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“PARLIAMENTS AND ACCOUNTABILITY”

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1. Introduction

Parliaments are sovereign. They exercise a most important power, interacting in a modern democratic state with the other two powers (executive and judiciary), as defined by Montesquieu. As such Parliaments control, supervise and have an overview over other state institutions and organs of the state apart from legislating. To talk about “Parliaments and Accountability” sounds *prima facie* as a contradiction in terms. Parliaments are there to hold others to account, how can they themselves be accountable and, if so, to which other institution? The traditional question “*qui custodiet ipsos custodes*” arises and the answer is that in a democracy every officer, every institution must be accountable in some way or another. Parliaments

despite their sovereignty cannot be exempted; they must also exhibit compliance with the laws and regulations of a country. The higher the rank of an institution or an officer of a state the higher the need for accountability for their actions.

Are they accountable to another institution, or solely to the citizens, that is, the voters who are called upon to elect MPs, at parliamentary elections? Or are they self-accountable, by means of internal rules applied by Parliamentary Committees?

Another issue is equally important: are the MPs' failures their own personal failures or failures of the political parties to which they belong? We must distinguish between the respective collective and individual responsibilities. Both must, of course, be accountable. Furthermore, distinction has to be made between electoral systems, that is, the one on the basis of constituencies, where the activities of individual MPs are more pronounced and the other, elections on the basis of party lists for greater areas, as is the system in many countries including Cyprus.

My presentation today will be devoted to the second aspect of accountability, that of Parliaments themselves and individual MPs, having in mind these introductory remarks.

2. The nature of parliamentary accountability

The notion of parliamentary accountability is linked to the nature of parliamentary mandate which has always been the subject of a lively debate.

According to the theory of *mandat impératif*, MPs are continuously accountable to the electorate and there should also be guarantees to effectively exercise that responsibility. Based on the idea of popular sovereignty, parliamentarians were, firstly, required to report regularly to the electorate on their individual action and the actions of the Parliament. Secondly, parliamentarians could be recalled by an electorate if they betrayed the voters' trust or committed any act unworthy of their office.

The imperative mandate, has now been widely abandoned giving its place to the so called *mandat représentatif*. This mandate draws on the theory of national sovereignty and conceives deputies as representing the whole

nation.¹ In this sense, elected representatives enjoy absolute independence *vis-a-vis* their electorate. They can exercise their mandates freely without being bound by any undertakings given before their election or instructions received from voters during their mandate, always having in mind, however, the public interest, and just that.

Indeed, elected representatives are free to do what they believe best serves the public interest and have absolute independence in expressing their opinions, and in so doing they are immune from any prosecution. But they are in the end accountable to their electorates, who can vote them out through the electoral process.²

It is expected that for the purpose of choosing their representatives, the public assesses whether parliamentarians and new candidates have met, or can be expected to meet the standards of performance and integrity during the term of their office. Such assessment on behalf of the public appears to be continuous rather than instantaneous and extends beyond the day of the elections. In this sense, elected representatives can be argued to be indirectly accountable throughout the parliamentary term.

¹ Snadrine Baume, *Hans Kelsen and the case for democracy*, ECPR Press, 2012, p. 32.

² Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century ó A Guide to Good Practice* 2006, p. 95.

After all, one of the core functions of the legislature is the supervision of the executive branch. To fulfil this role the legislature must maintain the confidence of the public. How can the legislature truly hold the executive branch accountable if its own conduct is not above reproach?³

The above apply in a system not based on constituencies. It applies more to all MPs belonging to a party collectively, it is a collective accountability. But it also covers MPs belonging to any political party who expresses non-party positions and votes outside the party line.

3. Accountability to whom?

3.1 Ballot box: the primary means of accountability

At the end of the day in principle parliamentary accountability begins on and eventually ends with the day of the elections, both for political parties as well as for individual members.

³ Commonwealth Parliamentary Association, "Benchmarks for Democratic Legislatures" ó A Study Group Report, 2006, pp. 33-34.

Regular and periodic legislative elections are necessary to ensure that the current opinions of the people are represented in the legislature and are therefore the prime mechanism for citizens to hold their representatives accountable.⁴ This does not mean, however, that elections should take place very frequently as this would have other adverse effects on political stability and effective legislating. Every new parliamentary term must allow for a preparatory stage, and on the other hand, it must also provide the citizen with a reasonable window during which to assess the performance of his/her elected representative.⁵

It should be noted, however, that in some countries' systems there are periodic elections for a part of the members of a Parliament, e.g. one third every two years. It seems to me that such a system gives the electorate better opportunities to hold to account political parties and MPs by non-renewing their term.

3.2 Media and pressure groups

⁴ Commonwealth Parliamentary Association, 'Benchmarks for Democratic Legislatures' ó A Study Group Report' 2006, p. 10.

⁵ National Democratic Institute for International Affairs, 'Toward the Development of International Standards for Democratic Legislatures - A Discussion Document for Review by Interested Legislatures, Donors and International Organizations' January 2007, p. 4.

While as we said MPs' accountability becomes in principle apparent in times of election, the reality is more complicated. Besides individual constituents, MPs are constantly answering for their own individual actions or the actions of their political groupings to third parties, whether these are local journalists, pressure groups (e.g. labour organisations) etc. They are also answerable to their own political group in case they do not follow the whip's instructions.⁶

Notwithstanding that MPs are not formally accountable to the press or pressure groups, the latter's ability to influence public opinion cannot be underestimated. For example if an MP denies answering to persistent questions of the media, this is most likely to be interpreted as a refusal to account for a certain decision or action. Even if admittedly an MP may have good reasons to deny engaging with the press on the relevant matter, in the end he/she has to give explanations, either alone or collectively through his/her political grouping.

3.3 Political party

⁶ Sabourin J., 'The Member of Parliament's Environment of Accountability' in World Bank Institute, *Parliamentary Accountability and Good Governance - A Parliamentarian's Handbook*, pp. 39-45, 40, 42.

As already indicated, more importantly, in spite of the fact that elected representatives are not legally obliged either to support their party or any decisions taken by their group in Parliament, in fact MPs regularly comply with the instructions of the political party to which they belong. To win an election, candidates need to be part of a political formation. Such membership implies that the candidate will adopt the political philosophy and policy objectives and priorities of the party.⁷ If elected, the MP will also be essentially a spokesperson for his or her political group, a position which comes with benefits but also considerable restraints. In many jurisdictions, party loyalty plays an important if not a dominant role in political life and necessarily influences the election of the MPs. If a candidate wishes to benefit from such party membership he/she would have to show strong willingness to defend successfully and vote for party positions on major issues and often nothing more than minor deviations would be tolerated. This situation, however, may frequently lead MPs before the uncomfortable position where they would have to act between competing accountabilities. For example, an MP may be under pressure to follow the party's position on a matter which may conflict with the voice and interests of his voters, who may think otherwise or with his own personal convictions as to a certain

⁷ Sabourin J., "The Member of Parliament's Environment of Accountability" in World Bank Institute, *Parliamentary Accountability and Good Governance - A Parliamentarian's Handbook*, pp. 39-45, 43.

matter. In such circumstances of conflict the following dilemma arises: What should an MP choose to defend: party loyalty, the opinion of the majority of their voters, or his own political views? Arguably, this is one of the most difficult and sensitive political exercises during an elected representative's term. MPs are, therefore, also accountable to their own political groupings but yet again to the electorate as part of a political party.

4. Enhancing accountability in practice

I will now turn to present some actions, practices and institutions which enhance the accountability of Parliaments and their Members. Several of these measures are already well established in the vast majority of political systems while others reflect the evolution of accountability through the use of modern technologies.

People need to know-Transparency

A very important aspect of accountability is the public's need to know: How does a Parliament function? What is the effect of its legislative and controlling activity? How does each MP carry out his duties?

This information to the public should not be left to the initiative of either the media or individual journalists or even citizens. It must be transparent.⁸ A regular reporting by the Parliament or the individual MPs should be put in place as a regular "account giving" to the ultimate holders of a country's sovereignty. Such is the case in France, Finland, Romania, and Luxemburg (where this report is circulated to every household). Also in Kitts & Nevis a regular "face to face" of parliamentarians with the public takes place once a year for questioning them. Also, as I understand, all members of the European Parliament may, and many do, issue on a regular basis an information bulletin on their activities. This should probably be demanded from every Parliament, either on a political party level or even at the level of the individual MPs. The voting of each member on the important issues should be recorded in order to be interrogated by their voters.⁹ Individual MP monitoring may also be a means to develop a "culture of accountability" within Parliament.¹⁰ The aim here is twofold: Firstly, to help citizens better understand the work of MPs, both in terms of facilitating their decision-

⁸ National Democratic Institute for International Affairs, "Toward the Development of International Standards for Democratic Legislatures - A Discussion Document for Review by Interested Legislatures, Donors and International Organizations" January 2007, p. 23.

⁹ Inter-Parliamentary Union, "Parliament and Democracy in the Twenty-First Century" A Guide to Good Practice" 2006, p. 96.

¹⁰ Mandelbaum A. G., "Strengthening Parliamentary Accountability, Citizen Engagement and Access to Information: A Global Survey of Parliamentary Monitoring Organizations" National Democratic Institute and World Bank Institute, September 2011, p. 27.

making at the polls and to encourage their participation in the political process in-between elections. The MPs as representatives of the people and the people must maintain close contacts; they cannot follow parallel and unconnected ways without them ever coinciding. They must share vision and objectives. Secondly, this helps MPs recognize that they are subject to public scrutiny.¹¹

Transparency of hearings and the work of Parliament

Accountability goes hand in hand with transparency. It goes without saying that hearings and voting procedures should be public, save for certain exceptions that require protection of confidential information or for exceptional public interest purposes, which should be in any case clearly defined in the rules of procedure.¹² I believe indeed that parliamentary sessions must be broadcasted both on TV and radio or even, today, on the electronic media.

Financial transparency

¹¹ Mandelbaum A. G., -Strengthening Parliamentary Accountability, Citizen Engagement and Access to Information: A Global Survey of Parliamentary Monitoring Organizationsø National Democratic Institute and World Bank Institute, September 2011, p. 27.

¹² Commonwealth Parliamentary Association, -Benchmarks for Democratic Legislatures ó A Study Group Reportø 2006, p. 31.

In most Parliaments (likewise in Cyprus) it is required from MPs to open their financial books and disclose their assets (land, shares, bank deposits, business interests and any other assets whatsoever) at the beginning of their term and at the end thereof. Failure to do so is contrary to the internal regulations, and sanctions may be imposed either by the Speaker or an appropriate Committee.

Conflict of interest

At the same time a clear distinction should always be made between public interest and private or personal one. There should never be a conflict of interest, that is, a conflict between the public interest at large which they have been elected to serve and MPs' own private interests. They should never appear that they pursue their private interest and if they do then they are guilty of corruption. Members should avoid being in a position of such conflict. Nor should they try to influence decisions which favour certain people to whom an MP or his/her Party owe a favour, or from whom an MP or a Party has received financial assistance with the expectation of a favour in exchange.

Profession

A very common question arises in this respect, whether MPs should continue during their term in Parliament to exercise any, or their previous, profession. The most straightforward answer would be that MPs must abandon any other occupation during their term and indeed in a manifest manner in order to show a commitment to continuous integrity and a firm intention for full accountability.

Party and campaign financing

Party and campaign financing encroaches upon the fairness of the electoral process and results in a Parliament not really and truly representative of the electorate and its expectations. These questions should very clearly be regulated by strict legislation and Codes of Conduct, like in many parts of the world and penalties for contraventions should be provided for. Usually subventions by the state are granted to political parties in order to avoid abuses.

Interaction with voters

Another way to enhance accountability of parliaments is by encouraging the engagement of citizens. To achieve this, it is useful to create mechanisms for interaction among legislators and citizens, as already mentioned, which would enable for example citizens to comment on bills or MP statements or their action and general attitude, submit annotations within bills or communicate with MPs either publicly or privately. In addition, convening regular meetings between MPs and civil society organizations, particularly the ones representing the younger generations and to engage in debates on specific issues will also serve this purpose appropriately. What is essential here is to create a mechanism that would allow citizens to have their views heard and considered by the legislature.¹³ For example at the EU Parliament level 1.000.000 signatures of voters from different countries may force EC and EP to take action on a certain point or problem.

¹³ Commonwealth Parliamentary Association, -Benchmarks for Democratic Legislatures ó A Study Group Reportø 2006, p. 32.

Arguably, such interaction should aim at educating the public, so that it can truly profit from access to the legislature by increasing their awareness of citizenship issues¹⁴ and receiving assurances of the accountability of MPs.

Opinion surveys

A feature that can contribute to the accountability of Parliaments is the regular assessment of their public standing through opinion surveys, in a systematic way.¹⁵ This helps to test the confidence of the people in Parliament among other institutions of the state, which as of recent has been lost, as demonstrated by the big numbers of citizens who choose to abstain from elections.

In addition, Parliaments must have mechanisms to prevent, detect, and bring to justice legislators and staff engaged in corrupt practices. The legislature must take the lead in demonstrating good governance and accountability. Corrupt practices on the part of a legislator constitute a betrayal of the confidence placed in the legislator by the citizens. These phenomena,

¹⁴ Commonwealth Parliamentary Association, "Benchmarks for Democratic Legislatures" ó A Study Group Reportø 2006, p. 32.

¹⁵ Inter-Parliamentary Union, "Parliament and Democracy in the Twenty-First Century" ó A Guide to Good Practiceø 2006, p. 109.

obviously, damage the public's confidence in democratic institutions and the democratic process in general.¹⁶

5. Accountability and Cyprus's House of Representatives

I will now say few words about Cyprus and the existing and planned measures towards enhancing the accountability of the House of Representatives and its members. As you may already know, Cyprus is a Presidential Republic. The executive power is vested in the President and the Council of Ministers. The legislative power of the Republic of Cyprus is exercised by the House of Representatives in all matters. Its members are elected for a five year term.

The Cypriot House of Representatives applies several transparency safeguards. Firstly, all votes in the House of Representatives are counted and recorded (Article 73(10) of the Constitution). Secondly, the meetings of the House of Representatives are open to the public and the media and the minutes of its debates are published (Article 75(1) of the Constitution), save for the minutes of the debates that take place in the Committees which are

¹⁶ Commonwealth Parliamentary Association, "Benchmarks for Democratic Legislatures" A Study Group Report, 2006, p. 34.

normally kept in a summarised form. Thirdly, the Special House Committee on the Declaration and Examination of Financial Interests, reviews representatives' declarations regarding their personal wealth when they are elected. Fourthly, a Special Committee is established which is empowered to ensure observance with the House of Representatives Regulation including the justification of any absences of representatives from sessions of the plenary or the committees. Moreover, our Constitution provides that the office of an MP is incompatible with that of a Minister or any other position in the public sector (Article 70 of the Constitution); a provision which aims to prevent any eventual conflicts of interest at that level.

I would also like to note that an elected MP before assuming duties makes an affirmation to have faith in, and respect for, the Constitution and the laws made thereunder, the preservation of the independence and the territorial integrity of the Republic of Cyprus. (Article 69 of the Constitution).

Parliamentary accountability is linked to the immunity of elected representatives. As is the case in most countries, elected representatives in Cyprus are not liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House. Additionally, they

cannot, without the leave of the Supreme Court, be prosecuted, arrested or imprisoned so long as they hold such position, save for offences punishable with imprisonment for five years or more in case the offender is apprehended in the act. (Article 83 of the Constitution). In cases of conviction of an MP of an offence involving dishonesty or moral turpitude it automatically means that his seat becomes vacant.

The lifting of the immunity is only possible if upon application of the Attorney General the Supreme Court so orders after hearing all interested parties, including the MP involved. We had an example recently of such lifting of the immunity of a member of the House.

In addition to the above, there are currently several legal reforms underway:

1. First, there is an ongoing reform towards modernising the legal framework on conflict of interest of the members of the House, so that it is in line with the requirements of Article 70 of the Constitution and GRECO's most recent Report.¹⁷

¹⁷ Council of Europe, "Third Evaluation Round, Second Compliance Report on Cyprus" (ETS 173 and 191, GPC 2) adopted by GRECO at its 67th Plenary Meeting (Strasbourg, 23-27 March 2015), Greco RC-III (2015) 1E.

2. Moreover, a bill is under preparation to regulate the financing of electoral campaigns which would provide *inter alia* for effective and proportionate sanctioning of candidates who fail to duly submit financial statements.

I consider these reforms to be in the right direction.

Before I conclude I would like to observe that in Cyprus, as in many other countries, parliamentary groups are disciplined in voting and only exceptionally do we see an individual MP acting outside the party line. MPs are often considered agents of the party and are therefore obliged to support the party programme.

Political groups apply formal and informal constraints which further enhance voting discipline. More importantly, Parliamentary groups can sanction voting rebellions in a variety of ways ó from a simple warning and political isolation to expulsion from the parliamentary group and/or the party. This has, in my view, the following effect: Although in principle MPs are supposed to be elected so that they can act on the basis of their own individual opinions, it is quite common that an MP does not vote according

to his or her conscience but as is instructed by the party so as to avoid severe penalties and so as not to damage his or her political ambitions.¹⁸

This, however, does not apply in all countries. The British parliamentary system, for example, features a more relaxed party discipline. Anthony Birch characteristically points out that:

*“. . . there is in each main party . . . independently-minded members who are willing to challenge the views of their leaders and colleagues in public, not minding that such action will probably reduce their chances of office. When crucial divisions are used such men will normally be found voting for their party, but their willingness to voice unorthodox opinions contributes much to the vitality and range of parliamentary debate.”*¹⁹

Despite the above, party cohesion naturally provides an important benefit. It enhances government stability and by extension the stability of the political system which is essential for a small country like Cyprus, part of the

¹⁸ See Jonathan Lemco, "The Fusion of Powers, Party Discipline, and The Canadian Parliament: A Critical Assessment," *Presidential Studies Quarterly*, Vol. 18, No. 2, To Form a More Perfect Union (SPRING 1988), pp. 283-302

¹⁹ Anthony Birch, *The British System of Government* (Winchester, George Allen and Unwin Ltd., 1982), p. 146.

territory of which unfortunately continues to remain under unlawful occupation.

6. Concluding remarks

In conclusion, the ability of the people, the ultimate principals in democratic societies, to select their representatives comprises an integral mechanism of democracy.²⁰ While elections indeed provide a basis for rule by the people, they may not always guarantee that citizens are effectively represented.²¹

Faced with challenges such as reduced public confidence and executive dominance, parliaments must ensure that they provide a high standard of accountability throughout and in every aspect of their work. In a democracy, whose life-blood is public discussion and debate, the obligation of representatives to give account to the public about their actions through ongoing dialogue is an essential feature.

²⁰ Kaare Strom, "Delegation and accountability in parliamentary democracies", *European Journal of Political Research* 37, 2000, pp. 261-289, 267.

²¹ UNDP, "Benchmarks and Self-Assessment Frameworks for Democratic Parliaments A Background Publication prepared for the International Conference on Benchmarking and Self-Assessment for Democratic Parliaments", March 2010, Brussels-New York, p. 10.

At the same time, we need to consider that every Parliament is a product of its own country's history and culture²² and therefore, it is responsible to apply its own distinct accountability model that would best serve the principle of democracy.



²² UNDP, "Benchmarks and Self-Assessment Frameworks for Democratic Parliaments A Background Publication prepared for the International Conference on Benchmarking and Self-Assessment for Democratic Parliaments" March 2010, Brussels-New York, p. 10.