

How would you describe the standard of the judiciary?

All the judges and magistrates do their best to pull their weight. Of course there are differences between one and another, but by and large I'm fairly satisfied with the team I have...

Are there any that you're unhappy with?

There are a couple who I'm sure could do much better - even I probably could do better - and a couple with whom I could sometimes volunteer advice as to what to do and what not to do.

Judges and magistrates have a code of ethics. Do you believe they should all abide by this fully?

What's the use of having a code of ethics if you don't abide by it? The whole point of having a code of ethics is for the members of the profession to abide by it.

You have one judge and one magistrate who are openly saying they don't see why they should have to abide by it. What do you make of this?

That's a problem for the Commission for the Administration of Justice. As long as they do their job, I can do very, very little about that. Perhaps the executive could look into whether the commission should be given more powers to discipline members of the judiciary.

Have you spoken to the judge and magistrate about this matter?

That's a confidential matter between me and them and I won't discuss it.

Don't you think that you having more powers is the way forward rather than hoping the commission is given more powers?

The disciplining power should rest with the commission. Even I can be disciplined by the commission. It's possible that the commission could recommend certain measures to the chief justice, but that's something which still has to be explored by the executive...

What disciplinary measures do you have in mind? Because all that can happen at the moment is that either a judge is told 'get your act together' or he is impeached. There is no in between.

Since I've been chief justice there have been instances when the commission has drawn the attention of a judge or magistrate to something and in most cases the matter stopped there; either because there was nothing else to be done or else the judge or magistrate fully complied.

In a small jurisdiction like Malta, the measures one can take are limited. However, one possibility is to have a member of the judiciary transferred from one court to another and it being made obvious that this is a disciplinary measure...

But at the moment the commission is toothless...

...I wouldn't say the commission is toothless; that's putting it in a very simplistic way.

These two members of the judiciary are defying it.

I will not discuss these two cases in particular. That's a matter for the commission and

I'm simply talking in general terms. There have been several instances where the commission has made its concerns known and everyone lived happily ever after.

But we are having cases where people aren't living happily ever after and the only alternative is impeachment.

Perhaps it's the people who perceive the commission to be toothless... The commission is not toothless. It has limited powers, but it also has moral authority.

But it can be ignored.

Again, that is putting it too simplistically. Being ignored is not the same as not fully complying with what the commission asks a particular judge or magistrate to do...

You don't wish to talk about these two members of the judiciary and I respect that. But the fact is they are ignoring what the commission has told them.

That's your view and I'm glad you have a view but that does not necessarily mean that I share that view.

How should the judiciary conduct themselves outside the court room?

I believe - and I think most judges and magistrates agree with me - that judges and magistrates are not public figures. First, they are expected to keep a low profile. A lot of things that Tom, Dick and Harry can do - things that are perfectly legal - cannot be done by a member of the judiciary for the sole reason that it might cast suspicion or it might detract from the dignity of the office of a judge or magistrate. Imagine if I decided to gamble in a casino, you would have a headline saying: 'Chief Justice gambling'.

So you disagree with judges going to casinos.

Yes, I would disapprove.

Do you disapprove of them going to nightclubs?

If one is going to a nightclub on a regular basis, perhaps. It also depends on who one associates with... Let's put it this way: the judicial office carries with it, to use a Latin word, a degree of gravitas. Anything which detracts from that detracts from the office and the moral authority of the judge or magistrate.

What about walking into a local council office and protesting about the treatment of someone's development application?

That is your version of events. I was given a different version of events but I don't wish to discuss that particular issue... In general terms the behaviour of a judge or magistrate should be ordinary behaviour without too much ostentation. If I walk into a hospital or whatever I normally queue up like everyone else... I don't see why judges or magistrates should flaunt the fact that they are members of the judiciary.

Do you believe there is any judge or magistrate in the Maltese islands that should be impeached?

No. I, of course, speak subject to any final decision being taken by the commission, but I cannot think of any judge or magistrate who at the moment should be faced with the ultimate sanction of impeachment. Far from it. I wouldn't talk about a good team if that were the case.

Why are some cases taking so long to be decided?

The reasons are many. Some of them are attributable to a lack of control by the judge or magistrate over the proceedings. Others are attributable to the parties. In the case of proceedings before the Magistrates' Court, many delays are attributable to the police. I have had magistrates complaining repeatedly that certain police officers repeatedly do not turn up for certain sittings. The result is that these cases have to be adjourned for up to two months at a time.

Lawyers fail to turn up as well.

Lawyers don't turn up and in some cases have an interest in not turning up.

What kind of interest?

In criminal proceedings, if you can plead and grovel about the length of time proceedings have taken before the court, some may think it improves your chances of getting a lighter sentence - which, of course, shouldn't normally be the case...

What's the solution to lengthy cases?

One of the possible solutions in criminal proceedings is to try and cut down on the length of committal proceedings... Cases are still going through the committal stage even though ultimately they will end up before the Magistrates' Court rather than the Criminal Court. Should we follow the English system where committal proceedings are very much a case of paperwork, with the prosecution handing in copies of statements to defence counsel, saying 'do you accept - shall we go to trial by jury immediately'? That would require an administrative set-up, however, which I think is beyond the current capacity of the Attorney General's Office and the police...

Should the police continue to handle prosecutions?

I find no difficulty (with police handling) the minor cases. But with the more serious cases, perhaps the lack of legal training is now beginning to tell. In England it was abandoned many years ago... the Crown Prosecution Service there has worked by and large. Can we justify having a state prosecution service? That would mean having to quadruple the staff at the Attorney General's office.

It would also mean more police could spend time on solving crime.

That's true... It would also help if magistrates did not have such a heavy workload. I know some magistrates who have to hold sittings every day. It beats me when they can find time to write the judgments. I've made it quite clear to the minister that magistrates are hard-pressed as far as workload is concerned...

Are you happy with the long list of magisterial inquiries?

I don't think anyone should go into a song and dance about this. Many of those magisterial inquiries are simply over trivial cases like breakage of a shop window... unfortunately what happens is that magistrates do not exercise their discretion to refuse to conduct inquiries where the matter is very trivial... Another problem relates to the amount of money being pumped into the appointment of experts. Once an expert performs his function, he has to be paid. Fair enough. But shouldn't certain cases which do not really require a magisterial inquiry or an expert simply be investigated by the police?

So you believe magistrates are launching too many inquiries.

I don't think they're using their discretion well enough, also in the appointment of experts. Experts should be given clear terms of reference... If you have a break-in into a factory for example, what's the point of appointing an expert to assess the value of the entire contents of the factory? Once a valuation of the contents is made, his fee will be enormous. When all you really need to do is establish whether the value inside the factory was more than €230 or €2,329. Because those are the benchmarks.

The magistrates are well aware of this, so they're being negligent in ordering inquiries.

In some cases there has been negligence, yes. Or, perhaps, over-caution. The line of demarcation between over-caution and negligence is sometimes blurred.

But some are obvious.

Some would be obvious. I'm not saying that if I were in the position of that particular magistrate I would not make that particular mistake, but one has to be more careful in appointing experts. They are a drain on the finances of the ministry.

Is it time to get rid of the magisterial inquiry?

No. It serves a good purpose because the magisterial inquiry in delicate cases - those involving the police themselves for example - is important... A magisterial inquiry ensures that a judicial authority has preserved the evidence and at least made a prima facie analysis and decided whether there are grounds for further investigation, prosecution and so forth.

According to the Home Affairs Ministry, 339 Presidential pardons were issued between 2003 and 2008. That's more than one a week. What do you make of this figure?

The Presidential pardon, apart from cases when it is given to enable a person to give evidence against someone else, should only be used in exceptional cases - when there is a clear indication that the court has erred or for narrowly defined humanitarian grounds.

What really worries me, however, is that the reasons for the Presidential pardons are not made available to the public. Technically they could be abused by the executive if no reason is given... the procedure that is invariably followed is that all the relevant departments, including the AG, are asked to give their views but ultimately the minister - advising the President - need not abide by the advice of those departments, or of the AG. I imagine that in the majority of cases he would. But he may not. So Presidential pardons should be opened up to scrutiny.

If you have a rate of one a week, either the system is being abused or too many sentences are incorrect.

It could be abused, yes.

So all details should be published in your view.

If a Presidential pardon is granted, the public should have the opportunity to find out why it was granted...

Do you think there is abuse on behalf of the executive?

I cannot assume abuse unless it's proved. I assume the contrary in fact, that is that things are done as they should be until the contrary is proved.

Is enough effort being made to enforce judgments of the courts of criminal justice in your view?

The enforcement of pecuniary punishments depends very much on the police, who receive the prison ticket if payment is not made within one week. These are piling up and many are not being executed in real time.

What's the reason for this?

I haven't the foggiest idea. I have tried to push the deputy police commissioner to try and ensure there is a speedier execution of judgments or prison tickets. Unfortunately, they simply keep piling up notwithstanding all his efforts.

I'm not looking at it from the venal point of view, but from the point of view that the judgment of the court is not being enforced. Sentences must be enforced. If a person sentenced to imprisonment is immediately taken down, then why should the payment of fines always involve the registrar in charge of the criminal courts in this hassle to try and get the police to enforce it?

I know that the police are overworked and that they have priorities... but a system must be devised whereby these tickets are enforced immediately... If you had to ask me what the system should be, I don't have the answer. But something must be devised.