

MALTA

ATT Nru XLV tal-2020

ATT maħruġ b'ligi mill-Parlament ta' Malta.

ATT li jemenda l-Kostituzzjoni ta' Malta u l-Att dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja, Kap. 369, relattivi għat-tneħħija mill-kariga ta' mhallfin u maġistrati.

ACT No. XLV of 2020

AN ACT enacted by the Parliament of Malta.

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.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

7 ta' Awwissu, 2020

ATT Nru XLV tal-2020

ATT li jemenda l-Kostituzzjoni ta' Malta u l-Att dwar Kummissjoni għall-Amministrazzjoni tal-Gustizzja, Kap. 369, relattivi għat-tneħħija mill-kariga ta' mħallfin u maġistrati.

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

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2020 li jemenda Diversi Ligijiet dwar it-Tneħħija mill-Kariga. Titolu fil-qosor.

TAQSIMA I

Emendi għall-Kostituzzjoni ta' Malta

2. Din it-Taqsima temenda l-Kostituzzjoni ta' Malta u għandha tinqara u tinftiehem haġa waħda mal-Kostituzzjoni ta' Malta, hawn iżjed 'il quddiem f'din it-Taqsima msejha "il-Kostituzzjoni". Emendi għall-Kostituzzjoni ta' Malta.
3. Is-subartikolu (5) tal-artikolu 91 tal-Kostituzzjoni għandu jiġi sostitwit b'dan li ġej: Emenda tal-artikolu 91 tal-Kostituzzjoni.

"(5) L-Avukat Ġenerali ma għandux jitneħħa mill-kariga tiegħu hlief mill-President wara indirizz mill-Kamra li jkollu favur tiegħu l-vot ta' mhux inqas minn żewġ terzi tal-membri kollha tagħha u li jitlob għal dik it-tneħħija minhabba inkapaċità ippruvata li jaqdi l-funzjonijiet tal-kariga tiegħu (kemm jekk għal mard korporali jew mentali jew għal xi raġuni oħra) jew imġiba hażina ppruvata.

(6) Il-Parlament jista' b'liġi jirregola l-proċedura għal preżentata ta' indirizz u għall-investigazzjoni u prova dwar l-inkapaċità jew imġiba hażina skont id-dispożizzjonijiet tal-aħħar subartikolu qabel dan."

Emenda tal-artikolu 91A tal-Kostituzzjoni.

4. Is-subartikolu (5) tal-artikolu 91A tal-Kostituzzjoni għandu jiġi sostitwit b'dan li ġej:

"(5) L-Avukat tal-Istat ma għandux jitneħħa mill-kariga tiegħu ħlief mill-President wara indirizz mill-Kamra li jkollu favur tiegħu l-vot ta' mhux inqas minn żewġ terzi tal-membri kollha tagħha u li jitlob għal dik it-tneħħija minhabba inkapaċità ippruvata li jaqdi l-funzjonijiet tal-kariga tiegħu (kemm jekk għal mard korporali jew mentali jew għal xi raġuni oħra) jew imġiba hażina ppruvata.

(6) Il-Parlament jista' b'liġi jirregola l-proċedura għal preżentata ta' indirizz u għall-investigazzjoni u prova dwar l-inkapaċità jew imġiba hażina skont id-dispożizzjonijiet tal-aħħar subartikolu qabel dan."

Emenda tal-artikolu 97 tal-Kostituzzjoni.

5. L-artikolu 97 tal-Kostituzzjoni għandu jiġi emendat kif ġej:

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

"(2) Imħallef tal-qrati superjuri ma għandux jitneħħa mill-kariga tiegħu ħlief kif provdut fl-artikoli 101B u 101Ċ tal-Kostituzzjoni."; u

(b) is-subartikolu (3) tiegħu għandu jiġi mħassar.

Emenda tal-artikolu 100 tal-Kostituzzjoni.

6. Is-subartikolu (4) tal-artikolu 100 tal-Kostituzzjoni għandu jiġi sostitwit b'dan li ġej:

"(4) Id-dispożizzjonijiet tas-subartikolu (2) tal-artikolu 97 tal-Kostituzzjoni għandhom japplikaw għal maġistrat tal-qrati inferjuri."

Emenda tal-artikolu 101A tal-Kostituzzjoni.

7. L-artikolu 101A tal-Kostituzzjoni għandu jiġi emendat kif ġej:

(a) il-paragrafu (b) tas-subartikolu (1) tiegħu għandu jiġi mħassar u l-paragrafi (ċ), (d), (e) u (f) għandhom jiġu enumerati mill-ġdid bħala l-paragrafi (b), (ċ), (d) u (e) rispettivament;

(b) is-subartikolu (2) tiegħu għandu jiġi sostitwit bis-subartikolu li ġej:

"(2) Il-President għandu jkollu il-vot oriġinali."; u

(ċ) is-subartikolu (13) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(13) Is-setgħat tal-President taħt kull liġi dwar is-surroga tal-imħallfin u l-maġistrati u dwar it-tqassim ta' dmirijiet tal-imħallfin u l-maġistrati għandhom ikunu eżerċitati fuq ir-rakkomandazzjoni tal-Prim Imħallef:

Iżda meta l-Prim Imħallef jonqos milli jagħmel rakkomandazzjoni lill-President, il-President għandu jeżerċita din is-setgħa fuq il-parir tal-Ministru responsabbli għall-gustizzja:

Iżda wkoll, f'dak il-każ il-Ministru responsabbli għall-gustizzja għandu jippubblika minnufih fil-Gazzetta, avviz dwar dak il-fatt li fih jagħti r-raġunijiet tiegħu għal dik l-azzjoni, u għandu jagħmel stqarrija dwar dak il-fatt fil-Kamra mhux aktar tard mit-tieni seduta li tiġi minnufih wara li jkun ta dak il-parir lill-President."; u

(d) fis-subartikolu (14) tiegħu, il-kliem "Il-kwistjoni jekk" għandhom jiġu sostitwiti bil-kliem "Bla ħsara għad-dispożizzjonijiet tas-subartikolu (1) tal-artikolu 101Ċ tal-Kostituzzjoni, il-kwistjoni jekk".

8. Il-paragrafu (ċ) tas-subartikolu (10) tal-artikolu 101B tal-Kostituzzjoni għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 101B tal-Kostituzzjoni.

"(ċ) jekk jidherli li l-ksur hu ta' natura tant serja li jisthoqq it-tneħħija tal-imħallef jew tal-maġistrat mill-kariga, jew huwa bbażat fuq ir-raġuni ta' inkapaċità li jaqdi l-funzjonijiet tal-kariga tiegħu (kemm jekk għal mard korporali jew mentali jew għal xi raġuni oħra), għandu jirrapporta l-konklużjonijiet tiegħu lill-Kummissjoni għall-Amministrazzjoni tal-Gustizzja li għandha tqis jekk il-provi jippruvawx il-każ *prima facie* u, jekk tqis li jkun hemm dak il-grad ta' prova, il-Kummissjoni għandha tissospendi lill-imħallef jew maġistrat konċernat u għandha tipproċedi bis-smiġħ tal-każ. Fiż-żmien li matulu imħallef jew maġistrat ikun sospiż skont id-dispożizzjonijiet ta' dan il-paragrafu, li ma għandux jeċċedi s-sitt (6) xhur, l-imħallef jew il-maġistrat għandu jkun intitolat għal nofs is-salarju u l-*allowances* tal-kariga tiegħu u wara t-trapass ta' tali perjodu ta' sitt (6) xhur huwa għandu jerga' jibda jirċievi s-salarju u l-*allowances* kollha tal-kariga tiegħu irrispettivament minn jekk il-każ riferut ikunx ġie konkluż jew le. F'każ illi l-

Kummissjoni għall-Amministrazzjoni tal-Ġustizzja tqis li l-ksur investigat jisthoqqlu t-tneħħija tal-imħallef jew tal-maġistrat mill-kariga, hija għandha tipproċedi biex tagħti parir lill-President biex inehhi l-imħallef jew maġistrat mill-kariga għal imġiba hażina ppruvata jew inkapaċità ppruvata li jaqdi l-funzjonijiet tal-kariga tiegħu:

Iżda f'każ li l-proċeduri quddiem il-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja ma jwasslux għat-tneħħija mill-kariga tal-membri tal-ġudikatura, allura l-membri tal-ġudikatura għandu jithallas is-salarju u l-allowances li jkun għew mizmuma matul il-perjodu kollu tas-sospensjoni."

Zieda ta' artikolu ġdid fil-Kostituzzjoni.

9. Minnufih wara l-artikolu 101B tal-Kostituzzjoni għandu jiżdied l-artikolu ġdid li ġej:

"Appell mid-deċiżjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja.

101Ċ.(1) Għandu jkun hemm dritt ta' appell lill-Qorti Kostituzzjonali mid-deċiżjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja għas-sejba ta' tneħħija ta' imħallef jew maġistrat u mid-deċiżjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja mogħtija skont l-artikolu 101B(12).

(2) L-appell għandu jiġi pprezentat fi żmien tmien granet tax-xogħol mid-data meta d-deċiżjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja tiġi kkomunikata lill-imħallef jew maġistrat.

(3) Il-prezentata tal-appell skont is-subartikolu (1) għandha tissospendi l-eżekuzzjoni tad-deċiżjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja."

TAQSIMA II

Emendi għall-Att dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja

Emendi għall-Att dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja. Kap. 369.

10. Din it-Taqsima temenda l-Att dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja u għandha tinqara u tintfiehmed haġa waħda mal-Att dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja, hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emenda tal-artikolu 8 tal-Att prinċipali.

11. Fl-artikolu 8 tal-Att prinċipali l-kliem "in konnessjoni ma' xi indirizz kif imsemmi fl-artikolu 97" għandhom jiġu sostitwiti bil-kliem "skont l-artikolu 101B".

Sostituzzjoni tal-artikolu 9 tal-Att prinċipali.

12. L-artikolu 9 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Proċedura li għandha tiġi adottata taħt l-artikolu 101B tal-Kostituzzjoni.

9. (1) Meta l-Kumitat għall-Imħallfin u l-Maġistrati jirrapporta s-sejbien tiegħu lill-Kummissjoni skont l-artikolu 101B(10)(ċ) tal-Kostituzzjoni, il-Kummissjoni għandha tikkomunika r-rapport tal-Kumitat għall-Imħallfin u l-Maġistrati lill-imħallef jew lill-maġistrat, skont il-każ, u għandu jingħata opportunità raġonevoli li jipprezenta dikjarazzjoni bil-miktub fiż-żmien li jista' jiġi speċifikat mill-Kummissjoni.

(2) Il-Kummissjoni għandha tagħmel l-investigazzjoni neċessarja u tagħmel rapport bid-deċiżjoni tagħha lill-President. Jekk ir-rapport tal-Kummissjoni jkun jgħid li ma hemmx imġiba hażina jew li l-imħallef jew maġistrat ma jkollu ebda inkapaċità, ma għandha tittiehed ebda azzjoni oħra dwar dak ir-rapport.

(3) Jekk ir-rapport tal-Kummissjoni jkun sab li l-imġiba hażina giet ippruvata, il-Kummissjoni għandha tagħmel rapport bid-deċiżjoni tagħha lill-President li jagħti parir għat-tneħħija tal-imħallef jew maġistrat skont il-każ. Kopja ta' din id-deċiżjoni għandha tingħata lill-imħallef jew maġistrat, skont il-każ.

(4) Il-proċeduri tal-Kummissjoni taħt dan l-artikolu għandhom jinżammu *in camera*. L-imħallef jew il-maġistrat li l-imġiba tiegħu tkun qiegħda tiġi investigata għandu jkollu d-dritt li jkun preżenti matul il-proċess kollu, li jipproduċi xhieda in sostenn tal-akkużi msemmija fir-rapport tal-Kumitat għall-Imħallfin u l-Maġistrati jew tad-difiża, u li jkun assistit minn avukat jew prokuratur legali.

(5) Id-deċiżjoni tal-Kummissjoni tista' tiġi appellata mill-imħallef jew maġistrat, skont il-każ, skont l-artikolu 101Ċ tal-Kostituzzjoni."

13. Fis-subartikolu (3) tal-artikolu 10 tal-Att prinċipali, il-kliem "li tkun qiegħda tiġi allegata fil-mozzjoni msemmija fl-artikolu 10(1)." għandhom jiġu sostitwiti bil-kliem "li tkun qiegħda tiġi allegata fir-rapport tal-Kumitat għall-Imħallfin u l-Maġistrat imsemmi fl-artikolu 10(1)."

Emenda tal-artikolu 10 tal-Att prinċipali.

14. Minnufih wara l-artikolu 11 tal-Att prinċipali għandu jizjed l-artikolu ġdid li ġej:

Żieda ta' artikolu ġdid fl-Att prinċipali.

"Proċedura li għandha tiġi addottata taht l-artikoli 91 u 91A tal-Kostituzzjoni.

12. (1) Meta jingħata avviż fil-Kamra dwar mozzjoni għall-għemil ta' indirizz lill-President kif msemmi fl-artikolu 91(5) u l-artikolu 91A(5) tal-Kostituzzjoni, l-Ispeaker għandu, mingħajr ma jippermetti li din tingħata xi pubbliċità, iżomm il-mozzjoni pendenti, u għandu jirreferi din l-istess lill-Kummissjoni.

(2) Il-mozzjoni għandu jkun fiha akkużi ċari kontra d-detentur tal-kariga li fuq il bażi tagħhom ikunu ser isiru l-investigazzjonijiet. Flimkien mal-mozzjoni, għandha tiġi ppreżentata dikjarazzjoni li turi r-raġunijiet li fuqhom kull waħda minn dawk l-akkużi tkun ibbażata.

(3) Dawk l-akkużi flimkien ma' dik id-dikjarazzjoni għandhom jiġu notifikati lid-detentur tal-kariga u d-detentur tal-kariga għandu jingħata opportunità raġonevoli li jippreżenta dikjarazzjoni bil-miktub fiż-żmien li jista' jiġi speċifikat mill-Kummissjoni.

(4) Il-Kummissjoni għandha tagħmel l-investigazzjoni neċessarja u tagħmel rapport fuq l-istess lill-Ispeaker. Jekk ir-rapport tal-Kummissjoni jkun jgħid li m'hemmx imġiba hażina jew li d-detentur tal-kariga ma jkollu ebda inkapaċità, ma għandha tittiehed ebda azzjoni oħra fil-Kamra dwar dak ir-rapport u ma għandhom isiru ebda proċeduri oħra dwar il-mozzjoni pendenti quddiem il-Kamra.

(5) Jekk ir-rapport tal-Kummissjoni ikun sab *prima facie* li l-imġiba hażina jew l-inkapaċità tkun pruvata, il-mozzjoni msemmija fl-artikolu 97(2) tal-Kostituzzjoni għandha, flimkien mar-rapport tal-Kummissjoni, tiġi kkunsidrata mill-Kamra.

(6) Jekk wara konsiderazzjoni mill-Kamra, din tkun sodisfatta li l-imġiba hażina jew l-inkapaċità huma ppruvati u jekk il-mozzjoni tiġi mgħoddija mill-Kamra skont id-dispożizzjonijiet tal-artikolu 91(5) jew 91A(5) tal-Kostituzzjoni, allura l-imġiba hażina jew l-inkapaċità tad-detentur tal-kariga milli jwettaq il-funzjonijiet tal-kariga titqies li tkun għet ippruvata u għandu jiġi ppreżentat mill-Kamra indirizz lill-President li fih tintalab it-tneħħija tad-detentur tal-kariga fl-istess sessjoni li fiha tkun għaddiet il-mozzjoni.

(7) Il-proċeduri tal-Kummissjoni taħt dan l-artikolu għandhom jinżammu *in camera*. Il-membru tal-Kamra li jkun ippreżenta l-mozzjoni u d-detentur tal-kariga li l-imġiba tiegħu tkun qieghda tiġi investigata għandu jkollhom id-dritt li jkunu preżenti matul il-proċess kollu, li jipproduċu xhieda in sostenn tal-akkużi jew tad-difiża, u li jkunu assistiti minn avukat jew prokuratur legali.

(8) Id-dispożizzjonijiet tal-artikolu 10 għandhom japplikaw *mutatis mutandis* fejn ikun allegat li d-detentur tal-kariga mhuwiex kapaċi li jwettaq il-funzjonijiet tal-kariga fuq il-bażi ta' mard korporali jew mentali."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 366 tad-29 ta' Lulju, 2020.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

7th August, 2020

ACT No. XLV of 2020

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 the Various Laws (Removal from Office) (Amendment) Act, 2020.

PART I

Amendments to the Constitution of Malta

Amendments to the Constitution of Malta.

2. This Part amends the Constitution of Malta and it shall be read and construed as one with the Constitution of Malta, 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 grounds 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 following:

"(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.

"(4) 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 the 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 grounds 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 which 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 new 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 the 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 Commission for 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 following: Substitution of article 9 of the principal Act.

"Procedure to be followed under article 101B.

9. (1) When the Committee for 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 for 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 for 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."

Amendment of article 10 of 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)."

Addition of new article to the principal Act.

14. Immediately after article 11 of the principal Act 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 grounds of infirmity of body or mind."

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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