

Debate & Analysis

Maladministration at its best ... but who cares!



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There are four forms of responsibility that emanate from the Adrian Delia v Prime Minister et (Vitals/Steward) court judgment of 24 February 2023: criminal, civil, moral, and political.

Now that the government has lost the court case, some persons are trying to exculpate themselves from any form of responsibility either by stating that they were not a Cabinet member at the time the infamous contracts were signed, or that the devil lies in the detail and that the details were not brought to the attention of cabinet, or that decisions were taken by one minister behind the back of others, or that for government to take action to redress a past government-committed mistake would have costed Malta thousands of millions in damages, as though the government was not originally at fault. These are all nothing but excuses intended to justify the government's mishandling of this case and for not exercising due diligence with state assets.

All cabinet members, all advisors thereto, all public officers involved, and others in the private sector who were somehow complicit in the Vitals/Steward saga, before, during and after the signing of the agreements, including any extensions, changes in original terms, and facilities given thereafter by government, up till the day when the court judgment was pronounced have an impelling case to answer. The public demands the truth, that same truth that has and continues to be denied by the government that has been caught red handed with dissipating the country's assets and taking lightly the administration of the country. It is only a question of determining what type of responsibility/responsibilities it was, to what degree, and what sanction/s to apply.

The government has dragged

for so long its feet and needs to act fast.

What is thus needed to redress this chaotic situation in which government has put the country in, provided that government intends to act in good faith, and I have my sincere misgivings on that, is to establish a board of inquiry made up of three retired judges to investigate the whole sour deal. A law should be enacted forthwith by Parliament that obliges the Prime Minister to appoint a board of inquiry and to subsequently implement in full its recommendations within three months from its conclusion; to afford all required powers of a judicial and administrative nature upon the inquiry board to carry out its terms of reference; and to be granted full and unhindered access to all government documentation, including cabinet minutes and documents; and to establish penal sanctions for those persons who do not cooperate or engage in diversionary tactics with the inquiry. Otherwise, it would be another report by a government appointed board that will remain unimplemented. This has to be understood in the light of the fact that the current government can indeed boast of a robust reputation for sleeping upon reports submitted to it by its own appointed boards and committees!

The Principal Permanent Secretary and Cabinet Secretary should be obliged, through law and subject to a criminal penalty for non-compliance, to provide the inquiry board with all the information that is required of them and of all their officers. All court records in the Delia Prime Minister et case are to be produced in evidence before the board, including the 24 February 2023 judgment itself.

All ministers, past and present, that were in the previous legislature and the current, Cabinet members should be required to give evidence in public before the Board. All those who refuse to do so, should they exercise their fundamental right not to incriminate themselves, should be investigated for any criminal responsibility on their part. The law should provide for a six-month non-renewable maximum period in which the Commissioner of Police / Attorney General should complete their investigations and initiate prosecution should they find any hint of criminal liability and, should this be not the case, they should publish a detailed report why this is so, that ought to be discussed in the House in their presence and with their active questioning and participation. The excessively poor level of accountability in this country

needs to be raised considerably as it leaves too much to be desired.

The inquiry should investigate criminal behaviour of whoever was involved. It should also investigate advice given to government by the Attorney General's Office, the involvement of the Permanent Secretary in the Ministry of Finance and other government officers, and all members of all adjudicating boards involved in the Vitals/Steward saga, including Bank of Valletta appropriate involved employees.

There was indeed a failure on the part of the institutions of the state to investigate. Otherwise, the court would not have arrived at the conclusions it arrived at. The Commissioner/s of Police and Attorney General/s at the time of the whole saga till to date should also be investigated by the Board of Inquiry for any wrongdoing on their part, including dereliction of duties, should this be the case.

The State Advocate should consider ways and means how to recover all the money paid by government to Vitals and Steward in breach of law. He should establish whether any minister or public officer or bank employees ought to pay damages to the state for personal negligence, and whether there was on their part: (a) lack of due diligence, (b) failure to exercise proper oversight, and/or (c) an omission to request additional information before approving or recommending the approval of the agreements in question or howsoever facilitating their implementation in full or in part.

The Commissioner for Standards in Public Life should also establish whether there was any breach of the code of ethics of ministers.

Of course, there are several persons who need to provide answers for this scandal and the faster the government acts to establish such a Board of Inquiry to clean up government, the better. For now, it is Malta's reputation that is at stake. If our institutions function properly – which they clearly don't – then we would not have arrived at such national embarrassment.

Vitals and Steward agreements apart, there are several instances of corrupt practices which are prevalent in Malta that need to change starting from sending cheques out on polling day or a few days before a general election; ministers employing – in breach of the Constitution of Malta and public service rules – more than 700 persons on a position of trust basis; ministers using public monies for their own propaganda; public broadcasting services that serves as

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the mouthpiece of government ignoring impartiality in news and current affairs programmes; the culture of impunity that exists in this country that endorses or condones government maladministration; resort to amnesties given to law breakers; ineffective law enforcement by various state entities starting with the Planning Authority; total and blatant disregard of the Constitution; conflicts of interest galore; millions of euros that are awarded by means of direct orders where friends of friends strike it rich; incompetent persons appointed to high public office; ministers than continuously interfere in the functioning of the civil service and public sector and employing their constituents in government agencies falling within their ministerial portfolio; development permits that are issued in breach of planning law, especially outside the development zone sometimes even with ministers themselves applying for these permits or being in receipt thereof, where prudent judgment should have dictated otherwise; all forms of licences and permits and other favours dispensed during an electoral campaign; etc. etc. The list is too long to reproduce here. And this is only the tip of the iceberg.

Of course, here I am not addressing moral responsibility. Because even it is found that certain ministers, public officers, persons of trust, and others might not have been involved in criminal dealings or in maladministration, or in misappropriation of public funds, or fraud, not to mention corruption, or failure to exercise due diligence or proper oversight over the workings of government, more so when they were privy to pertinent confidential information, does not mean that they have no moral and/or political responsibility to assume. Defrauding government coffers should attract not only a criminal sanction but

a political one as well. Resignation from office is not enough. Naming and shaming, and withdrawal of state honours and other forms of recognition should be resorted to.

This notwithstanding, I remain convinced that government will do nothing of the sort. For government is not interested in arriving at the truth; nor at employing a system of good governance. In the same way that the recommendations of the government appointed: (a) Bonello Commission for the Holistic Reform of the Justice Sector November 2013 report; (b) Board of Inquiry into the Assassination of Daphne Caruana Galizia report of nearly two years ago; (c) Media Reform Committee of last year, have not been implemented, in part or in full, government will continue to ignore these reports and appoint yes-men and yes-women to top offices of the state, at times at exorbitant and utterly unreasonable public expense and extremely and unheard of favourable conditions to the individuals concerned, to ensure that no action of whatever sort or measure is taken to redress gross maladministration, abuse of power, and pilfering of state assets. As things stand, the writing on the wall indicates that there is indeed no hope that Malta will ever move out of this impasse and return to being a country that truly (and not through lip service) respects the rule of law.

Opposition taken for a ride

In the meantime, government has taken successfully the Opposition for a ride when it discussed the Vitals/Steward scandal last Monday in the House of Representatives. By putting this item on the agenda of the House, the government ensured that the Opposition would not be credited by taking this initiative itself. It also ensured, more importantly, that the Opposition would not have tabled a motion of no confidence in the government and that no vote would have been taken. Through such a motion all members of government's parliamentary group would have had to vote against the no confidence in government motion, thereby fully assuming responsibility for the contracts entered into by government with Vitals and Steward. Quite a wise tactic from government and quite a short-sighted strategy of the Opposition that did not table, prior to, or during last Monday's debate, a motion of no confidence in government.

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