

Debate & Analysis

Withering away of the Opposition



KEVIN AQUILINA

Karl Marx advocated the withering away of the capitalist state to be substituted by a communist state.

However, what we are witnessing in Malta is a totally different phenomenon: the gradual withering away of the Opposition. This should worry us all. As more time passes, the Opposition not only does not gain ground amongst popular support over its competitor but is moving in the direction of obsolescence. The question appears to be not whether this will ever happen, but when it is going to happen, more so if it loses next year's European Union Parliament elections and subsequently the forthcoming general elections. So far there is no concrete indication that this will not be the case.

As the Constitution, laws, and parliamentary practice obtain today, the odds are against the party in opposition, more so that the two main political parties represented in the House of Representatives are policy-wise, by and large, mirror images of each other. There is hardly any ideological distance between the two. Not only so but people are comfortable with making the switch to the other political party represented in the House, feeling at home in the newly acquired party membership. Indeed, political parties brag when an opponent crosses the line to join the once-upon-a-time hardly fought rival party. For the propaganda machinery of the party that attracts more opponents to it, that is considered an added bonus. This often happens when the loser party is not perceived to be re-electable. An exodus of loser party members to join the opposing winning party in government is the order of the day so as not to miss on government disbursed favours and privileges out of taxpayers' monies which the opposition simply cannot afford.

All this happens because ideology and principles are no longer considered to be the main distinguishing factors between the Maltese political parties represented in the House of Repre-

sentatives. Left and right, conservative and progressive, Christian democrat and socialist, are terms that have lost their currency in the political language and are used only when addressing the grassroots or by reference to the party's past glorious history. Malta has moved from the politics of principle (or ideology) to the politics of convenience.

People flock to a party not because of ideological affinity or shared principles but whether that party can appease in the shortest possible time all their requirements, legal or illegal. And all politicians – of both sides – lend their ear to everybody, including to those that want to move mountains to attempt to regularise what is illegal at law. The parties are tossing the net so wide that they are becoming a catch-all party where all sorts of fish are caught. Everybody is accepted; nobody is rejected. This is the sort of desperation political parties in the House are in. It has worked out – due to their own making – as a cut throat competition. They prostitute their values and sell their soul for populism.

In these circumstances, whichever party happens to be on the opposition bench is normally on the losing end for the duration of the entire legislature. There is no level playing field between the two parties. The opposition can never compete with government. Failure is synonymous with the parliamentary opposition. The latter is disempowered from distributing jobs to the blue-eyed boys and girls. It cannot change its voters' status from that of a beggar to that of a rich person in a few weeks' time through irresponsibly dishing out positions of trust, direct orders, appointments to chairs, chief executives and other offices in the public sector as dictated by Castille. The Opposition can speak with a forked tongue until it is elected to government for it would not be called upon, once still in opposition, to deliver on its promises.

In the meantime, government – through its power of incumbency, abuse of state assets, and augmentation of the national debt – continues to extend its clientele through improper means. This all contributes to a vanishing opposition, a waning of opposition that hardly has any assets to combat this Father Christmas syndrome, though in government's case Christmas comes in October-November on budget day. When the government does not play fairly according to the rules of the political game, it is only the opposition that has to lose.

Newspapers' surveys corroborate

the statement in relation to the opposition's performance for whilst the Labour Party is shedding support, the Nationalist Party is not gaining from these losses. Of course, the determining event that will decide the fate of the current Leader of the Opposition is the forthcoming European Union parliamentary elections which should see the opposition losing thereby bringing with it the inevitably already delayed (from the time of the last general election) change of Nationalist Party leadership, a measure that should have been taken immediately following the announcement of the colossal defeat at the polls in the last general elections. For democracy, should work both ways, not only for the Labour government but also for the Nationalist opposition. What is more important in a democracy than the electorate's expression of opinion in a general election, where it rejected the Nationalist Party? The Leader, of course, is the person who ultimately must accept political responsibility for the defeat and should have therefore stepped down to give ample time for a new leader to be chosen and stir the party to victory in the forthcoming general election. But that will not be the case for a new Leader will simply not have the time to prove his/her worth.

The Opposition can never compete with government for the rules of the game are designed in such a way to work out always to its detriment. It has only snakes in its path in the Snakes and Ladders game. Not only is the Opposition outnumbered in the House and in its Committees but the Opposition does not have a say on the parliamentary agenda that is fixed by government; is deprived of adequate resources to carry out parliamentary duties; cannot benefit from the nonexistent Prime Minister's question time – not even one sitting a week is devoted to Opposition items; when it requests to discuss in the House an item of national importance this is invariably denied; its private members bill rarely make it to the House's agenda; its parliamentary questions take an interminable time to be answered; whilst oral questions are evaded by ministers.

The political system is one where decisions are taken on purely party lines and free votes are conspicuous by their absence. It is next to impossible for the opposition to get the House to be summoned during recess should a crisis emerge. When it presents motions for discussion they are left to lapse with the dissolution of Parliament, or take months to be placed on the House's agenda, and private members' bill presented by the

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opposition are aborted because financial bills require the support of the government to be placed on the agenda of the House, a support that is never forthcoming.

When the opposition presents a motion to alter or revoke a subsidiary law, its motion is invariably defeated by government and such motion is rejected on purely political partisan lines. At times laws are discussed at very short notice, not even giving the opposition parliamentary group ample time to convene and discuss the bill under consideration. Bills are discussed even though they would have been published in the Government Gazette on the same day of the debate with the opposition being granted an advance copy of the bill's text to expedite its passage through the House and a pittance of time to discuss it internally and consult thereupon. Financial considerations cannot be discounted for whilst the government can make use of the Department of Information, PBS (the government's public propaganda services) and the communication offices in ministries, apart from taxpayer-paid commissioned advertisers, the opposition does not have this machinery, structures or money to finance them.

Then there is also the lethargy factor on the opposition's side. Apart from the Leader of the Opposition, all opposition MPs are part-timers who earn their living from their respective profession, business, trade, skill, art, or employment; they must juggle their time between their main employment and their secondary parliamentary duties. That is why the current arrangement of part-time MPs does not work and has failed the country because part-time MPs put their own private interest before the national interest. This arrange-

ment suits MPs but not the public interest. This is seen in the opposition's slow response rate in proposing new motions, private members bills and other initiatives in the House of Representatives.

Take the recent case of Owen Bonnici's legal notice establishing the Centre of the Maltese Language that is clearly in breach of the Maltese Language Act. Has the Opposition filed a motion in the House to withdraw Legal Notices 201 and 203 of 2023 establishing illegally the said Centre to have them declared null by the House and, should the House defeat the opposition motion institute a court case on the basis Legal Notice 201 of 2023 runs counter to the provisions of the Maltese Language Act?

There is case law that states that a legal notice cannot run counter to the law under which it is made (the parent act) or to any other primary ordinary law for that matter, not to mention the Constitution. This was held in the Civil Court, First Hall, judgment delivered on 20 July 1988 by Mr Justice Victor Borg Costanzi in 'Louis F. Cassar and Christian Holland in their name and on behalf of and in representation of the Association Youth for the Environment v. The Hon. Prime Minister and Minister of the Interior' where the court correctly annulled a Legal Notice that went contrary to the provisions of the parent act – the Code of Police Laws – under which the Legal Notice was made. There is also article 116 of the Constitution that reads as follows: 'A right of action for a declaration that any law is invalid on any grounds other than inconsistency with the provisions of articles 33 to 45 of this Constitution shall appertain to all persons without distinction and a person bringing such an action shall not be required to show any personal interest in support of his action'.

As to article 116, first, there is no requirement to prove juridical interest – State Advocate please note when cutting and pasting your pleas. Second, the ground of invalidity need not be with the Constitution for it can be invalid on 'any grounds' not necessarily on grounds related to the Constitution. Third, even if, for argument's sake the State Advocate were to argue that the invalidity must be on constitutional grounds, then there is a breach of article 65(1) of the Constitution that empowers Parliament to make laws for the 'good government' of Malta and the Legal Notice can by no stretch of the imagination be it made for the good government of Malta.

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This apart from the fact that the subsidiary law runs counter to the primary law enacted by Parliament and the Maltese Language Act does not allow the minister concerned to enact subsidiary legislation in breach of the parent act. There is no Henry VIII clause to this effect.

Regulations which:

- (a) are in breach of the parent act;
- (b) establish a parallel institution independent of the control of the National Council for the Maltese Language and outside the framework of the Maltese Language Act that entrusts the Council, not the minister, to establish the Centre of the Maltese Language;
- (c) authorise the establishment of new structures by the minister who is not authorized to do so;
- (d) empower disbursement from public funds to the said Centre's Executive Head when there is no provision in the Maltese Language Act to that effect;
- (e) appropriate public money unauthorised by the House or by the Maltese Language Act, nor in an Appropriation Act;
- (f) give the absolute and unfet-

tered discretion to the competent minister, by regulations made by himself and not by a law enacted by Parliament, to decide when or whether to issue a public call for application for the Centre's Executive Head;

- (g) empower the minister to ride rough shot over the principle of meritocracy that ought to motivate appointments to public office;
- (h) enshrine in them the principle of political partisan favouritism in lieu of a competitive call for application to choose the most meritorious person for the post;
- (i) allow the minister to appoint a person in a non-transparent way motivating the appointment not on the basis of a bachelor's, master's or doctoral degree in the Maltese language or of reputable peer reviewed publications on the Maltese language but through an award that is not granted by a tertiary educational institution licensed by the National Commission for Further and Higher Education;
- (j) do not disclose the terms and conditions of the appointment both for public consumption and for the knowledge of the National Council for the Maltese Lan-

guage, of which the Executive Head is its Centre administrator;

- (k) do not provide for any form of accountability in the said Executive Head selection – there is no review mechanism established from the minister's decision when he first decides not to issue a public call and from the merits of his decision;
- (l) do not specify in detail the criteria for appointment for the post;
- (m) transform a public office into a position of trust in breach also of the Constitution; and
- (o) were made with no involvement from the National Council for the Maltese Language both (i) in relation to the drafting and (ii) to the approval of the regulations in question and also to the person selected for Executive Head;

can never – by no stretch of the imagination – be conducive to good government.

If at all, these are a recipe for ministerial resignation based on violation of the Constitution and the Maltese Language Act; unlawful appropriation of public money; misuse of law; bad governance; abuse of power; arrogance in the way how the minister has dealt with the whole issue; disregard of meri-

tracy and substitution therefor by favouritism; contempt of Parliament; disrespect of the National Council for the Maltese Language that was not involved both in the drafting/approval of the regulations i and the appointment of Centre's Executive Head. But on all these, the Opposition has elected to exercise its constitutional right to silence, apart from the odd press release that superficially refers to the appointment of the Centre's Executive Head. Malta and the Maltese Language deserve better both from government and the Opposition.

Has the Nationalist Party asked the Auditor General to investigate the disbursements made in terms of the legal notice establishing the Centre to confirm that they are illegal once such disbursements are directly in breach of the Maltese Language Act? Has it also requested the minister to refund illegal appropriated taxpayers' money from his own pocket once he authorised the illegality? Has the Nationalist Party written to the Accountant General to request the latter to sue the minister in court to reimbursement him taxpayers' money illegal disbursed? Has it reported the matter to the Commissioner for Standards in Public Life to investigate? Has it moved a mo-

tion in the House requesting the minister's resignation?

No, none of the above has been done. Why? Your guess is as good as mine. Hopefully this piece should serve as a wake-up call for the opposition that is currently enjoying its summer holidays whilst Robert's Malta – like Nero's Rome – is burning politically. All the above should have elicited a strong reaction from the opposition for these matters cannot be simply brushed aside as though nothing has happened. Perhaps it is an appropriate time for the Clerk of the House to issue an advert for the vacant post of Leader of the Opposition. To put our minds at rest, he can also state that the Opposition's premises will not be located at the Nationalist Party's Hamrun club!

Further, has the Opposition filed a contempt of the House motion to declare government in breach of the resolution adopted by the House not to hold an administrative inquiry when government ignored completely in the most contemptuous and undemocratic fashion the House resolution and still appointed the Jean Paul Sofia inquiry?

Kevin Aquilina is Professor of Law at the Faculty of Laws, University of Malta