



### CASE REPORT

<b>Case No:</b>	K/022
<b>Complaint:</b>	Abuse of power through the engagement of former minister Konrad Mizzi as a consultant with the Malta Tourism Authority
<b>Complainant:</b>	Carmel Cacopardo
<b>Complaint Date:</b>	28 January 2020
<b>Report Date:</b>	5 October 2020

*This document is a translation of the Maltese original. Extracts from correspondence that are quoted in the text have been translated, but the attachments remain in their original form.*

### The Complaint

1. By means of an email dated 28 January 2020 (attached and marked Document A), *Perit* Carmel Cacopardo, Chairperson of the political party Alternattiva Demokratika (“the Complainant”), referred to media reports about the award to the Hon Dr Konrad Mizzi, former Minister for Tourism, of a consultancy contract with the Malta Tourism Authority.
2. The Complainant observed that when the contract was signed, there was no minister of tourism and ministerial responsibility for this sector had been retained by the Hon Dr Joseph Muscat, then Prime Minister. The Complainant expressed the view that the award of the contract was “*a lack of correct ethical behaviour on the part of all those involved*”. He therefore requested me to investigate the award of the contract, “*and this with a view to examining the conduct of Joseph Muscat (Prime Minister), Konrad Mizzi (ex-Minister and Member of Parliament), Gavin Gulia (Chairman of the Tourism Authority) and Johann Buttigieg (Chief Executive Officer of the Tourism Authority).*”



## Decision to Investigate

3. The Standards in Public Life Act (Chapter 570 of the laws of Malta) applies to members of Parliament, including ministers and parliamentary secretaries, and to persons of trust. The definition of “persons of trust” in the Act is limited to persons who work in the private secretariat of a minister or parliamentary secretary, and who serve in an advisory or executive role.

4. Dr Gavin Gulia, Chairman of the Malta Tourism Authority (MTA), and Mr Johann Buttigieg, Chief Executive Officer of the MTA, are neither members of Parliament nor members of the private secretariat of a minister or parliamentary secretary. Hence they are not subject to the Act and cannot be investigated by me.

5. As a member of Parliament, the Hon Dr Konrad Mizzi is subject to the Code of Ethics of Members of the House of Representatives, which appears as the first schedule of the Act. In one of my first reports,<sup>1</sup> I recommended that members of Parliament who are not ministers or parliamentary secretaries should cease to be given jobs by the government, including consultancy assignments, *inter alia* because this would place them in a conflict of interest in their role as MPs obliged to scrutinise the activities of the same government. However, there is currently no provision in the code or in any law that prevents an MP from accepting such a role. Hence there are no grounds for me to investigate Dr Mizzi.

6. Dr Joseph Muscat was Prime Minister when Dr Mizzi was awarded the consultancy contract in question. Dr Muscat’s ministerial responsibilities at the time included tourism, so he was therefore the minister responsible for the MTA.

7. In this context I reviewed the Malta Travel and Tourism Services Act (Chapter 409 of the laws of Malta). Article 5(3) of this Act states that:

*“The Minister may, from time to time, as he may deem appropriate, give in writing and publish such directives as regards the policies and plans of the Government to be adopted and followed by the Authority, and the*

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<sup>1</sup> Report on case K/002, issued on 5 July 2019 and available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K002-EN.pdf>.



*Authority shall, as soon as practicable, adopt and follow all such directives.”*

8. Article 10 of the same Act states that:

*“Except with the approval of the Minister, the Authority shall not enter into any contract for the supply of goods or materials or for the execution of work or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to involve an expenditure exceeding two hundred and thirty-two thousand and nine hundred and thirty-seven euro and thirty-four cents (232,937.34), or such other amount as the Minister may from time to time prescribe, except after notice of the intention of the Authority to enter into such contract has been published and competitive tenders have been issued.”*

9. I noted that Dr Mizzi’s contract as consultant to the MTA, which was disclosed by the media,<sup>2</sup> provided for Dr Mizzi to be paid €241,200. This amount exceeds the limit set by article 10 of Chapter 409. The amount does not include the other benefits to which Dr Mizzi was entitled in terms of the contract, namely a fully expensed car; a driver whenever required by Dr Mizzi; an international health insurance policy for Dr Mizzi, his wife, and dependents under the age of 25 years; and a fully expensed mobile phone, along with an internet service and coverage of other telecommunications costs. The contract does not quantify these benefits, but it does state that if Dr Mizzi opted to use his private car instead of an MTA vehicle, he would be entitled to a lump sum payment of €11,400 in addition to running costs.

10. This means that if the MTA engaged Dr Mizzi as a consultant on its own initiative without issuing a call for tenders or without the approval of the Prime Minister as minister responsible for the MTA, it could have been in breach of article 10, unless the limit prescribed therein had been increased as provided for by the same article.

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<sup>2</sup> See <https://timesofmalta.com/articles/view/revealed-konrad-mizzis-secret-80000-job-contract-in-full.766732>. The contract refers to an appendix listing the subject areas concerning which Dr Muscat was to provide advice. This appendix was not published, but I did not consider it important for the purposes of my investigation in the light of the information provided by Dr Joseph Muscat in his letter of 20 March 2020 (Document E).



11. If, on the other hand, Dr Mizzi was engaged on the basis of some form of political direction, this could potentially be considered in breach of article 5 of Chapter 409, which appears not to give the minister the power to direct the MTA to grant contracts to particular individuals. Article 10 appears consistent with article 5 in the sense that the minister can only approve the Authority's own proposals as opposed to directing it to award contracts.

12. It also appeared to me that Dr Mizzi's remuneration of €80,400 per year in terms of the contract, apart from the other benefits, could be considered excessive when set against his salary as minister of approximately €56,300, in particular since the contract specified that Dr Mizzi was not being engaged on an exclusive basis and was free to carry out other work.

13. For these reasons I decided that I should investigate the complaint in so far as it concerned former Prime Minister Dr Joseph Muscat. The relevant provisions of the Standards in Public Life Act are the following:

- article 22(1)(a) and (b), which refer to actions contrary to law or in breach of a statutory duty;
- article 22(2), which mentions the exercise of discretionary powers in a manner that constitutes abuse of power.

14. Also relevant to the complaint are the following articles of the Code of Ethics for Ministers and Parliamentary Secretaries, which appears in the second schedule of the Act:

*"4.5 Ministers shall ensure that government departments and entities that fall within their ministries are managed well and prudently."*

*"5.3 Diligence – once Ministers administer public property, on behalf of the public in general, they shall exercise the highest level of diligence including in the expenditure of public funds, and they shall also work diligently and hard in the performance of their duties."*

*"5.4 Objectivity – in the performance of public duties, including in the appointments to offices, public procurement, or in the context of any award of benefits."*

*"5.8 Justice and respect – in their behaviour and in decisions which they take, Ministers shall show respect to the institutions and shall respect the laws of the country. [...]"*



## The Context

15. The Hon Dr Konrad Mizzi was appointed Minister for Tourism on 9 June 2017. He resigned from this office, for reasons unrelated to this case, on 26 November 2019. Subsequently Prime Minister Joseph Muscat assumed ministerial responsibility for tourism.<sup>3</sup>

16. On 9 December 2019, Dr Mizzi was engaged as a consultant to the MTA on the basis of a contract for service, that is to say not a contract of employment. The contract was for a period of three years. It was signed by Mr Johann Buttigieg, CEO of the MTA, and Dr Mizzi. No public announcement of this engagement appears to have been made by the government or the MTA.

17. Dr Joseph Muscat resigned as Prime Minister, also for reasons unrelated to this case, on 13 January 2020. The Hon Dr Robert Abela became Prime Minister while the Hon Julia Farrugia Portelli was appointed Minister for Tourism and Consumer Protection.

18. The existence of Konrad Mizzi's contract as consultant to the MTA was disclosed by the media on 27 January 2020.<sup>4</sup> On 28 January 2020 Minister Farrugia Portelli announced that after obtaining legal advice she had instructed the MTA to terminate the contract with immediate effect. She also stated that no payments had been made to Dr Mizzi in terms of the contract. The following day, Prime Minister Robert Abela added that Dr Mizzi was to receive no compensation for the termination of the contract.<sup>5</sup>

## Investigation Procedure

19. On 27 February 2020 I wrote to Dr Gavin Gulia, Chairman of the MTA (letter attached as Document B). By means of this letter I asked Dr Gulia to inform me "*whether the approval of the Prime Minister, who was at the time*

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<sup>3</sup> Government Notice no. 1520, dated 27 November 2019 and published in the *Government Gazette* on the same day.

<sup>4</sup> See <https://timesofmalta.com/articles/view/konrad-mizzi-given-80000-consultancy-job-two-weeks-after-resigning-as.766708>.

<sup>5</sup> See <https://timesofmalta.com/articles/view/pac-urged-to-urgently-consider-konrad-mizzi-consultancy-contract.766879> and <https://timesofmalta.com/articles/view/konrad-mizzi-will-not-get-compensation-for-cancelled-80000-contract.766963>.



*minister responsible for tourism, had been obtained before the contract with Dr Mizzi was signed, given that the value of the contract reportedly exceeded the amount established by article 10 of Chapter 409.”*

20. Dr Gulia replied by letter dated 3 March 2020 (attached as Document C). In this letter he stated:

*“After verifying matters with the Chief Executive Officer of the Malta Tourism Authority, I can say that the Chief Executive Officer was informed that the Prime Minister, who was then politically responsible for the Ministry for Tourism and the Authority, had given the direction for the said contract to be drawn up with the person concerned.*

*The Chief Executive Officer himself had verified with the Prime Minister that he was authorising the drawing up of the contract.”*

21. On 6 March 2020 I wrote to the Hon Dr Joseph Muscat (letter attached as Document D). I included a copy of the complaint and the letter from the MTA Chairman. In my letter I made the observations that appear in paragraphs 11 and 12 of this report, and I quoted the provisions of the Standards in Public Life Act and the Code of Ethics for Ministers and Parliamentary Secretaries that are reproduced in paragraphs 13 and 14 of this report. I requested Dr Muscat to present his reactions to the complaint.

22. Dr Muscat replied on 20 March 2020 (letter attached as Document E). He gave the following reasons for the appointment of Dr Mizzi as consultant:

*“In a moment of political and administrative transition, and on the resignation of Dr Konrad Mizzi as Minister for Tourism, the Government was responsible for ensuring that the tourism industry saw continuity.*

*On his resignation from the Cabinet of Ministers, Dr Mizzi indicated that he was willing to support the Government’s efforts in the national interest at a time when I had just assumed under the Prime Minister’s portfolio the responsibilities and entities that used to fall under the Ministry for Tourism. It was also a transitional phase in which the Malta Tourism Authority had engaged a new Chief Executive Officer, the Air Malta restructuring process under the direction of Dr Konrad Mizzi was still being implemented, and the new market strategy for tourism was being updated and put into effect.”*



23. Dr Muscat stated also that the complaint represented a “*generic allegation*” and should be considered as “*politically partisan criticism that is unfounded both in fact and at law.*”

24. With regard to applicable legislation, Dr Muscat quoted article 6(1) of the Public Administration Act (Chapter 595 of the laws of Malta), which states that:

*“Where a Minister is assigned responsibility for any department, agency or entity of Government in terms of article 82 of the Constitution, that Minister shall, in line with article 92 of the Constitution, and without prejudice to article 6 of the Interpretation Act, have the general direction and control of all departments, agencies and government entities that may be placed under his responsibility and may give directions directly to the head of the department, Chief Executive Officer, Board of Directors or any other employee falling within his responsibilities, on any matter, except matters where the head of department, Chief Executive Officer, Board of Directors or other employee is required by any law to act –*

*(a) independently; or*

*(b) in accordance with the direction of a person or authority other than the Minister:*

*Provided that where a Permanent Secretary has been appointed to supervise the relative department, agency or government entity the Minister shall inform the Permanent Secretary that he has given such directions:*

*Provided further that any public employee who receives directions from the Minister shall inform the Permanent Secretary forthwith that such directions have been given by the Minister.”*

25. Dr Muscat added that: “*As Prime Minister, and as Minister responsible for the Malta Tourism Authority, I acted as provided for by the law I have mentioned. Therefore it is not the articles cited by you that are applicable to these directions, but the general provisions on ministerial powers in public administration.*”

26. With regard to articles 5 and 10 of Chapter 409, Dr Muscat stated that “*it would be much fairer to quote them in full, which makes it clear that the aim and context of these articles is different and cannot be stretched to cover your proposed interpretation.*” Along with articles 5(3) and 10, already quoted in paragraphs 7 and 8 of this report, he quoted article 5(2), which states that:



*“In the performance of its functions the Authority shall adopt and follow the policies and plans of the Government and otherwise act in conformity with the provisions of this Act and any other applicable law; and the Authority may make such investments, as the Minister may approve, and as are calculated to assist in the promotion and advancement of Malta as a tourist destination.”*

27. Dr Muscat stated that it is clear from articles 5(2) and 5(3) that *“their aim was to oblige the Authority to execute the policies and plans of the Government in the tourism sector; as well as to ensure that investments deemed to facilitate the promotion and progress of Malta as a tourism destination are approved by the Minister.”* The aim of article 10 *“is not in any way to limit the powers of the Minister as provided for by the Public Administration Act. On the contrary, the aim of article 10 is to limit the power of the Authority to independently enter into contracts of supply or works that exceed €232,937.34.”*

28. Dr Muscat added that:

*“It is therefore clear that your interpretation is entirely contrary to the statutory authority that Ministers have over entities within their ministerial portfolio, according to article 6(1) of the Public Administration Act, which I am sure you are familiar with and you have used, correctly, when you held executive office.<sup>6</sup> The fact that the Authority cannot make certain disbursements without the Minister’s authorisation does not mean that the Minister cannot give direction to the Authority.*

*With respect to the view expressed by you concerning the remuneration proposed in the contract of service awarded to Dr Mizzi, in which you stated that it was excessive, I consider this to be a matter of subjective opinion. One must take into account all the circumstances, including the critical need for the requested service and the abilities of the person requested to provide the services, before judging the engagement with the indicated conditions. I do not see the relevance of a comparison of professional fees with a Minister’s salary, since a Minister does not provide a professional service to the Government, but serves in a political position under the Constitution, which is tied to a specific salary. I as*

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<sup>6</sup> It is not clear what Dr Muscat is referring to here. I served in an executive role as Parliamentary Secretary between 1999 and 2003. The first Public Administration Act (Chapter 497) was enacted in 2009.





*Prime Minister, Members of my Government, my predecessors and Members of their Governments systematically approved similar appointments with a remuneration higher than their own, and higher even than that under scrutiny.*

*Having considered this, I utterly reject the suggestion that I acted unethically in any way, and particularly that I acted contrary to law or in breach of a statutory right (article 22(1)(a) and (b) of Chapter 570) or that I exercised discretionary powers in a manner that constitutes abuse of power (article 22(2)). I assure you that my actions on this issue, as in other cases of public administration, were prudent and in the best interests of the public.”*

## **Considerations**

### *The powers of the minister*

29. The interpretation of the Malta Travel and Tourism Services Act (Chapter 409) is central to this case, as is also the relationship between this Act and the Public Administration Act (Chapter 595).

30. Article 5(2) of Chapter 409 obliges the MTA to “*adopt and follow the policies and plans of the Government.*” The same article empowers the minister to “*approve*” investments proposed by the MTA. The words “*policies*” and “*plans*” refer to directions on a general level. I fail to see how these words can cover an instruction to the MTA that it should engage a particular individual as a consultant. Such an instruction does not deal with policies or plans but with operational matters, which are not covered by article 5(2).

31. With respect to “*investments*”, the power of the minister under article 5(2) is limited to approving proposals that should come from the MTA. The minister cannot instruct the MTA to make an investment identified by the minister. If the minister did so, this would exceed his or her legal powers.

32. The same applies to article 10 of Chapter 409. This article empowers the minister to approve contracts with a value exceeding €232,937.34 if such contracts are not issued on the basis of calls for tenders. Article 10 is intended as a safeguard against abuse in the sense that the minister can ensure that the MTA does not award high-value contracts without first issuing calls for tenders unless there is a genuine need to do so. This article does not permit the



minister himself or herself to instruct the MTA to award a contract to a particular individual without first issuing a call for tenders. If article 10 were interpreted as giving the minister this power, it would cease to be a safeguard against abuse and would instead become a mechanism to facilitate it.

33. Article 5(3) of Chapter 409 is a “residual” provision on ministerial powers, in the sense that this article applies where other, more specific provisions do not. This article empowers the minister to give directions only “*as regards the policies and plans of the Government*”. As I have already stated, this does not cover instructions to the MTA to engage a particular individual as a consultant. Furthermore, ministerial directions under article 5(3) must be published. This provision is a safeguard to expose ministerial directions to public scrutiny and ensure that the minister does not exceed his or her powers.

34. Article 5(3) reinforces my interpretation of articles 5(2) and 10, because if these permitted ministerial directions to the MTA on operational matters, they would undermine the safeguard in article 5(3) and render it useless.

35. On the other hand, the Public Administration Act (Chapter 595) gives ministers much more extensive powers of direction over the entities under them, as Dr Muscat indicates. By virtue of article 6(1) of this Act a minister can give directions not only to the board of directors of an entity, but also to the chief executive officer and even to other entity employees. Such directions can cover any matter, including operational matters, except only for matters with respect to which the entity is required by law to decide independently or according to the directions of third parties.

36. Article 6(1) of Chapter 595 is almost identical to article 6(1) of the first Public Administration Act, enacted in 2009 (Chapter 497), which introduced the ministerial powers in question. Chapter 497 was repealed by Chapter 595 when the latter came into force on 1 March 2019.

37. Chapter 409, which governs the MTA, and Chapter 595, which governs public administration in general, are in conflict with regard to ministerial powers of direction. The question that therefore arises is which law should prevail. Here one can argue that by virtue of Chapter 409, the MTA can effectively decide on operational matters independently from the minister, so this area is covered by the exception set out in article 6(1) of Chapter 595. In addition, article 2(3) of Chapter 595 is very specific about how conflicts with other laws should be resolved:



*“Unless otherwise specified in this Act, where a provision of this Act conflicts with the provisions of any other law governing a department, an agency or a government entity, the other law shall prevail.”*

38. In his letter Dr Muscat states that he acted *“as provided for by the law I have mentioned”*, meaning on the basis of article 6(1) of Chapter 595 rather than Chapter 409. He does not acknowledge that the two laws are in conflict. Nonetheless the conflict exists, so Chapter 409 prevails over Chapter 595. This means that as minister responsible for the MTA, he did not have the right to direct this authority to offer a consultancy contract to Dr Konrad Mizzi without issuing a call for tenders. In so doing he exceeded his powers at law.

39. In his letter of 3 March 2020 (Document C), the Chairman of the Authority indicates that the Prime Minister’s instruction to award Dr Mizzi a consultancy contract was given to the Chief Executive Officer of the MTA. This means that the governing board of the MTA, or *“the Authority”*, as it is termed by Chapter 409, was bypassed altogether. Given that article 6(1) of Chapter 595 does not apply, Dr Muscat did not have the right to bypass the board. Dr Muscat thus exceeded his legal powers not only as a result of the content of his instruction, but also as a result of the manner in which he gave it.

#### *The value of the contract*

40. In his letter, Dr Muscat states that it is a matter of subjective opinion whether or not the value of the contract was excessive. This is true. He says that consultants were frequently engaged, both by his government and by preceding governments, with a remuneration higher than that of ministers and, in addition, higher than that specified by Konrad Mizzi’s contract.

41. However, this fact cannot be used to justify Dr Mizzi’s contract in the particular circumstances in which it was awarded. Moreover, as I have already stated in other reports, I was appointed by unanimous resolution of Parliament to contribute to the raising of standards in Maltese public life. It would be inconsistent with this aim if past practices, even if similar, were to be used to justify present ones.

42. It is also true that it is difficult to establish criteria by which to determine objectively whether or not the value of such a contract is justified. However, I cannot refrain from observing that while Dr Mizzi’s contract entitled him to €6,700 per month and other benefits, the contract neither specified the



number of hours Dr Mizzi was expected to work, nor did it link payments to the completion of particular assignments. By contrast, the standard government contract for individuals engaged as persons of trust for service as consultants in ministries specifies the average number of hours per week to be worked by the consultant.<sup>7</sup> This makes it possible to determine whether or not the consultant is fulfilling the terms of his or her contract. Dr Mizzi's contract included no such mechanism. This is a serious shortcoming that in itself makes the contract unduly "generous" to Dr Mizzi.

43. This point takes on particular importance in the light of Dr Muscat's statement that *"Dr Mizzi indicated that he was willing to support the Government's efforts in the national interest at a time when I had just assumed under the Prime Minister's portfolio the responsibilities and entities that used to fall under the Ministry for Tourism."* Here Dr Muscat is indicating that he personally felt in need of Dr Konrad Mizzi's assistance. This interpretation is reinforced by the fact that, according to Dr Muscat, Dr Konrad Mizzi was expected to give advice not only about tourism but also about the restructuring of Air Malta – a matter that was not part of the MTA's responsibilities. In such a case, however, it made no sense for Dr Mizzi to be engaged as a consultant with the MTA rather than the Office of the Prime Minister. It would have been doubly difficult for the MTA to ascertain that Dr Mizzi was fulfilling the terms of his contract if he was to be given work assignments by the Office of the Prime Minister.

44. Dr Muscat justifies the engagement of Konrad Mizzi as a consultant by saying that he would have provided continuity after his resignation as minister. But Dr Muscat also states, rightly in my view, that *"a Minister does not provide a professional service to the Government, but serves in a political position under the Constitution"*. Indeed officials in the ministry, the MTA and Air Malta should be the ones to provide professional and technical inputs in the development of policies and strategies, and to implement those policies and strategies once they are agreed by the government. Such officials provide continuity when the minister changes. Therefore I cannot understand why, for

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<sup>7</sup> "Template B1 – Standard Agreement for the Engagement of a Policy Consultant on a Person of Trust Basis (Non-Public Officer/Non-Public Employee)", accessible from <https://publicservice.gov.mt/en/people/Pages/PeopleResourcingandCompliance/FormsandTemplates.aspx>.



the sake of continuity, the former minister had to be engaged as a consultant to provide the professional inputs that it was up to others to provide.

45. For these reasons I feel that the justification presented by Dr Muscat for the engagement of Dr Konrad Mizzi as a consultant with the MTA is not valid. It should be noted that Dr Muscat's successor as Prime Minister and the new Minister for Tourism both appear to share this view, since they terminated Dr Mizzi's contract once they too evidently felt that it was not justified.

46. The engagement of Dr Mizzi appears consistent with the practice of giving members of Parliament on the government side posts of some kind within government as consolation if they are not appointed ministers or parliamentary secretaries, as found in the report on case K/002.<sup>8</sup> If this is the case it is wrong, as I have already stated in the aforementioned report. However, it may also be that in this case the consultancy was awarded to facilitate Dr Mizzi's resignation, while at the same time enabling him to continue performing the same work he had been carrying out as minister. This may be what Dr Muscat in his letter refers to as "continuity" (with a much higher salary and conditions).

47. Whether Dr Muscat's instruction to the MTA to engage Konrad Mizzi as a consultant was in accordance with the law is an objective issue. Whether the engagement of Konrad Mizzi as a consultant was justified is a separate issue, and a subjective one. Whoever holds an office involving scrutiny of the administration, as I do, must not substitute his or her own judgement for that of a member of the administration on subjective matters, as long as the decision taken was reasonable. For this reason I was willing to accept former Prime Minister Joseph Muscat's justification for the need to engage Dr Konrad Mizzi as a consultant. I am not accepting his justification because it is inconsistent with the manner in which the engagement was made and because it is contradictory, as indicated above.

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<sup>8</sup> The relevant report was issued on 5 July 2019 and is available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K002-EN.pdf>.



## Conclusions

48. The direction given by Dr Muscat to the MTA to offer a consultancy contract to Dr Mizzi exceeded Dr Muscat's legal powers as minister responsible for this authority. Therefore this direction on the part of Dr Muscat *prima facie* represents:

- (a) an action contrary to law, as mentioned in article 22(1)(a) of the Standards in Public Life Act; and
- (b) a breach of article 5.8 of the Code of Ethics for Ministers and Parliamentary Secretaries, which appears as the Act's second schedule, and which requires that "*in their behaviour and in decisions which they take, Ministers shall show respect to the institutions and shall respect the laws of the country*".

49. In my opinion, Dr Muscat's direction for the engagement of Dr Mizzi as a consultant also represents:

- (a) the exercise of discretionary powers in a manner that constitutes abuse of power, as mentioned in article 22(2) of the Act:
- (b) a breach of article 4.5 of the Code of Ethics for Ministers and Parliamentary Secretaries, which requires ministers to ensure that "*government departments and entities that fall within their ministries are managed well and prudently*"; and
- (c) a breach of article 5.3 of the Code, which obliges ministers to "*exercise the highest level of diligence including in the expenditure of public funds*".

50. I cannot refrain from commenting on the role of the Chief Executive Officer of the MTA and the Chairman of the Authority, although they are not covered by my investigation. In my opinion, when the CEO received the Prime Minister's instruction he should have referred it to the Chairman and sought his directions on how to proceed. If the CEO did not inform the Chairman about the Prime Minister's instruction, he thereby became complicit in the bypassing of the board to which he owed his loyalty. If, on the other hand, he informed the Chairman but the latter did not intervene, this means that the Chairman took no action to uphold the board's position. He seems to have been content to be bypassed so as to avoid assuming responsibility. In his letter the Chairman does not say when he came to know of the contract, but he does not indicate that he took any action even when the existence of the contract was disclosed. Neither the Chairman nor the CEO appear to have taken any action



to uphold the law or safeguard public funds, thereby falling short of their responsibility. If high standards in public life are to be maintained, persons in such roles should not submit to everything.

51. It is bad practice for ministers to bypass the governing boards of entities and give directions to members of staff who should answer to the board, even in cases where article 6(1) of Chapter 595 applies. This practice goes against every principle of good governance and opens the door to abuse. It undermines the authority of the board and can place board members in a situation where they have to account for irregular decisions by others.

52. As I have already indicated, article 6(1) of Chapter 595 originated as part of the Public Administration Act of 2009, so it does not constitute a recent development. Nevertheless, I recommend that this article should be reviewed in the light of the importance which is rightly being given to good governance at present. Ministers should not assume a management role, not only in the case of the MTA but also in that of any other government entity. Such entities are not set up as a front for possibly abusive actions by ministers. In particular, ministers should remain at arm's length from employment decisions and contract awards because of the risk of jobs and contracts being given as political favours, or for other reasons, rather than on merit.

53. This report is being forwarded to the Committee on Standards in Public Life in accordance with article 22(3) of Chapter 570 for any action it may consider appropriate in terms of articles 27 and 28 of Chapter 570. According to the procedure agreed by the Committee on 2 April 2019, I shall not publish this report at this stage, but I shall inform the Complainant and the Hon Dr Joseph Muscat that I have presented the report to the Committee. It is up to the Committee to decide when to release the report, but my recommendation is that the Committee should release the report as soon as practicable in the interests of transparency.

**Dr George Marius Hyzler**

Commissioner for Standards in Public Life



### Attached Documents

- Document A Email from *Perit Carmel Cacopardo* dated 28 January 2020.
- Document B Letter dated 27 February 2020 to Dr Gavin Gulia, Chairman of the MTA.
- Document C Reply from Dr Gulia dated 3 March 2020.
- Document D Letter dated 6 March 2020 to the Hon Dr Joseph Muscat.
- Document E Dr Muscat's reply dated 20 March 2020.



**George Hyzler - Office of the Commissioner for Standards in Public Life**

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**From:** carmel.cacopardo@alternattiva.org.mt  
**Sent:** Tuesday, January 28, 2020 7:02 PM  
**To:** George Hyzler - Office of the Commissioner for Standards in Public Life  
**Cc:** Ralph Cassar  
**Subject:** talba ghal investigazzjoni

Ghaziz Dr Hyzler,

Nirreferi għall-kuntratt ta' konsulenza li l-Awtorita tat-Turizmu tat lil Onorevoli Konrad Mizzi wara li spicca minn Ministru u li l-lejla thabbar mill-Ministru Julia Farrugia li gie annullat.

Dwar iktar dettalji ara:

[https://www.maltatoday.com.mt/news/national/100036/watch\\_tourism\\_minister\\_expects\\_decision\\_on\\_konrad\\_mizzi\\_contract\\_in\\_coming\\_hours#.XjB1FW5FzIU](https://www.maltatoday.com.mt/news/national/100036/watch_tourism_minister_expects_decision_on_konrad_mizzi_contract_in_coming_hours#.XjB1FW5FzIU)

<https://timesofmalta.com/articles/view/pac-urged-to-urgently-consider-konrad-mizzi-consultancy-contract.766879>

<https://timesofmalta.com/articles/view/revealed-konrad-mizzis-secret-80000-job-contract-in-full.766732>

Reals  
IA-  
IC

L-ghoti ta' dan il-kuntratt kien fil-fehma tieghek nuqqas ta' imgieba etika korretta ta' dawk kollha li kienu involuti.

Dan il-kuntratt sar fiz-zmien meta ma kienx hemm Ministru tat-Turizmu fil-kariga u allura r-responsabbilta Ministerjali kienet ta' l-Onorevoli Joseph Muscat, dakinnhar Prim Ministru.

Nitolbok għaldaqstant biex tinvestiga l-ghoti ta' dan il-kuntratt u dan bl-iskop li tkun ezaminata l-imgieba ta' Joseph Muscat (Prim Ministru), Konrad Mizzi (ex-Ministru u Membru Parlamentari), Gavin Gulia (Chairman tal-Awtorita tat-Turizmu) u Johann Buttigieg (Chief Executive Officer tal-Awtorita tat-Turizmu).

Nirringrazzjak tal-attenzjoni.

Carmel Cacopardo  
Chairperson – Alternattiva Demokratika

Tel : +356 9949 3903



27 ta' Frar 2020

Dr Gavin Gulia  
Chairman  
L-Awtorità tat-Turiżmu ta' Malta  
Suites 301-306, Bini SCM 01  
SmartCity Malta  
Il-Kalkara SCM 1001

Bil-posta u bl-email fuq [info@visitmalta.com](mailto:info@visitmalta.com)

Dr Gulia

**Ilment dwar il-kuntratt ta' konsulenza mogħti  
mill-Awtorità tat-Turiżmu lil Dr Konrad Mizzi**

Qed nikkunsidra ilment fejn ġejt mitlub ninvestiga l-għoti ta' kuntratt ta' konsulenza mill-Awtorità tat-Turiżmu ta' Malta lill-eks Ministru Konrad Mizzi f'Diċembru 2019.

Nosserva li l-artikolu 10 tal-Att dwar Servizzi tal-Ivvjaġġar u tat-Turiżmu għal Malta (il-Kapitolu 409 tal-liġijiet ta' Malta) jgħid hekk:

*“Ħlief bl-approvazzjoni tal-Ministru, l-Awtorità m'għandhiex tagħmel kuntratt għall-provvista ta' oġġetti jew materjal jew għall-eżekuzzjoni ta' xogħlijiet jew għall-għoti ta' servizzi, lil jew favur l-Awtorità, li jkun stmat mill-Awtorità bħala li jinvolti spiża li teċċedi mitejn u tnejn u tletin elf u disa' mija u sebgħa u tletin euro u erbgħa u tletin ċenteżmu (232,937.34) jew kull ammont ieħor li l-Ministru jista' minn żmien għal żmien jippreskrivi, ħlief wara li jkun ġie publikat avviż dwar l-intenzjoni tal-Awtorità li tagħmel dak il-kuntratt u jkunu nħarġu offerti kompetittivi.”*

Nosserva wkoll li l-valur tal-kuntratt mogħti lil Dr Konrad Mizzi skont kif ġie rappurtat kien jammonta għal €241,200, mingħajr ma wieħed jieħu in



konsiderazzjoni l-vettura u l-assikurazzjoni dwar is-saħħa li kienu nklużi fil-kuntratt.

Għaldaqstant inti mitlub tinformani jekk gietx miksuba l-approvazzjoni tal-Prim Ministru, li dak iż-żmien kien ministru risponsabbli għat-turiżmu, qabel ma gie ffirmat il-kuntratt ma' Dr Mizzi, stante li l-valur tal-kuntratt, skont kif gie rappurtat, kien jeċċedi l-ammont iffissat mill-artikolu 10 tal-Kapitolu 409.

Inti mitlub twieġeb sa mhux aktar tard mill-**Gimgħa 6 ta' Marzu 2020**.

Ninformak li inti m'intix is-sugġett tal-indaġni tiegħi u qed tiġi mitlub biss tfornini bl-informazzjoni msemmija fuq.

Inselli għalik,

Dr George Marius Hyzler  
Kummissarju għall-Istandards fil-Ħajja Pubblika

3 ta' Marzu 2020

Dr. George Marius Hyzler,  
Kummissarju għall-Istandards fil-Hajja Pubblika  
Ufficcju tal-Kummissarju għall-istandards fil-Hajja Pubblika,  
11, Triq San Pawl,  
Valletta VLT 1210.

Dr. Hyzler,

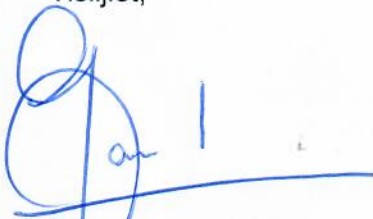
**Re: Ilment dwar il-kuntratt ta' konsulenza moghti mill-Awtorita' tat-Turizmu lil Dr. Konrad Mizzi**

Nirreferi għall-ittra tieghek tas-27 ta' Frar 2020.

Wara li ghamilt verifiki mal-Kap Ezekuttiv ta' l-Awtorita Maltija tat-Turizmu, ngħid li l-Kap Ezekuttiv kien infurmat li l-Prim Ministru, li dak iz-zmien kien hu nnifsu politikament responsabbli mill-Ministeru tat-Turizmu u mill-Awtorita, kien ta d-direzzjoni biex isir it-tali kuntratt ta' konsulenza mal-persuna kkoncernata.

Il-Kap Ezekuttiv kien ivverifika hu stess mal-Prim Ministru li kien qed jaghti l-awtorizzazzjoni tieghu biex isir.

Tislijiet,



**Gavin Gulia**  
Chairman



6 ta' Marzu 2020

L-Onor Dr Joseph Muscat MP

Bl-email fuq l-indirizz  
joseph.muscat@gov.mt

Onorevoli,

**Każ K/022: ingaġġ ta' Dr Konrad Mizzi bħala konsulent  
mal-Awtorità tat-Turiżmu ta' Malta**

Qed nibgħatlek kopja ta' ilment fejn jiena ġejt mitlub ninvestiga l-għoti ta' kuntratt lil Dr Konrad Mizzi bħala konsulent mal-Awtorità tat-Turiżmu ta' Malta f'Diċembru tal-2019.

Mill-indaġni li għamilt s'issa, jirriżulta li Dr Mizzi ġie ingaġġat mill-kap eżekuttiv tal-Awtorità tat-Turiżmu fuq l-istruzzjonijiet tiegħek bħala ministru responsabbli għat-turiżmu. Nitolbok tara l-ittra annessa, li hija mingħand iċ-Chairman tal-Awtorità.

Nosserva li skont id-dispożizzjonijiet relevanti tal-Att dwar Servizzi tal-Ivvjaġġar u tat-Turiżmu għal Malta (il-kapitolu 409 tal-liġijiet ta' Malta), il-ministru responsabbli għat-turiżmu għandu s-setgħat li:

- jagħti direttivi bil-miktub, li għandhom jiġu ppubblikati, lill-Awtorità dwar il-politika u l-pjanijiet tal-Gvern (artiklu 5); u
- japprova l-għoti ta' kuntratti li jeċċedu ċertu valur (artikolu 10).

L-ilment jista' potenzjalment jiġi kkunsidrat bħala ksur *prima facie* tal-artikolu 5 tal-Att, li ma jagħtix is-setgħa lill-ministru li jagħti direzzjonijiet lill-Awtorità dwar min għandha tingaġġa bħala konsulent. L-artikolu 10 huwa konsistenti mal-artikolu 5 fis-sens li l-ministru jista' biss japprova proposti li jitressqu mill-Awtorità u mhux jagħti struzzjonijiet hu dwar l-għoti ta' kuntratti.

Nosserva wkoll li skont il-kuntratt, Dr Mizzi kien se jkun intitolat għall-ħlas ta' €80,400 fis-sena, apparti mill-użu ta' karozza u assikurazzjoni dwar is-saħħa. Mad-daqqa t'għajn dan jidher eċċessiv meta mqabbel mas-salarju ta' madwar €56,300 li kellu Dr Mizzi bħala ministru, b'mod partikolari meta l-kuntratt kien



jispesifika li Dr Mizzi ma kienx qed jiġi ingaġġat fuq bażi esklussiva u seta' jwettaq xogħol ieħor.

Għaldaqstant jiena għandi nikkunsidra dan il-każ fil-kuntest tad-dispożizzjonijiet li ġejjin tal-Att dwar Standards fil-Ħajja Pubblika (il-kapitolu 570):

- azzjoni kontra dak li trid il-liġi u ksur ta' dmir statutorju – artikolu 22(1)(a) u (b);
- tħaddim ta' setgħat diskrezzjonali b'mod li jikkostitwixxi abbuż ta' poter – artikolu 22(2).

Għandi nikkunsidra l-każ ukoll fil-kuntest tas-segwenti paragrafi tal-Kodiċi ta' Etika għall-Ministri u s-Segretarji Parlamentari, li jinsab fit-tieni skeda tal-istess Att:

*4.5 Il-Ministri għandhom jaraw li d-dipartimenti governattivi u l-entitajiet li jaqgħu fid-dekasteru tagħhom jitmexxew tajjeb u b'għaqqal.*

*5.3 Diligjenza – Iadarba l-Ministri jamministraw beni pubbliċi, f'isem il-pubbliku inġenerali, għandhom jeżerċitaw l-ogħla livell ta' diligjenza inkluż fl-infiq ta' fondi pubbliċi, kif ukoll għandhom jaħdmu b'għaqqal u b'zulija fit-twettiq tad-doveri tagħhom.*

*5.4 Ogġettività – fil-qadi tad-doveri pubbliċi, inkluż fil-ħatriet għall-karigi, l-għoti ta' kuntratti, jew fil-kuntest ta' kull għoti ta' benefiċċji.*

*5.8 Ġustizzja u rispett – fl-imġiba tagħhom u deċiżjonijiet li jieħdu, il-Ministri għandhom juru rispett lejn l-istituzzjonijiet u għandhom jirrispettaw il-liġijiet tal-pajjiż. ...*

Inti gentilment mitlub tagħti r-reazzjonijiet tiegħek dwar l-ilment. Napprezza risposta sa nhar il-**Ġimgħa 20 ta' Marzu 2020**.

Inselli għalik,

Dr George Marius Hyzler  
Kummissarju għall-Istandards fil-Ħajja Pubblika

20 ta' Marzu 2020

Dr George Marius Hyzler  
Kummissarju għall-Istandards fil-Hajja Pubblika  
11 St Paul Street  
Valletta VLT1211

Għażiż Dr Hyzler,

Każ K/022 – Ingagġ ta' Dr Konrad Mizzi bħala konsulent mal-Awtorità tat-Turiżmu ta' Malta

Nagħmel riferenza għall-ittra tiegħek tas-6 ta' Marzu 2020.

Dawn huma l-fatti b'rabta mal-ingagġ ta' Dr Konrad Mizzi bħala konsulent mal-Awtorità tat-Turiżmu ta' Malta.

F'mument ta' tranżizzjoni politika u amministrattiva, u mar-riżenja ta' Dr Konrad Mizzi minn Ministru għat-Turiżmu, ir-responsabbiltà tal-Gvern kienet titlob li l-industrija tat-turiżmu tara kontinwità.

Mar-riżenja tiegħu mill-Kabinett tal-Ministri, Dr Mizzi wera d-disponibilità tiegħu li jassisti l-isforzi tal-Gvern fl-interess nazzjonali fi żmien meta jien kont għadni kif assumejt taht il-portafoll tal-Prim Ministru dawk ir-responsabbiltajiet u entitajiet li kienu jaqghu taht il-Ministeru tat-Turiżmu. Kienet ukoll fażi tranzitorja fejn l-Awtorità tat-Turiżmu ta' Malta kienet ingagġat Kap Eżekuttiv ġdid, il-proċess ta' ristrutturar tal-Air Malta taht id-direzzjoni ta' Dr Konrad Mizzi kien għadu qed jiġi implimentat, u l-istrategija ta' swieq godda għat-turiżmu kienet qed tiġi aġġornata u mwettqa.

L-ilment ta' Dr Carmel Cacopardo huwa allegazzjoni ġenerika li l-ġhoti tal-kuntratt ta' konsulenza lil Dr Konrad Mizzi jikkostitwixxi “nuqqas ta' mġieba etika korretta minn dawk kollha li kienu involuti.” Nemmen li l-ilment ta' Dr Cacopardo għandu jkun meqjus bħala kritika politika partigġjana li mhix imsejjsa la fuq il-fatti u lanqas fuq il-ligi.

In kwantu għall-osservazzjonijiet tiegħek fuq il-ligijiet applikabbli, nagħmel is-segweni sottomissjonijiet:

Skont l-artikolu 6 (1) tal-Att dwar l-Amministrazzjoni Pubblika, “Meta Ministru jkun inghata responsabbiltà għal xi dipartiment, aġenzija jew entità tal-Gvern skont l-artikolu 82 tal-Kostituzzjoni, dak il-Ministru għandu jkollu, skont l-artikolu 92 tal-Kostituzzjoni u bla hsara għall-artikolu 6 tal-Att dwar l-Interpretazzjoni, id-direzzjoni ġenerali u l-kontroll ta' kull dipartiment, aġenzija u entità tal-Gvern li jistgħu jitqieghdu taht ir-responsabbiltà tiegħu, u jista' jagħti direzzjonijiet direttament lill-kap tad-dipartiment, lill-Uffiċjal Eżekuttiv Ewlieni, lill-Bord tad-Diretturi jew lil kull

impjegat li jaqa' taht ir-responsabbiltà tieghu, dwar kull haġa hlied dwar hwejjeg fejn il-kap ta' dipartiment, Uffiċjal Eżekuttiv Ewlieni, Bord tad-Diretturi jew impjegat iehor ikunu mehtieġa b'xi liġi li jagixxu (a) b'mod indipendenti; jew (b) skont id-direzzjoni ta' persuna jew awtorità oħra li ma tkunx il-Ministru.

Bhala Prim Ministru, u bhala Ministru responsabbli mill-Awtorità tat-Turiżmu ta' Malta, imxejt kif previst mill-liġi msemmija. Għalhekk, mhumiex l-artikoli citati minnek li huma applikabbli għal dawn id-direzzjonijiet iżda huma d-dispożizzjonijiet ġenerali dwar il-poteri ministerjali fl-amministrazzjoni pubblika.

Irrid nġhid li la darba semmejt l-artikoli 5 u 10 tal-Kap 409, li jkun ferm aktar ġust li dawn jiġu citati b'mod sħiħ fejn allura jidher b'mod ċar li l-iskop u l-kuntest ta' dawn l-artikoli huwa differenti u ma jistax jiġġebbed għat-tifsira li ssuġġerejt int. L-artikolu 5 jipprovdi dwar il-Funzjonijiet tal-Awtorità tat-Turiżmu ta' Malta. Is-subartikoli (2) u (3) tal-artikolu 5 jipprovdu hekk:

“(2) Fl-esekuzzjoni tal-funzjonijiet tagħha, l-Awtorità taddotta u ssegwi l-politika u l-pjanijiet tal-Gvern u barra minn hekk tagħxi skont id-dispożizzjonijiet ta' dan l-Att u ta' kull liġi oħra li tapplika; u l-Awtorità tista' tagħmel dawk l-investimenti, kif japprova l-Ministru, u li jkunu meqjusa li jgħinu fil-promozzjoni u l-avvanz ta' Malta bhala destinazzjoni turistika.

(3) Il-Ministru jista', skont kif jidhiru xieraq, minn żmien għal żmien, jagħti bil-miktub u jippubblika dawk id-direttivi dwar il-politika u l-pjanijiet tal-Gvern li għandhom jiġu adottati u segwiti mill-Awtorità, u l-Awtorità għandha, kemm jista' jkun malajr, taddotta u ssegwi dawk id-direttivi kollha.”

Kif jidher ċar minn dawn id-dispożizzjonijiet l-iskop tagħhom kien li jobbliga lill-Awtorità li teżegwixxi l-politika (policies) u l-pjanijiet tal-Gvern fil-qasam tat-turiżmu; kif ukoll li tassigura li l-investimenti meqjusa li jgħinu fil-promozzjoni u l-avvanz ta' Malta bhala destinazzjoni turistika, jiġu approvati mill-Ministru.

Kwantu għall-artikolu 10 citat minnek ukoll, ikolli nirrileva li dan ma jgħidx dak sugġerit minnek fl-ittra tiegħek. Int għidt li “l-artikolu 10 huwa konsistenti mal-artikolu 5 fis-sens li l-ministru jista' biss japprova proposti li jitressqu mill-Awtorità u mhux jagħti struzzjonijiet hu dwar l-għoti ta' kuntratti.” L-iskop tal-artikolu 10 mhuwiex li jillimita f'xi mod il-poteri tal-Ministru kif maħsuba fl-Att dwar l-Amministrazzjoni Pubblika. Għall-kuntrarju l-iskop tal-artikolu 10 huwa li jillimita l-poter tal-Awtorità li wahedha tagħmel kuntratti ta' provvista jew xogħolijiet li jeċċedu l-€232,937.34. Għal fini ta' kjarezza, dan l-artikolu jipprovdi hekk:

“10. Hlied bl-approvazzjoni tal-Ministru, l-Awtorità m'għandhiex tagħmel kuntratt għall-provvista ta' oġġetti jew materjal jew għall-eżekuzzjoni ta' xogħlijiet jew għall-għoti ta' servizzi, lil jew favur l-Awtorità, li jkun stmat mill-Awtorità bhala li jinvolvi spiża li teċċedi mitejn u tnejn u tletin elf u disa' mija u sebgha u tletin euro u erbgha u tletin ċenteżmu (232,937.34) jew kull ammont iehor li l-Ministru jista' minn żmien għal



zmien jippreskrivi, hlief wara li jkun gie pubblikat avviż dwar l-intenzjoni tal-Awtorità li taghmel dak il-kuntratt u jkunu nharġu offerti kompetittivi.”

Ghalhekk huwa ċar li l-interpretazzjoni tiegħek tmur għal kollox kontra l-awtoritá’ statutorja li għandu Ministru fuq l-entitajiet li jaqgħu fil-portafoll ministerjali tiegħu, skont l-artikolu 6(1) tal-Att dwar l-Amministrazzjoni Pubblika, u li jien ċert li int familjari miegħu u wżajt, b’mod korrett, meta kont f’kariga eżekuttiva. Il-fatt li l-Awtoritá’ ma tistax taghmel ċertu nfiq mingħajr l-awtorizzazzjoni tal-Ministru ma jfissirx li l-Ministru ma jistax hu jagħti direzzjoni lill-Awtoritá’.

In kwantu għall-fehma espressa minnek dwar il-hlas mahsub fil-kuntratt ta’ servizz mogħti lil Dr Mizzi, fejn inti għedt li huwa eċċessiv, nistqarr li dik hija opinjoni soġġettiva. Wiehed irid iżid ic-ċirkostanzi kollha, inkluż il-htieġa kritika għas-servizz mitlub u l-hiliet ta’ min intalab jipprovdi s-servizzi, qabel jiġġudika l-ingaġġ bil-kundizzjonijiet indikati. Ma narax ir-rilevanza ta’ tqabbil ta’ drittijiet professjonali mal-paga ta’ Ministru, ġaladarba Ministru ma jagħtix servizzi professjonali lill-Gvern, iżda jservi f’pożizzjoni politika skont il-Kostituzzjoni, liema pożizzjoni hemm marbuta magħha salarju speċifiku. Jien bhala Prim Ministru, Membri fil-Gvern tiegħi, predeċessuri tiegħi u Membri fil-Gvernijiet tagħhom b’mod sistematiku approvaw hatriet simili bi hlasijiet oghla minn tagħhom, u saħansitra oghla minn dak li qed jigi skrutinizzat.

Meqjus dan, qieghed nirrespingi bil-qawwa s-suggeriment li jien b’xi mod aġixxejt b’mod mhux etiku, u partikolarment li jien aġixxejt kontra dak li trid il-ligi u bi ksur ta’ dritt statutorju (artikolu 22(1)(a) u (b) tal-Kap. 570) jew li haddimt setgħat diskrezzjonali b’mod li jikkostitwixxi abbuż ta’ poter (artikolu 22(2)). Nassigurak li l-aġir tiegħi f’din il-materja, bħal f’kazijiet ohra ta’ amministrazzjoni pubblika, kien wiehed għaqli, u fl-aħjar interess pubbliku.

Dejjem tiegħek,



Dr Joseph Muscat