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Committee on Rules of Procedure, Immunities and Institutional Affairs

Alleged breaches of the Code of Conduct for members of the Parliamentary Assembly – Decision of the Committee on Rules of Procedure, Immunities and Institutional Affairs on a complaint concerning Ms Rosianne Cutajar (Malta, SOC)

Report

Prepared by the Chairperson of the committee

On 15 April 2021, the Committee on Rules of Procedure, Immunities and Institutional Affairs was asked to examine a complaint from Mr Pieter Omtzigt (Netherlands, EPP/CD) and 28 other members of the Assembly, in accordance with paragraph 22 of the Assembly's Code of Conduct, against Ms Rosianne Cutajar (Malta, SOC).

The complaint refers to two alleged breaches. The first concerns Ms Cutajar's failure to submit her declarations of interests to the Assembly since 2018.¹ With regard to the first part of the complaint, the committee [decided](#) on 2 November 2021 that the failure by Ms Cutajar to submit a declaration of interests since 2018 for four consecutive years constituted a minor breach of the Code of Conduct. The examination of this aspect of the case was closed and the Speaker of the Maltese parliament informed accordingly.

As to the second alleged breach, the signatories of the complaint further contended that Ms Cutajar was widely reported to have been involved in a property deal of Mr Fenech and to have received money for that transaction, and this before the Assembly debate held in June 2019 on "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond", the explanatory report for which mentions in paragraph 37 Mr Fenech's name in connection with the companies repeatedly referred to in the draft resolution and the explanatory report. The complainants maintain that Ms Cutajar should have made a declaration about the contact she had had with Mr Fenech, and that in failing to do so she had committed a breach of Articles 7 (respect for the values of the Council of Europe), 8 (resolution of conflicts of interests)² and 9 (disclosure of conflicts of interests) of the Code of Conduct for members of the Parliamentary Assembly.

¹ Article 18 of the Code of Conduct "Members shall be personally responsible for submitting, at the opening of each session of the Parliamentary Assembly, a declaration of interests by means of the appropriate form. The declaration shall be published on the Assembly's website."

² Following the introduction in 2021 of a new Article 8, the numbering of the articles of the Code of Conduct was changed. The Articles 8 and 9 referred to in the complaint became Articles 9 and 10, respectively.

Relevant provisions

Article 7

“Members shall respect the values of the Council of Europe and the general principles of behaviour of the Assembly and not take any action which would cause damage to the reputation and integrity of the Assembly or its members.”

Article 9 (former Article 8)

“Members shall avoid conflicts between any actual or potential economic, commercial, financial or other interests on a professional, personal or family level on the one hand, and the public interest in the work of the Assembly on the other, by resolving any conflict in favour of public interest; if the member is unable to avoid such a conflict of interests, it shall be disclosed.”

Article 10 (former Article 9)

“Members shall draw attention to any relevant interest by an oral declaration in any proceedings of the Assembly or its committees, or in any relevant communications.”

Article 12 (former Article 11)

“Members shall not promise, give, request or accept any fee, compensation or reward intended to affect their conduct as members, particularly in their decision to support or oppose any motion, report, amendment, written declaration, recommendation, resolution or opinion. Members shall avoid any situation that could appear to be a conflict of interests or accept an inappropriate payment or gift.”

Procedure followed by the Committee on Rules of Procedure, Immunities and Institutional Affairs

On 2 and 3 June 2021, the committee held an initial exchange of views and decided, in accordance with the procedure laid down in the Code of Conduct, to hold a hearing with Ms Cutajar. A letter was sent to her on 18 August 2021 inviting her to attend the meeting on 8 September 2021.

On 8 September 2021, the committee took note of Ms Cutajar’s letter dated 6 September (received by email on the day of the meeting) and in which she, *inter alia*, denied all allegations against her regarding a possible conflict of interests at the time of the PACE debate on the report “Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond” and asked the committee to “suspend these proceedings indefinitely, given that the same subject matter (was) being discussed in the Maltese Parliament”. She pointed out that it would be premature and certainly not in the interest of due process to discuss the matter at this stage, as the allegations and media reports referred to by Mr Omtzigt in his complaint were being investigated by the Commissioner for Standards in Public Life in Malta, whose report had been referred to the Maltese Parliament’s Standards in Public Life Committee. The committee took note of this email and decided to renew its invitation to hear Ms Cutajar at its next meeting on 2 November 2021.

On 6 October 2021, Ms Cutajar resigned from the Parliamentary Assembly.

On 19 October 2021, Ms Cutajar sent the committee a letter in which she expressed her wish to defend herself against the allegations brought before the committee. In particular, she noted that when she delivered her speech during the Assembly debate on Mr Omtzigt’s report, in June 2019, she could not have known that Mr Fenech was involved in the murder of Ms Caruana Galizia. This information had been unknown to her until November 2019, when Mr Fenech was arrested and subsequently indicted in August 2021. As a result, in June 2019 she could not have declared a conflict of interests since the circumstances were not yet known to her. She further noted that she had never intended to defend any individual person, including Mr Fenech, nor any partnerships or companies in which he had had or still had any interest, neither during her speech, nor in any previous or subsequent statements which she had delivered as a member of the Parliamentary Assembly. She also pointed out that Mr Omtzigt’s complaint had been filed almost two years after

her speech. Meanwhile, the investigations had revealed matters which were unknown to her at the time of the Parliamentary Assembly debate on Mr Omtzigt's report. She asked for this case to be considered in the light of the facts that were available and known to her in June 2019. Lastly, she stated that the committee should examine her case based on the Code of Conduct in force at the time when she had delivered her speech.

To conclude, she asked the committee to declare the complaint ill-founded and to dismiss it in its entirety.

On 2 November 2021, the committee held an exchange of views on the complaint on the basis of Ms Cutajar's written submissions and, despite Ms Cutajar's resignation from the Maltese delegation to the Assembly, decided to keep the matter under consideration. The committee further decided to request the Speaker of the Maltese Parliament to provide the committee with detailed information about the ongoing procedure in the Maltese Parliament regarding the case of Ms Cutajar as well as its timeline.

On 6 December 2021, Ms Cutajar informed the committee that the Chairman of the Standing Committee for Standards in Public Life had informed her of the committee's decision in her case and that she had accepted that decision.

On 7 January 2022 the committee received from the Maltese Parliament a detailed timeline, a summary of the national proceedings and a full report on Ms Cutajar's case.³

On 25 January 2022 the committee continued its exchange of views, on the basis of letters from Ms Cutajar and the Maltese Parliament, and decided to give members more time to study the documents. Examination of the case was suspended until the next meeting.

Decision of the Committee on Rules of Procedure, Immunities and Institutional Affairs

On 22 March 2022, the committee deliberated as to whether there had been a breach of the Code of Conduct with regard to the second part of the complaint, and, after voting, found that there had been a serious breach of the rules of conduct set out in Articles 10 and 12⁴ of the Code of Conduct, and decided according to Article 27 of the Code of Conduct to prepare and publish a report and to inform the Speaker of the Maltese parliament accordingly.

Assessment by the Committee on Rules of Procedure, Immunities and Institutional Affairs

The committee wished to point out that the relevant provisions of the Code of Conduct for members of the Parliamentary Assembly concerning conflicts of interests apply to conflicts both existing and perceived. In effect, Article 12 covers not only actual conflicts of interests but also all relevant interests which could lead to a perception that the behaviour of a given member has been influenced by a personal interest.

³ The internal investigation conducted by the Commissioner for Standards in Public Life focused on two allegations. The first concerned a gift of €9,000 which Mr Fenech made to Ms Cutajar in August 2019. The Commissioner concluded, in paragraph 99 of the report, that he was "prepared to accept that the Hon. Cutajar was under no obligation to declare these Euro 9,000 in her ministerial declaration as income from employment, a profession or commercial activity", but that "the position would be different if the recommendations for changes to the code of ethics that [he] made on 29 July 2020 were to be accepted." The second allegation related to the brokerage fee which Ms Cutajar had received in connection with a transaction involving a property in Mdina for which Mr Fenech had signed a promise of sale. The Commissioner concluded in paragraph 140 that "the allegation forming the core of the investigation is proven to the level of a preponderance of probabilities" and "[t]his represents a breach of articles 5.7 and 7.3 of the Code of Ethics for Ministers and Parliamentary Secretaries" [the two articles relating to conflicts of interests].

On 9 November 2021, the Standing Committee for Standards in Public Life adopted the Commissioner's conclusions and decided to impose on Ms Cutajar the sanction provided for in paragraph (a) of Article 28 of Chapter 570 which relates to the admonishment of the person investigated.

⁴ Former Articles 9 and 11 of the Code of Conduct

Disclosure of interests, in addition to promoting transparency, reminds members of the Assembly that there is always a risk that the public or their colleagues may view some of their actions as biased. This was the idea behind the provisions on disclosure of conflicts of interests that already appeared in the first draft of the code of conduct introduced by Resolution 1903 (2012) "[Code of conduct of members of the Parliamentary Assembly: good practice or a core duty?](#)" and have remained unchanged ever since.

With regard to the debate in June 2019, the draft resolution on "Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond" referred in paragraph 3 to the "fundamental weaknesses" in connection with various companies including 17 Black which "received large sums of money from an Azerbaijani national and a company owned by a third member of the consortium".

Paragraph 37 of the explanatory memorandum explicitly stated that the "FIAU reported that 17 Black was owned by Yorgen Fenech, a director of the Electrogas power station and owner of one of the consortium companies".

Ms Cutajar does not deny the fact, and the report by the Commissioner for Standards in Public Life cites it on page 3, that she and Mr Fenech had a business meeting in the first half of 2019, before the Assembly debate took place.

Ms Cutajar maintains in her submissions that at the time of the debate she could not have known that Mr Fenech had been involved in the murder of Ms Galizia. This observation is not directly relevant under the terms of Articles 10 (disclosure of conflicts of interests) and 12 (avoidance of the perception of conflicts of interests) of the Code of Conduct. In order to establish a violation of the above-mentioned articles, it is sufficient to establish that a member of the Assembly did not disclose his or her professional relationship with one of the persons mentioned in the explanatory memorandum, the said person having been identified as the owner of one of the companies implicated in the draft resolution.

The assassination of Ms Caruana Galizia sent shockwaves beyond Malta's borders and was covered by the international media, which followed the investigation closely. In these circumstances, Ms Cutajar, as a member of the Maltese parliamentary delegation, should have acted with greater care to ensure that her participation in the debate did not create an appearance of bias. The committee also took into account the fact that Ms Cutajar did not respond to invitations to give oral testimony to the committee.

The committee therefore concluded that by failing to mention before the Assembly a professional relationship she had had with a person mentioned in the explanatory memorandum, Ms Cutajar committed a serious breach of the above-mentioned articles of the Code of Conduct.

With regard to the payment of a sum of money that Ms Cutajar accepted from Mr Fenech in connection with a real estate transaction, the committee ruled out any discussion of this matter because there was no way to establish whether the payment had been made for the speech she delivered to the Assembly or for promoting some interest or other.

Lastly, the committee also took into account the fact that the range of sanctions listed in the Code of Conduct cannot be applied in this case because Ms Cutajar is no longer a member of the Assembly. It was therefore proposed that further consideration be given to the impact that a finding of a violation of the Code of Conduct against a former member would have, including in the event that he or she were to re-join the Assembly at a later date.