CHAPTER 369

COMMISSION FOR THE ADMINISTRATION OF JUSTICE ACT

To make provision conferring powers upon the Commission for the Administration of Justice and regulating the procedures of the said Commission.

(3rd June, 1994)*

ACT XI of 1994, as amended by Legal Notice 425 of 2007 and Act XLV of 2020 and XIX of 2021.

Short title.

1. The short title of this Act is the Commission for the Administration of Justice Act.

Interpretation. *Amended by: XIX.2021.13.*

2. In this Act, unless the context otherwise requires -

"Code of Ethics" means a code or codes of conduct, made under article 101A of the Constitution to regulate the conduct of persons to which the code applies, with their colleagues, the courts, members of other professions and the public in general. The Codes of Ethics to be made under article 101A of the Constitution shall make specific provision against such abusive or negligent conduct as may be deemed necessary to be specified, and shall further provide that it shall be a breach of ethics to conduct oneself abusively or negligently or in a manner repugnant to the decorum, dignity or honour of one's office or profession, or in such manner which could seriously effect the trust conferred on such persons by their office or profession;

"Commission" means the Commission for the Administration of Justice established by article 101A of the Constitution;

"law firm" shall have the same meaning as assigned to it in the Code of Organization and Civil Procedure, the Code of Ethics and Conduct for Advocates and may also include an association or partnership consisting of or employing practicing advocates;

Cap. 12.

"misconduct in relation to advocates or legal procurators" means:

(*a*) any breach of a code or codes of ethics relative to the profession of advocate or legal procurator, as the case may be;

(*b*) a serious failure to comply with the anti-money laundering and counter funding of terrorism obligations under the Prevention of Money Laundering Act or the Prevention of Money Laundering and Funding of Terrorism Regulations, reported to the Committee for Advocates and Legal Procurators by the Financial Intelligence Analysis Unit;

Cap. 373.
S.L. 373. 01.

(*c*) being found guilty by a court of law of a crime affecting public trust or of theft or of fraud or of knowingly

**See* Government Notice No. 365 of 3rd June, 1994.

receiving property obtained by theft or fraud or of any crime punishable by a term of imprisonment exceeding one (1) year with the exception of involuntary offences;

"unit" means a sum of money equivalent to one *per centum* of the annual salary of the Attorney General as at the time established according to law.

Committee for Advocates and Legal Procurators. *Amended by: XIX.2021.14.*

3. (1) The Commission shall at all times have a committee to be styled the Committee for Advocates and Legal Procurators.

(2) The Committee for Advocates and Legal Procurators shall consist of:

(*a*) a Chairperson who shall be appointed from amongst retired judges by the Commission for a period of four (4) years;

(*b*) an advocate appointed by the Attorney General for a period of four (4) years;

(*c*) an advocate appointed by the State Advocate for a period of four (4) years;

(*d*) a senior public official of the Ministry responsible for justice who shall be appointed by the Minister responsible for justice; and

(*e*) three (3) advocates appointed by the Chamber of Advocates for a period of four (4) years, so however that where the committee is dealing with any matter relating to the profession of legal procurators, or relating to the conduct of a legal procurator, three (3) legal procurators appointed by the Chamber of Legal Procurators shall sit instead of the three (3) advocates appointed by the Chamber of Advocates..

(3) (*a*) Any member of the committee may be challenged and shall abstain in the same circumstances as a judge of the superior courts may be challenged or may abstain.

(*b*) Where a member has been challenged or has abstained the President acting in accordance with his own deliberate judgment shall appoint as a substitute member to sit on the committee where possible, a person who in his opinion has as far as may be the same qualities and qualifications as the member substituted.

(4) Where the members to be appointed under sub-article (2)(v) are not appointed within two weeks from a call for their appointment by the Secretary of the Commission, then the appointment of the said members shall be made by the President of Malta, who in making such appointment shall act in accordance with his own deliberate judgment.

(5) (*a*) The Committee shall have competence in all matters falling under the functions of the Commission relating to the professional conduct of advocates and legal procurators and to the exercise of the profession in general; and

(*b*) The Committee shall be responsible to fulfil the functions assigned to it under Title V of Book First of the Code of Organization and Civil Procedure. Cap. 12.

(6) The Committee shall make a report to the Commission of its findings in any investigation or study carried out by it.

(7) Where the Committee finds that there has been misconduct by an advocate or legal procurator in the exercise of his profession or by a law firm in the provision of its services, or finds that an advocate or legal procurator is no longer a fit and proper person or where the Committee finds that the advocate or legal procurator suffers from an infirmity of mind that may seriously affect the exercise of his profession, it may -

(*a*) request the Commission to recommend to the Prime Minister to advise the President of Malta that the advocate or legal procurator be suspended perpetually or for a specified period from the exercise of his profession; or

(*b*) recommend to the Commission that the registration of a law firm be suspended perpetually or for a specified period of time; or

(*c*) impose a pecuniary penalty, recoverable as a civil debt by the Secretary of the Commission, not exceeding ten units; or

(*d*) admonish the advocate or legal procurator; or

(*e*) make such recommendations to the advocate or legal procurator as it may deem appropriate in the circumstances.

(8) Where the Committee deems it appropriate, it may, notwithstanding anything in article 8(1), make public any action taken by it under this article.

(9) The Commission shall, upon an appeal made to it, have the same powers *mutatis mutandis* as the Committee has under subarticles (7) and (8).

4. (1) In the exercise of their functions the Commission and the Committee for Advocates and Legal Procurators shall have all the powers as are assigned to the First Hall of the Civil Court by the Code of Organization and Civil Procedure. Powers. *Amended by: XIX.2021.15.* Cap. 12.

(2) Four (4) members, including the Chairperson, of the Committee for Advocates and Legal Procurators shall constitute a *quorum* in its meetings. Save as is provided in article 101A of the Constitution and in any rules made for the purpose by the Commission that Committee shall regulate its own procedures.

5. (1) The Committee for Advocates and Legal Procurators shall, of its own motion, or at the request of the Commission, or on the complaint of any person, have the power and duty: Supervisory power of Committee for Advocates and Legal Procurators. *Substituted by: XIX.2021.16.*

(*a*) to investigate, enquire into and decide upon any misconduct of any advocate or legal procurator in the exercise of the profession or of any law firm in the provision of its services upon any complaint that an advocate or legal procurator may no longer be a fit and proper person or upon the inability of any advocate or legal procurator to exercise his profession because of infirmity of mind or that the law firm is not complying with the provisions of the Code of Organization and Civil Procedure and the Code of Ethics;

Cap. 12.

(*b*) without prejudice to any other action possible under any other law to impose disciplinary penalties and to take such other measures as it considers appropriate and as are provided for under this Act.

(2) Any investigation or inquiry as is referred to under paragraph (a) of sub-article (1) may only be commenced by the Committee within six (6) months from the date in which the Commission, the Committee or the complainant, as the case may be, becomes aware of such misconduct:

Provided that in any case any investigation or inquiry as is referred to under paragraph (a) of sub-article (1) may only be commenced not later than five (5) years from the date of such misconduct.

Right of appeal. *Amended by: L.N. 425 of 2007; XIX.2021.17.*

6. (1) There shall be a right of appeal to the Commission from a decision of the Committee for Advocates and Legal Procurators.

(2) (*a*) The person or law firm against whom the Committee makes a finding and the Chamber of Advocates where the complaint is against an advocate or law firm, and the Chamber of Legal Procurators where the complaint is against a legal procurator, shall have the right of appeal to the Commission:

Provided that when an appeal is declared frivolous or vexatious by the Commission, the Commission may impose a pecuniary penalty on the appellant in a sum not exceeding ten units which penalty is recoverable as a civil debt by the Secretary of the Commission.

(*b*) The Commission shall from time to time establish rules of procedure for such appeals.

(*c*) A person or law firm against whom a complaint is made shall be entitled to sue the complainant in addition to the damages which may be due under any law for the time being in force in respect of any actual loss, or injury, the court may grant to the person or law firm against whom the complaint is made a sum not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75), if the complaint proves unfounded and he can prove that the complaint was the result of gross negligence, or malice, or was vexatious.

Proceedings to be held *in camera*. *Amended by: XIX.2021.18.*

7. (1) The complainant and the person or law firm whose conduct is being investigated shall have the right to be present during the whole investigative process, produce witnesses in support of the complaint, or in defence, and to be assisted by an advocate or legal procurator. Unless the person or law firm being investigated requests otherwise, the hearing before the Committee for Advocates and Legal Procurators and the Commission shall be held *in camera.* The finding shall only be delivered in public where the hearing is not held *in camera*.

(2) Notwithstanding the provisions of subarticle (1), the Committee for Advocates and Legal Procurators shall transmit to the committee of the Chamber of Advocates a copy of any decision delivered by it on a complaint against an advocate or law firm, and shall transmit to the committee of the Chamber of Legal Procurators a copy of any decision delivered by it on a complaint against a legal procurator. The committees of the said chambers and every member thereof shall, where the complaint is heard *in camera,* treat such information as secret and confidential.

Additional powers of the Commission. *Amended by: XLV.2020.11.*

8. The Commission shall in addition to the functions conferred to it under article 101A of the Constitution or under any other law, have the functions and powers to carry out investigations on any judge or magistrate according to article 101B of the Constitution in accordance with articles 10 and 11.

Procedure to be followed under article 101B. *Substituted by: XLV.2020.12.*

9. (1) When the Committee for Judges and Magistrates reports its findings to the Commission in accordance with article 101B(10)(c) of the Constitution, the Commission shall communicate the report of the Committee for Judges and Magistrates to the judge or magistrate, as the case may be, and shall be given a reasonable opportunity to submit a written statement within such time as may be specified by the Commission.

(2) The Commission shall carry out the necessary investigation and report to the President. If the report of the Commission states that there is no misconduct or that the judge or magistrate has no incapacity, no further action shall be taken in respect of that report.

(3) If the report of the Commission has found that the misconduct has been proven, the Commission shall make a report of its decision to the President advising the removal of the judge or magistrate as the case may be. A copy of this decision shall be given to the judge or magistrate, as the case may be.

(4) The proceedings of the Commission under this article shall be kept *in camera*. The judge or magistrate whose conduct is being investigated shall have the right to be present throughout the trial, to produce evidence in support of the allegations mentioned in the report of the Committee for Judges and Magistrates or defence, and to be assisted by a lawyer or legal procurator.

(5) The decision of the Commission may be appealed by the judge

or magistrate, as the case may be, in accordance with article 101C of the Constitution.

Medical Board. *Amended by: XLV.2020.13.*

10. (1) Where it is alleged that the judge or magistrate is unable to perform the functions of his office because of infirmity of body or mind and the allegation is denied, the Commission may order the medical examination of the judge or magistrate by such medical board as may be appointed for the purpose by the President and the judge or magistrate, as the case may be, shall submit himself to such medical examination within the time specified by the Commission.

(2) The medical board shall submit a report to the Commission stating therein whether there exists any infirmity of body or mind, as the case may be, and in case such infirmity exists, whether it renders the judge or magistrate unable to perform the functions of his office.

(3) If the judge or magistrate refuses to undergo any medical examination considered necessary by the medical board, the Board shall submit a report to the Commission stating therein the examination which the judge or magistrate has refused to undergo, and the Commission may, on receipt of such report, presume that the judge or magistrate suffers from such infirmity of body or mind as is alleged in the report of the Committee for Judges and Magistrates referred to in article 10(1).

(4) The provisions of the foregoing subarticles of this article shall apply *mutatis mutandis* where it is alleged that an advocate or a legal procurator is unable to exercise his profession because of infirmity of mind.

Reports by judges and magistrates to the Commission for the Administration of Justice.

11. Every judge and magistrate presiding over any court shall, not later than the fifteenth day of January of every year, make a report to the Commission for the Administration of Justice giving a list of all cases pending before the court over which he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending and the time within which the judge or magistrate, as the case may be, expects the case to be disposed of by the said court.

Procedure to be followed under articles 91 and 91A of the Constitution. *Added by: XLV.2020.14.*

12. (1) Where notice is given in the House of a motion for presenting an address to the President as is referred to in article 91(5) and article 91A(5) of the Constitution, the Speaker shall, without allowing any publicity, keep the motion pending, and shall refer the same for investigation to the Commission.

(2) The motion shall contain definite charges against the holder of the office on the basis of which the investigations are to be held. Together with the motion there shall be filed a statement showing the grounds on which each of such charges is based.

(3) Such charges together with such statement shall be communicated to the holder of the office and the holder of the office shall be given a reasonable opportunity to present a written statement of defence within such time as may be specified by the Commission.

(4) The Commission shall carry out the necessary investigation and make a report thereon to the Speaker. If the report of the Commission contains a finding that there is no misbehaviour or that the holder of the office does not suffer from any inability, then, no further steps shall be taken in the House in relation to the report and the motion pending in the House shall not be proceeded with.

(5) If the report of the Commission contains a finding *prima facie* that the misbehaviour or incapacity has been proved then, the motion referred to in article 97(2) of the Constitution shall, together with the report of the Commission, be taken up for consideration by the House.

(6) If upon consideration by the House, it is satisfied that the misbehaviour or incapacity has been proved and if the motion is adopted by the House in accordance with the provisions of article 91(5) or 91A(5) of the Constitution then the misbehaviour or inability of the holder of the office to perform the functions of office shall be deemed to have been proved and an address praying for the removal of the holder of the office shall be presented to the President by the House in the same session in which the motion has been adopted.

(7) Proceedings by the Commission under this article shall be held *in camera*. The member of the House presenting the motion and the holder of the office whose conduct is being investigated shall have a right to be present during the whole process, to produce witnesses in support of the charges set in the motion or in defence, and to be assisted by any advocate or legal procurator.

(8) The provisions of article 10 shall apply *mutatis mutandis* where it is alleged that the holder of the office is unable to perform the functions of office on the grounds of infirmity of body or mind.