

MEMORANDUM TO CABINET BY THE  
HONOURABLE THE PRIME MINISTER

DUAL CITIZENSHIP

On the 2nd August, 1966, Ministers agreed to introduce legislation providing for the extension to the 20th September, 1967, of the periods within which certain categories of citizens of Malta are obliged to renounce any other citizenship held by them.

2. The three categories of citizens affected are :

- (a) those citizens who became so by virtue of section 23 of the Constitution and who have to renounce any other citizenship by the 20th September, 1966;
- (b) those citizens who became so by registration under the provisions of Sections 24, 25 and 27 of the Constitution and who had to renounce any other citizenship within six months from the date of registration;
- (c) citizens who attained the age of 18 years and acquired the citizenship of another country and who had to renounce that other citizenship within one year.

3. Crown Advocate General, to whom the matter was referred for action on 1, has advised that while the extension to the 20th September, 1967, of the period under 2(a) above can be made by an Act of Parliament, it would be necessary for the legislation to be enacted before the 20th September, 1966.

4. Crown Advocate General, moreover, advises that, in the cases of 2(b) and 2(c), it is necessary to amend the Constitution since the periods, having expired, cannot be extended but only restored and with retrospective effect.

5. A copy of Crown Advocate General's submissions on this, is attached.

6. In the circumstances, Government can either :-

- (a) bring before Parliament, with a view of having it enacted before the 20th September, 1966, a Bill which would extend only the period of renunciation in those cases falling under 2(a) above, leaving uncovered cases falling under 2(b) and 2(c); or
- (b) bring before Parliament, even after the 20th September, 1966, but at one of the first sittings in October, a Bill to amend the Constitution to cover all cases falling under 2(a), (b) and (c).

7. The adoption of 6(a) would require a sitting of the House of Representatives to be called by the Speaker as a matter of urgency. Moreover, since the cases falling under 2(b) and (c) cannot be left uncovered, the amendment of the Constitution would still be required.

8. The adoption of 6(b) would cover all three categories and could await the next Sitting of Parliament in October.

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9. A revised Electoral Register, correct as on the 20th September, 1966 is due for publication in October, 1966. Inclusion therein of names of electors who cease to be citizens of Malta on the 21st September, 1966 will stand the risk of judicial challenges but the only alternative is the removal from the Register of names of persons who cease to possess the nationality qualifications according to law and their subsequent re-registration.

10. In this respect, Deputy Crown Advocate-General considers that "provided the amendment to the Constitution is presented to and passed through Parliament early in October the risk of a challenge can reasonably be taken".

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11. Ministers are invited to agree:

- (a) that the course of action proposed under 6(b) above be adopted;
- (b) that the Chief Electoral Commissioner be directed to take no action for the removal of names of electors who cease to be citizens of Malta on the 21st September, 1966.

6th September, 1966.

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Administrative Secretary

There is a clear distinction at law between the extension of a legal term and the restoration of a legal term. Extension takes place when the legal term is still running and action to extend it is actually taken before the term expires. But, when the legal term has already expired and it is intended to restore the position "qua ante", namely to remedy the "fait accompli", restoration becomes essential.

2. The power given by section 28(6) of the Constitution is only a power of extension and an Act of Parliament, pursuant to its provision, may only extend a legal term which has not already expired. Thus, individuals who are to renounce their "other" citizenship under section 28(2) of the Constitution, are to do so by not later than the 20th September, 1966, and, in regard to them, an Act of Parliament could provide, in terms of the abovequoted section 28(6) of the Constitution for an extension of the said date of expiry subject to such Act being passed by Parliament before the 20th September, 1966, which would require a sitting of the House of Representatives to be called by the Speaker as a matter of urgency.

3. But, as regards individuals who became citizens of Malta by registration under section 24, 25 or 27 of the Constitution and citizens of Malta who attained the age of eighteen years after the appointed date, I read in paragraph 2 of the Memorandum at red 19 that the term of renunciation has already lapsed for quite a substantial number of them. This is clearly a case where an extension under an Act made pursuant to the provision of section 28(6) of the Constitution cannot take place and where the situation can only be remedied by restoration.

4. Restoration can only take place by amending the Constitution. Such an amendment would require in terms of section 67(5) of the Constitution "a majority of all members of the House". Although I will have to look deeper into the form of the amendment, when there is a policy decision of the Government on the points raised by me, I am thinking of the addition of a subsection (?) to section 28 of the Constitution which would run something along the following lines :-

"(?) Notwithstanding the provisions of subsections (1), (2), (3) and (4) of this section, any person who, being a citizen of Malta and a citizen of some other country, is required in terms of any of the said provision to renounce his citizenship of such other country within any time falling in the period between the 21st September 1964, and the 20th September, 1966, and who has not done so, shall not be deemed by reason of such omission to have ceased at any time in the said period to be a citizen of Malta, but he shall cease to be such a citizen if he does not renounce his other citizenship not later than the 20th September, 1967".

The said amendment would have to be also given retrospective effect.

5. In view of the foregoing, I cannot proceed further before I have the decision of the Government as to whether :-

- (a) it would prefer to bring before Parliament, with a view to having it enacted before the 20th September next, a Bill which would extend only the period of renunciation established in section 28(2) of the Constitution, but would leave uncovered all other cases; or
- (b) it would be ready to bring before Parliament, even after the 20th September next, but at one of the first sittings in October, a Bill to amend the Constitution, such amendment requiring a majority of all the members of the House.

(Sd) M. Tufigno  
Crown Advocate-General

17.8.1966.