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THE 1998 DISSOLUTION OF PARLIAMENT

The presidency of H.E., Dr. Ugo Mifsud Bonnici, the Fourth President of Malta, had a number of institutional ‘firsts’. One can mention that the President was the first to preside over the workings of the Commission for the Administration of Justice set up by Article 101A of the Constitution. He was the first President to address presidential messages to Parliament. The President was the first to dissolve Parliament twice during his term of office, in 1996 and in 1998. More significantly, he was the first Head of State, since Independence to preside over a political crisis involving the loss of confidence of a government by Parliament.

This article purports to review some of the constitutional implications in regard to the dissolution of Parliament in 1998 as well as the vote of confidence that led to the dissolution. Our constitution, in its 34 years of existence has started to evolve its own conventions and practices, understood in their classic constitutional formulation as rules of political practice considered as binding but not enforceable in a Court of Law. The institutional workings behind the withdrawal of confidence by Parliament, the first instance since Independence, bears an interest beyond the political contingency, and may therefore serve as a guideline for future events.

The political crisis started in November 1998, when the former Prime Minister, Mr. Dom Mintoff started to abstain from voting during the debate on the budget, thereby annulling the one seat majority enjoyed by the government without actually toppling the government headed by the then Prime Minister, Dr. Alfred Sant. The Speaker was called upon on various occasions to make use of the casting vote.

The crisis precipitated during the debate on the resolution presented by government in regard to the Cottonera project. The Prime Minister made the following statement in Parliament, just before the final vote on the resolution was taken:

“Sinjura President, irrid naghlaq billi nghid li l-grupp parlamentari u l-ezukkattiv nazzjonali kkonfermaw id-decizjoni li habbarna l-gimgha li ghaddiet fil-media li kontra dak li ghidna fil-bidu ta’ dan id-dibattitu, mhux se jkun hemm insistenza min-naha taghna li l-vot ta’ fiducja jghaddi permezz tal-voti kollha tal-membri parlamentari minghajr casting vote, imma l-vot ta’ fiducja fuq din il-mozzjoni hu mizmum bhala vot ta’ fiducja u qed nistennew li jghaddi minn dan il-Parlament. Jekk ma jghaddix minn dan il-Parlament, il-Gvern se jqis li tilef vot ta’ fiducja.”

The Prime Minister’s statement therefore emphasized two points:

- a) That the government considered the majority of all the members of the House as no longer applicable to the resolution and
- b) That this notwithstanding the government still considered the vote as one of confidence.

On the same day, July 7th, 1998, the final vote was taken and Mr. Mintoff obliged by voting against the motion which, after a division, was defeated by 35 votes to 34.

The Prime Minister did not indicate the government’s course of action in the aftermath of the vote. In this context reference may be made to a statement made on March 28th, 1979, by Mr. Jim Callaghan, British Prime Minister in the aftermath of a loss of a vote of no confidence in the House of Commons. He stated:

“Mr. Speaker, now that the House of Commons has declared itself, we shall take our case to the country. Tomorrow I shall propose to Her Majesty in parliament that parliament be dissolved as soon as essential business can be cleared up, and I shall then announce as soon as possible - and that will be as soon as possible - the date of the election and the date of meeting of the new parliament.”

The constitutional background to the Prime Minister’s statement lies in the provisions of article 76 of the Constitution, and specifically subsection 5(a):

“If the House of Representatives passes a resolution, supported by the votes of a majority of all the members thereof, that it has no confidence in the Government, and the Prime Minister does not within three days either resign from his office or advise dissolution, the President may dissolve Parliament.”

The Constitution of Malta has to a large extent incorporated in a written form the unwritten conventions of the British Constitution, particularly in the definition of those areas where the Head of State “acts in accordance with the advice of the Cabinet or a Minister” (Article 85). These have been considered to have retained their conventional nature since whether the Head of State has received or acted in accordance with such advice may not be enquired in a Court of Law (Article 85, subsection 2).

An important addition to British practice, however, was introduced in the requirements contained in article 76(5)(a), for a vote of no confidence to be carried namely those of a majority of all the members of Parliament expressed through a resolution. The reason behind such a requirement was to avoid the creation of political instability arising from a snap vote in Parliament, which would leave the government defeated. So a Resolution is required and a simple majority of those present and voting alone would not be enough.

Clearly, the expression “all the members of the House” had the added consequence, from a technical aspect of excluding the Speaker from using the casting vote since in this circumstance Parliament either reaches the required number of votes or not. No tie is possible. The Prime Minister was clearly conscious of this factor.

This provision does not go as far as a constructive vote of confidence would require. It, however, ensures that Parliament would be conscious of the institutional consequences of the vote prior to the vote itself being taken. Parliamentary stability is a constant feature of our parliamentary majorities as a consequence of the two-party system that has dominated the political scene since Independence. When the Constitution was being drafted, and when it came into force however, the political situation was completely different. Parliament had five political parties represented and in 1964 the majority party enjoyed an overall majority of only one seat.

Other Constitutions ensure that votes of no confidence do not the result from

snap votes. The Constitution of Italy, for example, requires that *“la mozione di fiducia deve essere formata da almeno un decimo dei componenti della Camera, e non può essere messa in discussione prima di tre giorni della sua presentazione”*. (Articolo 94).

The Prime Minister’s statement clearly indicated that the Cottonera resolution was no snap vote since the issue of confidence was already before Parliament. Through this statement, the Government exercised its political prerogative of linking the resolution to a question of confidence and of choosing to reduce the political threshold from an absolute to a simple majority.

Victory, all be it with the Speaker’s casting vote would, of course have been sufficient. Conversely the loss of confidence on the resolution could have brought into action another prerogative; the Presidential prerogative to dissolve Parliament if to the President’s mind, the conditions contained in article 76(5)(A) existed following Parliament’s removal of confidence.

The Constitution specifically stipulates that the President may dissolve Parliament on the advice of the Prime Minister. Article 76(5) provides:

“In the exercise of his powers under this section the President shall act in accordance with the advice of the Prime Minister.”

However,

“The President may act in accordance with his own deliberate judgment in those cases stipulated in article 85 of the Constitution, amongst which there is, Subsection (a): “in the exercise of the powers relating to the dissolution of Parliament conferred upon him by the proviso to subsection (5) of section 76 of this Constitution.”

This constitutes another departure from the British situation in that our Constitution envisages the possibility of the President dissolving Parliament WITHOUT the advice of the Prime Minister as long as the elements of article 76(5)(a) concur. Not so in the United Kingdom:

“There is no instance in this country, since the Restoration, of a

Sovereign attempting to dissolve Parliament without or against the advice of the Ministry.” (Constitutional and Administrative Law – O. Hood Phillips and Jackson 6th Edition Page 147).

The government limped on for a few more weeks after the confidence vote and on the 3rd. August 1998, the advice to dissolve Parliament was tendered by the Prime Minister to the President in terms of Article 76(5) referred to above.

What is of interest is that the President did not simply accept the advice tendered. He spelt out the circumstances in which the advice was being accepted. This becomes manifest when comparing the proclamation the President issued when dissolving Parliament in 1996, to that of 1998.

In 1996 Parliament was also dissolved before the natural time limit of five years and also on the advice of the then Prime Minister, Dr. Eddie Fenech Adami. The important difference being that Dr. Fenech Adami had not been defeated in Parliament when he tendered his advice.

The President’s proclamation, published in the government gazette of the 23rd September 1996, simply made reference to subsection (5) of section 76 of the Constitution of Malta that, “in the exercise of (the President’s power to dissolve Parliament) the President shall act in accordance with the advice of the Prime Minister”. The official statement published on the same date consisted of a laconic statement noting that the Prime minister had received the advice and “in accordance with the Prime minister’s advice the President signed two proclamations ... to hold the General Election.

The President’s official statement in 1998 included two important innovations:

- a) In addition to a generic reference to Article 76, and to the Prime minister’s advice in terms of subsection (5)(c) of the said article, the President brought into action that part of Article 76 whereby the President may act on his own deliberate judgment. In fact it was expressly stated that “*Il-President ma deherlux li ghandu jezercita d-diskrezzjoni li jirrifjuta li jxolxji l-Parlament, kif is-subartikolu (5)(c) ta’ l-istess artikolu jaghtih is-setgha li jaghmel, billi ma jqisx li huwa fl-interess ta’ Malta li l-Gvern jtkompla minghajr ma tkun tezisti fil-Parlament maggoranza li ssonstnih konsistentement*”.

The import of this addition to the normal wording used in Presidential procla-

mations dissolving Parliament is quite fundamental in understanding the solution to the 1998 crisis. The President did not invoke the powers granted to him by virtue of article 76 (a), which allow the President to dissolve Parliament after a motion of no-confidence is carried by an absolute majority of Parliament. The President, however, neither ignored the parliamentary reality that the government no longer enjoyed Parliament's confidence.

For the first time the President granted recognition to the constitutional figure of a government that did not enjoy Parliament's confidence by the words "ma jqisx li huwa fl-interess ta' Malta li gvern jitkompla minghajr ma tkun tezisti fil-Parlament maggoranza li ssostnih konsistentement". The only logical construction to the president's use of the word "konsistentement" qualifying Parliamentary defeat is the official recognition of a situation whereby the government lost Parliament's confidence and was unable to regain it. This view is strengthened by the emphasis of the President's power act on his own deliberate judgment - "Ma dehrux li ghandu jezercita d-diskrezzjoni tieghu."

b) The second important difference between the two proclamations was that in 1998, the President directed that "Il-Prim Ministru bil-kabinett tieghu ghandu jkompli fid-direzzjoni generali u l-kontroll tal-Gvern ghal dak li jirrigward l-amministrazzjoni ordinarja, salv dak li hemm mahsub fl-artikolu 76(4) tal-Kostituzzjoni." This is important because for the first time, the administration that leads the country into the general elections was officially defined as a caretaker government limited to the ordinary day-to-day administration of the country. Another indication of an administration that lost Parliament's confidence.

It would seem therefore that we followed the conventional practice whereby dissolution of Parliament is not an immediate and automatic result of the government's defeat on a vote of confidence or a vote of no confidence. The President however, remains in such circumstances the guarantor of the proper constitutional process.

In "Il-Manwal tal-President tar-Republika", a compendium of the President's powers and duties compiled by the President, on the President's powers to dissolve Parliament, the President has this to say: " Is-subartikolu (5) ta' l-artikolu 76 jaghti setghat kbar ta' garanzija kostituzzjonali, kontra kull abbuz possibbli min-nahha ta' l-ezekuttiv." (Page 31).

To-date no such remedy of last resort was deemed necessary.