



9th March 2018

## Statement by the Chamber of Advocates

The Chamber of Advocates has taken note of the statement issued by the *Association of Magistrates and Judges* and articles that have appeared in the local media and feels it is duty-bound to set the record straight in view of the numerous red herrings and material inaccuracies being made.

First and foremost, it is important to explain that for a law graduate to obtain the warrant to exercise the profession of "advocate", that graduate is subjected to two separate tests, consisting of, a written paper and an oral examination during which candidates are examined by a panel of two judges assigned by the court administration. Candidates are assigned to the panels in groups in approximately equal number in alphabetical order.

Following the written examination held on the 4 of January 2018 the Chamber of Advocates received a report that two candidates who had been found guilty of criminal offences had taken the written examination.

On the 8 January 2018 the Chamber wrote two letters to the Chief Justice, one in respect of each candidate, outlining the nature of the charges brought against each one of them, which charges incidentally were admitted by the accused and attached a copy of the two court judgements. The letters specifically requested the Chief Justice to bring the letters to the attention of the panel of judges assigned to examine the two candidates.

It is our understanding that these letters were duly forwarded to the respective panels of judges.

The two sets of judges declared that the two candidates satisfied the criteria set out in Article 81 of the Code of Organisation and Civil Procedure (Chap. 12 of the Laws of Malta), that states, amongst others, that no person shall be entitled to obtain the warrant to practice as an advocate unless he/she is a person of good conduct and good morals.

All that had to be decided by the judges was simple. Were the two candidates, who had been charged with and admitted to theft and forgery offences, of good conduct and good morals?

Article 81 of the Code of Organisation and Civil Proceedings does not, as the statement by the *Association of Magistrates and Judges* gives the impression, mentions "criminal convictions" or "clean police records". The *Association of Magistrates and Judges* has felt the need to explain to the public at length the definition of a conditional discharge and that this is not tantamount to a conviction. This is totally irrelevant to the matter at issue. In any event it might have also been pertinent for the *Association* to explain that whilst a conditional discharge is not tantamount to conviction, it is still a finding of guilt and the offender is simply discharged from punishment.

The message by the *Association of Magistrates and Judges* is that individuals who have committed and admitted to the crimes of theft and forgery but are "conditionally discharged" are to be considered as persons of good conduct and morals. The Chamber cannot and does not share this position and invites the *Association*, in the best interests of the profession, to withdraw the position taken.

The *Association of Magistrates and Judges* also referred to the fact that the Certificate of Conduct presented by each of the two candidates for the judges' scrutiny was "unblemished". Even this point is in the Chamber's view totally irrelevant. The fact that the crime does not appear on the Police Conduct Certificate cannot, and indeed should not, be construed to mean either that the crime was not committed or that the perpetrators of the crime are to be considered of "good conduct and morals". The Conduct Certificate issued by the Police may well be considered, at best, as *prima facie* evidence of "good conduct", that must be set aside when contradicted by proven facts to the contrary that were made known to the examining judges.

The Chamber of Advocates cannot subscribe to this view either. Conduct Certificates cannot and should not be the only and conclusive basis upon which conduct, and morals are properly assessed.

The Chamber of Advocates is committed towards higher standards of competence and integrity within the profession; to promote these core values as distinctive of the profession; and to protect the good name of the profession. Any attempt to equate theft and forgery with good conduct will certainly not serve to either help in these endeavours nor to improve the public perception of the profession and the justice system as a whole.

It is with regret that the Chamber had to formally and unequivocally reply to the statement made by the *Association of Magistrates and Judges* which places it in conflict with members of the judiciary. However, the issue of good conduct within the profession is a matter on which the Chamber feels it cannot compromise and will not allow any attempt to weaken the high standards of conduct which it shall continue to strive for.

## Stqarrija mill-Kamra ta' l-Avukati

Il-Kamra ta' l-Avukati innutat l-istqarrija maħruġa mill-*Assocjazzjoni tal-Maġistrati u l-Imħallfin* kif ukoll l-artikli li dehru fil-meżzi tax-xandir u tħossha fid-dmir li tistabilixxi l-fatti kif fil-fatt huma, fid-dawl ta' diversi ineżattezzi materjali li ntqalu u li jistgħu ifixklu.

L-ewwel u qabel kollox, huwa importanti li jkun spjegat li biex wieħed jiggradwa bħala avukat u jikseb il-*warrant* biex jeżerċita l-professjoni ta' "avukat", ikun sugġett għal żewġ eżamijiet separati, eżami bil-miktub, u eżami orali li matulu, il-kandidati ikunu eżaminati minn *panel* ta' żewġ imħallfin imqabbda mill-amministrazzjoni tal-qorti. Il-kandidati jiġu assenjati għal dawn il-*panels* fi gruppi ta' madwar l-istess ammont u f'ordni alfabetiku.

Wara l-eżami bil-miktub, nhar l-4 ta' Jannar 2018, il-Kamra ta' l-Avukati irċeviet rapport li żewġ kandidati li kienu nstabu haġja ta' reati kriminali, kienu poġġew għal dan l-eżami bil-miktub.

Nhar it-8 ta' Jannar 2018 il-Kamra kitbet żewġ ittri lill-Prim Imħallef, waħda dwar kull wieħed minn dawn iż-żewġ kandidati, fejn spjegat in-natura ta' l-akkużi li kienu qed isiru fil-konfront ta' dawn iż-żewġ kandidati, liema akkużi incidentalment kienu fil-fatt diġa ammettew għalihom, u ma' l-ittri ġew mehmuża kopji taż-żewġ sentenzi tal-qorti. Fl-ittri, intalab b'mod speċifiku sabiex il-Prim Imħallef jinforma lill-*panels* tal-maġistrati li kienu assenjati sabiex jeżaminaw lil dawn iż-żewġ kandidati b'dawn l-istess ittri.

Nifhmu li dawn l-ittri ġew mgħoddija liż-żewġ *panels* ta' mħallfin.

Iż-żewġ *panels* ta' mħallfin iddikkaraw li ż-żewġ kandidati kienu ssodisfaw il-kriterji kif stabbiliti f'Artiklu 81 tal-Kodiċi ta' Organizzazzjoni u Proċeduri Ċivili (Kap. 12 tal-Liġijiet ta' Malta), li jgħid fost l-oħrajn, li l-ebda persuna m'għandha tkun eliġibbli sabiex tingħata l-*warrant* biex tipprattika bħala avukat jekk din ma tkunx persuna ta' kondotta tajba u b'morali tajbin.

Kull ma kellu jkun deċiż mill-imħallfin kien sempliċi. Setgħu iż-żewġ kandidati, li kienu ġew akkużati b'serq u frodi, u li kienu ammettew għal dawn l-akkużi, ikunu kunsidrati bħala persuni ta' kondotta tajba u b'morali tajbin?

L-Artiklu 81 tal-Kodiċi ta' Organizzazzjoni u Proċeduri Ċivili ma jagħmilx referenza, kif l-istqarrija ta' l-*Assoċjazzjoni tal-Maġistrati u Imħallfin* tagħti l-impressjoni, għal "arresti kriminali" jew "kondotta nadifa". L-*Assoċjazzjoni tal-Maġistrati u Imħallfin* f'hażet il-ħtieġa li toqgħod tispjega fit-tul lill-pubbliku xi tfisser libertà kondizzjonali u li dan ma jfissirx arrest. Dan l-aspett huwa totalment irrelevanti għal din il-kwistjoni.

Kien ikun pertinenti li l-*Assoċjazzjoni* tispjega li filwaqt li l-libertà kondizzjonali mhix kundanna ta' kastig, xorta jfisser li l-persuna nstabet ħatja u li l-persuna kienet sempliciment meħlusa mill-kastig.

Il-messaġġ li qed twassal l-*Assoċjazzjoni tal-Maġistrati u Imħallfin* fil-fatt huwa li individwi li wettqu u ammettew għal reati ta' serq u frodi u li iżda ingħataw "libertà kondizzjonali" jistgħu ikunu kunsidrati bħala persuni ta' kondotta u morali tajbin. Il-Kamra ma taqbilx ma' din il-pożizzjoni u tistieden lill-*Assoċjazzjoni*, biex fl-aħjar interess tal-professjoni kollha, tirtira din il-pożizzjoni li ħadet.

L-*Assoċjazzjoni tal-Maġistrati u Imħallfin* irreferiet ukoll għall-fatt li ċ-Ċertifikat tal-Kondotta li pprezentaw iż-żewġ kandidati għall-iskrutinju tal-maġistrati kien "impekkabbli". Dan il-punt ukoll, fl-opinjoni tal-Kamra, huwa totalment irrelevanti. Il-fatt li att kriminali ma jidherx fuq Ċertifikat tal-Kondotta tal-Pulizija, ma jistax u b'għandu qatt jinftehem li l-att kriminali ma twettaqx jew li min wettaq l-att kriminali issa jista' jitqies persuna ta' kondotta u morali tajbin. Iċ-Ċertifikat tal-Kondotta maħruġ mill-Pulizija jista' jitqies bħala evidenza *prima facie* ta' "kondotta tajba" iżda dan għandu jitwarrab meta jkun kontraditt minn fatti ippruvati li ġew mgħarrfa lill-maġistrati li kienu qed jeżaminaw.

Il-Kamra ta' l-Avukati lanqas ma' din ma taqbel. Ċertifikati ta' Kondotta ma jistgħux u qatt m'għandhom ikunu l-uniku bażi konklussiva li fuqha jitqiesu l-kondotta jew il-morali ta' xi hadd.

Il-Kamra ta' l-Avukati għandha impenn li tiżgura li l-professjoni tkun waħda li tħaddan *standards* għoljin ta' kompetenza u integrità; li tippromwovi dawn il-valuri bħala l-qofol tal-professjoni; u li tħares ir-reputazzjoni ta' l-istess professjoni. Kwalunkwe attentat sabiex serq jew frodi jitqiesu bħala kondotta tajba żgur li ma jgħinuniex f'dan l-impenn u lanqas ma jgħinu sabiex intejjbu l-perċezzjoni li l-pubbliku għandu tal-professjoni u tas-sistema kollha tal-ġustizzja.

Huwa ta' dispjaċir għalina li l-Kamra kellha tirrispondi b'mod formali u inekwivokabbli għall-istqarrija ta' l-*Assoċjazzjoni tal-Maġistrati u l-Imħallfin* għaliex dan qed ipoġġina f'kunflitt mal-membri tal-ġudikatura. Għaldaqstant, kondotta tajba fil-professjoni hija xi haġa li dwarha, il-Kamra ma tista' qatt tagħmel kompromessi u mhi qatt se tippermetti li jkun hemm min jipprova jdgħajjef l-*standards* għoljin ta' kondotta li se nibqgħu nistinkaw għalihom.