

Sunday, 13th July 2008

Pending magisterial inquiries

Marse-Ann Farrugia, Judicial Assistant and Legal Secretary, Office of the Chief Justice, Valletta

I refer to the article (The Sunday Times, June 29) entitled 'Over 1,700 magisterial inquiries pending'.

While not wishing to dispute the bare statistics, it is important to put into context the nature and purpose of these so called "magisterial inquiries".

According to the law, the main purpose of such an inquiry, technically called an "inquiry relating to the in genere", is not, as many people believe, to investigate an offence in order to identify the offender. It is, rather, to ensure the preservation of any material evidence that is eventually produced in court.

The investigation of offences is, and remains, the responsibility of the police. Magistrates do not, and have never had, the resources to investigate all the offences to which in genere inquiries refer.

This means that, save in those rare cases where the inquiry relating to the in genere is precipitated by a person other than the Attorney General or a police officer, every such inquiry has a parallel police investigation.

It is this police investigation which, in the vast majority of cases, will ultimately determine whether a person will or will not be charged in court. This also applies to cases where an inquest is held on the body of a person whose cause of death is either violent, suspicious, or unknown.

It also applies where a person dies while in prison or in police custody, or while detained at Mount Carmel Hospital by court order - in all these cases there is also a parallel police investigation.

It is only in very rare cases, such as when the magistrate has reason to believe that the police are not willing or able to fully investigate a particular offence, or where the police themselves are the subject of an investigation, that a magistrate is expected to use his powers to the limit and to investigate the offence in parallel with, or in lieu of, the police.

It is these investigations which should be fast-tracked. Moreover, it is debatable whether, when such an investigation is inconclusive, it is better to draw up the process-verbal and send everything to the Attorney General - with the possibility that it will be archived - or to leave the investigation open and pending.

It is common knowledge in legal circles that the main reason many ordinary inquiries relating to the in genere are not concluded within 60 days is because expert witnesses fail to report within that time.

This, however, hardly ever has any bearing on the police investigation of the offence. Indeed, in many cases the police charge a defendant with an offence before the inquiry relating to the in genere is concluded, whereupon the magistrate concludes the inquiry with whatever material evidence is in hand.

It is therefore quite incorrect to suggest, as the first line of the article does, that the pending "magisterial inquiries" are "delaying justice". For the most part these inquiries are merely an additional safeguard to ensure a judicial presence in the preservation of certain evidence, which is preserved even if the relative proces-verbal is not drawn up within the required time limit.