

Sunday, 20th June 2010

Fine-tuning the judicial system

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Malta's judiciary is committed to constantly improving the Maltese court system and to providing access to equal justice to which all Maltese are entitled. As a proud member of that judiciary, I believe we have succeeded in creating a system that protects the rights of all and administers justice in an even-handed manner.

One thing I have learned over my near 30 years of service in the legal field is that justice is not a science; it is an art that requires constant review to keep it relevant and help it to better enforce the values and laws of our nation and the society for which we strive.

The country has produced a number of thoughtful White Papers and reports examining ways in which Malta's judicial system can keep current with its docket.

To be fair, legal process must also be timely. What we need, in my view, are better resources and greater commitment on the part of all those concerned in the legal process to expedite proceedings.

New forms of training are also needed to effectively handle the problems of people trafficking. Those involved in this ugly form of modern slavery should know that the courts will promptly hear the case and sentence appropriately if guilt is found.

Recently, I was honoured to meet with a wide range of court personnel in the US, including their Chief Justice, courtesy of a programme arranged by US Ambassador to Malta, Douglas Kmiec. I was pleased to see how well the Maltese system compared, but the US has developed important systems to ensure speedy trials and a properly supported judiciary.

Some of these systems I believe should be examined further for possible application in Malta. Some relate to dispute resolution and sentencing, and others to administrative procedures and judicial training. I will attempt to touch on each below. Of course, in making comparisons with, or looking for lessons in a system exponentially larger than our own, we must keep in mind what is feasible and suitable for Malta.

To lighten the judiciary's enormous caseload and make possible a more rapid administration of justice, the US has compulsory mediation for certain types of cases, much like we have in Malta. Some US states require mediation for all civil claims. Furthermore, while rights to appeal are guaranteed, the appellate court has discretion where issues are clearly defined to dispense with the case based on written pleadings rather than taking the time and resources to hear oral arguments.

These approaches should be examined in light of our own system of dispute resolution and appellate procedure.

The US devotes tremendous resources to its judiciary to ensure it is well managed, supported and trained, resources that are very limited here. Nonetheless, we should not reject as impossible the concept that we can do more to improve our judicial administration.

In the US, a government-funded Administrative Office, appointed by the Chief Justice, prepares regular policy documents outlining the staffing needs of the judiciary and ensuring those needs are met. Despite limited resources, we must collectively seek to identify how additional resources could decrease trial times and improve functioning of the courts, and to implement the recommendations of legal experts.

On-going judicial training is vital to ensure judges and magistrates remain up-to-date on the latest developments in the law, such as technology and crime, and how judges can better manage their cases. In the US, a Judicial Training College in Nevada offers live and online courses on topics such as opinion writing, sentencing practice, and case flow management.

In addition, all new judges are paired with a senior mentor judge who guides the new appointee on how to write opinions, manage cases and handle lawyers, all with a goal of maintaining a more professional and just system.

We could benefit from a similar system of mentoring here in Malta, with the involvement of our Judicial Studies Committee, which in recent years has initiated such a system on a voluntary basis.

No one questions the quality of our judiciary or our judicial system, but like all things the world over, we must strive to constantly improve and perfect the administration of justice.

As judges, we owe it to Malta's citizens to conduct our business in a manner that allows them to have timely closure in their dealings with the judiciary. Not only is this the right thing to do, but it will also encourage others to invest in Malta.

The spectre of decades-long commercial disputes, now very much a relic of the past, is not an acceptable risk to companies considering investing in a particular jurisdiction. It is also not an acceptable burden for citizens to bear.