

I have been requested to advise on the constitutional position of the President of Malta in the removal and substitution of the Leader of the Opposition in terms of the Constitution of Malta.

The matter is regulated by article 90 of the Constitution. The said article unequivocally deals with two situations involving the President and the Leader of the Opposition.

The first is dealt with in article 90(2) which governs the appointment of a Leader of the Opposition. The Constitution clearly provides that the President has to appoint as Leader of the Opposition that MP who is the leader of the "party" having the biggest representation in the House of Representatives.

The appointment of the Leader of the Opposition therefore differs radically from the appointment by the President of a Prime Minister. The President has to identify the MP who enjoys the confidence and consequently the majority of all MPs in the HoR to appoint such person as PM.

However in both cases the President acts in his own judgement and not following the advice of any other authority such as the Prime Minister.

This makes Constitutional sense in that the Prime Minister would have a vested partisan political interest in the appointment of his/her principal parliamentary adversary as the Leader of the Opposition would be from the constitutional and political perspective.

Yet whilst the President's choice of a PM is qualified by the criteria of he/she being an MP and enjoying the confidence of the House, the appointment of the leader of the Opposition is rigidly qualified by the criteria of an MP and the leader of the greatest opposition Party in the House.

Article 90 also provides for the removal of the Leader of the Opposition by the President in article 90(4). The most important difference from the appointment of the Leader of the Opposition is that now the qualification of "Leader of the Party" is substituted by "a member of the House of Representatives".

The President's judgement therefore is to determine factually positively that another MP "other than the Leader of the Opposition has become the Leader in the House of the Opposition". This is a factual cognizance on the part of the President that another MP enjoys the confidence WITHIN the parliamentary group of the biggest party in Opposition.

The second possibility envisaged by article 90 (4) allows the President to revoke the appointment of the sitting Leader of the Opposition on having ceased to have "the support" of the largest single group of members in Opposition to the Government.

The President therefore is constitutionally bound to ascertain as a fact that another MP other than the sitting Leader of the Opposition enjoys the majority of the largest party within the House in Opposition to the Government to appoint such other MP as the new Leader of the Opposition and of revoking the mandate of the MP originally appointed to that position.

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