

Comment & Letters

Fat lies about small fry



Jason Azzopardi

Jason Azzopardi is a Nationalist MP.

"It is not power that corrupts but fear. Fear of losing power corrupts those who wield it" - Aung San Suu Kyi, *Freedom from Fear*. We can now safely state that we are governed by a government that is being run by an inglorious determination to disfigure the rule of law.

Up until March of last year, the Labour Party and its leader were riding their horses like knights in shining armour, declaring and assuring us that they will fight corruption tooth and nail. We were promised zero tolerance to corruption.

A year later and, in the face of the biggest corruption scandal to hit the headlines in living memory, to the tune of €30 million in loss of revenue to Enemalta and more than €1.5 million in bribes, we are witnessing the real McCoy.

On February 16, the prime minister brazenly declared, as reported in *l-Orizzont*, that he did not want the police to intervene as yet, as the government wanted serenity. Later, he said that "we do not want to send hundreds of families to prison".

Since when does a prime minister of a democratic country that values the rule of law decide who is to be arraigned and what punishment is meted out by the court in case of guilt?

Which nefarious code of ethics is guiding our prime minister in placing himself above

the law and adopting the same obnoxious *forma mentis* of the Sun King in his *L'etat, c'est moi*?

The prime minister is repeating, in a devious way, that the government does not want to go after the small fry. What nonsense and what deceit.

Enemalta officials are public officers or servants in terms of law. The crime of bribery is dealt with in article 115 of the Criminal Code and lays down that "any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled shall, on conviction, be liable to punishment as follows...".

It lists the punishment that should be meted out in three different scenarios: 1) "where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do"; 2) "where the object be to induce the officer or servant to

forbear from doing what he is in duty bound to do" and 3) "where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do".

The Criminal Code, in article 117, makes it very clear that the person who bribes a public officer or servant, in this case the Enemalta employees, shall be deemed to be an accomplice.

Now let us come to the Cock and Bull Story the prime minister and his minions are so fond of repeating about the 'small fry'.

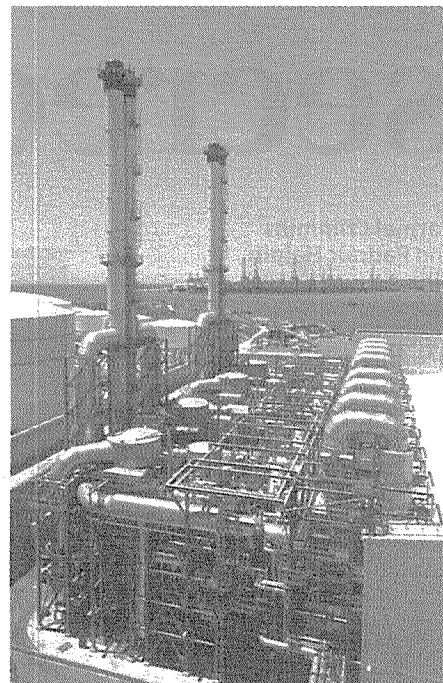
Article 43 of the Criminal Code makes it very clear that "unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal". Thus, the accomplice carries exactly the same criminal responsibility as the principal.

There is no small fry and big fish in the eyes of the criminal law on corruption. One cannot bribe oneself. It takes two to tango.

The police have a duty to arraign and no politician has the right to dictate otherwise.

Article 346(1) of the Criminal Code, dealing with the duties of the police, enunciates that "it is the duty of the police to... collect evidence, whether against or in favour of the person suspected of having committed that offence, and to bring the offenders, whether principals or accomplices, before the judicial authorities". That is exactly what the police did in the case of the bribery regarding maritime licences when, under a PN government, more than 700 people were arraigned. That is what happened when members of the judiciary and VAT Department employees were arraigned under these provisions of the law, among others.

In this case of the theft of electricity and the fraud committed to the detriment of Enemalta, the court can, according to article 28H (1) of the same code, award a suspended sentence and, thus, not impose



The Criminal Code is clear about cases of theft of electricity and fraud to the detriment of Enemalta. Photo: Jason Borg

an effective term of imprisonment but also, at the same time, "obliging the offender to make restitution to the injured party (Enemalta) of anything stolen or knowingly received or obtained by fraud or other unlawful gain by the offender to the detriment of such party by or through the offence to which the suspended sentence relates".

The court may allow not more than six months for such restitution to Enemalta, according to article 28H (2).

The prime minister just cannot keep on fooling all the people all the time.
jason.azzopardi@gov.mt

“

There is no small fry and big fish in the eyes of the criminal law on corruption

”

Renaissance at Faculty of Laws



Kevin Aquilina

Kevin Aquilina is dean of the Faculty of Laws at the University of Malta.

For the Faculty of Laws at the University of Malta, 2013 signifies a renaissance in legal publications. Nine books were published by academic members of the faculty and this without even taking into account other publications such as book chapters, papers in peer reviewed journals, both local and foreign, and articles in magazines and newspapers.

The Maltese legal system is unique, composed of civil law, British statutory law, European Union law and international law, which are incorporated into our law. It is a mixed system of law that has nourished itself from the above-mentioned four legal systems. Sometimes it does happen that the interaction between the four sources of our legal system interact harmoniously; at other

times, tensions manifest themselves and, essentially, it is up to the legislator and the courts to try and ease out such conflicts.

Using different and, sometimes, contrasting sources for our legal system makes the interpretation of the law a complex business. At times, it is not possible to look up English textbooks, journal papers and cases to understand Maltese public law deriving from British statutory law or Italian and French textbooks and cases to comprehend Maltese private law deriving from the civil law family of legal traditions.

The situation is no longer clear-cut as it used to be during the times of the Knights of St John where only one legal system prevailed: the civil law legal system, which traces its origin back to Roman law. Today, Roman law, though still relevant for the study of Maltese private law, has been supplemented by English law, EU law and public international law.

The natural consequence of all this interbreeding between the diverse sources of Maltese law implies that we need to develop our own textbooks and legal teaching materials to better explain the niceties and complexities of what is today the Maltese legal system.

The year 2013 has indeed been a fruitful year for the development of textbooks and legal publications on Maltese law.

University Chancellor David Attard wrote a book explaining Maltese law in a very easy and comprehensible manner. *The Maltese Legal System, Volume I*, published by the Malta University Press, provides an excellent introduction to the study of Maltese law.

As Giovanni Bonello states in the back cover blurb to Attard's opus, "so far, we have somehow done without it. After its publication, we may well ask how that was at all possible".

Raymond Mangion wrote a two-part volume on the *Speakers' Rulings in the Parliament of Malta, First Volume, The Legislative Assembly 1921-1924*. This publication won the National Book Council's first prize in the category of Research and General Books.

Moreover, the National Book Council has given national recognition not only to the author but even to the House of Representatives and the University of Malta as co-publishers of the book.

Like Attard's monograph, this book is published by the Malta University Press.

Notary Mark Sammut, lawyer David Borg and Patrick Cuiquet penned a book that summarises all the case law of the European Court of Human Rights where Malta was a defendant.

Malta at the European Court of Human Rights 1987-2012 was written to celebrate the 25th anniversary of the enactment of the European

Convention Act, the law drafted by Bonello to incorporate the European Convention for the Protection of Human Rights and Fundamental Freedoms into Maltese law. The deputy dean of the Faculty of Laws, Simone Borg's *Conservation on the High Seas: Harmonising International Regimes for Sustainable Use of Living Resources, New Horizons in Energy Law and Environmental Law* is a very important publication for the Faculty of Laws as, apart from other merits, it has been published abroad, by Edward Elgar Publishers, in England.

Ugo Mifsud Bonnici wrote *An Introduction to the Law of Education*. The Malta University Press has

“

Malta has a mixed system of law that has nourished itself from four legal systems

”

also published this book consisting in an indispensable vade mecum for all those interested in deepening their knowledge of Maltese and international education law.

Eugene Buttigieg, associate professor in the Department of European and Comparative Law at the Faculty of Laws, edited *Rights and Remedies for the Consumer in the European Union* and Robert Attard has updated his book on *Principles of Maltese Income Tax Law*.

Philip Sciberras, a retired judge, has published the first volume of an encyclopaedia in the form of a jurisprudential and doctrinal collection of case law and materials organised alphabetically relating to the terminology contained in the Civil Code entitled *L-Alfabbett tal-Kodiċi Ċivili, Volum A*.

This volume covers legal terminology beginning with the letter A.

The present author has co-authored a book together with Pietro Iaquina, a resident academic at the University of Calabria, Italy, entitled *Il Sistema Ambientale, Tra Etica, Diritti Ed Economia*, published by Casa Editrice Dott. Antonio Milani, CEDAM, in Milan, Italy.

Hopefully, 2014 will be as productive as 2013 was in so far as the publication of legal literature of very high quality is concerned. In this way, the Faculty of Laws at the University of Malta continues to assist in the study, research, analysis and development of the Maltese legal system in all its intricacies.