

MALTA

ATT Nru. VIII ta' I-1981

ATT maħruġ b'ligi mill-Parlament ta' Malta.

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

ACT No. VIII of 1981

AN ACT enacted by the Parliament of Malta.

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

Nagħti l-kunsens tiegħi.

(L.S.)

ANTON BUTTIGIEG
President

13 ta' Marzu, 1981

ATT Nru. VIII ta' l-1981

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, fareg b'liġi dan li ġej:—

Titolu fil-qosor
u bidu fis-sehh.

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 jiftiehem hekk waħda mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawn-hekk iżjed 'il quddiem imsejjaħ "il-liġi prinċipali".

(2) L-artikoli 4, 6, 7 u 8 ta' dan l-Att għandhom jibdew isehħu b'effett mis-6 ta' Frar, 1981, u l-artikolu 5 għandu jibda jsehħ b'effett mit-18 ta' Mejju, 1981 jew minn dik id-data aktar kmieni li tista' tiġi stabbilita b'avviż fil-Gazzetta mill-Ministru responsabbli għall-Gustizzja fuq il-parir tal-Kummissjoni Hídma fil-Qrati.

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 jidhór 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 Hídma 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 jidhór 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:

Izda wieħed miż-żewġ membri tal-Parlament ikun magħżul mill-Kap ta' l-Oppożizzjoni u izda 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 jaħtar persuna biex taġixxi fiok iċ-*Chairman* kull meta iċ-*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-ħidma tal-qrati kollha ta' ġurisdizzjoni ċivili, kummerċjali u kriminali, magħduda l-Qorti Kostituzzjonali, u li tirrakkomanda lill-Kamra tad-Deputati r-rimedji li fil-fehma tagħha jistgħu jwasslu għal ħidma aktar effiċjenti ta' dawk il-qrati;

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

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

(d) biex tikkunsidra u tirrapporta dwar kull haġa 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, izda bla ħsara għall-ġenerallità ta' dak li ntqal qabel, il-Kummissjoni —

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

(b) għandha tirraporta lill-Ministru responsabbli għall-gustizzja u lill-Kamra tad-Deputati kull każ ta' dewmien bla meħtieġ li tkun saret taf bih u tirrakkomanda dawk il-miżuri li jidhrilha meħtieġa biex jinstab rimejju għad-dewmien, kif ukoll dawk ir-riformi kollha fil-ligġi 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 tistħarreg kull ilment li jsirilha 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 twaħħal penali jew tipprovdi b'dak il-mod l-ieħor li jidhrilha xieraq:

Iżda jekk il-Kummissjoni tkun tal-fehma li minn dak li jirriżultat ha tkun ġustifikata rakkomandazzjoni li avukat jew prokuratur legali għandu jkun inabilitat għal dejjem jew għal żmien ta' iżjed minn sitt xhur, din għandha, qabel ma tagħmel xi rakkomandazzjoni lill-President, tirreferi dak li jirriżultat ha lill-Qorti ta' l-Appell, u l-Qorti għandha teżamina l-konklużjoni tal-Kummissjoni u, wara dawk il-proċedimenti li jidhrilha xierqa, tagħti parir lill-Kummissjoni jekk il-fatti tal-każ jiġġustifikawx jew le l-imsemmija rakkomandazzjoni; u meta tagħmel ir-rakkomandazzjonijiet tagħha lill-President, il-Kummissjoni għandha tiġi iggwidata mill-parir tal-Qorti ta' l-Appell,

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-generalità tad-disposizzjonijiet l-oħra tiegħu —

(a) kull avukat jew prokuratur legali li xjente-ment, direttament jew indirettament, jimpjega jew jaċ-ċetta 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 sehem mid-drittijiet jew xi rimunerazzjoni oħra maq-lugħa minn xi wieħed minnhom dwar xogħol profes-sjonali,

jitqies li għamel abbuż fl-eżerċizzju tal-professjoni tiegħu u dwar fwejjeġ 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 fwejjeġ oħra jew b'xi tpattija oħra tindaħal biex issib klijenti għal xi avukat jew prokuratur legali.

(9) Id-disposizzjonijiet ta' l-Att ta' l-1977 dwar l-Inkjesti għandhom japplikaw *mutatis mutandis* għall-Kum-missjoni."

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

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

"Iżda 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 ħlief biex titħares xi proċedura stabbilita f'dan il-Kodiċi jew, f'ċirkostanzi eċċezzjo-nali, 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 tispe-ċifika 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-dif-feriment 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. 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.

"Proċedi-
menti
kontra
l-Gvern.

460A. (1) Bla ħsara għad-disposizzjonijiet tas-sub-artikolu (2) ta' dan l-artikolu, ebda att ġudizzjarju li bih jinbdew xi proċedimenti ma jista' jiġi pprezentat, u ebda proċedimenti ma jistgħu jittieħdu jew jinbdew, u ebda mandat ma jista' jiġi mitlub, kontra l-Gvern jew kontra xi awtorità mwaqqfa bil-Kostituzzjoni, barra mill-Kummissjoni Elettorali, jew kontra xi persuna li jkollha kariga pubblika fil-kwalità ufficjali tagħha, ħlief wara li jgħaddu għaxart ijiem min-notifika kontra l-Gvern jew dik l-awtorità jew persuna kif intqal qabel, ta' ittra ufficjali jew ta' protest li fih il-pre-

tensjoni jew it-talba tiġi mfissra b'mod ċar; u r-Registatur għandu jirrifjuta li jirċievi kull att għudizzjarju jew dokument ieħor li jiġi pprezentat fir-Registru kontra d-disposizzjonijiet ta' dan l-artikolu.

(2) Id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu ma japplikawx —

(a) għal azzjonijiet għal rimedju taht l-artikolu 47 tal-Kostituzzjoni; jew

(b) għal mandati ta' inibizzjoni; jew

(c) għal azzjonijiet għall-korrezzjoni ta' atti ta' l-istat ċivili;

u meta skond id-disposizzjonijiet ta' xi liġi oħra għandha tiġi mharsa proċedura partikolari, magħdud terminu jew żmien ieħor, id-disposizzjonijiet tas-subartikolu (1) ta' dan l-artikolu m'għandhomx japplikaw u l-imsemmija proċedura, magħdud kull terminu jew żmien ieħor, għandha tapplika u tiġi mharsa minflokhom.”.

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

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

(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, hliet 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

(c) il-forma jew il-proċedura xierqa ma tkunx giet segwita f'haġa importanti u dan in-nuqqas ikun wassal għal preġudizzju sostanzjali;

Iżda għemil jew haġa li tkun fil-limitu tas-setgħat ġenerali jew speċjali ta' persuna jew awtorità m'għandhiex titqies li hi “*ultra vires*” kemm-il darba l-egħmil jew il-haġa ma tkunx b'mod ċar u espliċitu projbita jew eskluża b'liġi miktuba.

(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.

Iżda għemil jew haġa għandha titqies li hi fis-setgħa ta' persuna jew awtorità li tagħmel jew li ma tagħmilx kemm-il

darba ma jkunx provdut b'mod ċar u esplicitu b'ligi miktuba li l-egħmil jew haġa għandha jew m'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 għet revokata jew imħassra jew tkun waqfet milli jkollha effett jew milli tiftaddem, ebda qorti f'Malta ma għandha ġurisdizzjoni li tistharreġ il-validità tagħha jew li tiddikjaraha nulla jew invalida jew mingħajr effett.

(5) 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 ħlief safejn dik il-liġi ma tipprovdi xort'oħra.

(6) Id-disposizzjonijiet ta' dan l-artikolu huma bla ħsara għal kull ġurisdizzjoni esplicitament mogħtija bil-Kostituzzjoni.”.

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

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

“(3) Il-Qorti m'għandha toħroġ 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 l-awtorità jew il-persuna li kontra tagħha jintalab il-mandat ma tikkonfermax fil-qorti bil-miftuħ li l-haġa li qed tintalab li tiġi miżmuma tkun fil-fatt maħsuba li ssir, u l-Qorti tkun sodisfatta, wara li tisma' l-ispegazzjonijiet mogħtija, li kemm-il darba ma jinħariġx il-mandat il-preġudizzju li jinħoloq ma jkunx jista' jiġi rimedjat.”.

9. 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.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 478 tal-11 ta' Marzu, 1981.

C. AGIUS
Speaker

C. MIFSUD
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

ANTON BUTTIGIEG
President

13th March, 1981

ACT No. VIII of 1981

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 and 8 of this Act shall come into force with effect from the 6th February, 1981, and section 5 shall come into force with effect from the 18th May, 1981 or from such earlier date as may be established by notice in the Gazette by the Minister responsible for Justice on the advice of the Workings of the Law Courts Commission.

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 workings of all courts of civil, commercial and criminal jurisdiction, including the Constitutional Court, and to recommend to the House of Representatives the remedies which appear to it conducive to a more efficient functioning of such courts;

(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 and report on 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:

Provided that if the Commission is of the opinion that its findings may justify a recommendation that an advocate or a legal procurator should be disabled perpetually or for a time exceeding six months, it shall, before making any recommendation to the President, refer its findings to the Court of Appeal, and the Court shall examine the findings of the Commission and, after such proceedings, as it may deem appropriate, advise the Commission whether or not the facts of the case justify a recommendation as aforesaid; and in making its recommendations to the President, the Commission shall be guided by the advice of the Court of Appeal,

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.

(9) The provisions of the Inquiries Act 1977 shall apply mutatis mutandis to the Commission.”.

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

Amendment of section 104 of the principal law.

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

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

Amendment of section 193 of the principal law.

“(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 demanding 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 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. (1) Subject to the provisions of subsection (2) of this section, no judicial act commencing any proceedings may be 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 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.

(2) The provisions of subsection (1) of this section shall not apply —

- (a) to actions for redress under section 47 of the Constitution; or
- (b) to warrants of prohibitory injunction; or

(c) to actions for the correction of acts of civil status;

and where in accordance with the provisions of any law a particular procedure including a time-limit or other term is to be observed, the provisions of subsection (1) of this section shall not apply and the procedure aforesaid, including any time-limit or other term, shall apply and be observed in lieu thereof.”.

Amendment of section 743 of the principal law.

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

Provided that an act or thing which is within the general or special powers of a person or authority shall not be deemed to be “ultra vires” unless the act or thing is clearly and explicitly prohibited or excluded by a written law.

(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:

Provided that an act or thing shall be deemed to be within the power of a person or authority 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.

(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, 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 condi-

tions 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.

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

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

Amendment of section 876 of the principal law.

“(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.”.

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

Amendment of section 995 of the principal law.

Passed by the House of Representatives at Sitting No. 478 of the 11th March, 1981.

C. AGIUS
Speaker

C. MIFSUD
Clerk to the House of Representatives