

Nru. 25

13. 5. 77

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Cassar, M.P., Ministru tal-Gustizzja, Artijiet, Djar u Affarijiet tal-Parlament, u moqri għall-Ewwel darba fis-Seduta ta' l-4 ta' April, 1977.

A BILL introduced by the Honourable Joseph Cassar, M.P., Minister of Justice, Lands, Housing and Parliamentary Affairs, and read the First time at the Sitting of the 4th April, 1977.

ATT biex ikompli jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, Kap. 15.

AN ACT further to amend the Code of Organization and Civil Procedure, Cap. 15.

C. MIFSUD

Skrivan tal-Kamra tad-Deputati

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Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT biex ikompli jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, Kap. 15.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

Titolu fil-qosor.

1. Dan l-Att jista' jissejjah l-Att ta' l-1977 li jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, u għandu jinqara u jiftiehem haġa waħda mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawn-hekk iżjed 'il quddiem imsejjah "il-liġi prinċipali".

Sostituzzjoni ta' l-artikolu 77 tal-liġi prinċipali.

2. Minflok l-artikolu 77 tal-liġi prinċipali għandu jidhol dan li ġej:

"Dhul ta' Avukati u restrizzjonijiet dwar membri tal-Parlament.

77. (1) Ebda persuna ma tista' teżerċita l-professjoni ta' Avukat fil-Qrati tal-Gustizzja f'Malta mingħajr l-awtorità tal-President mogħtija b'*warrant* taħt is-Sigill Pubbliku ta' Malta.

(2) Minkejja kull awtorità mogħtija kif intqal qabel, ebda persuna ma tista', fil-waqt li tkun membru tal-Parlament, teżerċita l-professjoni ta' Avukat f'xi Qorti tal-Gustizzja f'Malta f'xi wiehed mill-kazijiet imsemmija fis-subartikolu (3) ta' dan l-artikolu jew xort'ohra taġixxi bħala avukat f'xi kwistjoni li wiehed raġonevolment jista' jistenna li twassal għal jew tispiċċa f'xi każ minn dawk.

(3) Il-kazijiet imsemmija fis-subartikolu (2) ta' dan l-artikolu huma:

(a) kull proċediment, barra minn proċediment ta' xorta kriminali, quddiem xi qorti jew tribunal jew korp iehor ġudizzjarju jew kważi-ġudizzjarju li fihom waħda mill-partijiet tkun Ministru, Kap ta' Dipartiment jew persuna oħra li tirrappreżenta l-Gvern, jew tkun Kummissjoni jew awtorità oħra, imwaqqfa b'xi liġi jew bis-saħħa tagħha, jew tkun korp magħqud imwaqqaf b'liġi jew kumpannija li fiha l-Gvern jew xi korp wiehed jew iktar kif intqal qabel, jew it-tnejn, ikollhom interess biżżejjed biex jikkontrollaw, jew tkun kumpannija li tkun sussidjarja tagħhom, hliet bħala avukat għall-Gvern jew għal Kummissjoni, awtorità, korp magħqud jew kumpannija hekk kif intqal qabel;

(b) kull każ kriminali li fih l-akkuzat ikun uffiċjal pubbliku skond kif imfisser fl-artikolu 126 tal-Kostituzzjoni ta' Malta jew uffiċjal jew impjegat ta' xi korp magħqud jew kumpannija hekk kif imsemmi fil-paragrafu (a) ta' dan is-subartikolu, u r-reat ikun wiehed li għandu x'jaqsam mal-kariga jew l-impieg tiegħu;

(ċ) kull każ kriminali iehor li fih ir-reat —

(i) ikun wiehed kontra xi waħda mid-disposizzjonijiet tat-Titli I, II, III, V u VI, jew tas-Subtitli II u III tat-Titlu IX, tat-Taqsima II ta' l-Ewwel Ktieb tal-Kodiċi Kriminali, barra mill-artikoli 339 u 342:

Iżda dwar kull reat kontra xi waħda mid-disposizzjonijiet ta' l-imsemmi Sub-titlu II tat-Titlu IX (barra mid-disposizzjoni ta' l-artikolu 310, jew tal-paragrafi (ċ), (d), (e), (f) u (g) ta' l-artikolu 312, jew ta' l-artikolu 321) is-subartikolu (2) ta' dan l-artikolu m'għandux japplika meta r-reat jew ir-reati jkunu saru bi preġudizzju ta' individwu privat wiehed biss jew ta' numru ristrett ta' individwi privati; jew

(ii) ikun dwar jew jolqot proprjetà pubblika, jew proprjetà li tkun tal-Gvern jew amministrata minnu jew li xort'oħra tkun fil-pussess tiegħu, kemm-il darba dak ir-reat ma jkunx biss inċidentali għal reat li għalih ma japplikax is-subartikolu (2) ta' dan l-artikolu; jew

(iii) ikun dwar jew jolqot finanzi pubbliċi (magħduda kull forma ta' tassazzjoni, lotteriji pubbliċi jew ghejjun oħra ta' dhul pubbliku); jew

(iv) ikun kontra xi liġi li jkun fiha disposizzjoni biex tirregola, tikkontrolla jew tkun xort'oħra dwar sedizzjoni, *meetings* pubbliċi, il-bon' ordni u l-paċi pubblika, il-ħabs, l-emigrazzjoni, il-provdiment ta' provvisti, servizzi u oġġetti oħra essenzjali, jew it-tagħlim obbligatorju; jew

(v) ikun kontra xi liġi li jkollha disposizzjoni biex tirregola, tikkontrolla jew tkun xort'oħra dwar il-kwistjonijiet monetarji jew ta' kambju, kummerċ bankarju jew istituzzjonijiet finanzjarji; jew

(vi) ikun kontra xi liġi dwar kif jinżammu elezzjonijiet jew referendi, jew dwar ir-reġistrazzjoni ta' votanti għall-finijiet tagħhom, jew kontra l-privileġġi u s-setgħat tal-Kamra tad-Deputati jew tal-Membri tal-Parlament; jew

(vii) ikun kontra l-liġi militari.

(4) Għall-finijiet ta' dan l-artikolu persuna li tkun Membru tal-Parlament meta jkun hemm xi xoljiment tal-Parlament titqies li għadha hekk membru wkoll wara dak ix-xoljiment sakemm terġa' ssir hekk membru jekk terġa' tiġi eletta fl-elezzjoni li tiġi sewwa sew wara, jew sakemm jiġu pubblikati r-riżultati ta' dik l-elezzjoni jekk tkun kandidat għal dik l-elezzjoni iżda ma terġax tiġi eletta, jew sad-data ta' l-egħluq għan-nomina ta' kandidati għal dik l-elezzjoni jekk ma tkunx kandidat għal dik l-elezzjoni."

Emenda ta' l-artikolu 846 tal-liġi prinċipali.

3. Fis-subartikolu (1) ta' l-artikolu 846 tal-liġi prinċipali minnufih wara l-kliem "l-avviż ta' l-eżekuzzjoni tiegħu" għandhom jiżdiedu l-kliem "jew lir-rikorrent jew lill-avukat jew prokuratur legali li l-firma tiegħu tkun tidher fuq ir-rikors".

Emenda ta' l-artikolu 849 tal-liġi prinċipali.

4. Fis-subartikolu (2) ta' l-artikolu 849 tal-liġi prinċipali minnufih wara l-kliem "li jingħata lilu" għandhom jidhlu l-kliem "jew lill-avukat jew prokuratur legali li l-firma tiegħu tkun tidher fuq ir-rikors".

Emenda ta' l-artikolu 852 tal-liġi prinċipali.

5. Fl-artikolu 852 tal-liġi prinċipali għandu jiżdied il-proviso li ġej:

"Izda —

(a) l-azzjoni dwar il-pretensjoni msemmija fil-mandat ta' sekwestru kawtelatorju għandha tinbeda mir-rikorrent fi żmien erbat ijiem tax-xogħol minn meta jiġi notifikat lilu l-avviż ta' l-eżekuzzjoni tal-mandat jew fi żmien għaxart ijiem tax-xogħol wara l-hruġ tal-mandat, skond liema tkun l-ewwel data, u, fin-nuqqas ta' dan, l-effetti tal-mandat jispiċċaw; u

(b) meta s-sekwestratorju jkun bank, mandat ta' sekwestru kawtelatorju ma japplikax għal xi flus li jkollhom jithallsu mill-bank fl-eżekuzzjoni ta' xi garanzija mogħtija mill-bank li huwa jhallas fuq it-talba tal-persuna li favur tagħha tkun saret il-garanzija bankarja; u f'kull każ bhal dan ikun skond il-liġi li l-bank ihallas lil dik il-persuna kull flus bhal dawk minkejja kull mandat ta' sekwestru bhal dak."

Emenda ta' l-artikolu 882 tal-liġi prinċipali.

6. Fl-artikolu 882 tal-liġi prinċipali minnufih wara l-kliem "l-avviż ta' l-eżekuzzjoni tal-mandat" għandhom jidhlu l-kliem "ikun ingħata lir-rikorrent jew lill-avukat jew lill-prokuratur legali li l-firma tiegħu tkun tidher fuq ir-rikors".

Effett ta' ċerti disposizzjonijiet ta' dan l-Att.

7. (1) L-emendi għal-liġi prinċipali li jinsabu fl-artikoli 3, 4 u 6 ta' dan l-Att, u l-proviso (a) b'dan l-Att miżjud ma' l-artikolu 852 tal-liġi prinċipali, m'għandhom japplikaw għal ebda mandat ippreżentat qabel il-bidu fis-sehħ ta' dan l-Att u għal ebda proċedimenti konsegwenzjali għalih,

(2) Il-proviso (b) b'dan l-Att miżjud ma' l-artikolu 852 tal-ligi prinċipali għandu japplika wkoll għal kull mandat ta' sekwestru ppreżentat qabel il-bidu fis-sehħ ta' dan l-Att u li jkun għadu fis-sehħ f'dik id-data.

Għanijiet u Ragunijiet

L-Għanijiet ta' dan l-Abbozz huma —

(a) li avukati li jkunu wkoll Membri tal-Parlament ma jkunux jistgħu jaħdmu bħala avukati f'każijiet kontra l-Gvern u f'każijiet oħra msemmija fl-Abbozz; u

(b) li garanzija bankarja tkun eżentata mit-tħaddim ta' mandat ta' sekwestru kawtelatorju u li jsiru disposizzjonijiet oħra dwar ċerti mandati kawtelatorji.

A BILL

entitled

AN ACT further to amend the Code of Organization and Civil Procedure, Cap. 15.

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:—

Short title.

1. This Act may be cited as the Code of Organization and Civil Procedure (Amendment) Act, 1977, and shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as "the principal law".

Substitution of section 77 of the principal law.

2. For section 77 of the principal law there shall be substituted the following:

77. (1) No person may exercise the profession of Advocate in the Courts of Justice in Malta without the authority of the President granted by warrant under the Public Seal of Malta.

(2) Notwithstanding any authority granted as aforesaid, no person may, while he is a member of Parliament, exercise the profession of Advocate in any Court of Justice in Malta in any of the cases mentioned in subsection (3) of this section or otherwise act as an advocate in any matter that could reasonably be expected to lead to or end in any of those cases.

(3) The cases referred to in subsection (2) of this section are;

(a) any proceedings, other than proceedings of a criminal nature, before any court or tribunal or other judicial or quasi-judicial body in which one of the parties is a Minister, Head of Department or other person in representation of the Government, or is a Commission or other authority, established by or under any law, or is a body corporate established by law or a company in which the Government or any one or more bodies corporate as aforesaid, or both, have a controlling interest, or is a company which is a subsidiary thereof, except as advocate for the Government or for such Commission, authority, body corporate or company as aforesaid;

(b) any criminal case in which the accused is a public officer within the meaning of section 126 of the Constitution of Malta or an officer or employee of any body corporate or company as is referred to in paragraph (a) of this subsection, and the offence is one connected with his office or employment;

(c) any other criminal case in which the offence —

(i) is one against any of the provisions of Titles I, II, III, V and VI, or of Sub-Titles II and III of Title IX, of Part II of Book First of the Criminal Code, other than sections 339 and 342:

Provided that in respect of any offence against any of the provisions of Sub-Title II of Title IX aforesaid (other than a provision of section 310, or of paragraphs (c), (d), (e), (f) and (g) of section 312, or of section 321) subsection (2) of this section shall not apply where the offence or offences are committed to the prejudice of only one private individual or of a restricted member of private individuals; or

(ii) relates to or affects public property, or property belonging to or administered by or otherwise in the possession of the Government, unless such offence is merely incidental to an offence to which subsection (2) of this section does not apply; or

(iii) relates to or affects public finance (including any form of taxation, public lotteries and other sources of public income); or

(iv) is one against any law containing provision regulating, controlling or otherwise relating to sedition, public meetings, public good order and peace, prisons, immigration, the provision of essential supplies, services or other goods, or compulsory education; or

(v) is one against any law containing provision regulating, controlling or otherwise relating to monetary or exchange matters, banking or financial institutions; or

(vi) is one against any law relating to the holding of elections or referenda, or the registra-

tion of voters for the purposes thereof, or against the privileges and powers of the House of Representatives or of Members of Parliament; or

(vii) is one against military law.

(4) For the purposes of this section a person who is a Member of Parliament on any dissolution of Parliament shall be treated as if he were still such a member even after that dissolution until he again becomes such a member if he is re-elected as such at the next following general election, or until the publication of the results of that election if he is a candidate for that election but is not re-elected, or until the closing date for the nomination of candidates for that election if he is not a candidate for that election."

Amendment of section 846 of the principal law.

3. In subsection (1) of section 846 of the principal law immediately after the words "notice of its execution" there shall be added the words "either to the applicant or to an advocate or legal procurator whose signature appears on the application".

Amendment of section 849 of the principal law.

4. In subsection (2) of section 849 of the principal law immediately after the words "from the delivery to him" there shall be inserted the words "or to an advocate or legal procurator whose signature appears on the application".

Amendment of section 852 of the principal law.

5. In section 852 of the principal law there shall be added the following proviso:

"Provided that —

(a) the action in respect of the claim stated in a precautionary garnishee order shall be brought by the applicant within four working days from the delivery to him of the notice of the execution of the warrant or within ten working days after the issue of the warrant, whichever is the earlier date, and, in default, the effects of the order shall cease; and

(b) where the garnishee is a bank, a precautionary garnishee order shall not apply to any money payable by the bank in execution of any guarantee given by the bank that it will effect payment on the demand of the person in whose favour the banker's guarantee is made out; and in any such case it shall be lawful for the bank to pay to such person any such money notwithstanding any such garnishee order."

Amendment of section 882 of the principal law.

6. In section 882 of the principal law immediately after the words "notice of the execution of the warrant" there shall be inserted the words "has been given to the applicant or to the advocate or legal procurator whose signature appears on the application".

Effect of certain provisions of this Act.

7. (1) The amendments to the principal law contained in sections 3, 4 and 6 of this Act, and the proviso (a) added by this Act to section 852 of the principal law, shall not apply to any warrant filed before the commencement of this Act and to any proceedings consequent thereto,

(2) The proviso (b) added by section 5 of this Act to section 852 of the principal law shall apply also to any garnishee order filed before the commencement of this Act and still operative on that date.

Objects and Reasons

The main Objects of the Bill are —

(a) to preclude advocates who are also Members of Parliament from practising as advocates in cases against the Government and in other specified cases; and

(b) to exempt a banker's guarantee from the operation of a precautionary garnishee order and to make other provision with respect to certain precautionary warrants.