

Echoes on the paper entitled

*Judicial Appointment in Malta:
A Historic-Legal Perspective*

by Prof Kevin Aquilina,

carried in *Melita Historica*, Vol. XV No.3, pp. 233-54.

The Commission for the Administration of Justice took exception to some comments by Prof Aquilina and sent the following comments to the editor on 3 June 2011:

**KUMMISSJONI GHALL-AMMINISTRAZZJONI
TAL-ĠUSTIZZJA**

Sir,

1. In his paper entitled *Judicial Appointment in Malta: A Historico-Legal Perspective*, carried in *Melita Historica* Vol. XV No 3 (2010), Professor Kevin Aquilina discusses what he terms as “the Dr Andrè Camilleri case.” The main facts of that case were the following.

Request by Prime Minister for advice

2. By letter of 26 September 2002 Prime Minister Dr Edward Fenech Adami, informed Professor Guido de Marco, President of the Commission for the Administration of Justice, that he intended advising Professor de Marco as President of Malta to appoint two persons as judges of the Superior Courts with effect from 9th October 2002. By the same letter the Prime Minister, in accordance with article 101A (11) (c) of the Constitution of Malta, requested the advice of the Commission on the appointment of the said two persons to the said office. One of the persons mentioned in Dr Fenech Adami’s letter was Dr Andrè Camilleri.

Letter of Advice by Commission

3. After obtaining information regarding the said persons, the Commission discussed the Prime Minister’s request, and by letter of 7th October 2002 replied to the Prime Minister in the following terms. The Commission noted that in his letter the Prime Minister had mentioned the 9th

what amounts to actual practice is not defined at law.” (pp. 243, 244) This point was not to be, and should not be, decided by the Commission. For this reason it would not have been judicious of the Commission to provide a definitive advice on the point in question.

10. In the second place, by the said underlined words in its advice the Commission clearly showed that it did not exclude that Dr Camilleri actually possessed the qualifications, and for the full term required by law. It stated solely that it did not have an indication that he possessed such qualifications. It could perhaps have obtained such indication had it had more time within which to make its inquiries. All this clearly means that the Commission did not at all advise the Prime Minister against Dr André Camilleri’s appointment as judge.
11. It is to be noted that the law does not require the Commission, in the context in question, to provide an advice which is necessarily categorical in favour or against the proposed appointment. In the circumstances of the present case the Commission was evidently not in a position to give such advice.
12. It is finally to be observed that the Prime Minister was not bound by law to abide by the Commission’s advice. It is also to be observed, and emphasized, that in fact the Prime Minister, in appointing Dr Camilleri as judge after he had received the Commission’s advice, did not go against that advice, precisely for the reason that that advice was not against Dr Camilleri’s appointment. Indeed the Prime Minister’s decision to appoint Dr Camilleri appears to have been correct, once the Prime Minister was satisfied, as it must be assumed that he was satisfied, that Dr Camilleri possessed all the qualifications required by law.
13. There is obviously no reason for which the Commission is to apologize to Dr Camilleri. Indeed it is clearly the Commission that is owed a public apology from Professor Aquilina for completely misconstruing the Commission’s communications on this matter and for imputing to it “bad administration.”

Yours faithfully,
Dr Deborah Farrugia
Secretary

Prof Kevin Aquilina was requested to comment on the letter sent by the Commission for the Administration of Justice. His reply, on 28 June 2011, was as follows:

1. The reply of the Commission for the Administration of Justice does not address the main contention in the article namely that the Commission fell foul of maladministration. The bad administration lay in the fact that the Commission discussed Government’s request for advice on the nomination of Dr Andre’ Camilleri for judicial office and gave its advice thereupon without however providing a thorough evaluation and well reasoned opinion on the said nomination (see paragraph 2 of the Commission’s letter to the Prime Minister dated 7 October 2002, a copy of which is attached to DOI Press Release No. 1572 dated 7 November 2002 available at http://www.doi.gov.mt/EN/press_releases/2002/11/pr1572.asp).
2. Although in the said letter (same paragraph 2) the Commission informed the Prime Minister that he had stipulated what it claimed to be a short period within which it had to carry out the evaluation of Dr Camilleri’s nomination, the Commission still elected nonetheless to pass on its advice to the Prime Minister on such nomination whilst in the process shedding doubts as to Dr Camilleri’s eligibility for appointment to judicial office without in any way seeking to investigate and verify the correctness of such doubts. The Commission had sufficient time to ask Dr Camilleri to provide it with further clarifications with regard to his practice of the legal profession as outlined in his *curriculum vitae*. After all, as the Commission states in paragraph 3 of the said letter, it was the Commission itself which had requested the Minister of Justice to ask Dr Camilleri to provide it with his *curriculum vitae*. Hence the Commission, once it entertained doubts as to whether Dr Camilleri had exercised the profession of advocate for the period stipulated in the Constitution, it could still have sought the necessary clarifications from Dr Camilleri but stopped short from doing so. It instead wrote that: ‘*Ghalhekk, fl-assenza ta’ indikazzjoni li Dottor Camilleri eżerċita l-avukatura tul it-terminu rikjest, hemm il-possibilità li tonqos fih il-kwalità preskritta fl-artikolu 96(2) ċitat.*’ Dr Camilleri was not in a position to clarify such doubts as he was never given a right of audience before the Commission nor was he requested to do so in writing. By raising doubts on Dr Camilleri’s

eligibility for judicial office without having carried out a proper investigation to ascertain whether such doubts were well founded or not, the Commission implied that there could have been a problem in Dr Camilleri's nomination in so far as eligibility to judicial office was concerned as he did not appear to comply with the provisions of article 96(2) of the Constitution of Malta which essentially prescribes one criterion for judicial office: having exercised the profession of advocate for twelve years.

3. From a good administration point of view it would have been more proper for the Commission not to have advised the Prime Minister on the matter but to have requested him to grant it an extension of time to adequately carry out its investigations concerning Dr Camilleri's professional practice once it entertained doubts thereupon. However, it elected not to do so: it expressed an opinion on the matter without having undertaken the pertinent examination and verification of the facts at issue thereby prejudging the issue.
4. An analysis of Dr Camilleri's *curriculum vitae* – which is also attached to the aforesaid Department of Information Press Release – indicates that he had practised the profession of advocate at the bar and has also practised the said profession in the various other posts he held, both in Malta and abroad, by, *inter alia*, drafting legislation and giving legal professional advice. From his *curriculum vitae*, it transpired that he graduated Doctor of Laws in 1975 and exercised the profession at the bar for several years. However, the Commission failed to substantiate why it had raised doubts as to the ineligibility of Dr Camilleri for judicial office without identifying those periods where, in its opinion, he did not satisfy the 12 year period of professional practice as required by the Constitution.
5. Once the Commission shied away from giving reasons for its appraisal of the facts at issue, failed to motivate its decision as to why it has arrived at such a conclusion as to the potential ineligibility for judicial office of Dr Camilleri and refrained from calling Dr Camilleri before it or from asking him to address in writing those doubts it had raised, one can conclude from an analysis of Dr Camilleri's *curriculum vitae* and the Commission's doubts thereupon that the Commission was not considering

Dr Camilleri's practice when he was involved in administrative positions he held (even though he might still have been exercising the profession of advocate during this time, even if not at the bar) or when he was working abroad or in both cases. Had the Commission been specific in its advice to the Prime Minister and had it sought to establish the facts of the case prior to pronouncing itself on the matter then it would have been clear to one and all why, in the Commission's view, Dr Camilleri could not potentially have been eligible for judicial office. In the absence of such clarification and verification of the facts at issue, it is legitimate to conclude that in its computation of Dr Camilleri's twelve year period of professional practice, the Commission was only considering practice at the bar and in Malta.

Prof Kevin Aquilina