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## The quest for expeditious justice

Vanessa Macdonald

Chief Justice Vincent de Gaetano at the recent opening of the forensic year at the law courts.

In his small office, Chief Justice Vincent De Gaetano has a sign saying: "It is nice to be important but it is much more important to be nice". This says a lot about someone in a position that could so easily lead to arrogance. In his now established regular interview with Vanessa Macdonald, he recapped the progress of the last year and the challenges still ahead.

*Why are you here? Weren't you one of the three nominees supposed to replace Judge Giovanni Bonello at the European Court of Human Rights?*

All three nominees are still here. Some sub-committee found fault with the list and, as far as I am aware, the government is seeking some ruling on this matter. In any case, all three of us have a lot of work to do and cannot afford to worry about what is happening in the maze of committees and sub-committees of the Parliamentary Assembly in Strasbourg. I am neither particularly worried nor enthused about the whole matter. If you allow yourself to be distracted by these things, it means that your performance is going to suffer. My two colleagues and I still have a job to do here and we simply get on with it. Period.

As far as I am aware, Judge Bonello keeps his position until he is replaced.

*Since we last spoke, there have been a number of subtle but nevertheless important changes that boost the independence of the judiciary. The only point on which you did not make progress is on the way in which members of the judiciary are appointed. What are you pleased about and what are you disappointed about?*

Yes, a number of amendments to the Code of Organisation and Civil Procedure have eliminated the President's and the minister's role in the subrogation of judges and magistrates and, at the same time, allowed for greater flexibility in the assignment and distribution of cases among members of the judiciary. The Rule Making Board under this Code has also been given greater scope for making rules of court. I am pleased that the government is now, at least informally, consulting the Chief Justice on proposed appointments. There is no obligation to do so; I acknowledge that. Still, it is very important that each newcomer fits into the team and is not a misfit. I think this is why, in the past, the Chief Justice was consulted, at least about appointments to the Court of Appeal or the Superior Courts.

Nowadays, of course, the Magistrates' Court has assumed a very important role so, quite rightly, the minister informally consults with the Chief Justice on these appointments too.

On the negative side, I still believe there should be, as I suggested on other occasions, some formal mechanism for the selection of prospective candidates for judges and magistrates, as exists in other jurisdictions such as England, Scotland, Northern Ireland and Ireland. The ultimate decision could still remain in the hands of the Executive if the Executive is so keen to hang on to that power. In many jurisdictions this power has been transferred to the body dealing with judicial appointments.

Granted, the size of the island is a problem as it is often difficult to keep a secret once things start moving. But there should be a more transparent process via a selection board or, at least, a process which is seen to be less political.

This should also be extended to other areas where decision-taking of a judicial nature takes place, such as the Small Claims Tribunal, the Commissioners for Justice and other similar tribunals.

*The fact that there are people now in the judiciary who started off in the Small Claims Tribunal would indicate that the selection system is working...*

That is true but some appointments have raised eyebrows - not because they were inappropriate but they were not the obvious choice.

The Small Claims Tribunal has been overall an unparalleled success, relieving a lot of pressure from the courts and providing a faster and, to a certain extent, a less complicated decision-making process. On the other hand, although the Tribunal is now an integral and important part of the administration of justice, it falls outside the direct jurisdiction of the Commission for the Administration of Justice, as also do adjudicators who sit in the Tribunal. This is an anomaly that should be rectified.

*The number of cases filed before the Small Claims Tribunal has gone down over the past four years. Why?*

This is probably due in part to the fact that some of the cases can now be dealt with by judicial executive letter as well as to the fact that some cases have been sent off to arbitration.

Although there has been criticism about the cost of litigation, on the whole the rise in judicial fees means that people only resort to litigation in court when they have at least a plausible case. This has put a lot of responsibility on lawyers to ensure that they do their homework, give good advice to their clients and only resort to litigation, including appeal, in really deserving cases.

*You recently described an appeal made by the Attorney General as "frivolous" and a "waste of time". Was this comment related to one case or were you trying to make a point*

*about appeals in general? The number of appeals filed by the Attorney General has doubled since the remit for appeals was extended...*

First of all it is perilous to extrapolate from one case to cases in general. I am sure that you will find many, many cases in which I, and other judges sitting in appellate courts, have described the appeal as being "frivolous". That was simply a case where the person who filed the appeal had not done his homework. Normally appeals by the Attorney General are well motivated, despite the enormous volume of work that that office has to deal with and the chronic shortage of staff. The staff there do an outstanding job - and I say this not because I come from those stables.

Prior to the recent amendments you mentioned, the Attorney General could only appeal on points of law; now he can also appeal - in serious cases - on the basis of the facts themselves. This extension was long overdue as the jurisdiction of the Magistrates' Court has expanded considerably over the years and they are now dealing with cases that involve up to 10 years imprisonment, compared to three months as it was many years ago, so the implications are far more serious. If an error is made, which can happen to anyone, why shouldn't the Attorney General have the right to appeal?

Some weeks ago a number of letters appeared in the press criticising a magistrate whose decision was overturned on an appeal filed by the Attorney General. The criticism was very unfair and belies a total ignorance of legal procedure.

Many judgments are overturned or modified on appeal for a variety of reasons. When I sat in courts of first instance, I had my fair share of judgments overturned on appeal.

These decisions of the appellate courts hardly ever reflect on the competence of the judge or magistrate delivering judgment in first instance. To have a few cases reversed or varied out of the hundreds delivered every year does not reflect on the competence of the magistrate concerned.

*The number of pending cases has gone down by a quarter since 1999 but there are still almost 10,900 cases waiting. The numbers are falling but are they falling fast enough - especially for those whose cases have been pending for over a decade?*

Have they been falling fast enough? Yes and no. In civil cases especially, delay does not always depend on the court. You may have one or even both parties applying for the case to be put off for years on end simply because they are contemplating the possibility of an amicable settlement.

However, there is a problem with cases which have been put off for judgment for a number of years. The problem is not equally spread across the judiciary or courts but is concentrated in pockets. The judges and magistrates concerned are trying to tackle them but it takes time.

*You now have the authority to reassign cases. Why don't you take them away from the ones who are slow in delivering?*

I wish it were that simple. To begin with, does it really make sense to penalise a judge who is deciding cases expeditiously by giving him even more work just because someone else is slower? Moreover, there is quality to be kept in mind and not just quantity or statistics. My approach is to ensure that if a judge has problems - which are often of a personal nature - he is not assigned new cases until he clears a number of cases from his backlog.

But the way to attack these pockets is not to shift cases en bloc that have been heard by one judge to be decided by another one. That simply causes problems with the evaluation of evidence, and possibly even further delays. It has to be handled on a case by case basis and you cannot generalise.

I also relieve magistrates of new cases if they have a complex caseload, as happened very recently when I felt it was better to assign all 420 new cases involving alleged fraud of maritime certificates to one magistrate; he has been temporarily relieved of some of his other duties. As long as the number continues to go down, I will be happy. Obviously, everyone would be happier if it were to decrease at a faster rate. Overall, everyone is performing well. There are just one or two judges and one or two magistrates who are slower than others, but that happens in every institution and jurisdiction.

*What about the idea of reducing the pending caseload by bringing in retired judges or magistrates? Why was it never taken up?*

One reason is the difficulty of absorbing them into the system; another is that it might set a dangerous precedent.

I had suggested it myself but, with hindsight, I now realise that that solution would have solved the symptoms but not necessarily the root cause. It would have relieved temporarily pressure on the judiciary but would it have avoided delays piling up again?

*You recently described a court case pertaining to a wall that fell down as an "example of how a case should not be run". It seems part of the delay was due to the court expert's late filing of reports. Doesn't this happen a lot?*

Court experts in civil cases are not appointed with the same frequency and in the same way as they used to 10-15 years ago. Judges quite rightly prefer to have the court expert, where appropriate, go on site and give evidence in court rather than having the evidence heard by the court expert himself if this can be avoided. So in civil cases and, to a lesser extent, in criminal cases the number of court experts has decreased.

The case you referred to involved a series of mistakes which should never have been made in a case dealing with an allegedly dangerous structure. In such a case, time is of

the essence. The thing is either dangerous or not dangerous and the matter should be resolved in a matter of days.

It is the same with cases of spoliation, contempt of court proceedings, warrants of prohibitory injunction.

I hope to introduce a system of lists allocating categories of cases, like spoliation suits and other time-sensitive cases, to particular judges as this would mean their judgments can become much shorter as they would not need to repeat or research all the law and case-law each time. In effect, it boils down to a question of specialisation.

It is a system that has already worked very well in the Family Court and in criminal matters with child abuse cases and other "family related" offences. Obviously, you cannot limit a judge to only one type of case for years on end. But I have discussed this idea of the lists with a number of judges and they have responded favourably. If you give these time-sensitive cases to someone who is writing up a long judgment for a complex case then, obviously, they get held up.

*You would create a sort of "fast check out" lane...*

Yes, call it better "fast track". All judges are generalists but each has his or her own area of specialisation and it is better to tap into that expertise than to expect everyone to be an expert on everything. A few decades ago all you had to know to be a good lawyer was the civil, commercial and criminal codes.

Today lawyers, and as a result also judges, have to deal with complicated cases involving complex issues of financial legislation, shipping law, communications law and a host of other areas of expertise.

*The judiciary is only part of the picture. What about support staff?*

I do not have enough judicial assistants as some have been promoted, like Magistrate Ellul; others have moved. The courts administration requested quite some time ago eight part-time judicial assistants but it takes a lot of time for the administrative side to do the recruitment process. The bureaucracy is demoralising. Finally, the approval for the call for applications to be issued has come through.

*I understand that the capital vote for the Justice Ministry in this year's budget did not include enough money to develop the Montanaro Gauci house as offices for the judiciary. Is this a blow or merely an inconvenience?*

You were actually the first person to mention this to me some time ago. I did not go through the financial estimates. If this is as you say, it would certainly be very disappointing. It is not a blow but it is more than just an inconvenience.

I cannot remember how many times I have sat down with architect Italo Raniolo and his staff to revise the plans for these offices.

Each time I am told that there are other priorities. At present, judges' and magistrates' chambers are spread all over the court building, some of them in very odd places, and are far from uniform or appropriate.

The house in Old Bakery Street would take most of the judges and some magistrates, and free up a number of rooms in the court building.

*What do you see as a priority for the coming year?*

The introduction of consolidated rules of court, the uniform application of pre-trial hearings in civil cases, reducing the time factor in compilations of evidence in criminal cases and generally trying always to work more efficiently.