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The revocation of warrants on criminal conviction and the role of the Kamra tal-Periti



K A M R A T A L - P E R I T I

To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community

Following the reading of Magistrate Mifsud's sentence regarding the role of Perit Roderick Camilleri and Perit Anthony Mangion in the tragic death of Miriam Pace, it is pertinent to inform the public about relevant aspects of the law and the role of the Kamra tal-Periti in this regard.

1. Suspension or Revocation of Warrants and Memberships

The most frequent question that the Kamra is receiving from media houses is whether the convicted periti are members of the Kamra and, if so, whether it intends suspending their membership. There are a number of points that need to be clarified for the benefit of the public on this point:

- 1.1. The Kamra is not an association, a club or a union for architects and civil engineers. It is set up by Law as a regulating body of the profession and to act as an official consultant to the State on matters related to the industry.
- 1.2. All members of the profession form part of the Kamra tal-Periti **automatically**, are subject to its disciplinary procedures, and are obliged to follow its directives and code of conduct.
- 1.3. Expulsion from the Kamra would entail expulsion from the profession. Such an expulsion can only happen following the suspension or revocation of a perit's warrant in accordance with the law. It is indeed the Council's role to investigate any misconduct of periti and to establish adequate disciplinary measures that may be necessary to protect the public and the reputation of the profession. With the passing of the new Periti Act, the Council will also have the power, after carrying out an investigation, to delegate the conduct of the disciplinary hearings to a Periti Professional Conduct Board.
- 1.4. Any disciplinary decision of the Council of the Kamra can be appealed before the Court of Appeal, and thus the Council acts as a quasi-judicial body. In this respect, the Council is obliged to adhere to the principles of natural justice enshrined in the Constitution. These include the right to a fair hearing. Failure to abide by these principles would invalidate any disciplinary decision of the Kamra tal-Periti on appeal.
- 1.5. To ensure a fair hearing, the Kamra cannot pronounce itself publicly on the merits of a case until its disciplinary proceedings are finalised. If it does, it would prejudice the relative conduct proceedings.

1.6. It is also pertinent to point out that a perit can lose his or her warrant in one of two ways:

- a) Through a decision of the Council, and eventually of the Professional Conduct Board; or
- b) Through a criminal conviction with a prison term of at least one year, even if suspended.

In the latter case, the revocation would be automatic and would not require a specific pronouncement on this point in the judgement.

The role of the Periti Warranting Board is to execute the Council's or the Court's decision, as applicable, and has no discretionary powers on these matters.

1.7. One of the principles of natural justice is *non bis in idem*; i.e., no legal action can be instituted twice for the same cause of action. In view of this, the Council was unable to proceed with its investigation given that the specific charges were not made known to the Kamra until today.

1.8. In March 2021, the Court had denied the Kamra's request to be granted special access to the magisterial inquiry to extract any relevant information for its disciplinary investigation.

1.9. The Kamra cannot take any ulterior disciplinary measures on points already decided upon by the Criminal Court, as confirmed by its legal consultants and the Office of the Attorney General.

2. What happens next?

The two investigations which had been hitherto suspended due to the criminal proceedings, will be reopened by the Council to determine the following points:

- a) Establish whether the prosecution or the convicted parties will file an appeal against the judgement. If so, the Council will need to await its outcome and proceed accordingly;
- b) Analyse the charges and judgement to establish whether there are any disciplinary merits not covered by the criminal case, including breach of the code of conduct, breach of a directive of the Kamra, professional misconduct or negligence, and bringing the profession into disrepute.

Beyond the merits of the criminal and disciplinary proceedings, the testimony brought before the Criminal Court, particularly that of the Court-appointed experts, has exposed serious flaws within the regulation of the industry that need to be addressed in earnest and with competence. The Kamra shall also continue monitoring the criminal proceedings instituted against the contractor and the worker involved to determine whether they bring to the fore any further systemic failures within the existing chaotic regulatory framework governing the industry.

The Kamra has been campaigning on the need for reforms for several years, and has indeed published its own detailed proposals for reform in May 2019 in line with its legal and moral obligations to advise the State on how best to safeguard the public interest.

More recently, it launched a public consultation on its redraft of the infamous Legal Notice 136 of 2019, which was heavily criticised during the criminal proceedings, and shall shortly be publishing the final amended version having taken on board the feedback it received.