

MALTA

ATT Nru XLIII tal-2020

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT sabiex jemenda l-Kostituzzjoni ta' Malta relattiv għall-ħatriet ta' mħallfin u maġistrati.

ACT No. XLIII of 2020

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Constitution of Malta relative to the appointment of judges and magistrates.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

7 ta' Awwissu, 2020

ATT Nru XLIII tal-2020

ATT sabiex jemenda l-Kostituzzjoni ta' Malta relattiv għall-ħatriet ta' mħallfin u magistrati.

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

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2020 li jemenda l-Kostituzzjoni ta' Malta u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Kostituzzjoni ta' Malta, hawn iżjed 'il quddiem imsejha "il-Kostituzzjoni". Titolu fil-qosor.

2. L-artikolu 96 tal-Kostituzzjoni għandu jiġi emendat kif ġej: Emenda tal-artikolu 96 tal-Kostituzzjoni.

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(1) L-imħallfin tal-qrati superjuri għandhom jiġu maħtura mill-President li jaġixxi fuq ir-rakkomandazzjoni magħmula mill-Kumitat dwar il-Ħatriet tal-Ġudikatura stabbilit bl-artikolu 96A tal-Kostituzzjoni."; u

(b) is-subartikolu (3) tiegħu għandu jiġi sostitwit b'dan is-subartikolu ġdid li ġej:

"(3) Il-Prim Imħallef għandu jiġi maħtur mill-President li jaġixxi fuq riżoluzzjoni tal-Kamra li jkollha favur tagħha l-voti ta' mhux inqas minn żewġ terzi tal-membri kollha tal-Kamra:

Iżda illi minkejja d-dispożizzjoni tal-artikolu 97(1), jekk ir-Riżoluzzjoni ma jkollhiex favur tagħha l-voti ta' mhux inqas minn żewġ terzi tal-membri kollha tal-Kamra, il-persuna li tkun tokkupa l-kariga ta' Prim Imħallef għandha, fi kwalunkwe ċirkostanza, tibqa' fil-kariga sakemm ir-Riżoluzzjoni jkollha favur tagħha l-voti ta' mhux inqas minn żewġ terzi tal-membri kollha tal-Kamra."; u

(ċ) is-subartikolu (4) tiegħu għandu jiġi mħassar.

Emenda tal-artikolu 96A tal-Kostituzzjoni.

3. L-artikolu 96A tal-Kostituzzjoni għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej;

"(1) Għandu jkun hemm Kumitat dwar il-Ħatriet tal-Ġudikatura, hawn iżjed 'il quddiem f'dan l-artikolu msejjaħ "il-Kumitat", li għandu jkun sottokumitat tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja mwaqqfa bl-artikolu 101A ta' din il-Kostituzzjoni u li jkun magħmul kif ġej:

(a) il-Prim Imħallef;

(b) żewġ membri eletti għal perjodu ta' erba' (4) snin minn fost l-imħallfin tal-qrati superjuri;

(ċ) membru elett għal perjodu ta' erba' (4) snin minn fost il-maġistrati tal-qrati inferjuri;

(d) l-Awditur Ġenerali;

(e) il-Kummissarju għall-Investigazzjonijiet Amministrattivi (Ombudsman); u

(f) il-President tal-Kamra tal-Avukati:

Iżda l-President tal-Kamra tal-Avukati ma għandux ikun eliġibbli għal haħtra bħala membru fil-ġudikatura qabel l-għeluq tal-perjodu ta' sentejn (2) li jibda mill-ġurnata li fiha l-aħħar kellu kariga fil-Kumitat jew aġixxa bħala membru tal-Kumitat.";

(b) il-paragrafu (d) tas-subartikolu (3) tiegħu għandu jiġi sostitwit bil-paragrafu ġdid li ġej:

"(d) Meta membru tal-Kumitat ikun astjerna jew ikun ġie rikuzat, fil-każ tal-Prim Imħallef għandu jiġi sostitwit minn imħallef li jkun l-aktar imħallef anzjan fil-kariga li jkun imiss, fil-każ tal-Awditur Ġenerali għandu jiġi sostitwit mill-aktar uffiċjal anzjan skont il-kariga fl-Uffiċċju Nazzjonali tal-Verifika li jkun imiss, fil-każ tal-Kummissarju għall-Investigazzjonijiet Amministrattivi mill-aktar uffiċjal anzjan li jkun imiss fl-Uffiċċju tal-Ombudsman u fil-każ tal-President tal-Kamra tal-Avukati mill-aktar avukat anzjan skont il-kariga fil-kumitat tal-Kamra tal-Avukati.";

(ċ) is-subartikolu (6) tiegħu għandu jiġi emendat kif ġej:

(i) fil-paragrafu (b) tiegħu, il-kliem "għall-Prim Ministru u għall-Ministru responsabbli għall-ġustizzja" għandhom jiġu sostitwiti bil-kliem "u għall-President ta' Malta";

(ii) il-paragrafu (d) għandu jiġi sostitwit b'dan li ġej:

"(d) meta sseħħ vakanza fil-kariga ta' mħallef jew maġistrat, il-Kumitat għandu jibgħat lill-President, permezz tas-Segretarju, l-ismijiet ta' tliet kandidati li fl-opinjoni tal-Kumitat ikunu l-aktar kandidati idoneji flimkien ma' rapport dettaljat dwar l-idoneità u l-mertu ta' dawn it-tliet kandidati li, fl-opinjoni tal-Kumitat, huma meqjusa bħala l-aktar xierqa għall-ħatra ta' dawn il-karigi:

Iżda illi l-President għandu jkun intitolat li jeleġġi mħallef jew maġistrat esklussivament mill-ismijiet tat-tliet kandidati mogħtija mill-Kumitat liema ismijiet tat-tliet kandidati għandhom jiġu ppubblikati fid-deċiżjoni tal-President;"

(iii) il-paragrafu (e) tiegħu għandu jiġi mħassar u l-paragrafu (f) tiegħu għandu jiġi rinumerat mill-ġdid bħala l-paragrafu (e);

(iv) fil-paragrafu (e) tiegħu, il-kliem "minn żmien għal żmien jitlob:" għandhom jiġu sostitwiti bil-kliem "minn żmien għal żmien jitlob;" u

(v) minnufih wara l-paragrafu (e) għandu jiżdied il-paragrafu ġdid li ġej:

"(f) biex javviċina bil-għan li jqajjem interess fost persuni kwalifikati għall-kariga ta' mħallef jew maġistrat:" u

(d) is-subartikolu (8) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(8) Il-Kumitat għandu jirregola l-proċedura tiegħu stess u għandu d-dmir li jippubblika mingħajr ma jkun soġġett għall-ebda direzzjoni, il-politika tiegħu li għandha tinkludi fost l-oħrajn iż-żamma ta' bilanċ bejn is-sessi fil-ħatra tal-membri tal-ġudikatura liema politika għandha tkun ta' gwida għall-Kumitat."

Żieda ta' artikolu ġdid fil-Kostituzzjoni.

4. Minnufih wara l-artikolu 96A tal-Kostituzzjoni għandu jiżdied l-artikolu ġdid li ġej:

"Vakanzi fil-kariga ta' membru tal-ġudikatura.

96B. (1) Kull meta sseħħ vakanza fil-kariga ta' mħallef jew ta' maġistrat, il-Ministru responsabbli mill-ġustizzja għandu johroġ sejha pubblika għall-applikazzjonijiet miftuħa għal persuni li għandhom il-kwalifiki meħtieġa sabiex jinħatru għall-kariga ta' mħallef jew maġistrat.

(2) Hadd ma jkun intitolat li jiġi maħtur fil-kariga ta' mħallef jew maġistrat jekk:

(a) ma jkollux in-numru ta' snin ta' prattika fil-professjoni ta' avukat f'Malta kif stabbilit fl-artikoli 96 jew 100 tal-Kostituzzjoni, skont il-każ;

(b) fil-mument li japplika ma jkunx fil-pussess ta' warrant validu biex jipprattika ta' avukat f'Malta u ma jkunx prekluz li jiġi maħtur bħala membru tal-ġudikatura fuq impediment legali;

(ċ) ma jkunx kapaċi jesprimi lill-nnifsu fil-lingwa Maltija u Ingliża u jkun kapaċi jikkomunika b'mod ċar u konċiż;

(d) ma jippossjedix integrità, korrettezza u onestà fil-ħajja pubblika u privata;

(e) ma jkollux għarfien tal-liġi, tal-proċeduri tal-qrati u esperjenza professjonali;

(f) ma jkunx spedjenti, kapaċi jaħdem taħt pressjoni, diliġenti, analitiku u kapaċi jieħu deċiżjoni;

(g) ma jkunx imparzjali u indipendenti;

(h) ikun involut f'xi attività kummerċjali jew negozju u ma jkunx f'sitwazzjoni finanzjarja li tqajjem dubju dwar il-kapaċità li jwettaq dmirijiet ġudizzjarji b'mod xieraq;

(i) ma jkunx kapaċi jaħdem f'ambjent kolleġġjali; u

(j) ma jippossjedix għarfien tal-Kodiċi tal-Etika tal-membri tal-ġudikatura u jkun lest li jidhol għal żvilupp professjonali."

5. L-artikolu 100 tal-Kostituzzjoni għandu jiġi emendat kif ġej:

Emenda tal-artikolu 100 tal-Kostituzzjoni.

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(1) Il-maġistrati tal-qrati inferjuri għandhom jiġu maħtura mill-President li jaġixxi fuq ir-rakkomandazzjoni magħmula mill-Kumitat dwar il-Ħatriet tal-Ġudikatura stabbilita bl-artikolu 96A tal-Kostituzzjoni."; u

(b) is-subartikoli (5) u (6) għandhom jiġu mħassra.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 366 tad-29 ta' Lulju, 2020.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

7th August, 2020

ACT No. XLIII of 2020

AN ACT to amend the Constitution of Malta relative to the appointment of judges and magistrates.

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. The short title of this Act is the Constitution of Malta (Amendment) Act, 2020 and this Act shall be read and construed as one with the Constitution of Malta, hereinafter referred to as "the Constitution".

Amendment of article 96 of the Constitution.

2. Article 96 of the Constitution shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) The judges of the superior courts shall be appointed by the President acting in accordance with the recommendation made by the Judicial Appointments Committee established by article 96A of the Constitution.";

(b) sub-article (3) thereof shall be substituted by the following new sub-article:

"(3) The Chief Justice shall be appointed by the President acting in accordance with a resolution of the House supported by the votes of not less than two-thirds of all the members of the House:

Provided that notwithstanding the provisions of article 97(1), if the Resolution is not supported by the votes of not less than two-thirds of all the members of the House, the person occupying the office of Chief Justice shall, in any circumstance, remain in office until the Resolution is supported by the votes of not less than two-thirds of all the members of the House."; and

(c) sub-article (4) thereof shall be deleted.

3. Article 96A of the Constitution shall be amended as follows:

Amendment of article 96A of the Constitution.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) There shall be a Judicial Appointments Committee, hereinafter in this article referred to as "the Committee", which shall be a subcommittee of the Commission for the Administration of Justice established by article 101A of this Constitution and which shall be composed as follows:

(a) the Chief Justice;

(b) two (2) members elected for a period of four (4) years by the judges of the superior court from among themselves;

(c) one member elected for a period of four (4) years by the magistrates of the inferior courts from among themselves;

(d) the Auditor General;

(e) the Commissioner for Administrative Investigations (Ombudsman); and

(f) the President of the Chamber of Advocates:

Provided that the President of the Chamber of Advocates shall not be eligible to be appointed a member of the judiciary before the expiration of a

period of two (2) years starting from the day on which he last occupied a post on the Committee or he was last a Committee member.";

(b) paragraph (d) of sub-article (3) thereof shall be substituted by the following new paragraph:

"(d) Where a member of the Committee abstains or is challenged, in the case of the Chief Justice he shall be substituted by a judge who shall be the next most senior judge in office, in the case of the Auditor General he shall be substituted by the next most senior officer according to office in the National Audit Office, in the case of the Commissioner for Administrative Investigations he shall be substituted by the next most senior officer according to the Office of the Ombudsman and in the case of the President of the Chamber of Advocates he shall be replaced by the next most senior advocate according to office in the committee of the Chamber of Advocates.";

(c) sub-article (6) thereof shall be amended as follows:

(i) in paragraph (b) thereof the words "to the Prime Minister and to the Minister responsible for justice" shall be substituted by the words "and the President of Malta";

(ii) paragraph (d) thereof shall be substituted by the following new paragraph:

"(d) when a vacancy in the office of judge or magistrate occurs, the Committee shall send to the President, through the Secretary, the names of three candidates that the Committee considers to be most suitable along with a detailed report on the suitability and merit of these three candidates who, in the opinion of the Committee, are deemed to be the most suitable for the appointment of these offices:

Provided that the President shall be entitled to elect a judge or a magistrate exclusively from the names of the three candidates transmitted by the Committee which names of the three candidates shall be made public in the President's decision;"

(iii) paragraph (e) thereof shall be deleted and paragraph (f) thereof shall be renumbered as paragraph (e);

(iv) in paragraph (e), the words "may from time to time request:" shall be substituted by the words "may from time to time request;"; and

(v) immediately after paragraph (e) there shall be added the following new paragraph:

"(f) to approach with a view of eliciting interest amongst qualified persons for the office of judge or magistrate:"; and

(d) sub-article (8) thereof shall be substituted with the following:

"(8) The Committee shall regulate its own procedure and shall be obliged to publish without being subject to any direction the policy amongst others of maintaining gender balance in the appointment of members of the judiciary, which shall guide the Committee."

4. Immediately after article 96A of the Constitution, there shall be added the following new article:

Addition of new article to the Constitution.

"Vacancies in the office of member of the judiciary.

96B. (1) Whenever a vacancy occurs in the office of judge or magistrate, the Minister responsible for justice shall issue a public call for applications open to persons who have the necessary qualifications and experience required to be appointed to the office of judge or magistrate.

(2) No person shall be entitled to be appointed to the office of judge or magistrate unless that person:

(a) has the number of years of practice of the profession of advocate in Malta as established in articles 96 or 100 of the Constitution as the case may be;

(b) at the time of application be in possession of a valid warrant to practice as an advocate in Malta and must not be precluded from appointment as a member of the judiciary by any legal impediment;

(c) is able to express oneself in the Maltese and English language and able to communicate in a clear and concise manner;

(d) possesses integrity, correctness and honesty in public and private life;

(e) has knowledge of the law, of court procedures and professional experience;

(f) is industrious, able to work under pressure, diligent, analytical and able to make decisions;

(g) is impartial and independent;

(h) is not involved in any commercial or business activity and does not have a financial situation which raises doubt about the ability to perform judicial duties in a proper manner;

(i) is able to work in a collegial environment; and

(j) possesses knowledge of the Code of Ethics for members of the Judiciary and is willing to undertake continuing professional development."

Amendment of article 100 of the Constitution.

5. Article 100 of the Constitution shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) Magistrates of the inferior courts shall be appointed by the President acting in accordance with the recommendation made by the Judicial Appointments Committee established by article 96A of the Constitution."; and

(b) sub-articles (5) and (6) thereof shall be deleted.

Passed by the House of Representatives at Sitting No. 366 of the 29th July, 2020.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives