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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Fenech, M.P., Ministru tal-Gustizzja, u moqri għall-Ewwel darba fis-Seduta tat-28 ta' Settembru, 1992.

ATT biex jemenda l-Kostituzzjoni ta' Malta.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Joseph Fenech, M.P., Minister of Justice, and read the First time at the Sitting of the 28th September, 1992.

AN ACT to amend the Constitution of Malta.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjaħ

Att biex 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' jissejjaħ l-Att ta' l-1992 li jemenda l-Kostituzzjoni ta' Malta, u għandu jinqara u jiftiehem haġa waħda mal-Kostituzzjoni ta' Malta, hawnhekk iżjed 'il quddiem imsejjaħ "il-Kostituzzjoni". Titolu fil-qosor.
2. Fil-paragrafu (b) tas-subartikolu (2) ta' l-artikolu 66 tal-Kostituzzjoni minflok il-kliem "l-artikoli minn 95 sa 100 (it-tnejn inklużi), l-artikoli minn 102 sa 110" għandhom jidhlu l-kliem "l-artikoli minn 95 sa 110". Emenda ta' l-artikolu 66 tal-Kostituzzjoni.
3. Minflok il-kliem "kif jista' jkun preskritt b'xi liġi li għal dak iż-żmien tkun isseħħ f'Malta:" fis-subartikolu (6) ta' l-artikolu 95 għandhom jidhlu l-kliem "kif il-President jista' jistabbilixxi b'Ordni fil-Gazzetta minn żmien għal żmien:". Emenda ta' l-artikolu 95 tal-Kostituzzjoni.
4. Minnufih fi tmiem l-artikolu 96 tal-Kostituzzjoni, għandu jiżdied dan is-subartikolu għid li ġej: Emenda ta' l-artikolu 96 tal-Kostituzzjoni.

“(3) Imħallef tal-Qrati Superjuri jew Maġistrat tal-Qrati Inferjuri ma għandux jidhol għad-dmirijiet tal-kariga tiegħu sakemm ma jkunx ħa u iffirma l-ġurament ta' lealtà u dak il-ġurament għall-qadi xieraq tal-kariga tiegħu kif jista' jkun preskritt b'xi liġi li għal dak iż-żmien tkun isseħħ f'Malta.”.
5. Minflok is-subartikolu (3) ta' l-artikolu 97 tal-Kostituzzjoni għandu jidhol dan li ġej: Emenda ta' l-artikolu 97 tal-Kostituzzjoni.

“(3) (a) Meta jingħata avviż fil-Kamra tad-Deputati dwar mozzjoni għall-għemil ta’ indirizz lill-President kif hemm imsemmi fis-subartikolu ta’ qabel dan, li ma tkunx mozzjoni preżentata mill-Prim Ministru fuq rakkomandazzjoni tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja hekk kif jista’ jiġi provdut skond il-liġi, l-*Speaker* għandu, mingħajr ma jippermetti li din tingħata xi pubbliċità, iżomm il-mozzjoni pendenti, u għandu jirreferi din l-istess mozzjoni lill-Kummissjoni għall-Amministrazzjoni tal-Gustizzja mwaqqfa bis-saħħa ta’ l-artikolu 101 ta’ din il-Kostituzzjoni.

(b) Il-mozzjoni li ma tkunx mozzjoni preżentata mill-Prim Ministru kif imsemmija fil-paragrafu (a) ta’ dan is-subartikolu, għandu jkun fiha akkużi ċari kontra l-imħallef li dwarhom ikunu ser isiru l-investigazzjonijiet. Flimkien mal-mozzjoni għandha tiġi preżentata dikjarazzjoni li tkun turi r-raġunijiet li fuqhom kull waħda minn dawk l-akkużi tkun bażata.

(c) Dawk l-akkużi flimkien ma’ dik id-dikjarazzjoni għandhom jiġu notifikati lill-imħallef u l-imħallef jingħata opportunità raġonevoli li jippreżenta dikjarazzjoni bil-miktub fiz-żmien stabbilit mill-Kummissjoni għall-Amministrazzjoni tal-Gustizzja.

(d) Jekk ir-rapport tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja jkun jgħid li l-imħallef ma jkunx hati ta’ xi mġieba hażina jew li ma jkollu ebda inkapaċità, ma għandha tittiehed ebda azzjoni oħra fil-Kamra dwar dak ir-rapport, u ma għandhom isiru ebda proċeduri oħra dwar il-mozzjoni pendenti quddiem il-Kamra.

(e) Jekk ir-rapport tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja jkollu riżultanzi li l-imġieba hażina jew l-inkapaċità tkun fondata, il-mozzjoni msemmija fis-subartikolu (2) ta’ dan l-artikolu għandha, flimkien mar-rapport tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja, tiġi kkunsidrata mill-Kamra.

(f) Jekk il-mozzjoni tgħaddi mill-Kamra skond id-dispożizzjonijiet tas-subartikolu (2) ta’ dan l-artikolu, l-imġieba hażina jew l-inkapaċità ta’ l-imħallef li jwettaq id-dmirijiet tal-kariga tiegħu għandha titqies li tkun giet pruvata u għandu jiġi preżentat mill-Kamra indirizz lill-President li fih tintalab it-tneħħija ta’ l-imħallef fl-istess seduta li fiha tkun għaddiet il-mozzjoni.”

Emenda ta’
l-artikolu 100
tal-Kostituzzjoni.

6. Fis-subartikolu (4) ta’ l-artikolu 100 tal-Kostituzzjoni minflok il-kliem “Id-dispożizzjonijiet tas-subartikoli (2) u (3)” għandhom jidhlu l-kliem “Id-dispożizzjonijiet tal-proviso li tinsab mas-subartikolu (6) ta’ l-artikolu 95, tas-subartikolu (3) ta’ l-artikolu 96 u tas-subartikoli (2) u (3)”.

Sostituzzjoni ta’
l-artikolu 101
tal-Kostituzzjoni.

7. Minflok l-artikolu 101 tal-Kostituzzjoni għandu jidhol dan li ġej:

“Kummissjoni għall-Amministrazzjoni tal-Gustizzja.

101. (1) Għandu jkun hemm Kummissjoni għall-Amministrazzjoni tal-Gustizzja li jkun magħmul mill-President, li jkun *Chairman*, u minn disa' membri oħra kif ġej:

(a) il-Prim Imħallef li jkun *deputy Chairman* u jippresjedi l-Kummissjoni fin-nuqqas ta' *Chairman*;

(b) l-Avukat Ġenerali, *ex officio*;

(ċ) żewġ membri eletti għal żmien erba' snin mill-Imħallfin tal-Qrati Superjuri minn fosthom stess;

(d) żewġ membri eletti għal żmien erba' snin mill-Maġistrati tal-Qrati Inferjuri minn fosthom stess;

(e) żewġ membri mahturin għal żmien erba' snin wiehed mill-Prim Ministru u l-iehor mill-Kap ta' l-Oppożizzjoni li f'kull każ ikunu persuna li mill-inqas ikollha età ta' hamsa w erbghin sena, li tgawdi r-rispett generali tal-pubbliku u tkun maghrufa għall-integrità u onestà tagħha;

(f) il-president tal-Kamra tal-Avukati, *ex officio*.

(2) Il-President ikollu biss *casting vote*, u fl-eżercizzju tal-funzjoni tiegħu bhala *Chairman* tal-Kummissjoni huwa jaġixxi skond ma jidhirlo hu fil-gudizzju tiegħu innifsu.

(3) Il-membri eletti fil-Kummissjoni għall-Amministrazzjoni tal-Gustizzja għandhom jiġu eletti skond dawk ir-Regoli li jistgħu jiġu stabbiliti mill-persuna jew Awtorità kif imsemmi fis-subartikolu (7) ta' l-artikolu 46 tal-Kostituzzjoni.

(4) (a) Persuna ma tkunx kwalifikata li tinħatar jew tkompli żżomm il-kariga ta' membru tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja:

(i) jekk tkun Ministru, Segretarju Parlamentari, Membru tal-Kamra tad-Deputati jew membru ta' awtorità ta' gvern lokali; jew

(ii) jekk ikun instab hati ta' reat kastigat b'kull żmien li jkun ta' ħabs; jew

(iii) jekk ikun skwalifikat milli jiġi elett membru tal-Kamra tad-Deputati għal xi waħda mir-raġunijiet imsemmija fil-paragrafi (a), (d), (e) jew (f) tas-subartikolu (1) ta' l-artikolu 54 ta' din il-Kostituzzjoni.

(b) Il-kariga ta' membru tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja ssir vakanti jekk

jinholqu ċirkostanzi li, kieku dak il-membru ma kienx membru tal-Kummissjoni, huwa ma kienx jikkwalifika sabiex isir membru tagħha.

(5) Meta persuna timla l-vakanza mahluqa minn membru tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja li ma jibqax membru għal kull raġuni, hlief dik ta' l-iskadenza tal-perjodu tal-kariga tiegħu, dik il-persuna għandha tokkupa l-kariga għaż-żmien mhux skadut tal-kariga ta' dak il-membru li jkun issostitwixxa.

(6) Kull membru tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja jista' jiġi rikuzat jew għandu jastjeni f'kull każ li fih jeżistu ċirkostanzi li fihom Imħallef tal-Qorti ta' l-Appell jista' jiġi rikuzat jew jista' jastjeni skond il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew skond kull liġi li tista' minn żmien għall-ieħor tissostitwixxi dak il-Kodiċi. Il-President li jaġixxi bil-gudizzju tiegħu nnifsu biss għandu jahtar membru sostitut biex joqgħod fuq il-Kummissjoni sabiex jieħu konjizzjoni ta' każ li fih membru jkun ġie rikuzat jew ikun astjena:

Izda l-membru sostitut għandu jintgħazel:

(a) minn fost l-imħallfin meta l-membru rikuzat jew li jkun astjena jkun il-Prin Imħallef jew xi Imħallef ieħor,

(b) minn fost l-avukati li jaħdmu fl-Uffiċċju ta' l-Avukat Ġenerali meta l-membru li jkun ġie rikuzat jew li jkun astjena jkun l-Avukat Ġenerali,

(ċ) minn fost il-Maġistrati meta l-membru li jiġi rikuzat jew li jkun astjena jkun Maġistrat,

(d) minn fost l-avukati li jkunu jinsabu fuq lista mogħtija mill-Kamra ta' l-Avukati meta l-membru li jiġi rikuzat jew li jkun astjena jkun il-President tal-Kamra ta' l-Avukati,

(e) minn fost persuni li jkollhom l-istess kwalifiki bħal membru sostitut, meta l-membru hekk sostitwit ikun il-persuna maħtura skond il-paragrafu (e) tas-sub-artikolu (1) ta' dan l-artikolu.

(7) Fit-twettiq ta' dmirijiethom il-membri tal-Kummissjoni u ta' kull wieħed mill-Kumitati tagħha għandhom jaġixxu bil-gudizzju individwali tagħhom u ma jkunux sugġetti għad-direzzjoni jew kontroll ta' xi persuna jew awtorità oħra.

(8) Is-subartikoli (2) u (3) ta' l-artikolu 121 ta' din il-Kostituzzjoni għandhom japplikaw għall-Kumitati tal-Kummissjoni.

(9) Għandu jkun hemm segretarju tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja li għandu jaġixxi wkoll ta' Segretarju tal-Kumitati u li jinħatar mill-imsemmija Kummissjoni minn fost l-assistenti registraturi jew id-deputati registraturi tal-qorti jew minn fost membri tal-professjoni legali. Is-Segretarju għandu jibqa' fil-kariga sa dak iż-żmien li l-Kummissjoni ttemmi l-ħatra tiegħu. Is-Segretarju għandu jirċievi l-ilmenti kolla li jsiru taħt dan l-Att u għandu jinnotifika b'dan l-ilment lil-persuna li kontriha jkun sar l-istess ilment kemm jista' jkun malajr.

(10) Il-Kummissjoni għall-Amministrazzjoni tal-Gustizzja għandu f'kull żmien ikollha dawn il-kumitati li ġejjin li għandu jkollhom dik l-għamla, kompetenza, setgħat u dmirijiet hekk kif jingħataw lhom bil-ligi:

- (a) Il-Kumitat għall-Qrati Superjuri
- (b) Il-Kumitat għall-Qrati Inferjuri
- (c) Il-Kumitat għall-Avukati u Prokuraturi Legali.

(11) Min jinħatar membru tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja jew xi wieħed mill-Kumitati tagħha jista' jitneħħa mill-kariga tiegħu mill-President, li jaġixxi skond il-parir tal-korp li jaħtar dak il-membri, jew tad-detentur tal-kariga li jkun ħatar lil dak il-membri, iżda dak il-membri jista' biss jitneħħa minħabba f'inkapaċità li jwettaq id-dmirijiet tal-kariga tiegħu, sew minħabba f'inkapaċità tal-moñh jew fiżika jew kull raġuni oħra, jew minħabba f'imġieba ħażina.

(12) Il-funzjonijiet tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja għandhom ikunu:

- (a) li tissorvelja l-ħidma tal-qrati superjuri u inferjuri kollha u li tagħmei dawk ir-rakkomandazzjonijiet meħtieġa lil-Ministru responsabbli għall-Gustizzja dwar ir-rimedji li fil-fehma tagħha jistgħu jwasslu għal ħidma aktar effiċjenti ta' dawk il-qrati;
- (b) li tagħti parir lil-Ministru responsabbli għall-Gustizzja dwar kull haġa li għandha x'taqsam ma' l-organizzazzjoni ta' l-amministrazzjoni tal-gustizzja;
- (c) li tagħti parir lil-Prim Ministru dwar kull ħatra li għandha ssir skond l-artikolu 98 ta' din il-Kostituzzjoni;
- (d) li tirvestiga u tiċċiedi dwar kull kwistjoni li fil-fehma tagħha tikkostitwixxi dik l-imġieba ħażina ta' imħallef jew ta' magistrat, jew dik l-inkapaċità li wieħed iwettaq dmirijietu li jkunu jiġġustifikaw l-għemil ta' indirizz skond l-artikolu 97 tal-Kostituzzjoni, u li tisma' u taqta' appelli minn kull deċiżjoni, rapport, jew rakkomandazzjoni ta' xi wieħed mill-Kumitati tagħha;

(e) li tikkonsidra u tirrapporta lill-*Speaker* tal-Kamra tad-Deputati dwar kull mozzjoni li ssir skond l-artikolu 97 ta' din il-Kostituzzjoni;

(f) li skond kull liġi u mingħajr preġudizzju għad-dispożizzjonijiet ta' l-artikolu 97 tal-Kostituzzjoni, teżerċita dixxiplina fuq membri tal-korp ġudizzjarju u fuq avukati u prokuraturi legali fit-twettiq tal-professjoni tagħhom:

Iżda għar-rigward ta' avukati u prokuraturi legali fl-uffiċċju ta' l-Avukat Ġenerali, li jaqgħu taħt id-dispożizzjonijiet ta' l-artikolu 110 tal-Kostituzzjoni, id-dispożizzjonijiet ta' dan il-paragrafu għandhom japplikaw biss wara li tinhareg awtorizzazzjoni bil-miktub mingħand il-Prim Ministru;

(g) li tifformula kodiċi jew kodiċijiet ta' etika li jirregolaw il-kondotta professjonali ta' membri tal-professjoni legali fuq il-parir tal-Kumitat tagħha għall-avukati u prokuraturi legali; u

(h) dawk il-funzjonijiet l-oħra li jistgħu jin-għatawliha b'kull liġi.

(13) Il-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja u l-Kumitati tagħha għandhom jikkonformaw ruħhom ma' kull liġi li tista' tkun fis-seħħ minn żmien għal żmien dwar dak kollu regolat bl-istess liġi, altrimenti dawn għandhom jistabbilixxu l-proċedura tagħhom stess.

(14) Il-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja għandha ta' kull sena tagħmel rapport lill-Ministru responsabbli għall-Ġustizzja dwar l-attivitajiet tagħha matul is-sena kalendarja ta' qabel, u għandha f'kull żmien meta hekk jidhrilha xieraq jew kif jista' jitlob l-istess Ministru, tagħmel rapport lill-imsemmi Ministru dwar kull kwistjoni partikolari.

(15) Is-setgħat tal-President taħt kull liġi, dwar is-surroga ta' l-Imħallfin u l-Maġistrati u dwar tqassim ta' dmirijiet ta' l-Imħallfin u l-Maġistrati, għandhom jitwettqu fuq il-parir tal-Ministru responsabbli għall-Ġustizzja b'dan illi l-Ministru għandu, filwaqt li jkun qiegħed jagħti parir lill-President, jagixxi skond ir-rakkomandazzjoni li tkun saritlu mill-Prim Imħallef wara li l-imsemmi Prim Imħallef ikun ikkonsulta lill-Kumitat għall-Qrati Superjuri fil-każ ta' Imħallfin, u lill-Kumitat għall-Qrati Inferjuri fil-każ ta' Maġistrati:

Iżda meta l-Prim Imħallef jonqos milli jagħmel rakkomandazzjoni lill-Ministru, u f'kull każ, meta l-Ministru jqis li jkun hekk xieraq, huwa jista' jagħti parir

lill-President xort'oħra milli skond ir-rakkomandazzjoni tal-Prim Imħallef, jew meta dik ir-rakkomandazzjoni ma ssirx, b'dan illi f'dak il-każ il-Ministru għandu jagħmel stqarrija dwar dak il-fatt fil-Kamra tad-Deputati mhux iktar tard mis-sitt seduta li tiġi minnufih wara li jkun ta dak il-parir lill-President.

(16) Meta l-Parlament, b'abbozz mgħoddi bil-mod provdut fis-subartikolu (2) ta' l-artikolu 66 tal-Kostituzzjoni, jipprovdi dwar kull haġa li skond dan l-artikolu jista' jiġi provdut dwarha b'ligi, u iktar minn hekk jipprovdi li d-dispożizzjonijiet kollha ta' dik il-ligi jew xi waħda minnhom ma jistgħux jinbidlu jew jiġu emendati ħlief bil-mod kif provdut fl-imsemmi subartikolu (2) ta' l-artikolu 66, għaldaqstant dik id-dispożizzjoni jew dawk id-dispożizzjonijiet ta' dik il-ligi ma jistgħux jinbidlu jew jiġu emendati ħlief b'abbozz li jiġi mgħoddi bil-mod imsemmi qabel, u għall-finijiet ta' dan is-subartikolu d-dispożizzjonijiet tas-subartikolu (7) ta' l-artikolu 66 tal-Kostituzzjoni għanhom jgħoddu bħallikieku r-riferenzi għal xi waħda mid-dispożizzjonijiet tal-Kostituzzjoni kienu riferenzi għal xi waħda minn dik id-dispożizzjoni jew dispożizzjonijiet ta' dik il-ligi.”.

8. Ir-regoli msemmija fis-subartikolu (2) ta' l-artikolu 101 tal-Kostituzzjoni kif emendati permezz ta' dan l-Att, għandhom isiru fi żmien xahar mid-dhul fis-seħħ ta' dan l-Att, u l-elezzjoni ta' l-ewwel membri tal-Kunsill, li ssir bis-saħħa ta' dawk ir-regoli, għandha ssir fi żmien ħmistax-il jum wara dik id-data.

Dispożizzjoni
transitorja.

Għanijiet u Raġunijiet

L-Għan ta' l-Abbozz huwa sabiex jipprovdi għat-twaqqif ta' Kummissjoni għall-Amministrazzjoni tal-Gustizzja, li jkun jagħti lok għal konjizzjoni ta' responsabbiltà pubblika xierqa tal-korp ġudizzjarju u tal-professjonijiet legali, b'salvagwardji adegwati għall-indipendenza tal-qradi u tal-qadi liberu tal-professjonijiet legali.

**A BILL
entitled**

AN ACT 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 of Malta (Amendment) Act, 1992 and shall be read and construed as one with the Constitution of Malta, hereinafter referred to as “the Constitution”.

Amendment to section 66 of the Constitution.

2. In paragraph (b) of subsection (2) of section 66 of the Constitution for the words “sections 95 to 100 (inclusive), sections 102 to 110” there shall be substituted the words “sections 95 to 110”.

Amendment of section 95 of the Constitution.

3. For the words “as may be prescribed by any law for the time being in force in Malta:” in subsection (6) of section 95 of the Constitution, there shall be substituted the words “as the President may by Order in the Gazette from time to time establish:”.

Amendment of section 96 of the Constitution.

4. Immediately at the end of section 96 of the Constitution, there shall be added the following subsection:

“(3) A judge of the Superior Courts or a magistrate of the Inferior Courts shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.”.

Amendment to section 97 of the Constitution.

5. For subsection (3) of section 97 of the Constitution there shall be substituted the following:

“(3) (a) Where notice is given in the House of Representatives of a motion for presenting an address to the President as is referred to in the foregoing subsection, not being a motion presented by the Prime Minister on the recommendation of the Commission of Administration of Justice as may be provided by law, the Speaker shall, without allowing any publicity keep the motion pending, and shall refer the same for investigation to the Commission for the Administration of Justice established in virtue of section 101 of this Constitution.

(b) The motion not being a motion presented by the Prime Minister as referred to in paragraph (a) of this subsection, shall contain definite charges against the judge on the basis of which the investigations are to be held. Together with the motion there shall be filed a statement showing the grounds on which each of such charges is based.

(c) Such charges together with such statement shall be communicated to the judge and he shall be given a reasonable opportunity to present a written statement of defence within such time as may be specified by the Commission for the Administration of Justice.

(d) If the report of the Commission for the Administration of Justice contains a finding that the judge is not guilty of any misbehaviour or does not suffer from any inability, then, no further steps shall be taken in the House in relation to the report and the motion pending in the House shall not be proceeded with.

(e) If the report of the Commission for the Administration of Justice contains a finding that the misbehaviour or incapacity has been proved then, the motion referred to in subsection (2) of this section shall, together with the report of the Commission for the Administration of Justice, be taken up for consideration by the House.

(f) If the motion is adopted by the House in accordance with the provisions of subsection (2) of this section then the misbehaviour or inability of the judge to perform the functions of his office shall be deemed to have been proved and an address praying for the removal of the judge shall be presented to the President by the House in the same session in which the motion has been adopted.”.

6. In subsection (4) of section 100 of the Constitution for the words “The provisions of subsections (2) and (3)” there shall be substituted the words “The provisions of the proviso to subsection (6) of section 95, of subsection (3) of section 96 and of subsections (2) and (3)”.

Amendment of section 100 of the Constitution.

7. For section 101 of the Constitution there shall be substituted the following:

Substitution of section 101 of the Constitution.

“Commis-
sion for the
Administ-
ration of
Justice.

101. (1) There shall be a Commission for the Administration of Justice which shall consist of the President, who shall be the Chairman, and nine members as follows:

(a) The Chief Justice who shall be deputy Chairman and shall preside over the Commission in the absence of the Chairman;

(b) The Attorney General, *ex officio*;

(c) two members elected for a period of four years by the Judges of the Superior Court from among themselves;

(d) two members elected for a period of four years by the Magistrates of the Inferior Courts from among themselves;

(e) two members appointed for a period of four years as to one by the Prime Minister and as to the other by the Leader of the Opposition, being in each case, a person of at least forty five years of age who enjoys the general respect of the public and a reputation of integrity and honesty;

(f) the president of the Chamber of Advocates, *ex officio*.

(2) The President shall only have a casting vote, and in the exercise of his function as Chairman of the Commission he shall act in accordance with his own deliberate judgment.

(3) The members elected to the Commission for the Administration of Justice shall be elected in accordance with such Rules as may be prescribed by the person or Authority referred to in subsection (7) of section 46 of the Constitution.

(4) (a) A person shall not be qualified to be appointed or continue to hold office as a member of the Commission for the Administration of Justice:

(i) if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives or a member of a local government authority; or

(ii) if he has been convicted of any crime punishable by imprisonment for any term; or

(iii) if he is disqualified to be elected as a member of the House of Representatives for any of

the reasons stated in paragraphs (a), (d), (e) or (f) of subsection (1) of section 54 of the Constitution.

(b) The office of a member of the Commission for the Administration of Justice shall become vacant if any circumstances arise that if he were not a member of the Commission he would not qualify for membership thereof.

(5) Where a person fills a vacancy caused by a member of the Commission for the Administration of Justice ceasing to be such a member for any reason, other than the expiration of the period of office, such person shall hold office for the unexpired period of office of the member he replaces.

(6) Any member of the Commission for the Administration of Justice may be challenged or shall abstain in any case in which circumstances exist where a Judge of the Court of Appeal can be challenged or may abstain in terms of the Code of Organisation and Civil Procedure or any law that may from time to time substitute such Code. The President acting in accordance with his own deliberate judgment shall appoint a substitute member to sit on the Commission to hear a case in which a member has been challenged or has abstained:

Provided that the substitute member shall be selected:

(a) from among judges where the member challenged or who has abstained is the Chief Justice or any Judge,

(b) from among advocates on the staff of the Attorney General's Office where the member who is challenged or has abstained is the Attorney General,

(c) from among Magistrates where the member who is challenged or who has abstained is a Magistrate,

(d) from among advocates on a list submitted by the Chamber of Advocates where the member who is challenged or who has abstained is the President of the Chamber of Advocates,

(e) from among persons having the same qualifications as the member substituted, where the member so substituted is the person appointed in terms of paragraph (e) of subsection (1) of this section.

(7) In the exercise of their functions the members of the Commission and of any of its Committees shall act on

their individual judgment and shall not be subject to the direction or control of any person or authority.

(8) Subsections (2) and (3) of section 121 of this Constitution shall apply to the Committees of the Commission.

(9) There shall be a secretary of the Commission for the Administration of Justice who shall also act as Secretary to the Committees and who shall be appointed by the said Commission from among the assistant registrars or the deputy registrars of the Court or from among members of the legal profession. The Secretary shall hold office until such time as his appointment is terminated by the Commission. The Secretary shall receive all complaints under this Act and shall notify the complaint as soon as possible to the person against whom it is made.

(10) The Commission for Administration of Justice shall at all times have the following committees which shall have such composition, competence, powers and duties as shall be assigned to them by law:

- (a) The Superior Courts Committee
- (b) The Inferior Courts Committee
- (c) The Committee on Advocates and Legal Procurators.

(11) A person appointed as a member of the Commission for the Administration of Justice or any of its Committees may be removed from office by the President, acting in accordance with the advice of the body or the holder of the office appointing such member, but he may be removed only for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause or for misbehaviour.

(12) The functions of the Commission for the Administration of Justice shall be:

- (a) to supervise the workings of all the superior and inferior courts and to make such recommendations to the Minister responsible for Justice as to the remedies which appear to it conducive to a more efficient functioning of such courts;
- (b) to advise the Minister responsible for Justice on any matter relating to the organisation of the administration of justice;

(c) to advise the Prime Minister on any appointment to be made in terms of section 98 of the Constitution;

(d) to investigate and determine any matter which in its opinion constitutes such misbehaviour of a judge or magistrate or such inability to perform one's functions as would justify the making of an address in accordance with section 97 of the Constitution and to hear and determine appeals from any decision, report, or recommendation of its Committees;

(e) to consider and report to the Speaker of the House of Representatives on any motion made in terms of section 97 of the Constitution;

(f) to exercise, in accordance with any law and without prejudice to the provisions of section 97 of the Constitution, discipline over members of the judiciary and over advocates and legal procurators practising their profession:

Provided that with regard to advocates and legal procurators on the staff of the Attorney General's office, who are subject to the provisions of section 110 of this Constitution, the provisions of this paragraph shall apply only on the authority in writing of the Prime Minister;

(g) To draw up a code or codes of ethics regulating the professional conduct of members of the legal profession on the advice of its Committee on advocates and legal procurators; and

(h) such other functions as may be assigned to it by law.

(13) The Commission for the Administration of Justice and its Committees shall conform with such law as may from time to time be in force in all matters regulated therein, otherwise they shall determine their own procedure.

(14) The Commission for the Administration of Justice shall each year make a report to the Minister responsible for Justice on its activities during the previous calendar year, and shall at any time, when it deems fit or as may be required by the said Minister, make a report on any particular matter to the said Minister.

(15) The powers of the President under any law with regard to the subrogation of Judges and Magistrates and to the assignment of duties of Judges and Magistrates shall be exercised on the advice of the Minister responsible for Justice

so however that the Minister shall, in advising the President, act in accordance with any recommendation on the matter by the Chief Justice, after the said Chief Justice shall have consulted the Superior Courts Committee in the case of Judges, and the Inferior Courts Committee in the case of Magistrates:

Provided that where the Chief Justice fails to make a recommendation to the Minister, and in any case where the Minister deems it so appropriate, he may advise the President, not in accordance with a recommendation of the Chief Justice, or whenever such a recommendation is not made, provided that in any such case he shall make a statement of such fact in the House of Representatives not later than the sixth sitting immediately after he has so advised the President.

(16) Where Parliament, by a bill passed in the manner provided for in subsection (2) of section 66 of the Constitution, provides for any of the matters that may in accordance with this section be provided for by law, and provides further that all or any of the provisions thereof shall not be altered or amended except in the manner provided for in the said subsection (2) of section 66, then such provision or provisions of such law may not be altered or amended except by a bill passed in the manner as aforesaid, and for the purposes of this subsection the provisions of subsection (7) of section 66 of the Constitution shall apply as if references to any of the provisions of the Constitution were references to any such provision or provisions.”

Transitory provision.

8. The rules referred to in subsection (2) of section 101 of the Constitution, as amended by this Act, shall be made within one month of the coming into force of this Act, and the election of the first members of the Commission under those rules shall be held within fifteen days thereafter.

Objects and Reasons

The Object of the Bill is to provide for the setting up of a Commission for the Administration of Justice, providing for a proper accountability of the judiciary and of the legal professions, with adequate safeguards for the independence of the courts and the free exercise of the legal professions.