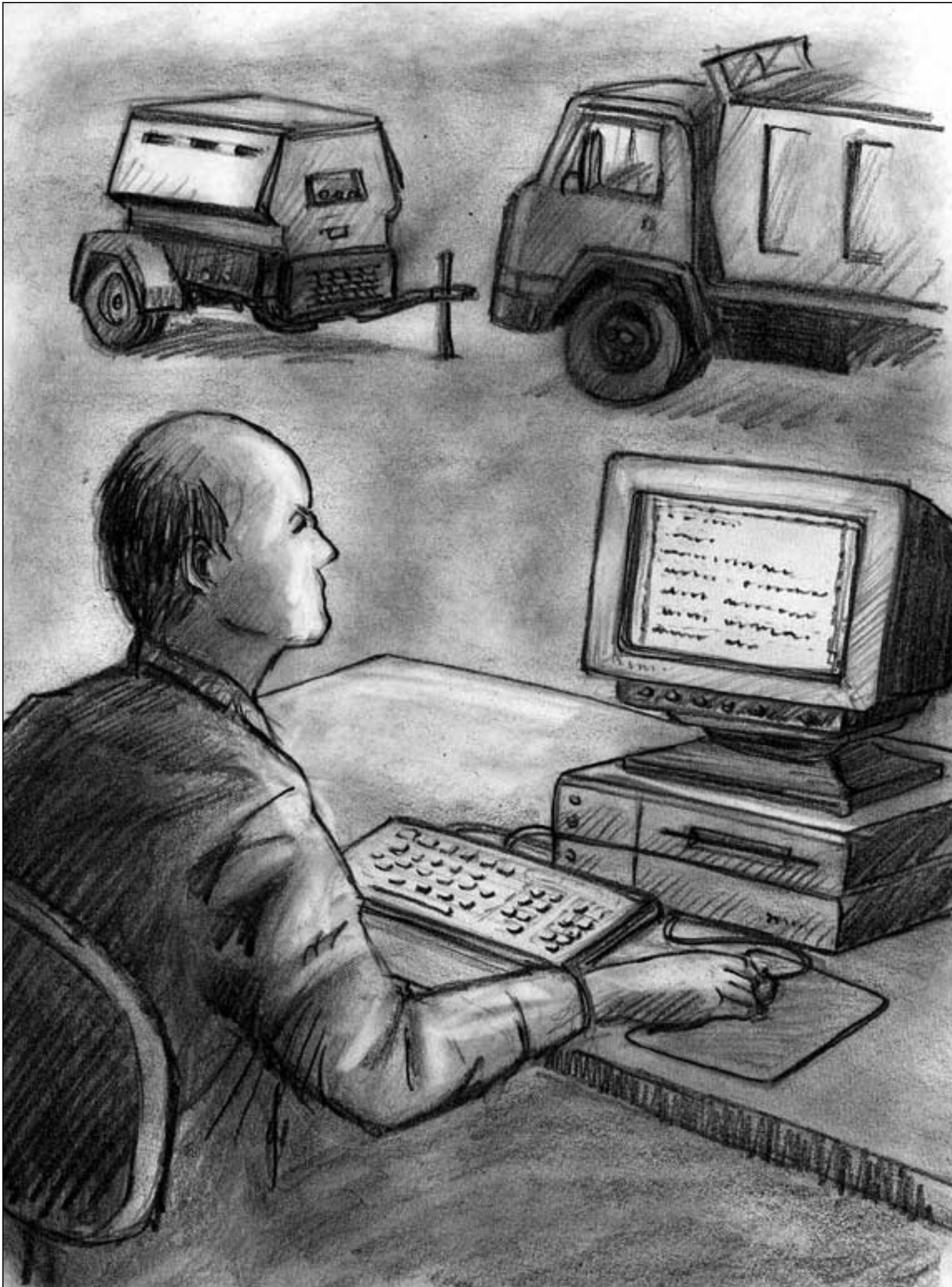


# The AWTs scheme



**In this final excerpt of the minority report submitted by Dr Tonio Azzopardi, concluding his deliberations about Joseph R Aquilina, C.E.O of the E.T.C. and enumerating in detail the reasons why on many counts, he could not bring himself to agree with the majority report of the main commission on allegations' of abuse in the Auxiliary Workers' Scheme.**



Continued from page 9

Page 23 of the main report of the Commission reads as follows:

"As the Chief Executive, if Mr Aquilina really believed the contents of the letter, he should have immediately opened a file about the matter and formally presented to the board of directors, rather than treat it as a matter between himself and Mr Jones."

I don't agree completely with this opinion. Mr Aquilina's duty was to investigate the veracity of the contents of the letter, irrespectively of what he believed. As long as he reacted in a reasonable way, it was up to him as Chief Executive to select the method, the time and the occasion to do this. It is essential that we concede to the C.E.O of the E.T.C. organisation the privilege to choose whether to investigate the letter on its own or whether wait for other reports.

About the fact that he did not immediately bring the letter to the attention of the board of directors, it is worth keeping in mind that within the board there was an unhappy state of affairs, as explained by Marvic Borg, one of the directors, that is, that there were four directors who were considered to be in favour of the government and over whom the minister had jurisdiction and of whom it was said that they had met with him in private. There was a chairman i.e. George Borg Cardona who at the time was also a secretary in the ministry for social policy and later on a permanent secretary in the same ministry. Therefore, I cannot imagine how Joseph R Aquilina, the Chief Executive could immediately bring David Jones' letter to the attention of the Board of Directors and at the same time ensure the confidentiality that the business in hand required until it was investigated. As I said before, I do not agree with the fact that Mr Aquilina sent the letter to the Honourable Prime Minister behind the back of the Board of Directors. I can, however, understand why he didn't just open a file about it and bring it immediately to the attention of the board. His actions do not prove that he considered this "a private business between himself and Mr Jones."

## CONCLUSIONS

My conclusions about this case are as follows:

**1.** I agree that the reason why the AWTS had to be run by persons who for the greater part were neither qualified, nor competent to run it is that the Establishments did not provide properly qualified persons to run it. This lack of adequate personnel is the responsibility of the Establishments Section and it is high time that its excessive power is placed under greater control.

**2.** I feel that, as it was explained in this minority report, the system of hiring machinery that was proposed and recommended by George Borg Cardona, as "the most economic system" caused, as it was evident from the beginning that it would, a great waste of money from public funds. As it was said, if this machinery had been bought, the price would have been paid off in a very short time.

**3.** After this ridiculous system was introduced, the controls recommended by the Ministry of Finance, were not implemented rigorously.

3.1 I agree with the paragraph of page 50 of the Commission's majority report, where it says :

"It resulted, however, that there was doubtless no proper control over the use of the equipment that was being hired, and therefore one cannot exclude the fact that it is possible that there

were some abuses committed by those who rented out the equipment. The reason is that in the progress reports that were supposed to be written out by the supervisors or the leading men of the works in progress, the machinery that was used was not always mentioned and neither was the amount of time for which it was used. It could have happened, therefore, that the contractor was being paid rent on this equipment even when it wasn't being used."

3.2 I would like to add that there are clear indications which result from the evidence given by Manwel Grech Mallia and from other clues like the voucher paid out in connection with cars rented from St Mary Garage by Ray Abdilla, that abuses did exist. Among these we find that the vehicles that were supposed to be on site and for which money was being paid, were in fact not available because they were being used elsewhere at the time.

**4.** I do not agree that controls began to loosen because it had already been decided that the Scheme was going to close down. This is not a valid reason. The true reason is that the person chosen to run the AWTS and who had the precise task to ensure that the AWTS functions properly, in other words, George Borg Cardona, failed to ensure that there was discipline and control. Mr Mario Wismayer, Chairman of the Board of Discipline, felt that things were being taken "very, very lightly" and therefore resigned from his post. (pages 158-160 of the transcription of the witnesses)

**5.** On page 6 of the dossier that was presented to the Commission by Dr Wenzu Mintoff, marked Document WM1, there is the following:

"From an evaluation of the contracts that were given out, it should become clear to the Committee how individuals whose residence fell within one of the two electoral constituencies form where Dr Louis Galea contested the general elections of 1987 and of 1992, were preferred over other applicants."

5.1 As I already said on page 5 of this minority report, my moral conviction in this regard is that the officials responsible for the AWTS, in spite of their genuine hard work to ensure that this Scheme would work successfully, as it seems to have done, concentrated their attention on Siggiewi, Qrendi etc. The percentages are too high for one not to remark upon this. It seems that that is where the word spread that equipment was going to be hired by the AWTS. Siggiewi, Qrendi etc. are villages which form part of the districts contested by Dr Louis Galea. Morally, however, I cannot say that the evidence convinces me that the Minister Louis Galea had a hand in this. It is a fact that in a small country like ours there are many who do their best to carry favour with the minister, more so if they see in him a person who works ceaselessly and who has vision of what the country needs.

5.2 In spite of this, I do not agree that such a concentration of beneficiaries from the same electoral district in any given system should be allowed to repeat itself in our country. This can be avoided if it could be ensured that there is more extensive advertising, in the press and also on television and radio and not only once as seems to have happened in this case. It is true that in this case the notice appeared in the newspaper In-Nazzjon (31.5.88), L-Orizzont (31.5.88) and The Times (7.6.88) and therefore the notice could have been read by thousands of people. However it would have been much better had the notice appeared more than once. It is incredible that Mr George Borg Cardona claimed before the Com-

mission that the notice was published in the Government Gazette simply to defend his running of the operation. From official documents presented to the Commission it resulted that the opposite was true. On the other hand there were 139 participants and besides Safi, Qrendi, Siggiewi and Mqabba, there were other villages from where people applied to rent their equipment i.e. Zebbug, Sta Venera, Rabat, Valletta, Mosta, Gharghur, Tarxien and Qormi.

5.3 However and above all, of the 139 persons who applied all were accepted. Therefore Dr Wenzu Mintoff is incorrect when he claims that

"From an evaluation of the contracts that were given out, it should become clear to the Committee how individuals whose residence fell within one of the two electoral constituencies form where Dr Louis Galea contested the general elections of 1987 and of 1992, WERE PREFERRED OVER OTHER APPLICANTS."

5.4 I agree with the paragraph on page 86 of the Commission's majority report that :

"It would have been different if not everyone had been accepted because then favours could have been done and in that case, perhaps should have been drawn by lot. The allegation that was made, that equipment was hired out before the notice periods had closed is not correct in the sense that the request for hiring equipment did not close but was open ended. However it is true that equipment was hired while notices were appearing in the papers.

However, this fact cannot under any circumstances imply any corruption and is explained by the fact that the Scheme started quickly and was in urgent need of equipment and therefore it is understandable that those who were first to apply had their equipment hired in spite of the fact that notices were still appearing in the papers."

5.5 Besides this, however, I would like to refer to the all my other observations that have been incorporated in this minority report, especially with regards to the individual cases of those who hired out equipment

**6.** As regards the running of the E.T.C. I refer to pages 22-23 of this report to avoid repetition. I will only add that apart from the difficulties that may have been caused by the demanding and controversial character of Mr Joseph R Aquilina, I do not agree with the opinion of the majority of the members of the commission expressed on page 88 of the majority report that "This man instituted a system of monitoring in the E.T.C. that resemble policing." In my opinion, although I do not agree with the way in which he conducted himself, it seems that he acted according to his principles and when he felt it was necessary, he also sought legal advice to sustain his decisions. A letter from the offices of Hugh Peralta and Co. to the E.T.C. dated 18 February 1991 was submitted as evidence before the board and he himself gave witness that he had taken personal advice from the legal offices of Ganado Sammut about the limits of his responsibility. I do not think that he had planned some "Concerted effort to make trouble for the Corporation and for Minister Galea" when he did this.

**7.** I agree with the observation on page 89 of the majority report that even if it were proved that there had been instances of corruption in the Auxiliary Scheme, one would still have had to prove in a clear and concrete manner that the minister had been involved in

that corruption before one could claim that the minister had committed acts of corruption. This principle was applied in paragraph 5.1 above.

**8.** As regards the declarations by David Jones to Josette M Camilleri and the unfinished draft sent by Jones to Aquilina, who denied sending them when he gave viva voce witness before the Commission, the correct legal position is as follows: once the witness retracts and his statements (not made under oath) were denied by him under oath, what counts in the eyes of the law is what he said under oath. According to the law, he whose duty it is to judge, must necessarily depend on what the witness says under oath. He may not believe as I do not believe David Jones' evidence given under oath, but he cannot fill in the blanks that result from his denial by drawing upon what was said not under oath. The law does not permit this. In the same way, a jury is free to disbelieve a witness when he denies declarations that he would have made previously, however, it cannot accept as proof positive a fact that comes to light from declarations not made under oath when such declarations are denied during a viva voce witness under oath. therefore once David Jones denied under oath that which he had said or written not under oath, the content of his declarations does not constitute proof positive which the Commission can accept and act upon.

**9.** As I told Mr Jones when he gave witness before the Commission the law stipulates criminal proceeding against those who give false witness. I am convinced that David Jones gave false witness during the procedures before the commission. I therefore recommend that criminal proceedings should be instituted against him for giving false witness during these proceedings. This civil servant should be ashamed of himself for behaving in such an irresponsible manner. There is no doubt that this behaviour seriously obstructed the investigations of this Commission.

**10.** The witness Louis Psaila, for reasons mentioned in this report, cannot be trusted. Although what he said might be true, it might just as easily not be. I do not feel that his evidence can be relied upon without corroboration. He is a person who will go to lengths that the ordinary man in the street would not contemplate and he had already been found guilty by a Magistrate's Court. Serious allegations such as these must be sustained by concrete proof before they are accepted by those who are in duty bound to judge. Therefore I cannot say that it was proved, or that I am convinced that the Minister Louis Galea carried out the irregularities which were mentioned by this witness, even more so when Louis Psaila himself states that the minister did not accept the income from the fourth dumper.

**11.** Therefore it does not result that the Honourable Minister Louis Galea carried out acts of corruption.

**12.** I also would like to show my appreciation for the civil behaviour of the two sides during the investigations carried out by the Commission. Certainly this was one of the longest and most difficult investigations which I have ever had to deal with as a member of this Commission, among them the case that involved the ex-minister of works. I would like to thank Mr Carmel Debono for his most valid assistance to the Commission.

**Given today the 21 June, 1996**

(Signed)

**Dr Tonio Azzopardi LL.D.**