

Nru. 175

5. 2. 81

MALTA**KAMRA TAD-DEPUTATI****HOUSE OF REPRESENTATIVES**

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Brincat M.P., Ministru tal-Gustizzja, Artijiet, Djar u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tal-21 ta' Jannar, 1981.

A BILL introduced by the Honourable Joseph Brincat M.P., Minister of Justice, Lands, Housing and Parliamentary Affairs and read the First time at the Sitting of the 21st January, 1981.

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***C. MIFSUD***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 u bidu fis-sehħ.

1. (1) Dan l-Att jista' jissejjaħ l-Att ta' l-1981 li jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, u għandu jinqara u jftiehem haġa waħda mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawn-hekk iżjed "il quddiem imsejjah "il-liġi prinċipali".

(2) L-artikoli 4, 6, 7, 8 u 9 ta' dan l-Att għandhom jibdew isehħu b'effett mis-6 ta' Frar, 1981.

Emenda ta' l-artikolu 82 tal-liġi prinċipali.

2. L-artikolu 82 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (2) tiegħu għandu jiġi numerat mill-ġdid bħala subartikolu (3); u

(b) minnufih wara s-subartikolu (1) tiegħu għandu jidhöl is-subartikolu ġdid li ġej:

"(2) Persuna tista' wkoll tiġi inabilitata għal dejjem jew għal żmien mill-eżerċizzju tal-professjoni ta' Avukat fuq ir-rakkomandazzjoni tal-Kummissjoni Hidma fil-Qrati."

Zieda ta' Titlu ġdid ma' l-Ewwel Ktieb tal-liġi prinċipali.

3. Minnufih wara t-Titlu IX ta' l-Ewwel Ktieb tal-liġi prinċipali għandu jidhöl it-Titlu ġdid li ġej:

"TITLU X

"Kummissjoni.

94A. (1) Għandu jkun hemm kummissjoni li tkun magħrufa bħala l-Kummissjoni Hidma fil-Qrati (u li f'dan it-Titlu qed tissejjaħ "il-Kummissjoni") li tkun magħmula minn *Chairman*, u erba' membri oħra, kollha maħtura mill-Prim Ministru skond dan l-artikolu.

(2) *Iċ-Chairman* għandu jkun persuna ta' l-età 'l fuq minn ħamsa u erbgħin sena li tkun kisbet esperjenza fil-ħajja pubblika permezz tal-politika, ta' kariga pubblika jew ta' movimenti jew organizzazzjonijiet ta' ħaddiema jew ċiviċi jew industrjali; mill-erba' membri l-oħra, tnejn ikunu membri tal-Parlament, wieħed ikun membru tal-kumitat tal-Kamra ta' l-Avukati u wieħed ikun magħżul minn fost membri ta' l-organizzazzjoni ta' ħaddiema li jkollha l-akbar numru ta' membri:

Iżda wieħed miż-żewġ membri tal-Parlament ikun magħżul mill-Kap ta' l-Oppożizzjoni u iżda wkoll ebda membru tal-Parlament li jkun avukat li jkun qed jeżerċita l-professjoni tiegħu ma jista' jkun membru tal-Kummissjoni.

(3) Il-Kummissjoni jkollha segretarju maħtur mill-Prim Ministru minn fost uffiċjali pubbliċi li jkunu qed jaqdu dmirijiet fil-Ministeru responsabbli għall-gustizzja jew f'dipartiment li jaqa' taħt dak il-Ministeru.

(4) Il-Prim Ministru jista' wkoll f'kull żmien jahtar persuna biex taġixxi flok *iċ-Chairman* kull meta *ċ-Chairman* ma jkunx f'Malta jew għal xi raġuni oħra ma jkunx jista' jaqdi l-funzjonijiet tiegħu.

(5) Il-funzjonijiet tal-Kummissjoni jkunu —

(a) li tissorvelja l-amministrazzjoni tal-gustizzja fil-qrati kollha ta' ġurisdizzjoni ċivili, kummerċjali u kriminali, magħduda l-Qorti Kostituzzjonali kif ukoll it-tmexxija tal-proċedimenti f'dawk il-qrati;

(b) li tissorvelja l-imġieba professjonali ta' avukati u prokuraturi legali;

(ċ) biex tikkunsidra u tittratta ilmenti li jsiru minn xi persuna dwar xi waħda mill-ħwejjeġ imsemmija qabel;

(d) biex tikkunsidra, tirrapporta u xort'oħra tittratta kull ħaġa li għandha x'taqsam ma' l-amministrazzjoni tal-gustizzja li tiġi riferita lilha mill-Prim Ministru; u

(e) dawk il-funzjonijiet l-oħra li jistgħu jingħatawliha b'liġi.

(6) B'mod partikolari, iżda bla ħsara għall-ġenerali ta' dak li ntqal qabel, il-Kummissjoni —

(a) għandha, mhux iktar tard minn Diċembru ta' kull sena jew aktar spiss meta jidhrilha spedjenti, taġġmel rapport lill-Kamra tad-Deputati fuq il-ħidma tagħha u l-kwistjonijiet li jkunu ġew kunsidrati minnha, u tista' wkoll taġġmel dawk ir-rakkomandazzjonijiet lill-Kamra li jidhrilha xierqa;

(b) għandha tirrapporta lill-Ministru responsabbli għall-gustizzja u lill-Kamra tad-Deputati ku' każ ta' dewmien bla meħtieġ li tkun saret taf bih u tirrakkomanda dawk il-miżuri li jidhrilha meħtieġa biex jinstab rimedju għad-dewmien, kif ukoll dawk ir-riformi kollha fil-liġi jew fl-amministrazzjoni tagħha li fil-fehma tal-

Kummissjoni jistgħu jwasslu biex il-kawzi jinqatgħu aktar malajr;

(c) ħlief għall-każijiet imsemmija fl-artikoli mid-987 sad-994 u fis-subartikolu (1) ta' l-artikolu 995 ta' dan il-Kodiċi, ikollha s-setgħa li tistharreg kull ilment li jsir-ilha dwar xi abbuż jew imġieba ħażina jew mhux skond l-etika ta' xi Avukat jew Prokuratur Legali fil-qadi tal-professjoni tiegħu jew fi hwejjeġ li għandhom x'jaqsmu mad-dmirijiet professjonali tiegħu;

(d) wara li tkun ikkunsidrat xi każ ta' abbuż jew imġieba ħażina jew mhux skond l-etika attribwit lil Avukat jew Prokuratur Legali, ikollha s-setgħa li tirrakkomanda lill-President li persuna tiġi inabilitata għal dejjem jew għal żmien mill-eżerċizzju tal-professjoni ta' avukat jew ta' prokuratur legali, jew meta, minn dak li jirriżulta kontra l-avukat jew il-prokuratur legali, fil-fehma tal-Kummissjoni ma tkunx ġustifikata l-inabilitazzjoni, li twahħal penali jew tipprovdi b'dak il-mod l-ieħor li jidhrilha xieraq;

u bla ħsara għad-disposizzjonijiet ta' dan it-Titlu, tista' tagħmel regoli dwar il-proċeduri tagħha stess u il-mod u ż-żmien kif isiru u jinstemgħu ilmenti taħt dan l-artikolu, u dwar kull haġa oħra li taqa' taħt il-funzjonijiet tagħha, magħduda t-tmexxija ta' proċedimenti f'kull qorti, u l-imġieba professjonali ta' avukati u prokuraturi legali, u tista' wkoll xort'oħra tirregola l-proċedura tagħha stess u kull haġa oħra msemmija qabel.

(7) Il-Kummissjoni tista' taġixxi minkejja kull vakanza fost l-għadd tal-membri tagħha, iżda m'għandhiex taġixxi jekk ma jkunux preżenti għall-anqas tliet membri.

(8) Għall-finijiet ta' dan l-artikolu, iżda bla ħsara għall-ġeneralità tad-disposizzjonijiet l-oħra tiegħu —

(a) kull avukat jew prokuratur legali li xjente-ment, direttament jew indirettament, jimpjega jew jaċċetta s-servizzi ta' xi sensal; u

(b) kull avukat li jiftiehem ma' prokuratur legali jew nutar pubbliku, u kull prokuratur legali li jiftiehem ma' xi avukat jew nutar pubbliku, li jagħti jew li jirċievi xi schem mid-drittijiet jew xi rimunerazzjoni oħra maq-luġha minn xi wiehed minnhom dwar xogħol profes-sjonali,

jitqies li għamel abbuż fl-eżerċizzju tal-professjoni tiegħu u dwar hwejjeġ professjonali; u l-espressjoni "sensal" f'dan is-subartikolu tfisser kull persuna li bi ħlas ta' xi dritt, rigal jew rimunerazzjoni, sew bil-flus jew bi hwejjeġ oħra jew b'xi tpattija oħra tindahal biex issib klijenti għal xi avukat jew prokuratur legali."

Emenda ta'
l-artikolu 104
tal-liġi
prinċipali.

4. L-artikolu 104 tal-liġi prinċipali għandu jiġi emendat biż-żieda tal-proviso li ġej miegħu:

"Izda ż-żmien ta' għaxart ijiem imsemmi fl-artikolu 460A ma għandu f'ebda każ jitqassar."

5. Minflok is-subartikolu (4) ta' l-artikolu 193 tal-liġi prinċipali għandhom jidhlu s-subartikoli li ġejjin:

Emenda ta' l-artikolu 193 tal-liġi prinċipali.

“(4) Id-differiment ta' kawża ma jingħatax hlief biex titħares xi proċedura stabbilita f'dan il-Kodiċi jew, f'ċirkostanzi eċċezzjonali, skond id-disposizzjonijiet tas-subartikolu (5) ta' dan l-artikolu.

(5) Kawża tista' tiġi differita f'ċirkostanzi eċċezzjonali biss jekk il-Qorti tkun sodisfatta li dawk iċ-ċirkostanzi jkunu jeżistu u hekk tiddikjara fid-digriet li bih tordna d-differiment u fejn tispeċifika dawk iċ-ċirkostanzi, u biss fuq rikors ipprezentat mill-parti li titlob id-differiment mhux iktar tard minn jumejn tax-xogħol qabel id-data li fiha l-kawża tkun għas-smiġh jew, jekk ir-raġuni tad-differiment tinqala' wara li jgħaddi l-imsemmi żmien kemm jista' jkun malajr wara; u r-rikors għandu jispeċifika bid-dettal iċ-ċirkostanzi li jiġġustifikaw it-talba u għandu jiġi konfermat bil-ġurament mir-rikorrent jew, jekk ir-rikorrent ikun nieqes minn Malta jew xort' oħra ma jkunx jista' jikkonferma r-rikors personalment, mill-avukat li jiffirma r-rikors li għandu f'dak il-każ jikkonferma wkoll bil-ġurament li r-rikorrent ma setgħax jikkonfermah hu nnifsu.”.

6. Fl-artikolu 388 tal-liġi prinċipali, minnufih wara s-subartikolu (2) tiegħu għandu jiżdied is-subartikolu ġdid li ġej:

Emenda ta' l-artikolu 388 tal-liġi prinċipali.

“(3) Ebda mandat *in factum* ma jista' jintalab sabiex xi awtorità mwaqqfa bil-Kostituzzjoni jew xi persuna li jkollha kariga pubblika tiġi obligata tagħmel xi haġa minha b'dik il-kariga.”.

7. Fis-Sub-Titlu VI tat-Titlu VIII tat-Taqsima I tat-Tieni Ktieb tal-liġi prinċipali, minnufih qabel l-artikolu 461 għandu jidhlo l-artikolu ġdid li ġej:

Dhul ta' artikolu ġdid 460A fil-liġi prinċipali.

“Procedimenti kontra l-Gvern.

460A. Ebda att ġudizzjarju, barra minn ittra uffiċjali jew protest, ma jista' isir jew jiġi pprezentat, u ebda procedimenti ma jistgħu jittiehdu jew jinbdew, u ebda mandat ma jista' jiġi mitlub, kontra l-Gvern jew kontra xi awtorità mwaqqfa bil-Kostituzzjoni, jew kontra xi persuna li jkollha kariga pubblika fil-kwalità uffiċjali tagħha, hlief wara li jgħaddu għaxart ijiem tax-xogħol min-notifika kontra l-Gvern jew dik l-awtorità jew persuna kif intqal qabel, ta' ittra uffiċjali jew ta' protest li fih il-pretensjoni jew it-talba tiġi mfissra b'mod ċar; u r-Registatur għandu jirrifjuta li jirċievi kull att ġudizzjarju jew dokument ieħor li jiġi pprezentat fir-Registru kontra d-disposizzjonijiet ta' dan l-artikolu.”.

8. L-artikolu 743 tal-liġi prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 743 tal-liġi prinċipali.

(a) l-artikolu għandu jiġi numerat mill-ġdid bħala s-sub-artikolu (1) tiegħu, u

(b) minnufih warajh għandhom jiżdiedu s-subartikoli godda li ġejjin:

“(2) Ebda qorti f'Malta ma għandha ġurisdizzjoni li tistharreg il-validità ta' xi għemil jew haġa oħra li tkun saret mill-Gvern jew minn xi awtorità mwaqqfa bil-Kostituzzjoni jew minn xi persuna li jkollha kariga pubblika fl-eżerċizzju tal-funzjonijiet pubbliċi tagħhom jew li tiddikjara xi għemil jew haġa bħal dawk nulli jew invalidi jew mingħajr effett, hlief u sakemm —

- (a) dak l-egħmil jew haġa ma tkunx "*ultra vires*"; jew
- (b) dak l-egħmil jew haġa ma tkunx b'mod ċar bi ksur ta' disposizzjoni espliċita ta' liġi miktuba; jew
- (ċ) il-forma jew il-proċedura xierqa ma tkunx giet segwita f'haġa importanti u dan in-nuqqas ikun wassal għal preġudizzju sostanzjali.

(3) Ebda qorti f'Malta ma għandha ġurisdizzjoni li tordna lill-Gvern jew lil xi awtorità mwaqqfa bil-Kostituzzjoni jew lil xi persuna li jkollha kariga pubblika, biex jagħmlu xi għemil jew haġa li tkun tappartjeni lill-funzjonijiet pubbliċi tagħhom, meta dak l-egħmil jew dik il-haġa tkun fis-setgħa tagħhom li jagħmlu jew li ma jagħmlux; lanqas ma għandha xi qorti bħal dik ġurisdizzjoni li tiddikjara li xi għemil jew haġa hekk kif intqal qabel kellha jew ma kellhiex jew għandha jew ma għandhiex issir.

(4) Meta xi għemil jew haġa oħra magħmula mill-Gvern jew minn xi awtorità mwaqqfa bil-Kostituzzjoni jew minn xi persuna li jkollha kariga pubblika fl-eżerċizzju tal-funzjonijiet pubbliċi tagħhom, tkun giet revokata jew imħassra jew tkun waqfet milli jkollha effett jew milli tithaddem, ebda qorti f'Malta ma għandha ġurisdizzjoni li tistharreg il-validità tagħha jew li tiddikjaraha nulla jew invalida jew mingħajr effett.

(5) Għall-finijiet ta' dan l-artikolu —

(a) għemil jew haġa għandha titqies li hi "*intra vires*" kemm-il darba dak l-egħmil jew dik il-haġa ma tkunx b'mod ċar u espliċitu projbta jew eskluża b'liġi miktuba; u

(b) att jew għemil għandu jitqies li hu fis-setgħa ta' persuna li tagħmel jew li ma tagħmilx kemm-il darba ma jkunx provdut b'mod ċar u espliċitu f'liġi miktuba li dak l-att jew l-egħmil għandu jew m'għandux isir.

(6) Għall-finijiet ta' dan l-artikolu, u ta' kull disposizzjoni oħra ta' din il-liġi jew ta' xi liġi oħra, servizz mal-Gvern u rapport speċjali regolat b'disposizzjonijiet legali speċifikament applikabbli għalih u bil-pattijiet u l-kondizzjonijiet stabbiliti minn żmien għal żmien mill-Gvern, u ebda liġi jew disposizzjoni tagħha dwar kondizzjonijiet ta' mpieg jew kuntratti ta' servizz jew ta' mpieg ma tapplika, u qatt ma kienet tapplika, għal servizz mal-Gvern hliet safejn dik il-liġi ma tipprovdi xort'oħra.

(7) Id-disposizzjonijiet ta' dan l-artikolu huma bla ħsara għal kull ġurisdizzjoni espliċitament mogħtija bil-Kostituzzjoni."

9. Fl-artikolu 876 tal-liġi prinċipali, minnufih wara s-subartikolu (2) tiegħu għandu jżidded is-subartikolu ġdid li ġej:

"(3) Il-Qorti m'għandha tohrög ebda mandat bħal dak kontra l-Gvern jew awtorità mwaqqfa bil-Kostituzzjoni jew xi persuna li jkollha kariga pubblika fil-kariga uffiċjali tagħha kemm-il darba

Emenda ta'
l-artikolu 876
tal-liġi
prinċipali.

l-awtorità jew il-persuna li kontra tagħha jintalab il-mandat ma tikkonfermax fil-qorti bil-miftuh li l-ħaġa li qed tintalab li tiġi miż-
muma tkun fil-fatt maħsuba li ssir, u l-Qorti tkun sodisfatta, wara
li tisma' l-ispjegazzjonijiet mogħtija, li kemm-il darba ma jinħariġx
il-mandat il-preġudizzju li jinħoloq ma jkunx jista' jiġi rimedjat.”

10. Fl-artikolu 995 tal-liġi prinċipali, is-subartikoli mit-(2) sad-(9)
it-tnejn inkluzi huma b'dan imħassra.

Emenda ta'
l-artikolu 995
tal-liġi
prinċipali.

Għanijiet u Raġunijiet

L-Għanijiet u r-Raġunijiet ta' dan l-Abbozz jinstabu fid-dettal fl-Istqarrija għall-
Istampa maħruġa illum mid-Dipartiment ta' l-Informazzjoni.



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 and commencement.

1. (1) This Act may be cited as the Code of Organization and Civil Procedure (Amendment) Act, 1981, and shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as "the principal law".

(2) Sections 4, 6, 7, 8 and 9 of this Act shall come into force with effect from 6th February, 1981.

Amendment of section 82 of the principal law.

2. Section 82 of the principal law shall be amended as follows:

(a) subsection (2) thereof shall be re-numbered subsection (3); and

(b) immediately after subsection (1) thereof there shall be inserted the following new subsection:

"(2) A person may also be disabled perpetually or for a time to practise the profession of Advocate on the recommendation of the Workings of the Law Courts Commission."

Addition of new Title to Book First to the principal law.

3. Immediately after Title IX of Book First of the principal law there shall be inserted the following new Title:

"TITLE X

"Commis-
sion.

94A. (1) There shall be a commission to be known as the Workings of the Law Courts Commission, (and is in this Title referred to as "the Commission") consisting of a Chairman and four other members, all appointed by the Prime Minister in accordance with this section.

(2) The Chairman shall be a person over the age of forty-five years who has gained experience in public life

through politics, public office or workers', civic or industrial movements or organizations; of the four other members, two shall be members of Parliament, one shall be a member of the committee of the Chamber of Advocates and one shall be chosen from among members of the organization of workers having the largest membership:

Provided that one of the two members of Parliament shall be chosen by the Leader of the Opposition and provided further that no member of Parliament who is a practising lawyer shall be a member of the Commission.

(3) The Commission shall have a secretary appointed by the Prime Minister from among public officers performing duties in the Ministry responsible for justice or in a department falling under the Ministry.

(4) The Prime Minister may also at any time appoint a person as Chairman of the Commission whenever the Chairman is absent from Malta or otherwise unable to perform his functions.

(5) The functions of the Commission shall be —

(a) to supervise the administration of justice in all courts of civil, commercial and criminal jurisdiction, including the Constitutional Court, as well as the conduct of proceedings therein;

(b) to supervise the professional conduct of advocates and legal procurators;

(c) to consider and deal with complaints by any person concerning any of the matters aforesaid;

(d) to consider, report on and otherwise deal with any matter concerning the administration of justice referred to it by the Prime Minister; and

(e) such other functions as may be assigned to it by law.

(6) In particular, but without prejudice to the generality of the foregoing, the Commission —

(a) shall, not later than the end of December of each year or as frequently as it may deem expedient, make a report to the House of Representatives on its activities and on matters considered by it, and may also make such recommendations to the House as it may deem appropriate;

(b) shall report to the Minister responsible for justice and to the House of Representatives any instance of undue delay which shall have come to its notice and shall recommend the measures it may deem adequate to remedy the delays, including any reform in the law or its administration which appears to it conducive to an expeditious conclusion of litigation;

(c) saving cases referred to in sections 987 to 994 and in subsection (1) of section 995 of this Code, shall have power to inquire into any complaint made to it regarding any abuse or misconduct or unethical behaviour attributed to any Advocate or Legal Procurator in the exercise of his profession or in connection with his professional duties;

(d) having considered any case of abuse or misconduct or unethical behaviour attributed to an Advocate or Legal Procurator, shall have power to recommend to the President that a person be disabled perpetually or for a time to exercise the profession of advocate or legal procurator, or, where the findings against an advocate or legal procurator do not, in the opinion of the Commission, justify disability, to inflict fines or make such other provision as it may deem appropriate in the circumstances;

and subject to the provisions of this Title, may make rules concerning its own procedure, and the manner and time for the making and hearing of complaints under this section, and concerning any other matter within its functions, including the conduct of proceedings in any court and the professional conduct of advocates and legal procurators; and may also otherwise regulate its own procedure and any other matter aforesaid.

(7) The Commission may act notwithstanding any vacancy in its membership, but shall not act unless at least three members are present.

(8) For the purposes of this section, but without prejudice to the generality of the other provisions thereof —

(a) any advocate or legal procurator who knowingly shall, directly or indirectly, employ or accept the services of any tout; and

(b) any advocate who agrees with a legal procurator or a notary public, and any legal procurator who agrees with any advocate or notary public, to give or to receive any share of the fees or other remuneration earned by any one of them in respect of professional work,

shall be deemed to have committed an abuse in the exercise of his profession and in connection with professional affairs; and the expression "tout" in this subsection means any person who undertakes in return for a fee, reward or remuneration, whether in cash or in kind or for any other consideration to find clients for any advocate or legal procurator."

Amendment of section 104 of the principal law.

4. Section 104 of the principal law shall be amended by the addition thereto of the following proviso:

"Provided that the period of ten days mentioned in section 460A shall in no case be abridged."

Amendment of section 193 of the principal law.

5. For subsection (4) of section 193 of the principal law there shall be substituted the following subsections:

"(4) The adjournment of a cause shall not be granted except for the purpose of compliance with any procedure laid down in this Code or, in exceptional circumstances, in accordance with the provisions of subsection (5) of this section.

(5) A cause may be adjourned in exceptional circumstances only if the Court is satisfied that such circumstances exist and so states in the decree ordering the adjournment specifying those circumstances, and only on an application filed by the party demand-

ing the adjournment not later than two working days before the day due for hearing or, if the cause of the adjournment arises after the expiration of the said time limit as soon as practicable thereafter; and the application shall specify in detail the circumstances justifying the demand and shall be confirmed on oath by the applicant or, if the applicant is absent from Malta or is otherwise unable to confirm the application in person, by the advocate signing the application who shall, in such case further confirm on oath the applicant's inability to confirm it himself."

6. In section 388 of the principal law, immediately after subsection (2) thereof there shall be added the following new subsection:

Amendment of section 388 of the principal law.

"(3) No warrant in factum may be demanded for the purpose of compelling any authority established by the Constitution or any person holding a public office to perform an act by reason of that office."

7. In Sub-Title VI of Title VIII of Part I of Book Second of the principal law, immediately before section 461 there shall be inserted the following new section:

Insertion of new section 460A to the principal law.

"Proceedings against the Government.
460A. No judicial act, other than a judicial letter or a protest, may be made or filed, and no proceedings may be taken or instituted, and no warrant may be demanded, against the Government or against any authority established by the Constitution, other than the Electoral Commission, or against any person holding a public office in his official capacity, except after the expiration of ten working days from the service against the Government or such authority or person as aforesaid, of a judicial letter or of a protest in which the right claimed or the demand sought is clearly stated; and the Registrar shall refuse to receive any judicial act or other document which is presented in the Registry against the provisions of this section."

8. Section 743 of the principal law shall be amended as follows:

Amendment of section 743 of the principal law.

(a) the section shall be re-numbered as subsection (1) thereof; and

(b) immediately thereafter there shall be added the following new subsections:

"(2) No court in Malta shall have jurisdiction to enquire into the validity of any act or other thing done by the Government or by any authority established by the Constitution or by any person holding a public office in the exercise of their public functions or declare any such act or thing null or invalid or without effect, except and unless —

(a) such act or thing is "ultra vires"; or

(b) such act or thing is clearly in violation of an explicit provision of a written law; or

(c) the due form or procedure has not been followed in a material respect and substantial prejudice has ensued from such non-observance.

(3) No court in Malta shall have jurisdiction to order the Government or any authority established by the Constitution or any person holding a public office to do any act or thing pertaining to their public functions, when the doing of any such act or thing is within their power to do or to refrain

from doing; nor shall any such court have jurisdiction to declare that any such act or thing as aforesaid should or should not be or have been done.

(4) Where any act or other thing done by the Government or by any authority established by the Constitution or by any person holding a public office in the exercise of their public function, has been revoked or cancelled, or has ceased to have effect or to be operative, no court in Malta shall have jurisdiction to enquire into the validity thereof or to declare it null or invalid or without effect.

(5) For the purposes of this section —

(a) an act or thing shall be deemed to be "intra vires" unless the act or thing is clearly and explicitly prohibited or excluded by a written law; and

(b) an act or thing shall be deemed to be within the power of a person to do or to refrain from doing unless it is clearly and explicitly provided in a written law that the act or thing shall or shall not be done.

(6) For the purposes of this section, and of any other provision of this and of any other law, service with the Government is a special relationship regulated by the legal provisions specifically applicable to it and by the terms and conditions from time to time established by the Government, and no law or provision thereof relating to conditions of employment or to contracts of service or of employment applies, or ever heretofore applied, to service with the Government except to the extent that such law provides otherwise.

(7) The provisions of this section shall be without prejudice to any jurisdiction explicitly conferred by the Constitution."

Amendment of section 876 of the principal law.

9. In section 876 of the principal law, immediately after subsection (2) thereof, there shall be added the following new subsection:

"(3) The Court shall not issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in his official capacity unless the authority or person against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the Court is satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused would not be capable of remedy."

Amendment of section 995 of the principal law.

10. In section 995 of the principal law, subsections (2) to (9) both inclusive shall be deleted.

Objects and Reasons

The Objects and Reasons of this Bill are set out in detail in a Press Release issued today by the Department of Information.