

310. L-Onorevoli Jason Azzopardi jipproponi:

L-Ewwel Qari ta' Abbozz ta' Liġi imsejjaħ “Att tal-2016 li jemenda l-Kostituzzjoni ta' Malta u li jwaqqaf b'Liġi l-Awtorità dwar l-ghażla għas-Servizzi Ġudizzjarji”.

11.02.16

ABBOZZ ta' LIĠI

Imsejjah

ATT sabiex jemenda l-Kostituzzjoni ta' Malta u li jwaqqaf b'Liġi l-Awtorità dwar l-ghażla għas-Servizzi Ġudizzjarji.

Il-President, bil-kunsens u bil-parir tal-Kamra tad-Deputati, imlaqqà f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:

It-titlu fil-qosor ta' dan l-Att huwa Att tal-2016 li jemenda l-Kostituzzjoni ta' Malta u li jwaqqaf b'Liġi l-Awtorità dwar l-ghażla għas-Servizzi Ġudizzjarji.

Jason Azzopardi MP

L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji

Twaqqif u funzjonijiet tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji

1. (1) Għandu jkun hemm Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji

(2) L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji tkun magħmula minn President u erbà membri

(3) L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji għandha tkun maħtura mill-President ta' Malta u tkun magħmula mill-membri msemmija fl-Artiklu 2 ta' dan l-Att

(4) L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji jkollha d-dover li tirrakomanda lill-Prim Ministru min jokkupa s-segweni karigi:

a) Prim Imhalledf;

b) Imhalledfin tal-Qrati Superjuri;

c) Magistrati tal-Qrati Inferjuri, u;

d) Ġudikaturi tat-Tribunal għat-Talbiet Żgħar.

(5) L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji ikollha d-dover li tahtar is-segweni:-

a) Ġuristi;

b) Avukat għall-Għajnuna Legali;

c) Imhalledfin u Magistrati biex iservu fi qrati jew tribunali reġjonali jew internazzjonali;

d) Kelliem għall-Ġudikatura;

- e) Bord tal-Għazla għall-Ġurija;
- f) Assistenti għall-Qorti ta' Minorenni, u;
- g) Kwalunkwe persuna oħra biex tokkupa kull kariga li l-Ministru jistà, b'regolament, jiddisponi.

(6) L-Awtorità dwar l-għazla għas-Servizzi Ġudizzjarji jkollha d-dover li taqdi kull funzjoni oħra li tistà tkun lilha assenjata b'dan l-Att jew b'kull liġi oħra, u kull funzjoni oħra li l-Ministru jistà, b'regolament, jiddisponi.

(7) L-Awtorità dwar l-għazla għas-Servizzi Ġudizzjarji tistabilixxi u jkollha d-dover li tippublika b'Ordni fil-Gazzetta tal-Gvern kriterji kwalitattivi, kriterji ta' evalwazzjoni u proċeduri għal hatriet fil-karigi msemmija fis-subartikli (5) u (6) ta' dan l-artiklu, fosthom, iżda mhux biss:

- i) iż-żmien ta' Prattika ta' Avukat fil-Qrati;
- ii) integrità, rettezza u onestà;
- iii) għarfien tal-liġi;
- iv) l-assenza ta' kull attività kummerċjali jew ta' negozju;
- v) pubblikazzjonijiet ta' natura legali;
- vi) korsijiet ta' speċjalizzazzjoni jew *post graduate*;
- vii) atti ipprezentati mill-applikant tul iż-żminijiet;
- viii) sentenzi, deċiżjonijiet jew rapporti magħmulha mill-applikant;
- ix) *peer review*, u;
- x) il-pożizzjoni finanzjarja tal-applikant.

(8) Il-hatriet imsemmija fis-subartikli (4) u (5) ta' dan l-artiklu isiru wara sejha pubblika għall-espressjoni ta' interess. L-identità tal-persuni li

jesprimu interess tkun meqjusa bhla kunfidenzjali, u ma tkunx ippublikata jekk mhux bil-kunsens tal-persuna li wriet interess. L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji tippublika biss l-isem tal-persuna magħżulha minnha.

(9) F'każ li ebda persuna ma turi interess, jew ma jkun hemm ebda persuna li turi interess li tkun eliġibbli skont l-Awtorità dwar l-għażla għas-servizzi Ġudizzjarji, allura dik l-Awtorità jkollha s-setgħa li taġixxi skont l-aġjar ġudizzju tagħha fit-tweqq tal-funzjonijiet tagħha skont is-subartikli (4) u (5) ta' dan l-artiklu.

Shubija fl-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji

2. (1) L-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji tkun magħmulha mill-Prim Imhalledf bhala l-President tagħha, il-President tal-Kamra tal-Avukati, l-Avukat Ġenerali, avukat nominat mill-Prim Ministru u avukat nominat mill-Kap tal-Oppożizzjoni.

(2) Dawk li fit-tlett snin ta' qabel okkupaw xi kariga jew rwol ufficjali f'xi partit politiku ma jkunux jistgħu ikunu membri ta' din l-Awtorità.

Żmien fil-kariga

3. It-terminu tal-hatra tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji ikun perjodu ta' erbà snin. It-terminu ta' kull membru, minbarra dak tal-Prim Imhalledf u tal-Avukat Ġenerali, jista' jiġġedded darba biss.

Vakanzi

4. (1) Bla preġudizzju għad-dispożizzjonijiet ta' dan l-artiklu, ikun hemm vakanza ta' membru tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji:

a) Għeluq erbà snin mid-data tal-ħatra ta' dak il-membru; jew

b) F'każ ta' ċirkostanza li tavvera ruħha li tiskwalifika lil dak il-membru milli jkun eliġibbli li jkun mahtur fuq l-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji.

(2) Jekk ikun hemm vakanza fuq l-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji jew jekk membru tagħha ma jkunx jistà jaqdi d-doveri tiegħu għal kwalunkwe raġuni, il-President ta' Malta jahtar membru supplementari skont il-ġudizzju tiegħu u wara d-debita konsultazzjoni.

Klawżola għall-ankrar fil-Kostituzzjoni

5. (1) Soġġett għad-dispożizzjonijiet ta' dan l-artiklu u skont id-dispożizzjonijiet tas-sub-artiklu (8) tal-artiklu 66 tal-Kostituzzjoni, il-Parlament jistà jemenda kwalunkwe artiklu jew dispożizzjoni ta' dan l-Att.

(2) Kull Abbozz ta' Liġi li jkollu l-għan li jemenda kwalunkwe artiklu jew dispożizzjoni ta' dan l-Att, ma jsirx liġi u ma jkunx approvat mill-Kamra tar-Rappreżentanti jekk ma jkunx approvat bil-voti ta' mill-inqas żewġ terzi tal-membri kollha tal-Kamra.

(3) F'dan l-artiklu:-

Kull referenza għal kwalunkwe dispożizzjoni ta' dan l-Att tinkludi referenza għal kull liġi li temenda jew tissostitwixxi dik id-dispożizzjoni;

Referenzi għal emendi fid-dispożizzjonijiet ta' dan l-Att jinkludu referenzi għal emendi, modifikazzjoni, tibdil jew dhul fis-seħh mill-ġdid, b'emenda jew minghajr, ta' dik id-dispożizzjoni, is-sospensjoni,

revoka ta' dik id-dispożizzjoni u kull dispożizzjoni differenti li tiehu post dispożizzjoni oħra.

Emendi konsegwenzjali għall-Kostituzzjoni ta' Malta

Emenda għall-artiklu 66 tal-Liġi prinċipali

6. Is-sub-artikli li ġejjin jiżiedu wara s-sub-artiklu (7) tal-Artiklu 66 tal-Liġi prinċipali:

“(8) Il-Parlament jistà, b'Att tal-Parlament, idahhal kull, jew uħud, mid-dispożizzjonijiet ta' kwalunkwe Att tal-Parlament fuq l-istess linja skont kif provdut fis-sub-artiklu (2) ta' dan l-artiklu; f'dan il-każ, dawk id-dispożizzjonijiet ta' dak l-Att tal-Parlament li jsiru skont ma hu provdut f'dan is-sub-artiklu, sa fejn jirrigwarda tali tibdil, jistgħu jinbidlu jew jiġu emendati biss bl-istess mod skont ma hu provdut fis-sub-artiklu (2) ta' dan l-artiklu.”

Emenda għall-Artiklu 96 tal-Liġi prinċipali

7. **L-Artiklu 96** tal-Kostituzzjoni ikun emendat kif ġej:

a) Is-sub-artiklu (1) tiegħu jkun sostitwit b'dan li ġej:

“96. (1) L-Imħallfin tal-Qrati Superjuri jkunu mahtura mill-President ta' Malta li jaġixxi skont il-parir tal-Prim Ministru wara li dan tal-aħhar ikun irċieva rakkomodazzjoni għall-ħatra ta' Imħallef tal-Qrati Superjuri mill-Awtorità dwar l-ghażla għas-Servizzi Ġudizzjarji.”

(b) is-sub-artiklu (2) għandu jkun sostwit b'dan li ġej:

“(2) Hadd ma jkun kwalifikat biex ikun mahtur Imħallef tal-Qrati Superjuri jekk ma jkunx ilu perjodu ta' mhux inqas minn ħmistax-il sena li ha l-*warrant* ta' avukat u l-ġurament ta' lealtà u tal-kariga bħala avukat f'Malta, u għal fini ta' tali kwalifika, tali persuna trid tkun eżerċitat

regolarment il-professjoni ta' avukat fil-Qrati u Tribunali Maltin għas-sodisfazzjon tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji għal mhux inqas minn għaxar snin minn dawk il-ħmistax-il sena.

B'dan li l-ħatra bhala Imhalled ta' persuna li qed isservi fil-kariga ta' Magġstrat tkun soġġetta għall-approvazzjoni tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji.

8. L-artiklu 97 tal-Liġi prinċipali ikun emendat kif ġej:

“(a) il-kliem “ħamsa u sittin sena” fis-sub-artiklu (1) ikunu sostitwiti bil-kliem “tmienja u sittin sena.”

Għal finijiet u effetti kollha tal-Liġi u biex ma jkun hemm ebda dubbju fil-Liġi, l-Imhalled ikollu l-jedd li jeżerċita l-għażla li jgawdi d-drittijiet tal-pensjoni fl-istess mod bhall kull persuna pensjonabbli oħra skont id-dispożizzjonijiet tal-Att dwar is-Sigurtà Soċjali (Kap.318 tal-Liġijiet ta' Malta) u l-istess Att għandu jkun interpretat bl-istess mod.”

Emenda għall-Artiklu 100 tal-Liġi prinċipali

9. L-Artiklu 100 tal-Kostituzzjoni ikun emendat kif ġej:

a) Is-sub-artiklu (1) tiegħu jkun sostitwit b'dan li ġej:

“100. (1) Il-Maġistrati tal-qrati inferjuri jkunu appuntati mill-President li jaġixxi skont il-parir tal-Prim Ministru wara li dan tal-aħħar ikun irċieva rakkomodazzjoni għal ħatra ta' Maġistrat tal-qrati inferjuri mill-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji”; u

b) Is-sub-artiklu (2) għandu jkun sostwit b'dan li ġej:

“(2) Hadd ma jkun kwalifikat biex ikun maħtur għal jew biex jaġixxi fil-kariga ta' maġistrat tal-qrati inferjuri kemm-il darba ma jkunx ilu perjodu ta' mhux inqas minn ħmistax-il sena li ħa l-*warrant* ta' avukat u l-ġurament ta' lealtà u tal-kariga bhala avukat f'Malta, u għal fini ta'

tali kwalifika, tali persuna trid tkun eżerċitat regolament il-professjoni ta' avukat fil-Qrati u Tribunali Maltin għas-sodisfazzjon tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji għal mhux inqas minn għaxar snin minn dawk il-ħmistax-il sena.”

- c) Il-kliem “ħamsa u sittin sena” fis-sub-artiklu (3) ikunu sostitwiti bil-kliem “tmienja u sittin sena.” Għal finijiet u effetti kollha tal-liġi u biex ma jkun hemm ebda dubju fil-liġi, il-Maġistrat ikollu l-jedd li jeżerċita l-għażla li jgawdi d-drittijiet tal-pensjoni fl-istess mod bħal kull persuna pensjonabbli oħra skont id-dispożizzjonijiet tal-Att dwar is-Sigurtà Soċjali (Kap.318 tal-Liġijiet ta' Malta) u l-istess Att għandu jkun interpretat bl-istess mod”.

Għanijiet u Raġunijiet

Dan l-Abbozz jipprovdi għat-twaqqif tal-Awtorità dwar l-għażla għas-Servizzi Ġudizzjarji li tkun hi responsabbli għar-rakkomodazzjoni u għażla ta' dawk maħtura biex jaqdu d-doveri ta' Ġudikaturi fil-Qrati liema għażla tkun trasparenti u 'l hinn minn kull involviment tal-Eżekuttiv, biex tali Awtorità tkun ankrata fil-Kostituzzjoni ta' Malta, biex jipprovdi sabiex l-età ta' irtirar tal-Maġistrati u Imħallfin tiżdied minn 65 sena għal 68 sena, u jiżdied l-perjodu minimu ta' snin ta' esperjenza għall-eligibilità għal kariga ta' Imħallef u Maġistrat minn 12-il sena u 7 snin rispettivament għal 15-il sena li minnhom 10 snin ikunu eżerċizzju regolari tal-professjoni ta' avukat fil-Qrati u Tribunali Maltin.

A BILL

entitled

AN ACT to amend the Constitution of Malta and to establish by law the Judicial Services Appointment Authority.

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:-

The short title of this Act is the Judicial Services Appointment Authority Act,
2016

THE JUDICIAL SERVICES APPOINTMENT AUTHORITY

Appointment and functions of the Judicial Services Appointment Authority.

1. (1) There shall be a Judicial Services Appointment Authority.
- (2) The Judicial Services Appointment Authority shall consist of a Chairperson and four members.
- (3) The Judicial Services Appointment Authority shall be appointed by the President of Malta and shall be made up of the members mentioned in article 2 of this Act.
- (4) The Judicial Services Appointment Authority shall be entrusted with recommending to the Prime Minister the following appointments:
 - (a) The Chief Justice;

- (b) Judges of the Superior Courts;
- (c) Magistrates of the Inferior Courts; and
- (d) Adjudicators of the Small Claims Tribunal.

(5) The Judicial Services Appointment Authority shall be entrusted with making the following appointments:

- (a) Court Attorneys;
- (b) Advocate for Legal Aid;
- (c) Judges and Magistrates to serve on international and regional courts or tribunals;
- (d) Judiciary Media Spokesperson;
- (e) Jurors' Selection Board;
- (f) Juvenile Court Assistants; and
- (g) such other person to occupy any office which the Minister may prescribe.

(6) The Judicial Services Appointment Authority shall carry out such other functions as are assigned to it by this Act or by any other law, and such other functions as the Minister may prescribe.

(7) The Judicial Services Appointment Authority shall establish and publish by order in the *Government Gazette* qualitative criteria, evaluation criteria and procedures for appointment to the offices mentioned in sub-articles (4) and (5) of this article, including, but not only:

- i. The number of years practising as an advocate at the Law Courts;
- ii. Integrity, moral uprightness and honesty;

- iii. Knowledge of the law;
- iv. Absence of any commercial activity or business interests;
- v. Legal publications;
- vi. Post graduate courses or specialisation courses;
- vii. Judicial acts filed by the applicant;
- viii. Judgements, decrees handed down and reports written by the applicant;
- ix. Peer review, and
- x. The financial situation of the applicant

(8) The appointments referred to in sub-articles (4) and (5) of this article shall be made following a public call for expressions of interest. The identity of the persons who express an interest shall be treated as confidential, and shall not be revealed except with the consent of the person who has expressed an interest. Only the identity of the person finally selected by the Judicial Services Appointment Authority shall be made public.

(9) Should no person express an interest, or no person who has expressed an interest be deemed eligible by the Judicial Services Appointment Authority, then the Authority shall be empowered to act in accordance with its own deliberate judgement in the performance of its functions in terms of sub-articles (4) and (5) of this article.

Membership of the Judicial Services Appointment Authority.

2. (1) The Judicial Services Appointment Authority shall be made up as follows: the Chief Justice as its President, the President of the Chamber of Advocates, the Attorney General, a lawyer nominated by the Prime Minister and a lawyer nominated by the Leader of the Opposition.

(2) Those who in the preceding three years occupied any official role or position within any political party cannot sit as members on the Authority.

Term of office

3. The Judicial Services Appointment Authority shall be appointed for a period of four years. Such appointment can be renewed once only in the case of each member, except that of the Chief Justice and the Attorney General.

Vacancies

4. (1) Subject to the provisions of this article, the office of a member of the Judicial Services Appointment Authority shall become vacant –

(a) at the expiration of four years from the date of his appointment;

or

(b) if any circumstances arise that, if he were not a member of the Judicial Services Appointment Authority, would cause him to be disqualified from appointment as such.

(2) If the office of member of the Judicial Services Appointment Authority is vacant or if a member is for any reason unable to perform the functions of his office, the President of Malta shall appoint a supplementary member in accordance with his own deliberate judgment and following due consultation.

Entrenchment provision

5. (1) Subject to the provisions of this article and in terms of the provisions of sub-article (8) of article 66 of the Constitution, Parliament may alter any of the provisions of this Act.

(2) In so far as it alters any article of this Act, a Bill for an Act of Parliament under this Act shall not be passed in the House of Representatives unless at the final voting thereon in the House is supported by the votes of not less than two-thirds of all the members of the House.

(3) In this article –

(a) references to any of the provisions of this Act include references to any law that amends or replaces that provision; and

(b) references to the alteration of the provisions of this Act include references to the amendment, modification or re-enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu of that provision.

Consequential amendment to the Constitution.

Amendment of **Article 66** of the principal law.

6. The following sub-articles shall be added after sub-article (7) of **Article 66** of the principal law:

“(8) Parliament may by Act of Parliament also entrench all or some of the provisions contained in any Act of Parliament on the same lines as provided in the sub-article (2) of this article; and, in such case, those provisions of such Act of Parliament made in terms of this sub-article, in so far as their alteration is concerned, may only be altered in the same way as provided in the sub-article (2) of this article.”

Amendment of **Article 96** of the principal law.

7. **Article 96** of the principal law shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

“**96.** (1) The judges of the Superior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister after the latter has received a recommendation for appointment of a judge of the Superior Courts from the Judicial Services Appointment Authority.”;

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

“(2) A person shall be qualified to be appointed a Judge of the Superior Courts if for a period of not less than fifteen years the person concerned has been duly warranted and sworn as an advocate in Malta, and for the purposes of such qualification, the person concerned shall have practised regularly to the satisfaction of the Judicial Services Appointment

Authority as an advocate in the Courts and Tribunals of Malta for not less than ten years within the said fifteen years.

Provided that the appointment as a Judge of a person who is serving as a Magistrate shall be subject to the approval of the Judicial Services Appointment Authority.”

8. Article 97 (1) of the principal law shall be amended as follows:

“(a) the words “sixty-five years” in sub-article (1) thereof shall be substituted by the words “sixty-eight years. For the avoidance of doubt, for all intents and purposes at law the Judge shall be entitled to exercise the option to enjoy pension rights in the same manner as any pensionable person in accordance with the provisions of the Social Security Act (Chapter 318 of the Laws of Malta) and the said Act shall be interpreted accordingly.”

9. Article 100 of the principal law shall be amended as follows:

(a) Sub-article (1) thereof shall be substituted by the following:

“**100.** (1) The magistrates of the inferior courts shall be appointed by the President acting in accordance with the advice of the Prime Minister after the latter receives a recommendation for appointment of a magistrate of the inferior courts from the Judicial Services Appointment Authority”; and

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

(2) A person shall be qualified to be appointed Magistrate of the inferior courts if for a period of not less than fifteen years the person concerned has been duly warranted and sworn as an advocate in Malta, and for the purposes of such qualification, the person concerned shall have practised regularly to the satisfaction of the Judicial Services Appointments Authority as an advocate in the Courts and Tribunals of Malta for not less than ten years within the said fifteen years.

(3) The words “sixty-five years” in sub-article (3) thereof shall be substituted with the words “sixty-eight years. For the avoidance of doubt, for all intents and purposes at law the Magistrate shall be entitled to exercise the option to enjoy pension rights in the same manner as any pensionable person in accordance with the provisions of the Social Security Act (Chapter 318 of the Laws of Malta) and the said Act shall be interpreted accordingly”.

Objects and Reasons

The aim of this Bill is to provide for the setting up of a Judicial Services Appointment Authority responsible for recommending the appointment, and carrying out appointments to the Judiciary as a result of a transparent and public process cut off from any involvement from the Executive arm of Government, to provide for the entrenchment in the Constitution of Malta of this Authority, to provide for the increase in the minimum age eligibility requirement for those appointed Judges and Magistrates from 12 years and 7 years respectively to 15 years in both cases, 10 years of which have to be in the regular exercise of the legal profession in Maltese Courts and Tribunals, and an increase in the retirement age of Judges and Magistrates from 65 years to 68 years.