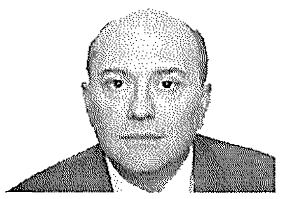
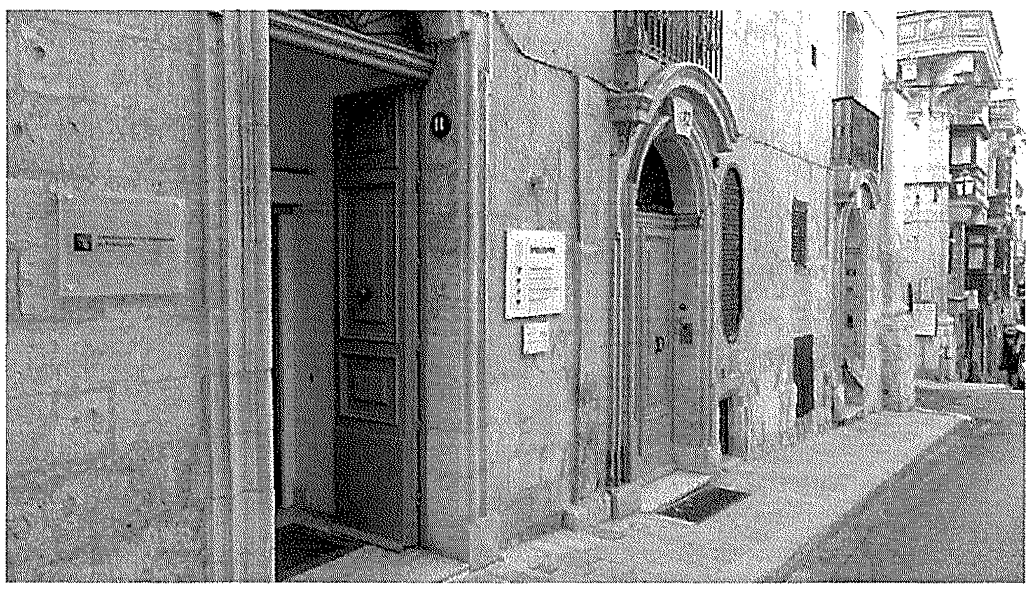
Debate & Analysis

Rethinking standards in public life



KEVIN AQUILINA

Professor Arnold Cassola is a regular complainant to the Office of the Commissioner for Standards in Public Life.



Through these public-spirited complaints, the Commissioner is requested to investigate an alleged misbehaviour of a minister or parliamentary secretary. The difficulty with such complaints is that when the Commissioner, in terms of article 17(3) of the Standards in Public Life Act, Chapter 570 of the Laws of Malta, 'decides not to investigate or make further investigation of an allegation he shall inform in writing the person making the allegation of that decision, and shall state his reasons therefore'.

Nevertheless, the law does not provide for the automatic publication of that decision so much so that unless the complainant decides to publish it, nobody would have known of the existence of that complaint let alone its outcome. Hence, there is a need to amend this provision to mandate publication of the Commissioner's decision.

Another point that needs to be considered when amending that law is the question of Commissioner's guidelines. As the Speaker correctly pointed out when he motivated his decision in relation to the Commissioner's report no. K/041 in relation to alleged misuse of public funds by ministers and parliamentary secretaries, these guidelines are not binding at law.

Although the Commissioner uses them in the performance of his duties, they bind neither the Standards Committee, nor MPs, nor the Speaker who presides that committee. Hence, it is imperative that the law is amended to establish a procedure whereby Commissioner guidelines are submitted to the Standards Committee which ought to discuss them and adopt them with or without modifications after having also heard the Commissioner on those points with which the Committee disagrees. Furthermore, the salutary practice that the Commissioner has adopted to issue guidelines for public consultation before they are adopted should also become a mandatory procedure.

A difficulty that I see with the Standards in Public Life Committee is its composition. It is made up to two Labour MPs – who vote according to the directions that the Prime Minister imparts to the Labour whip – and two Nationalist MPs – who vote according to the directions that the Leader of the Opposition imparts to the Nationalist whip. Then there is the Speaker who presides. Needless to say, this Committee is biased. Being prejudiced implies that it cannot act impartially. We already have gone through this in two previous occasions: the Demicoli case and the Anton Depasquale case.

In the Demicoli case, Carmel Demicoli was charged of a breach of parliamentary privilege. The House of Representatives acted as his prosecutor, witness, judge, jury, executioner, and nemici curiae. How could Demicoli ever be granted a fair trial by such a partial institution? In the case of Anton Depasquale, a Superior Court judge, once again the vote taken to remove him from the office of judge – bar for one Opposition MP – was on party lines.

The House has twice proved itself not to be impartial. It is, of course, a political forum, not a judicial forum. The House is not guided by due process or law, the right to a fair trial, but by political expediency and convenience. Hence, when the Standards Committee – the House in miniature that still follows House practice – decides upon reports referred to it by the Standards Commissioner, it is already perceived to be biased because of its inherent partisan composition where MPs are not even given a free vote but have to toe the party line. The Speaker is the odd man out. Of course, it is technically possible for the 4 MPs on the Committee to out vote the Speaker where their interests – not those of the Code of Ethics – so dictate.

However, when the Speaker opts to leave the matter open, it essentially means that he must automatically side with the government of the day. And as the Speaker is selected from outside the membership of the House, once he is not directly elected thereto, it makes his decision conditioned by his future reappointment that is totally dependent on government. Hence, even the Speaker has an axe to grind, thereby making him unsuitable from the impartiality perspective.

This all boils down to the fact that all five members of the Standards Committee do not satisfy the requirement of impartiality. Yet it is these five persons who are called to judge their own peers. This apart from the fact that Nationalist MPs feel politically obliged through thick and thin to defend a Nationalist MPs and Labour MPs feel politically obliged through thick and thin to defend a Labour MP. There is thus no justice in the whole procedure, not even a shadowy semblance thereof.

The Standards Committee as conceived by Parliament is intended not to function properly. It will never arrive at the situation where an MP will ever be disciplined. All MPs will get away with murder. This is because Malta is a dysfunctional state where laws are made, not to be applied, but to embellish and adorn the statute book. In practice, these laws are insignificant. However, we can boast, like the British for instance, that we have a law to regulate standards in public life, even if our law is ineffective.

We know that when the European Court of Human Rights in the Demicoli case declared the Maltese Parliament not to be impartial, the law was amended and breach of privileges since then begun to be – correctly – decided by the courts. We also know that following intense international pressure on government that had no other option but to give in, the Constitution was amended in 2020 so that it would no longer be the House of Representatives that would farcically remove a judge or magistrate from office but the Commission for the Administration of Justice and, on appeal, the Constitutional Court.

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The next step now – for this country to mature and grow – is to ensure that ministers and parliamentary secretaries are disciplined by the Judicial Discipline Committee where the procedure would respect the right to a public and fair trial and where no minister and parliamentary secretary will evade responsibility simply because his or her parliamentary group bails them out notwithstanding the grave breaches of the Code of Ethics. Until this drastic but imperative step is taken, the Standards Committee was, is, and will continue to be a farce.

Moreover, there are ways and means how ministers can bypass the Code of Ethics for ministers. Take another complaint lodged by Professor Arnold Cassola in relation to Minister Aaron Farrugia whose ministry issued a restoration scheme that favoured the minister's electoral base. Apart from this scheme being unfair in relation to other Labour Party general election candidates who cannot use their ministerial office to attract the vote of Labour Party constituents – but that is a matter for these candidates to raise within the internal structures of the party – the question remains that such scheme is discriminatory in nature once its general thrust is to favour the minister's constituents.

This is nothing less and nothing more than abuse of power. Indeed, half of the streets that benefitted from this scheme, lo and behold, happened to be situated in the electoral districts where the Minister has presented his candidature in the 2022 general election. Of course, a gullible person might conclude that this was a matter of good luck for the minister and there was nothing wrong with that. However, the principles of good administration should have dictated a more representative apportionment of the streets to benefit from this scheme in a more proportionate manner so all electoral districts would benefit in equal proportion therefrom, irrespective of whether this apportionment was made by the Planning Authority (that is appointed by the Minister in question) or following the input of that ministry. The solution to this complaint is to the effect that the Standards in Public Life Act should be amended to ensure that ministers, parliamentary secretaries, and all the persons to whom that law applies comply with the principles of good administration, do not abuse power, and ensure that entities falling under their ministerial portfolio also comply with these principles.

It is essential that people like Professor Arnold Cassola and other public-spirited NGOs continue to complain to the Commissioner for Standards in Public Life not only to unmask the hypocrisy of our leaders who attempt to portray themselves under an aura of good administration, but to identify gaps and deficiencies in the law that regulates, without any effective sanction, standards in public life. One day will surely come that our politically infantile class with grow up – as it did in the case of breach of privilege and removal of a member of the judiciary – and change the law relating to standards in public life to make it function properly and a commensurate proportionate sanction is applied for its transgression. The question is when this will happen.

Kevin Aquilina is Professor of Law, at the Faculty of Laws, University of Malta