

Nru. 172

25. 10. 91

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Eddie Fenech Adami, M.P., Prim Ministru, u moqri għall-Ewwel darba fis-Seduta tat-23 ta' Ottubru, 1991.

A BILL introduced by the Honourable Eddie Fenech Adami, M.P., Prime Minister, and read for the First time at the Sitting of the 23rd October, 1991.

ATT biex ikompli jemenda l-Kostituzzjoni ta' Malta.

AN ACT further to amend the Constitution of Malta.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT biex ikompli jemenda l-Kostituzzjoni ta' Malta.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

1. Dan l-Att jista' jissejjah l-Att ta' l-1991 li jemenda l-Kostituzzjoni ta' Malta (Emenda Nru. 2), u għandu jinqara u jiftiehem haġa waħda mal-Kostituzzjoni ta' Malta, hawnhekk iżjed 'il quddiem imsejha "il-Kostituzzjoni". Titolu fil-qosor.

2. L-artikolu 52 tal-Kostituzzjoni għandu jiġi emendat kif ġej: Emenda ta' l-artikolu 52 tal-Kostituzzjoni.

(a) il-proviso li hemm għas-subartikolu (1) tiegħu għandu jithassar; u

(b) fil-proviso li hemm għas-subartikolu (2) tiegħu, minnufih wara l-kliem "l-artikolu 66 ta' din il-Kostituzzjoni" għandhom jiżdiedu l-kliem "jew għall-finijiet ta' l-artikolu 52A ta' din il-Kostituzzjoni".

3. Minnufih wara l-artikolu 52 tal-Kostituzzjoni, għandu jiżdied dan l-artikolu ġdid li ġej: Żieda ta' l-artikolu 52A ġdid mal-Kostituzzjoni.

52A. (1) Partit rappreżentat huwa kull partit politiku ^{Membri addizzjonali.} li jkollu mill-inqas wieħed mill-kandidati tiegħu elett biex ikun membru tal-Kamra tad-Deputati minn xi distrett elettorali.

(2) (a) Kull partit rappreżentat għandu jkollu għadd ta' membri fil-Kamra tad-Deputati li jkun fl-istess proporzjon għar-rigward ta' l-għamla shiħa tal-Kamra

daqskemm hu l-proporzjon ta' voti akkreditati favur dak il-partit rappreżentat għar-rigward ta' l-għadd sħiħ ta' voti akkreditati favur il-partiti rappreżentati kollha: dak l-għadd ta' membri għandu minn hawn 'il quddiem jissejjah "l-għadd proporzjonali ta' membri".

(b) Għal kull fini ta' dan is-subartikolu l-voti akkreditati favur partit rappreżentat għandhom ikunu l-għadd sħiħ ta' voti validi akkreditati mill-Kummissjoni Elettorali lill-kandidati kollha ta' dak il-partit fl-ewwel għadd.

(3) Partit rappreżentat li ma għandux għadd proporzjonali ta' membri jissejjah "partit mhux rappreżentat biżżejjed".

(4) Jekk f'elezzjoni ġenerali jkun hemm partit wiehed jew iżjed li jkun partit mhux rappreżentat biżżejjed, l-għadd ta' membri tal-Kamra tad-Deputati għandu jiżdied b'dak l-għadd ta' membri (hawnhekk iżjed 'il quddiem imsejhin "membri addizzjonali" li jistgħu jkunu meħtieġa sabiex kull partit rappreżentat ikollu għadd proporzjonali ta' membri.

(5) Dawk il-kandidati ta' kull partit mhux rappreżentat biżżejjed daqskemm ikunu jinhtieġu minn kull partit bħal dak sabiex jinkiseb l-għadd proporzjonali ta' membri, li jkunu l-kandidati tal-partit mhux rappreżentat biżżejjed li ġew akkreditati mill-Kummissjoni Elettorali fl-aħħar għadd bl-oghla għadd jew bl-għadd li jiġi wara l-oghla għadd ta' voti mingħajr ma jiġu eletti, irrispettivament mid-distrett elettorali fejn ikun hemm dak l-oghla għadd jew għadd li jiġi wara l-oghla għadd, għandhom jiġu dikjarati mill-Kummissjoni Elettorali bħala membri addizzjonali: jekk l-għadd ta' kandidati ta' partit mhux rappreżentat biżżejjed ma jkunx ilaħħaq ma' dak meħtieġ sabiex jinkiseb l-għadd proporzjonali ta' membri, il-postijiet tal-membri addizzjonali li jkunu għad iridu jiġu eletti wara li l-lista tal-kandidati kollha ta' dak il-partit mhux rappreżentat biżżejjed tkun giet eżawrità, għandhom jimtlew b'elezzjoni b'għażla.

(6) L-għadd proporzjonali ta' membri u l-elezzjoni ta' membri addizzjonali għandhom jinħadmu skond ir-regoli li hemm fil-Hames Skeda li tinsab ma' din il-Kostituzzjoni."

Emenda ta'
l-artikolu 56
tal-Kostituzzjoni.

4. Minnufih fi tmiem is-subartikolu (1) ta' l-artikolu 56 tal-Kostituzzjoni għandu jiżdied dan il-proviso li ġej:

"Iżda ma jkunx jista' jsir it-trasferiment ta' preferenza f'vot mingħand kandidat ta' partit politiku wiehed għal għand kandidat ta' partit politiku ieħor u kull vot li jkun juri bħala l-preferenza li

jmiss kandidat li jappartjeni lil partit li ma jkunx dak li għalih ikunu jappartjenu l-kandidati li jkunu inghatawllhom il-preferenzi ta' qabel, għandu jitqies bħala vot mhux trasferibbli fl-istadju fejn ikun hemm dik il-preferenza li jmiss: għal kull fini ta' dan il-proviso kandidat li jikkontesta elezzjoni bħala kandidat indipendenti u mhux bħala kandidat ta' partit politiku għandu jitqies bħallikieku kien partit politiku separat.”.

5. Is-subartikolu (2) ta' l-artikolu 66 tal-Kostituzzjoni għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 66 tal-Kostituzzjoni.

(a) fil-paragrafu (b) tiegħu minflok il-kliem “l-artikoli 51, 52, 56, 57, 60 u 61” għandhom jidhlu l-kliem “l-artikoli 51, 52, 52A, 56, 57, 60 u 61”;

(b) il-paragrafu (c) tiegħu għandu jiġi enumerat mill-ġdid bħala l-paragrafu (d) u, fl-imsemmi paragrafu kif enumerat mill-ġdid, minflok il-kliem “fil-paragrafu (a) jew (b) ta' dan is-subartikolu” għandhom jidhlu l-kliem “fil-paragrafi (a), (b) jew (c) ta' dan is-subartikolu”; u

(c) minnufih wara l-paragrafu (b) tiegħu għandu jiżdied dan il-paragrafu li ġej:

“(c) il-Hames Skeda li tinsab ma' din il-Kostituzzjoni; jew”.

6. Minnufih wara r-Raba' Skeda li tinsab mal-Kostituzzjoni, għandha tiżdied din l-Iskeda ġdida li ġejja:

Żieda tal-Hames Skeda ġdida mal-Kostituzzjoni.

“IL-HAMES SKEDA

(Artikolu 52A)

Regoli dwar kif jiġi stabbilit l-għadd proporzjonali ta' membri tal-Kamra tad-Deputati u dwar l-Elezzjoni ta' Membri Addizzjonali

1. Fi tmiem l-ipproċessar kollu ta' l-għadd, il-Kummissjoni Elettorali għandha tghodd flimkien il-voti validi akkreditati fl-ewwel għadd lill-kandidati kollha ta' kull partit rappreżentat, u l-għadd totali li johroġ bħala riżultat ikun il-vot-mal-ewwel-għadd-tal-partit għar-rigward ta' dak il-partit rappreżentat.

2. Il-Kummissjoni Elettorali mbagħad tghaddi biex tghodd flimkien il-voti-mal-ewwel-għadd-tal-partit kollha u l-għadd totali li johroġ bħala riżultat ikun il-voti-totali-mal-ewwel-għadd għal dik l-elezzjoni ġenerali.

3. (a) Il-Kummissjoni Elettorali għandha mbagħad tistabilixxi xi tkun il-perċentwali proporzjonali li kull vot-mal-ewwel-

ghadd-tal-partit ikollu għar-rigward tal-voti-totali-mal-ewwel-ghadd. Dan il-proporzjon għandu minn hawn 'il quddiem jissejjah il-perċentwali-ta'-voti-ghal-partit.

(b) Partijiet frazzjonali ta' punt perċentwali għandhom jittellgħu għall-eqreb numru shih jew għandhom jithallew barra għal kollox skond ir-Regola 4 kif ġej.

4. Jekk xi perċentwali-ta'-voti-ghal-partit wiehed jew iktar minn wiehed kif komputat fil-paragrafu (a) tar-Regola 3 ma jkunx unità shiħa iżda jkun fih ukoll parti frazzjonali ta' punt perċentwali, il-Kummissjoni Elettorali għandha tghaddi biex l-ewwel ittella' għall-eqreb numru shih l-ikbar parti frazzjonali u mbagħad tghaddi biex ittella' għall-eqreb numru shih l-ikbar parti frazzjonali li jmiss sakemm il-perċentwali-ta'-voti-ghal-partit tal-partiti kollha rappreżentati jkunu flimkien iġibu l-mija fil-mija, u għandha wara dan ma tagħtix każ aktar ta' kuli parti frazzjonali ji jfdal. Jekk żewġ partijiet frazzjonali jkunu ndaqs il-Kummissjoni Elettorali għandha l-ewwel ittella' l-parti frazzjonali li tkun taqsimel sehem mill-ikbar vot-mal-ewwel-ghadd-tal-partit, u mbagħad il-parti frazzjonali l-oħra. Jekk kemm il-parti frazzjonali kif ukoll il-vot-mal-ewwel-ghadd-tal-partit ikunu indaqs, il-Kummissjoni Elettorali għandha taqta' bix-xorti liema tkun dik il-parti frazzjonali li għandha tittella' l-ewwel.

5. (a) Il-Kummissjoni Elettorali għandha mbagħad tistabbilixxi xi jkun il-proporzjon perċentwali ta' l-ghadd ta' kandidati dikjarati eletti fid-distretti elettorali kollha għal kull partit rappreżentat għar-rigward ta' l-ghamla shiħa tal-Kamra tad-Deputati kif tohrōg mill-artikolu 52 ta' din il-Kostituzzjoni. Il-proporzjon li jiġi hekk stabbilit għandu jikkostitwixxi l-perċentwali-ta'-postijiet-ghal-partit dwar dak il-partit.

(b) Partijiet frazzjonali ta' punt perċentwali għandhom jittellgħu għall-eqreb numru shih jew ma jingħatax każhom skond id-dispożizzjonijiet. *mutatis mutandis*, stabbiliti fir-Regola 4.

6. Jekk dwar kull partit rappreżentat il-perċentwali-ta'-voti-ghal-partit ikun daqs il-perċentwali-ta'-postijiet-ghal-partit, ebda membru addizzjonali ma għandu jiġi dikjarat elett.

7. Jekk dwar partit rappreżentat il-perċentwali-ta'-voti-ghal-partit ma jkunx daqs il-perċentwali-ta'-postijiet-ghal-partit, il-Kummissjoni Elettorali għandha tghaddi biex tiddikjara eletti l-membri addizzjonali skond dawn ir-regoli li ġejjin.

8. Il-Kummissjoni Elettorali għandha tistabbilixxi l-indiċi ta' nuqqas ta' proporzjonalità għal kull partit rappreżentat billi tnaqqas għal kull partit il-perċentwali-ta'-voti-ghal-partit mill-perċentwali-ta'-postijiet-ghal-partit. b'mod li jinkiseb, skond il-każ, indiċi pożittiv jew negattiv ta' nuqqas ta' proporzjonalità għal kull partit rappreżentat.

9. (a) Il-Kummissjoni Elettorali għandha mbagħad tgħaddi biex timmoltiplika l-għadd ta' kandidati eletti f'isem il-partit rappreżentat li jkollu l-ogħla indici pożittiv ta' nuqqas ta' proporzjonalità b'mija, u tiddividi r-riżultat hekk miksub bl-għadd ta' punti perċentwali li dak il-partit ikun kiseb bħala perċentwali-ta'-voti-għal-partit. Jekk ir-riżultat ikun fih parti frazzjonali jew ikun numru biż-żewġ dan għandu jittella' għall-ogħla numru bil-fard li jmiss. In-numru miksub jikkostitwixxi l-għamla totali ġdida tal-Kamra tad-Deputati.

(b) Għandhom jiġu dikjarati eletti mill-Kummissjoni daqstant membri addizzjonali daqskemm ikun ir-riżultat miksub bit-tnaqqis li jsir mill-għamla totali ġdida tal-Kamra tad-Deputati, ta' l-għadd ta' membri tal-Kamra tad-Deputati kif johrog bis-saħħa ta' l-artikolu 52 tal-Kostituzzjoni.

10. Il-Kummissjoni Elettorali għandha mbagħad tistabbi-lixxi l-għadd proporzjonali ta' membri li kull partit rappreżentat ikun ser ikollu fil-Kamra tad-Deputati billi timmoltiplika għal kull partit rappreżentat l-għadd ta' membri li jkunu jikkostitwixxu l-għamla totali ġdida tal-Kamra bil-perċentwali-ta'-voti-għal-partit tal-partit rappreżentat rispettiv u tiddividi r-riżultat b'mija; partijiet frazzjonali għandhom jittellghu għall-eqreb numru shih jew ma jingħatax aktar każhom skond id-dispożizzjonijiet, *mutatis mutandis*, stabbiliti fir-Regola 4.

11. Il-Kummissjoni Elettorali għandha mbagħad tgħaddi biex tiddikjara eletti skond id-dispożizzjonijiet tas-subartikolu (5) ta' l-artikolu 52A ta' din il-Kostituzzjoni daqstant membri addizzjonali għal kull partit rappreżentat daqskemm ikun meħtieġ biex iżid l-għadd ta' kandidati dikjarati eletti għal dak il-partit rappreżentat mid-distretti elettorali kollha għan-numru proporzjonali ta' membri li jikkostitwixxu l-għamla totali ġdida tal-Kamra dwar kull partit rappreżentat skond dawn ir-regoli."

Għanijiet u Ragunijiet

L-Għan ta' l-Abbozz hu biex jiżgura proporzjonalità akbar fil-għadd tad-Deputati fil-Kamra tad-Deputati u biex tiġi eliminata l-possibbiltà ta' *gerrymandering* fil-futur.

**A BILL
entitled**

AN ACT further to amend the Constitution of Malta.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Constitution (Amendment) (No. 2) Act, 1991, and shall be read and construed as one with the Constitution of Malta, hereinafter referred to as the Constitution.

Amendment of section 52 of the Constitution.

2. Section 52 of the Constitution shall be amended as follows:

(a) the proviso to subsection (1) thereof shall be deleted; and

(b) in the proviso to subsection (2) thereof, immediately after the words "section 66 of this Constitution" there shall be added the words "or for the purposes of section 52A of this Constitution".

Addition of new section 52A to the Constitution.

3. Immediately after section 52 of the Constitution, there shall be added the following new section:

"Additional members.

52A. (1) A represented party is any political party which has at least one of its candidates elected as a member of the House of Representatives in any one electoral division.

(2) (a) Each represented party shall have a number of members in the House of Representatives in the same proportion to the total composition of the House as is the proportion of votes credited in favour of that represented party to the total number of votes

credited in favour of all represented parties; such number of members shall hereinafter be called the "proportional number of members".

(b) For the purpose of this subsection votes credited in favour of a represented party shall be the total number of valid votes credited by the Electoral Commission to all the candidates of that party at the first count.

(3) A represented party which does not have a proportional number of members shall be called an "under-represented party".

(4) Where at a general election there is one or more under-represented parties the number of members of the House of Representatives shall be increased by such number of members (hereinafter called "additional members") as may be necessary so that each represented party will have a proportional number of members.

(5) The candidates of each under-represented party as may be necessary for each such party to achieve the proportional number of members, being the candidates of the respective under-represented party who were credited by the Electoral Commission at the last count with the highest or next higher number of votes without being elected, irrespective of the electoral division in which such highest or next higher number of votes occurs, shall be declared elected by the Electoral Commission as additional members: where the number of candidates of an under-represented party is not sufficient to achieve the proportional number of members, the seats of additional members still remaining to be elected after exhausting the list of all the candidates of that under-represented party shall be filled by co-option.

(6) The proportional number of members and the election of additional members shall be arrived at in accordance with the rules set out in the Fifth Schedule to this Constitution."

4. Immediately at the end of subsection (1) of section 56 of the Constitution there shall be added the following proviso:

Amendment of
section 56
of the
Constitution.

"Provided that it shall not be lawful to transfer the preference in a vote from a candidate of one political party to a candidate of another political party and any vote indicating as a next preference a candidate belonging to a party other than that to which the candidates to whom previous preferences have been indicated shall be deemed to be non transferable at the stage where such next preference is indicated: for the purpose of this proviso a candidate contesting an election as an independent candidate and not as a candidate of a political party shall be deemed to be a separate political party."

Amendment of section 66 of the Constitution.

5. Subsection (2) of section 66 of the Constitution shall be amended as follows:

(a) in paragraph (b) thereof for the words "sections 51, 52, 56, 57, 60 and 61" there shall be substituted the words "sections 51, 52, 52A, 56, 57, 60 and 61";

(b) paragraph (c) thereof shall be renumbered as paragraph (d) and, in the said paragraph as renumbered, for the words "paragraph (a) or (b) of this subsection" there shall be substituted the words "paragraph (a), (b) or (c) of this subsection"; and

(c) immediately after paragraph (b) thereof there shall be added the following paragraph:

"(c) The Fifth Schedule to this Constitution; or".

Addition of new Fifth Schedule to the Constitution.

6. Immediately after the Fourth Schedule to the Constitution, there shall be added the following new Schedule:

"FIFTH SCHEDULE

(Section 52A)

Rules for the establishment of the proportional number of members of the House of Representatives and for the Election of Additional Members

1. At the end of all counting operations, the Electoral Commission shall add together the valid votes credited at first count to all the candidates of each represented party, and the resultant total shall be the party-first-count-vote in respect of that represented party.

2. The Electoral Commission shall then proceed to add together all the party-first-count-votes and the resultant total shall be the total-first-count-vote for that general election.

3. (a) The Electoral Commission shall then establish what percentage proportion each party-first-count-vote constitutes of the total-first-count-votes. This proportion is hereinafter referred to as party-vote-percentage.

(b) Fractional parts of a percentage point shall be rounded up to the nearest whole number or disregarded in accordance with Rule 4 hereunder.

4. Where any one or more party-vote-percentages as arrived at in paragraph (a) of Rule 3 is not a whole unit but contains also a fractional part of a percentage point, the Electoral Commission

shall proceed by first rounding up to the nearest whole number the biggest fractional part and then proceed to round up to the nearest whole number the next bigger fractional part until the party-vote-percentages of all represented parties together add up to one hundred per cent, and shall thereafter disregard any remaining fractional parts. Where two fractional parts are equal the Electoral Commission shall first round up the fractional part which is the remainder of the bigger party-first-count-vote and then the other. Where both the fractional part and the party-first-count-vote are equal the Electoral Commission shall determine by lot which fractional part shall first be rounded up.

5. (a) The Electoral Commission shall then establish what percentage proportion the number of candidates declared elected in all the electoral divisions for each represented party constitutes of the total composition of the House of Representatives as determined under section 52 of this Constitution. The proportion thus established shall constitute the party-seat-percentage in respect of that party.

(b) Fractional parts of a percentage point shall be rounded up to the nearest whole number or disregarded in accordance with the provisions, *mutatis mutandis*, set out in Rule 4.

6. Where in respect of each represented party the party-vote-percentage is equal to the party-seat-percentage, no additional members shall be declared elected.

7. Where in respect of any represented party the party-vote-percentage is not equal to the party-seat-percentage, the Electoral Commission shall proceed to declare elected the additional members in accordance with the next following rules.

8. The Electoral Commission shall establish the index of disproportionality for each represented party by deducting in respect of each party the party-vote-percentage from the party-seat-percentage, thus achieving, as the case may be, a positive or a negative index of disproportionality for each represented party.

9. (a) The Electoral Commission shall then proceed by multiplying the number of candidates elected on behalf of the represented party having the highest positive index of disproportionality by one hundred, and dividing the result thus obtained by the number of percentage points that that same party achieved as a party-vote-percentage. Where the result contains a fractional part or is an even number it shall be rounded up to the next highest odd number. The result obtained shall constitute the new total composition of the House of Representatives.

(b) As many additional members shall be declared elected by the Commission as is the result achieved by subtracting from the new total composition of the House of Representatives, the number of members of the House of Representatives as determined under section 52 of the Constitution.

10. The Electoral Commission shall then determine the proportional number of members which each represented party is to have in the House of Representatives by multiplying in respect of each represented party the number of members constituting the new total composition of the House by the party-vote-percentage of the respective represented party and dividing the result by one hundred; fractional parts shall be rounded up to the nearest whole number or disregarded in accordance with the provisions, *mutatis mutandis*, set out in Rule 4.

11. The Electoral Commission shall then proceed to declare elected in accordance with the provisions of subsection (5) of section 52A of this Constitution as many additional members for each represented party as is necessary to increase the number of candidates declared elected in respect of that represented party from all the electoral divisions to the proportional number of members constituting the new total composition of the House in respect of each represented party in accordance with these rules.”.

Objects and Reasons

The Object of the Bill is to ensure a greater proportionality in the membership of the House of Representatives and to eliminate the possibility of gerrymandering in the future.