

Upholding Parliamentary standards

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Following an interminable saga characterised by procrastination and dragging of feet, Parliament finally came round to enact the Standards in Public Life Act, 2018, now Chapter 570 of the Laws of Malta. At long last a Parliamentary Commissioner for Standards in Public Life was appointed by the House of Representatives who not only garnered the required two-thirds vote for his appointment, but was appointed unanimously.

One would have been led to believe that the whole House had full faith and trust in the incumbent, Dr George Hyzler, a seasoned politician who is a lawyer by profession and known for his integrity, rectitude and honesty, qualities that such an office indubitably requires. Yet recent government discourse in the House indicates otherwise.

Two codes of ethics were adopted by this law, one addressed to Members of Parliament, and another to Ministers and Parliamentary Secretaries. These codes apply to the Speaker, Prime Minister, Ministers, Parliamentary Secretaries, the Leader of the Opposition, and all backbench MPs on both the government and

opposition sides.

Even so called 'persons of trust' are regulated by this law, albeit their office is one that runs counter to the Constitution, notwithstanding all attempts made over time by government and opposition to somehow give it a semblance of constitutionality.

The Standards Commissioner has had the opportunity to note this irregular position, but his words of wisdom fell on deaf ears. The recent parliamentary stint at attempting to regularise positions of trust through the Appointment (Persons of Trusts) Act, 2021, Act No XVI of 2021, still fails the constitutional test. Like the amendments proposed to be made to the Interpretation Act through Bill No. 198 of 2021, it attempts to alter the provisions of the Constitution without actually amending the Constitution. This is, of course, to say the least, an abuse of power.

Of course, the powers that be continue to contend that positions of trust are constitutional, but no unconstitutional practice that has evolved over time, even if blessed by government and opposition, will right what is otherwise inherently wrong. For the Constitution is quite clear as to appointments.

It provides only for the following mechanisms: (a) through the involvement of the Public Service Commission in the case of civil servants; (b) through the Constitution's own provisions for various public officers (e.g. Ombudsman, Auditor General, Attorney General, State Advocate, etc.); (c) through an employment service (Jobs Plus) for employment (i) with bodies corporate established by law, and (ii) for public offices from outside the public service; and (d) through persons of trust positions only and limitedly in relation to the Office of President.

Indeed, it is only the President of Malta, in terms of the Constitution, that approves his own staff. This is written black on white. Nevertheless, no comparable provision is made in the Constitution that allows the Prime Minister, Ministers and Parliamentary Secretaries to approve their own personal staff. At least I could not find any such constitutional provision.

The Constitution does not even allow the appropriation of honoraria to a person of trust once it does not recognise such position, except for those employed by the President. This means that all honoraria received by persons of trust was, is, and continues to be unconstitutional, unlawfully appropriated, and consequently should be refunded to government coffers.

Yet whilst this abuse of power continues, none of the state institutions, notably Parliament, Cabinet, and the Principal Permanent Secretary, stop this abuse. On the contrary, they justify it and continue to enact legislation and issue codes in breach of the Constitution. Yet we are told that the institutions are functioning! Of course they are ... but to violate the Constitution's provisions!

Things, thank God, have however begun to change and there is now light at the end of the tunnel. If Ministers and Parliamentary Secretaries are not held accountable by the House, once government enjoys a comfortable majority therein, at least there is now a public officer who can censor their misdeeds.

Post-October 2018, one would have expected that the parliamentary standards law would have made Ministers and Parliamentary Secretaries more cautious in their behaviour but the nearly 100 hundred cases already registered with the Standards Commissioner indicates that this expectation is only a pious wish. Misdeed after misdeed in ministerial and parliamentary secretariat office does not augur well for the observance of high ethical standards as the law requires.

Although the law in question was enacted on 30 March 2017 and brought into force by government grudgingly on 30 October 2018, it has already begun to bear fruit. Yet, as with all laws enacted in Malta, enforcement remains a joke. It is indeed not an independent authority that enforces its provisions, but by the House of Representatives that acts in a non-transparent and partial manner.

When the Commissioner finds a breach of standards, he reports to the Parliamentary Standing Committee for Standards in Public Life that is not obliged by law to publish forthwith his report. When the Committee discusses the Commissioner's report, it is this Committee that decides thereupon. The Committee is made up of two government MPs, two opposition MPs, and the Speaker as Chair.

Yet the Committee is not impartial, as the two government MPs side with the reported government MP and vice-versa in the case of the opposition reported MP, putting in an embarrassing situation not only the reported MP, but even Committee MPs hailing from his/her own political party. How can such a Committee convey to the general public an aura of impartiality when it acts more as a political forum than a judicial body?

The Commissioner's report should by law be laid on the table of the House by the Speaker during the very first sitting following receipt thereof. No ifs or buts! It should be the constitutionally-established disciplinary Committee for Judges and Magistrates that should decide on the report not the Committee for Standards in Public Life that does not satisfy the basic guarantees of impartiality.

Such measures will strengthen the Office of the Parliamentary Commissioner for Standards in Public Life and ensure that all MPs abide to the letter by the provisions of the Codes of Ethics for MPs, Ministers, and Parliamentary Secretaries. It is in the interest of the whole country that MPs, Ministers and Parliamentary Secretaries lead by example and uphold the highest possible level of ethical behaviour. Malta also needs to convey the message internationally that parliamentarians and government act above board and uphold high ethical standards, as the impression one gets overseas is quite a negative one.

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