repubblika

POLICY DISCUSSION PAPER

Justice in the Name of the People

Citizen participation, institutional accountability and the reform of criminal justice in Malta

3 NOVEMBER 2026

Executive summary

The recent acquittals in the trials concerning the murders of Daphne Caruana Galizia and Lassana Cisse have intensified serious concerns about public confidence in Malta's criminal justice system.

Many citizens have struggled to reconcile the evidence publicly reported from those proceedings with the verdicts returned. The resulting concern extends beyond individual defendants. It raises questions about the competence, independence, transparency and accountability of the institutions responsible for investigating, prosecuting and adjudicating serious crime. The inability to understand a verdict does not establish that it was wrong. Nor does public disappointment establish that jurors were prejudiced or that the prosecution failed. It does, however, expose the difficulty of maintaining confidence in a system whose most consequential decisions may be delivered without an explanation. This concern becomes especially acute where the cases also raise wider questions about political hostility, racism and the equal protection of human life.

Repubblika respects the legal authority of the verdicts. That respect does not require agreement with them, nor does it preclude criticism of the institutions and procedures through which they were reached.

The controversy has generated calls to abolish lay juries and replace them with professional judges.

Repubblika recognises the concerns motivating those proposals. We nevertheless consider that citizen participation in criminal justice represents an important democratic value that should not be surrendered without compelling justification.

The involvement of ordinary citizens distributes responsibility for exercising state power beyond professional institutions. It brings the community's experience and judgment into criminal adjudication, offers some protection against institutional insularity and dysfunction, and reflects an accurate conception of citizenship grounded in responsibilities as well as rights.

These benefits do not make juries infallible. Lay participants may misunderstand evidence, make mistakes or be influenced by prejudice. Professional judges are not immune from error or bias either.

The question is which institutional arrangements can best combine democratic participation, professional expertise, impartiality, transparency and accountability.

European criminal justice systems demonstrate that alternatives exist to the traditional division between a professional judge who presides over proceedings and a lay jury that deliberates separately.

Comparative experience from Italy, France, Germany, Norway, Spain and Japan demonstrates that countries have adopted different approaches to citizen participation in criminal justice. Some have replaced traditional juries with mixed courts; others have restored lay juries or introduced new forms of participation. These experiences offer lessons

on collective deliberation, voting safeguards, reasoned decisions, appellate scrutiny, and public confidence.[1]

Repubblika proposes that Malta undertake a rigorous examination of its existing jury system before deciding whether fundamental institutional change is necessary. That examination should establish whether the powers and safeguards already provided by the Criminal Code are being fully and effectively exercised, identify weaknesses in current practice, and assess reforms capable of improving the operation of traditional jury trials. It should also consider alternative arrangements, including mixed criminal courts combining professional judges and lay citizens. The objective is not to privilege one model in advance, but to determine which reforms can best secure impartial, competent, transparent and accountable justice while preserving meaningful citizen participation.

This paper does not advocate the immediate replacement of Malta's jury system. It proposes an evidence-based process of evaluation, informed by Malta's legal tradition and comparative experience. The options should range from more effective application of existing law, through procedural and legislative improvements to traditional jury trials, to the possible adoption of alternative models. None should be accepted or rejected before its practical, legal and constitutional implications have been properly examined.

More fundamentally, reform cannot be confined to the jury.

A jury decides on the evidence properly presented to it. It does not investigate crimes, gather evidence, prepare prosecutions or manage the years of proceedings that may precede a trial.

Weaknesses at any of those stages may compromise the eventual administration of justice.

Repubblika has repeatedly expressed concerns about political interference in law enforcement and judicial administration, weaknesses in institutional management, the departure of experienced personnel, inadequate professional training, insufficient specialisation and delays that may seriously diminish the reliability of evidence.

Repubblika's earlier research and submissions, independent reporting, and successive assessments of Malta's justice system by European institutions support these concerns.[2]

They do not establish that institutional failures caused any particular acquittal. They establish the need for an independent examination extending well beyond jury deliberation.

Criminal justice also operates within a society marked by political divisions, racism and xenophobia. These attitudes cannot be assumed to disappear when citizens enter a

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[1] Claire Brader, "Jury Trials: International Models and Reform Proposals," House of Lords Library, 27 July 2026, https://lordslibrary.parliament.uk/jury-trials-international-models-and-reform-proposals/; Maria Leonor Rodríguez Pratt, *Trial by Jury: International Standards, Comparative Practice and Its Role as a Safeguard against Corruption*, Transparency International Anti-Corruption Helpdesk, 14 July 2026, https://knowledgehub.transparencycdn.org/helpdesk/Final-version-Trial-by-jury.pdf

[2] European Commission, *2026 Rule of Law Report: Country Chapter on the Rule of Law Situation in Malta, 2026*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52026SC0918; Repubblika, *Defending Integrity: An Anti-Corruption Strategy and Manifesto*, 2024, https://repubblika.org/wp-content/uploads/2024/12/rep2024-manifesto-ENG_REDACTED.pdf

courtroom, although their influence on particular verdicts cannot be inferred without evidence. Reform must therefore include a sustained effort to strengthen civic education, confront social prejudice and rebuild solidarity across political, racial and social divisions. The equal dignity of every person must be a principle not only of criminal law but also of the democratic culture in which that law operates.

Finally, criminal justice reform must be situated within a wider reconsideration of Malta's constitutional arrangements.

Repubblika's general position is that citizens should have greater, not less, opportunity to participate in the governance of the state to which they belong. But institutional reforms cannot be considered in isolation from the constitutional balances necessary for effective and democratic government.

We therefore reiterate our call for a national constitutional convention and offer this paper as a contribution to the wider programme of institutional reform we have advocated over several years.

Our objective is not to secure more convictions. It is to secure better justice: justice that is independent, competent, transparent, accountable and worthy of public confidence.

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Summary of recommendations

Repubblika recommends that Malta undertake a comprehensive reform of criminal justice, guided by the following priorities:

- **Preserve meaningful citizen participation in criminal justice.** Reject the outright exclusion of lay citizens from determining criminal guilt as an immediate response to controversial verdicts. Reform should strengthen democratic participation rather than abandon it.

- **Evaluate reform of the existing jury system alongside alternative models.** Examine whether more effective application of existing judicial powers, improved jury directions, structured questions, revised selection procedures and targeted legislative reforms could address weaknesses in Malta's traditional jury system. Compare these options on equal terms with mixed criminal courts and other arrangements, without presuming that replacement is necessary or preferable.

- **Strengthen the active responsibilities of presiding judges.** Examine the exercise of judicial powers under Articles 436 and 477–480 of the Criminal Code, including structured questions, clarification of verdicts and impartial guidance on evidence. Identify whether established practices have fallen into disuse and ensure that judges receive the training necessary to assist jurors without compromising their independent judgment.

- **Guarantee the independence and influence of lay participants.** Examine court composition, voting thresholds, equal voting rights, secret ballots, lay-first voting and other safeguards to prevent professional judges from dominating collective decisions.

- **Introduce greater transparency through reasoned verdicts.** Examine arrangements requiring the factual and legal basis of convictions and acquittals to be explained, whether through collective written judgments in mixed courts or structured, reasoned findings by traditional juries.

- **Review appellate safeguards.** Assess whether reasoned decisions could permit more effective scrutiny of serious legal or evidential errors, while preserving the presumption of innocence, the finality of proceedings, protection against repeated prosecution and the fundamental rights of accused persons.

- **Strengthen the independence and accountability of criminal justice institutions.** Examine safeguards against political interference in investigations, prosecution and judicial administration, together with the effectiveness of institutional oversight and accountability mechanisms.

- **Examine institutional discrimination and strengthen equal access to justice.** Investigate racial and ethnic representation across the judiciary, prosecution services, legal profession, police and court administration. Identify barriers to recruitment and advancement, assess whether institutional practices produce unequal treatment of accused persons, victims or witnesses, and recommend safeguards against discrimination. The objective should be to ensure that criminal justice institutions are

open, representative, impartial and capable of protecting every person equally, without presuming prejudice on the part of individual officials.

- **Improve institutional competence, trial experience and continuity.** Review recruitment, retention, management, professional training, specialisation and case ownership across the police, prosecution services and judiciary. Examine whether judicial and prosecutorial appointments, assignments and training adequately provide for practical criminal trial experience and preserve institutional memory.

- **Reduce delays and protect the integrity of evidence.** Improve case management, judicial and prosecutorial capacity, evidence preservation and continuity of proceedings, addressing the causes of delay throughout the criminal justice process rather than assuming that changes to jury composition will resolve them.

- **Confront social prejudice and rebuild democratic solidarity.** Develop a sustained programme of civic and democratic education addressing racism, xenophobia, political tribalism, the equal dignity of every person and the responsibilities of citizenship. The programme should involve schools, public institutions, civil society and communities, with measurable objectives and independent assessment.

- **Modernise jury selection and protect jurors from improper influence.** Review the compilation, publication and selection of juror lists, ensure transparent and independently auditable procedures, and assess the need for safeguards against indirect contact, profiling and attempts to influence prospective jurors. Improve juror preparation, compensation, welfare arrangements and psychological support, and examine whether sequestration remains necessary in its present form or could be replaced in appropriate cases by less restrictive safeguards.

- **Establish an independent criminal justice review.** Appoint a time-limited, multidisciplinary review to examine the operation of existing jury procedures, the exercise of judicial powers, jury selection, institutional competence and independence, safeguards against prejudice and discrimination, and the comparative merits of reforming traditional juries or adopting alternative models. Its findings, recommendations, resource assessments and implementation timetable should be published.

- **Pursue immediate improvements alongside longer-term reform.** Address procedural, administrative and capacity weaknesses without waiting for the completion of constitutional reform, while subjecting more fundamental changes to rigorous legal examination and public consultation.

- **Include criminal justice reform in a national constitutional convention.** Consider the organisation of criminal justice within a comprehensive, participatory review of Malta's constitutional arrangements, with the objective of strengthening the distribution of power, institutional independence, democratic accountability and meaningful citizen participation.

1. A crisis of confidence

The verdicts returned in the trials of Yorgen Fenech and Lorin Scicluna have generated exceptional public concern. Although the proceedings concerned different defendants, crimes, evidence and juries, both outcomes have left serious and troubling questions about the administration of criminal justice.

For many citizens, the difficulty is not simply that the defendants were acquitted. It is that the verdicts appear impossible to reconcile with significant evidence reported from the proceedings, while the absence of reasons makes it impossible to understand how the juries resolved the questions before them.

These concerns deserve more than a demand that the public accept the authority of the verdicts. They require serious examination of the procedures, safeguards and institutions through which criminal justice is administered.

They raise questions about whether criminal justice can be relied upon to protect everyone, whether the institutions responsible for its administration are competent and independent, and whether victims receive equal concern regardless of political associations, social position, nationality or race.

These questions go to the foundations of democratic society. The concern arises against a wider deterioration in public perceptions of judicial independence. The European Commission's *2026 Rule of Law Report* records that the proportion of Maltese respondents who considered judicial independence fairly or very good fell from 69% in 2025 to 47% in 2026.[3] These figures predate the verdicts discussed in this paper. They establish a broader context of declining confidence in judicial independence, but cannot measure the effect of the acquittals themselves.

An acquittal is not inherently a failure of justice. Where the prosecution has not established guilt beyond reasonable doubt, acquittal is the legally required outcome. Public opinion cannot determine the correctness of a verdict. Courts must remain able to acquit defendants whom the public believes to be guilty.

Nevertheless, the legitimacy of criminal justice cannot depend exclusively on requiring the public to accept outcomes it cannot understand.

This distinction between legality and legitimacy recalls Jürgen Habermas's account of constitutional democracy.[4] A decision may be legally valid because it has been reached through the procedures prescribed by law, yet the legitimacy of the legal order also depends on institutions and procedures through which the exercise of public authority can be justified, understood and subjected to reasoned scrutiny. This does not mean that judicial decisions

[3] European Commission, *2026 Rule of Law Report: Country Chapter on the Rule of Law Situation in Malta*, Commission Staff Working Document SWD(2026) 918 final, 17 July 2026, section I, "Justice System—Independence," https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52026SC0918

[4] Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Translated by William Rehg. Cambridge, MA: MIT Press, 1996. Particularly the discussion of the relation between the facticity and validity of law and the democratic foundations of legal legitimacy.

must conform to public expectations. It means that the authority of the courts is strengthened when their decisions can be understood as the product of law and reason rather than accepted solely on the strength of institutional authority.

A justice system must show that its decisions result from competent procedures, independent judgment, proper consideration of evidence, and faithful application of law. This is particularly difficult where juries return verdicts without explaining their reasoning.

The public may know which evidence was heard and what arguments were advanced. It does not know which evidence the jurors accepted, which they rejected, what doubts they considered decisive or how they resolved contradictions. This opacity invites speculation.

In politically sensitive cases, it may encourage suspicions of partisan influence. Where victims belong to marginalised communities, it may generate fears that prejudice or unequal social attitudes have affected the outcome.

Such concerns cannot be established merely by reference to an acquittal. Equally, they cannot be adequately addressed by insisting that no further questions should be asked. The immediate challenge is therefore not to discover the private motivations of particular jurors. It is to examine whether Malta's criminal justice institutions provide adequate safeguards against error, bias, incompetence and institutional failure.

The present crisis should be an occasion for that examination. It should not become an exercise in assigning responsibility to citizens who have performed a duty required of them by law.

2. Why citizen participation in criminal justice matters

The participation of ordinary citizens in criminal justice is not merely a historical practice preserved through habit. It expresses an important democratic principle: the authority to determine criminal guilt and authorise punishment need not be exercised exclusively by professional institutions. Repubblika considers that this principle deserves preservation even as the procedures through which it is exercised are modernised.

2.1 Justice in the name of the people

Criminal justice involves one of the most consequential powers the state exercises.

A criminal court may determine whether an individual is deprived of liberty for many years, or even for life. Such authority requires the highest standards of independence, competence and fairness. Professional judges are indispensable to exercising that authority. Their expertise and independence provide essential safeguards against arbitrariness. Judicial independence does not require completely excluding citizens from adjudication.

Lay participation gives practical expression to the principle that justice is administered not merely for the people but also in their name and with their involvement. It recognises that the

community has a legitimate responsibility to exercise powers that affect its members' liberty and rights.

2.2 The distribution of public power

Constitutional democracy aims to prevent excessive concentrations of power.

This principle is ordinarily expressed through the separation of powers between the legislature, executive and judiciary. It also has relevance within institutions. Professional judicial institutions possess specialised expertise and must be protected from political interference. Yet, they are not immune from institutional insularity, established assumptions, unconscious bias or excessive deference to professional authority. Citizen participation introduces another source of judgment into criminal adjudication.

Historically, trial by jury has also been associated with protection against arbitrary prosecution and punishment by the state. Citizen involvement can provide an additional safeguard against concentrating criminal justice entirely within official institutions. This protection is imperfect. Juries may themselves be prejudiced or mistaken.[5]

A *Transparency International Anti-Corruption Helpdesk* study on trial by jury provides a useful assessment of this argument. It identifies the dispersal of decision-making among citizens as a potential safeguard against improper influence over criminal adjudication. However, it also recognises that direct empirical evidence showing juries' effectiveness in preventing judicial corruption remains limited.[6]

The available research does not establish that lay juries consistently outperform professional judges in deciding criminal cases. Their potential contribution to institutional independence must therefore be assessed within a wider framework that includes independent investigations, competent prosecution, proper presentation of evidence, and effective safeguards against corruption throughout the criminal justice process. Citizen participation may strengthen these safeguards, but it cannot substitute for them.[7]

Nevertheless, abolishing lay participation would remove an established mechanism for distributing responsibility for criminal adjudication beyond the professional judiciary. That constitutional consequence deserves careful consideration.

2.3 The contribution of ordinary experience

Criminal trials frequently require judgments about credibility, intention, conduct and human relationships. Legal training is essential to understanding the rules governing those judgments. It does not confer a monopoly on sound judgment about human behaviour.

Citizens bring different experiences, occupations and perspectives to the assessment of evidence. Their participation can challenge assumptions that might otherwise remain

[5] Rodríguez Pratt, *Trial by Jury*, pp. 7–8.
[6] Rodríguez Pratt, *Trial by Jury*, pp. 12–13.
[7] Rodríguez Pratt, *Trial by Jury*, pp. 9–13.

unexamined within a professional judicial culture. It can help ensure that legal decision-making remains connected to the society in which the law operates.

This is not an argument for allowing popular prejudice or instinct to displace evidence. Lay participants must apply the law, respect the presumption of innocence and determine guilt only where the prosecution has met the required standard of proof. Their contribution is most valuable when ordinary experience operates within a disciplined framework of legal reasoning.

2.4 Citizenship as responsibility

Democracy cannot be reduced to voting in periodic elections.

It also depends on citizens accepting responsibilities towards one another and participating in the institutions through which society governs itself. Jury service is an unusually demanding form of civic responsibility. Citizens must listen, consider conflicting evidence, question assumptions, distinguish suspicion from proof, and reach decisions that may profoundly affect another person's life. These are also essential democratic habits.

Participation in criminal justice can contribute to public understanding of the rule of law and the responsibilities of citizenship. Such benefits are not automatic. They depend on adequate preparation, appropriate guidance and institutional arrangements that encourage conscientious and independent judgment.

But the possibility that citizens may exercise responsibility imperfectly is not, by itself, sufficient reason to withdraw that responsibility from them. A democracy should seek to develop its citizens' capacities, not assume those capacities are permanently inadequate.

2.5 The democratic cost of abolition

Abolishing lay participation would do more than change the procedure through which criminal verdicts are reached.

It would transfer responsibility for determining guilt entirely to professional judges, removing an established opportunity for citizens to exercise direct public authority. Such a change may be defended on grounds of expertise, consistency or efficiency. These are legitimate considerations.

Abolition would narrow direct citizen participation in an important institution, remove a mechanism for distributing judicial responsibility and surrender an opportunity for citizens to contribute their experience to the administration of justice. Nor would it guarantee the elimination of erroneous or controversial verdicts.

Professional judges may misunderstand evidence, make mistakes, be influenced by unconscious prejudice or reach conclusions subsequently overturned on appeal. The appropriate comparison is not between imperfect juries and infallible professional judges. It is between alternative institutional arrangements, each with strengths, weaknesses and risks.

Comparative research also suggests that jury trials may be associated with greater public confidence in judicial institutions. In a study covering 111 countries, John Zhuang Liu and Lei Chen found that countries with jury trials tended to report higher levels of public trust in the judiciary, stronger judicial constraints on governmental power and better-performing criminal adjudication systems.[8]

The authors expressly caution that these findings establish correlation rather than causation. They do not demonstrate that introducing juries will necessarily increase trust, or that removing them will necessarily diminish it. Nevertheless, the findings challenge the assumption that excluding citizens from criminal adjudication must improve institutional performance or legitimacy. They also provide a reason to examine the democratic consequences of abolition before adopting it as a response to public dissatisfaction.

Repubblika does not suggest that every democracy must employ lay citizens in criminal trials. Our argument is that where meaningful citizen participation already exists, removing it should require compelling justification, including consideration of whether less restrictive reforms can address its shortcomings.

The recent verdicts provide urgent reasons to examine Malta's system. They do not establish, without further analysis, that excluding citizens would produce better justice.

2.6 The active responsibility of the presiding judge

Malta's traditional jury system does not envisage a judge who merely observes proceedings, explains the law and leaves jurors entirely to their own devices. The Criminal Code assigns the presiding judge an active responsibility for conducting the trial and assisting the jury in the proper discharge of its functions.

Article 436(3)(c) empowers the court, within the limits prescribed by law, to take measures it considers necessary for the discovery of the truth. Article 480 provides mechanisms through which the court may put questions to the jury concerning matters on which it is empowered or required to return a verdict. Related provisions address the treatment of verdicts requiring clarification. These mechanisms recognise that the judge's responsibilities extend beyond maintaining order and explaining abstract legal principles. Article 480 also permits jurors, where a question of law arises, to make findings on specified facts and refer the resulting legal question to the court for determination, illustrating a further mechanism through which the Code distinguishes factual judgment from the application of law.[9]

Appropriate questions may help jurors distinguish the constituent elements of an offence, identify the factual issues requiring determination and approach complex or apparently

[8] Liu, John Zhuang, and Lei Chen. “Jury Trial and Public Trust in the Judiciary: Evidence from Cross-Countries Comparison.” *Asia Pacific Law Review*, vol. 28, no. 2, 2020, pp. 412–36. https://doi.org/10.1080/10192557.2020.1867794

[9] Criminal Code, *Chapter 9 of the Laws of Malta*, arts. 436(2)–(3), 477–480. Article 436(3)(c) confers a qualified discretionary power on the Criminal Court to take measures necessary for the discovery of the truth; articles 477–480 regulate supplementary jury questions, incomplete or ambiguous verdicts and written questions intended to assist the jury. Official consolidated text: https://legislation.mt/eli/cap/9/eng/pdf

contradictory evidence systematically. The judge's summing-up can likewise assist jurors in understanding how the evidence relates to the legal questions they must decide.

Such assistance must remain impartial. It must not relieve the prosecution of its burden of proof, require an accused person to establish innocence, or substitute the judge's assessment of credibility or guilt for the jury's independent judgment.

A potential weakness arises where judicial neutrality is interpreted as requiring excessive passivity. Impartiality does not necessarily require silence in the face of confusion or material contradictions in the evidence. The proper distinction is between helping jurors understand the issues they must decide and directing them towards a particular verdict.

There is therefore a legitimate question whether judicial summing-up in Malta has become too narrowly focused on explaining legal principles, without consistently providing the structured assistance necessary for jurors to understand how those principles apply to competing factual accounts.

This concern requires investigation rather than being treated as an established finding about judicial practice. An independent review should examine summing-up directions, the use of questions under Article 480, relevant appellate judgments and the experiences of judges and criminal practitioners. It should establish whether existing statutory powers are fully exercised, whether their use has changed over time and whether established practices have fallen into disuse.

3. The jury is only one part of the criminal justice system

The present controversy risks concentrating responsibility for criminal justice failures on the final group of citizens called upon to participate in it. That would be a serious mistake.

A jury does not investigate a crime, collect forensic evidence, interview witnesses, determine investigative priorities, prepare indictments or manage the proceedings that may precede a criminal trial. It reaches its verdict on the evidence that survives those processes and is properly presented in court.

The quality of a verdict cannot therefore be considered independently of the quality of the investigation, prosecution and administration of the trial.

3.1 Political interference and institutional independence

Repubblika has repeatedly raised concerns about attempts at political interference in the institutions responsible for criminal investigation, prosecution and judicial administration. These concerns are not abstract.

In its January 2021 submissions concerning the public inquiry into the assassination of Daphne Caruana Galizia, Repubblika highlighted evidence concerning the relationship

between former Deputy Police Commissioner Silvio Valletta and Yorgen Fenech, as well as questions concerning the conduct of former Police Commissioner Lawrence Cutajar.[10]

The submissions described serious concerns about the proximity between persons occupying senior police positions and individuals connected to the investigation.

These matters illustrate why institutional independence cannot be assessed solely by examining formal legal powers. It must also be assessed through officeholders' conduct, conflicts of interest, relationships with political and economic power, and the effectiveness of mechanisms intended to prevent interference.

In August 2024, Repubblika responded to a MaltaToday report citing unnamed government sources who alleged that Prime Minister Robert Abela had directed senior police officers concerning investigative and arraignment decisions in the hospitals corruption case.[11] Repubblika demanded that the allegation be denied or properly addressed. The allegation was not established as fact merely by being reported. Its significance lies in the seriousness of the alleged interference and the need for institutional safeguards that can prevent and independently investigate such conduct.

In September 2025, Repubblika criticised public remarks by the Minister for Justice concerning the possible appointment of a magistrate, arguing that political pressure on the judicial appointments process was incompatible with judicial independence.[12] These episodes concern different institutions and different forms of alleged or publicly expressed political influence. They should not be conflated.

Together, however, they demonstrate the importance of examining how law-enforcement, prosecution and judicial institutions are protected from political pressure in practice.

Repubblika has also consistently defended citizens' right to request magisterial inquiries where ordinary investigative mechanisms may fail to act. In February 2025, it published a detailed memorandum examining proposed amendments to the Criminal Code governing individual petitions for magisterial inquiries. The memorandum argued that the proposed restrictions would substantially weaken a mechanism through which citizens could seek independent judicial preservation of evidence, particularly in cases involving alleged corruption or misconduct by public officials. Repubblika regarded this as a matter of institutional accountability and effective access to justice, rather than simply a procedural question.[13]

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[10] Repubblika, "Submissions to the Public Inquiry into the Murder of Daphne Caruana Galizia," PR January 29, 2021, https://repubblika.org/en/submissions-to-the-public-inquiry-into-the-murder-of-daphne-caruana-galizia/

[11] Repubblika, "The Prime Minister Should Either Deny This Allegation or Resign," Repubblika, 25 Aug. 2024, https://repubblika.org/en/the-prime-minister-should-either-deny-this-allegation-or-resign/

[12] Repubblika, "We Defend the Independence of the Judiciary from Government Interference," Repubblika, 30 Sept. 2025, https://repubblika.org/mt/we-defend-the-independence-of-the-judiciary-from-government-interference/

[13] Repubblika, *The Right of Individual Petition for Magisterial Inquiries, memorandum, Feb. 2025*, https://repubblika.org/wp-content/uploads/2025/02/REPUBBLIKA-The-Right-of-Individual-Petition-for-Magisterial-Inquiries.pdf

The underlying constitutional principle is clear. The institutions responsible for investigating and prosecuting crime must not be dependent on the preferences or interests of the political authorities whose conduct may themselves require investigation.

An independent review should therefore examine the effectiveness of safeguards against political interference, appointment procedures, reporting arrangements, operational autonomy and the mechanisms available to investigate alleged abuses.

It should distinguish documented misconduct from allegations requiring further examination. Its purpose should be to establish facts and recommend remedies, not to presume conclusions about particular criminal proceedings.

3.2 Mismanagement, personnel attrition and institutional memory

Repubblika has also expressed concern about institutional management and the departure of experienced personnel from law-enforcement and prosecutorial institutions.

Its 2024 anti-corruption strategy, *Defending Integrity*, cited figures showing 90 resignations from the Police Corps between 2020 and 2022, compared with 29 between 2013 and 2015.[14] The figures, drawn from reporting by The Shift, indicate substantially greater recorded attrition during the later period.

The strategy also alleged that experienced senior police officers had been driven to resign following mistreatment, pressure and failures of leadership.[15] Those allegations require examination on their merits. The resignation figures alone do not establish the causes of individual departures. Nevertheless, the scale of the reported increase raises legitimate questions about management, working conditions, retention and the preservation of professional capacity.

Experienced investigators and prosecutors may leave because of retirement, better professional opportunities, dissatisfaction with institutional conditions or personal circumstances. Their departure can involve more than a reduction in staff numbers. It may result in the loss of institutional memory, specialist expertise, continuity in complex investigations and professional judgment accumulated through years of experience.

Replacing experienced personnel requires more than recruiting new employees. Effective succession demands training, supervision, mentoring, manageable workloads and sufficient continuity for knowledge to be transferred.

The European Commission's *2026 Rule of Law Report* confirms that recruitment and retention remain relevant institutional concerns. It records that the number of prosecutions increased from 492 in 2024 to 578 in 2025, while indictments for trial by jury increased from 72 to 74. It also notes that recruitment of prosecutors continued and that a retention strategy

[14] Repubblika, *Defending Integrity: An Anti-Corruption Strategy and Manifesto*, 2024, https://repubblika.org/wp-content/uploads/2024/12/rep2024-manifesto-ENG_REDACTED.pdf
[15] Repubblika, *Defending Integrity*.

had been introduced to mitigate staff turnover and preserve specialised expertise and case ownership.[16]

These developments deserve recognition. They also demonstrate why institutional performance cannot be assessed simply by counting appointments or prosecutions.

An independent review should examine staff turnover, the reasons for departures, the experience and training of replacements, the continuity of case assignments and the effects of institutional restructuring on the handling of complex proceedings. It should also assess whether recruitment and retention measures have been sufficient to meet the prosecution service's increasing responsibilities.

3.3 Prosecutorial competence and accountability

The quality of prosecution is central to the fairness and effectiveness of criminal justice.

The prosecution must present evidence competently, disclose material appropriately, apply the law correctly and respect the rights of accused persons. Failures in prosecution may result in guilty persons being acquitted, innocent persons being wrongly accused, unnecessary delays, or proceedings collapsing before their merits can be determined.

Repubblika's 2024 anti-corruption strategy raised concerns about the leadership, management capacity and performance of the prosecution service, including its ability to absorb additional responsibilities previously exercised by the police.[17] These criticisms should be assessed alongside the reforms subsequently undertaken.

The European Commission's 2026 report records continued recruitment, increased prosecutorial activity and the introduction of a new code of ethics for prosecutors in September 2025.[18]

It also notes that the transfer of responsibility for prosecuting non-summary cases from the police to the Attorney General remains ongoing, while extending the transfer to summary cases would require additional resources and time.[19] The relevant question is whether the prosecution service has the institutional capacity, professional expertise, management structures and operational independence required to discharge its responsibilities. This cannot be answered solely through the number of cases brought to court.

Performance assessment should examine preparation, continuity, disclosure, case management, professional development, avoidable procedural failures and the quality of institutional oversight. It should also consider whether decisions not to prosecute are subject to adequate transparency and independent review.

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[16] European Commission, *2026 Rule of Law Report: Country Chapter on the Rule of Law Situation in Malta*, 2026, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52026SC0918
[17] Repubblika, *Defending Integrity*.
[18] European Commission, *2026 Rule of Law Report: Malta Country Chapter*.
[19] European Commission, *2026 Rule of Law Report: Malta Country Chapter*.

Accountability must not become political supervision of individual prosecution decisions. Its purpose should be to ensure that the prosecution service operates according to law, professional standards and the public interest.

3.4 Judicial training and specialisation

Repubblika has previously advocated systematic judicial training and greater specialisation.[20] These reforms are particularly relevant to serious criminal proceedings. Assessing forensic evidence, electronic communications, expert testimony, complex financial transactions, and intricate questions of criminal law demands substantial professional expertise.

Judicial training should not be regarded as an optional supplement to appointment. It should be a structured, adequately resourced feature of judicial service, including induction, continuing professional development, and specialist preparation for particular categories of proceedings. Prosecutors, investigators and court personnel need equivalent commitments.

The European Commission's 2026 report acknowledges that the judicial training framework could be improved. It also records reforms intended to increase court specialisation, including the establishment of a Commercial Court and changes concerning the Family Court.[21]

The principle of specialisation should also be examined in relation to serious criminal trials. Malta should consider dedicated judicial capacity for jury proceedings, supported by specialist administrative personnel and effective case-management systems. The objective should be continuity, expertise and efficiency, without compromising judicial independence or the impartial allocation of cases.

Professional competence in criminal justice depends not only on legal qualifications and experience in judicial or administrative office, but also on familiarity with the practical conduct of contested criminal proceedings. Experience in examining witnesses, challenging evidence, preparing prosecutions or conducting criminal defences may contribute to an understanding of the difficulties faced by trial participants.

An independent review should examine the extent to which judges assigned to criminal trials and senior prosecutorial officials possess relevant trial experience, and whether appointment, assignment, induction and continuing professional development adequately address gaps in practical expertise. Particular attention should be given to judicial summing-up, the formulation of questions for jurors, the handling of conflicting testimony and the exercise of existing statutory powers. The review should also consider whether changes in professional recruitment and career pathways have contributed to a loss of institutional memory concerning established practices under the Criminal Code.

3.5 Delay and the erosion of evidence

[20] Repubblika, *Defending Integrity*.
[21] European Commission, *2026 Rule of Law Report: Malta Country Chapter.*

The length of criminal proceedings is not merely an administrative inconvenience. It can undermine the quality of justice itself. Witnesses may be required to recount the same events repeatedly over several years. Memories fade. Details become uncertain. Witnesses may become unavailable or struggle to distinguish their original recollections from accounts they encounter later. Repeated exposure to information about events may also affect recollection. Changes in investigating officers, prosecutors and legal representatives may compound these difficulties. The passage of time can affect the availability, preservation and interpretation of physical, documentary and electronic evidence.[22]

Delay therefore risks compromising both the prosecution's ability to prove its case and the accused person's ability to defend it. It can also prolong the suffering and uncertainty experienced by victims and their families. These consequences cannot always be repaired through careful judicial directions at the eventual trial.

Reducing delay must consequently be a central objective of reform. This requires effective case management, sufficient judicial and prosecutorial capacity, continuity in case handling, and reliable evidence-preservation systems and procedures that reduce unnecessary repetition of testimony while safeguarding the rights of the defence.

The European Commission's 2026 report on Malta records an 11% increase in the justice budget and additional investment in court premises and staffing. Nevertheless, shortages remain: the number of judges relative to population is among the lowest in the European Union, and more than 100 criminal jury trials were awaiting hearing.[23]

Adding a courtroom that can support parallel jury trials is a positive development, but infrastructure alone cannot resolve every source of delay. A comprehensive review should examine the entire period between investigation and final adjudication, including the time required to gather evidence, compile proceedings, indictment, trial preparation, hearing, and appeal. It should identify avoidable delays and their causes, including administrative decisions, resource constraints and failures of case management.

The relationship between jury trials and delay is also being debated in other jurisdictions. Recent proposals in England and Wales to restrict jury trials in certain categories of criminal cases have been justified by the need to reduce court backlogs. However, these proposals have sparked disagreement about whether reducing jury use would produce significant efficiency gains.[24] This debate reinforces the importance of identifying the actual causes of delay before assuming that changing the composition of criminal courts will resolve them. Reform should be informed by evidence about investigation times, prosecution preparation, court capacity, procedural requirements and case management rather than by assumptions about the relative efficiency of lay and professional adjudication.

The objective must be to ensure that serious criminal cases are heard while the evidence remains as reliable and complete as reasonably possible.

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[22] Elizabeth F. Loftus, “Planting Misinformation in the Human Mind: A 30-Year Investigation of the Malleability of Memory,” *Learning & Memory*, vol. 12, no. 4, 2005, pp. 361–66, https://doi.org/10.1101/lm.94705

[23] European Commission, *2026 Rule of Law Report: Malta Country Chapter*.

[24] Brader, “Jury Trials: International Models and Reform Proposals.”

3.6 Independence and accountability

Institutional independence and accountability are complementary constitutional principles. Judges and prosecutors must be protected from improper interference in individual cases. But independence must not become an argument for placing institutional performance, administrative decisions or the use of public resources beyond scrutiny. Those responsible for managing the police, prosecution services and courts should be accountable for the effectiveness of the institutions they lead.

Such accountability should include transparent examination of staffing, recruitment, retention, professional development, case backlogs, delays, operational capacity and implementation of reforms. It should also extend to decisions by successive governments on institutional structures, funding, appointments, and administrative priorities.

This scrutiny must never become a mechanism for punishing judges, prosecutors or investigators because a particular verdict is unpopular. Equally, judicial independence cannot absolve the state of responsibility for ensuring that justice is competently administered. A defective investigation cannot be repaired merely by changing the composition of the trial court. Inadequate prosecution cannot be remedied simply by introducing professional judges into jury deliberations. Evidence weakened through avoidable delay cannot necessarily be restored by requiring written reasons.

Repubblika therefore considers that any examination of jury reform must form part of a comprehensive assessment of the criminal justice system. The state cannot ask citizens serving on juries to bear responsibility for failures that may have occurred long before the trial reached them.

4. Comparative alternatives to the traditional jury

The debate about criminal trials is frequently presented as a choice between retaining the existing jury system and transferring responsibility for determining guilt entirely to professional judges. European experience demonstrates that these are not the only available arrangements.

Several criminal justice systems employ mixed courts in which professional judges and lay citizens deliberate together and participate in reaching verdicts. Their arrangements vary considerably. They should not be treated as interchangeable, and their existence does not establish that any particular model would necessarily improve criminal justice in Malta.

They do, however, demonstrate that citizen participation can be preserved while the procedures governing criminal adjudication are substantially reformed.

4.1 Italy: the *Corte d'Assise*

Italy's *Corte d'Assise* provides a relevant model. It consists of two professional judges and six lay judges. Lay judges help form the judgment and have equal voting rights with

professional judges. This arrangement preserves a substantial lay majority while integrating professional judicial expertise into collective deliberation.[25]

Italian criminal procedure also safeguards against professional domination. Article 527 of the Code of Criminal Procedure requires lay judges to vote before professional judges, with the presiding judge voting last. The provision regulates the order of voting and how the court considers questions arising during deliberation.

Italy also provides for reasoned criminal judgments and appellate review. Its arrangements demonstrate that meaningful lay participation can coexist with professional judicial involvement and written decisions. They do not eliminate the possibility of professional influence over lay participants. Their practical operation and effectiveness therefore require careful examination.

4.2 France: collective deliberation and secret voting

France's *cour d'assises* combines professional judges with randomly selected citizens. At first instance, the court ordinarily consists of three professional judges and six jurors. Judges and jurors deliberate together, and they reach decisions on guilt through secret written ballots.[26]

The court must provide reasons for its decision, and first-instance judgments may be appealed to an appellate assize court with a larger lay component.

The French model is relevant in two respects. First, it demonstrates that joint deliberation need not entail public disclosure of individual jurors' votes. Second, it shows that collective verdicts involving lay citizens can include explanations and be subject to appellate procedures.

France also employs professional-only criminal courts for specified serious offences through its cours criminelles départementales.[27] Its experience therefore offers material for examining both mixed and professional-only arrangements.

4.3 Germany: from traditional juries to mixed criminal courts

Germany provides an especially relevant historical precedent because it abolished the traditional jury while preserving citizen participation in criminal adjudication.

Until 1924, Germany employed traditional jury courts in which lay jurors determined guilt separately from professional judges. The Emminger Reform, introduced by emergency decree in January 1924, abolished this institutional separation and replaced it with collective adjudication by professional and lay judges.[28]

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[25] Italy, *Codice di procedura penale*, art. 527.
[26] France, *Code de procédure pénale, provisions governing appeals from judgments of the cour d'assises*, Légifrance, https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006071154/
[27] France, *Code de procédure pénale*, provisions governing the cour criminelle départementale, Légifrance, https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006071154/
[28] Brader, “Jury Trials: International Models and Reform Proposals,” section “International comparisons.”

Introduced during the Weimar Republic amid financial and administrative pressures, the reform was enacted by emergency decree rather than through an ordinary, extended legislative process. It fundamentally changed the institutional form of citizen participation, rather than eliminating it. Although the historical designation *Schwurgericht* survived, it no longer described a court in which an independent jury deliberated separately from professional judges.[29]

Germany therefore illustrates an important distinction for Malta's present debate: abolishing the traditional jury does not necessarily mean abolishing ordinary citizens' participation in criminal justice.

Today, the *Gerichtsverfassungsgesetz*, or Courts Constitution Act, provides for mixed criminal courts at different levels of the judicial system.

Under section 29, a local *Schöffengericht* ordinarily consists of one professional judge and two lay judges. In specified circumstances, a second professional judge may be added.[30]

Section 30 provides that lay judges exercise judicial office during the main hearing with the same voting rights as professional judges, subject to statutory exceptions.[31]

At regional court level, section 76 provides for criminal divisions with different compositions, including three professional judges and two lay judges or, in specified circumstances, two professional judges and two lay judges.[32]

The German system demonstrates that mixed criminal adjudication need not follow a single ratio between professional and lay members. It also provides statutory safeguards governing collective decision-making.

Section 197 of the Courts Constitution Act generally requires lay judges to vote before professional judges, subject to the statutory provision concerning a reporting judge. The presiding judge votes last.[33] Section 263 of the Strafprozessordnung, or Code of Criminal Procedure, requires a two-thirds majority for decisions concerning guilt and the legal consequences of an offence that are adverse to the accused.[34]

Section 267 requires reasons for criminal judgments, including acquittals. Where an accused person is acquitted, the judgment must indicate whether guilt was not proved or whether the conduct established did not constitute a criminal offence.[35]

These provisions are especially relevant to Malta. They demonstrate that lay participation, collective judicial responsibility, heightened voting thresholds and reasoned judgments can

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[29] Brader, “Jury Trials: International Models and Reform Proposals.”
[30] Germany, *Gerichtsverfassungsgesetz* [Courts Constitution Act], § 29, Gesetze im Internet, Federal Ministry of Justice, https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html
[31] Germany, *Gerichtsverfassungsgesetz*, § 30.
[32] Germany, *Gerichtsverfassungsgesetz*, § 76.
[33] Germany, *Gerichtsverfassungsgesetz*, § 197.
[34] Germany, *Strafprozessordnung [Code of Criminal Procedure]*, § 263, Gesetze im Internet, Federal Ministry of Justice, https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html
[35] Germany, *Strafprozessordnung*, § 267.

form part of a single institutional framework. They also illustrate the need for careful constitutional design.

In a court consisting of three professional judges and two lay judges, a two-thirds conviction threshold requires four affirmative votes. Professional judges cannot convict without at least one lay judge's agreement. Conversely, the two lay judges cannot secure a conviction without at least two professional judges' agreement.

In a court consisting of one professional judge and two lay judges, a two-thirds threshold requires two affirmative votes, not unanimity. The two lay judges may therefore form the necessary majority even if the professional judge disagrees. Where the court consists of two professional judges and two lay judges, it requires three affirmative votes.

The court's composition and the voting threshold therefore interact to determine the practical influence of lay participants. These consequences must be examined together, rather than assuming that equal voting rights necessarily produce the same distribution of authority in every mixed court.

Germany also demonstrates the importance of distinguishing formal voting rights from actual influence during deliberation. Equal votes do not necessarily imply equal authority in discussion. Professional judges possess legal expertise, experience and institutional standing that may influence lay participants.

A Maltese mixed-court model would therefore require safeguards addressing both voting power and the practical independence of deliberation.

4.4 Norway: replacing traditional juries while retaining lay adjudication

Norway provides a more recent example of reforming criminal adjudication without abandoning citizen participation.

In 2017, Norway legislated to abolish the traditional lay juries previously used in criminal appeals. The reform took effect on 1 January 2018, replacing the jury with a mixed court comprising two professional judges and five lay judges, who deliberate collectively. Transitional proceedings continued under the former arrangements, with the last jury verdict delivered in January 2019.[36]

The reform followed a prolonged national debate about citizens' appropriate role in criminal proceedings.[37] Norway's experience is relevant because it shows that a transition from separate juries to mixed adjudication need not exclude citizens. It also offers an opportunity to examine how such a transition affects transparency, appellate safeguards, procedural efficiency and the independence of lay participants.

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[36] Norwegian Courts Administration, “History of the Courts,” *The Courts of Norway*, https://www.domstol.no/en/about-the-legal-system/history-of-the-courts/; Research Council of Norway, *Evaluation of Legal Research in Norway: Impact Cases*, 2021, https://iea.prod-cms12.nfr.no/siteassets/publikasjoner/2021/jureval-impact.pdf

[37] Brader, “Jury Trials: International Models and Reform Proposals.”

4.5 Spain: citizen juries and reasoned verdicts

Spain provides a contrasting historical example.

Following the Franco dictatorship, the Spanish Constitution of 1978 recognised citizen participation in the administration of justice. The *Organic Law on the Jury Court* of 1995 implemented this constitutional commitment.[38] Unlike the mixed-court systems examined above, Spain adopted a model in which lay jurors determine factual questions separately from the professional judge.

The Spanish system is particularly relevant because the presiding professional judge submits structured factual questions to the jury, which must record its findings and provide a succinct explanation of the evidential grounds for them. The professional judge then delivers the judgment incorporating the jury's verdict. This is not equivalent to requiring lay jurors to produce a fully reasoned judicial judgment, but it provides a degree of transparency beyond an unexplained verdict. It therefore shows that introducing reasoned verdicts does not necessarily require replacing a traditional jury with a mixed court.[39]

Spain also assigned certain corruption-related offences, including bribery and influence trafficking, to jury jurisdiction.[40] This decision reflected a legislative assessment that such cases were suitable for lay determination, although subsequent experience has not conclusively established that juries are more or less effective than professional judges in dealing with those offences.[41]

Spain's experience should therefore be examined both as an example of restoring citizen participation following authoritarian rule and as a possible source of procedural reforms that can improve transparency without necessarily changing the composition of the trial court.

4.6 Japan: introducing mixed courts to strengthen democratic legitimacy

Japan provides a different example of the relationship between citizen participation and public confidence.

In 2009, Japan introduced the *saiban-in* system for serious criminal cases. Under this arrangement, six randomly selected citizens ordinarily sit alongside three professional judges and participate in decisions concerning guilt and sentence. The reform sought, among other objectives, to increase public understanding of and confidence in criminal justice by opening adjudication to ordinary citizens.[42]

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[38] Spain, *Constitución Española*, art. 125; Spain, *Ley Orgánica 5/1995, de 22 de mayo, del Tribunal del Jurado*, Boletín Oficial del Estado, 23 May 1995, https://www.boe.es/buscar/act.php?id=BOE-A-1995-12095

[39] Spain, *Ley Orgánica* 5/1995, arts. 52, 60–61, 63, and 70.

[40] Spain, *Ley Orgánica* 5/1995, art. 1(2).

[41] Rodríguez Pratt, *Trial by Jury*, pp. 9–11.

[42] Brader, “Jury Trials: International Models and Reform Proposals”; Rodríguez Pratt, *Trial by Jury,* pp. 4–5.

It therefore demonstrates that some jurisdictions have responded to concerns about the distance between professional judicial institutions and the public by introducing citizen participation rather than removing it.

Japan's experience also provides an opportunity to examine the practical relationship between professional expertise and lay independence, the preparation of citizens for judicial responsibilities, and the effects of participation on public perceptions of justice.

Taken together, the German, Norwegian, Spanish and Japanese experiences show that the relationship between professional justice and citizen participation is neither fixed nor uniform. Different countries have moved in different institutional directions, often in response to distinct historical, democratic and administrative concerns.

4.7 Traditional juries in common-law jurisdictions: reform without replacement

The comparative examination should also consider jurisdictions that have retained the traditional division of responsibility between a professional judge and a lay jury. Jury trials remain an established feature of criminal justice in England and Wales, the United States and several Commonwealth jurisdictions, although their procedures and safeguards differ.

Their continued use does not establish that traditional juries are inherently superior to mixed courts. Equally, the adoption of mixed courts in other jurisdictions does not establish that the traditional jury is inherently defective.

Comparative research should examine how jurisdictions retaining traditional juries address judicial summing-up, written directions, structured questions and verdict forms, complex evidence, juror screening, protection against improper influence and the clarification of verdicts.

England and Wales provide a useful example of procedural reform within a traditional jury system. The *Criminal Procedure Rules* require judges to give jurors directions on the relevant law and to summarise the evidence to the extent necessary for the issues they must decide. As a general rule, these directions are also provided in writing. The rules expressly contemplate questions that assist jurors in reaching their verdict.[43]

The Judicial College's *Crown Court Compendium* describes the use of a written “route to verdict”: a sequence of questions designed to guide jurors through the legal and factual issues that must be resolved before a verdict can be returned. In complex cases, these may be supplemented by diagrams or charts identifying the permissible combinations of findings and verdicts. The approach seeks to make jury deliberation more structured without transferring the determination of guilt from jurors to professional judges.

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[43] *Criminal Procedure Rules 2020 (England and Wales)*, r. 25.14(2)–(5), https://www.legislation.gov.uk/uksi/2020/759/part/25; Judicial College, *The Crown Court Compendium: Part I — Jury and Trial Management and Summing Up*, October 2025, Chapter 1, section on written directions and routes to verdict, https://www.judiciary.uk/wp-content/uploads/2022/06/Crown-Court-Compendium-Part-I.pdf

This experience does not establish that similar measures would necessarily resolve Malta's difficulties. It does, however, demonstrate that greater procedural clarity, more systematic judicial guidance and better-structured questions can be pursued within a system that preserves the traditional separation between judge and jury. Malta should examine these practices alongside the powers already available under its Criminal Code, including Article 480.

These experiences may identify reforms that Malta could adopt without abandoning its existing institutional tradition. They should be evaluated alongside the arrangements discussed in the preceding sections, taking account of Malta's particular legal framework, small population and closely interconnected professional and social networks.

4.8 The European Convention on Human Rights

The European Court of Human Rights has considered the compatibility of unreasoned jury verdicts with Article 6 of the *European Convention on Human Rights*. In *Taxquet v. Belgium*, the Court examined whether the procedures governing a jury conviction enabled the accused to understand the basis of the decision.[44] In *Lhermitte v. Belgium*, the Grand Chamber reaffirmed that the Convention does not invariably require jurors themselves to produce written reasons.[45] What matters is whether the proceedings, considered as a whole, provide adequate safeguards against arbitrariness and enable the accused to understand the verdict. The Convention therefore does not compel every state to replace traditional juries with mixed courts or adopt conventional written judgments in all jury proceedings.

Repubblika's argument is not that Malta's present system is necessarily incompatible with the Convention merely because its juries do not provide reasons. Our argument is that Malta should examine whether a higher standard of transparency, accountability and judicial scrutiny is desirable and achievable.

Human-rights law establishes minimum protections. Constitutional reform may legitimately aspire to stronger institutional safeguards.

5. Options for reforming criminal adjudication in Malta

5.1 Reforming the existing jury system

Malta should not abandon its established jury tradition without first examining whether its weaknesses can be addressed through more effective application of existing law and targeted procedural reform.

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[44] European Court of Human Rights, *Taxquet v. Belgium, application no. 926/05*, Grand Chamber, 16 Nov. 2010, HUDOC, https://hudoc.echr.coe.int/eng?i=001-101739

[45] European Court of Human Rights, *Lhermitte v. Belgium, application no. 34238/09*, Grand Chamber, 29 Nov. 2016, HUDOC, https://hudoc.echr.coe.int/eng?i=001-168977

The independent review should assess the adequacy of judicial directions, the use of structured questions, jury selection, protection against improper influence, preparation and support of jurors, and the possibility of more transparent findings. It should distinguish reforms requiring legislative amendment from improvements achievable through existing judicial powers, training and procedural practice.

Reform of the existing system should be evaluated on equal terms with the introduction of mixed courts. The decisive consideration should be the effectiveness of the safeguards each model can provide in Malta's particular circumstances.

5.2 Mixed criminal courts as an alternative

Mixed criminal courts represent an alternative institutional model deserving detailed examination. Under such arrangements, professional judges and lay citizens deliberate and determine guilt together.

The objective should be to combine the democratic value of citizen participation with professional legal expertise, reasoned decision-making and effective safeguards against error. This proposal requires careful institutional design.

Germany and Norway show that mixed adjudication can preserve citizen participation after abolishing traditional juries. A mixed court would still preserve substantial and meaningful lay participation.

The Italian arrangement of six lay judges and two professional judges offers one possible starting point. The German arrangements demonstrate that other compositions are possible, although their implications for lay influence differ.[46] The number of professional and lay members, their respective voting rights and the majorities required for conviction should be determined in light of the principles of fairness, independence and meaningful civic participation.

Particular consideration should be given to whether conviction should require a specified level of affirmative support among lay members, independently of the overall majority. The design should ensure that professional judges cannot simply determine the outcome without meaningful lay agreement.

At the same time, it must address whether a lay majority should be able to convict against the opposition of every professional judge, and what safeguards would be necessary in such circumstances.

5.3 Safeguarding lay independence and minimising the risk of deference

Introducing professional judges into deliberations creates a serious risk that their authority, expertise and institutional standing may cause lay participants to defer to their views. A

[46] Germany, *Gerichtsverfassungsgesetz*, §§ 29–30 and 76.

mixed court in which citizens merely endorse professional judges' conclusions would preserve the appearance of participation while sacrificing its substance.

Repubblika considers that this risk must be addressed expressly. Possible safeguards include a substantial lay majority, equal voting rights, lay-first voting procedures, secret ballots, structured deliberation and professional training designed to encourage independent contributions.

This paper reviews different models that provide a basis for comparison. The Italian and German requirements that lay members vote before professional judges provide concrete statutory precedents.[47] France's use of secret ballots offers another arrangement worth examining.[48]

Consideration could also be given to requiring lay members to form a preliminary assessment of the principal factual questions before collective deliberation begins. Such assessments should not bind participants or prevent them from changing their minds. Their purpose would be to encourage independent consideration before introducing professional judicial opinions.

Any such mechanism would require careful safeguards concerning confidentiality and the treatment of preliminary records. Any requirement to produce collective reasons must also distinguish between the court's agreed findings and the private reasoning of individual members. The written reasons should explain the court's legally adopted decision, without requiring every member to agree with every aspect of the majority's reasoning or disclosing individual votes. The presiding judge should have responsibility for ensuring that the applicable law is properly understood and that relevant evidence is considered. That responsibility must be distinguished from authority to impose the judge's personal assessment of guilt.

The professional judge should be an authoritative interpreter of the law, not an authoritative substitute for the judgment of the citizens sitting alongside them.

5.4 Structured deliberation

Collective deliberation should be organised around the legal elements of the offences charged and the principal factual questions arising from the evidence. This could involve considering the applicable legal tests, the evidence relevant to each element, material contradictions, and the standard of proof.

Structured deliberation should help ensure that decisions are reached through an examination of evidence rather than an immediate overall impression of guilt or innocence. It should also facilitate the subsequent formulation of reasons.

Nevertheless, procedures must preserve participants' freedom to discuss the evidence, challenge assumptions, and reconsider their views.

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[47] Italy, *Codice di procedura penale*, art. 527; Germany, *Gerichtsverfassungsgesetz*, § 197.
[48] France, *Code de procédure pénale*, provisions on voting in the cour d'assises, Légifrance, https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006071154/

The objective is disciplined reasoning, not mechanical decision-making.

5.5 The particular challenges of a small jurisdiction

Comparative experience provides valuable institutional models, but Malta's circumstances require particular attention. The countries examined in this paper have much larger populations, legal professions and judicial institutions. Arrangements that operate effectively in those jurisdictions cannot be assumed to produce identical results in a small and closely interconnected society.

Malta's scale may increase the likelihood of personal, professional, familial or political connections between those administering justice and the people involved in criminal proceedings. Such connections do not necessarily compromise impartiality, but they may create actual or perceived conflicts of interest and expose participants to pressures that are difficult to identify or manage.

A relatively small pool of eligible jurors may also complicate selection, particularly in proceedings attracting intense publicity or involving politically prominent individuals. Questions of representativeness, prior knowledge, impartiality, confidentiality and protection from external influence therefore require particular examination.

These challenges are not confined to lay participants. A small judiciary and legal profession may also be characterised by close professional relationships, shared institutional assumptions and concentrations of influence. Replacing citizen participation with professional-only adjudication would not necessarily remove the risks associated with small scale. It could instead concentrate responsibility within a narrower professional community.

Both reforms of traditional juries and proposals for mixed courts must therefore be assessed not only against comparative standards but also against Malta's demographic, institutional and political circumstances. The independent review should examine whether proposed safeguards are practicable in a small jurisdiction, including jury selection, disclosure of conflicts of interest, protection against external pressure, the composition of mixed courts and measures to preserve the independence of both professional and lay decision-makers.

The objective should be to adapt comparative experience to Malta's circumstances rather than reproduce foreign institutional arrangements without examining the conditions necessary for their effective operation.

6. Reasoned verdicts and appellate scrutiny

One of the most significant weaknesses of the present system is the limited ability to understand the reasoning underlying a jury's verdict. The absence of a fully reasoned verdict does not necessarily mean that the jury's decision-making process must remain entirely unstructured or that existing law offers no means of clarifying its findings. Articles 477–480 of the Criminal Code already provide mechanisms through which the court may seek clarification or put questions to the jury in specified circumstances. The independent review should establish the scope, frequency and effectiveness of these mechanisms before

determining what additional requirements for reasoned verdicts are necessary and practicable. Repubblika proposes that Malta consider introducing written reasons for decisions on criminal guilt.

Former European Court of Human Rights judge Giovanni Bonello has argued that the absence of reasons for jury acquittals raises important questions about victims' rights. In particular, he asks how victims can assess whether proceedings were independent and impartial, or meaningfully participate in available appellate remedies, when they are not told why the accused was acquitted. Bonello challenges the apparent asymmetry between the importance attached to explaining convictions to accused persons and the absence of comparable explanations for victims following acquittals. His argument reinforces the case for examining whether greater transparency should be required of jury verdicts, while leaving open the precise procedural form such explanations should take.[49]

Comparative evidence also requires us to distinguish reform objectives from the institutional means by which they might be achieved. Introducing reasoned verdicts does not necessarily require a mixed court: Spain shows that a traditional jury can be required to answer structured questions and explain its findings.[50]

6.1 Explaining the verdict

A reasoned judgment should identify the principal factual and legal considerations supporting the court's conclusion. It should explain, to the extent necessary to understand the decision, which elements of the offence were established, which were not, and how the court resolved material issues arising from the evidence. The obligation should apply to acquittals as well as convictions.

Where the accused is acquitted, the reasons should explain, so far as reasonably possible, why the prosecution did not establish the elements necessary for conviction. This must not impose a requirement to identify a particular exculpatory fact or formulate a specific doubt as a condition of acquittal. The accused bears no burden of proving innocence, and the prosecution retains the entire burden of establishing guilt beyond reasonable doubt.

Germany's section 267 of the Code of Criminal Procedure provides a particularly clear statutory example of the obligation to explain both convictions and acquittals.[51] Written reasons should reflect the court's collective decision rather than a professional judge's personal reconstruction of the lay members' thinking.

The confidentiality of deliberations and individual votes should be protected.

6.2 Effective appeals

[49] Giovanni Bonello, “Victims of crime – their right to know reasons why jurors acquitted the accused,” *Times of Malta*, 7 September 2026, https://timesofmalta.com/article/victims-crime-right-know-reasons-jurors-acquitted-accused.1133737
[50] Spain, *Ley Orgánica 5/1995*, arts. 52 and 61.
[51] Germany, *Strafprozessordnung*, § 267.

Reasoned judgments would make it easier to identify the legal and evidential basis of a decision and to assess whether it discloses errors falling within the permitted grounds of appeal. Repubblika proposes examining the scope of appellate review alongside the introduction of reasoned verdicts.

Relevant questions include whether the trial court applied the correct legal principles, addressed material evidence, relied on impermissible considerations or reached findings that cannot reasonably be supported by the evidence.

The appellate court should not simply substitute its preferred interpretation of disputed evidence because it would have reached a different conclusion.

The distinction between an unreasonable verdict and a verdict with which another court disagrees is fundamental.

6.3 Acquittals and the rights of accused persons

Particular caution is necessary concerning appeals against acquittals.

The presumption of innocence, the finality of criminal proceedings and protection against repeated prosecution are essential safeguards against the power of the state.[52] Any proposal to broaden appellate review must be assessed against these principles and Malta's existing appeal provisions.

Article 500(2) of Malta's *Criminal Code* permits the Attorney General to appeal against an acquittal following trial on indictment. Article 500(4) restricts the circumstances in which the Court of Criminal Appeal may allow such an appeal to grave irregularities during proceedings or judgments clearly resulting from manifest misinterpretation or manifestly wrong application of the law that could have affected the verdict. The Court may nevertheless dismiss the appeal where no miscarriage of justice has actually occurred. Article 500(5) governs the Court's powers when determining the appeal. Reform must therefore begin by examining whether these existing provisions afford adequate scrutiny, rather than assuming that acquittals are immune from appeal.[53]

The comparative experience of France, Italy and Germany is relevant, but their appellate arrangements cannot be transplanted without regard to Malta's legal and constitutional framework.

Repubblika does not propose unrestricted appeals against acquittals. It proposes examining whether reasoned decisions can enable more effective scrutiny of serious legal or evidential errors while preserving the fundamental rights of accused persons.

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[52] Council of Europe, *Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, art. 4, 22 Nov. 1984, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=117

[53] Malta, *Criminal Code*, Chapter 9, arts. 500(2), 500(4)–(5), Legislation Malta, consolidated version of 1 October 2026

7. Citizen participation, social prejudice and the responsibilities of democracy

7.1 The courtroom is not separate from society

A jury is composed of citizens drawn from the society in which a criminal trial takes place. Those citizens bring with them their experiences, convictions, assumptions and understanding of the world. This is one of the democratic arguments for citizen participation in criminal justice. It is also a source of vulnerability.

A society marked by political tribalism, racial prejudice, xenophobia or unequal regard for different communities cannot assume that those attitudes cease to exist when its citizens enter a courtroom.

The obligation to decide impartially is fundamental. Jurors swear to perform their duties according to law and evidence. But an oath cannot, by itself, eliminate prejudices that may have been formed and reinforced over many years. Nor can legal directions guarantee that unconscious assumptions will have no bearing on how evidence is interpreted, which witnesses are believed, or what conduct appears plausible.[54]

This problem is not confined to lay jurors. Professional judges, prosecutors, police officers and lawyers are also members of society. Their training and professional obligations provide important safeguards, but do not place them beyond the influence of prevailing social attitudes.

The question is therefore not whether ordinary citizens are uniquely susceptible to prejudice. It is whether our institutions and democratic culture are sufficiently equipped to recognise prejudice, challenge it and prevent it from determining the administration of justice.

7.2 The equal value of every human life

The acquittals that have prompted the present debate concern different defendants, different evidence and different legal questions. They cannot responsibly be treated as proof of a common explanation.

Nevertheless, the public response to them raises a question that goes beyond criminal procedure: whether every victim of violence can expect the same concern, protection and solidarity from the society in which they live.

Daphne Caruana Galizia was a journalist whose work exposed powerful political and economic interests and provoked intense partisan hostility. Lassana Cisse was a Black

[54] Jennifer S. Hunt, “Race, Ethnicity, and Culture in Jury Decision Making,” *Annual Review of Law and Social Science*, vol. 11, 2015, pp. 269–88, https://doi.org/10.1146/annurev-lawsocsci-120814-121723

migrant whose killing occurred in a society where racism, xenophobia, hate-motivated violence and the marginalisation of migrants have been documented as serious concerns.[55]

Their circumstances were different. Their right to life was not.

Neither a person's political opinions nor their nationality, race, occupation, social standing or public reputation can diminish their entitlement to the protection of the law.

Yet democratic societies do not always live up to this principle. Political opponents may be treated as enemies rather than fellow citizens. Migrants may be spoken of as burdens or threats rather than as people entitled to dignity and protection. Public discourse may encourage indifference towards the suffering of people perceived as outsiders.

Such attitudes can create a hierarchy of sympathy in which some victims are more readily recognised as deserving of justice than others.

This is not a claim that the jurors in either recent trial acted upon such prejudices. Their individual reasoning is not known, and their verdicts cannot establish their motives. It is, however, a legitimate concern that the attitudes present in wider society may also influence the institutions responsible for protecting its members.

The proper response is neither to accuse jurors without evidence nor to dismiss the possibility of prejudice because it cannot be demonstrated in a particular verdict. It is to recognise that equal justice requires more than formally equal legal rights. It requires a democratic culture in which the equal worth of every human being is genuinely accepted.

7.3 A crisis of legitimacy without prejudging guilt

The public reaction to the recent acquittals goes beyond disappointment with individual verdicts. It raises a more fundamental question about the legitimacy of the institutions responsible for administering criminal justice.

Citizens may understand and respect the principle that guilt must be proved beyond reasonable doubt while finding it impossible to reconcile a verdict with the evidence reported during a trial. They may also be profoundly disturbed by conduct disclosed in the proceedings, even where the evidence does not establish responsibility for the particular offence charged. When such concerns cannot be addressed because the reasoning underlying a verdict remains unexplained, the consequences extend beyond disagreement with a judicial outcome. They affect public confidence that the criminal justice system is capable of administering justice competently, independently and impartially.

This is a crisis of institutional legitimacy, not a licence to presume the guilt of acquitted defendants or attribute improper motives to jurors. The legal authority of a verdict must be distinguished from the wider legitimacy of the institutions and procedures through which it is reached. Respect for the former does not preclude rigorous scrutiny of the latter.

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[55] European Commission against Racism and Intolerance. *ECRI Report on Malta (Sixth Monitoring Cycle)*. Council of Europe, adopted 9 Apr. 2024, published 26 June 2024, https://rm.coe.int/sixth-ecri-report-on-malta/1680b063ef

During the trial concerning Lassana Cisse's murder, Lorin Scicluna acknowledged in his testimony that he and Francesco Fenech had previously driven around Ħal Far looking for Black people to harass. The proceedings also included testimony about an earlier confrontation involving a Black man. These accounts exposed disturbing conduct and attitudes independently of the question whether the prosecution had proved Scicluna's responsibility for the offences charged.[56] These disclosures understandably deepened public concern about the violence experienced by migrants and the wider social environment in which the killing occurred.

But evidence of racism, however disturbing, does not dispense with the prosecution's obligation to prove every necessary element of a criminal offence against the particular accused. A court must distinguish between reprehensible conduct, suspicion of involvement and guilt established to the required legal standard.

The difficulty is that unexplained verdicts leave the public unable to know which distinctions proved decisive. Did the jurors reject particular testimony? Did they consider the evidence insufficient to establish the accused's participation or intention? Did they identify a contradiction that created reasonable doubt? The verdict alone does not answer these questions. That uncertainty may foster suspicions of prejudice, just as it may foster suspicions of prosecutorial incompetence or institutional failure.

Reasoned verdicts would not eliminate disagreement, but they could make it possible to distinguish between the reasons actually adopted by a court and the explanations that members of the public may otherwise imagine. This is closely connected to the fundamental principle that justice must not only be done but must also be seen to be done.[57] Public confidence in the administration of justice depends not on courts delivering expected outcomes, but on the ability of citizens to recognise that decisions have been reached through fair, impartial and intelligible procedures.

The demand for greater transparency should therefore be understood as a demand for accountable justice, not as a demand that courts convict whenever the public expects a conviction. Making the reasoning behind verdicts more accessible would help protect both the legitimacy of the criminal justice system and the rights of those who appear before it.

7.4 Political tribalism, racism and the erosion of solidarity

Malta's democratic difficulties cannot be separated from the manner in which people are encouraged to regard one another. Political allegiance can become a form of social identity so powerful that evidence of wrongdoing is assessed according to who is accused, who is

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[56] "Wrap: We Used to Go Looking for Black People, Murder Accused Admits." *Times of Malta*, 28 Oct. 2026, https://timesofmalta.com/article/live-jurors-continue-hear-evidence-lorin-scicluna-trial.1136279; Matthew Bonanno, "Lassana Cisse Murder Accused Taunted Black Man before Killing, Jury Hears," *Times of Malta*, 26 Oct. 2026, https://timesofmalta.com/article/jurors-shown-video-route-retraced-murder-accused-lorin-scicluna.1136160

[57] *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256, 259 (Lord Hewart CJ), establishing the principle that justice must not only be done but must manifestly and undoubtedly be seen to be done.

harmed and which political interests may benefit from the outcome. In such circumstances, the principle of equal justice is endangered not only by direct political interference but also by a culture in which loyalty to a political camp displaces loyalty to common democratic standards.

Racism and xenophobia produce a related, although distinct, danger. They can diminish empathy for people regarded as foreign, unfamiliar or outside the national community. They can encourage the belief that certain people are less entitled to security, dignity or public concern.

Political signalling can intensify these dangers. In a highly partisan society, statements by political leaders and other influential figures may do more than express opinions. They can legitimise hostility towards particular individuals or groups, establish narratives through which allegations are interpreted, and reinforce the perception that loyalty to a political community requires defending its members or distrusting its opponents. Similar dynamics may operate where public rhetoric depicts migrants or racial minorities as threats, burdens or competitors for rights, services and opportunities, rather than as people sharing a common society. Such influence need not take the form of explicit instructions or direct interference in proceedings. It may operate through the social assumptions that citizens and professionals alike bring to the administration of justice. Whether and how these mechanisms affect criminal adjudication requires careful empirical examination, rather than assumptions about the motives of participants in particular trials.

Such attitudes can have consequences far beyond jury trials. They may influence how allegations of violence are received, whether victims are believed, how public institutions respond, and whether the wider community insists upon equal protection.

A democracy cannot sustain the rule of law if its citizens do not recognise one another as equally deserving of that law's protection. Rebuilding solidarity must therefore be understood as part of the work of democratic reform. It requires the deliberate cultivation of a public culture in which disagreement does not extinguish mutual respect, political rivalry does not justify dehumanisation, and differences of origin or identity do not determine the value assigned to human life.

7.5 Institutional representation and racial equality before the law

The possibility of racial prejudice in criminal justice cannot be examined solely by considering the attitudes of jurors. It must also be examined in relation to the composition, culture and operation of the institutions responsible for administering justice.

An important question concerns the representation of Black people and other racial and ethnic minorities within Malta's legal and judicial institutions. How many serve as judges, magistrates, prosecutors, advocates, court administrators or other court employees? What opportunities exist for people from minority backgrounds to enter these professions and advance within them? What legal, educational, linguistic, economic or institutional barriers might impede their participation? An examination of representation should distinguish formal eligibility for appointment or employment from practical access to qualifications and

professional opportunities, and from the actual composition of institutions. These are related questions, but they require different evidence and may call for different remedies.

These questions require evidence. The apparent lack of racial diversity in the most visible positions within Malta's criminal justice system should prompt an examination of actual representation, rather than an unsupported assertion that particular communities are entirely absent. Any collection or analysis of information concerning racial or ethnic origin must comply with applicable data-protection and equality law, use appropriate safeguards for voluntary self-identification and confidentiality, and avoid publishing information that could identify individuals in small professional groups.

Representation matters for reasons extending beyond appearances. Institutions develop professional cultures through the experiences, assumptions and perspectives of the people who work within them. Where those experiences are narrow, institutions may be less equipped to recognise forms of discrimination, understand the circumstances of marginalised communities or identify assumptions that have become normalised within professional practice.

This does not mean that a white judge cannot administer justice impartially to a Black defendant or victim, or that a Black judge would necessarily reach a different or more reliable conclusion. Impartiality is a professional and constitutional obligation that cannot be inferred from racial identity.

But it does mean that institutional impartiality cannot be assessed exclusively by examining the personal intentions of individual officeholders.

Racial inequality may arise through institutional arrangements and practices even where no particular official intends to discriminate. Recruitment and promotion procedures, access to legal education, the treatment of complainants and witnesses, the availability of interpretation, the investigation of racist motives, and the collection of data concerning discriminatory outcomes all deserve examination.

The Council of Europe's *European Commission against Racism and Intolerance* has already raised concerns about the treatment of people with migration backgrounds in Malta, including their trust in law enforcement, and has recommended greater diversity in police recruitment.[58] The same underlying questions of representation, equal treatment and institutional confidence warrant examination across the wider criminal justice system.

This is particularly important where a Black person appears before the courts as an accused person or as the victim of violence. The legitimacy of justice depends on that person's ability to expect impartial treatment, equal protection and serious consideration of their circumstances, irrespective of whether the officials deciding the case share their background.

Repubblika therefore proposes that an independent review examine racial and ethnic representation throughout Malta's criminal justice institutions, identify barriers to entry and

[58] European Commission against Racism and Intolerance, *ECRI Report on Malta (Sixth Monitoring Cycle)*, 2024.

advancement, assess safeguards against institutional discrimination and recommend measures to strengthen equality and public confidence.

The objective should not be to presume prejudice on the part of existing judges, prosecutors, lawyers or court employees. It should be to ensure that the institutions administering justice are demonstrably open, fair and capable of protecting the rights of every person who comes before them.

7.6 Civic education as democratic renewal

Civic education should not be confined to explaining constitutional institutions or teaching citizens how elections work. It should develop the intellectual and moral capacities required to live together in a democratic society. These include the ability to distinguish evidence from allegation, to question inherited assumptions, to recognise manipulation and prejudice, to understand the rights of people with whom one disagrees, and to accept that the law must protect everyone equally.

Education should address the presumption of innocence, the burden and standard of proof, judicial independence and the responsibility to decide impartially. But it must also confront racism, xenophobia, political sectarianism, stereotyping and the normalisation of contempt towards vulnerable groups.

Such education should begin in schools and continue through adult education, public institutions, professional training and community initiatives. It should not be limited to those who may eventually serve on juries.

Schools should provide opportunities for students from different backgrounds to encounter one another as equals, discuss contested questions respectfully and understand the experiences of people whose circumstances differ from their own.

Public institutions should promote equal treatment in their own conduct. Political leaders should be held to standards that discourage the dehumanisation of opponents and minorities. Civil society, educational institutions and independent media all have responsibilities in sustaining informed discussion and resisting prejudice.

Public authorities must also demonstrate these principles through their decisions and conduct. Policies affecting access to public services, the treatment of migrants and minorities, the language used by officeholders and the response to discrimination can either reinforce or undermine the equal dignity that civic education seeks to promote. A programme of democratic renewal must therefore combine education with institutional practices that demonstrate fairness and equal treatment in everyday life.

The objective should not be to prescribe political opinions or demand conformity. Democratic education must encourage independent judgment, including the freedom to criticise public authorities. Its purpose is to establish the common ethical and constitutional foundations without which disagreement can deteriorate into hostility and the exercise of public power can become indifferent to the rights of others.

7.7 Preparing and supporting citizens who serve

The broader programme of civic education should be complemented by specific preparation for citizens selected to participate in criminal trials.

Jurors should receive clear and impartial guidance, including ongoing guidance where appropriate, on their responsibilities, the presumption of innocence, the standard of proof, the assessment of evidence, the importance of impartiality and the need to identify and resist prejudicial assumptions. Such preparation must never attempt to influence the outcome of particular proceedings or undermine the authority of the presiding judge.

Jury selection procedures should also be examined to ensure that participation is accessible to a broad cross-section of society and that appropriate safeguards exist against demonstrable conflicts of interest and prejudgment.

The procedures through which prospective jurors are identified and selected also require scrutiny. The independent review should examine how the lists of eligible jurors are compiled, the criteria and methods used for selection, the transparency and independent oversight of those procedures, and the safeguards protecting the personal information and independence of prospective jurors. The process should be sufficiently transparent to permit public confidence in its fairness, without exposing prospective jurors unnecessarily to identification, profiling or improper approaches.

Particular attention should be given to indirect attempts to influence or profile prospective jurors. Concerns arose before the 2026 trial of Yorgen Fenech about an opinion survey commissioned after the publication of a list of prospective jurors. Questions were raised about whether the survey could have been used to identify or assess the attitudes of people who might serve on the jury. Those involved disputed suggestions that prospective jurors had been targeted.[59] The controversy nevertheless highlights the need to examine whether existing legal and procedural safeguards adequately protect prospective jurors against improper contact, profiling, intimidation or manipulation, including through intermediaries or third-party research. Any proposed restrictions must distinguish between legitimate opinion research, lawful trial preparation and conduct intended to compromise the independence or impartiality of jurors.

Citizens should not suffer disproportionate economic or personal hardship because they are required to serve on juries. Inadequate compensation may place particular burdens on people with modest incomes, caring responsibilities or insecure employment, affecting the fairness and representativeness of jury participation. Public accounts of the demands placed on jurors during the Yorgen Fenech trial, including concerns expressed by their families and

[59] Jacob Borg, “Survey held on eve of Yorgen Fenech trial was questioned by judge,” *Times of Malta*, 5 September 2026, https://timesofmalta.com/article/survey-held-eve-fenech-trial-questioned-judge.1133706; “Ray Fenech says jurors denied participating in survey, as Marmarà slams claims,” *Times of Malta*, 6 September 2026, https://timesofmalta.com/article/marmara-hits-allegations-cassola-demands-university-investigation.1133748; Eva Brannon, “The 22 questions asked in survey commissioned by Yorgen Fenech’s uncle,” *MaltaToday*, 31 October 2026, https://www.maltatoday.com.mt/news/national/145385/the_22_questions_asked_in_survey_commissioned_by_yorgen_fenechs_uncle

explanations offered by the court administration, illustrate the importance of examining these conditions.

Sequestration raises additional questions about the necessity and proportionality of restricting jurors' contact with their families, employment and ordinary lives, particularly during lengthy proceedings. The independent review should examine whether sequestration remains justified in its present form, whether it should be reserved for exceptional circumstances, and whether less restrictive arrangements could adequately protect jurors from improper influence. It should also assess compensation, employment protection, support for dependants and psychological welfare as integral safeguards of an effective jury system. These concerns do not establish that hardship influenced any particular verdict, but they deserve serious institutional examination.

The quality of citizen participation depends not only on the legal powers assigned to jurors but also on the conditions in which they are expected to exercise those powers.

7.8 Reforming society as well as its institutions

Procedural reform can improve the transparency, consistency and accountability of criminal adjudication. Institutional reform can strengthen the independence and competence of police, prosecutors and courts. Neither can, by itself, eliminate the social prejudices that may influence the exercise of judgment.

Replacing lay juries with professional judges would not remove racism or political tribalism from Maltese society. Nor would it guarantee that these attitudes cease to influence criminal justice. It would instead transfer responsibility for determining guilt to a smaller group of professionals drawn from that same society.

Retaining citizen participation is not sufficient either. Democratic involvement has value only when it is accompanied by a serious commitment to impartiality, equal rights and the responsibilities of citizenship.

Repubblika therefore proposes that criminal justice reform be accompanied by a sustained national programme of civic and democratic education, anti-racism initiatives and efforts to rebuild solidarity across political, racial and social divisions. Such a programme should involve educational institutions, civil society, professional bodies, communities and public authorities. It should include measurable objectives and independent assessment, rather than rely exclusively on public-awareness campaigns.

A national programme of civic education should have identifiable components rather than rely on general appeals for greater tolerance. These could include the systematic teaching of constitutional principles, the presumption of innocence, equality before the law, the responsibilities of citizenship and the distinction between political loyalty and institutional accountability. Schools, further and higher education institutions, adult education providers and civil society organisations should be involved in developing opportunities for informed discussion, critical thinking and democratic participation. Particular attention should be given to media literacy, the recognition of disinformation and prejudice, and the ability to assess competing claims without reducing questions of justice to political allegiance. The

programme should establish measurable objectives and be independently evaluated over time.

Malta's *National Action Plan Against Racism 2025–2030* already provides a policy framework for confronting racism, promoting inclusion and strengthening institutional accountability.[60] The task is therefore not simply to propose new commitments, but to ensure that existing commitments are effectively implemented, independently evaluated and reinforced where necessary. Criminal justice reform should be linked to that wider programme, including its provisions concerning hate crime prevention, training, representation, structural racism and monitoring.

This is necessarily a longer-term undertaking. It cannot substitute for urgent improvements in criminal procedure, institutional competence or accountability. But it addresses a deeper question raised by the present controversy.

If we are concerned that citizens may not always exercise public responsibility fairly, the democratic response cannot be limited to removing that responsibility from them. We must also ask what kind of society has shaped their judgments, and what responsibilities we share for improving it. The objective should be not only a justice system capable of reaching fair decisions, but a society in which the equal dignity of every person is recognised and defended.

8. Outstanding questions and a programme for reform

Repubblika does not present the proposals in this paper as a complete legislative blueprint. It establishes principles, identifies competing reform options deserving examination, and proposes a process for determining which arrangements would best serve Malta's criminal justice system. The review should not presume that the existing jury system must be replaced, or that retaining it without substantial improvement would be adequate.

The questions are substantial. They should be examined through independent comparative research, consultation with criminal justice practitioners, constitutional analysis and informed public discussion.

8.1 Questions requiring further examination

Question	Proposed examination

[60] Government of Malta, Human Rights Directorate. “National Action Plan Against Racism (NAPAR).” *Human Rights Directorate*, https://humanrights.gov.mt/units/integration-and-anti-racism-unit/strategic-frameworks/national-action-plan-against-racism/

Composition and voting thresholds in mixed courts	Comparative analysis of Italian, French, German, Norwegian, Spanish and Japanese arrangements, including voting majorities, the independence of lay participants, and the distribution of authority between professional and lay judges, followed by Maltese procedural and constitutional assessment.
Existing judicial powers and practice	Examine the use of Articles 436 and 477–480, judicial summing-up, structured questions, clarification of verdicts and whether established practices have fallen into disuse.
Reform of traditional juries	Assess procedural and legislative reforms capable of improving jury trials without replacing the traditional separation between judge and jury.
Selection and protection of jurors	Review compilation and publication of juror lists, selection procedures, safeguards against profiling and improper contact, and existing criminal prohibitions.
Judicial and prosecutorial trial experience	Examine professional experience, training, judicial assignments, prosecutorial leadership, institutional memory and the transmission of practical expertise.
Comparative common-law practice	Examine jury directions, structured questions, juror screening and safeguards against interference in jurisdictions retaining traditional juries.
Independence of lay participants	Research into judicial dominance, voting procedures, deliberation practices and safeguards for independent judgment
Juror compensation, sequestration and welfare	Assess the adequacy of compensation, protection against loss of earnings, employment safeguards, caring responsibilities and psychological support. Examine the necessity and proportionality of sequestration, including whether it should be exceptional rather than routine, and

	whether alternative safeguards against outside influence could adequately protect the integrity of proceedings.
Collective written reasons	Examination of comparative practice, procedures for drafting and adopting collective reasons where professional and lay members disagree, safeguards ensuring that written judgments faithfully reflect the majority decision, confidentiality of deliberations and European human-rights requirements.
Reasoned verdicts within traditional jury systems	Examination of Spain's structured questions and reasoned jury verdicts, including whether Malta could introduce comparable arrangements without replacing traditional juries with mixed courts.
Appeals against convictions and acquittals	Review of Malta's existing law, comparative appellate systems and safeguards concerning finality and repeated prosecution
Constitutional implications	Assessment of Maltese constitutional guarantees and the legislative changes required
Political interference and institutional independence	Examination of documented incidents, appointment procedures, operational safeguards and independent oversight
Recruitment, expertise and institutional continuity	Independent review of staffing, turnover, training, case reassignment and operational capacity
Delays and evidence erosion	Examination of case-management data, witness procedures, evidence preservation and the age of pending proceedings

Civic preparation, representativeness and jury selection	Examination of jury eligibility and representativeness; the effects of employment, caring responsibilities, compensation and language requirements on participation; safeguards against demonstrated prejudice and conflicts of interest; and the preparation and continuing support of jurors.
Social prejudice, impartiality and democratic solidarity	Examine evidence concerning implicit and explicit bias in criminal adjudication; safeguards against racial, ethnic and political prejudice; the effectiveness of juror preparation; and the contribution of civic education and anti-discrimination measures to equal citizenship and public confidence.
Racial and ethnic representation in criminal justice institutions	Establish available data on representation among judges, magistrates, prosecutors, advocates, police officers and court personnel; examine recruitment, qualification, appointment and advancement barriers; assess institutional practices affecting minority defendants, victims and witnesses; and recommend safeguards against discrimination.

These questions are not reasons to postpone reform indefinitely. They are reasons to undertake it seriously.

8.2 An independent criminal justice review

Repubblika proposes establishing an independent, time-limited review of criminal justice, with particular attention to trials by jury. Its membership should include expertise in criminal law, constitutional law, judicial administration, prosecution, forensic evidence, human rights, comparative criminal procedure, social psychology, equality law, institutional discrimination, access to justice and civic education.

The review should not begin from the assumption that Malta's traditional jury system should be replaced. Its first task should be to examine how that system operates in practice, whether the safeguards and powers already available under the Criminal Code are fully used, and whether weaknesses can be addressed through improved judicial practice, professional training and targeted legislative reform. It should then compare the likely effectiveness of those measures with alternative institutional arrangements, including mixed criminal courts. Each option should be assessed against the same criteria: impartiality, fairness, transparency, judicial competence, meaningful citizen participation, constitutional compatibility and suitability for a small jurisdiction.

Given the breadth of its mandate, the review should organise its work into clearly defined thematic workstreams, supported where necessary by specialist research and consultation.

Its terms of reference should establish a realistic timetable, procedures for gathering and assessing evidence, safeguards for confidential information and arrangements for publishing both its findings and any limitations in the available evidence. Its independence should be protected through transparent appointments, adequate resources and freedom from political direction.

The review should consult the judiciary, police, prosecution services, criminal-law practitioners, court administrators, academics, civil society, former jurors and, where appropriate, their families. It should also consult Black residents, migrant communities, organisations representing racial and ethnic minorities, and organisations providing legal assistance or support to victims of racism and discrimination.

The review should examine the adequacy of juror compensation and employment protection, the impact of jury service on family and caring responsibilities, and the availability of psychological support. It should also assess whether sequestration remains necessary in its present form, whether its use should be restricted to exceptional circumstances, and whether less restrictive safeguards could protect the integrity of proceedings without imposing disproportionate hardship on jurors and their families.

It should have access, subject to appropriate legal safeguards, to the administrative information necessary to examine institutional performance.

This should include staffing and vacancy histories, retention and recruitment, training, case backlogs, adjournments, the time between indictment and trial, and the continuity of personnel assigned to complex proceedings.

The review should also examine documented instances and credible allegations of political interference in criminal investigation, prosecution and judicial administration, assess the effectiveness of existing safeguards against improper influence, and consider whether institutional accountability and oversight mechanisms are adequate. It should distinguish established facts from allegations requiring investigation and must not presume that political interference determined the outcome of any particular criminal proceedings.

The review should also examine the safeguards available against prejudice in criminal adjudication, including jury selection, preparation, judicial directions and procedures for identifying conflicts of interest or prejudgment. It should draw on comparative research concerning the influence of implicit and explicit bias on lay and professional decision-makers. This examination must not attempt to attribute unproven motives to the jurors who participated in particular trials.

The review should undertake a detailed examination of judicial summing-up, the use of structured questions under Article 480, the court's powers under Article 436, the treatment of material contradictions in evidence, and procedures for clarifying incomplete or ambiguous verdicts. It should also investigate the selection and protection of prospective jurors, including safeguards against indirect interference and the transparency of juror-list compilation. This work should draw on relevant court records, historical practice, appellate jurisprudence and evidence from serving and retired judges and criminal practitioners.

The review should further examine racial and ethnic representation throughout Malta's criminal justice institutions, including the judiciary, prosecution services, legal profession, police and court administration. It should establish what reliable information is available, identify gaps in published data, and examine legal, educational, linguistic, economic and institutional barriers to recruitment, appointment and professional advancement. It should assess whether institutional practices may produce discriminatory outcomes, including in the treatment of complainants, accused persons, victims and witnesses, and recommend appropriate safeguards. This examination should distinguish between individual prejudice, structural barriers to participation and unequal treatment arising from institutional practices, without presuming discriminatory motives on the part of particular officials.

The review should recommend measures relevant to criminal justice and identify where broader initiatives in civic education, anti-discrimination and democratic participation are required. The design and implementation of a national programme to rebuild democratic solidarity should involve a wider range of educational, civic and community institutions and should not be treated as the responsibility of the criminal justice review alone.

Its findings should be published, together with recommendations, an implementation timetable and an assessment of the resources required.

The review must be independent of political direction and must not interfere with pending criminal proceedings or become a retrospective substitute for the appellate process.

Its purpose should be institutional improvement.

8.3 Immediate measures and longer-term reform

Not every improvement requires constitutional amendment or the completion of an independent review. Measures concerning training, staffing, evidence preservation, case management and administrative capacity may be implementable within the existing legal framework. The examination of current jury procedures, including judicial summing-up, the use of structured questions and the exercise of existing statutory powers, should likewise begin promptly. Such work can proceed while the independent review is being established and conducted, without prejudging its findings or compromising judicial independence.

Where improvements are possible through training, guidance or more consistent application of current law, they should be considered promptly, subject to the rights of accused persons. Legislative changes concerning jury selection and protection against improper influence should likewise be examined as potential reforms in their own right.

Other reforms, particularly those concerning the composition of criminal courts, the nature of judicial participation and appellate jurisdiction, require detailed legal examination and potentially significant legislative change.

Repubblika therefore proposes a two-track approach. The first track should begin addressing urgent procedural and administrative weaknesses without awaiting the review's completion, while incorporating its findings as they become available. The second should examine the constitutional implications of more fundamental institutional reform through a wider process of democratic deliberation.

9. Criminal justice and constitutional democracy

Criminal justice administration is not an isolated component of the state. Its effectiveness depends on the relationships among institutions, the distribution of powers, the mechanisms that control those powers, and the opportunities available to citizens to participate in public life.

Reforming one institution without considering its relationship with others risks addressing an immediate weakness while creating new imbalances elsewhere.

The independence of the judiciary must be considered alongside the accountability of judicial institutions. The effectiveness of prosecution services must be considered alongside their independence from political interference. The authority of criminal courts must be reconciled with the rights of accused persons, the interests of victims and the legitimate expectations of society.

Citizen participation in criminal justice raises a wider constitutional question: what role should ordinary citizens have in exercising and scrutinising the powers of the state?

Repubblika's general position is that Malta needs greater citizen participation in public affairs, not less. This does not mean that every public decision should be subject to popular approval, or that professional expertise and institutional independence should be subordinated to majority opinion. Constitutional democracy requires safeguards precisely because popular majorities must not be permitted to override fundamental rights.

But citizens in whose name public authority is exercised should have meaningful opportunities to participate in its exercise, scrutinise its use and hold those entrusted with it accountable. The relationship between participation, expertise, independence and accountability must be considered across the constitutional system as a whole.

A reform that strengthens one institution while weakening the checks upon it may leave the country worse governed. Equally, a reform that removes citizens from one sphere of public responsibility without considering their role elsewhere may contribute to the progressive concentration of power within professional, administrative or political establishments.

The objective should be a coherent constitutional settlement in which institutions fulfil their distinct responsibilities, exercise appropriate checks upon one another and remain connected to the democratic community they serve.

9.1 The constitutional convention

Repubblika reiterates its call for a comprehensive, participatory and properly structured process of constitutional reform.

Malta's constitutional arrangements should not be redesigned through isolated responses to successive political or institutional crises. They require consideration as an interconnected system.

Such a process should not be confined to negotiations between political parties or conducted exclusively by those who presently exercise institutional power. Citizens, civil society organisations, professional bodies, academics and independent experts must have meaningful opportunities to participate.

Repubblika has previously addressed not only the substance of constitutional reform but also the process through which it should be undertaken. In its 2019 recommendations on constitutional reform procedures, Repubblika called for meaningful public engagement and a process not controlled exclusively by incumbent political authorities.[61] Those recommendations provide a foundation for our continuing call for a properly constituted national constitutional convention. The present paper should contribute to that wider discussion, rather than treating criminal justice reform as a separate institutional exercise.

9.2 Continuity with Repubblika's reform programme

This paper forms part of Repubblika's continuing work on institutional reform and democratic renewal.

In Reforming Malta's Parliament (2021), Repubblika proposed changes intended to restore the legislature's independence and effectiveness and examined the electoral and constitutional arrangements through which political power is exercised.[62]

Its 2024 anti-corruption strategy, Defending Integrity, examined institutional weaknesses affecting the prevention, investigation and prosecution of corruption, including the independence and accountability of public institutions.[63]

Repubblika's February 2025 memorandum on the right of individual petition for magisterial inquiries examined in detail how changes to criminal procedure could affect citizens' ability to seek independent judicial intervention when ordinary investigative institutions fail to act.[64] Alongside our proposals concerning judicial independence and prosecutorial accountability, that work reflects a consistent concern with preserving meaningful public safeguards against the misuse or ineffective exercise of state power.

The present paper applies the same principles to criminal justice. It does not attempt to resolve every question concerning trials by jury. It seeks to contribute to an informed national discussion and to demonstrate that institutional reform can be guided by principles more enduring than the understandable anger provoked by recent events.

10. Conclusion: More democracy, better justice

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[61] Repubblika, *Reform of Malta's Constitution: Recommendations on a Procedure for the Consideration and Approval of Amendments to the Constitution,* 1 Mar. 2019, https://repubblika.org/wp-content/uploads/2020/10/EN-Constitutional-Reform-Procedure-Memo-March-2019.pdf

[62] Repubblika, *Reforming Malta's Parliament*, 2021, https://repubblika.org/wp-content/uploads/2021/11/Malta-Parliament-Reform.pdf

[63] Repubblika, *Defending Integrity: An Anti-Corruption Strategy and Manifesto*, 2024, https://repubblika.org/wp-content/uploads/2024/12/rep2024-manifesto-ENG_REDACTED.pdf

[64] Repubblika, *The Right of Individual Petition for Magisterial Inquiries*.

The recent verdicts have exposed a profound crisis of public confidence in Malta's criminal justice system. That crisis must be acknowledged and addressed.

Repubblika understands the anger that has prompted calls to abolish lay juries. We share the concern that our justice system is failing to provide the assurance of fairness, competence and accountability that society is entitled to expect. But anger, however understandable, should not be the sole architect of constitutional reform.

Citizens' participation in criminal justice is an important expression of the principle that public power belongs to the community and should not become the exclusive preserve of those professionally entrusted with its exercise. That participation must be meaningful, informed and accountable. It must operate within procedures that protect the rights of accused persons, ensure the proper application of the law and produce decisions that can be understood and subjected to appropriate scrutiny.

Malta's traditional jury system should not be discarded without first establishing whether its weaknesses arise from defects in the legal framework, inadequate application of existing safeguards, or shortcomings elsewhere in criminal justice. The Criminal Code already assigns substantial responsibilities to the presiding judge and provides mechanisms intended to assist jurors in reaching legally coherent decisions. Those provisions and their practical operation deserve serious examination.

Comparative experience demonstrates that there is no single institutional model for combining citizen participation with impartial and effective criminal adjudication. Malta should therefore examine reforms of its existing jury system alongside alternative arrangements, including mixed courts. The choice must follow evidence, research and public deliberation, not precede them.

But reforming jury trials cannot substitute for reforming the institutions that investigate crimes, prepare prosecutions, preserve evidence, and administer criminal proceedings. Those institutions must be independent, competently managed, adequately staffed, properly trained and accountable for their performance.

The quality of justice depends on the integrity of the entire process, not merely its final stage. Nor can criminal justice reform be separated from the broader constitutional question of how power is distributed, controlled and exercised in our democracy.

Repubblika therefore calls for an independent examination of the criminal justice system, beginning with the operation of Malta's existing jury procedures and extending to the comparative assessment of alternative models. Any reform should emerge from rigorous research, informed public debate and careful constitutional consideration, rather than an immediate reaction to the understandable public frustration provoked by recent verdicts.

Our response to the failures of democratic institutions should not be to retreat from democracy, but to make those institutions more democratic, more competent and more accountable.

Criminal justice cannot be insulated entirely from the society in which it operates. Racism, xenophobia, political hostility and the unequal regard in which different people are held

threaten the foundations of equal justice, whether decisions are taken by lay citizens or professional judges. Reform must therefore extend beyond courtroom procedures to the composition, accessibility and practices of justice institutions, as well as the democratic culture that shapes them. It must seek to rebuild solidarity across political and social divisions and strengthen the conviction that every human life is entitled to equal protection.

The people should not be excluded from the administration of justice. They should be better equipped to participate, and the institutions through which they exercise that responsibility should be worthy of their trust.

“The Association is composed of individuals who act independently of government and other interests and seeks to promote civil rights, democratic life, the rule of law, free speech, personal freedoms, social inclusion, environmental conservation, economic sustainability and equality of access, by means of active participation in the national discourse and related educational, social and charitable initiatives.”

- Article 2(5) of the Statute of Repubblika.

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