

Dear Sir,

During the recently held President's Forum, which has been extensively reported both in your newspaper and in other media, Dr. Giovanni Bonello considered it opportune to embark on an address which did not amount to much more than an attempt at denigrating the Maltese courts and in particular the Constitutional Court of Malta for the simple reason that he does not agree with the position taken by the courts on the issue of invalidity of laws. Fr. Joe Borg in his Sunday column of your edition of the 5th May 2013 also raised the matter, while remarking on Dr Bonello's "pungent and acerbic" style

Of course, I have no problem with people who disagree with the opinion expressed by the Constitutional Court on any issue. The Maltese courts are always open to be persuaded otherwise - unlike those who seem to speak as if *ex cathedra*. I do have a problem, however, with shows of contempt and the belittlement of others especially when based upon objectively mistaken information. Since when have pungent and acerbic become synonyms for denigrating and insolent? I do expect that persons who disagree should at least convey correct and precise information and not befuddle the issues raised by colourful and insulting language even if perceived by many as entertaining. What I find surprising is the totally unquestioning stance of most persons, including professors of law, to all that Dr. Giovanni Bonello has said on the issue. Perhaps they fear they might otherwise be subjected to Dr. Bonello's "pungent and acerbic" style should they venture to disagree? If so, it is a style not conducive to encouraging freedom of speech. It is with great reluctance that I therefore am obliged to send in this limited response.

Dr. Giovanni Bonello stated that the Maltese Constitution in Article 6 provides that a law inconsistent with the Constitution is null. At this junction of his address, which was being delivered in Maltese, he was noted rifling through his papers in an attempt to use the precise wording of the Maltese text of the Constitution but he evidently did not find in Article 6 the word he was looking for: viz. "nulla". Yet he still insisted that Article 6 said that such a law is "nulla" (null). As a matter of fact neither in the English text nor in the Maltese text do we find the use of the word "null". In the English text the word used is "void" while in the Maltese text what is used is the phrase "tkun bla effett". I do not consider it appropriate to here enter into the possible implications that this wording may have (and possible implications do exist, especially when combined with the fundamental notion of "personal juridical interest" endorsed by our legal system, as indeed it is by many other jurisdictions). When one is quoting the Constitution to prove a point one is expected to quote the Constitution faithfully.

In second place, Dr. Giovanni Bonello referred to article 116 of the Constitution and stated that this article introduces an exception to the general principle that for the institution of a court action the plaintiff must show a personal interest in the action. Dr. Bonello said that in terms of Article 116, in order to challenge in court the validity of a law on the ground of unconstitutionality the plaintiff is exempted from having to prove any personal interest. Again, Dr. Giovanni Bonello did not cite fully and correctly the said provision which provides as follows:

"A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of article 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such action shall not be required to show any personal interest in support of his action."

Therefore, the exemption is limited to actions for a declaration that a law is invalid for any ground “other than” inconsistency with the human rights provisions. Otherwise, for an action to declare a law invalid on the ground of inconsistency with the human rights provisions, the Constitution requires personal interest in the plaintiff. Consequently, when the Constitutional Court upholds such a requirement it is upholding the supremacy of the Constitution. On the other hand the exemption applies to all such actions, unless on the ground of inconsistency with the human rights provisions, and not only where the action is on the ground of unconstitutionality as stated by Dr Giovanni Bonello.

In the third place, Dr. Giovanni Bonello said that he had searched assiduously but that he did not find any judgment which explained the Constitutional Court’s position. Dr. Bonello did not look hard enough. I refer to the judgment of the Constitutional Court of 8th October 2012 in the case “H. Vassallo & Sons Limited v Avukat Generali et.” paragraphs 19-25 where the Constitutional Court did give its reasons for its position. I do not see why Dr. Giovanni Bonello is necessarily right and the Constitutional Court is necessarily wrong.

One final comment. The annulment of laws across the board following an action brought by one party is being touted as the zenith of constitutional protection while anything less is horror and betrayal. In my view it would be wise to give more thought to the consequences of such a position. But on this aspect I cannot comment further. I do wish, however, that those who can, do so.

More could be added, but what could be added is not for me to add on account of the position I occupy. As I said during the forum, the position is not as simple as Dr Giovanni Bonello tries to make it out to be. In any case, a modicum of humility when one addresses the issues raised would not do anyone any harm, especially when the targets are members of the audience who, because of their office, are unable to respond or to respond as fully as the issues demand.

Yours Sincerely,

Silvio Camilleri,  
Chief Justice