

## The Chief Justice

The appointment, role and functions of the Chief Justice are determined primarily by the Constitution and by the Code of Organisation and Civil Procedure (COCP).

Chapter VIII of the Constitution provides for the establishment of the Superior Courts – in which Judges sit – and the Inferior Courts – in which Magistrates sit. The Judiciary, with which Chapter VIII deals, is one of the three pillars of Government, the other two being the Legislature (Chapter VI) and the Executive (Chapter VII).

According to the Constitution the Judges of the Superior Courts are the Chief Justice and such other number of Judges as may be prescribed by any law for the time being in force. This number is determined by Order of the President of Malta made pursuant to Article 6(2) of the COCP.

The Chief Justice is appointed by the President of Malta acting on the advice of the Prime Minister. A Chief Justice may be appointed either from among practising advocates or Magistrates having the qualifications required by law to be appointed as Judges, or from among serving Judges (as is the case with the current incumbent).

The Chief Justice is *ex officio* President of the Court of Appeal (in its Superior Jurisdiction, that is when that court is composed of three Judges), of the Constitutional Court and of the Court of Criminal Appeal (in its Superior Jurisdiction, that is when composed of three Judges). He is also *ex officio* Deputy Chairman of the Commission for the Administration of Justice and presides over the Rule-Making Boards set up under the COCP and the Criminal Code. The Constitution further provides that whenever the office of President of Malta is temporarily vacant, and until a new President is appointed, and whenever the holder of the office of President of Malta is absent from Malta or on vacation or is for any reason unable to perform the functions conferred upon him by the said Constitution, those functions shall be performed by such person as the Prime Minister, after consultations with the Leader of the Opposition, may appoint or, if there is no person in Malta so appointed and able to perform those functions, by the Chief Justice.

With particular reference to judicial work and organisation, the Chief Justice recommends to the Minister responsible for justice how Judges and Magistrates are to be allocated between the different courts, and the Minister, in advising the President of Malta as to the assignment of duties of Judges and Magistrates “*shall...act in accordance with any recommendation on the matter by the Chief Justice*” (Article 101A(13) of the Constitution). If,

however, the Chief Justice fails to recommend as aforesaid, or where the Minister deems it appropriate to advise the President of Malta not in accordance with the recommendation of the Chief Justice, then the Minister “*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 of Representatives not later than the second sitting immediately after he has so advised the President*”. Since the introduction of this provision in the Constitution in 1994, the Chief Justice has never failed to make the necessary recommendations, and the Minister responsible for justice has never had occasion to refuse to advise the President in accordance with the recommendation of the Chief Justice.

More recent amendments to the COCP have transferred powers formerly exercised by the President of Malta on the advice of the Minister responsible for Justice to the Chief Justice, thereby highlighting the “institutional”, as opposed to merely “constitutional” independence of the Judiciary from the Executive. Thus, for instance, where more than one Judge or Magistrate is assigned to sit ordinarily in a court, or in chamber or section of a court, the distribution of duties in general between the said Judges and Magistrates is made by the Chief Justice. Likewise, when a Judge or a Magistrate is challenged or otherwise lawfully impeded from hearing a case, it is the Chief Justice who assigns another Judge or Magistrate, as the case may be, to take cognizance of that case. Where the Chief Justice is precluded according to law from hearing a particular case, the assignment of that case is made in the Superior Courts by the Senior Administrative Judge and in the Inferior Courts by the Senior Magistrate. Both the Senior Administrative Judge and the Senior Magistrate are so designated by the Chief Justice. The Chief Justice also designates the presidents of chambers or sections of a court – the current President of the General Jurisdiction Section of the Civil Court is the Hon. Mr Justice Joseph Azzopardi (he succeeds the Hon. Mr Justice G. Valenzia, who has since moved to the Court of Appeal and the Constitutional Court), whereas the President of the Family Section of the Civil Court is the Hon. Mr Justice Noel Cuschieri.

If any dispute arises as to whether a case or other judicial act is to be assigned to one judge or to another judge sitting in the same court, or in the same chamber or section of a court, or where a dispute arises as to which chamber or section of a court is to deal with a particular case or judicial act, the matter is referred to the Chief Justice who determines, *in camera*, the judge or chamber or section to which the case or judicial act is to be assigned. The same applies to cases or judicial acts in the Inferior Courts.

Sub-article (6) of Article 29 of the COCP provides that *“The Chief Justice may from time to time convene meetings of judges and magistrates, either separately or collectively, and shall regularly consult with the same, individually or collectively, regarding matter concerning the conduct and trial of causes, the application and conduct of court procedures and proceedings, the implementation of administrative procedures connected with the trial of causes and the conduct of proceedings, the relationship between the judiciary and the Commission for the Administration of Justice, the making of rules of court and such other matters as the Chief Justice may deem appropriate to discuss”*. Moreover, the Chief Justice may, in his discretion, transfer any case from one court to another, but before doing so he must discuss the matter with the Judges or Magistrates concerned either during one of the meetings convened under sub-article(6) of Article 29 or during an *ad hoc* meeting convened for the purpose.

A number of provisions of the Code of Ethics for Members of the Judiciary provide that the Chief Justice is to be consulted by members of the judiciary before certain activities are undertaken.

Certain decisions which are required by law to be taken by the Director General (Courts Division) also require the concurrence of the Chief Justice (for example decisions, touching upon the maintenance of good order within the precincts of the Courts of Justice, and the extension of the time during which the registries are kept open). In the context of the general functions, powers and duties of the Director General (Courts Division), Regulation 12 of L.N. 139 of 2004 (which was added by L.N. 46 of 2008) provides that *“Notwithstanding the foregoing provisions of these regulations, the Director General or any person authorised by him under these regulations, in the exercise of his functions thereunder, shall ensure that he does not interfere in any manner in the exercise of judicial functions by the members of the judiciary and, should this be the case, the Chief Justice shall, by written notice under his hand and in terms of this regulation, overrule any such decision of the Director General; and, in so doing, the Chief Justice may give such directions to the Director General or to any delegate thereof which might appear to the Chief Justice to be in the interests of the better administration of justice in the instant case.”*