

Comment&Letters

When Parliament is dissolved



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The principle in the Maltese constitutional law is that Parliament continues "for five years from the date of its first sitting" and that after the expiration of the said five years, it shall stand dissolved (article 76(2) of the constitution). Once Parliament is dissolved, all the items on the agenda of the House of Representatives and all its select and standing committees automatically lapse. These can include motions proposing the enactment of Bills and motions requesting the removal of a member of the judiciary.

The constitution does not expressly save the operation of motions requesting the removal of a member of the judiciary from lapsing following a dissolution of Parliament. In fact, it does not even distinguish between motions that are to survive the dissolution of Parliament to be carried on to another legislature and motions that should lapse automatically with the dissolution of Parliament.

Thus, the Commission for the Administration of Justice Act or the Standing Orders of the House have no bearing on this issue.

This is because the constitution is supreme and "if any other law is inconsistent with this constitution, this constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

Nevertheless, the constitution does contemplate a situation where a dissolved Parliament may be recalled in the case of an emergency. But, clearly, Mr Justice Lino Farrugia Sacco's motion for removal from the judiciary does not qualify as such.

The constitution defines an emergency in article 27(2) as being war, public emergency and subversion of the democratic institutions. In no other situation can Parliament be recalled once dissolved.

The constitution further states in article 55(1)(a) that "the seat of a member of Parliament shall become vacant upon the next dissolution of Parliament after his election". This means that once Parliament has been dissolved, all MPs lose their seat and can no longer be called members of Parliament. Nor do they enjoy any privileges granted to them by law. Nor are they in receipt of their honorarium.

Moreover, the constitution stipulates in article 59(3) that the office of Deputy Speaker becomes vacant when Parliament is dissolved. On the contrary, insofar as the Speaker is concerned, dissolution does not bring about loss of office: he continues in office until "when the House first meets after any dissolution of Parliament" (article 59(4) (a) (i) and (b) (i)).

So, although Parliament rests dissolved, it is only the Speaker who survives dissolution and remains in office until the summoning of the first sitting of a new legislature. This is an exceptional measure the constitution is contemplating specifically and constitutes an exception to the effects of dissolution.

But the exception is constitutional as the constitution itself is unequivocally providing for it. On the other hand, the constitution does not contemplate by way of an exceptional measure the saving of motions



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or a select class or motions from one legislature to another. Nor does it allow any standing committee to continue with its work.

The Commission for the Administration of Justice Act does nothing of the sort and the Standing Orders of the House are silent on this matter. Nor can these two laws as a matter of fact provide for the carrying forward of a motion from one legislature to another for, if they were to do so, they would be in blatant breach of the constitution.

Recourse to Standing Order 197 (the Erskine May provision, if I may call it so) is also irrelevant because once the constitution does not allow specifically for a motion to be carried forward to another legislature than, irrespective of what is the practice of the House of Commons in the United Kingdom, this has no bearing on the constitution of Malta, which is *suprema lex* and which is not subordinate to the will of the UK Parliament.

Indeed, contrary to the UK, the constitution of Malta is a written constitution and when it explicitly incorporates the procedure of dissolution, with all its attendant

effects, implications and consequences, the Erskine May provision cannot really come into being once the matter is specifically regulated by Maltese constitutional law.

In this regard, I cannot agree with Speaker Lawrence Gonzi's memorandum, dated April 22, 1996, related to the motion to remove Mr Justice Anton Depasquale from judge of the superior courts when the memorandum seems to base its reasoning on an Indian law of 1968, on the British position and on article 9(6) of the Commission for the Administration of Justice Act.

Our constitution provides otherwise by allowing only for one instance where something does not lapse and which can be carried forward to another legislature, that something being that the Speaker holds office till the summoning of a new Parliament. This is the sole exception the constitution allows, which was, however, not factored by Gonzi in his memorandum.

The point whether the member of Parliament who has proposed the motion is still a member of Parliament or not in the current legislature, although an added reason to argue that the motion cannot be carried forward to a new legislature, is ancillary to the principal argument made above that dissolution brings with it the lapse of all parliament business in the previous legislature, whatever that business might be, except for the person occupying the office of Speaker who is retained in office by the constitution itself notwithstanding a dissolution.

B. S. Markesinis, in his authoritative book *The Theory and Practice of Dissolution of Parliament* (Cambridge University Press 1972), states that: "dissolution marks the death of Parliament; and no living creature ever vanquished death. No political expediency can adequately justify an exception to a constitutional rule of such grave importance. If such an expediency exists it is the duty of the constituent legislator to incorporate it in the constitution and not leave its interpreters to decide upon such a delicate matter."

The conclusion of this piece is obvious.

First, dissolution of Parliament brings with it an automatic end to all parliamentary business pending before it.

Second, all members of Parliament and the Deputy Speaker lose their office, privileges and honorarium.

Third, the constitution does not expressly save the operation of a motion from one legislature to another.

Fourth, even if, for argument's sake, there was a provision in the Commission for the Administration of Justice Act or the Standing Orders of the House or any other law to the effect that a motion of removal of a member of the judiciary may be carried from one legislature to another, still that provision would run counter to the constitution and would be void from the very beginning and by force of law (*ab initio* and *ipso jure*).

Fifth, the constitution of Malta does not distinguish between classes of motions, such as those motions which should survive a dissolved Parliament and those motions which should not.

Sixth, once the constitution does not explicitly recognise an exception to the lapsing of motions following a dissolution of Parliament, it is not a matter to try and resolve this question by reference to British constitutional practice (say, by reference to Erskine May and other authors on British parliamentary procedure).

Seventh, it is only the Speaker of the House of Representatives who survives a dissolution and is carried forward, limitably, to the first sitting of the next legislature when a new Speaker is appointed in his stead.

By applying the above conclusions to the motion for removal from office of Farrugia Sacco, the ruling delivered by Speaker Anġlu Farrugia on January 28, to the effect that the removal motion has lapsed is, in my humble opinion, constitutionally correct insofar as the decision goes but not entirely correct insofar as the reasoning for such a decision is concerned.

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