

I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

5th August, 2016

ACT No. XLIV of 2016

AN ACT to provide for Constitutional reforms in the Justice Sector and for matters consequential or ancillary thereto.

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 Constitutional Reforms (Justice Sector) Act, 2016. Short title.

PART I

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

3. In paragraph (b) of sub-article (2) of article 66 of the Constitution for the words "articles 95 to 100 (inclusive)" there shall be substituted the words "articles 95, 96, 96A, 97, 98, 99, 100, 101A, 101B,". Amendment of article 66 of the Constitution.

4. Immediately after sub-article (2) of article 96 of the Constitution there shall be added the following new sub-articles: Amendment of article 96 of the Constitution.

"(3) Without prejudice to the provisions of sub-article (4), before the Prime Minister gives his advice in accordance with sub-article (1) in respect of the appointment of a judge of the Superior Courts, (other than the Chief Justice) the evaluation by the Judicial Appointments Committee established by article 96A of this Constitution as provided in paragraphs (c), (d) or (e) of sub-article (6) of the said article 96A shall have

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been made.

(4) Notwithstanding the provisions of sub-article (3), the Prime Minister shall be entitled to elect not to comply with the result of the evaluation referred to in sub-article (3):

Provided that after the Prime Minister shall have availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:

(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and

(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with sub-article (1):

Provided further that the provisions of the first proviso to this sub-article shall not apply in the case of appointment to the office of Chief Justice."

Addition of new article to the Constitution.

5. Immediately after article 96 of the Constitution there shall be added the following new article:

"Judicial
Appointments
Committee.

96A. (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) the Attorney General;

(c) the Auditor General;

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

(e) 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 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.

(2) The Committee shall be chaired by the Chief Justice or, in his absence, by the judge who substitutes him in accordance with paragraph (d) of sub-article (3).

(3) (a) A person shall not be qualified to be appointed or to continue to hold office as a member of the Committee if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives, a member of a local government or an official or a candidate of a political party:

Provided that where the President of the Chamber of Advocates is not qualified to be appointed or to hold office as aforesaid the Chamber of Advocates shall nominate another advocate to sit on the Committee in his stead.

(b) The office of a member of the Committee shall become vacant if any circumstances arise that, if the person were not a member of the Committee, the person would not qualify for membership thereof.

(c) A member of the Committee may abstain or be challenged in the same circumstances as a judge of the Superior Courts.

(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 Attorney General he shall be substituted by the next most senior advocate according to office in the Office of the Attorney General, 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 office in 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.

(4) In the exercise of their functions the members of the Committee shall act on their individual judgement and shall not be subject to the direction or control of any person or authority.

(5) There shall be a Secretary to the Committee who shall be appointed by the Minister responsible for justice.

(6) The functions of the Committee shall be:

(a) to receive and examine expressions of interest from persons interested in being appointed to the office of judge of the Superior Courts (other than the office of Chief Justice) or of magistrate of the Inferior Courts, except from persons to whom paragraph (e) applies;

(b) to keep a permanent register of expressions of interest mentioned in paragraph (a) and to the acts relative thereto, which register shall be kept secret and shall be accessible only to the members of the Committee, to the Prime Minister and to the Minister responsible for justice;

(c) to conduct interviews and evaluations of candidates for the above-mentioned offices in such manner as it deems appropriate and for this purpose to request information from any public authority as it considers to be reasonably required;

(d) to give advice to the Prime Minister through the Minister responsible for justice about its evaluation on the eligibility and merit of the candidates for appointment to the above-mentioned offices;

(e) when requested by the Prime Minister, to give advice on the eligibility and merit of persons who already occupy the offices of Attorney General, Auditor General, Commissioner for Administrative Investigations (Ombudsman) or of magistrate of the Inferior Courts to be appointed to an office in the judiciary;

(f) to give advice on appointment to any other judicial office or office in the courts as the Minister responsible for justice may from time to time request:

Provided that the evaluation referred to in paragraph (d) shall be made by not later than sixty days from when the Committee receives the expression of interest and the advice mentioned in paragraphs (e) and (f) shall be given by not later than thirty days from when it was requested, or within such other time limits as the Minister responsible for justice may, with the agreement of the Committee, by order in the Gazette establish.

(7) The proceedings of the Committee shall be confidential and shall be held *in camera* and no member or secretary of the Committee may be called to give evidence before any court or other body with regard to any document received by or any matter discussed or communicated to or by the Committee.

(8) The Committee shall regulate its own procedure and shall be obliged to publish, with the concurrence of the Minister responsible for justice, the criteria on which its evaluations are made."

6. Immediately after sub-article (4) of article 100 of the Constitution there shall be added the following new sub-articles:

Amendment of article 100 of the Constitution.

"(5) Without prejudice to the provisions of sub-article (6), before the Prime Minister gives his advice in accordance with sub-article (1) in respect of the appointment of a magistrate of the Inferior Courts the evaluation by the Judicial Appointments Committee established by article 96A of this Constitution as provided in paragraphs (c), (d) or (e) of sub-article (6) of the said article 96A shall have been made.

(6) Notwithstanding the provisions of sub-article (5), the Prime Minister shall be entitled to elect not to comply with

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the result of the evaluation referred to in sub-article (5):

Provided that after the Prime Minister shall have availed himself of the power conferred upon him by this sub-article, the Prime Minister or the Minister responsible for justice shall:

(a) publish within five days a declaration in the Gazette announcing the decision to use the said power and giving the reasons which led to the said decision; and

(b) make a statement in the House of Representatives about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House to be held after the advice was given to the President in accordance with sub-article (1)."

Amendment of article 101A of the Constitution.

7. Sub-article (11) of article 101A of the Constitution shall be amended as follows:

(a) paragraph (c) thereof shall be substituted by the following:

"(c) to exercise, subject to article 101B of this Constitution, discipline on judges and magistrates;" and

(b) paragraph (f) thereof shall be substituted by the following:

"(f) to draw the attention of any judge or magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court;"

Addition of new article to the Constitution.

8. Immediately after article 101A of the Constitution there shall be added the following new article:

"Discipline
of judges and
magistrates.

101B. (1) There shall be a Committee for Judges and Magistrates (hereinafter referred to as "the Committee") which shall be a subcommittee of the Commission for the Administration of Justice and which shall consist of three members of the judiciary who are not members of the Commission for the Administration of Justice and who shall be elected from amongst judges and magistrates according to regulations issued by the Commission for the Administration of Justice so however that in disciplinary proceedings against a magistrate two of the three members shall be magistrates and in the case of disciplinary proceedings against a judge two of the three members shall be judges.

(2) The Chairman of the Committee shall be elected by the members of the Committee from amongst themselves.

(3) Any member of the Committee may be challenged and shall abstain in the same circumstances as a judge of the Superior Courts may be challenged or may abstain. Where a member has been challenged or has abstained, the Commission for the Administration of Justice shall appoint a substitute member.

(4) The Committee shall exercise discipline on judges and magistrates in the manner prescribed in this article.

(5) Disciplinary proceedings against a judge or a magistrate shall be commenced upon a complaint in writing and containing definite charges made to the Committee by the Chief Justice or by the Minister responsible for justice, for breach of the provisions of the Code of Ethics for Members of the Judiciary or of a code or disciplinary rules for members of the judiciary promulgated according to the same procedure according to which the said Code of Ethics is promulgated which are from time to time applicable to the members of the judiciary. The complaint shall also include the grounds upon which each of such charges is based.

(6) The Committee shall, upon receipt of a complaint under sub-article (5), notify the said complaint to the judge or magistrate against whom it is made granting him or her a reasonable time to reply.

(7) If, following *prima facie* consideration of the complaint and of the reply, the Committee considers that there are not sufficient grounds to commence disciplinary proceedings, the Committee shall refrain from further consideration of the case.

(8) If, following the consideration of the complaint and of the reply as referred to in sub-article (7), the Committee considers that there are sufficient grounds to continue the disciplinary proceedings the Committee shall appoint a date for the hearing.

(9) Proceedings before the Committee shall be held *in camera* unless the judge or magistrate against whom the proceedings are taken requests otherwise. The complainant or his representative and the judge or magistrate against whom the proceedings are taken shall have a right to be present during the whole of the proceedings, to produce witnesses in support or in defence of the charges set in the complaint, and to be assisted by an advocate or a legal procurator. The Commission for the Administration of Justice may also appoint an advocate to act as a special independent prosecutor in the disciplinary proceedings.

(10) If the Committee finds that the judge or magistrate has breached the Code of Ethics for Members of the Judiciary it shall:

(a) if it considers that the breach is of a minor nature, either issue a warning or impose a pecuniary penalty recoverable as a civil debt payable to the Secretary of the Commission for the Administration of Justice, not exceeding ten *per centum* of the annual salary of the judge or magistrate as at the time established according to law;

(b) if it considers that the breach is of a serious nature it may suspend the judge or magistrate from the exercise of his duties for a period of not more than six months on half of his salary and allowances as recoverable at the time;

(c) if it considers that the breach is of such a serious nature that it merits the removal of the judge or magistrate from office, it shall report its findings to the Commission for the Administration of Justice which shall consider whether the evidence constitutes *prima facie* proof and, if it considers that such degree of proof exists, the Commission shall suspend the judge or the magistrate concerned and shall refer the matter to the Speaker of the House of Representatives and to the Prime Minister.

During the period of suspension of a judge or a magistrate in accordance with the provisions of this paragraph, which shall not exceed six months, the judge or magistrate shall be entitled to half the salary and allowances appertaining to his office and after the lapse of the said period of six months he shall again start receiving his salary and all the allowances of his office irrespective of whether the case referred has been concluded or otherwise. In the event that the proceedings before the House of Representatives do not lead to the removal from office of the member of the judiciary then the member of the judiciary shall be paid the salary and allowances which shall have been withheld from him during all the period of his suspension.

(11) The Committee may also upon the request of the Chief Justice order that a judge or a magistrate be suspended from the performance of his duties on serious medical grounds for a definite period during which the said judge or magistrate shall continue to receive his full salary and allowances. The procedure laid down in this article in respect of disciplinary proceedings shall apply *mutatis mutandis* in the case of any proceedings taken under this sub-article.

(12) (a) There shall be a right of appeal to the Commission for the Administration of Justice from decisions of the Committee by the judge or magistrate against whom the Committee makes a finding.

(b) The appeal shall be filed with the Secretary of the Commission for the Administration of Justice by not later than twenty days from when the Committee delivers its decision.

(c) The filing of an appeal as aforesaid shall suspend the execution of the decision of the Committee.

(d) The Commission for the Administration of Justice may from time to time establish rules of procedure for such appeals.

(e) The President of Malta shall not form part of the Commission for the Administration of Justice when the said Commission is hearing an appeal from a decision of the Committee.

(13) Proceedings before the Committee shall be concluded within a period of one year and appeal proceedings before the Commission for the Administration of Justice shall be concluded within a further period of six months.

(14) In the exercise of their function under this article the Commission for the Administration of Justice and the Committee for Judges and Magistrates shall have all the powers as are assigned to the First Hall of the Civil Court by the Code of Organisation and Civil Procedure or by any law from time to time regulating the powers of Courts of civil jurisdiction.

(15) In the exercise of their functions the members of the Committee shall act on their own individual judgment and shall not be subject to the direction or control of any other person or authority.

(16) The provisions of this article shall be without prejudice to the application of sub-articles (2) and (3) of article 97 of this Constitution wherever they may apply."

9. In sub-article (1) of article 107 of the Constitution for the words "There shall be paid" there shall be substituted the words "Without prejudice to the provisions of articles 101A and 101B, there shall be paid".

Amendment of article 107 of the Constitution.

10. In paragraph (a) of sub-article (4) of article 108 of the Constitution the words "of paragraph (a)" shall be deleted.

Amendment of article 108 of the Constitution.

PART II

11. This Part enacts the Members of the Judiciary (Pensions) Act, 2016.

1. (1) The short title of this Act is the Members of the Judiciary (Pensions) Act, 2016.

Short title and commencement.

(2) The provisions of this Act shall come into force on such a date as the President of Malta may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act.

2. In this Act and in the regulations made thereunder -

Interpretation.

"Attorney General" means the person appointed in accordance with the provisions of Chapter VII of the Constitution of Malta, whether serving or in retirement, and who is not entitled to a pension under the Pensions Ordinance;

Cap. 93.

"legal representative" means testate or intestate heir of the deceased member of the judiciary or of the deceased Attorney General, as the case may be;

"member of the judiciary" means the Chief Justice, judges and magistrates appointed in accordance with the provisions of Chapter VIII of the Constitution of Malta, whether serving or in retirement, and who are not entitled to a pension under the Pensions Ordinance;

Cap. 93.

"month" means a calendar month;

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"pensionable emoluments" means:

Cap. 175.
Cap. 186.

(i) in the case of a member of the judiciary or the Attorney General who has retired before the date of the coming into force of this Act who, however, was not entitled to a pension under the Pensions Ordinance, the salary that would be payable to the holder of such office on the date of the coming into force of this Act in accordance with the Judges and Magistrates (Salaries) Act and the President of Malta and other Officers (Salaries) Act respectively; and

(ii) in the case of a member of the judiciary or the Attorney General who has retired after the coming into force of this Act, the salary payable to him in accordance with the Acts mentioned in paragraph (i) immediately before his retirement;

"pensionable office" means the office of a member of the judiciary or of the Attorney General, as the case may be;

"pensionable service" in relation to a member of the judiciary or Attorney General means service performed by the member of the judiciary or Attorney General prior to his retirement:

Provided that:

(i) service performed by a member of the judiciary prior to his retirement in any court or tribunal of international jurisdiction constituted by virtue of any international or multilateral convention or treaty shall, for the purposes of calculating length of service, also be included as pensionable service except when that service gives a right to the member of the judiciary to a pension or other retirement benefit from an institution outside Malta; and

(ii) in the case of a member of the judiciary and the Attorney General service performed in the offices of Chief Justice, judge, magistrate, Attorney General, and as an advocate in the Office of the Attorney General, irrespective of how the office is referred to, before retirement shall qualify as pensionable service;

"public service" means service of a civil capacity under the Government of Malta or such other service as the President of Malta may determine to be public service for the purposes of any provision of this Act or any regulations made thereunder;

"retirement" means the date when a serving member of the judiciary vacates his office in accordance with the provisions of

Chapter VIII of the Constitution of Malta, or a person occupying the post of Attorney General vacates his office in accordance with the provisions of Chapter VII of the Constitution of Malta, as the case may be, and includes the date when a serving member of the judiciary or a person occupying the post of Attorney General, as the case may be, resigns or is removed due to proved inability to perform the functions of his office due to infirmity of body or mind in accordance with the provisions of Chapter VIII of the Constitution of Malta, or Chapter VII of the Constitution of Malta, respectively;

"widow" has the same meaning as given to it in article 2 of the Social Security Act; Cap. 318

"year" means a calendar year.

3. (1) Without prejudice to article 113 of the Constitution of Malta it shall be lawful for the President of Malta, from time to time to make, and when made, to vary regulations for the granting of pensions, gratuities and other allowances to Members of the Judiciary and to the Attorney General. President may make pension regulations.

(2) The said regulations and any regulations varying the same as aforesaid, shall have the same force and effect for all purposes as if they were contained in this Act, and the term "this Act" shall in the following articles be read and construed accordingly.

(3) Whenever the President of Malta is satisfied that any regulation made under this article should have retrospective effect in order to confer a benefit, that regulation may be given retrospective effect for that purpose.

(4) No regulation made under this article shall have effect unless it has received the prior approval of the House of Representatives signified by resolution.

(5) Any pension or gratuity granted under this Act shall be computed in accordance with the provisions in force at the actual date of retirement of a member of the judiciary or of the Attorney General, as the case may be.

4. There shall be charged on and paid out of the Consolidated Fund all such sums of money as may from time to time be granted by the President of Malta by way of pension, gratuity or other allowance in accordance with this Act. Pensions, etc., to be charged on the revenues of Malta.

5. A member of the judiciary, as well as the Attorney General, shall have the right to a pension, gratuity, or allowance under this Act or under any regulations made thereunder: Pensions are a right.

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Provided that a member of the judiciary or the Attorney General, as the case may be, shall forfeit the right to a pension, gratuity or allowance under this Act or under any regulations made thereunder if he or she is removed from office in accordance with the provisions of Chapter VIII or Chapter VII, respectively, of the Constitution of Malta due to proved misbehaviour.

Circumstances in which pension may be granted.

6. (1) A member of the judiciary or a person who formerly occupied the post of Attorney General, who is retired on the date of coming into force of this Act, shall be entitled to a pension, gratuity or other allowance as prescribed by regulations made under this Act.

(2) A member of the judiciary or the Attorney General, as the case may be, who is in office on the date of coming into force of this Act will be entitled on retirement to a pension, gratuity or other allowance being granted by virtue of this Act.

Maximum pension.

7. A pension granted to a member of the judiciary or to the Attorney General, as the case may be, under this Act shall not exceed two-thirds of his pensionable emoluments.

Pensions affected by re-employment following retirement.

Cap. 93.

8. If any member of the judiciary or the Attorney General, as the case may be, to whom a pension has been granted under his Act is appointed to a full time office in the public service, or is or was after his retirement appointed to an office established by the Constitution, also being a pensionable office under the Pensions Ordinance, and subsequently retires in circumstances in which he may be granted a pension, or leaves office at the end of his appointment or re-appointment, as the case may be, he may be granted, in lieu of his previous pension, a pension computed as if the periods of his service had been continuous, and such pension may be based on his pensionable emoluments on his previous or final retirement from the service of Malta, or from the said office established by the Constitution, whichever are the greater:

Provided that if, on his previous retirement, he was paid a gratuity and reduced pension, the gratuity, if any, to be paid to him on final retirement shall be reduced by the amount of the gratuity already paid.

Pensions, etc., not to be assignable, etc.

Cap. 12.

9. No pension, gratuity, or allowance granted under this Act shall be assignable, transferable or liable to be attached, sequestered, or levied upon, for or in respect of any debt or claim whatever, except in so far as is provided in article 381(3) of the Code of Organization and Civil Procedure.

Pensions, etc., to cease on bankruptcy.

10. If any member of the judiciary or the Attorney General, as the case may be, to whom a pension or allowance has been granted

under this Act becomes a bankrupt, then such pension or allowance shall forthwith cease:

Provided always that in any such case where a pension or allowance ceases by reason of the bankruptcy of the pensioner, it shall be lawful for the President of Malta, from time to time, during the remainder of such pensioner's life or during such shorter period or periods, either continuous or discontinuous, as the President of Malta shall think fit, to cause all or any of the moneys to which such pensioner would have been entitled by way of pension or allowance had he not become a bankrupt, to be paid to or applied for the maintenance and personal support or benefit of all or any, exclusive of the other or others, of the following, namely, such pensioner himself and any wife, child or children of his, in such proportion and manner as the President of Malta thinks proper and such moneys shall be paid or applied accordingly.

11. If any member of the judiciary or the Attorney General, as the case may be, to whom a pension has been granted under this Act is sentenced to a term of imprisonment by a competent court in Malta or abroad for any crime or offence, then it shall be lawful for the President of Malta to direct that such pension or allowance shall forthwith cease:

Pensions, etc.,
to cease on
conviction.

Provided that, where a pension or allowance ceases for the reason aforesaid, it shall be lawful for the President of Malta to cause all or any part of the moneys to which the member of the judiciary or Attorney General concerned, as the case may be, would have been entitled by way of pension or allowance, to be paid to or applied for the benefit of his or her surviving spouse or surviving partner in a civil union, child or children.

12. (1) Subject to the provisions of this article, a widow or widower or the survivor of a civil union of a member of the judiciary or of an Attorney General who was at the time of his death entitled to a pension under this Act, shall be entitled to receive a pension:

Widow's
pension.

Provided that where there are one or more widows or widowers or survivors of a civil union who had been married to or had been in a civil union with a member of the judiciary or an Attorney General at any time during his tenure of office, such widow's pension shall be apportioned in the manner provided in article 42A of the Social Security Act:

Cap. 318.

Provided further that a person entitled to a pension under this article who is also entitled to a pension under any other provision of this Act shall only be entitled to receive the higher of such pensions.

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(2) The provisions of sub-article (1) shall also apply to a widow or widower of or to the survivor of a civil union with a member of the judiciary or Attorney General who has not yet attained pensionable age at the time of his death but who, before such death, satisfied the requirements of pensionable service under this Act.

(3) The rate of pension payable under this article shall be equivalent to five-sixths of the pension to which the member of the judiciary or the Attorney General was entitled, in accordance with the current pensionable emoluments that would have been applicable to the member of the judiciary or Attorney General but for his death.

(4) No pension shall be payable to a widow under the age of sixty-five years during any time in which she is in receipt of earnings from a gainful occupation exceeding the amount specified under article 32 of the Social Security Act in respect of any period of four weeks.

Cap. 318.

Application of
Act.

13. The provisions of this Act and any regulations made thereunder shall apply to all members of the judiciary and to persons occupying the post of Attorney General appointed after the 15th January, 1979, and no pension, gratuity or other allowance shall be payable under this Act, nor shall any other payment be made thereunder, to any person who was a member of the judiciary or a person occupying the post of Attorney General before the 16th January, 1979, or to the surviving spouse or surviving partner in a civil union, child or other relative of any such person.

Passed by the House of Representatives at Sitting No. 421 of the 20th July, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

