

## ARTICLE 35

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## ARTICLE 56

General elections have become quite a violent struggle for the attainment of power. In this field, the US is definitely at the lead, the latest fashion being that of asking for a re-count each time there's a loser (which of course there has to be). Indeed, Americans, are creating controversy on the grand scale and re-counting has become the order of the day.

In Malta interesting things did happen immediately preceding the 2003 referendum and election. Somehow PN has developed a habit of making exceptional allegations just before important votes are taken. To mention but one allegation we could take the case of PM Fenech Adami's allegation that the leader of the Opposition, in the capacity of Chairman of the Board of Admissions, had formerly maliciously denied his son access to University. This allegation was done just before the referendum. A libel case was filed by Sant on the following day and curiously enough some days later, the PM himself (obviously after the vote was taken), said that what he had said was not true. Fenech Adami's allegations were proved false much later when the maxim "justice delayed justice denied" was justified more than ever.

PN's strategy had worked. And some might justly argue that the false allegations uttered in the nick of time "*have been of such a nature that they may reasonably be expected to affect the result of the election*". But if you had to look at the Constitution of Malta more closely you would find that indeed it does provide for such situations with such words.

If you were still wondering whether an election can ever be suspended or annulled locally, if you looked at Art. 56 of the Constitution you would find a mechanism which could have possibly been employed even in the case of the PM's son's accession to University scenario.

The Constitution in Art. 56 says that "*The election ... shall be free of illegal or corrupt practices ...*". To my knowledge neither illegal nor corrupt practices are defined anywhere in the laws of Malta. However, notable is the use of the word "*practices*" rather than "*offences*" or "*crimes*". "*Illegal*" might be defined as that which is against what the law permits (definitely not an act which a court could ever declare as libellous).

And in such cases it is “*the duty of the Electoral Commission to suspend the election... if it has reasonable ground to believe that ... such practices, offences ... have been of such nature that they **may** reasonably be expected to affect the result of the election ...*”.

At this point, one could ask, may the reputation of the leader of the Opposition reasonably be expected to affect the result of an election?

And one could here say that the law fails to say anything about who could instigate the Electoral Commission to affect such suspension. However, the Constitution does go even further. Inasmuch as the Electoral Commission has the power to hold an election from taking place, “*any person entitled to vote at that election may, not later than three days after the publication of the official result of that election, refer the matter to the Constitutional court for its decision*” (Art. 56 (5)). The article does provide us with an infallible solution although indirectly. If there were to be an allegation of such practices taking place before an election and someone whistleblow upon the possibility of referring the electoral result within three days of the publication of the results to the Constitutional Court, would the Electoral Commission take the risk of running an election at all? On the other hand, the Constitution does leave a lot of power in the hands of the citizen, or voter, against a government gaining an advantage upon the use dubious practices.

And of course, all that is needed in this case is the issue to be referred to the Constitutional Court. Time is allowed for proof to be compiled and the Constitutional Court is given the power to annul the election. Although the triggering of the mechanism provided for in this article will definitely have devastating effects, the moreso if the three days following the official election results option is implemented, the article is full of general and undefined terms which do not necessarily straightjacket the Electoral Commission or the interested voter.

Moreover, considering the fact that the Election of the House of Representatives was not the only election or vote the last few years, an amendment adding “*European Parliament, Local Council elections and Referenda*” would be more appropriate.

With a history of cases giving rise to staunch libel resulting from allegations done on the eve of elections, as well as with the withdrawal of candidatures in the naughty childish style at the last minutes of nominations’ closing time, shouldn’t this article be revised to ensure that the interests of democracy be guarded in all respects? Shouldn’t MPs of good will press for such article to be explicitly extended to cover libellous allegations and other malicious manouvres employed in the interest of partisan politics rather than democracy? Although critics, in their majority, albeit definitely not exclusively, on the Opposition side, have gone a long way, such articles should never be disregarded or abandoned. The checks and balances the Constitution provides are there.