

Misreading the Venice Commission

The justice minister should do the right thing and ditch Bills 166 and 198

Opinion

Comment

Justice

Rule of Law

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Bills 166 and 198 found the disfavour of the Venice Commission. Photo: Shutterstock.com

Justice Minister Edward Zammit Lewis has repeated his own spin (DOI PR 211042, June 1, 2021) that the Venice Commission, in its June 1 Malta ‘Opinion on the Reform of Fair Requirements Relating to Substantial Administrative Fines’, ruled in the government’s favour that the latter’s constitutional amendments were not in breach of human rights. He repeated this blatant misreading of the opinion in his recent contribution ‘Commission ruled in favour’ (June 9) in reply to our article [‘We were right after all’](#) (June 3).

The government has been trying for the past months to amend the constitution to deny all persons in Malta the right of access to a court of law in criminal proceedings. It wants to confer the power to impose fines which can amount to millions of euros, so far exercised exclusively by courts presided over by independent judges and magistrates, to “authorities” mostly made up of politically-appointed persons of trust with zero guarantees of impartiality and zero guarantees of independence. And he invites readers to believe that the Venice Commission endorsed this parody of the rule of law.

In our piece, the point was made that the Venice Commission found that the government was abusively attempting to change the constitution not in terms of its alteration provision but through ordinary law. In a nutshell, the government proposed bill No. 166 that “aims at amending article 39 of the constitution to enable regulatory authorities to impose sanctions which may qualify as ‘criminal’, subject to judicial review” (Venice Commission Opinion, para

42). Bill No. 198, instead, aims at interpreting the Interpretation Act that “amounts to an attempt to change article 39(1) of the constitution” (ibid., para. 43).

For the minister’s sake, and to set the record straight, let us reproduce hereunder a few extracts from the Venice Commission’s Opinion that the minister has clearly missed:

"The justice minister should propose an urgently required new thorough legislative framework for administration sanctions for Malta"

“Bill No. 198... basically amounts to an attempt to change article 39(1) of the constitution as it is interpreted by the Constitutional Court of Malta’ (para. 43).”

“Where the Constitutional Court has ‘determined’ the interpretation of a constitutional provision, a subsequent act of parliament which advances an ‘interpretation’ which is opposed to, or incompatible with, such a determination is difficult to reconcile with the powers of the Constitutional Court’ (para. 46).”

“To read the interpretative power of parliament so widely as to enable it to be used as an alternative to having to use the amendment procedures would open the way for the government of the day easily to circumvent individual rights and other protections set out in the constitution” (para. 52).

In relation to bill 166: “The Commission wishes to stress that any decision to limit and, even more, remove or abrogate a fundamental right or freedom should only be taken after long and very careful consideration and debate” (para 73).

Of course, when we publicly advised the minister to change course and desist from violating the constitution, our words fell on deaf ears. He writes that “the government never intended to

surpass the constitutional framework”. Yet, the Venice Commission Opinion states otherwise.

We did propose to the minister a viable alternative that did not involve lessening our human rights as proposed in bill 166 and did not amend the constitution through an unconstitutional amendment to the Interpretation Act, as suggested in bill 198. Instead, we recommended – and were not original here – that the government should be consistent and apply equal weights and equal measures by following its own precedent adopted in the amendments made through the Competition Act and Consumer Affairs Act and other Laws (Amendment) Act, 2019, Act No. XVI of 2019.

Of course, this model can be further improved through the establishment of an Administrative Section in the Civil Court to deal with all administrative offences that have spread all over the statute book.

This suggestion was not rocket science, surely not out of the ordinary, did not rock the boat, did not involve constitutional violations and could have been easily emulated by the justice minister. Instead he sought to wash our dirty linen in public before the Venice Commission and ended up with egg on his face.

It is high time for the justice minister – instead of wasting time with articles in the popular press that serve only to trumpet his lethargy, and, without further ado, while duly appreciating the gravity of the situation and that inaction contributes to exacerbate matters – to move on and do the right thing: ditching bills 166 and 198 that found the disfavour of the Venice Commission and, instead, propose an urgently required new thorough legislative framework for administration sanctions for Malta.

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