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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MALTA

**BILL NO. 141 “CONSITUTION OF MALTA
(AMENDMENT NO.2) BILL”**

**A BILL
entitled**

AN ACT to provide for the amendment of 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:-

1. The short title of this Act is the Constitution of Malta (Amendment No. 2) Act, 2020 and this Act shall be read and construed as one with the Constitution, hereinafter referred to as "the Constitution".

Short title.

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

Amendment of article 96 of the Constitution.

(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 if the Resolution is not supported by the votes of not less than two-thirds of all the members of the House, a second vote on the Resolution shall be taken not earlier than seven (7) days from the first vote which shall also require the votes of not less than two-thirds of all the members of the House and if the Resolution in the second vote is not supported by the votes of not less than two-thirds of all the members of the House, a third vote on the Resolution shall be taken not earlier than seven (7) days from the second vote and at the said third vote the Resolution will be approved if supported by the majority of the votes of all the members of the House:

Provided further that when a second vote is taken, new candidates for the office of Chief Justice may be nominated before the taking of the second vote."; and

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

Amendment of
article 96A of
the Constitution.

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

(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, 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, be eligible to be appointed a member of the judiciary.";

(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 "to the Cabinet of Ministers";

(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 substituted by the following new paragraph:

"(e) when requested by the Cabinet of Ministers, through the Secretary to Cabinet, to give advice on the eligibility and merit of persons who already occupy the offices of Attorney General, State Advocate, Auditor General, Commissioner for Administrative Investigations (Ombudsman) or of magistrate of the inferior courts to be appointed to an office in the judiciary;";

(iv) in paragraph (f), 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 (f) there shall be added the following new paragraph:

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

(e) 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."

Addition of new article to the Constitution.

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

"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."

5. 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 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.

Objects and Reasons

The objects and reasons of this Bill consist of the amendment of the Constitution for the purpose of providing for the appointment of the Chief Justice with the approval of two-thirds of all the Members of the House of Representatives, for a change in the composition of the Judicial Appointments Committee so that a majority of its members are members of the judiciary, and to provide for the issuing of public calls for vacancies in the judiciary apart from the current system of applications on an open call.

AMENDMENT DOCUMENT OF THE GOVERNMENT