



4 March 2021

Hon Anglu Farrugia MP
Speaker
House of Representatives
Valletta

By hand and by email to
anglu.farrugia@parlament.mt

Hon Mr Speaker

**Ruling no. 60 concerning the remit of the
Commissioner for Standards in Public Life**

I refer to your ruling of 2 March 2021 following a request by the Hon Dr Byron Camilleri MP and the Hon Dr Edward Zammit Lewis MP during the sitting of the Standing Committee on Standards in Public Life of 1 March 2021.

I would have greatly appreciated an opportunity to discuss the request with you before you issued your ruling. Had you given me such an opportunity I would have expressed my profound concern that the request was an invitation to you to act in a manner that exceeds your legal powers, and this on the basis of an incorrect premise.

Since you issued your ruling in the House only a day after the request was made without giving me such an opportunity, I now feel compelled to place my concerns about the ruling on record by means of this letter. I fear that the interpretation of art 13(3) of the Standards in Public Life Act that you have given in this ruling could undermine the aim of raising ethical standards that underlies the establishment of my office and that we all aspire to achieve.



1. The ruling is *ultra vires*

1.1 As Speaker, you have authority over proceedings in the House of Representatives. You also have the power to interpret the Standing Orders of the House and to give rulings on such matters. However, your ruling of 2 March 2021 seeks to constrain my remit as Commissioner for Standards in Public Life, which emerges not from the Standing Orders but from the Standards in Public Life Act (“the Act”). It is not within your power as Speaker, or as chairman of the Standards Committee, to interpret a law. It is the law itself which may establish a mechanism for its interpretation, failing which this becomes a matter for the courts.

1.2 The Act establishes the Standing Committee for Standards in Public Life (“the Committee”) under your chairmanship. Article 27(2) of the Act gives the Committee the power to oversee and scrutinise the work of the Commissioner for Standards in Public Life. This is explicitly for the purpose of ensuring that the Commissioner is fulfilling his duties and operating efficiently. This power does not extend to the interpretation of the law, and moreover it is to be exercised by the Committee as a whole, not by its chairperson.

1.3 Article 27(4) of the Act also gives the Committee the power to accept or reject a report presented by the Commissioner for Standards in Public Life and the conclusions therein. The Committee may choose to reject a report on legal grounds, but once again this role cannot be exercised by the chairperson of the Committee alone. The exercise of this role presupposes a discussion of the report by the Committee.

1.4 It is my firm view that, for transparency’s sake, such a discussion should take place in public, and it should be preceded by the publication of the relevant report. Article 27(6) of the Act lends support to this view in that it obliges the Committee to give reasons if it decides to reject my report. Such reasons should be stated in public, which in turn presupposes that the report itself has been made public.

1.5 In your capacity as chairperson of the Committee, you have a casting vote in the case of an equality of votes [art 26(2)]. You may of course choose to explain why you have exercised your casting vote in one way or another. However, the Act does not give you the authority to take decisions in the form of “rulings”, or in any other form, that are binding on the Commissioner for Standards in Public Life. The power to interpret the Act in so far as the Commissioner’s functions are concerned vests in the Commissioner and,



ultimately, in the ordinary courts in the event that anyone should wish to challenge the Commissioner's interpretation of the law.

1.6 Your attention is drawn to art 13(5) of the Act, which states that in the exercise of his functions the Commissioner is not subject to the direction or control of any other person or authority. Your ruling is, in my view, in direct conflict with this provision.

1.7 For these reasons it is my firm view that you have been led into issuing a ruling that you do not have the power to issue, hence it is *ultra vires*. This is particularly ironic considering that the ruling was issued in response to a request claiming that I myself was acting *ultra vires*.

2. The ruling is based on an incorrect premise

2.1 Your ruling is based on article 13(3) of the Act, which provides that: *"The Commissioner shall not proceed to investigate any allegation on a matter about which proceedings are pending before a court or before a tribunal established by law, and shall suspend an investigation if any interested person files a demand before a court or tribunal as aforesaid about the matter under investigation, or if the Court of Magistrates holds an inquest about such matter, or if the Commissioner of Police shall have commenced an investigation about the same matter."* In your ruling you conclude that I should not have continued to investigate case K/017 (detention of journalists at the Auberge de Castille with no explanation and by persons acting in no official capacity) since *"there is no doubt that the matter regarding the facts encompasses proceedings that are still pending before the Court."*¹

2.2 As I have already explained in my report on case K/017, my investigation and the criminal proceedings dealt with two separate and distinct matters.

2.3 My investigation concerned the conduct of former Prime Minister Joseph Muscat in relation to the treatment of members of the media, specifically whether he was in breach of the codes of ethics with regards to the detention of journalists in his office. On the other hand the criminal proceedings concerned the conduct of three individuals who allegedly physically detained the journalists without lawful authority.

¹ Page 11 of the ruling: *"... m'hemmx dubju li l-kwistjoni fuq il-fatti tinkwadra proċeduri li għadhom pendenti quddiem il-Qorti."*



2.4 There was no evidence in the criminal proceedings or in my investigation that linked the three persons charged in court with the former Prime Minister whose conduct was the subject of my investigation. Neither does my report consider the behaviour of the individuals who were the subject of the criminal proceedings. My report specifically excludes any question regarding alleged criminal acts or responsibility therefor by any party involved.

2.5 Article 13(3) of the Act refers to a “matter” (“kwistjoni”) about which proceedings are pending before a court. In your ruling you refer to “facts” (“fatti”). You appear to argue that if two separate matters share some facts in common, they should be treated as a single matter for the purposes of article 13(3). There is nothing in article 13(3) to support such an interpretation. Linking the matter of my investigation (breach of ethics by the former Prime Minister) to the matter of criminal proceedings (charges against three other individuals for illegal arrest, detention or confinement in breach of article 86 of the Criminal Code) is stretching the application of article 13(3) of the Act and confusing issues.

2.6 This is not altered by the fact that some of the persons who gave evidence in court also gave evidence in my investigation, or the fact that I interviewed the three individuals who subsequently faced criminal charges in court. All of these were simply witnesses for the purposes of my investigation and I did not “investigate” any of them, as you erroneously suggest.² As indicated clearly in my report, witnesses who were potentially subject to criminal proceedings were made aware of and exercised their legal right to avoid testifying. It is to be borne in mind that I gathered all the evidence for my investigation prior to my being informed that the police would be investigating the incident or that charges would be issued against the three individuals concerned.

2.7 I note the reference in your ruling to article 428(4) of the Criminal Code, which states that *“If the superior court finds that an appeal entered solely on the ground of want of jurisdiction or of any breach or omission of formalities, is groundless, it shall make a pronouncement to that effect, and shall refer the case to the inferior court.”* On this basis you attempt to refute my argument that no new evidence can be brought forward in the criminal proceedings against Messrs Pisani, McKay and Gauci, now that the proceedings are at the appeal stage. I disagree with the reasoning and the relevance of the section

² Page 10 of the ruling: *“Fost dawn il-persuni hemm persuni illi l-Kummissarju ħass il-ħtieġa li jkompli jinvestiga ...”*



quoted, however the point at issue is that my report can have absolutely no bearing on the criminal proceedings at appeal stage and cannot prejudice the individuals concerned.

2.8 In my view, the principle underlying art 13(3) of the Act is to protect the rights of persons under investigation by the police, persons facing criminal charges in court, and persons involved in civil litigation, thereby avoiding interference in the due course of justice in a particular case. My report does not in any way prejudice the rights of such persons. Your ruling seeks to turn art 13(3) into an instrument to protect people from investigation under the Act even though they are not being investigated by the police or involved in any other proceedings.

Invocation of article 22(4) of the Act

Article 22(4) of the Act states that *“If within a reasonable time, which shall not exceed three months, after the report is made no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, in his discretion, may send a copy of the report and recommendations to the Speaker who shall lay a copy thereof on the Table of the House.”*

It appears that, as a result of your ruling, no action will be taken in connection with my report on case K/017, even though the ruling is *ultra vires* and based on erroneous premises as explained above. There is nothing to indicate that this situation will cease to prevail in the foreseeable future.

Given this, I am attaching a copy of my report on case K/017 to this letter and I am formally requesting you in terms of article 22(4) of the Act to lay it on the table of the House.

I am aware that the report has already been made public, but I believe that at the very least it merits being placed in the public domain through official rather than unofficial means.

I am releasing this letter to the public through the official website of my office.

Yours sincerely,

Dr George Marius Hyzler
Commissioner for Standards in Public Life