

ABBOZZ TA' LIĠI msejjah

ATT biex jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, Kap.12, u għal affarijiet konsegwenzjali jew inċidentali għal dan.

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

1. It-titolu fil-qosor ta' dan l-Att huwa Att tal-2014 li jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, u dan l-Att għandu jinftehem u jinqara' haġa waħda mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, hawnhekk iżjed 'il quddiem imsejjah "il-Kodiċi".

Titolu fil-qosor.
Kap. 12.

2. Minnufih wara l-artikolu 467 tal-Kodiċi għandu jizdied l-artikolu ġdid li ġej:

Żjieda tal-artikolu 468 ġdid mal-Kodiċi.

"Proċedura sommarja għal żgumbrament minn ċerti artijiet.
Kap. 228.

468. (1) Mingħajr ħsara għas-setgħat li għandu taht l-Att dwar Żgumbrament minn Artijiet, il-Kummissarju tal-Artijiet jista', meta jkun behsiebu jaġixxi għall-iżgumbrament ta' xi persuna minn art li:

(a) tkun okkupata minn dik il-persuna mingħajr ebda titolu; jew

(b) li tkun mogħtija skont termini ta' *encroachment*; jew

Kap. 169.

(ċ) meta, fil-każ ta' art li minn żmien għal żmien tkun giet speċifikata skont id-disposizzjonijiet tal-artikolu 2 tal-Ordinanza dwar il-Kummissarju tal-Artijiet, ikun skada l-perjodu ta' żmien speċifikat f'kuntratt li jkun jagħti titolu; jew

(d) meta, f'każ ta' art li għad li tkun okkupata b'titolu validu li ma jkunx wieħed reali, dik il-persuna tkun qed tikser il-kundizzjonijiet miftiehma,

jitlob l-iżgumbrament minnufih ta' dik il-persuna u t-tneħħija minn dik l-art ta' kull oġġett mobbli.

(2) It-talba msemmija fis-subartikolu (1) għandha ssir permezz ta' dikjarazzjoni maħlufa quddiem ir-Registratur u għandha tiġi notifikata lill-intimat permezz ta' ittra uffiċjali pprezentata fil-Prim'Awla tal-Qorti Ċivili jew fil-Qorti tal-Maġistrati (Għawdex) fil-kompetenza tagħha superjuri, skond il-każ, u għandu jkollha l-istess effett daqslikieku kienet ġudikat tal-qorti kompetenti, kemm-il darba l-intimat, fi żmien għoxrin jum min-notifika li ssirlu ta' dik id-dikjarazzjoni, ma jopponix it-talba billi jipprezenta rikors li fih jitlob li l-qorti tiddikjara t-talba bħala waħda fejn mhuwiex opportun li l-iżgumbrament isir bil-proċedura sommarja:

B'dan iżda li, l-ittra uffiċjali għandha, taħt piena ta' nullità, tavża lill-intimat bid-dritt mogħti lili li jressaq rikors li fih jitlob li l-qorti tiddikjara t-talba bħala waħda fejn mhuwiex opportun li l-iżgumbrament isir bil-proċedura sommarja.

(3) Ir-rikors prezentat skont is-subartikolu (2) għandu jiġi notifikat lill-Kummissarju tal-Artijiet, li jkollu dritt jipprezenta risposta fi żmien għoxrin jum. Il-qorti tgħaddi biex tappunta dak ir-rikors għas-smiġh f'jum li jiġi wara li jgħaddi dak iż-żmien.

(4) F'kazijiet ta' xorta urgenti l-Qorti tista', wara li jsirilha rikors minn xi waħda mill-partijiet, tqassar kull żmien perentorju bħalma huwa previst f'dan l-artikolu bil-mezz ta' digriet li jiġi notifikat lill-partijiet.

(5) Il-Qorti għandha, wara li tappunta r-rikors għas-smiġ, tiddeciedi fuq dan ir-rikors sommarjament wara li tisma' kull xhieda li jidhriha xierqa, u dan fl-iqsar żmien possibbli iżda mhux aktar tard minn erba' xhur mill-gurnata li l-partijiet ikunu gew debitament notifikati.

(6) Il-Qorti għandha tilqa' r-rikors kemm-il darba tkun sodisfatta, wara li tisma' l-ispjegazzjonijiet mogħtija, li r-rikorrenti, minghajr preġudizzju għad-deċizjoni finali li tingħata skont is-sub-artikolu (8), għandu difiża valida x'iqajjem kontra talba għal żgumbrament.

(7) M'hemmx appell mid-deċizjoni tal-Qorti li tilqa' rikors u tiddikjara t-talba tal-Kummissarju bħala waħda fejn mhuwiex opportun li l-iżgumbrament isir bil-proċedura sommarja skont dan l-artikolu.

(8) Meta talba magħmula skont dan l-artikolu tiġi dikjarata mill-Qorti bħala waħda fejn mhuwiex opportun li l-iżgumbrament isir bil-proċedura sommarja għall-fini ta' dan l-artikolu, il-Kummissarju tal-Artijiet jkun jista' jipproponi l-azzjoni li jidhirlu xierqa quddiem il-qorti kompetenti kontra l-pussessur jew detentur tal-art:

B'dan iżda li, minkejja d-dispożizzjonijiet ta' kull liġi oħra, din l-azzjoni għandha tingiebb quddiem il-Prim'Awla tal-Qorti Ċivili jew fil-Qorti tal-Maġistrati (Għawdex) fil-kompetenza tagħha superjuri li jkunu il-qrati esklussivament kompetenti sabiex jisimġu u jiddeciedu t-talba għal żgumbrament li ssir wara li tkun giet eżawrita l-proċedura skont dan l-artikolu u kull talba konnessa li tista' tingiebb magħha.

Għall-għanijiet ta' dan l-artikolu, "art" għandha l-istess tifsira bħal ma għandha fl-Att dwar it-Trasferiment ta' Artijiet tal-Gvern."

C 898

Zieda ta' artikolu 468A ġdid mal-Kodiċi.

3. Minnufih wara l-artikolu 468 tal-Kodiċi għandu jiżdied l-artikolu ġdid li ġejj:

"Proċedura sussegwenti għal talba taht l-artikolu 468.

468A. (1) F'kawża magħmula mill-Kummissarju tal-Artijiet, il-Qorti tista' tordna lid-detentur jew pussessur tal-art li jġib, fi żmien li jiġi mogħti mill-Qorti, garanzija tajba f'ammont li jiġi ffissat mill-Qorti, liema garanzija tagħmel tajjeb għal danni jew telf ta' kirjiet li l-Kummissarju jista' jsofri fil-mori tal-proċeduri.

(2) F'każ li jiġi impost l-għoti tal-garanzija din għandha tibqa' fis-seħħ sa xahar wara li l-azzjoni tal-Kummissarju tal-Artijiet tinqata' b'mod definittiv.

(3) F'każ li parti tonqos li gġib garanzija kif stabbilita mill-Qorti, il-Qorti għandha, fuq talba tal-Kummissarju magħmula b'rikors, tħassar l-ordni li tkun tat skont l-artikolu 468 u b'hekk it-talba tal-Kummissarju magħmula fit-termini ta' dak l-artikolu tiġi fis-seħħ u għandhom japplikaw l-effetti kontemplati fis-subartikolu (2) tal-imsemmi artikolu 468."

Emendi konsegwenzjali għall-Ordinanza dwar il-Kummissarju tal-Artijiet. Kap. 169.

4. L-artikolu 2 tal-Ordinanza dwar il-Kummissarju tal-Artijiet għandu jiġi emendat kif ġejj:

(a) fl-ewwel proviso tiegħu, minflok il-kliem "u d-disposizzjonijiet tal-artikolu 181, tas-Subtitolu VI u VII tat- Titolu VIII tat-Taqsima I tat-Tieni Ktieb, l-artikolu 590(2), l-artikolu 627, l-artikolu 637 u l-artikolu 873 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili" għandhom jidhlu l-kliem "u d-disposizzjonijiet tal-artikolu 181, tas-Subtitolu VI u VII tat- Titolu VIII tat-Taqsima I tat-Tieni Ktieb, l-artikolu 590(2), l-artikolu 627, l-artikolu 637, l-artikolu 837(2) u l-artikolu 873 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili"; u

(b) fit-tielet proviso tiegħu, minflok il-kliem "u d-disposizzjonijiet tal-artikolu 181, tas-Subtitoli VI u VII tat- Titolu VIII tat-Taqsima I tat-Tieni Ktieb, tal-artikolu 590(2), tal-artikolu 627, tal-artikolu 637, u tal-artikolu 873 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili" għandhom jidhlu l-kliem "u d-disposizzjonijiet tal-artikolu 181, tas-Subtitolu VI u VII tat- Titolu VIII tat-Taqsima I tat-Tieni Ktieb, l-artikolu 590(2), l-artikolu 627, l-artikolu 637, l-artikolu 837(2) u l-artikolu 873 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili".

Ghanijiet u Raġunijiet

L-ghanijiet ta' u r-raġunijiet ta' dan l-Abbozz ta' Liġi huma sabiex isiru emendi lill-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili bil-ghan li tiġi ffaċilitata l-proċedura għall-iżgumbrament f'ċerti każi li jirrigwardaw art tal-Gvern u meta r-raġunijiet għal żgumbrament ikunu ċari.

C 900

**A BILL
entitled**

An Act to amend the Code of Organisation and Civil Procedure, Cap. 12, and for matters consequential or incidental thereto.

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. The short title of this Act is the Code of Organisation and Civil Procedure (Amendment) Act, 2014, and this Act shall be read and construed as one with the Code of Organisation and Civil Procedure, hereinafter referred to as the "Code".

Cap. 12.

Addition of new article 468 to the Code.

2. Immediately after article 467 of the Code there shall be added the following new article:

"Summary proceedings for eviction from certain land. Cap. 228.

468. (1) Without prejudice to the powers held by virtue of the Land (Compulsory Eviction) Act, the Commissioner of Land may, when he intends to act for the compulsory eviction of any person from any land which is:

(a) occupied by such person without any title; or

(b) held on encroachment terms;

or

(c) where, in respect of land that may from time to time be specified in terms of article 2 of the Commissioner of Land Ordinance, the time-period specified in a contract conferring title has lapsed; or

Cap. 169.

(d) where, in respect of land that, although occupied with a valid title not being a real title, such person is in breach of the agreed conditions,

request the immediate compulsory eviction of such person and the removal therefrom of any movable effect.

(2) The request mentioned in sub-article (1) shall be made by means of a declaration to be sworn before the Registrar and shall be notified to the respondent by way of a judicial letter filed in the First Hall of the Civil Court or in the Court of Magistrates (Gozo) in its superior jurisdiction, as the case may be, and shall have the same effect of a *res judicata* of the competent court, unless the respondent, within twenty days from service of the said declaration, does not oppose the request by filing an application in which he asks the Court to declare that the request is unfounded:

Provided that the judicial letter shall, on pain of nullity, inform the respondent of his right to file an application in which he asks the Court to declare the request as unfounded.

(3) The application filed in terms of sub-article (2) shall be served on the Commissioner of Land, who shall have the right to file a reply within twenty days. The court shall proceed to set a date for hearing for the said application after the expiration of that period.

(4) In urgent cases, the Court may, after an application filed by any one of the parties, reduce any peremptory period as provided in this article by means of a decree which is to be served on the parties.

(5) The Court shall, following the appointment of the application for hearing, decide upon this application summarily after having heard all evidence which it deems fit, in the shortest time possible but not later than four months from the day when the parties would have been notified.

C 902

(6) The Court shall uphold the application if it is satisfied, after having heard the explanations given, without prejudice to the final decision given in accordance with sub-article (8), that the applicant has a valid defence to plead against the request for eviction.

(7) No appeal shall lie from the decision of the Court upholding the application and declaring the request of the Commissioner as unfounded in terms of this article.

(8) When a request made in terms of this article is declared by the Court as being unfounded for the purposes of this article, the Commissioner of Land may proceed with the action he deems proper before the competent Court against the possessor or holder of the land:

Provided that, notwithstanding the provisions of any other law, such action shall be brought in the First Hall of the Civil Court or in the Court of Magistrates (Gozo) in its superior jurisdiction, which Court shall be exclusively competent to hear and decide on the request for compulsory eviction, made after the procedures in terms of this article, and any other connected request that can be brought in connection with the said eviction, have been exhausted.

For the purposes of this article, "land" has the same meaning as given to it in the Disposal of Government Land Act."

Cap. 268

Addition of new article 468A to the Code.

3. Immediately after article 468 of the Code there shall be added the following new article:

"Procedure subsequent to a request made under article 468.

468A. (1) In an action brought by the Commissioner of Land, the Court may order the holder or possessor of land to provide, within the time stipulated by the Court, a guarantee for an amount to be fixed by the Court, which security shall make good for damages or loss of rent which the Commissioner may suffer during the term of the proceedings.

(2) In the event that a guarantee is imposed, this shall remain in force up to one month after the action brought by the Commissioner for Land is decided in a definite manner.

(3) In the event that a party fails to provide security as fixed by the Court, the Court shall, upon the demand by the Commissioner by means of an application, revoke the order made in accordance with article 468 and thereby the request of the Commissioner made within the terms of such article shall come into force and the effects contemplated in sub-article (2) of the said article 468 shall apply."

4. Article 2 of the Commissioner of Land Ordinance shall be amended as follows:

(a) in the first proviso thereto, for the words "and the provisions of article 181, Subtitle VI and VII of Title VIII of Part I of Book Second, article 590(2), article 627, article 637 and article 873 of the Code of Organization and Civil Procedure" there shall be substituted the words "and the provisions of article 181, Subtitle VI and VII of Title VIII of Part I of Book Second, article 590(2), article 627, article 637, article 837(2) and article 873 of the Code of Organization and Civil Procedure"; and

(b) in the third proviso thereto, for the words "and the provisions of article 181, of Sub-titles VI and VII of Title VIII of Part I of Book Second, of article 590(2), of article 627, of article 637, and of article 873 of the Code of Organization and Civil Procedure" there shall be substituted the words "and the provisions of article 181, of Subtitle VI and VII of Title VIII of Part I of Book Second, article 590(2), article 627, article 637,

Consequential amendments to the Commissioner of Land Ordinance. Cap. 169.

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article 837(2) and article 873 of the Code of Organization and Civil Procedure".

Objects and Reasons

The objects and reasons of this bill are to amend the Code of Organization and Civil Procedure with the aim of facilitating the procedure for compulsory eviction in certain cases concerning Government land and where the reasons for compulsory eviction are clear.