

Transcript - Testimony Caoilfhionn Gallagher - Opening Hearing - People's Tribunal on the Murder of Journalists

The Hague, 2 November 2021

Caoilfhionn Gallagher:

I'm Caoilfhionn Gallagher, international human rights lawyer, originally qualified in Ireland, as you can probably tell from my strangely spelled name and for the past 15 years I've been practicing primarily from London as an international human rights lawyer. So I act in cases before various tribunals the ECtHR, UN special procedure, international courts, judicial committee of the privy council and the UK courts. I also sit part-time as an assistant coroner, which is a part-time judicial role in England and Wales, which involves conducting inquest or investigations into suspicious deaths, violent deaths and deaths in custody. But I think primarily the reason that I'm here today as a witness is that I've got particular expertise in a tax on journalists, accountability for journalists deaths and I act for many bereaved families, whose loved ones have lost lives simply for doing their jobs of being journalists, you'll hear from one of them in a moment.

The wonderful Matthew Caruana Galizia, whose mother was killed in Malta in October 2017 and I act for many journalists who are currently harassed in a range of ways, using lawfare, the law being used against them including Maria Ressa who you heard from earlier today. I think finally for completeness I should flag that I have also given expert evidence in some of the cases you're considering. You heard earlier this morning very powerful evidence from Marisa Carrillo of Flip, in correlation to the case of Jineth Bedoya Lima against Columbia. I was expert-witness for the Inter American Commission on Human Rights in that case about gender-based violence and particular issues in respect of safety of woman journalists.

Almudena Bernabeu

Thank you. Given your extensive experience and across length of time, that I think you know encapsulates very well the evolution of the issue of impunity that we'll be attacking all day and discussing all day. Would you walk us through the legal obstacles to justice in general for journalists when it comes to the reprisal that they suffer and death course.

Caoilfhionn Gallagher:

So question about legal obstacles to justice for journalists murdered and reprisal for their work that's obviously a huge multi-layered question and I've got to provide you with more detail in writing. But could I today focus on four specific points which I hope help in the time we've got available. At first I want to deal with some preliminary points, second I want to highlight the importance that adopting a broad concept of impunity and not focusing purely on criminal liability, that is very important, third I just want to flag in light of some of the evidence earlier some specific issues about woman journalists and the importance of a gender sensitive approach and then fourth I want to highlight

some key shortcomings of existing international law mechanisms where States fail to act.

So starting with preliminary remarks, the first thing to say is of course that legal obstacles depend on a number of factors, I'd highlight three in particular. A. the state in which the murder occurs, fundamentally different issues arise when you're dealing with the murder of a journalist in a state that is not rule of law compliant, doesn't have a functioning judiciary for example, and the murder of a journalist in a state for example which might have a strong regional mechanism to hold a state to account if they don't take the action they're obliged to like a Council of Europe member state. And I know this isn't something we're touching on today but I do just want to mention it, there are very particular legal obstacles arising which I see in my work when you have murders of journalists in conflict zones, I won't go into in detail but I'm happy to help further. The second point is whether there's an extra-territorial element to the case. An increasing trend which I'm seeing in my work is states attempting silence their critics across borders. So including online attacks physical attacks, rendition and kidnapping and threats of death on foreign soil and indeed deaths on foreign soil.

Now we see that in countries like in the Kingdom of Saudi-Arabia, Iran, Russia, we saw a very extreme example earlier this year in the case of Belarus, commandeering a Ryanair plane in order to bring journalists in their jurisdiction. So that extra-territorial issue is a real challenge and by way of example I act for a 150 BBC Persian journalists, so journalists at the BBC world service, primarily based in London and they face rape-threats, death threats, online abuse, harassment of their families back into Iran even though they live in London. In my view, where you have an extra-territorial element to the case, my view is that our systems really fail and are particularly poor at dealing with that issue, when you got a journalist located in one place with the threat coming from another. The final example to give us the nature of the murder, there is fundamentally different legal issues are arising and legal obstacles to navigate, when you're considering a state perpetrated execution, such as Iran's extra-territorial kidnapping of Ruhollah Zam and his execution in December last year and situation in which state agents have colluded in a journalist murder for example by leaking information about their whereabouts, or situations in which states have facilitated or encouraged an assassination by private individuals, non-state actors. Or states have failed to take adequate steps. So I'm afraid it's a real lawyers answer to start by giving a lot of caveats, but when you think about legal obstacles these things are very important because the legal obstacles are so contact specific as Irene Kahn and others have pointed out.

I should also say the phrase 'justice for journalists' is also a tricky one, what I find working with bereaved families who've lost their loved ones, justice means very different things for different people. So for some bereaved families, they want a criminal conviction, they want to see someone behind bars and answerable for what they've done. For others it is fundamental for them that there's change and that other journalists are protected going forward. The themes I tend to see, in terms of what justice means, but it's very specific to the individual bereaved families are: they want answers to what happened, because often the death is occurred in circumstances where the information is very murky. They just want basic information about what in fact happened. They want

accountability of some kind, whether that's criminal accountability or compensation or some other form. And they want change so others aren't placed at risk. But the fourth element which is really important with journalists is that the story doesn't die with the journalist and the phrase that's used by the forbidden stories project is 'killing the journalist, must not kill the story'. And that's really vital it seems to me, and in fact it's also a protective mechanism because when you pick off an individual journalist to try to gag them, sometimes described as the ultimate form of censorship to assassinated journalists, that's much less likely to work if we have collaborative journalism networks, if we have things like the forbidden story project, if we have things like CPJs The Last Column and if we have the kind of collaborative journalism we've seen with multiple different organizations working together. So I should say that.

So second topic I wanted to cover is on impunity. I'm afraid many of you in the room, may have heard me on this particular soap box before, but the focus of and I find is exclusively upon impunity in the sense of criminal impunity, has there been a criminal investigation? Has there been a prosecution? Have there been convictions of the perpetrators? That statistic that we've heard repeatedly, the UNESCO statistic, which is between 8-9 out of 10 journalists murders going unpunished, is about criminal impunity. But in many of the cases in which I act, impunity is not only about the perpetrators, whether the foot soldiers or the contract killers or the masterminds are those who funded the killing, impunity is a far broader concept. I would urge the prosecution team and the People's Tribunal, when looking at this issue, to think of impunity in that broader way. In many cases for example an attack may come from a non-state actor, from a private individual, but the context is a climate of impunity, facilitated by or fueled by the state and we often see impunity afterwards. The bottom line is, journalists step on some pretty powerful toes in their line of work and too often those in power have minimal incentive to investigate, let alone pursue justice in those circumstances and that's why you get that persistent 90%, or between 80-90% statistic. With as Irene Kahn said earlier, the needle not moving and stubbornly staying. It's a stubborn statistic which has remained despite many fine words and many resolutions on paper. But haven't in fact changed that statistic but I would ask, don't focus only on that criminal issue. Look at the broader concept of impunity, see for example the wonderful recent judgement of the Inter American Court of Human Rights in the Jineth Bedoya case.

Look at the Council of Europe standards in the cases like Dink v. Turkey, its 2016 recommendation and its 2020 recommendation which focus on the obligation on the state to foster an environment in which journalist may practice their trait safely and free from harassment by state or private actors, because it's an obligation on the state to create an enabling and favourable media-environment. If they fail to do that, that is something they must be held to account for, even if they didn't pull the trigger, even if they didn't pay for someone else to pull the trigger, they are complicit in those circumstances. I'd also ask the People's Tribunal to consider international impunity and not just within state borders. May I give one example, I know you're going to hear from Matthew very shortly about his mother, I want to give it as an example of looking at impunity in that broader way. So when Daphne was assassinated in October 2017, it was deeply shocking in many ways. It was the brutal murder of a journalist in a car bomb in a European country. Malta losing the voice of a journalist often referred to as their national conscious.

But frankly, and I know Matthew agrees with this, in many other ways it was not at all shocking. This was not a bolt from the blue killing. It followed three decades of harassment and abuse of Daphne. Multiple attempts to silence her. Ten days before her assassination she spoke to the CoE about her life and what it had become. She described arson attacks on her home, attacks on her pets, attempts to cuddle for income, the freezing of her bank accounts, dozen-and-dozens of libel suits brought by ministers, business people, misogynistic attacks online, critics industries calling her a witch, and she said: 'you get used to it, like a scar forms around a wound'. And when you read that interview from ten days before her death, you can see she sat out in her own words the danger she was in. Ten days later she was dead. This was an entirely preventable death. It followed years of state sanctioned harassment, it took place in a culture of total impunity. Importantly, the killing also came in a culture of total impunity in relation to the subject matter of her reporting, including corruption, organized crime and ethical failures at every level of Maltese society. Within days and weeks of Daphne's death, Matthew and his brothers were accusing the state and prime minister Joseph Muscat of being complicit in her killing for precisely that reason and because a culture of impunity had been allowed to flourish by the government in Malta. Matthew said at the time 'it's a little comfort for the prime minister to say he will not rest until the perpetrators are found' when he had the government that encouraged that same impunity.

Bottom line is, if the institutions in Malta were working properly, there simply wouldn't be association to investigate. Matthew said that in 2017 and three months ago the independent public inquiry in Malta published a 437 page report which agrees entirely with what Matthew said, then found that the Maltese state should show the responsibility for her death. It's a damning report, which says a culture of impunity was created from the highest echelons of power within the casteel in Malta. And that former prime minister Joseph Muscat was singled out and identified as enabling that culture of impunity. So if you have a situation like that, where the government creates a favourable climate for anyone seeking to eliminate a journalist like Daphne, to know that they will do so with the minimum of consequences, they are essentially giving a green light to her being treated as a target. The report of course also found that the state failed to recognize the real and immediate risks to her life, and failed to take protective steps to avoid those risks. So why do we three months long find ourselves without a meaningful response to that report by the Maltese government. Indeed the Maltese government has yet to even release an English translation of the 437 page report. I hope Matthew won't mind me saying not many people speak Maltese. I think slightly more than speak Irish, a language in which I'm fluent which is rather unhelpful I've got to say. But what translation you've heard or read have been provided by the bereaved family and their legal team. Not the state.

Even that very basic step to commit to transparency, enable the international community to understand what happened and hold Malta to account has simply not been taken. I also emphasize that the climate of impunity was not Malta specific. This is not a tale about a particular Island of the coast of Europe. Whilst that climate of impunity festered in Malta, the world stood idly by. Daphne reported, you can read it in her blog Running Commentary. The world did not listen and states who have close relationship with Malta, like the UK, countries across Europe, countries which now proudly announce that they are member of

the Media Freedom Coalition, did nothing to protect Daphne or to hold Malta to account. My view is, they ignored what was happening under their noses and left Daphne to her faith. Even in the four years since we've had to have a huge flight to secure support for many states to support media freedom.

I find as an international lawyer in this space, it's far easier to get states to be critical of other states which are far away, they don't have good relations, they don't have trade relations or economic ties. You try to get them to criticize their allies, it's very difficult. That similar theme of a climate of impunity within a perpetrators state being allowed to continue by other states and the international community is a familiar tale, we see with Jamal Khashoggi as well. We see it with my brave, brilliant client Maria Ressa and the Philippines, where Maria faces a succession of cases that seek criminalize for reporting, exposure to a 100 years in prison, and she has been subjected to what the Filipino National Union of journalists calls 'a shameless act of prosecution by a bully government'. But Duterte is openly contentious of journalists. He said, a number of years ago: 'Just because you're a journalist, you're not exempted from assassination if you're a son of a bitch.' His former campaign spokesperson called journalists 'prostitutes', and when you have that kind of language emanating from government, is it any wonder that this year in the Philippines we have seen twenty murders of journalists, and we're not even at the end of the year yet. And yes, why does the Philippines enjoy preferential trade starters with the EU. GSP plus status, which is a recognition of a country which complies with international human rights standards. Because the Philippines is very good at signing up to international treaties and signing up to promises on paper. It doesn't follow through in practice, but the international community has failed so far to hold it onto account.

I'm very conscious of the time so may I just flag in relation to specific threats to woman journalists. It just occurred to me over the course of the evidence today, that it may be helpful to provide the People's Tribunal and the prosecution team with some additional information and I'm happy to do this if helpful, on the importance of having a gender-sensitive approach for looking at woman journalists. I mentioned Daphne and Maria. There's some chilling common themes in the materials I see in those cases with misogynistic, sexist memes, rape threats, calling them witches, circulating dehumanizing images which stop them being perceived as people. I also see that with for example with my BBC Persian clients I mentioned earlier.

Let me give you one example: a fake photoshopped picture with one of my clients faces photoshopped onto a pornographic image. It was sent to my clients 14 year old son at his school in London. So, and that is obviously particularly disturbing, because it says: we know where you are, we know where your sons goes to school. So I would say these are generic, general, global phenomenon's that woman face different types of threats, different nature of threats and woman have differential barriers to accessing justice. I would say it is important to look, when we think about woman journalists, at the impact on four levels: the individual journalist themselves, woman journalists more generally, because target at a tax like that have impact on other woman in that space and it means silencing of woman who would otherwise contribute to public debates. It also, importantly, has an impact on the wider audience, and Irene Kahn touched on this earlier, because in addition to raising grave concerns about the protection of freedom of expression and the right of woman to be free from gender-based

violence and harassment, those kind of behaviors, whether by state or non-state actors, undermine the free flow of ideas and the right of audiences to hear woman's voices in the media and have a diverse media. Finally, there is a potential wider discriminatory impact on woman more generally. Compounding on equal patterns in the media about woman's roles. So the IWFM global report on the status of woman in the news media has identified that woman represent only a third of the fulltime journalism workforce, in the over 500 companies that surveyed. With particular gaps in frontline investigative reporting roles, and the difficulty, if you don't crack down on these issues it just compounds and perpetuates that pattern. So there is that issue.

Final thing I wanted to turn to before finishing up is on legal obstacles whether states fail to act. In international law, the primary obligation is upon the state to question to act. When the state fails to act, how can you hold them to account. Now in some states we have a means to bring them to account within domestic legal systems, we can bring a challenge to say: why have you not conducted this investigation? Why have you not conducted this prosecution? We can challenge them in that way against established standards. With others we can bring them to account within a regional system, like the Inter American Court, as in Daphne's case we always had the threat of being able to go to the ECtHR if Malta didn't do the right thing. Some states have signed optional protocols to treaties which allow us for example to file an individual complaint before UN treaty bodies. In some circumstances the matter can come to the International Criminal Court, but a key problem which happens again and again is that states often constructed their systems in such a way as to render themselves immune from such mechanism and our options are then very limited. So many cases were left with a very thin range of options. We can make complaints for example to the UN Human Rights Council's special procedures you heard earlier today from Irene Kahn, one of those mandate holders the UN special rapporteur on freedom of expression. But first of all UN Human Rights Council special procedures don't have access to many of the relevant states. They're simply not allowed in, so some of the ideas which we heard earlier, which I agree are fantastic in principle, it's just a fundamental difficulty.

If a state like Iran won't let the UN special rapporteur on Iran, professor Javid Rehman, into the country, they are not going to allow this investigative task force into the country. So it's a fundamental problem when you've got UN mechanisms in circumstances where states block it. The special procedures in many ways have no teeth as my brilliant colleague Tatyana Eatwell, who is sitting there, has put it. 'The UN special procedures have no bite, the reason is that states don't want to get bitten.' And that's quite a good description of exactly what the problem is here. They have minimal resources and heavy workloads, they have very limited support. UN special rapporteurs are not paid which is a problem for diversity in the role but it's also a recipe for some people being robust and dynamic, and putting a large amount of time in it, and others not giving the role the attention it needs or deserves. There's essentially a lottery going on about who you happened to get. You can get a very robust, dynamic, brilliant special rapporteur like dr. Agnès Callamard who decides in the case of Jamal Khashoggi: this is not good enough, I'm going to appoint my own ad hoc group, I'm going to go and try to fill the investigative void left by the Kingdom of Saudi Arabia, left by Turkey a Council of Europe country, on the grounds of which Jamal was killed.

But there's no means of appealing if you're UN Special Rapporteur, or the working group doesn't engage. There is no come back, there is no means to challenge it. We can also of course urge other states to step in, but regrettably they often fail to do so. Before I finish I just wanted to give you one final example which gives an indication of the problems you face when the perpetrator's state failed to act. Ten years ago, in early 2011, our clients husband, Anton Hammerl, a brilliant photojournalist and photographer, traveled from his home in London to Libya to cover the civil war. He was a courageous, brilliant journalist, deeply committed to his craft. He entered Libya at a time when Khadaffi's forces were suspected of serious violations of international humanitarian law, including war crimes, crimes against humanity, to tell the world what was truly happening and bring accurate accounts to the world. Days after arriving in Libya, on April 5th 2011, Anton and three other journalists, one of whom was the US journalist James Foley, Jim Foley, whose name many of you will know, came under fire while covering conflict from Khadaffi loyalist forces. And as the family understood it at the time, the four journalists had been kidnapped and were held for a period over six weeks. Our client Penny Sukhraj Hammerl only discovered that Anton had in fact been killed at that initial point when the journalists were ambushed by Khadaffi forces. Six weeks later when she saw on TV three journalists being released, not four, and she saw that her husband wasn't there. And at the time she had a seven year old son and a six week old baby. They are now 17 and 10, a remarkable young man, Penny and her two children have decided, this is simply not good enough. They have now constructed an international team. We're in a position where lawyers and other journalists are trying to piece together what happened on that day with the aid of really wonderful investigative work by James Foley himself before he was beheaded by ISIS. Because he himself felt he had been witness to a war crime on that day in April 2011, and the world did not care.

That is why he started investigating, so we've got his notebooks and we're piecing it together. But it seems to us, in these circumstances, Libya and the new government have zero interest in investigating Anton Hammerl's death, even though on the face of it war crimes and serious crimes against humanity were committed. So why will other governments not step in? Anton was a South-African and Austrian geol national. South-Africa and Austria could step in and fill that investigative void. He and his family lived in the UK. Indeed if his body would have been returned, Penny would have been entitled automatically to a full coroner's inquest and an investigation. Because his body is missing she doesn't get it. So where you have an investigative void like this, Libya not acting, it's simply not good enough for other states to call on Libya to take action but should take action themselves. Key to getting justice for journalists in these circumstance, the first step is getting that investigation. That's what gives you the answers, ultimately towards accountability and change. All those things which are so important.

It seems to me you should not need to have a courage, articulate, brilliant widow like Penny, or a son like Matthew, or a fiancée like Hatice, to secure even the most basic of steps towards accountability. Bereaved families and their loved ones, should not have to shoulder this burden. It's frankly disgraceful. The bereaved families, lawyers and other journalists end up doing the digging which states should do themselves or the international community should undertake when those states fail. And for that reason I wish this People's Tribunal all the

very best of luck. It's such an important job that you're doing, shining a light on issues which otherwise would be neglected.