**Questionnaire of the Special Rapporteur on the independence of judges and lawyers – REPLIES SENT BY MALTA**

1. **Please indicate whether there is a national body or mechanism in charge of electing, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?**

Article 96 of the Constitution of Malta deals with the appointment of judges and sub-article (1) thereof states that judges of the Superior Courts are appointed by the President acting in accordance with the advice of the Prime Minister. Sub-article (3) of Article 96 of the Constitution provides that 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 of the Judicial Appointments Committee established by Article 96A of the Constitution shall have been made. The only exception to this rule is provided in sub-article (4) of Article 96 of the Constitution.

**Article 96A of the Constitution** establishes the **Judicial Appointments Committee** which Judicial Appointments Committee is responsible to give advice to the Prime Minister through the Minister for justice about the evaluation on the eligibility and merit of candidates for appointment to the Office of judge of the Superior Courts (other than the office of Chief Justice) or of magistrate of the Inferior Courts.

The Offices of judge and magistrate are separate and a magistrate is not promoted to the office of judge. However, if a magistrate sends an expression of interest to the Judicial Appointments Committee to be evaluated for the office of Judge, the said Committee interviews the magistrate and prepares its recommendation.

**The Committee for Judges and Magistrates** established in terms of **Article 101B of the Constitution** exercises disciple on judges and magistrates and if the said Committee finds that the judge or magistrate has breached the Code of Ethics for members of the judiciary it may suspend the member of the judiciary for a period of not more than six months on half pay or when it is of the opinion that the case merits removal of the member of the judiciary, it reports its findings to the Commission for the Administration of Justice for the latter to investigate the findings and during the pendency of such investigation the Commission for the Administration of Justice shall suspend the member of the judiciary.

A member of the judiciary may be removed from office in accordance with Article 97 of the Constitution and sub-article (2) thereof provides that a judge of the Superior Courts shall be removed from his office by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the member of the house 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. Article 100 (4) of the Constitution provides for the application of Article 97 (2) of the Constitution to the office of magistrate.

When a notice in accordance with Article 97 (2) of the Constitution is given in the House of Representatives on the basis of misbehaviour or inability to perform the functions of the office of judge or magistrate, such a motion is referred, in terms of Article 9 of the **Commission for the Administration of Justice Act (Chapter 369 of the Laws of Malta)** to the **Commission for the Administration of Justice established by Article 101A of the Constitution** for investigation. When the allegation is that the judge or magistrate is unable to perform the functions of his office because of infirmity of body or mind, the Commission for the Administration of Justice shall follow the procedure established in Article 10 of Chapter 369 of the Laws of Malta.

1. **Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget).**

The **Judicial Appointments Committee** is established in terms of Article 96A of the Constitution of Malta and consists of five ex officio members that qualify as members on the basis of the office that they occupy. These are:

1. the Chief Justice who acts as Chair;
2. the Attorney General;
3. the Auditor General;
4. the Commissioner for Administrative Investigations (Ombudsman); and
5. the President of the Chamber of Advocates.

The members are not appointed for any set period of time and enjoy full security of tenure.

This Committee is established as a subcommittee of the Commission for the Administration of Justice.

The Judicial Appointments Committee is allocated a budget of ten thousand Euros per annum.

The **Commission for the Administration of Justice** is established in accordance with Article 101A of the Constitution of Malta and consists of ten members being:

1. the President of Malta who acts of Chairman of the Committee;
2. the Chief Justice who shall be the Deputy Chairman and presides over the Commission in the absence of the Chairman;
3. the Attorney General, *ex officio*;
4. two members elected for a period of four years by the judges of the Superior Court from among themselves;
5. two members elected for a period of four years by the magistrates of the Inferior Courts from among themselves;
6. 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 honest; and
7. the President of the Chamber of Advocates, *ex officio*.

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.

The **Committee for Judges and Magistrates** established in accordance with Article 101B of the Constitution of Malta consists of three members of the judiciary. This Committee shall also be a subcommittee of the Commission for the Administration of Justice. These members cannot be members of the Commission for the Administration of Justice and are elected from amongst judges and magistrates according to regulations issued by the Commission for the Administration of Justice. In the case of disciplinary proceedings against a magistrate two of the three members of the Committee shall be magistrates and in the case of disciplinary proceedings against a judge two of the three members of the Committee shall be judges. The election of the members of the committee is regulated by the provisions of the Committee for Judges and Magistrates (Election of Members) Regulations (SL. Const. 07).

1. **Please provide detailed information on the legislation and practice existing in your country in relation to:**
2. **The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);**

Article 96 (2) of the Constitution of Malta provides that “(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”. Article 100 (2) of the Constitution of Malta provides that “(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”.

In accordance with Articles 96 (3) and 100 (5) of the Constitution of Malta the Judicial Appointments Committee shall evaluate the candidates for the office of judge or magistrate. The Judicial Appointments Committee conducts interviews and evaluations of candidates for the offices of judge or magistrate as to their eligibility and merit and it may also request information from any public authority.

1. **Condition of service and security of tenure of judges;**

The remuneration of members of the judiciary is paid from the Consolidated Fund in accordance with Article 107 of the Constitution. The salary is established in accordance with the Judges and Magistrates (Salaries) Act (Chapter 175 of the Laws of Malta). Moreover, upon retirement from office, the members of the judiciary are eligible for a pension in accordance with the Members of the Judiciary (Pensions) Act (Chapter 564 of the Laws of Malta).

Members of the judiciary enjoy security of tenure of their offices. Article 97 (1) of the Constitution provides “(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”. Article 97 (2) of the Constitution provides for the instances when a judge may be removed from office: “(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”. Article 100 of the Constitution deals with the appointment of Magistrates and Articles 100 (3) and (4) provide that “(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”.

If a motion in terms of Article 97 or 100 is passed against a member of the judiciary, the charges against the member of the judiciary are investigated by the Commission for the Administration of Justice.

1. **Promotion of judges;**

The offices of judges and magistrates are considered to be separate and distinct offices. In order for a magistrate to be appointed as a judge, the procedure established in Article 96A of the Constitution has to be followed.

Article 96A (6) (a) and (e) of the Constitution provides that the Judicial Appointments Committee provide that “(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; ... (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”.

1. **Transfer of judges;**

The distribution of duties of judges and transfer of judges is regulated by Article 11 of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta). Article 11 (1) of Chapter 12 of the Laws of Malta provides that “(1) The President of Malta shall assign to each of the judges his duties by assigning to him the court or the chamber of the court or section in which he is to sit ordinarily, and may transfer a judge from one court or chamber or section of a chamber to another: Provided that a judge may be assigned to sit ordinarily in more than one court or more than one chamber or section of one or more courts”.

Article 11 (3) of Chapter 12 of the Laws of Malta provides that “(3) Where more than one judge is assigned to sit ordinarily in a court, or in a chamber or section of a court, the distribution of duties in general between the said judges shall be made by the Chief Justice, and the registrar shall assign cases and other judicial acts to the judges as directed by the Chief Justice: Provided that, except where cases or judicial acts are assigned according to general directives or according to rules made pursuant to sub-article (6), where the Chief Justice may be challenged or may abstain from taking cognizance of a case for any of the reasons mentioned in article 734 (1) (a), (b), (c), (d) (ii) and (iii), (e) and (g), the assignment of such a case shall be made by the Senior Administrative Judge referred to in sub-article (11)”.

1. **Disciplinary proceedings against judges.**

The discipline of judges and magistrates is regulated by Article 101B of the Constitution of Malta. The Committee for Judges and Magistrates exercises discipline on judges and magistrates in the manner prescribed in Article 101B of the Constitution.

Article 101B (5) of the Constitution provides that “(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”. If, the Committee following prima facie consideration of the complaint considers that there are not sufficient grounds to commence disciplinary proceedings, the Committee refrains from further consideration of the case (Article 101B (5) of the Constitution). If, on the other hand, following the consideration of the complaint, the Committee considers that there are sufficient grounds to continue disciplinary proceedings the Committee shall appoint a date for the hearing of the proceedings (Article 101B (8) of the Constitution). If the Committee finds that the judge or magistrate has breached the Code of Ethics for Members of the Judiciary it can impose any one of the sanctions provided in Article 101B (10) of the Constitution.

**What is the role played by the national organ or mechanism with regard to the issues referred to above?**

Reference to the replies above.

1. **If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:**
2. **Judicial selection and appointment;**
3. **Transfer and promotion of judges;**
4. **Disciplinary proceedings against judges**

Reference to the replies relative to Question 3 which indicates the role and mechanism played by the Commission for the Administration of Justice, the Judicial Appointments Committee and the Committee for Judges and Magistrates relative to Question 4 (a), (b) and (c) and the legislation applicable in so far as transfer of judges is concerned.