

Times of Malta

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Date of Publication: 25th May 2006

The lacuna

Our electoral system remains to date one of the most representative of individual's preferences. This due to the application of the single transferable vote method. This has also provided the Maltese with a stable government. However, it has also counter-produced a system lacking in party representation and a threshold which is highly insurmountable for anyone contesting without the MLP-PN axes. The Constitution, from which such system emanates, is one of the boldest democratic safeguards which needs heavy votes from the House of Representatives for some of its provisions to be changed. Nonetheless, the observer may still encounter lacunae that do not cause chaos just because the situation never arose.

A lacuna is a missing part, a situation not catered for. This runs diagonally opposite to the spirit of the law which aims to pre-empt a crisis before it occurs, no matter how remote the possibility of occurrence or materialisation may be.

And if there be a lacuna in the Maltese Constitution, it is that regarding the presence of minor parties in Parliament.

Although they are not a novelty, effective minor parties are a recent phenomenon in Maltese politics. Alternattiva Demokratika has proved to be the only persevering minor party since the 1990's and the only success achieved by its members was during the 2004 European Parliament elections, at the European level, and, ironically enough, in the Italian Parliament elections. The Nationalist Party used and abused Alternattiva campaigners during the 2003 electoral campaign. It cajoled them into extending the PN's door-to-door campaign promising the big party's support, blowing off all their hope at the eleventh hour.

Another pseudo-one-man-party faired also better than the others in the last EP elections. However, no matter how reasonably ambitious any AD leader may be, or how controversial some minor parties may be, they seem to be moving away from the humorous relief that used to appear on our screens in the 1980's in the form of independent candidates singing the Maltese anthem.

On the other hand, funny blokes do sometimes attract all the attention. Lordi is one good example fresh in readers' memory. They also tend to cater for protest voters, especially for those who need a good excuse to go to the polling booth to keep their names out of the big parties' non-voters lists. As the feeling of discontent reaches boiling point, and the two larger parties make their utmost to make the main rival look bad, some unwanted visitor may well be elected to the House one day. S/he may well be a budding statesman with gold cufflinks or just a merry-andrew, but s/he would definitely cause quite an uproar.

Starting off from the conviction that EU membership has actually changed our way of thinking at the polling booth – more than what would be apparent on the street or at the greengrocer – our Constitution might as well be lagging behind.

Although recognition of smaller parties is envisaged in the supreme law of the country, there seems to be an innate presumption that none of them will succeed! This may well be termed “*ab*

initio discriminatory” with regard to such parties in that it gives them the right to contest an election presuming their failure therein. However, it may well be giving them the key to causing democratic chaos and even leading to a state of anarchy – an anarchy that arises from the non-regulation of a three-party Parliament.

This may well be the lacuna in our Maltese laws. The article of the Constitution that caters for the constitution of the House of Representatives is number 52. It provides that:

The House of Representatives shall consist of such number of members being an odd number and divisible by a number of electoral divisions... Such members shall be elected in the manner provided by or under any law for the time being in force in Malta in equal proportions from the electoral divisions ... being not less than five and not more than seven...

Provided that where:

at any general election, a political party obtains in the aggregate more than 50 per centum of all the valid votes cast at that election as credited to its candidates by the Electoral Commission at the first counts of all the votes, but the number of its candidates elected at such election is less than the total of all the other candidates; or

at a general election which is contested by more than two political parties and in which only candidates of two of such parties are elected, a political party obtains a percentage of all the valid votes cast at such election as credited to its candidates by Electoral Commission at the first count of all the votes, which is greater than that obtained by any other party, but the number of candidates elected at such election is less than the number of the other candidates so elected,

the number of members of the Houses of Representatives shall be increased by as many members as may be necessary in order that the party obtaining more than 50 per centum, or the larger percentage, of all the valid votes, as the case may be, shall have one member more than the total of the other candidates elected at that election...

Such article caters for a situation where: (i) one party gets an absolute majority of the valid votes cast at the first count and (ii) a party obtains a relative majority of the valid votes cast where only two of the parties contesting the election have candidates elected to Parliament.

What happens if we have an election in which candidates of more than two parties are elected? Will the party who gets the relative majority govern? Will it have the right to increase the number of candidates according to sub-article (ii) if it needs? What will be the powers of the candidate/s elected from a third party? What would be the rules of coalition? Would Parliament have to decide there and then? And, after all, who will legislate on the new law in a non-government/non-Parliament scenario? Shouldn't at least some interim procedures be put down on paper... the paper?

Whether it is out of recognition of smaller parties, or because of concern from a party representation aspect or out of concern for democracy, shouldn't our parliamentarians stop assuming that absolute majorities are a godsend attached to the MLP-PN duopoly only? And whether parliamentarians be MLP or PN, shouldn't they give a thought to what could happen if such bi-party political scenario ever changed? Shall the stability of the country be put at stake? Or shall we just discuss whether sub-article (ii) of article 52 – “and in which only candidates of two of such parties are elected,” – should be struck off altogether and discuss the rest?