

(4) Heads of departments of government other than those whose manner of appointment is specifically provided for in this Constitution shall be appointed from amongst senior public officers by the Prime Minister acting after consultation with the Public Service Commission.

93. (1) The President shall have power to -

Prerogative of mercy.
*Amended by:
LVIII.1974.45.*

- (a) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or
- (d) remit the whole or part of any sentence passed on any person for an offence or for any penalty or forfeiture otherwise due to the State on account of any offence.

(2) (a) Where any person has been sentenced to death by any court in Malta, the President shall cause a written report of the case from the trial judge, or, in the case of a court-martial the person presiding, and such other information derived from the record of the case or elsewhere as the President may require, to be sent to the Minister responsible for justice.

(b) The said Minister shall send such written report and information (if any) to the Cabinet, and the Cabinet shall advise the President whether he should grant the offender a pardon or respite in the exercise of the powers conferred on him by this article.

94. (1) There shall be a Secretary to the Cabinet who shall be a public officer designated in that behalf by the Prime Minister.

Secretary to the Cabinet.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may from time to time direct.

CHAPTER VIII

The Judiciary

95. (1) There shall be in and for Malta such Superior Courts having such powers and jurisdiction as may be provided by any law for the time being in force in Malta.

Superior Courts.
*Substituted by:
LVIII. 1974.46.*

(2) One of the Superior Courts, composed of such three judges as could, in accordance with any law for the time being in force in Malta, compose the Court of Appeal, shall be known as the Constitutional Court and shall have jurisdiction to hear and determine -

- (a) such questions as are referred to in article 63 of the Constitution;
- (b) any reference made to it in accordance with article 56 of this Constitution and any matter referred to it in accordance with any law relating to the election of members of the House of Representatives;
- (c) appeals from decisions of the Civil Court, First Hall, under article 46 of this Constitution;
- (d) appeals from decisions of any court of original jurisdiction in Malta as to the interpretation of this Constitution other than those which may fall under article 46 of this Constitution;
- (e) appeals from decisions of any court of original jurisdiction in Malta on questions as to the validity of laws other than those which may fall under article 46 of this Constitution; and
- (f) any question decided by a court of original jurisdiction in Malta together with any of the questions referred to in the foregoing paragraphs of this sub-article on which an appeal has been made to the Constitutional Court:

Provided that nothing in this paragraph shall preclude an appeal being brought separately before the Court of Appeal in accordance with any law for the time being in force in Malta.

(3) Notwithstanding the provisions of sub-article (2) of this article, if any such question as is referred to in paragraph (d) or (e) of that sub-article arises for the first time in proceedings in a court of appellate jurisdiction, that court shall refer the question to the court which gave the original decision, unless in its opinion the raising of the question is merely frivolous or vexatious, and that court shall give its decision on any such question and, subject to any appeal in accordance with the provisions of sub-article (2) of this article, the court in which the question arose shall dispose of the question in accordance with that decision.

(4) The provisions of sub-articles (6) and (7) of article 46 of this Constitution shall apply to the Constitutional Court and for that purpose references to that article in the said sub-articles shall be construed as references to this article.

(5) If at any time during an election of members of the House of Representatives and the period of thirty days following any such election, the Constitutional Court is not constituted as provided in this article, the said Court shall, thereupon and until otherwise constituted according to law, be constituted by virtue of this sub-article and shall be composed of the three more senior of the judges then in office, including, if any is in office, the Chief Justice or other judge performing the functions of Chief Justice; and if at any other time the said Court is not constituted as provided in this article for a period exceeding fifteen days, such Court shall, upon the expiration of the said period of fifteen days and until otherwise

constituted according to law, be constituted by virtue of this sub-article and shall be composed of the three more senior judges as aforesaid.

(6) The judges of the Superior Courts shall be a Chief Justice and such number of other judges as may be prescribed by any law for the time being in force in Malta:

Provided that the office of a judge of the Superior Courts shall not, without his consent, be abolished during his continuance in office.

96. (1) The judges of the Superior Courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.

Appointment of judges.
Amended by:
LVIII. 1974.47.

(2) A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served.

97. (1) Subject to the provisions of this article, a judge of the Superior Courts shall vacate his office when he attains the age of sixty-five years.

Tenure of office of judges.
Amended by:
LVIII. 1974.48.

(2) A judge of the Superior Courts shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for 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.

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

98. (1) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall (except to such extent, if any, as other provision is made by law) be performed by such one of the other judges of the Superior Courts as may be designated in that behalf by the President, acting in accordance with the advice of the Prime Minister.

Acting Chief Justice and acting judges.
Amended by:
LVIII. 1974.49.

(2) If the office of any judge of the Superior Courts (other than the Chief Justice) is vacant or if any such judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, may appoint a person qualified for appointment as a judge of the Superior Courts to act as a judge of those Courts:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-five years.

(3) Any person appointed under sub-article (2) of this article to act as a judge of the Superior Courts shall continue so to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President acting in accordance with the advice of the Prime Minister.

Inferior Courts.

99. There shall be in and for Malta such inferior courts having such powers and jurisdiction as may be provided by any law for the time being in force in Malta.

Magistrates.
Amended by:
LVIII. 1974.50;
XIV. 2007.5.

100. (1) Magistrates of the inferior courts shall be appointed by the President acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified to be appointed to or to act in the office of magistrate of the inferior courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) Subject to the provisions of sub-article (4) of this article, a magistrate of the inferior courts shall vacate his office when he attains the age of sixty-five years.

(4) The provisions of sub-articles (2) and (3) of article 97 of this Constitution shall apply to magistrates of the inferior courts.

Oaths to be taken
by judges and
magistrates.

101. A judge of the Superior Courts or a magistrate of the inferior courts shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law for the time being in force in Malta.

Commission for
the Administration
of Justice.
Added by:
IX.1994.2.

101A. (1) There shall be a Commission for the Administration of Justice which shall consist of the President, who shall be the Chairman, and nine other members as follows:

- (a) the Chief Justice who shall be Deputy Chairman and shall preside over the Commission in the absence of the Chairman;
- (b) the Attorney General, *ex officio*;
- (c) two members elected for a period of four years by the judges of the Superior Court from among themselves;
- (d) two members elected for a period of four years by the magistrates of the Inferior Courts from among themselves;
- (e) two members appointed for a period of four years as to one by the Prime Minister and as to the other by the Leader of the Opposition, being in each case, a person of at least forty-five years of age, and who enjoys the general respect of the public and a reputation of integrity and honesty;
- (f) the President of the Chamber of Advocates, *ex officio*.

(2) The President shall only have a casting vote; when the Deputy Chairman presides over a meeting of the Commission he shall retain his original vote together with the casting vote.

(3) The members elected to the Commission for the Administration of Justice shall be elected in accordance with such rules as may be prescribed by the person or authority referred to in sub-article (7) of article 46 of this Constitution.

(4) (a) A person shall not be qualified to be appointed or continue to hold office as a member of the Commission for the Administration of Justice:

- (i) if he is a Minister, a Parliamentary Secretary, a Member of the House of Representatives or a member of a local government authority; or
- (ii) if he has been convicted of any crime punishable by imprisonment for any term; or
- (iii) if he is disqualified to be elected as a member of the House of Representatives for any of the reasons stated in paragraphs (a), (c), (d), (e), (f), (g) or (h) of sub-article (1) of article 54 of this Constitution.

(b) The office of a member of the Commission for the Administration of Justice shall become vacant if any circumstances arise that if he were not a member of the Commission he would not qualify for membership thereof, and a member of the Commission may abstain or be challenged in the same circumstances as a judge of the superior courts.

(5) (a) Where a person fills a vacancy caused by a member of the Commission for the Administration of Justice ceasing to be such a member for any reason, other than the expiration of the period of office, such person shall hold office for the unexpired period of office of the member he replaces.

(b) Where a member of the Commission has been challenged or has abstained, the President acting in accordance with his own deliberate judgement shall appoint as a substitute member to sit on the Commission, a person who in his opinion has as far as may be the same qualities and qualifications as the member substituted.

(c) Where the members who, are to be elected under paragraph (c) and (d) of sub-article (1) of this article, or who are to be appointed under paragraph (e) of the same sub-article, are not so elected or appointed within two weeks from a call for the purpose by the President, the President who in making such appointment shall act in accordance with his own deliberate judgement shall himself appoint members in their stead who where possible in his opinion shall have the same qualities and qualifications as such members.

(6) (a) The Commission for the Administration of Justice shall at all times have a committee for Advocates and Legal Procurators which shall have such composition, functions, powers and duties as may be assigned to it by law. The Commission shall in the exercise of any of its functions in relation to the professions of Advocates and Legal Procurators act through the said committees in such manner and subject to such review as may by the said law

be provided.

(b) Notwithstanding the provisions of paragraph (a) of this sub-article, the Commission shall refer to the Committee for Advocates and Legal Procurators (hereinafter in this article referred to as "the Committee") any matter concerning the misconduct of an advocate or legal procurator in the exercise of their profession, and, saving in the case of an appeal, the Commission shall not act otherwise than on receipt of, and in accordance with, the findings of the Committee in any such matter. So however that, where a report of findings by the Committee has not been submitted to the Commission within two months from the day on which the matter was brought before the Committee, or within such further period or periods as the Commission may allow, which shall in no case, except for very exceptional reasons, exceed a further four months, the Commission shall thereupon itself investigate and determine the matter.

(c) Without prejudice to the provisions of the foregoing paragraph the Commission may appoint such other committees to assist it on any matter falling within its functions as it may deem fit.

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

(8) Sub-articles (2) and (3) of article 121 of this Constitution shall apply to any committee of the Commission.

(9) There shall be a secretary of the Commission for the Administration of Justice who shall also act as secretary of any committee of the Commission. The Secretary of the Commission shall be appointed by the Commission from among public officers assigned to the Courts or from among members of the legal professions. The Secretary shall hold office until such time as his appointment is terminated by the Commission.

(10) A person appointed as a member of the Commission for the Administration of Justice or any of its committees may be removed from office by the President, acting in accordance with the advice of the body or the holder of the office appointing such member, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

(11) The functions of the Commission for the Administration of Justice shall be:

- (a) to supervise the workings of all the superior and inferior courts and to make such recommendations to the Minister responsible for justice as to the remedies, which appear to it, conducive to a more efficient functioning of such courts;
- (b) to advise the Minister responsible for justice on any matter relating to the organisation of the administration of justice;

- (c) when so requested by the Prime Minister, to advise on any appointment to be made in terms of articles 96, 98 or 100 of this Constitution;
- (d) to draw up a code or codes of ethics regulating the conduct of members of the judiciary;
- (e) on the advice of the Committee for Advocates and Legal Procurators to draw up a code or codes of ethics regulating the professional conduct of members of those professions:

Provided that where such advice is not given within such time as the Commission may establish, the Commission may draw up such code or codes without the necessity of such advice;
- (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, and to draw the attention of any judge or magistrate to any conduct which could affect the trust conferred by their appointment or to any failure on his part to abide by any code or codes of ethics relating to him;
- (g) to exercise, in accordance with any law, discipline over advocates and legal procurators practising their profession; and
- (h) such other function as may be assigned to it by law.

(12) The Commission for the Administration of Justice shall each year make a report to the Minister responsible for justice on its activities during the previous calendar year, and shall at any time, when it deems fit or as may be required by the said Minister, make a report on any particular matter to the said Minister.

(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 advice of the Minister responsible for justice, so however that, the Minister shall, in advising the President, act in accordance with any recommendation on the matter by the Chief Justice:

Provided that where the Chief Justice fails to make a recommendation to the Minister, and in any case where the Minister deems it so appropriate, the Minister may advise the President on the matter, in any manner which, in the circumstances, he considers appropriate:

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

(14) The question whether the Commission for the Administration of Justice has validly performed any function vested in it by or under this Constitution shall not be enquired into in any court.