

**The Hon. Mr. Speaker,
The House of Representatives,
Parliament of Malta, Misrah il-Helsien,
Valletta Malta VLT1115**

5th March 2021

Dear Sir,

I refer to your request for advice regarding the surprising letter written to your good self by the Commissioner for Standards in Public Life on the 4th March, 2021. I am assuming that the Commissioner is an official of Parliament and perhaps greater discretion could have been used in his address to the Speaker which would have enhanced the impartiality of his office.

I find rather surprising the contention of the Commissioner that the Speaker should not interpret or engage in an application of the law as that matter is reserved to the Court. That is evidently not so, and the Speaker, where so required, must in his ruling apply the law as he understands it. The Speaker must rule on any parliamentary process or procedure that requires his ruling. The matter was raised in a Parliamentary Committee and his ruling was requested by Members of the House and of the appropriate Committee. He had therefore to rule on the matter and he did so after hearing the submissions made by Members in that regard. In so doing it was not his desire to interfere with the proper working of the Commissioner or to subject him to any direction or control. If his ruling is unpalatable to the Commissioner so be it but that in no manner should prevent him from making the ruling. As the Commissioner knows only too well there is only one way in which the Speaker's ruling may be overruled and that is through a contrary vote in Parliament. Questioning the validity of the Speaker's ruling leads nowhere, especially when this is done by an officer of Parliament itself. It unfortunately only demeans the impartiality of both the office holder and the Speaker, making them parties to partisan politics.

It is evident that from a reading of the Standards in Public Life Act that the Commissioner is not a completely autonomous institution as his report is subject to the approval of the Committee for Standards in Public Life which alone determines the remit, adoption and consequences of such a report. So the raising of the issue by Members in the Committee was in the normal performance of their functions and the Speaker was then bound to give a ruling on the matter so raised. The issue of whether one agrees or otherwise with the ruling of the Speaker is really an irrelevance. The point at



issue seems to me that the Speaker of the House was bound to rule on the matter, and in so ruling he had to apply the law as he understood it and this as has previously been done on several occasions. I add here that I perfectly understand the position taken by the Speaker in the matter. If the investigations involve an inquiry which touches upon an issue that is sub judice then the inquiry should not be proceeded with. This is my clear understanding of section 13(3) of the law. This in order to avoid any apparent conflict between the Court and a parliamentary officer, and to leave the course of justice proceed in the fairest of manner, uninfluenced by other parliamentary proceedings. This not only protects that due and fair hearing requirements in relation to the accused but also in deference to the proper function of the Courts of law.

My considered opinion is that the ruling is certainly intra vires the power of the Speaker and is based on a proper and correct understanding of the law.

I remain,

Yours,

Prof. I. Refalo