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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

MALTA

**BILL NO. 142 “VARIOUS LAWS (REMOVAL FROM OFFICE)
(AMENDMENT) BILL”**

**A BILL
entitled**

AN ACT to provide for the amendment of the Constitution of Malta and to the Commission for the Administration of Justice Act, Cap. 369, relative to the removal from office 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 Various Laws (Removal from Office) (Amendment) Act, 2020.

**PART I
Amendments to the Constitution**

Amendments to the Constitution. **2.** This Part amends the Constitution and it shall be read and construed as one with the Constitution, hereinafter in this Part referred to as "the Constitution".

Amendment of article 91 of the Constitution. **3.** Sub-article (5) of article 91 of the Constitution shall be substituted by the following:

"(5) The Attorney General shall not be removed from his office except by the President upon an address by the House supported by the votes of not less than two-thirds of all the members thereof and requesting such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(6) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour under the provisions of the last preceding sub-article."

4. Sub-article (5) of article 91A of the Constitution shall be substituted by the following: Amendment of article 91A of the Constitution.

"(5) The State Advocate shall not be removed from office except by the President upon an address by the House supported by the votes of not less than two-thirds of all the members thereof and requesting such removal on the ground of proved inability to perform the functions of office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(6) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour under the provisions of the last preceding sub-article."

5. Article 97 of the Constitution shall be amended as follows: Amendment of article 97 of the Constitution.

(a) sub-article (2) thereof shall be substituted by the follows:

"(2) A judge of the superior courts shall not be removed from his office except as provided in articles 101B and 101C of the Constitution."; and

(b) sub-article (3) thereof shall be deleted.

6. Sub-article (4) of article 100 of the Constitution shall be substituted by the following: Amendment of article 100 of the Constitution.

"(2) The provisions of sub-article (2) of article 97 of the Constitution shall apply to a magistrate of the inferior courts."

7. Article 101A of the Constitution shall be amended as follows: Amendment of article 101A of the Constitution.

(a) paragraph (b) of sub-article (1) thereof shall be deleted and paragraphs (c), (d), (e) and (f) shall be renumbered as paragraphs (b), (c), (d), and (e) respectively;

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

"(2) The President shall have an original vote."

(c) sub-article (13) thereof shall be substituted by the following:

"(13) 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 recommendation of the Chief Justice:

Provided that where the Chief Justice fails to make a recommendation to the President, the President shall exercise this power on the advice of the Minister responsible for justice:

Provided further that in any such case the Minister responsible for justice shall immediately publish in the Gazette, a notice of that fact together with the reasons therefore, and he shall make a statement of such fact in the House not later than the second sitting immediately after he has so advised the President."; and

(d) in sub-article (14) thereof, the words "The question whether" shall be substituted by the words "Subject to provisions of sub-article (1) of article 101C of this Constitution, the question whether".

Amendment of
article 101B of
the Constitution.

8. Paragraph (c) of sub-article (10) of article 101B of the Constitution shall be substituted by the following:

"(c) if it considers that the breach is of such a serious nature as to merit the removal of the judge or magistrate from office, or is based on the ground of incapacity to perform the functions of his office (both whether for bodily or mental illness or for any other reason), it shall report its findings to the Commission for the Administration of Justice which shall consider whether the evidence proves the case *prima facie* and, if it considers that there is such degree of proof, the Commission shall suspend the judge or magistrate concerned and shall proceed with the hearing of the case. During the period during which a judge or magistrate is suspended in accordance with the provisions of this paragraph, which shall not exceed six (6) months, the judge or magistrate shall be entitled to half the salary and allowances relative to the office and after the expiry of such a period of six (6) months he shall resume receiving his salary and all allowances for his post irrespective of whether or not the case referred has been concluded. In the event that the Commission for the Administration of Justice considers that the breach under investigation merits the removal of the judge or

magistrate from office, it shall proceed to advise the President to remove the judge or magistrate from office for proven misconduct or proven incapacity to perform the functions of his office:

Provided that in the event that the proceedings before the Commission for the Administration of Justice do not result in the removal of the member of the judiciary, then the member of the judiciary shall be paid the salary and allowances have been held throughout the period of suspension."

9. Immediately after article 101B of the Constitution there shall be added the following new article:

Addition of article to the Constitution.

"Appeal from the decisions of the Commission for the Administration of Justice.

101C.(1) There shall be a right of appeal to the Constitutional Court from a decision of the Commission for the Administration of Justice's finding for the removal of a judge or magistrate and from decision of the Commission for the Administration of Justice delivered in accordance with article 101B(12).

(2) The appeal shall be filed within eight working days from the date when the decision of the Commission for the Administration of Justice is communicated to the judge or magistrate.

(3) The filing of an appeal in terms of sub-article (1) shall suspend the execution of the decision of the Commission for the Administration of Justice."

PART II

Amendments to the Commission for the Administration of Justice Act

10. This Part amends the Commission for the Administration of Justice Act and it shall be read and construed as one with the Administration of Justice Act, hereinafter in this Part referred to as the "principal Act".

Amendments to the Commission for the Administration of Justice Act. Cap. 369.

11. In article 8 of the principal Act, the words "in connection with an address as is referred to in article 97" shall be substituted by the words "according to article 101B".

Amendment of article 8 of the principal Act.

12. Article 9 of the principal Act shall be substituted by the

Substitution of article 9 of the principal Act.

following:

"Procedure to be followed under article 101B.

9. (1) When the Committee of Judges and Magistrates reports its findings to the Commission in accordance with article 101B(10)(c) of the Constitution, the Commission shall communicate the report of the Committee of Judges and Magistrates to the judge or magistrate, as the case may be, and shall be given a reasonable opportunity to submit a written statement within such time as may be specified by the Commission.

(2) The Commission shall carry out the necessary investigation and report to the President. If the report of the Commission states that there is no misconduct or that the judge or magistrate has no incapacity, no further action shall be taken in respect of that report.

(3) If the report of the Commission has found that the misconduct has been proven, the Commission shall make a report of its decision to the President advising the removal of the judge or magistrate as the case may be. A copy of this decision shall be given to the judge or magistrate, as the case may be.

(4) The proceedings of the Commission under this article shall be kept *in camera*. The judge or magistrate whose conduct is being investigated shall have the right to be present throughout the trial, to produce evidence in support of the allegations mentioned in the report of the Committee of Judges and Magistrates or defence, and to be assisted by a lawyer or legal procurator.

(5) The decision of the Commission may be appealed by the judge or magistrate, as the case may be, in accordance with article 101C of the Constitution."

Addition of new article to the principal Act.

13. In sub-article (3) of article 10 of the principal Act, the words "as is alleged in the relative motion referred to in article 10(1)." shall be substituted by the words "as is alleged in the report of the Committee for Judges and Magistrates referred to in article 10(1)."

Amendment of article 10 of the principal Act.

14. Immediately after article 11 of, there shall be added the

following new article:

"Procedure to be followed under articles 91 and 91A of the Constitution.

12. (1) Where notice is given in the House of a motion for presenting an address to the President as is referred to in article 91(5) and article 91A(5) of the Constitution, the Speaker shall, without allowing any publicity, keep the motion pending, and shall refer the same for investigation to the Commission.

(2) The motion shall contain definite charges against the holder of the office 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.

(3) Such charges together with such statement shall be communicated to the holder of the office and the holder of the office shall be given a reasonable opportunity to present a written statement of defence within such time as may be specified by the Commission.

(4) The Commission shall carry out the necessary investigation and make a report thereon to the Speaker. If the report of the Commission contains a finding that there is no misbehaviour or that the holder of the office 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.

(5) If the report of the Commission contains a finding *prima facie* that the misbehaviour or incapacity has been proved then, the motion referred to in article 97(2) of the Constitution shall, together with the report of the Commission, be taken up for consideration by the House.

(6) If upon consideration by the House, it is satisfied that the misbehaviour or incapacity has been proved and if the motion is adopted by the House in accordance with the provisions of article 91(5) or 91A(5) of the Constitution then the misbehaviour or inability of the holder of the office to perform the functions of office shall be deemed to have been proved and an address praying for the removal of the holder of the office shall be presented to the President by the House in the same session in which the motion has been adopted.

(7) Proceedings by the Commission under this article shall be held *in camera*. The member of the House presenting the motion and the holder of the office whose conduct is being investigated shall have a right to be present during the whole process, to produce witnesses in support of the charges set in the motion or in defence, and to be assisted by any advocate or legal procurator.

(8) The provisions of article 10 shall apply *mutatis mutandis* where it is alleged that the holder of the office is unable to perform the functions of office on the ground of infirmity of body or mind."

Objects and Reasons

The objects and reasons of this Bill are to revise the composition of the Committee for Judges and Magistrates, to ensure that the removal of members of the judiciary is made by a body which is not political and to provide for an appeal from decisions of the Commission for the Administration of Justice.