

The Medical Council of Malta: Analysing its Disciplinary and Investigative Functions through the Ruling Spiteri Dottor Stephen v Kunsill Mediku et

Abigail-Marie Farrugia

This article by **Abigail-Marie Farrugia** was previously submitted as part of MCT2001 and is being published with the author's permission. The article examines the role of the Medical Council of Malta (MCM) as a regulatory body responsible for maintaining professional standards among healthcare practitioners. It focuses on the Council's dual investigative and disciplinary functions, which have raised concerns about impartiality and fairness. Central to the discussion is the case *Spiteri Dottor Stephen v Kunsill Mediku*, where the plaintiff argued that the MCM's combined roles breached the right to a fair trial. The court found that the MCM's structure—acting as investigator, prosecutor, and adjudicator—compromised objective impartiality. The article concludes that separating these functions into distinct bodies would better safeguard the right to a fair hearing.

TAGS: Medical Law, Health Care Professions Act, Medical Council

Abigail-Marie Farrugia is a third-year law student at the University of Malta, currently working at the Law Revision Commission and gaining practical experience through notarial practice under the guidance of a notary. Through her studies and hands-on exposure, she has developed a keen interest in the practical application of legal principles, particularly in family and notarial law.

1. Introduction

Located in the former St. Luke's Hospital, the Medical Council of Malta (MCM) serves as a vital authority for the regulation of healthcare professionals in Malta. As a quasi-judicial and independent body, the MCM plays a pivotal role in maintaining the integrity of Malta's healthcare system by establishing and enforcing ethical and professional standards.¹ Having a binding effect on both medical and dental professionals alike, not only do such standards ensure the protection of patients' rights and safety, but they also play a role in preserving the respectability and reputation which is inherent in this line of professions.²

To effectively fulfil this function, the Health Care Professions Act (HCPA) bestows the MCM with a range of investigative and disciplinary powers, allowing it to effectively address breaches of these professional standards. However, this dual investigative and disciplinary role has not been without controversy, with the MCM facing repeated allegations, instituted by medical practitioners, of exceeding its statutory authority and challenging its actions as *ultra vires*. Such claims were made in the case of *Spiteri Dottor Stephen vs Kunsill Mediku et*,³ where the primary point of contention revolved around whether the exercise of the powers granted to the MCM infringed upon the plaintiff's fundamental right to a fair trial.

2. Key implications of *Spiteri Dottor Stephen v Kunsill Mediku et*

The landmark case of *Spiteri Dottor Stephen vs Kunsill Mediku et* revolved around the interplay between the MCM's regulatory authority as established by the HCPA and the constitutional guarantees of fundamental rights to every individual, particularly the right to a fair trial contemplated in Article 39 of the Constitution of Malta and Article 6 of the European Convention of Human Rights (ECHR). The instituted inquiry saw Dr. Spiteri being accused of granting medical certificates to individuals not only prior to but also without conducting the required examination and found guilty of professional and ethical misconduct under Articles 32(1)(b) and (c) of the HCPA,⁴ based on his failure to adhere to and respect the professional and ethical standards as prescribed by the MCM in the Ethics of the Medical Profession Regulations.⁵

The main point of contention before the First Hall of the Civil Court centred around the MCM's simultaneous role as an accuser, investigator and adjudicator in inquiries held before it. The plaintiff argued that this was a typical case of *nemo iudex in causa sua*, with the MCM taking on both a prosecutorial and an adjudicatory role, thereby impeding and infringing upon his fundamental right to a fair trial.

¹ Health Care Professions Act, Chapter 464 of the Laws of Malta, Article 10.

² Medical Council, <<https://medicalcouncil.gov.mt/en/the-council/our-mission/>> accessed 28 December 2024.

³ 175/2020 *Spiteri Dottor Stephen vs Kunsill Mediku et*, Civil Court (First Hall) 13 June 2023.

⁴ HCPA (n 1) Article 32(1)(b), Article 32(1)(c).

⁵ Ethics of the Medical Profession Regulations, S.L. 464.17, Regulation 17.

3. Composition and Functions of the Medical Council

Established by Article 9 of the HCPA, the MCM is composed of a mix of individuals enacted by different parties and entities. The Prime Minister is bestowed with the task of appointing a President, both a licensed medical practitioner and a licensed dental surgeon, and two individuals from the general public who are not healthcare professionals whilst the University of Malta, as an entity, is responsible for appointing another medical practitioner. The last seven members, five of whom are medical practitioners and two who are dental surgeons, are to be elected from amongst all of their peers to represent them on the Council.⁶ Such a mix serves as an indispensable element to ensure that all spheres of the public are adequately represented within the Council, allowing for diverse views and perspectives to be applied and presented throughout proceedings.

The HCPA establishes numerous and varying functions to the MCM, including making recommendations to the President regarding both the granting but also revocation of licenses to medical and dental professionals,⁷ maintaining and publishing both registers for dental surgeons and medical practitioners but also specialist registers,⁸ communicating with other European Union (EU) Member States regarding investigations into serious breaches by nationals from such other EU Member States and any related penalties which may be imposed,⁹ and advising the Minister of Health, when so requested, on matters dealing with the dental or medical profession.¹⁰

However, the main points of criticism regarding the MCM's procedural aspects rest in the exercise of its investigative and disciplinary functions. Despite being expressly prescribed and regulated by the HCPA, questions regarding the impartiality of the MCM's inquiries arise due to this intertwined nature as in the end, it is the same Council, albeit through sub-committees, who is not only investigating but also adjudicating and, in some cases, even accusing.

4. Investigative Powers of the Medical Council

The MCM's primary investigative function is expressly granted by Article 31 of the HCPA.¹¹ Interestingly, this investigative function is granted to all the Councils established under the HCPA¹² and is not limited solely to the MCM. It bestows these Councils with the authority to investigate 'any allegation of professional misconduct or breach of ethics by a health care professional falling under its supervision'.¹³ In the case of the MCM, it is granted the power to not only institute but also carry out investigations on medical practitioners or dental surgeons if a complaint is made regarding breaches of ethics or professional misconduct. However, a wider scope of investigative power is granted specifically to the MCM under

⁶ HCPA (n 1) Article 9.

⁷ *ibid* Article 10(1)(a), Article 10(1)(b).

⁸ *ibid* Article 10(1)(c).

⁹ *ibid* Article 10(1)(e), Article 10(1)(f), Article 10(1)(g), Article 10(1)(h).

¹⁰ *ibid* Article 10(1)(j).

¹¹ *ibid* Article 31.

¹² *ibid* Article 15, Article 21, Article 26.

¹³ *ibid*.

Regulation 4(1) of the Medical Council (Erasure of Names Procedure) Rules.¹⁴ This wider scope allows the MCM to investigate claims of improper conduct and unfitness to exercise the medical profession due to physical or mental infirmity, as well as medical practitioners being convicted of offences bearing a punishment of more than a year of imprisonment or offences listed under Articles 198 to 209 of the Criminal Code.¹⁵

Such investigations can be instituted both on the MCM's own accord but also by formal complaints made by other individuals or even third parties. By way of example, in the case of *Dr Johanna Van't Verlaat vs Kunsill Mediku Malti*,¹⁶ it was the patient, acting as an injured party, who instituted the complaint against the neurosurgeon for failing to be present at the operating theatre for his scheduled operation whilst he was under anaesthesia. Moreover, Article 31(5) also clearly stipulates that the complaint need not necessarily be instituted by an injured party.¹⁷ In fact, in *Spiteri Dottor Stephen vs Kunsill Mediku*, the complaint to the MCM was made by Chris Peregrin, the head of the local newsroom which had received information regarding Dr. Spiteri's alleged wrongdoing.¹⁸ Since no prejudice was suffered by Peregrin in his personal capacity, then he could not be considered as an injured party to the case.

Regardless of who institutes the claim, the preliminary procedure, which must be followed both by the MCM but also by the complainant himself, remains the same. According to Regulation 4(2), in the cases where the complaint relates to 'conduct or unfitness on grounds of infirmity',¹⁹ such a complaint must be submitted to the Registrar on oath and its validity must also be attested to and confirmed on oath.²⁰ Once submitted, the Registrar is obliged to inform both the practitioner about the complaint, allowing sufficient time and opportunity to present submissions to the Council, but also the MCM.²¹ Upon being presented and duly notified of the complaint, the MCM is tasked with deciding whether it merits further investigation. If closer scrutiny is deemed necessary, the complainant is required to present evidence against the particular medical practitioner named in the complaint which acts as the basis of the inquiry launched by the MCM.²² Consequently, in accordance with Regulation 5(1), once inquiry proceedings are duly launched, the practitioner must be served with a proper notification of inquiry, bearing the date, location and a clear explanation of the subject of inquiry.²³

In an effort to uphold the practitioner's right to a fair trial, all MCM proceedings are to be held in public except when the MCM considers it expedient to substitute this public element with a more private one.²⁴ Notably, these inquiries are held before the MCM which also holds the legal authority to decide whether they are held in public or behind closed doors. This system, despite being designed to ensure impartiality and fairness in the MCM proceedings, still contains elements of potential bias. Such right is further cemented under Regulation 10(1), which stipulates that all parties involved in MCM proceedings are entitled to have and be assisted by legal representation for the duration of the inquiry, with the accused practitioner also reserving the right to receive aid from a fellow professional.²⁵

Notably, once the preliminary procedure is concluded, the elements of the inquiry

¹⁴ Medical Council (Erasure of Names Procedure) Rules, S.L. 458.08, Regulation 4(1).

¹⁵ Criminal Code, Chapter 9 of the Laws of Malta.

¹⁶ 948/2009 *Van't Verlaat Johanna vs Kunsill Mediku Malti*, Civil Court (First Hall) 29 May 2012.

¹⁷ HCPA (n 1) Article 31(5).

¹⁸ *Spiteri Dottor Stephen vs Kunsill Mediku et* (n 3).

¹⁹ S.L. 458.08 (n 14) Regulation 4(2).

²⁰ The Medical Council, 'Guidance on How to Lodge a Complaint with the Medical Council Malta' (medicalcouncil.gov.mt, October 2021) <<https://medicalcouncil.gov.mt/wp-content/uploads/2024/03/Guidance-on-how-to-lodge-a-complaint-October-2021.pdf>> accessed 28 December 2024.

²¹ S.L. 458.08 (n 14) Regulation 4(3).

²² HCPA (n 1).

²³ S.L. 458.08 (n 14) Regulation 5(1).

²⁴ *ibid* Regulation 8.

²⁵ *ibid* Regulation 10(1).

procedure share a strong resemblance and likelihood to those of a court trial. The inquiry commences with the Registrar reading the charge with which the practitioner is being accused of and the President, acting like a judge in a court trial, asking the practitioner whether he admits to the charge.²⁶ This admission or lack thereof is essential as, if the practitioner admits to the charge, the MCM is given the power to proclaim its decision, thereby concluding the inquiry in its initial stage.²⁷ If, however, the practitioner ‘refuses the charge’ or ‘fails to attend without just cause’, the MCM is given the power to duly proceed with the inquiry.²⁸ The rest of the procedure is stipulated in Regulation 13 which establishes 4 distinct stages which must be adhered to during the inquiry for it to be formulated and carried out according to law.²⁹ The first two stages involve the presentation of witnesses, both in defence and in support of the charge brought before the MCM, which are all liable not only to cross-examination by both parties, depending on which side presents them to the MCM, but also to answer any questions posed by members of the MCM.³⁰ The third stage involves the practitioner making his own defence and presenting it to the MCM.³¹ However, this is not the first time that the practitioner can directly address the MCM, with Regulation 13(b) bestowing the practitioner with the right to directly present his own evidence to the MCM, as long as this is done prior to the submission of witnesses in his defence.³² This concludes the inquiry procedure, with the fourth stage involving the MCM reaching a decision and communicating it to the parties involved.³³

In *Spiteri Dottor Stephen vs Kunsill Mediku*, the above-mentioned procedures were rigorously followed to a ‘T’, showing complete adherence by the MCM to the procedures established by law.³⁴ Dr. Spiteri was presented with a notice of inquiry, clearly clarifying the date and location of the inquiry along with the subject matter which revolved around a complaint of unethical behaviour. Moreover, this notice also informed him of his right to seek both legal aid but also professional support from a member of his own profession.³⁵ Similarly, procedures regarding the hearing of the inquiry itself were also adhered to, with the inquiry taking place in front of the President of the MCM and two other members of the MCM: a medical practitioner and a layman. As stipulated in the above-mentioned Regulations, the MCM called its own witnesses and made its own submissions, allowing Dr. Spiteri to cross-examine them and to bring his own evidence and witnesses.

5. Disciplinary Powers of the Medical Council

As mentioned previously, the HCPA does not solely establish the MCM, but establishes a number of Councils, each dealing with a particular group of healthcare professionals.³⁶ In fact, Article 5 of the HCPA bestows all of these Councils with the power to conduct special surveillance of the practitioners falling under their authority.³⁷ With regards to the MCM, such practitioners include both medical practitioners and dental surgeons. Since it is the

²⁶ *ibid* Regulation 11.

²⁷ *ibid* Regulation 12(1).

²⁸ *ibid* Regulation 12(2), Regulation 12(3).

²⁹ *ibid* Regulation 13.

³⁰ *ibid* Regulation 13(a), Regulation 13(b).

³¹ *ibid* Regulation 13(c).

³² *ibid* Regulation 13(b).

³³ *ibid* Regulation 13(d).

³⁴ *Spiteri Dottor Stephen vs Kunsill Mediku et (n 3)*.

³⁵ *ibid*.

³⁶ HCPA (n 12).

³⁷ HCPA (n 1) Article 5.

MCM's responsibility to survey and ensure that its 'subjects' are adhering to the standards and procedures set out by law, the MCM is also awarded the power to exercise a disciplinary function over its practitioners.

However, this function can only be exercised as a result of the conclusion of the MCM's investigative power. According to Article 32 of the HCPA, such a disciplinary function can be exercised in three scenarios: firstly, if it transpires that the practitioner so accused has been convicted of a crime punishable by more than one year of imprisonment or of a crime stipulated in articles 198 to 205 or articles 206 to 209 of the Criminal Code³⁸; secondly, if the MCM has returned a guilty verdict for professional or ethical misconduct; and finally, if it arises from the inquiry conducted by the MCM that the particular practitioner has shown a lack of respect to the professional and ethical standards applicable to him.³⁹

The MCM's disciplinary function lies in the power bestowed by Article 32 to impose five different measures or sanctions to practitioners who are found to be the subject matter of any of the three scenarios mentioned previously.⁴⁰ These measures range from erasing the medical practitioner's name from the register, permanently or temporarily and the consequential withdrawal or suspension of the practitioner's license,⁴¹ issuing a pecuniary penalty to the practitioner,⁴² cautioning the practitioner about their behaviour⁴³ and finally, ordering the practitioner to undergo a period of training or supervised professional practice.⁴⁴ Notably, Article 32 clarifies that the MCM may impose 'any one or more' of the above-mentioned measures, highlighting their non-exclusivity and the authority of the MCM to impose several punishments for a singular breach or offence.⁴⁵ Such an option is routinely chosen by the MCM, which generally punishes severe cases of professional misconduct by not only imposing a fine, but also attaching a temporary or permanent suspension and consequential erasure from the register. In fact, in accordance with the Medical Council (Penalties) Regulations, if a medical practitioner or dental surgeon fails to pay the fine imposed as a result of an MCM inquiry within three months, then the MCM is authorised to erase the individual's name from the register, which name can only be reinstated if the fine is paid in full.⁴⁶

It was this disciplinary function which was criticised in *Spiteri Dottor Stephen vs Kunsill Mediku et*, with the plaintiff, Dr. Spiteri, arguing that the MCM should not have the jurisdiction to hear and adjudicate inquiries. His argument stemmed from the fact that the sanctions which are by law imposed by the MCM are of a penal nature rather than an administrative one and thus, inquiries which can lead to the bestowal of such sanctions are to be held in front of a competent Court rather than the MCM, in this case the Criminal Court. In response, the MCM held that under Article 33 of the HCPA, its investigative functions 'shall be without prejudice to any other criminal, civil, administrative or disciplinary proceedings', consequently separating the Council's own investigations from those undertaken by the Criminal Court.⁴⁷ Moreover, this separation is also guaranteed as the Criminal Court and the MCM are two distinct bodies which give equally different disciplinary sanctions, with the MCM giving administrative sanctions whilst the Criminal Court giving penal sanctions. In determining the true nature of the sanctions imposed by the MCM, the Court made reference to *Orlen Lietuva Ltd v Lithuania*, where the ECHR held that penal sanctions can only apply to criminal offences and not to administrative ones.⁴⁸ The

³⁸ Criminal Code (n 15).

³⁹ HCPA (n 1) Article 32.

⁴⁰ *ibid*.

⁴¹ *ibid* Article 32(1)(i), Article 32(1)(ii).

⁴² *ibid* Article 32(1)(iii).

⁴³ *ibid* Article 32(1)(iv).

⁴⁴ *ibid* Article 32(1)(v).

⁴⁵ HCPA (n 36).

⁴⁶ Medical Council (Penalties) Regulations, S.L. 464.18, Regulation 3, Regulation 4.

⁴⁷ HCPA (n 1) Article 33.

⁴⁸ *Orlen Lietuva Ltd v Lithuania*, App no 45849/13 (ECtHR, 24 April 2019).

Civil Court continued to explain that to determine whether an offence is criminal in nature and thus, whether it is subject to the provisions of Article 6 of the ECHR, one must apply the Engel criteria as established in *Engel and Others v the Netherlands*.⁴⁹ Taking into account 'the legal classification of the offence under national law',⁵⁰ 'the very nature of the offence'⁵¹ and 'the nature and degree of severity of the penalty'⁵² that can be incurred, the Civil Court ruled that the breach of professional and ethical behaviour according to pre-set standards is not tantamount to a criminal offence due to their restrictive applicability solely to medical practitioners and dental surgeons.

6. Judicial findings

As stated previously, the main point of contention of the *Spiteri Dottor Stephen vs Kunsill Mediku et* case centred around the true independence and impartiality of the MCM. Although this supposed impartiality was put into question throughout the whole trial, it became even more evident when discussing the right of appeal underlined in Article 36 of the HCPA⁵³ which, as stated in *Dr. Frank Portelli v Kunsill Mediku*, '*jeżisti biss fil-każ u fl-eventwalità illi l-Kunsill Mediku fid-deċizzjoni tiegħu jiddeċiedi li isem ta' persuna jithassar mir-registru relattiv*'.⁵⁴

Therefore, since this right of appeal is not an automatic right and is only granted in instances where the practitioner's name is permanently struck off the register, the impartiality and independence of the MCM is even more paramount. As established in *Albert and Le Compte v Belgium*, a body who is bestowed with not only investigative and disciplinary functions, but also accusatory power can never adequately satisfy the criterion of objective impartiality.⁵⁵ Given that the MCM '*minbarra li investiga u għandu l-poter li jiġġudika lill-istess esponenti fejn jista' saħansitra jitlef il-warrant tiegħu, saħansitra xlietu hi meta ħarġet l-akkużi fil-konfront tiegħu*',⁵⁶ the Civil Court ruled in favour of the plaintiff, holding that his right to a fair trial contemplated under Article 6 of the ECHR and Article 39 of the Constitution had been compromised during the proceedings of the MCM.

7. Conclusion

As discussed throughout this article, the disciplinary and investigative roles of the MCM have been the subject of varying levels of criticism, especially in raising concerns about the respect for the fundamental right to a fair hearing. To effectively address such concerns, it would be beneficial to establish separate bodies responsible for different areas of the investigative and disciplinary functions of the MCM as it 'cannot reasonably be expected to fulfil the roles of complaint recipient, processor, investigator, prosecutor, judge and jury'⁵⁷ all at once whilst ensuring a fair and transparent process.

⁴⁹ *Engel and Others v the Netherlands*, App nos 5100/71; 5101/71; 5102/71; 6354/72; 5370/72 (ECtHR, 8 June 1976).

⁵⁰ S.L. 464.18 (n 46).

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ HCPA (n 1) Article 36.

⁵⁴ 18/2009 *Dr. Frank Portelli vs Kunsill Mediku*, Court of Appeal (Inferior) 27 April 2010.

⁵⁵ *Albert and Le Compte v Belgium*, App nos 7299/75; 7496/76 (ECtHR, 10 February 1983).

⁵⁶ 25/2017/1 *Rosette Thake et noe vs Kummissjoni Elettorali et*, Constitutional Court 8 October 2018.

⁵⁷ Department of Health, 'Good doctors, safer patients' (choiceforum.org, 2006)

<<https://www.choiceforum.org/docs/saferpatients.pdf>> accessed 30 December 2024.



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