

This enquiry was set up on the 12th May 2020 following the resignation of Dr. Charles Mercieca from his employment as public prosecutor at the Attorney General's Office, and its aim was:

- a. To determine where the compilation of evidence of Mr. Yorgen Fenech was held at the office of the Attorney General and what systems are in place relative to restricting the access to the relative the documentation;
- b. To determine where the compilation and any copies made therefrom were kept and to identify the public prosecutors at the said office who had access to the compilation of evidence and copies;
- c. To determine with whom discussions of the compilation were held and whether Dr. Charles Mercieca was ever involved in such discussions or whether in such discussions he was present;
- d. To establish whether the contract of employment of public prosecutors, conditions of employment and the Code of Ethics applicable to Public Prosecutors at the office of the Attorney General provide sufficient safeguards of independence for the public prosecutors;

The Board heard the Attorney General Dr. Peter Grech and assistant Attorney General Dr. Philip Galea Farrugia on oath and from their testimony it emerged that the Office of the Attorney General employs sixteen other lawyers who are assigned work by Dr. Galea Farrugia in the various criminal prosecutions. Dr. Mercieca was employed on the 30th August 2018 as a trainee and eventually as a lawyer from the 2nd January 2020 having duly served his traineeship (copies of the contracts are attached). On the 30th April 2020 he informed Dr. Grech verbally that he intended to leave the office and Dr. Grech, after asking him whether he had any problems at work got the impression that Dr. Mercieca was in a hurry to leave. He eventually submitted the resignation letter on the 4th May and accepted to make up for the not giving notice by forfeiting part of the salary he was owed. During his employment Dr. Mercieca performed well, often insisting on being assigned more demanding work like trials by jury. Dr. Grech said however that these trials are handled by more experienced lawyers.

Dr. Galea Farrugia said that he had chosen Dr. Nadia Attard to assist him in the proceedings regarding defendants brothers Messrs. Degiorgio and Mr. Vince Muscat accused of the homicide of Mrs. Daphne Caruana Galizia. He kept the records of the case in his office under lock and key and Dr. Attard was given a copy of the *verbali* and transcripts of the witnesses in the case. Regarding the compilation of evidence against Mr. Yorgen Fenech he was the one person prosecuting and up to that point did not involve any other lawyer at the office – very recently he assigned Dr. Attard to assist him. Dr. Galea Farrugia said he did not compile any notes on strategy in these cases since they were still at the compilation stage.

The Board also heard Dr. Attard on oath and she confirmed that she had a copy of the Court proceedings against the Degiorgios and Muscat. Early in May she was detailed to assist Dr. Galea Farrugia, appearing in Court with him also on the proceedings against Mr. Fenech. However, she did not have a copy of the Court proceedings in his regard. Dr. Attard and Dr. Mercieca along with two other lawyers had their office in the same room but Dr. Attard insists that she did not discuss these cases (or any other case) with any other lawyer. Dr. Mercieca did not divulge his intention to leave the Attorney General's Office. However, she did suspect that he would leave soon from his attitude especially when they moved to a new office.

Dr. Grech and Dr. Galea Farrugia asked to testify again to say that there was another copy of the Court proceedings in the Registry of the Office but this was always attended to in the sense that the room was never left open without any person in attendance. Therefore, no person could go and inspect the records without them knowing and it appears that Dr. Mercieca did not do so. In any case it would have been easier for him to inspect the relative records in the cabinet in room where he had his office.

The Board heard Dr. Mercieca on oath and he confirmed what was said by Dr. Grech and Dr. Galea Farrugia regarding his employment. It was always his intention to leave the Office at the earliest opportunity because he always wanted to practice what was once called "la libera professione" (not his words). He was approached among others by Dr. Gianluca

Caruana Curran who told him that since he practiced mostly in the financial services sector, he would assign him any criminal work in his firm since naturally Dr. Mercieca had practiced in this field at the Attorney General's office. He insists that he did not involve himself in any of the proceedings regarding the homicide of Mrs. Caruana Galizia and had not searched any papers in the Office in this regard. He left the office on the 5th May and has since appeared in a constitutional case instituted by Mr. Fenech regarding his arraignment.

From a legal point of view, on reviewing the contracts of employment referred to, it is clear that the lawyer employed at the Attorney General's office cannot do any private work. However, there is no clause somehow binding the lawyer after he leaves the office. Consequently, then the issue remains whether the lawyer concerned breaks the Criminal Code (sections 122-3) or the Code of ethics **binding all lawyers**. **These are clearly matters beyond the scope of this enquiry.**

ANSWERS TO THE TERMS OF REFERENCE

Therefore, to answer the questions posed by the terms of reference;

The documents relating to the compilation of evidence of Mr. Fenech at the Attorney General's Office were copies of the Court proceedings and it is clear that the Office holds two copies. Dr. Galea Farrugia has one copy and it is kept under lock and key and the other is kept at the Registry and no one can accede to it freely unless he asks the persons at the Registry to let him or her examine it. It does not appear Dr. Mercieca ever consulted with the file since he was not involved in the relative prosecution. In any case since these were copies of the Court proceedings there was not anything "secret" in the file since of course the original at the Court's Registry is public. Dr. Attard's copy relates the other compilation, that is against the Degiorgio brothers and Muscat. There were no relative discussions at the Office involving Dr. Mercieca.

Finally the Board was asked whether the contract of employment of lawyers at the Attorney General's Office and the Code of Ethics

applicable provide sufficient safeguards of independence of public prosecutors. As already indicated the Board does not think that there are sufficient safeguards the image of correctness of the Office and the lawyers who leave the Office after serving a number of years at that office. The Board therefore recommends that the lawyers employed at the Office be barred for appearing for persons or companies against whom criminal or civil proceedings were instituted during the period in which they were lawyers working at the Office.



JOSEPH AZZOPARDI

Chief Justice Emeritus

1st June 2020