ELSA Malta speech on Administrative Penalties[1]

Good evening.

I'm the last speaker today; thank you ELSA Malta for this, enabling me to keep my dental appointment and make it to today's event. No I mean it, I'm not being sarcastic or anything. I specifically accepted the invitation on condition that I am not first speaker, because I had aready postponed my dental appointment more times than I care to think about.

Having survived my dental appointment, I can concentrate on today. May I start by congratulating ELSA Malta on this initiative. At the Faculty of Laws we have three very active student organisations, which can be tiring, believe me, it sometimes is especially when the same initiative is taken multiple times and I have to go through the same thing over and over again; But on the other hand it means that multiple initiatives are taken because having three pyramids (you know how it is, pyramids get thinner as you go up) means there is more room for more students to be active. And more initiatives are taken. So, recently I was involved in one initiative on judicial review and a proposed reformative bill, and today it's administrative fines and proposals for reform. Both very valid and both initiatives welcome, because they do the Students proud and show what our law students are made of. My argument is that if there was only one organisation concentrating on one initiative at a time, there would not be such a flow of ideas. The Govt, Parliament, is faced not with one Law Student proposal, but two, and the credit is theirs, of the students, and theirs alone. So Well done ELSA for this.

Regarding Admiistrative Fines. To my mind, it's not about FIAU, it's about Administrative Fines and a system which started off okay back in the early 1980s; if we are talking about what is referred to in chapter 291 (the Commissioners for Justice Act) as "petty offences" then nobody is going to bat an eyelid when it comes for example, to a parking ticket. To my mind, this situation is equivalent to the Small Claims Tribunal: A has a dispute with B involving a minimal amount of money, they appear before the adjudicator without needing a lawyer, having simply filled in a form, and the adjudicator decides practically on the spot who is right and who is wrong, or whether one is partly right or wrong and what is fair,

[1] On this occasion the Dean of the Faculty of Laws formed part of a panel who discussed this subject. The event was held at H.E. The President's Palace. The other members of the panel were Dr Robert Attard and Prof. Tonio Borg.

and that's it end of story. Don't clog the courts with these small cases; it's the same with administrative penalties and depenalised offences: they are of very small consequence but important just the same, let's clear them, in the shortest time possibe and with the minimum of resources; nobody really gets hurt because the amounts are so small and the consequences minimal. And the system proved effective and this applies to both the Small Claims Tribunal (not on today's agenda) and when it comes to Administrative Fines.

Then somebody got the bright idea that hey the system is so good let's make more use of it! If something works well, hey why not make more use of it? Correct? Well, up to a point one understands the logic, the reasoning. Where concerns the Small Claims Tribunal, if you can decide cases quickly of up to 230 Euro, on the basis of equity, provided they are not prescribed, why not up to 500 Euro? Except that we are now at 5000 Euro and Small Claims Tribunal cases are not decided on the spot any longer, nor are they free from lawyers and legal representation. And the original advantages of the SCT have been lost because it takes six sittings easily for a case to be decided. And where concerns Administrative Penalties, whereas the amounts were so small that nobody would ask whether the individual's right to a fair hearing have been respected, the question arose and is a very valid one at that.

My personal position is simple and the number is 100 to my mind. Or 230 euro (the old 100 liri). Nothing above 230 euro remains a small claim, and in parallel nothing above 230 euro should be depenalised. Anything above should be subjected to the normal rules and should be decided by a Court. Because one cannot put a price to justice; there should be no short cuts in justice, no authority should compromise justice for the sake of convenience either. **Justice is sacred** and with it the judicial procedures.

Let me remind you of a few facts: in the publication we are discussing, page 7, reference is made to Prof Tonio Borg who explains why Sir Hillary Blood back in 1961 suggested that crimes are only tried by a court. The reason was self-preservation, the Brits were concerned that post-independence they would find themselves hounded, persecuted by sham tribunals aimed only at seeking absolution for perceived or possibly real past wrongs. This was very intelligent on the part of Sir Hillary Blood: remember the Commission for the Investigation of Injustices in 1987? The Tribunal for the Investigation of Injustices in 1996? Change in leadership leads to the creation of such bodies, so Sir Hillary Blood reasoned that if such processes are to take place, they should take place in the

safest of environments, where they stood the best chance of things being done according to law i.e. the courts. Note how they had faith in the Courts of Justice, because ultimately it is the Courts, the non-elected third pillar of the State, and not tribunals or commissions or what not, all of which are appointed by the Executive arm of Government and as such form part of the same Executive, which can guarantee fairness and lawfulness to the highest extent.

It is indeed thanks to this suggestion, that we are where we are today, well protected, enjoying more protection under the Constitution of Malta than under the European Convention on Human Rights. And this is the crux of the matter. We enjoy here in Malta more rights under the Constitution than under the ECHR, because the Constitution reads:

39. (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

It is most unfortunate that not too long ago the solution proposed to the FIAU's woes, and other entities too, was to propose Bill number 166/2020, to make allowances for administrative fines. When this did not garner the required 2/3 majority another attempt was made via bill number 190/2020 (via amending the Interpretation Act). Thankfully both attempts failed; Heaven forbid that we should ever have our constitutional rights tampered with.

ELSA (Malta) student members have suggested a proposal, and a very valid one at that. However, the proposal is restricted to the FIAU, whereas my argument is that the malaise is wider than the FIAU; the solution therefore has to be wider. It lies in setting up a system of Administrative **Courts** and I emphasise on the word 'courts' as in part of the Maltese courts, not tribunals (part of the executive arm of government). These tribunals should vary in formation and competence, but all of them must be presided over by members of the Judiciary, be they Magistrates or Judges, who enjoy security of tenure and guaranteed independence and impartiality, thus ensuring an end to the very thing which the Executive fears most: an end to the control which the executive has over the system of tribunals, commissions, commissioners which it appoints and renews at its pleasure e.g. Commissioners for Justice who are appointed without any call or selection process, for two years, and renewable by the Prime Minister. Because that is what it has always been about: collecting fines as quickly and effortlessly as possible, and also controlling appointees in a way that no government controls the Members of the Judiciary. And I will stop there.

Thank you

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