

# Retiring age of the Judiciary in Malta

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In this article, **Andrew Sciberras** examines the retiring age of the judiciary, offering his thoughts as to why members of the bench should be afforded a more distant retirement age than 65 or 68.

**TAGS:** Judiciary

**Andrew Sciberras** is a 2nd year LL.B. (Hons) student, with a particular interest on the procedural aspects of the law. Upon entering the law course, he was immediately drawn to student activism, first occupying the role of Policy Officer within GhSL in his first year and subsequently moving on to the role of Secretary General, a role which he occupies presently.

In Malta all members of the judiciary, be it magistrates as well as judges, retire at the age of 65.<sup>1</sup> For some members of the judiciary, namely magistrates, the retirement age was even lower, originally set at 60, however this was raised, together with the retirement age for the Attorney General, by Act XIV of 2007.<sup>2</sup>

When looking at other countries, Malta seems to be the outlier. Our judiciary has one of the lowest retiring ages in the world. In the United Kingdom, for example, judges retire at the age of 70, extendable on a year by year basis up to a maximum of 75, if authorised by the Lord Chief Justice of England and Wales in the case of judges which sit exclusively in England and Wales, the Lord Chief Justice of Northern Ireland with respect to judges who sit exclusively in Northern Ireland, the Scottish minister responsible for justice in cases of Scottish judges, or the Lord Chancellor for any such other judge.<sup>3</sup> In the United States, each state has its own laws regulating the retiring age of judges; the lowest is 70 years, but the highest is the State of Vermont at 90 years old, with some states not prescribing a retiring age at all.<sup>4</sup> In the United States Federal Court system, there is no retiring age for judges, and they therefore sit for life.<sup>5</sup> United States Supreme Court Justices serve for life, and only leave the court on submitting their resignation or passing away. When it comes to other inferior federal courts, namely the US District Courts and the Court of Appeals, there exists a form of semi-retirement, known as senior status, however judges can keep on working for as long as they wish.<sup>6</sup>

It makes no sense to throw away a perfectly capable legal mind just because he or she has attained the arbitrary age of 65. At 65, many members of the judiciary might still have the mental fortitude and stamina to continue their vocation with great skill and expertise, perhaps even more so than newcomers owing to their increased experience. When one considers the fact that court delays have become a fact of life, and the number of judges and magistrates sitting in our Courts of Justice are always on the rise, it only makes sense to utilise their skill for as long as possible.

Indeed, many judges remain active following their retirement from the bench. One can look at Judge Giovanni Bonello, an expert legal mind who was appointed to the European Court of Human Rights in 1998 when he was

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<sup>1</sup> Constitution of Malta, Articles 97(1), 100(4).

<sup>2</sup> Malta Independence Order 1964, Article 101(3); Act XIV of 2007, An Act to amend the Constitution of Malta 2007, Articles 4-5.

<sup>3</sup> Judicial Pensions and Retirement Act 1993 (1993 c 8, Laws of The United Kingdom) s 26(1), 26(5), 26(12), 30(1).

<sup>4</sup> 'Mandatory Retirement' (Ballotpedia) <[https://ballotpedia.org/Mandatory\\_retirement](https://ballotpedia.org/Mandatory_retirement)> accessed 16 October 2020.

<sup>5</sup> The Constitution of the United States 1789 (United States Law) Article III.

<sup>6</sup> Retirement on salary; retirement in senior status (28 USC 371).

62 years old. Normally, this would mean he would need to retire three years later, however the ECtHR has no such age restriction, only a term length, which incidentally was extended in Judge Bonello's case, enabling him to remain on the Court for a total of almost 12 years, retiring at the age of 74, and he remains a more than capable jurist to this day at the age of 84. Judge David Attard of the International Tribunal for the Law of the Sea has just been elected for a further nine years, by which time he will be 76 years old.<sup>7</sup> The Court of Revision of Notarial Acts, a relatively unknown court, which *ex lege* is presided over by a retired judge, magistrate, or advocate of 12 years' experience, showcases the fact that the legislator recognises the ability of retired members of the judiciary.<sup>8</sup> Presently, it is presided over by Judge Joseph Galea Debono. At the age of 68, Ena Cremona went on to be a judge at the General Court of the Court of Justice of the European Union, a position she would hold for eight years until her resignation at the age of 76.<sup>9</sup> Joining Judge Cremona at the Court of Justice of the European Union, Judge Anthony Borg Barthet sat on the Court of Justice until 2018, by which time he was 71 years old, 6 years past the local retirement age.<sup>10</sup> Three years after his mandatory retirement, Chief Justice Emeritus Joseph Said Pullicino was appointed Parliamentary Ombudsman, a post he held for a further 11 years, another testament to the service judges can provide even after their time on the bench has come to an end.<sup>11</sup>

This list is not exhaustive in the slightest, with judges continuing to serve in some way or another after their forced exit from the bench. A number of judges go on to lecture at university, extending their knowledge to future professionals, *inter alia*, Chief Justice Emeritus Silvio Camilleri, Chief Justice Emeritus Vincent De Gaetano, Judge Silvio Meli and Judge Lawrence Quintano. These judges, although retired, continue to provide an essential service to the next generation of lawyers. By forcing such judges to retire at the age of 65, their legal minds are going to waste. If they are good enough to take up other duties, why are they not good enough to continue their work on the bench?

Another problem with judges retiring at a specific age is the fact that they stop working on cases well before their time on the bench is over. When a judge retires, all pending cases are transferred to another judge, who begins the process of hearing the case over again. This means that in the year or so before they retire, not only will judges stop getting assigned cases, but they will start postponing cases which will not be concluded in front of him, with the excuse that since the judgement will not be made by him, it should be

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<sup>7</sup> 'Judge David Joseph Attard' <<https://www.itlos.org/the-tribunal/members/vice-president-david-joseph-attard/>> accessed 18 October 2020.

<sup>8</sup> Notarial Profession and Notarial Archives Act, Chapter 55, Laws of Malta, Article 110(2).

<sup>9</sup> 'CURIA - Former Members - Court of Justice of the European Union' <[https://curia.europa.eu/jcms/jcms/Jo2\\_7014/](https://curia.europa.eu/jcms/jcms/Jo2_7014/)> accessed 18 October 2020.

<sup>10</sup> *ibid.*

<sup>11</sup> 'Joseph Said Pullicino | The Office of the Ombudsman' <<https://www.ombudsman.org.mt/about-us/joseph-said-pullicino/>> accessed 17 October 2020.

postponed until his eventual retirement. A solution to this problem would be to appoint a new member to the bench when the judge reaches retirement age but keep the old judge on to conclude the cases pending before him. This would allow the judge to continue being productive even after he has stopped accepting new cases, in order to complete the cases which are pending. This proposal is not a replacement for increasing the retirement age, but to be implemented in addition. All this is to say that the retirement age should be increased. There is no reason why judges cannot continue to perform their duty of safeguarding justice once they attain the age of 65.

It is not the first time that plans to increase the retirement age of members of the judiciary was attempted, but eventually failed. In 2016, a bill with wide parliamentary support was progressing through Parliament, which included a provision to increase the retirement age of members of the judiciary from 65 to 68.<sup>12</sup> These amendments were withdrawn at committee stage, one of the last steps before a bill becomes a law, and in fact are nowhere to be found in the Act which the bill eventually became, Act XLIV of 2016.<sup>13</sup> It is anybody's guess why this amendment did not make its way into the final act, however it certainly is not because the amendment was ill-conceived or deficient.

In the process of writing this article, Parliament promulgated Act LV of 2020, amending the Constitution and increasing the retirement age of both judges and magistrates to 68. This is achieved by allowing the member of the bench the possibility to inform both the Chief Justice as well as the President of the Republic of his intention to remain in office until the age of 68. Such a notice must be presented prior to the attainment of 65 years of age, to leave the possibility of retiring at 65 if the judge or magistrate so wishes. This maintains the balance if the member of the bench does not feel up to continuing for a further three years. There are other proposals contained in this article, however this is certainly a step in the right direction.

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<sup>12</sup> An Act to provide for Constitutional reforms in the Justice sector and for matters consequential or ancillary thereto. 2016 [Bill number 145 of 2016] Clauses 4, 8.

<sup>13</sup> Tonio Borg, 'Amendment That Never Was' *Times of Malta* (11 August 2016)

<<https://timesofmalta.com/articles/view/Amendment-that-never-was.621659>> accessed 18 October 2020; An act to provide for Constitutional reforms in the Justice Sector and for matters consequential or ancillary thereto. 2016 (Act XLIV of 2016, Laws of Malta).

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