

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,537, 19 ta' Frar, 2016

Taqsimha C

Nru. 142

19. 02. 2016

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Jason Azzopardi, M.P., u moqri għall-Ewwel darba fis-Seduta tal-15 ta' Frar, 2016.

A BILL introduced by the Honourable Jason Azzopardi, M.P., and read the First time at the Sitting of the 15th February, 2016.

ATT sabiex jemenda l-Kostituzzjoni ta' Malta u li jwaqqaf b'Ligi l-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji.

AN ACT to amend the Constitution of Malta and to establish by law the Judicial Services Appointment Authority.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT sabiex jemenda l-Kostituzzjoni ta' Malta u li jwaqqaf b'Liġi l-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji.

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2016 li jwaqqaf l-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji. Titolu fil-qosor.

2. (1) Għandu jkun hemm Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji, hawn iżjed 'il quadiem imsejha "l-Awtorità". Twaqqif u funzjonijiet tal-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji.

(2) L-Awtorità tkun magħmula minn President u erba' membri.

(3) L-Awtorità għandha tkun mahtura mill-President ta' Malta skont id-dispożizzjonijiet tal-artikolu 3.

(4) L-Awtorità jkollha d-dover li tirrakkomonda lill-Prim Ministru min jokkupa l-karigi li ġejjin:

- (a) il-Prim Imhallef;
- (b) Imħallfin tal-Qrati Superjuri;
- (ċ) Magistrati tal-Qrati Inferjuri; u
- (d) Ġudikaturi tat-Tribunal għal Talbiet Żgħar.

(5) L-Awtorità jkollha d-dover li tahtar dawn li ġejjin:

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- (a) Ġuristi;
- (b) Avukat għall-Għajnuna Legali;
- (c) Imħallfin u Maġistrati biex iservu fi qrati jew tribunali reġjonali jew internazzjonali;
- (d) Kelliem għall-Ġudikatura;
- (e) Bord tal-Għażla għall-Ġurija;
- (f) Assistenti għall-Qorti tal-Minorenni; u
- (g) kull persuna oħra biex tokkupa kull kariga li l-Ministru jista', b'regolamenti, jippreskrivi.

(6) L-Awtorità jkollha d-dover li taqdi kull funzjoni oħra li tista' tkun lilha assenjata b'dan l-Att jew b'kull liġi oħra, u kull funzjoni oħra li l-Ministru jista', b'regolamenti, jippreskrivi.

(7) L-Awtorità għandha tistabbilixxi u tippubblika, b'Ordni fil-Gazzetta, kriterji kwalitativi, kriterji ta' evalwazzjoni u proċeduri għal ħatriet fil-karigi msemmija fis-subartikoli (4) u (5), inklużi, iżda mhux limitati għal:

- (a) iż-żmien ta' prattika ta' avukat fil-Qrati tal-Ġustizzja;
- (b) l-integrità, ir-rettezza u l-onestà;
- (c) l-għarfien tal-liġi;
- (d) l-assenza ta' kull attività kummerċjali jew ta' negozju;
- (e) il-pubblikazzjonijiet ta' natura legali;
- (f) korsijiet ta' speċjalizzazzjoni jew *post-graduate*;
- (g) atti ġudizzjarji pprezentati mill-applikant;
- (h) sentenzi, digrietni mogħtija jew rapporti magħmula mill-applikant;
- (i) *peer review*; u
- (j) il-pożizzjoni finanzjarja tal-applikant.

(8) Il-ħatriet imsemmija fis-subartikoli (4) u (5) isiru wara

sejha pubblika għal espressjonijiet ta' interess. L-identità tal-persuni li jesprimu interess tkun meqjusa bħala kunfidenzjali, u ma tkunx ippubblikata jekk mhux bil-kunsens tal-persuna li wriet interess. L-Awtorità tippubblika biss l-isem tal-persuna magħzula minnha.

(9) F'każ li ebda persuna ma turi interess, jew ma jkun hemm ebda persuna li turi interess li tkun eliġibbli skont l-Awtorità, allura dik l-Awtorità jkollha s-setgħa li tagixxi skont l-aħjar għidizzju tagħha fit-twettiq tal-funzjonijiet tagħha skont is-subartikoli (4) u (5).

3. (1) L-Awtorità tkun magħmula mill-Prim Imhalled bħala l-President tagħha, il-President tal-Kamra tal-Avukati, l-Avukat Ġenerali, avukat nominat mill-Prim Ministru u avukat nominat mill-Kap tal-Oppożizzjoni.

Shubija fl-Awtorità.

(2) Persuni li, fit-tliet snin ta' minnufih qabel in-nomina, ikunu okkupaw xi kariga jew rwol uffiċjali f'xi partit politiku ma jkunux jistgħu jkunu membri tal-Awtorità.

4. It-terminu tal-hatra tal-Awtorità jkun perjodu ta' erba' snin. It-terminu ta' kull membru, minbarra dak tal-Prim Imhalled u tal-Avukat Ġenerali, jista' jiġgedded darba biss.

Zmien fil-kariga.

5. (1) Bla preġudizzju għad-dispożizzjonijiet ta' dan l-artikolu, ikun hemm vakanza ta' membru tal-Awtorità -

Vakanzi.

(a) għeluq erba' snin mid-data tal-hatra ta' dak il-membri; jew

(b) f'każ li jseħhu ċirkostanzi li, kieku dak il-membri ma kienx membru tal-Awtorità, kienu jiskwalifikawh milli jkun eliġibbli li jkun mahtur bħala membru fuq l-Awtorità.

(2) Jekk ikun hemm vakanza fl-Awtorità jew jekk membru tagħha ma jkunx jista' jaqdi l-funzjonijiet tal-kariga tiegħu għal xi raġuni tkun li tkun, il-President ta' Malta jahtar membru supplementari skont il-għidizzju tiegħu u wara d-debita konsultazzjoni.

6. (1) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu u skont id-dispożizzjonijiet tal-artikolu 66(8) tal-Kostituzzjoni ta' Malta, il-Parlament jista' jemenda kull artikolu jew dispożizzjoni ta' dan l-Att.

Dispożizzjoni dwar radikar.

(2) Kull Abbozz ta' Liġi li jkollu l-għan li jemenda, jissostitwixxi jew jirrevoka xi artikolu jew dispożizzjoni ta' dan l-Att, ma jsirx liġi u ma jkunx approvat mill-Kamra tad-Deputati jekk ma jkunx approvat bil-voti ta' mill-inqas żewġ terzi tal-membri kollha

tal-Kamra.

(3) F'dan l-artikolu:

(a) kull referenza għal xi dispożizzjoni ta' dan l-Att tinkludi referenza għal kull liġi li temenda jew tissostitwixxi dik id-dispożizzjoni; u

(b) referenzi għal emendi fid-dispożizzjonijiet ta' dan l-Att jinkludu referenzi għal emendi, modifikazzjoni, tibdil jew dħul fis-seħħ mill-ġdid, b'emenda jew mingħajr, ta' dik id-dispożizzjoni, is-sospensjoni jew ir-revoka ta' dik id-dispożizzjoni u kull dispożizzjoni differenti li tiegħu post dik id-dispożizzjoni l-oħra.

Emendi
konsegwenzjali
għall-
Kostituzzjoni.

7. Il-Kostituzzjoni ta' Malta, hawn iżjed 'il quddiem imsejha "il-Kostituzzjoni", għandha tiġi emendata skont l-artikoli li ġejjin.

Emenda tal-
artikolu 66 tal-
Kostituzzjoni.

8. Minnufih wara s-subartikolu (7) tal-artikolu 66 tal-Kostituzzjoni għandu jiżdied is-subartikolu ġdid li ġej:

"(8) Il-Parlament jista', b'Att tal-Parlament, jirradika d-dispożizzjonijiet kollha jew uħud minnhom ta' xi Att tal-Parlament fuq l-istess linja skont kif previst fis-subartikolu (2) ta' dan l-artikolu; u, f'dan il-każ, dawk id-dispożizzjonijiet ta' dak l-Att tal-Parlament li jsiru skont ma hu previst f'dan is-subartikolu, sa fejn jirrigwarda tali tibdil, jistgħu jinbidlu jew jiġu emendati biss bl-istess mod skont ma hu previst fis-subartikolu (2) ta' dan l-artikolu."

Sostituzzjoni
tal-artikolu 96
tal-
Kostituzzjoni.

9. L-artikolu 96 tal-Kostituzzjoni għandu jiġi sostitwit b'dan li ġej:

"96. (1) L-Imħallfin tal-Qrati Superjuri jkunu mahtura mill-President ta' Malta li jaġixxi skont il-parir tal-Prim Ministru wara li dan tal-aħhar ikun irċieva rakkomodazzjoni għal hatra ta' Imħallef tal-Qrati Superjuri mill-Awtorità dwar l-Għazla għas-Servizzi Ġudizzjarji.

(2) Hadd ma jkun kwalifikat biex ikun mahtur Imħallef tal-Qrati Superjuri jekk ma jkunx ilu perjodu ta' mhux inqas minn hmistax-il sena li ha l-warrant ta' avukat u l-ġurament ta' lealtà u tal-kariga bħala avukat f'Malta, u għall-finijiet ta' tali kwalifika, tali persuna trid tkun eżerċitat regolarment il-professjoni ta' avukat fil-Qrati u Tribunali ta' Malta għas-sodisfazzjon tal-Awtorità dwar l-Għazla għas-Servizzi Ġudizzjarji għal mhux inqas minn għaxar snin minn dawk il-

hmistax-il sena:

B'dan illi l-hatra bhala Imhalled ta' persuna li qed isservi fil-kariga ta' Maġistrat tkun soġġetta għall-approvazzjoni tal-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji."

10. Fis-subartikolu (1) tal-artikolu 97 tal-Kostituzzjoni, minflok il-kliem "hamsa u sittin sena." għandhom jidhlu l-kliem "tmienja u sittin sena. Għall-finijiet u effetti kollha tal-liġi u biex ma jkun hemm ebda dubju fil-liġi, l-Imhalled ikollu l-jedd li jeżerċita l-għażla li jgawdi d-drittijiet tal-pensjoni bl-istess mod bħal kull persuna pensjonabbli oħra skont id-dispożizzjonijiet tal-Att dwar is-Sigurtà Soċjali u l-imsemmi Att għandu jkun interpretat bl-istess mod".

Emenda tal-artikolu 97 tal-Kostituzzjoni.

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

Emenda tal-artikolu 100 tal-Kostituzzjoni.

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Il-Maġistrati tal-qrati inferjuri jkunu appuntati mill-President ta' Malta li jaġixxi skont il-parir tal-Prim Ministru wara li dan tal-aħħar ikun irċieva rakkomodazzjoni għal hatra ta' Maġistrat tal-qrati inferjuri mill-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji.";

(b) is-subartikolu (2) tiegħu għandu jiġi sostwit b'dan li ġej:

"(2) Hadd ma jkun kwalifikat biex ikun mahtur għal jew biex jaġixxi fil-kariga ta' Maġistrat tal-qrati inferjuri kemm-il darba ma jkunx ilu perjodu ta' mhux inqas minn hmistax-il sena li ha l-warrant ta' avukat u l-ġurament ta' lealtà u tal-kariga bhala avukat f'Malta, u għall-finijiet ta' tali kwalifika, tali persuna trid tkun eżerċitat regolarment il-professjoni ta' avukat fil-Qrati u Tribunali ta' Malta għas-sodisfazzjon tal-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji għal mhux inqas minn għaxar snin minn dawk il-hmistax-il sena."; u

(ċ) minflok il-kliem "hamsa u sittin sena" fis-subartikolu (3) tiegħu għandhom jidhlu l-kliem "tmienja u sittin sena. Għall-finijiet u effetti kollha tal-liġi u biex ma jkun hemm ebda dubju fil-liġi, il-Maġistrat ikollu l-jedd li jeżerċita l-għażla li jgawdi d-drittijiet tal-pensjoni bl-istess mod bħal kull persuna

pensjonabbli oħra skont id-dispożizzjonijiet tal-Att dwar is-Sigurtà Soċjali u l-imsemmi Att għandu jkun interpretat bl-istess mod".

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz ta' Ligi hu li jipprovdi għat-twaqqif tal-Awtorità dwar l-Għażla għas-Servizzi Ġudizzjarji li tkun responsabbli għar-rakkomondazzjoni u għażla ta' dawk maħtura biex jaqdu d-doveri ta' Ġudikaturi fil-Qrati liema għażla tkun trasparenti u lil hinn minn kull involviment tal-Eżekuttiv, biex tali Awtorità tkun radikata fil-Kostituzzjoni ta' Malta, biex jiżdied il-perjodu minimu ta' snin ta' esperjenza għall-eligibilità għal kariga ta' Imħallef u Maġistrat minn 12-il sena u 7 snin rispettivament għal 15-il sena fiż-żewġ każi li minnhom 10 snin ikunu eżerċizzju regolari tal-professjoni ta' avukat fil-Qrati u Tribunali ta' Malta, u biex jipprovdi sabiex l-età ta' irtirar tal-Maġistrati u Imħallfin tizdied minn 65 sena għal 68 sena.

**A BILL
entitled**

AN ACT to amend the Constitution of Malta and to establish by law the Judicial Services Appointment Authority.

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:-

1. The short title of this Act is the Judicial Services Appointment Authority Act, 2016. Short title.

2. (1) There shall be a Judicial Services Appointment Authority, hereinafter referred to as "the Authority". Appointment and functions of the Judicial Services Appointment Authority.

(2) The Authority shall consist of a Chairperson and four members.

(3) The Chairperson and the four members of the Authority shall be appointed by the President of Malta in accordance with the provisions of article 3.

(4) The Authority shall be entrusted with recommending to the Prime Minister the following appointments:

- (a) the Chief Justice;
- (b) Judges of the Superior Courts;
- (c) Magistrates of the Inferior Courts; and
- (d) Adjudicators of the Small Claims Tribunal.

(5) The Authority shall be entrusted with making the

following appointments:

- (a) Court Attorneys;
- (b) Advocate for Legal Aid;
- (c) Judges and Magistrates to serve on international and regional courts or tribunals;
- (d) Judiciary Media Spokesperson;
- (e) Jurors' Selection Board;
- (f) Juvenile Court Assistants; and
- (g) such other person to occupy any office which the Minister may, by regulations, prescribe.

(6) The Authority shall carry out such other functions as are assigned to it by this Act or by any other law, and such other functions as the Minister may, by regulations, prescribe.

(7) The Authority shall establish and publish, by order in the Gazette, qualitative criteria, evaluation criteria and procedures for appointment to the offices mentioned in sub-articles (4) and (5), including, but not limited to:

- (a) the number of years practising as an advocate at the Law Courts;
- (b) integrity, moral uprightness and honesty;
- (c) knowledge of the law;
- (d) absence of any commercial activity or business interests;
- (e) legal publications;
- (f) post-graduate courses or specialisation courses;
- (g) judicial acts filed by the applicant;
- (h) judgements, decrees handed down and reports written by the applicant;
- (i) peer review, and
- (j) the financial situation of the applicant.

(8) The appointments referred to in sub-articles (4) and (5) shall be made following a public call for expressions of interest. The identity of the persons who express an interest shall be treated as confidential, and shall not be revealed except with the consent of the person who has expressed an interest. Only the identity of the person finally selected by the Authority shall be made public.

(9) Should no person express an interest, or no person who has expressed an interest be deemed eligible by the Authority, then the Authority shall be empowered to act in accordance with its own deliberate judgement in the performance of its functions in terms of sub-articles (4) and (5).

3. (1) The Authority shall be made up as follows: the Chief Justice as its Chairperson, the President of the Chamber of Advocates, the Attorney General, a lawyer nominated by the Prime Minister and a lawyer nominated by the Leader of the Opposition. Membership of the Authority.

(2) Persons who, in the immediately preceding three years prior to their nomination, will have occupied any official role or position within any political party shall not be eligible to sit as members on the Authority.

4. The Authority shall be appointed for a period of four years. Such appointment can be renewed once only in the case of each member, except that of the Chief Justice and the Attorney General. Term of office.

5. (1) Subject to the provisions of this article, the office of a member of the Authority shall become vacant - Vacancies.

(a) at the expiration of four years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Authority, would cause him to be disqualified from appointment as such.

(2) If the office of member of the Authority is vacant or if a member is for any reason unable to perform the functions of his office, the President of Malta shall appoint a supplementary member in accordance with his own deliberate judgment and following due consultation.

6. (1) Subject to the provisions of this article and in terms of the provisions of article 66(8) of the Constitution of Malta, Parliament may alter any of the provisions of this Act. Entrenchment provision.

(2) In so far as it alters any article of this Act, a Bill for an Act

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of Parliament amending, substituting or repealing this Act, or any provision thereof, shall not be passed by the House of Representatives unless at the final voting thereon in the House it is supported by the votes of not less than two-thirds of all the members of the House.

(3) In this article:

(a) references to any of the provisions of this Act include references to any law that amends or replaces that provision; and

(b) references to the alteration of the provisions of this Act include references to the amendment, modification, change or re-enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu of that provision.

Consequential amendments to the Constitution.

7. The Constitution of Malta, hereinafter referred to as "the Constitution", shall be amended in accordance with the following articles.

Amendment of article 66 of the Constitution.

8. Immediately after sub-article (7) of article 66 of the Constitution there shall be added the following new sub-article:

"(8) Parliament may by Act of Parliament also entrench all or some of the provisions contained in any Act of Parliament on the same lines as provided in the sub-article (2) of this article; and, in such case, those provisions of such Act of Parliament made in terms of this sub-article, in so far as their alteration is concerned, may only be altered or amended in the same way as provided in the sub-article (2) of this article."

Substitution of article 96 of the Constitution.

9. Article 96 of the principal law shall be substituted by the following:

"96. (1) The Judges of the Superior Courts shall be appointed by the President of Malta acting in accordance with the advice of the Prime Minister after the latter has received a recommendation for appointment of a judge of the Superior Courts from the Judicial Services Appointment Authority.

(2) A person shall be qualified to be appointed a Judge of the Superior Courts if for a period of not less than fifteen years the person concerned has been duly warranted and sworn as an advocate in Malta, and for the purposes of such qualification, the person concerned shall have practised regularly to the satisfaction of the Judicial Services Appointment Authority as an advocate in the Courts and

Tribunals of Malta for not less than ten years within the said fifteen years:

Provided that the appointment as a Judge of a person who is serving as a Magistrate shall be subject to the approval of the Judicial Services Appointment Authority."

10. In sub-article (1) of article 97 of the Constitution, for the words "sixty-five years." there shall be substituted the words "sixty-eight years. For the avoidance of doubt, for all intents and purposes at law the Judge shall be entitled to exercise the option to enjoy pension rights in the same manner as any pensionable person in accordance with the provisions of the Social Security Act and the said Act shall be interpreted accordingly."

Amendment of article 97 of the Constitution.

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

Amendment of article 100 of the Constitution.

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

"(1) The Magistrates of the inferior courts shall be appointed by the President of Malta acting in accordance with the advice of the Prime Minister after the latter receives a recommendation for appointment of a magistrate of the inferior courts from the Judicial Services Appointment Authority.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) A person shall be qualified to be appointed Magistrate of the inferior courts if for a period of not less than fifteen years the person concerned has been duly warranted and sworn as an advocate in Malta, and for the purposes of such qualification, the person concerned shall have practised regularly to the satisfaction of the Judicial Services Appointments Authority as an advocate in the Courts and Tribunals of Malta for not less than ten years within the said fifteen years."; and

(c) for the words "sixty-five years." in sub-article (3) thereof there shall be substituted the words "sixty-eight years. For the avoidance of doubt, for all intents and purposes at law the Magistrate shall be entitled to exercise the option to enjoy pension rights in the same manner as any pensionable person in accordance with the provisions of the Social Security Act and the said Act shall be interpreted accordingly."

Objects and Reasons

The aim of this Bill is to provide for the setting up of a Judicial Services Appointment Authority responsible for recommending the appointment, and carrying out appointments to the Judiciary as a result of a transparent and public process cut off from any involvement from the Executive arm of Government, to provide for the entrenchment in the Constitution of Malta of this Authority, to provide for the increase in the minimum age eligibility requirement for those appointed Judges and Magistrates from 12 years and 7 years respectively to 15 years in both cases, 10 years of which have to be in the regular exercise of the legal profession in Maltese Courts and Tribunals, and an increase in the retirement age of Judges and Magistrates from 65 years to 68 years.

