

## Debate & Analysis

# Another inquiry, another report, another inaction



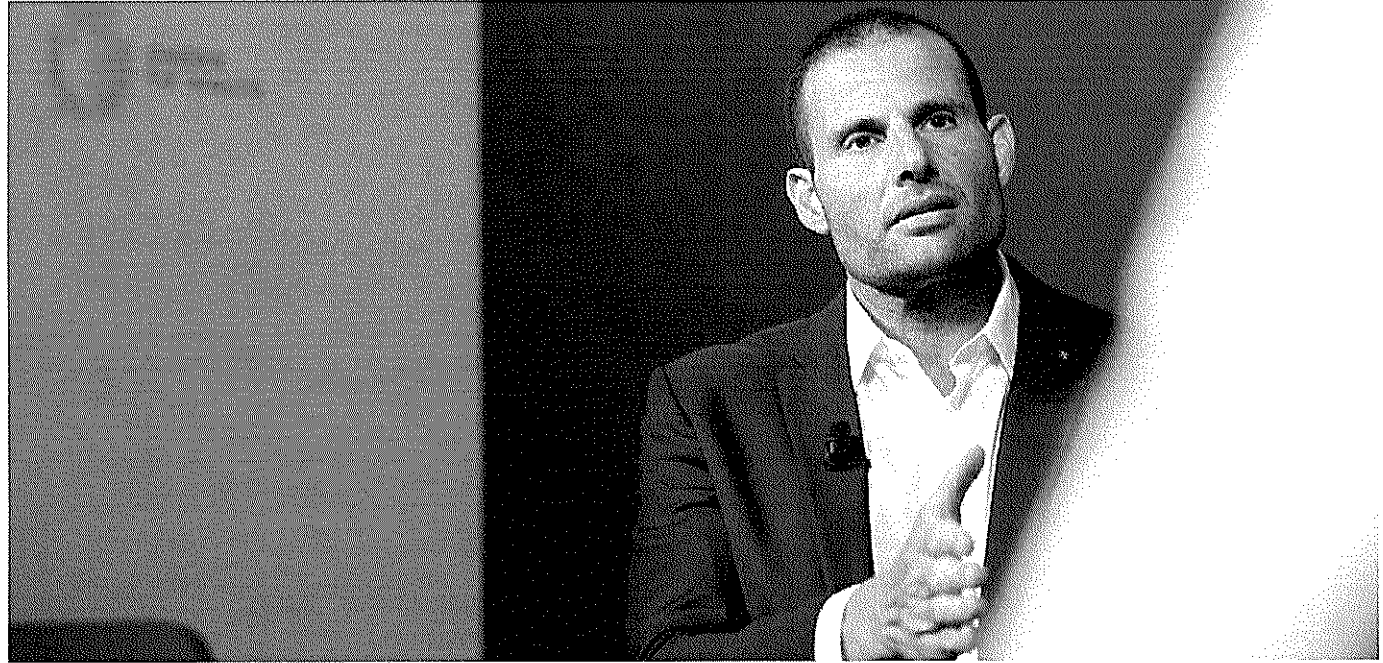
**KEVIN AQUILINA**

In my 16 July 2023 contribution in this newspaper on artistic expression, I wrote about government's abortion law tragicomedy.

I also stated that as an academic I would need volumes to document all government's tragicomedies. It was followed by that of 18 July 2023 where, after government comfortably defeated an opposition motion to appoint an administrative inquiry into the death of Jean Paul Sofia - whose life was cut abruptly short - the Prime Minister announced that he was ignoring the parliamentary vote totally in his favour that saw the Opposition's motion defeated by the Labour Parliamentary group.

The implications of this governmental unprecedented Olympian somersault means that the government's action is conducive to defy parliament, despise the rule of law, ditch the separation of powers where parliament keeps government in check and undermine the independence of the judiciary by shifting all the blame not on government's incompetence but on the magistrate carrying out the magisterial inquiry. A tragicomedy in its own right that has made Euripides, William Shakespeare, and other authors of tragicomedies blush. For how could these tragicomedy authors excel more than Robert Abela and his parliamentary group do? Abela would surely make an excellent candidate for the Nobel Prize in literature if he were to reduce his tragicomedies to paper instead of writing letters to the Chief Justice!

Now that government has - reluctantly and belatedly - given the green light to the inquiry into Jean Paul Sofia's death, the inevitable question that arises once the Board of Inquiry concludes its report will be: what will happen to the Board of Inquiry's report? Will it meet the same fate of the Daphne Caruana Galizia Assassi-



nation Board of Inquiry report that - two years down the road - has remained totally unimplemented? Will it meet the same fate of the Judge Giovanni Bonello 30 November 2013 report on the Holistic Reform of the Justice Sector? Will it meet the same fate of Madam Justice Consuelo Scerri Herrera's report on court experts?

The pattern, should it continue to be followed, and there is no contrary indication that this will not be the case as the inquiry terms of reference mention nothing to this effect, nor the DOI press release that announced them, is that like all the previous reports they will be filed somewhere in a registry in the Office of the Prime Minister, in the special section entitled 'No further action to be taken: Archived - to be forgotten'. The files will remain there held until thirty years would have elapsed and are subsequently sent to the National Archives for preservation to make more shelving space for other unimplemented inquiries yet to come including probably the Sofia one as well.

Of course, if the Prime Minister had tabled a Bill in the House of Representatives whereby government binds itself by law to implement the inquiry's recommendations within a six month period following the publication of the Sofia Board of Inquiry's report, that would be another matter as it would have given credibility to government that it currently lacks. But the writing is clear on the wall. The Prime Minister has fallen in the same bad governance trap as his predecessor when the latter had

to swallow a camel down his throat when he kept on procrastinating in establishing the Caruana Galizia Board of Inquiry as he was left no other option by the international community to do so.

Yet what was the result of that inquiry: a report that has led to complete inaction. Will the Prime Minister follow this precedent? Undoubtedly he will for it is he himself who has, since being appointed Prime Minister, continuously failed to see to it that the Daphne report is implemented. His strategy is now known. Order an inquiry. The inquiry will take its time to be concluded. By the time this happens everybody would have forgotten Jean Paul Sofia and government's mess. The report can then also be buried with the innocent victim. This is not a one-off strategy that this Prime Minister and his predecessor have adopted: it is a characteristic trait of their bad governance. It shows, therefore, that there is no good faith on the part of the government and that the ordering of the Sofia inquiry is simply intended to keep aloof bad government publicity. Everything then goes back to normal. Government continues with its routine bad governance.

What is also interesting about this episode is the way how the decision to change course 360 degrees was arrived at in full disrespect and total contempt of the House of Representatives. Our Prime Minister and his government who often preach how dear the rule of law is to them, did not have the decency to appear complying with the rule of law and the separation of powers doctrines to go back to the House of

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Representatives and file a new 360 degrees u-turn motion (as it is probably called in parliamentary jargon) to undo the previous one as standard parliamentary practice dictates. Instead, they adopted the 'cowboy' approach, that is, they took the law into their own hands and, worse still, defied the House of Representatives with impunity that - after all - had voted in their favour. The inevitable question that arises here is: are we in the wild west or in a supposedly democratic state that respects the rule of law? Not even did the government keep up appearances of going to the House to undo a previously cruel,

arrogant, and stubborn decision of the government's own making.

If government is to be believed that it will implement the recommendations of the Sofia report, it has to do more than just simply establish a board of inquiry. Government's continuous defiance of the rule of law, its constant attack on the independence of the judiciary, and its nonchalant fashion of administering the country does not bode well to us citizens trusting it with deliver on the inquiry report.

The Prime Minister has put the blame of his government change of course on the Inquiring Magistrate. But he was proved wrong as the inquiry was concluded a few days later after he made the fatal and frontal attack on the judiciary. Rather than attacking the judiciary who are like sitting ducks and cannot defend themselves from government's attack, he failed to inform us what measures his minister of justice took already or is planning to announce to assist magistrates to conclude magisterial inquiries in an expeditious way. Nor did the Prime Minister inform us of the magistrate's case load, that is, whether it is excessive, highly excessive, or astronomical. Did the Inquiring Magistrate have only one inquiry to conclude? Surely not. Did she have to perform other duties in the Court of Magistrates that required her to attend to several other cases? Undoubtedly so. If this is the case - and I have no doubt about that - why did the Prime Minister not give us the whole picture of the Magistrate's duties?

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When one reads the Prime Minister's colossal u-turn speech one gets the impression that the magistrate had only one task to do – the conclusion of the Sofia inquiry and nothing else. But we all know that this is far from the truth, that half-truths amount to a lie, and that our judiciary are not only understaffed when compared to other EU judiciary but do not enjoy the necessary administrative, logistic, human resources, and other support measures to do their delicate job serenely and properly. It is very easy to publicly denounce members of the judiciary when it is well known that whatever is stated about them in the media, they are precluded by their Code of Ethics from commenting thereupon. However, politically, it makes sense to criticise a judge or magistrate as the latter is bound by silence. What better defenceless sitting targets could the Prime Minister choose? But political victories are not won that way, through a walk over. Only face-saving measures are deployed this way to give the impression that one is strong (with the weak of course!). Thus, there is no level playing field and here the Prime Minis-

ter is abusing his office to castigate the judiciary when the fault lies at his own door – at the justice minister's office who has so far failed to deliver a proper setup for prompt conclusion of magisterial enquiries.

In the meantime, we await government's next tragicomedy to comment upon. On the basis of government's past performance and tragicomedy track record, I am sure that I will not have much to wait and will surely not be deluded!

Returning back to the Inquiring Magistrate's Sofia report, it transpires that when the fatal accident took place, three Occupational Health and Safety Authority (OHSA) employees were belatedly present on site after the tragic event as mere spectators. The Inquiring Magistrate correctly declined a request by that Authority so that its officers would be present during the hearing of witnesses by the Magistrate in question as this request was in violation of article 518 of the Criminal Code that covers the whole proceedings of the inquiry by a blanket secrecy provision. On 20 December 2022, the Chief Executive Office of the said Authority gave evidence to the effect that once the owners of the development in question had not in-

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formed OHSA, the OHSA would not have known of that development taking place. Hence, no inspections were held by OHSA on the site in question.

Irrespective of whether OHSA was at fault, or whether the law needs to be amended, it is imperative that the board of in-

quiry looking into administrative faults by the public administration in the Sofia case investigates this point to establish whether there was bad administration on OHSA's part, or whether the law needs changing. Of course, even if the owners did not inform the OHSA that works were to commence, what happens if – this notwithstanding – works commence, people die, workers get injured, and the OHSA is not there to supervise the works once it has not been notified? One has also to think of those situations – as was clearly this case – where an owner fails to notify the Authority, the latter is conspicuous by its absence, and as a result of this administrative or legislative failure, death or injury to workers or passers-by ensues. It is thus important to establish whether the current law expressly prohibits OHSA being more vigilant and on site in those cases where it has not received notification. Hopefully, the board of inquiry will answer this vexed question and make suitable recommendations for the future.

Finally, if the board of inquiry concludes that OHSA was at fault, then one cannot but not question the reasonableness and wisdom of the amendment

to the Criminal Code made by Act XIX of 2023 that came into effect on 9 June 2023 whereby an Inquiring Magistrate has been bound by law 'as soon as practicable [to] notify the Authority of the inquest and shall allow the said Authority to participate by delegating not more than two (2) of its officers so as to be present during the inquest on the spot and during the hearing of witnesses if and as may be decided by the Magistrate'. This is a very bad practice especially if it is found in the Sofia inquiry that OHSA failed to carry out its supervisory functions. If, as the amended law now provides, OHSA will be privy to all confidential information in a magisterial inquiry gained through its involvement in an inquiry, thereby being able to cover its back should it be found in breach of its duties at law, not to say destroy any evidence of maladministration, will not that amount to a miscarriage of justice with the potential culprit having access to all such information that can prejudice and future action in OHSA's regard? Quite an unbelievable bad law indeed!

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