House of Representatives
Malta

21 ta' Marzu 1989.

L-Onor. Prof. Guido de Marco,
Chairman,
Kumitat Maghzul,
Il-Palazz,
Valletta.

Onorevoli Prof. de Marco,

Bhal ma inti zgur taf, il-Grupp Parlamentari, flimkien ma l-Ezekuttiv tal-Partit Laburista, hass li bid-decizjoni tal-Prim Minsitru li jinjora lill-Kumitat Maghzul u jghaddi ghal ghazla ta' President mill-Parlament b'maggoranza semplici inqered kull bzonn li ahna nkomplu bix-xoghol taghna u stedinna biex inwarrbu. Ma dan ahna naqblu.

Minhabba li diga konna lestejna rapport sa fejn wasal ix-xoghol taghna sal-lum, ahna qeghdin formalment naghtuhulek bit-tama li dan ikun ir-rapport li jitqieghed flimkien mal-minuti u dokumenti fuq il-Mejda tal-Kamra.

....
Dom Mintoff

....
Dr Guze Cassar

KUMITAT MAGHZUL
GHAL EMENDI KOSTITUZZJONALI
(It-Tieni Rapport - 11 Marzu 1989)

Dan ir-rapport fih:-

a) RAPPORT PRELIMINARI UNANIMU TA' MARZU 1988;

b) PROPOSTI TAL-MEMBRI TAL-GVERN "NEW GOVERNMENT PROPOSALS" (wara x-xandir tar-Rapport Preliminari);

c) *PROPOSTI U KUMMENTI TAL-MEMBRI TA' L-OPPOZIZZJONI (wara x-xandir tar-Rapport Preliminari.*

(Sabiex min jaqra jista jifhem malajr il-proposti u l-kummenti l-godda u ma jitlifx il-fil, nizzilnihom ezattament taht il-parti milquta tar-Rapport Preliminari).

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1) Bis-sahha ta' rizoluzzjoni approvata unanimament mill-kamra tad-deputati fis-seduta ta' l-ghaxra t'Awwissu 1987, gie mwaqqaf Kumitat Maghzul b'membri nominati miz-zewg nahat tal-Kamra biex jaghmel dawk ir-rakomandazzjonijiet lil kamra kif f'Malta jistghu jissahhu aktar l-istituzzjonijiet u d-demokrazija li ahna kburin li bnejna biex b'hekk titwettaq ix-xewqa espressa fil-programmi elettorali taz-zewg partiti li l-lum jirraprezentaw lil poplu Malti fil-Parlament.

2) Il-Kumitat Maghzul ezamina il-problemi principali li, fil-kontest ta' l-istess programmi elettorali, kif ukoll ta' l-esperjenza ta' l-imghoddi u tal-fehmiet espressi fil-gazzetti, u fin-numru konsiderevoli ta' ittri li dan il-kumitat ircieva, l-aktar li jinhtiegu li jigu mistharrga. Ghalhekk inhass il-bzonn li jinstab ordinament istituzzjonali u kostituzzjonali aktar b'sahhtu b'mod li tkompli tissahhah id-demokrazija f'Malta.

3) Il-Kumitat qabel li hemm certi istituzzjonijiet, organi u materji li ghalkemm ta' natura purament politika, pero ikun ahjar illi biex jissahhu u b'hekk tissahhah id-demokrazija, dawn ghandhom johorgu mill-glieda politika bejn il-partiti u jitpoggew fuq bazi nazzjonali.

B'hekk biss dehrilna li seta jigi evitat li dawn l-istituzzjonijiet tant importanti u essenzjali ghaz-zamma ta' l-istess demokrazija f'Malta jigu indeboliti ghad-dannu tal-pajjiz.

4) L-istituzzjonijiet, organi u materji ohra li gew hekk ikkunsidrati mill-Kumitat huma dawn:

a) Il-Qrati
b) Ix-Xandir
c) Kummissjoni dwar l-Impjiegi u Kummissjoni dwar is-Servizz Pubbliku
d) Il-Process Elettorali
e) Il-Parlament
f) L-Ispeaker
g) Is-Sigurta' ta' l-Istat
h) In-Newtralita' u materji ohra konnessi maghha
i) Il-Festa Nazzjonali

5.1) Mill-banda l-ohra gew ikkunsidrati wkoll materji ohra ta' importanza fil-hajja politika tal-poplu Malti li ghandhom x'jaqsmu ma drittijiet godda tac-cittadin u kif dawn ghandhom jigu salvagwardati. F'dan il-kuntest gew ezaminati:

a) Ugwaljanza shiha tas-sessi quddiem il-Kostituzzjoni u quddiem l-Istat;
b) Il-harsien u l-protezzjoni ta' taghrif partikolari u privat dwar ic-cittadin fil-konfront ta' socjeta' komputerizzata.

5.2) Il-Kumitat Maghzul hass il-bzonn ta' inkoraggiment biex l-ahjar imhuh u cittadini ta' esperjenza jghinu l-poplu u l-htiega li dawn ikunu f'xi pozizzjoni ufficjali rikonoxxuta meta jigu biex jaghtu l-pariri mehtiega (state councillors - kunsillieri ta' l-Istat).

KUMMENTI MILL-MEMBRI TA' L-OPPOZIZZJONI

Dwar dawn kollha nitkellmu meta nigu fuq l-istess suggetti separatament.

6.1) KUNSILL TA' L-ISTAT

Il-Kumitat ikkonsidra li il-bidla istituzzjonali li twettqet permezz tal-proklamazzjoni tar-Repubblika fl-1974 holqot il-kariga ta' President bhala kap ta' l-Istat Malti. Pero ghal dak li jirrigwarda is-sahha politika ta' din il-kariga, il-Presidenza tar-Repubblika ghalkemm moghtija ir-responsabbilita' li thares il-kostituzzjoni, fil-fatt thalliet b'poteri awtonomi zghar hafna, cioe' kariga aktar simbolika milli effettiva. Ghalhekk il-persuna li tokkupa din il-kariga kienet tigi murija rispett aktar formali milli konkret. Infatti il-kariga ta' President kif imfassla il-lum ma taghtihx il-forza li jkun il-"watchdog" (ghassies) tal-kostituzzjoni li tassigura l-indipendenza tal-pajjiz u l-hajja demokratika tac-cittadin Malti. Dan il-fatt wassal liz-zewg partiti rapprezentati fil-Parlament biex ihossu dan il-bzonn u jiddikjaraw fil-programmi elettorali taghhom li bi hsiebhom igibu tibdil fil-poteri u fil-funzjoni tal-kariga ta' President tar-Repubblika.

6.2) F'dan ir-rigward il-hsieb li iddomina id-diskussjonijiet kien hekk: Hemm materji fil-hajja nazzjonali li jmorru 'l hemm mill-glieda tal-partiti. Il- President tar-Repubblika ghandu jkollu d-dmir li f'dawk l-aspetti ta' hajja politika li jmorru 'l hemm mill-politika partiggjana, izda fit-twettiq taghhom ma jkunx hemm qbil bejn il-partiti, l-ewwel li jfittex biex dan il-qbil jintlahaq u jekk dan ma jsirx jerfa r-responsabbilita' tad-decizjoni hu stess f'isem u fl-ahjar interess tan-nazzjon.

Biex mit-tagen ma naqghux fin-nar, hemm bzonn li mhux biss il-Parlament izomm is-sahha ta' l-impeachment kontra abbuzi ta' natura gravi mill-President, imma l-President, fid-decizjonijiet tieghu, jkun marbut ma process li jassigura lin-nazzjon l-akbar garanzija ta' rispett lid-demokrazija f'pajjizna.

Ghalhekk il-Kumitat hass li ghandu jinholoq Kunsill ta' Stat ippresedut mill-istess President tar-Repubblika, bil-Prim Ministru u l-Kap ta' l-Oppozizzjoni bhala membri. Din l-istituzzjoni gdida ghandha sservi bhala makkinarju kostituzzjonali fejn il-President ghandu jaccetta il-parir kongunt moghti mill-Prim Ministru u l-Kap ta' l-Oppozizzjoni u f'kaz illi ma jkunx hemm qbil, ikun xieraq li l-President wara li jkun sema l-pariri taghhom, kif ukoll ta' ohrajn, jezercita d-dritt awtonomu tieghu li jiddeciedi fl-ahjar interess

nazzjonali. Il-Kumitat qabel ukoll li ghandu jkun hemm bhala Kunsillieri ta' l-Istat persuni li kkontribwew ghal certu zmien fil-hajja politika tal-pajjiz u li dwar il-patriottizmu taghhom m'hemmx dubju, ikunu minn liema partit politiku jkunu. Il-konferiment tat-titolu ta' Kunsillier ta' l-Istat ghandu jkun konsidrat bhala rikonoxximent kemm tal-meriti kif ukoll tas-servizzi li persuna jkun ta ghall-pajjiz fit-tregija tieghu.

In-nomina ssir mill-President tar-Repubblika u fuq dawn il-hatriet irid ikun hemm qbil bejn il-Prim Ministru u l-Kap ta' l-Oppozizzjoni. Dawn il-Kunsillieri ta' l-Istat jissejhu meta l-President tar-Repubblika jhoss il-htiega tal-parir taghhom.

Ikunu Kunsillieri ta' l-Istat bi dritt l-ex Presidenti tar-Repubblika u l-ex Prim Ministri.

Dan il-Kunsill ta' l-Istat ghandu jservi wkoll biex jiddeciedi dwar certi nomini bhalma huma: Il-Kummissjonarju Principali Elettorali, l-Awtorita' tax-Xandir, il- Kummissjoni ta' l-Impjiegi, u korpi ohrajn, u dan partikularment ghan-nomina tac-Chairman ta' dawn l-istituzzjonijiet li f'hafna aspetti tista tkun nomina determinanti.

6.3) Dekorazzjonijiet :- Il-Kumitat Maghzul ihoss u jkun xieraq ukoll li fl-interess nazzjonali, waqt li l-accettazzjoni tad-dekorazzjonijiet ta' stati barranin kellha tibqa tigi taht il-prerogattiva tal-Prim Ministru, l-ghoti ta' dekorazzjonijiet mir-Repubblika Maltija tkun ir-responsabbilita' tal-Kunsill ta' l-Istat.

6.4) Barra mill-Kunsill ta' l-Istat, il-President tar-Repubblika ghandu jippresiedi wkoll: il-Kunsill Nazzjonali tad-Difiza; il-Kunsill ghall-Amministrazzjoni tal-Gustizzja - zewg istituzzjonijiet li dwarhom hemm ir-rakomandazzjonijiet ta' dan il-Kumitat aktar il-quddiem fir-rapport. Il-Kumitat qabel li il-Kunsill ta' l-Istat ikollu d-dmir li jifli dawk it-trattati (agreements) kollha ma stati ohra sovrani sabiex jassigura li bl-ebda mod il-klawsoli "entrenched" tal-kostituzzjoni ma jigu mittiefsa, specjalment in-newtralita' u n-non alinjament tal-pajjiz. Il-Kunsill ta' l-Istat ghandu wkoll id-dmir li jara li ftehim ma' persuni jew enti-guridici ta' stati ohra sovrani ma jdghajjfux l-istess klawsoli tal-Kostituzzjoni. Ghal dawn ir-ragunijiet ikollu d-dritt li jitlob id-dokumenti kollha relattivi meta hekk jidhirlu li hu xieraq. Il-Kunsill ta' l-Istat ikollu wkoll id-

dritt li jigbed l-attenzjoni ta' l-awtoritajiet koncernati halli jkun hemm it-tibdil mehtieg.

6.5) Dan kollu juri li waqt li bl-ebda mod mhux se tinholoq sistema presidenzjali (jigifieri li jkun hemm President li veramentj ikun il-kap li jiddeciedi fl-amministrazzjoni tal-pajjiz) u li se tibqa s-sistema ta' Gvern Parlamentari, il-kariga ta' President mhux se tibqa biss wahda simbolika izda wkoll kariga li tkun responsabbli ghal parti minn dawk il-poteri li jolqtu il-hajja ta' kuljum tac-cittadini.

Ghal dawn ir-ragunijiet kariga bhal din titlob li kemm jista jkun tkun tgawdi l-appogg nazzjonali. Ghandu jitfittex li l-persuna maghzula bhala President tar-Repubblika ikollha warajha is-sahha morali, barra minn dik legali. Dan jista jintlahaq billi din il-persuna tigi eletta b'maggoranza kwalifikata mill-Parlament ta' zewg terzi. Jekk minkejja l-isforzi li jkunu saru, din il-maggoranza kwalifikata ma tintlahaqx, allura wiehed ghandu jirrikorri ghal elezzjoni diretta tal-poplu. F'dan il-kaz, jekk fl-ewwel votazzjoni ebda wiehed mill-kandidati ghall-presidenza ma jkollu l-maggoranza assoluta (jigifieri aktar minn nofs tal-voti validi), allura terga ssir elezzjoni ohra li fiha jiehdu parti biss dawk iz-zewg kandidati li jkunu gabu l-aktar numru ta' voti fl-ewwel elezzjoni.

B'dan il-mod ikun qieghed jigi assigurat li l-President tar-Repubblika gie mahtur mill-poplu jew mir-rapprezentanti mahturin mill-poplu u, kemm hu umanament possibli, bl-appogg ta' aktar minn partit politiku wiehed fil-pajjiz. Hekk biss il-President tar-Repubblika jista jakkwista s-sahha morali li jmexxi dawk l-istituzzjonijiet li huwa jkun qieghed jippresiedi bhalma huma il-Kunsill ta' l-Istat u l-Kunsill Nazzjonali tad-Difiza (li tahtu jaqa' s-Servizz tas-Sigurta' Nazzjonali) - pilastri godda li qeghdin jitwaqqfu biex isahhu r-Repubblika maltija u jharsuha minn kull theddid fil-gejjieni.

PROPOSTI MILL-MEMBRI TAL-GVERN

Section 48 - Amendment to section 48 of the principal law (Constitution)

(1) Subsection (1) of section 48 of the principal law shall be deleted and substituted with the following new subsection -

"(1)There shall be a President of Malta who shall be appointed in accordance with the following procedure -

(a) any person may be nominated as President of Malta provided his nomination is in writing is proposed by at least fifteen Members of Parliament and is accepted in writing by the nominee. A member of Parliament may not propose more than one person;

(b) the election of the President of Malta shall be made by the House of Representatives by secret ballot and no person shall be declared elected unless he secures the votes of not less than two-thirds of all the members of the House;

(c) should no person achieve the majority required in sub-paragraph (b) after three ballots have been taken, then the House of Representatives shall by Resolution appoint as President of Malta any person it may deem fit even though such person was not previously nominated in terms of subparagraph (a) above.

(2) In sub-paragraph (b) of subsection 3 of section 48 of the principle law the words "by resolution of the House of Representatives" shall be deleted and substituted by the following: "In accordance with the procedure set out in the following subsection".

(3) In sub-paragraph (b) of subsection 3 of section 48 of the principal law after the words "or misbehaviour" there shall be added: "or for failure to observe any duty or obligaiton imposed on him by this Constitution".

(4) Immediately after subsection (3) of section 48 of the principal law the following new subsection:

"(4)The procedure to be followed for the removal of the President of Malta in terms of subsection (3) of this section shall be as follows:

(a) the proposal to remove the President of Malta shall be approved by a Resolution of the House of Representatives clearly specifying the grounds for such removal;

(b) on such Resolution being approved by the House of Representatives, the Clerk of the House of Representatives shall within three days cause a copy of such Resolution to be communicated to the Registrar of the Superior Courts and within three days of the receipt of such communication the constitutional Court shall,

hold a public sitting to examine whether or not the facts alleged in the Resolution exist;

(c) the Constitutional Court in conducting the sitting shall regulate its own procedure and shall hear such evidence as it may deem fit;

(d) should the Constitutional Court find that the facts mentioned in the Resolution do in fact exist the office of President of Malta shall be declared to be vacant from the date of the judgement of the Constitutional Court.

Section 85 - Amendment to section 85 of the principal law:

(1) Immediately after sub-paragraph (a) of the proviso of subsection (1) of section 85 of the following new sub-paragraph shall be added :-

"(f) in the exercise of the powers granted to him by section 97 of this Constitution."

Chapter VIII - Council of State.

95 (1) There shall be a Council of State to be composed of the President of Malta, the Prime Minister and the Leader of the Opposition.

(2) The President of Malta shall call a meeting of the Council of State whenever he is required to do so by this Constitution.

(3) The Council of State shall have the sole power of conferring by unanimous vote, decorations for service to the Republic of Malta.

(4) The Council of State can funtion notwithstanding the absence of any of its members.

Counsellors of the Republic.

96 (1) Any citizen of Malta over the age of forty years may be appointed as Counsellor of the Republic provided his appointment is approved by a Resolution of the House of Representatives supported by not less than two thirds of all the members of the House of Representatives.

(2) Not more than two persons may be appointed as Counsellors of the Republic in any one year and there may not be more than ten Counsellors of the Republic.

(3) The Counsellors of the Republic are to be consulted by the President of Malta if so required to do by this Constitution.

Appointment of Commissions.

97 (1) Without prejudice to sub section (8) of this section, whenever any number of members, including the Chairman, of any commission, body or authority established by this Constitution is to be appointed the President of Malta shall, within ten days of such vacancy occuring, call a meeting of the Council of State, for the purpose of discussing the appointment of the person or persons to be so appointed.

(2) Should the Prime Minister and the Leader of the Opposition agree on the person or persons to be nominated then the President of Malta shall be obliged to nominate such person in the capacity indicated.

(3) Should the Prime Minister and Leader of the Opposition not agree with regard to the appointment of the Chairman of any commission, board or authority established by this Constitution, then such Chairman shall be appointed by the President of Malta after he has, individually or collectively, consulted with the Counsellors of the Republic who are present in Malta and such appointment shall be made not later than seven days after the Prime Minister and the Leader of the Opposition fail to reach agreement.

(4) Should the President of Malta fail to make such appointment within the time specified in the previous subsection such appointment shall be made by the Prime Minister not later than seven days after the end of the period allotted to the President of Malta and should the Prime Minister fail to make such appointment within the prescribed time then such appointment shall be made by the Leader of the Opposition.

(5) Should the Prime Minister and the Leader of the Opposition not agree with regard to the appointment of any member or members of any commission, body or authority established by this Constitution then all the members thereof shall be appointed by the President of Malta following the recommendation of the Prime Minister as to half the number thereof and the recommendation of the Leader of the opposition as to the other half.

(6) The Prime Minister and the Leader of the Opposition shall make such recommendations within seven days of disagreement being

registered in the Council of State provided that if either one fails to make the recommendation within the specified time the right to recommend shall be forfeited and shall pass to the other person.

(7) The President of Malta shall issue the appointment of the members within three days of having received the recommendations of the Prime Minister and/or the Leader of the Opposition.

(8) When the office of Chairman or member of any body, commission or authority becomes vacant during the ordinary course of appointment of the body, commission or authority concerned, such vacancy shall be filled by the President of Malta in accordance with the following procedure:

(a) if the person vacating the office has been appointed in terms of subsection (2) of this section the person appointed has to be similarly agreed to provided that if no agreement is reached the vacancy shall not be filled unless the vacancy regards the Chairman in which case the procedure laid down in subsections (3) and (4) is to be followed;

(b) if the person vacating the office has been appointed in terms of sub-section (3) of this section the procedure set out in subsections (3) and (4) of this section shall be followed;

(c) if the person vacating the office has been appointed in terms of sub-section (6) of this section the person who had originally made the recommendation shall make the recommendation.

98 Any authority or commission provided for by this Constitution shall be deemed to have been validly set up even if the President of Malta fails to make the appointments in accordance with the previous section provided that at least half the members thereof, excluding the Chairman, have been nominated in terms of the previous section.

Continuity of service of commission etc.

99 The members, including the Chairman, of any commission or authority appointed in terms of this Constitution shall continue in office after the period of office for which they have been appointed has elapsed

until such time as new members have been appointed in terms of this constitution.

KUMMENTI MILL-MEMBRI TA' L-OPPOZIZZJONI
(inharsu lejn in-'New Government Proposals')

Minn naha tal-Membri tal-Gvern gew ippreparati, dejjem fl-1989, emendi ghall-Kostituzzjoni li jidhru bl-Ingliz hawn fuq (immarkati bhala sec.85; 95-1,2,3,4; 96-1,2,3; 97-1,2,3,4,5,6,7,8a-b-c; 98; 99) rigward il-funzjonijiet tal-President.

Bhala rimarka purament teknika jidher li l-emenda ghal sec.(85) riedet tirreferi ghas-sub.para.(e) mhux (a) ta' sub. sec.(1) u f'sec.(85) jidher ukoll li in-new sub.para.(f) ghandu jirreferi ghal dik il-parti gdida tal-Kostituzzjoni li tidher f'pagni 34-37 taht "Appointments of Commission" u li bi zball giet immarkata 97(1) minflok dehret bhala klawsola gdida tal-Kostituzzjoni.

Tajjeb li dwar dawn id-drafts li saru minghajr konsultazzjoni mal-Membri ta' l-Oppozizzjoni, isiru dawn il-kummenti:

Dwar Kunsill ta' l-Istat 95(4), m'huwiex car jew facli li tifhem jekk dan ifissirx li l-Kunsill ta' l-Istat jista jiffunzjona wkoll minghajr il-prezenza tal-President. Dwar dan l-istess Kunsill il-Membri tal-Gvern naqsu li jdahhlu l-klawsola gdida fil-Kostituzzjoni biex jaghtu s-sahha xierqa lill-Kunsill ta' l-Istat li jhares in-newtralita' u n-non alinjament tal-pajjiz. Dawn il-poteri lill-Kunsill ta' l-Istat hemm aktar u aktar bzonnhom fid-dawl ta' l-esperjenza ta' dawn l-ahhar zminijiet. Jekk la l-Ispeaker u lanqas il-President ma jibqghu jhossu bhalma ghamlu s'issa li m'ghandhomx id-dritt li jindahlu u jrazznu l-Gvern kontra nuqqasijiet f'dan il-qasam, ikun ifisser li t-trazzin jithalla kompletament f'idejn il-Qorti Kostituzzjonali. Ghal min hu f'sensih Qorti Kostituzzjonali hija effettiva mhux biex trazzan izda biex iddewwi l-feriti jew tnaqqas il-hsara, ghax fin-natura taghha ma tistax tasal ghal decizjonijiet tant malajr li twaqqaf il-Gvern minn dak li jkun se jaghmel hazin. Kwazi kostituzzjonali ta' din in-natura s'issa hadu s-snin.

Dwar il-Kunsill tar-Repubblika il-klawsola 96(2) taghti il-fakulta li f'hames snin jistghu jigu maghzula l-ghaxar kunsillieri kollha tar-Repubblika u donnu m'hemmx skop ghaliex ma jistghux jigu appuntati/eletti aktar minn tnejn kull sena. Jidher ukoll li spicca l-kuncett li min serva

l-pajjiz bit-tmun f'idejh ghal zmien twil, bhal ex-Presidenti u ex-Prim Ministri, u jigu sottomessi bi dritt ghall approvazzjoni ta' tnejn minn tlieta tal-Membri tal-Parlament. Mhux car ukoll kif se jkun il-bidu tat-twaqqif ta' dan il-Kunsill tar-Repubblika jekk f'sena wahda jista jkun hemm tnejn biss. Ghal dawn ir-ragunijiet ahna nemmnu li l-proposta originali tar-Rapport Preliminari unanimu tal-Kumitat Maghzul hija ferm ahjar minn din li giet moghtija lilna minghajr ebda diskussjoni u ragunijiet minn naha tal-Membri tal-Gvern.

Dwar l-Appointment of Commissions jidher li dawn il-paragrafi fil-Kostituzzjoni jirriflettu ir-rakomandazzjonijiet maghmula mill-Kumitat Maghzul.

Dwar Klawsola 98 jidher li ahjar id-drafting ikun aktar car biex wiehed jista jifhem l-iskop minnufih, jigifieri li d-drafting jaghmel car li jekk il-Prim Ministru minn naha tieghu jew minn naha l-ohra, il-Kap ta' l-Oppozizzjoni jonqsu li jissottomettu l-persuni li jixtiequ jservu fuq dawn il-kummissjonijiet, il-kummissjoni xorta tkun tista tiffunzjona bic-Chairman u nofs il-Membri. Imma ghandu dejjem jigi assikurat li l-President ghandu d-dmir li malli jew il-Prim Ministru jew il-Kap ta' l-Oppozizzjoni iressaq in-nomini, dawn jaccettahom. Nahsbu li din kienet l-intenzjoni tal-Membri tal-Gvern, imma dawn il-klawsoli langas biss waslu ghad-diskussjoni.

Il-Klawsola gdida 99 donnha ma taghtix kaz ta' dak li jista jigri taht Sec 98, izda forsi aktar importanti huwa l-fatt li meta tigi l-htiega li c-Chairman jew il-membri tal-kummissjonijiet jinbidlu ghal xi ragunijiet serji bhalma huma ta' zbilanc jew inefficjenza, m'hemmx kif dawn jistghu jinbidlu qabel ma jaghlaq iz-zmien. Ahna jidhrilna li l-principju ta' "chi bolla, sbolla" ghandu jigi segwit ghar-rigward ta' hatriet regolati bil-Kostituzzjoni. Fuq dan s'issa ma saret l-ebda diskussjoni fil-Kumitat Maghzul.

F'din is-sezzjoni ta' dan ir-Rapport Preliminari tissemma l-"impeachment" tal-President li f'pajjizi demokratici jistghu jwasslu kemm ghat-tnehhija tal-President, kif ukoll, f'kazi gravissimi, ghal passi kriminali.

Dwar l-ghoti ta' poteri tal-Parlament lill-Qorti Kostituzzjonali biex tiddecidi hi jekk il-President ikunx naqas mid-dmirijiet tieghu hallikun jista jitnehha, wiehed irid isemmi ukoll li jekk il-President se jinghata kif s'issa ghadhom jixtiequ ukoll il-Membri tal-Gvern, sahha li jhares il-

mixi sewwa tal-Gudikatura jkun perikoluz jekk President b'dawn il-poteri godda jitpogga fil-pozizzjoni li jkollu kull darba jhares wara spallejh u jevita li bl-azzjonijiet tieghu jurta 'l dawk il-persuni li ghada jistghu jkunu fil-pozizzjoni li jpattuwhielu.

Jidher car li l-Membri tal-Gvern iridu jhallu f'idejn il-Qorti ir-responsabbilita finali dwar it-tnehhija ta' President (sub-section 4 gdida ghal section 48). Ir-rapport unanimu preliminari kien jimplika li ladarba l-President ikun jista jinhatar mill-Parlament biss bil-maggoranza kwalifikata ta' tnejn minn tlieta, hekk ukoll skond il-principju ta' "chi bolla, sbolla" irid ikun hemm l-istess poter minn naha tal-Parlament ghat-tnehhija tal-President. Jekk b'xi mod irridu naghtu protezzjoni aktar (kif inhu xieraq) lil President kontra azzjonijiet kriminali, ahna naqblu li fil-kaz ta' passi kriminali mhux biss ghandu jkun hemm, qabel xejn, l-approvazzjoni ta' tnejn minn tlieta tal-membri tal-Parlament izda wara t-tnehhija irid ikun hemm il-fijat mill-istess maggoranza kwalifikata li jistghu jittiehdu passi kriminali kontra tieghu mill-Qorti Kriminali. Naturalment dan kollu jaqa jekk l-ghazla tal-President ma ssirx jew bil-maggoranza kwalifikata ta' tnejn minn tlieta jew b'elezzjoni diretta mill-poplu.

Elezzjoni tal-President.- Dwar dan il-Membri tal-Gvern issottomettew draft ghall-emendi fil-kostituzzjoni li jidher fuq (section 48; sub-section 1; para. 1a,b,c).

B'din il-proposta gdida tal-Membri tal-Gvern twarrbet il-fehma unanima li biex "jakkwista s-sahha morali li jmexxi dawk l-istituzzjonijiet li huwa jkun qieghed jippresedi" il-President tar-Repubblika jew jigi mahtur direttament mill poplu, jew jigi mahtur mill-Parlament imma "kemm ikun umanament possibli bl-appogg ta' aktar minn partit politiku wiehed fil-pajjiz". Biex aktar ikun difficli ghall-Membri Socjalisti li jaccettaw dan it-tibdil, il-Membri tal-Gvern dahhlu principju li fid-demokrazija ta' pajjizna s'issa qatt ma gie accettat - il-principju ta' vot sigriet. Li jidneb kontra principju aqwa minnu li rapprezentant tal-poplu qed jivvota f'isem ic-cittadini li ghazluh u f'kwalunkwe okkazjoni ghandu l-obbligu li jurihom kif qed jivvota. Allahares fid-demokrazija taghna jigi accettat il-principju tal-vot sigriet fill-Membri tal-Parlament. L-esperjenza qarsa ta' l-Italja f'dawn l-ahhar ghoxrin sena ghandha tkun twissija biz-zejjed biex ma nilghabux man-nar.

7.1) KUNSILL NAZZJONALI TAD-DIFIZA

Il-Kumitat jirrikmanda li ghandu jkun hemm Kunsill Nazzjonali tad-Difiza taht il-presidenza tal-President tar-Repubblika li jkun ghal dan il-fini wkoll il-kap tal-Forzi Armati tal-pajjiz. Dan il-kumitat ikollu bhala membri: il-Prim

Ministru; il-Ministru responsabbli ghad-Difiza; il-Ministru ghall-Affarijiet Barranin u ufficjali gholja tal-Forzi Armati. Dan il-Kumitat ikun responsabbli li jiddeciedi fuq policies dwar il-htigijiet fondamentali u bazici tad-Difiza u dan kemm fi zmien ta' paci u kemm fi zmien ta' gwerra, izda fi zmien ta' paci l-amministrazzjoni u t-tmexxija generali tal-Forzi Armati tal-gzira tkun f'idejn il-Ministru tad-Difiza.

7.2) Is-Servizzi Nazzjonali Sigrieti tar-Repubblika jkunu taht ir-responsabbilita' tal-Kunsill Nazzjonali tad-Difiza.

Dawk kollha li minn zmien ghal zmien ikunu msejha, skond il-materja li tkun qed tigi diskussa, biex jiehdu parti fil-Kunsill ta' l-Istat jew il-Kunsill Nazzjonali tad-Difiza, jkunu marbuta bis-sigriet ta' l-Istat.

PROPOSTA TAL-MEMBRI TAL-GVERN

120B National Defense council.

(1) There shall be a National Defence Council for Malta with the functions of establishing the policies to be followed in the defence and security of the territory of Malta.

(2) The President of Malta shall be the Chairman of the National Defence Council and the Prime Minister, the Minister for Internal Affairs, the Commissioner of Police and the Commanding Officer of the Armed Forces shall be members.

KUMMENTI TAL-MEMBRI TA' L-OPPOZIZZJONI

L-Oppozizzjoni ma fehmitx ghaliex fil-funzjonijiet tal-Kunsill Nazzjonali tad-Difiza m'ghandhux ikun hemm specifikat fil-Kostituzzjoni stess ir-responsabilita ta' dan il-Kunsill ghas-servizzi sigrieti nazzjonali tar-Repubblika, specjalment meta din ir-responsabilita ma tidhirx fil-Kostituzzjoni li qeghda fuq xi hadd. Il-Membri ta' l-Oppozizzjoni jidhrilhom ukoll li f'kaz ta' emergenza nazzjonali meta l-President ikun hu

direttament responsabbli ghall-agir tal-Forzi Armati u tal-Pulizija, il-Kap ta' l-Oppozizzjoni ghandu jifforma parti minn dan il-Kunsill bi dritt. La l-Membri tal-Gvern issa dahhlu wkoll lill-Ministru ta' l-Intern, barra mill-Ministru tad-Difiza, allura dan il-kunsill ghandu jkollu s-setgha li jfassal il-policies ta' dan il-Korp tal-Pulizija. Jekk dan kollu jsehh, il-Membri ta' l-Oppozizzjoni ma humiex kontra t-tibdil suggerit.

Naturalment ghad iridu jigu definiti fil-Kostituzzjoni x'inhuma sewwa l-funzjonijet tal-Kunsill Nazzjonali tad-Difiza, partikolarment meta jkun hemm stat ta' emergenza fil-pajjiz u fi stat ta' gwerra.

Huwa importanti wkoll li minn jum ghal jum il-Parlament ikollu rendikont jew rapport dwar ix-xoghol ta' dan il-Kunsill specjalment jekk ikun hemm nuqqas ta' qbil bejn ic-Chairman u Membri tad-Defence Council.

8.1) KUNSILL GHALL-AMMINISTRAZZJONI TAL-GUSTIZZJA

Il-Kumitat maghzul ezamina il-problema dwar il-Qrati u l-funzjonijiet taghhom fi hdan l-Istutuzzjonijiet ta' l-Istat Malti. Il-Kumitat jidhirlu li ghandu jigi kkonfermat fil-Kostituzzjoni li l-Gudikatura hija organu indipendenti ta' l-Istat u li kull Gudikant ghandu jiddeciedi l-kwistjonijiet li jkollu quddiemu skond l-apprezzament tieghu tal-fatti u skond l-applikazzjoni tal-ligijiet kif interpretati skond il-kuxjenza tieghu bla ebda pressjoni, influenza jew indhil minn ebda naha. Dan huwa essenzjali biex il-Gudikatura tkun f'ghajnejn il-poplu organu li jiggudika imparzjalment u b'mod indipendenti.

8.2) Kif inhi s-sitwazzjoni l-lum, l-Ezekuttiv ghandu d-dritt iqassam lill-Imhallfin id-dmirijiet taghhom fil-Qrati.

Biex certi poteri ma jibqghux f'idejn l-Ezekuttiv (il-Gvern) wahdu, u biex tigi assigurata aktar l-indipendenza tal-Gudikatura, il-Kumitat jirrikmanda li din is-sahha ghandha tghaddi f'idejn il-Kunsill ghall-Amministrazzjoni tal-Gustizzja.

Dan il-Kunsill ikollu r-responsabbilita' ghat-tmexxija efficjenti tal-Amministrazzjoni tal-Qrati, ikollu l-poter jassenja lill-Imhallfin u l-Magistrati d-dmirijiet taghhom fil-Qrati u li jassigura li l-hidma fil-Qrati tkun skond il-ligi u fl-interess tal-poplu.

Il-Kunsill ghall-Amministrazzjoni tal-Gustizzja jkun presedut mill-President tar-Repubbli ka u kompost ukoll mill-Prim Imhallef bhala vici- President, il-Ministru tal-Gustizzja, Imhallef elett mill-Bank

tal-Gudikatura, Magistrat elett mill-Bank tal-Magistrati, persuna nominata mill-Prim Ministru u persuna nominata mill-Kap ta' l-Oppozizzjoni. Dawn l-ahhar tnejn ghandhom ikunu persuni li m'humiex gejjin mill-Parlament u li jgawdu r-rispett tal-poplu ghall-integrita' u ghas-serjeta' taghhom.

8.3) Il-Kumitat Maghzul jaqbel u jemmen, kif jidher minn dan ir-rapport, fl-indipendenza tal-Gudikatura. Jidhirlu pero' li fl-interess ta' l-istess Gudikatura ghandu jigi introdott il-kuncett tal-"accountability".

Kif inhi s-sitwazzjoni l-lum, l-Imhallef igawdi s-sigurezza tal-pozizzjoni tieghu u ma jistax jigi rimoss mill-kariga jekk mhux bil-vot taz-zewg terzi tal-Kamra tad-Deputati kif tipprovdi l-Kostituzzjoni. Din is-sitwazzjoni, il-Kumitat jidhirlu li ghandha tinzamm.

8.4) Il-Kumitat jidhirlu li ghal ahjar funzjonament tal-Kunsill ghall-Amministrazzjoni tal-Gustizzja ghandu bzonn l-ghajnuna ta' zewg kummissjonijiet:

(a) Kummissjoni tat-Tmexxija tal-Qrati; u

(b) Kummissjoni ta' Vigilanza.

Il-Kummissjoni ghat-Tmexxija tal-Qrati ghandha r-responsabbilita' li tara li t-tmexxija tal-Qrati u tar-registru taghhom tkun tajba, efficjenti u responsabbli. Din il-Kummissjoni tkun preseduta mill-Ministru tal-Gustizzja u jkun hemm fiha Imhallef u Magistrat li jkunu nominati biex iservu fil-Kunsill ghall-Amministrazzjoni tal-Gustizzja, ir-rapprezentant tal-Kamra tal-Avukati, rapprezentant tal-Kamra tal-Prokuraturi Legali, rapprezentant elett mill-impjegati tal-Qrati, u zewg membri nominati mill-Prim Ministru u tnejn nominati mill-Kap ta' l-Oppozizzjoni li minnhom tnejn ikunu dawk it-tnejn li qeghdin iservu diga' fil-Kunsill ghall-Amministrazzjoni tal-Gustizzja u t-tnejn l-ohra li jkollhom l-istess rekwiziti u kwalifiki bhal ta' dawk nominati ghall-Kunsill ta' l-Amministrazzjoni tal-Gustizzja.

8.5) Il-Kummissjoni ta' Vigilanza jkollha r-responsabbilita' li tara l-Gudikanti fl-amministrazzjoni taghhom fil-Qrati (ghad-differenza tal-funzjonijiet li jiddeciedi il-materji li jkollhom quddiemhom) jaqdu l-istess funzjonijiet taghhom skond il-ligi u b mod li ma jonqsux mid-doveri taghhom u minn dak li gustament huwa mistenni minnhom.

Il-Kummissjoni tkun komposta mill-Prim Imhallef li jippresjedi, mill-Imhallef u l-Magistrat li qeghdin jservu fil-Kunsill ghall-Amministrazzjoni tal-Gustizzja, minn persuna nominata mill-Prim Ministru u minn persuna nominata mill-Kap ta' l-Oppozizzjoni, liema persuni kollha jkunu dawk l-istess li jkunu jservu fil-Kunsill ta' l-Amministrazzjoni tal-Gustizzja.

Kull membru ta' dawn il-Kummissjonijiet ghandu d-dritt li jappella quddiem il-Kunsill ta' l-Amministrazzjoni tal-Gustizzja. Hekk ukoll ghandha d-dritt kull persuna li tigi milquta minn decizjonijiet ta' dawn il-Kummissjonijiet.

8.6) Il-membri tal-Parlament ikollhom id-dritt li l-ilmenti taghhom iressquhom u jidhru wkoll quddiem kull wahda mill-Kummissjonijiet kif ukoll, meta jkun il-kaz, quddiem il-Kunsill ta' l-Amministrazzjoni tal-Gustizzja.

8.7) L-principji hawn dikjarati m'huwmiex godda. Dawn huma diga implimentati f'pajjizi demokratici ohra u dan qieghed isir biex jassigura l-indipendenza tal-Gudikatura u fl-istess hin din il-Gudikatura takkwista aktar rispett f'ghajnejn ic-cittadin.

PROPOSTI MILL-MEMBRI TAL-GVERN

(5) It shall be the function of the Council for the Administration of Justice to:-

(a) safeguard the independence of the judiciary, and the proper administration of justice;

(b) to assign to specific courts or other ajudicating authorities prescribed by law, judges and magistrates according to their respective competences and to perform the distribution of duties in general;

(c) appoint judges or magistrates to sit on any Board of Enquiries from time to time established by Parliament or by the Executive;

(d) distirbute equitably remunerative work or similar duties which according to law, have to be performed by any member of the judiciary;

(e) authorise any member of the judiciary to accept any remuneration other than the official salary, and to limit or withdraw any such authorisation;

(f) surrogate any judge or magistrate when such surrogation is required;

(g) ensure, without interference in the decision making functions of the Court or any other adjudicating authority prescribed by the law, the expeditious administration of Justice;

(h) make recommendation to the Minister for Justice for the improvement of the running of the Court Registry and of the administration of the Courts in general;

(i) make rules, to be called Rules of Court, having the force of law, for any of following purposes:-

(i) for carrying into effect the provision of the Judicial Proceeding (Use of English Language) Act 1965.

(ii) for establishing any form not provided in the Code of Organisation and Civil Procedure.

(iii) for fixing the days, hours, duration and number of sittings of the Courts, determinig the manner of the distribution of causes among the judges and magistrates appointed to sit in a particular court.

(iv) for governing the conduct of the Courts and for securing and maintaining order and decorum within the building of the Courts.

(v) generally for establishing practices and procedures with regard to judicial acts and hearing of cases, not already provided for in the Code of Organisation and Civil Procedure or in other laws.

(vi) for establishing the rules and procedures for the conduct of the elections referred to Sub-Section (3) of this Section.

(vii) for carrying into effect the provisions of Article 46(7) of this Constitution.

KUMMENTI MILL-MEMBRI TA' L-OPPOZIZZJONI

Jidher li dawn l-emendi tal-Kostituzzjoni qeghdin 'in line' ma dak li gie rakkomandat fir-rapport preliminari. Ghalhekk wiehed isib li mhux kollox

gie inkluz f'dawn l-emendi ladarba ufficjalment rega kien hemm qbil dwar ir-rapport preliminari f'dan ir-rigward. It-tibdil zghir li hemm fil-kompozizzjoni tal-Kunsill tal-Amministrazzjoni u l-Kunsill tal-Vigilanza huwa accettat mill-Membri ta' l-Oppozizzjoni.

9.1) XANDIR

Il-Kumitat qabel li ghandu jigi assigurat li x-Xandir ikun verament Xandir nazzjonali b'mod li t-tmexxija tieghu ma tinbidilx mal-bidla tal-poter effetiv tal-pajjiz. Il-Kumitat qabel li x-Xandir ghandu jkun ghalhekk taht ir-responsabbilita' unika ta' l-Awtorita' tax-Xandir bhala korp imparzjali u indipendenti li thares biss u tkun immexxija biss mill-interess nazzjonali u kapaci tonora ir-responsabbilitajiet taghha u tiggarantixxi l-imparzjalita fix-Xandir kif tirrikjedi l-istess kostituzzjoni.

Ghal dan il-ghan il-Kumitat qabel li ghandhom jigu rispettati dawn il-principji, cioe':

a) L-Awtorita' tax-Xandir tkun mhux biss awtorita' tax-xandir izda wkoll fix-xandir u ghalhekk ghandu jkollha funzjoni ezekuttiva. Il-Kap tax-Xandir jigi nominat minnha, direttament responsabbli lejha u rimovibbli minnha.

b) L-Awtorita' jkollha l-poter li timplimenta l-politika taghha dwar bilanc u mparzjalita'.

c) Huwa desiderabbli li l-membri li jikkomponu l-awtorita', ikunu wkoll accettabli ghaz-zewg nahat tal-Parlament.

d) Ic-Chairman ta' l-Awtorita' ghandu jigi approvat mill-Kunsill ta' l-Istat. Jekk ma jkunx hemm qbil bejn il-Prim Ministru u l-Kap ta' l-Oppozizzjoni, l-ghazla ssir mill-President.

e) Il-partiti politici rapprezentati fil-Parlament ikollhom id-dritt ghal programmi minnhom u fuq ir-responsabbilita' taghhom organizzati ghal numru ta' sieghat fuq ir-radio u fuq it-televizjoni a bazi tar-rapprezentanza taghhom fil-Parlament; fiz-zmien elettorali l-partiti politici kollha jkollhom id-dritt ghal sensiela ta' trasmissjonijiet lill-elettorat.

PROPOSTI TAL-MEMBRI TAL-GVERN.

Section 41 - Amendment of Section 41 of the principal law.

(1) In subsection (1) of section 41 of the principal act the following words shall be inserted immediately after the words "ideas and information without interference": "and whether the communication be by means of the press, radio, television or by any means used for the communication of ideas and information."

(2) in sub-paragraph (a) of sub-section (3) thereof the words "twenty-one" shall be deleted and substituted with the word "eighteen".

(3) immediately after sub-section (5) thereof there shall be added the following new sub-section (6): "(6)Any person who is a citizen of Malta and ordinarily resident in Malta may operate a radio and/or a television broadcasting station. Provided that provision may be made by law:-

(a) prohibiting or restricting the running of a radio and/or television station by anyone who is under eighteen years of age;

(b) ensuring that any person operating a radio and/or television broadcasting station is able to fulfil his obligations according to law and in particular to secure compliance with all directions of the Broadcasting Authority issued in accordance with the powers granted to it by this law or by any other law for the time being in force;

(c) ensuring compliance with the directives issued by the Wireless Telegraph Office or by the Broadcasting Authority in virtue of any law in force regarding quality and power of transmission as may be reasonably required to regulate broadcasting in Malta;

(d) ensuring compliance with such other directives issued by the Broadcasting Authority in virtue of any law in force as may be reasonably required to safeguard:-

(i) a correct balance between different types of programmes;

(ii) minimum number of programmes to be of Maltese origin;

(iii) maximum advertising time allotted;

(iv) minimum time allotted to news and new features;

(v) protection of religious sentiment, good taste and decency;

(vi) prohibition of incitement to crime or disorder;