A 796

I assent.

(L.S.) **GEORGE VELLA**
President

7th August, 2020

ACT No. XLIII of 2020

AN ACT to amend 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:-

Short title.

1. The short title of this Act is the Constitution of Malta (Amendment) Act, 2020 and this Act shall be read and construed as one with the Constitution of Malta, hereinafter referred to as "the Constitution".

Amendment of article 96 of the Constitution.

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

(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 notwithstanding the provisions of article 97(1), if the Resolution is not supported by the votes of not less than two-thirds of all the members of the House, the person occupying the office of Chief Justice shall, in any circumstance, remain in office until the Resolution is supported by the votes of not less than two-thirds of all the members of the House."; and

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

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

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

(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 "and the President of Malta";

(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 deleted and paragraph (f) thereof shall be renumbered as paragraph (e);

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

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

(d) 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.".

Amendment of article 100 of the Constitution.

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

(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.

Passed by the House of Representatives at Sitting No. 366 of the 29th July, 2020.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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