

From:



Subject:

Date:

RE: Additional note to Repubblika's submission in preparation for the 2023 Rule of Law Report on Malta
05 January 2023 14:36:33

Sir or Madam:

We write to you to record our concern about Bill No. 34 presented by the government to Parliament at a First Reading on 19 December 2022 and published on 27 December 2022 which proposes amendments to the Standards in Public Life Act.

The government is proposing that should the House fail in two attempts within 7 days of each other to secure a two-thirds majority approval for a nominee to fill the position of Commissioner for Standards in Public Life, the House would be empowered to make an appointment on the approval of a simple majority.

While we appreciate the desire to seek workable systems that overcome any gridlock due to the inability of political parties to reach consensus, we find this so-called solution to be nothing short of taking away from the legislature this element which forms the bulk of the way it fulfils its function of scrutinising the conduct of persons in public life and giving it instead to the Prime Minister who, in the great majority of situations in this country, is the person who hires persons in public life.

The so-called mechanism the government proposes allows it to put forward to the opposition a manifestly unacceptable candidate, wait for two ceremonial votes that do no more than confirm the opposition's disagreement, and then appoint a person of their choice. The amendment even allows the government to nominate to the final vote requiring a simple majority an individual who had not been nominated in the two previous votes when the opposition's participation would have still had some meaningful significance.

The office of the Commissioner for Standards in Public Life has been one of the very few effective actors in Malta's framework that could act genuinely independently of government control. Although any misconduct by Members of Parliament belonging to the opposition is within the jurisdiction of the Commissioner, government members and senior persons of trust, by the function of their public roles, have greater opportunity for misconduct and greater cause for independent scrutiny.

In Malta's strict two-party system, the government and the simple majority of Parliament are one and the same thing and there are no circumstances of any sort when one would act independently or in any way differently from the other. As such, therefore, a Parliamentary official appointed by a simple majority in Parliament is, to all practical purposes, an official appointed by the executive branch alone.

We further point out that this amendment is being presented because of an ongoing disagreement between the two parliamentary parties on the appointment of an individual proposed by the government and rejected by the opposition. The government has in turn rejected all candidates for the position suggested by the opposition. This makes this bill a law passed ad hominem, not based on objective analysis on how best to fill the role but based on how best to fulfil the wishes of the Prime Minister on hiring his choice of person to scrutinise him, his Ministers, and his senior officials.

While, no doubt, the government is entitled to insist on its choice, the fact that it uses its legislative power to change the rules in the middle of the game to impose the desires of the executive branch shows just how undemocratic the government's actions are.

Although the rules governing the appointment of the Commissioner for Standards in Public Life are provided for in ordinary legislation, the role (and the manner of filling it) are, in a broad sense, part of Malta's constitutional framework. The two-thirds majority required in the law as it stands is a key component of the fragile separation of the powers of the legislature and the executive and allows Parliament to scrutinise the conduct of the government with relative autonomy.

Using the power of the simple majority enjoyed by the government in Parliament to abolish a requirement for cross-party consensus to appoint an official whose task it is to hold officials to account is, though not strictly unconstitutional in legal terms, a dilution of accepted democratic norms and a regression of the rule of law.

The government is using its power to change the rules to reduce transparency, accountability, and the autonomy of state agents whose function it is to restrain it.

We reiterate that we appreciate the need for legal mechanisms to avoid gridlock and underline that appreciation by saying that we would loathe to see these positions left vacant for any length of time because of ineffective inter-party horse trading. As has happened for several months in this case.

We would insist that any mechanism that is introduced does not have the effect of nullifying the utility originally intended by the law, as the government's proposal does.

While we are, in Malta, appealing publicly in the strongest terms for the government to conduct public consultation and consider alternative paths that do not diminish our democracy, we feel it is also appropriate that your office consider this matter as they complete their review of the state of the rule of law in Malta.

Yours sincerely,

Emanuel Delia
Executive Officer