Vyriausioji tarnybinės etikos komisija*, Judgment of the 1st August 2022.
[20] Guidelines 8/2020 on the targeting of social media users, version 2.0, adopted on the 13th April 2021, paragraph 121.

43. The Data Protection Act (Cap. 586 of the Laws of Malta) does not provide any exemption when the publication involves any special categories of personal data as set forth in article 9(1) of the Regulation. This is in light of recital 51 of the Regulation, which provides that special categories of personal data due to their sensitive nature merit specific protection as the context of the processing could create significant risks.

44. For this reason, article 9 of the Data Protection Act has deliberately omitted article 9 of the Regulation from the list of provisions from which journalists may claim exemptions or derogations for journalistic purposes. This effectively means that the processing of special categories of personal data for journalistic purposes does not benefit from any exemptions or derogations. Accordingly, the controller must fully comply with all the provisions of the Regulation. In this specific case, pursuant to the principle of accountability, as set forth in article 5(2) of the Regulation, the controller must be able to demonstrate that the processing is based on article 6(1) and subject to any of the grounds set forth in article 9(2) of the Regulation.

45. The Commissioner emphasises that the right to the protection of personal data is a fundamental right, and any restrictions to such right, must be applied in a restrictive manner. In such case, the controller failed to effectively demonstrate the lawfulness of the processing of the personal data pertaining to the complainant.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to demonstrate the lawfulness of the publication of the personal data pertaining to the complainant, and therefore, the processing is deemed unlawful.

Pursuant to article 58(2)(g) of the Regulation, the Commissioner is hereby ordering the controller to erase <u>all</u> personal data of the complainant from both the blog and associated social media posts within twenty (20) days from the date of service of this legally-binding decision. The controller shall inform the Commissioner of the action taken immediately thereafter.

Ian DEGUARA (Signature)
Digitally signed by Ian DEGUARA (Signature)
Date: 2025.09.01 13:48:22 +02'00'

Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Chapter 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed shall have the right to appeal to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.[21]

An appeal to the Tribunal shall be made in writing and addressed to "*The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta*".

[21] Further information is available on the IDPC's portal at the following hyperlink: https://idpc.org.mt/appeals-tribunal/