



Commissioner for Standards in Public Life

CASE REPORT

Case no: K/007

Complaint: Inappropriate use of public resources by the Minister for Justice, Culture and Local Government, consisting in the dissemination of a press statement of a political nature through the Department of Information.

Complainant: Dr Andrew Borg Cardona

Complaint Date: 25 April 2019

Report date: 16 September 2019

The Complaint

1. By email of the 25 April 2019 (attached and marked Document A), Dr Andrew Borg Cardona referred to a press statement issued by the Ministry for Justice, Culture and Local Government through the Department of Information (attached and marked Document B) and requested me *“to determine whether the political nature of the comments made in this Press Release are fit and proper use by the minister of a publicly funded entity, namely the Department of Information”*.
2. The Complainant did not refer to any specific clause in the Code of Ethics for Ministers and Parliamentary Secretaries (the Code), now forming part of the *Standards in Public Life Act* (Chapter 570 of the Laws of Malta) (the Act), as the basis of the alleged breach.

Decision to Investigate

3. I decided that the Complaint warranted further investigation under the Act.

Investigation Procedure

4. I met with the Minister for Justice, Culture and Local Government on the 13 June 2019 and referred him to the provisions of the Code that appeared to me relevant to this complaint:



4.9 *Ministers shall keep their roles as Ministers and as Representatives separate, as well as their role as a member of a political party.*

4.10 *Ministers shall respect the principle of political impartiality of the public service.*

The Context

5. On the 25 April 2019 the civil society organisation “*Repubblika*” filed two applications before the First Hall of the Civil Court in its constitutional jurisdiction (the Constitutional Court) to challenge and stop the then-imminent appointment of three judges and three magistrates.

6. Members of the judiciary are by law appointed by the President of Malta acting in accordance with the advice of the Prime Minister¹ following the advice given by the Judicial Appointments Committee² through the Minister responsible for justice, about its evaluation of the eligibility and merit of the candidates for appointment.

7. This method of appointment of members of the judiciary was enshrined in the Constitution following a reform introduced in 2016 and has been at the centre of controversy particularly following the publication of a critical report by the Venice Commission.

8. The applications before the Constitutional Court were filed by Dr Simon Busuttill and Dr Jason Azzopardi in their capacity as lawyers of *Repubblika*. Dr Busuttill and Dr Azzopardi happen to be members of the House of Representatives.

Considerations

9. I have had the opportunity to discuss at some length the use by ministers of the Department of Information in another report.³

10. In the said report I commented on the fact that there is no specific departmental policy that regulates which statements forwarded by Ministers to the DOI should be issued by it and which should not. I also noted that the only consideration seems to be whether a statement would be in breach of the Media and Defamation Act, that is to say whether “*content is offensive and/or libelous.*”

¹ Article 96 of the Constitution.

² Article 96A of the Constitution.

³ A copy of the report may be viewed on the following URL:

<https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K004.pdf>.



11. I also observed in the said report *“that although the practice of issuing official press statements with a partisan slant is longstanding ... it would be in my view self-defeating if current practices were to be evaluated by reference to past, possibly incorrect, practices”*.

12. Contrary to that in the press release which was the subject of the complaint referred to above, the tone used by the Ministry for Justice, Culture and Local Government in the press release under review is not one that gives rise to any concern from an ethical point of view.

13. As regards content, one can legitimately accept that it concerned a matter of public interest and government policy rather than a partisan issue since the press release concerned a decision of the Constitutional Court regarding a challenge to the application of certain provisions of the Constitution following changes that had been agreed to by both sides of the House a couple of years earlier.

14. Minister Bonnici would have been more in order had he refrained from including within the press release a statement that the lawyers concerned had themselves voted in favour of the 2016 amendments to the Constitution. This comment went beyond the purpose of the press release and could be construed as an attempt to score political points since it appears to have been designed to damage the credibility of the two lawyers concerned.

15. Moreover, the lawyers concerned may justifiably feel aggrieved by the Minister’s comment and his failure to distinguish between their responsibility as lawyers and their parliamentary duties. This is a popular failing that lawyers in general, and those who seek to balance their role as lawyers and their role as members of parliament in particular, must endure. Court cases belong to the litigants not to the lawyers, and lawyers do not necessarily endorse the cause by representing a party. Having stated this, lawyers in general would be well advised to refrain from seeking publicity for the cases they participate in as this apart from raising ethical concerns from a lawyer’s point of view, would only fuel the perception that lawyers identify themselves with the cause. Lawyers active in politics should be particularly sensitive to this peril.

Conclusion

16. In my opinion, the content of the press statement under consideration is directly related to the function and responsibility of the Ministry concerned. It publicises a decision by the courts on an issue that concerns the Minister’s duty to advise the Prime Minister on the appointment of members of the judiciary in accordance with the Constitution and publicises the fact that the appointments took place. There is of course an element of political controversy but I do not consider the press release to have been issued in breach of the provisions of the code of ethics as it was not partisan in nature, despite the comment relating to the



lawyers concerned, that was unnecessary and that came dangerously close to crossing the line in this respect.

17. Nevertheless, in keeping with the mission of this office to *challenge customs that are well established in the Maltese political system where such customs fall short of the standards that we collectively aspire to embrace* I feel that it is my duty to advise Ministers in general to avoid using the DOI for statements intended to score party-political points.

18. A copy of this report is being given to the Complainant and to Minister Owen Bonnici and is being submitted to the Standing Committee for Standards in Public Life for information purposes. A copy will also be available on the web-site of my office⁴.



Dr George-Marius Hyzler
Commissioner for Standards in Public Life

⁴ <https://standardscommissioner.com/>



Documents Attached:

Document A Complaint by Dr Andrew Borg Cardona

Document B Press Statement by the Ministry for Justice, Culture and Local Government published by the DOI dated 25th April 2019

Charles Polidano - Office of the Commissioner for Standards in Public Life

From: Andrew Borg Cardona <andrewbc@bcgladvocates.com>
Sent: Thursday, 25 April 2019 20:10
To: Office
Subject: Reference for the purposes of the Commissioner determining whether the political nature of the comments made in this Press Release are fair and proper use by the Minister of a publicly funded entity, namely the Department of Information. In my humble ...

PR190883

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STQARRIJA MILL-MINISTERU GHAL
ĠUSTIZZJA, KULTURA U GVERN LOKALI

*Simon Busuttil u Jason Azzopardi kontra t-thadd
ta' dak li huma stess kienu vvutaw favurih*

Il-gvern jirreferi għal żewġ rikorsi li ġew mress lllum b'urgenza quddiem il-Prim'Awla tal-Qorti Ċivili (Sede Kostituzzjonali) miż-żewġ membri t-Oppożizzjoni Simon Busuttil u Jason Azzopardi atti ta' kawża li huma fetħu lllum ukoll.

F'dawn iż-żewġ rikorsi huma talbu, fost oħrajn, li Qorti żżomm milli ssir il-ħatra ta' tliet Imħallfin tliet Maġistrati. Il-ħatriet saru iktar kmieni lli waranofsinar wara li l-Qorti espressament caħdet talba ta' Busuttil u Azzopardi b'digriet li ngħata mi Prim'Awla tal-Qorti Ċivili preseduta mill-Imħal Mark Chetcuti.

PR190883

25/04/2019

STQARRIJA MILL-MINISTERU GHALL-ĠUSTIZZJA, KULTURA U GVERN LOKALI: Simon Busuttil u Jason Azzopardi kontra t-thaddim ta' dak li huma stess kienu vvutaw favurih

Il-gvern jirreferi għal żewġ rikorsi li ġew mressqa llum b'urgenza quddiem il-Prim'Awla tal-Qorti Ċivili (Sede Kostituzzjonali) miż-żewġ membri tal-Oppożizzjoni Simon Busuttil u Jason Azzopardi fl-atti ta' kawża li huma fethu llum ukoll.

F'dawn iż-żewġ rikorsi huma talbu, fost oħrajn, li l-Qorti żzomm milli ssir il-hatra ta' tliet Imħallfin u tliet Maġistrati. Il-hatriet saru iktar kmieni llum waranofsinar wara li l-Qorti espressament ivaħdet it-talba ta' Busuttil u Azzopardi b'digriet li ngħata mill-Prim'Awla tal-Qorti Ċivili preseduta mill-Imħallef Mark Chetcuti.

Huwa ironiku li dawn iż-żewġ deputati għamlu dak kollu li setgħu biex iwaqqfu milli jsiru hatriet fil-ġudikatura bil-metodu ta' hatra ta' ġudikanti li huma stess kienu vvotaw favurih fl-2016 fil-Parlament.

Iktar minn hekk, ta' min jirimarka li f'dak li qed jagħmlu qed jgħidu li l-ġudikanti kollha li nhatru minn gvernijiet wieħed wara l-ieħor, inkluż gvern li kienu jagħmlu parti minnu huma stess b'sistema inqas trasparenti milli hemm illum, m'humiex imparzjali u indipendenti. L-attakk fuq il-ġudikatura kollha qatt ma kien frontali daqs dak li qed jagħmlu llum iż-żewġ deputati tal-Oppożizzjoni.

Il-gvern ifakkar li bis-saħħa ta' emendi Kostituzzjonali li kienu għaddew mill-Kamra tad-Deputati b'mod unanimu bis-saħħa ta' Att XLIV tal-2016, mill-5 t'Awissu, 2016 hatriet ta' ġudikanti jistgħu jsiru biss wara li l-ewwel jinkiseb il-parir ta' Kumitat tal-Għażla tal-Ġudikanti li hu magħmul mill-Prim Imħallef, l-Avukat Ġenerali, l-Awditur Ġenerali, l-Ombudsman u l-President tal-Kamra tal-Avukati. Kemm Simon Busuttil u kemm Jason Azzopardi kienu vvotaw favur u qablu ma' din is-sistema iktar trasparenti ta' hatriet, liema sistema kienet ukoll imfaħħra bħala pass 'il quddiem mill-Kummissjoni ta' Venezja.

Għalhekk il-gvern ma jistax jifhem għala d-deputati tal-Oppożizzjoni Simon Busuttil u Jason Azzopardi huma kontra t-thaddim ta' dak li huma stess kienu vvotaw favurih.

Il-gvern huwa determinat li jkompli jtejjeb il-qasam tal-ġustizzja u jsaħħaħ bil-fatti d-demokrazija u s-saltna tad-dritt.