

# the notorious 'c' word

BESIDES THE EVERGREEN CONDOMS MACHINE STRUGGLE NOW SYNONYMOUS WITH OUR UNIVERSITY, 2009 WILL BE REMEMBERED FOR ANOTHER 'C' WORD INSPIRED CLASH WHICH HAS DRAGGED OUR CAMPUS INTO THE HEAT OF THE BATTLE. FROM THE BANNING OF STITCHING TO COMPLAINTS ABOUT NAKED MANNEQUINS, EVERYTHING CAME TO A HEAD WITH THE PUBLICATION OF THE NOW NOTORIOUSLY FAMOUS CONTRIBUTION 'LI TKISSER SEWWI' IN IR-REALTÀ, A CAMPUS-BASED NEWSPAPER. AMIDST THE ENTIRE HULLABALOO, NOEL CAMILLERI TALKS TO PROFESSOR KEVIN AQUILINA, HEAD OF THE DEPARTMENT OF MEDIA, COMMUNICATIONS AND TECHNOLOGY LAW, ABOUT SOME OF THE LEGAL ASPECTS THAT GOVERN CENSORSHIP

The *Stitching* saga focused our attention on the controls that theatrical productions have to pass through before appearing on stage. Due to the furore its prohibition caused and the resultant debate about the board responsible for such decision, I ask Prof. Aquilina to explain which Maltese law controls the Board of Film and Stage Classification, and what jurisdiction it asserts over our theatres.

He starts by saying that the main function of this board is established by regulation 42 of the Cinema and Stage Regulations, "which defines the board's authority to classify films and stage productions on the basis of guidelines to be drawn up by the board based on a number of general criteria that relate to morality, literary merits, the general character of the production and the class of persons to whom it is intended."

Prof. Aquilina adds that, "in exercising such function, the board classifies productions in one of six categories, with the extremes being 'U' for suitable to all, and '18' for adults only." In addition, this board can also decide to withhold any film or stage production from public exhibition as happened in the case of *Stitching*.

Prof. Aquilina contends that he agrees "with the board's appreciation of facts after having read the play's script". He continues that had the play been allowed to be staged it "would have breached several provisions of Maltese law, and giving the green light to the play's performance would have meant that the Board of Film and Stage Classification would be permitting a breach of Maltese law each and every time that the play was performed."

Moreover, he refers to a number of cases involving the European Court of Human Rights in which the nature of freedom of expression as expressed in Article 10 of the European Convention of Human Rights is clarified. One such litigation concerned a short film called *Visions of Ecstasy* in the case *Wingrove v. United Kingdom*. This film, which portrays St Theresa of Avila having erotic fantasies involving the crucified figure of Christ, was banned by the British board of Film Classification, an action that was confirmed by the European Court for infringing criminal law.

We move on to the *Ir-Realta* case, and I ask him what law provisions were cited to justify its banning. Prof. Aquilina explains that after reading the piece in question, he could "come

up with a list of several provisions of Maltese law which do not allow the dissemination of such type of writing". Examples of legal provisions which Vella Gera's contribution appears to violate include, *inter alia*, provisions taken from the Criminal Code and the Press Act. Furthermore, he states that the Press Act obliged the University authorities not to permit its distribution once they were aware that its content contravenes criminal law.

Interestingly, when asked whether the insertion of a warning on the front page to alert readers about the adult content would have helped matters, Prof. Aquilina explains that "by putting a warning on the front page to the effect that the publication contains adult content does not solve the problem and is totally immaterial". He emphasises that the editor assumed responsibility when he agreed to publish Alex Vella Gera's short narrative.

In relation to *Ir-Realta's* online publication, Prof. Aquilina says that the internet, contrary to popular perception, is still subject to the country's laws. Besides, "the Broadcasting Authority, for instance, can license broadcasting services on the internet so that such services comply with Maltese law."

He adds that a person can also sue for defamation in the context of comments posted on the web, a case in point being a particular judgment delivered this year by the Court of Appeal.

Dwelling more on the flimsy border between freedom of expression and safeguards against certain abuses, Prof. Aquilina mentions a case in France whereby a television station was closed down for inciting racial hatred. He refers again to the European court, "where in the case (*Otto-Preminger v. Austria*) the Court agreed to the forfeiture of a satirical film which was deeply offensive to Christian believers, even though such a film was intended to be shown late at night in a private cinema."

Ultimately, he stresses the point "that the balance between freedom and restriction depends on a case-by-case basis

and hence it is up to a court to decide upon them. Turning to the need of having laws which clamp down on racial hatred and sexism, I ask such a question even in the light of a controversy that erupted last summer in France involving the French rapper *Orelsan*. Known as the 'French Eminem', *Orelsan* had his albums withdrawn from public libraries after he was accused of having songs that encouraged violence against women. Prof. Aquilina remarks, "these laws are an exception as they are enacted for the common good, in the interest of society at large."

He refutes suggestions that the censorship issue is a question of being fundamentalist or liberal, "but of protecting those vulnerable persons in society from harm to their well-being." At this stage, he illustrates how even on a global level, the International Covenant on Civil and Political Rights provides in article 19, that freedom of expression may be restricted 'for respect of the rights or reputations of others', among other considerations.

Finally, I cannot resist putting one last question about the recent crucifixes saga, which Archbishop Paul Cremona termed as "another form of censorship", and the Swiss referendum on minarets, which Amnesty International has branded as 'illegal'. On the former, Prof. Aquilina says that, "as I see the *Lautsi v. Italy* judgment of the European Court of Human Rights, the Court has imposed its own morality upon the state of Italy", adding that the matter should be left to the discretion of domestic authorities.

As regards the latter, he thinks "that though the Swiss referendum is expressing the will of the majority, this does not mean that the majority can take measures which appear to contravene human rights and fundamental freedoms."

He qualifies that since Switzerland is a party to the European Convention of Human Rights and Fundamental freedoms (ECHR) and Switzerland has entered no reservation on the lines of rendering minarets illegal, Swiss domestic law, when taking on board the minaret prohibition referendum, will be in contravention of its obligations under the ECHR.

He concludes that, "I think the Swiss are in an ambivalent situation which requires rectification from their end."

