

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