CHAPTER 394

TRIBUNAL FOR THE INVESTIGATION OF INJUSTICES ACT

To make provision for the establishment of an independent tribunal for the hearing of complaints of certain injustices occurring between 1987 and 1995.

(2nd June, 1997)*

ACT VIII of 1997, as amended by Act XVI of 1997; and Legal Notice 425 of 2007.

Short title.

1. The short title of this Act is the Tribunal for the Investigation of Injustices Act.

Interpretation.

2. In this Act unless the context otherwise requires -

"the tribunal" means the Tribunal for the Investigation of Injustices established under article 3;

"injustice" has the meaning assigned to it under article 6;

"person aggrieved" means an individual who claims to have sustained such injustice as is mentioned in article 6 but does not include a company or other commercial partnership or an individual or other person claiming as a shareholder or member of a company or other commercial partnership, or a group or association which includes any such company or other commercial partnership;

"public officer" has the same meaning assigned to it by article 124 of the Constitution;

"statutory body" means any corporation or other body corporate established by law and includes any partnership or body in which the Government or any one or more of the said bodies aforesaid or any combination thereof has a controlling interest or had a controlling interest between the 9th May, 1987 and the 15th May, 1995 or over which the Government or any one or more of the said bodies or a combination thereof has effective control or had effective control between the 9th May, 1987 and the 15th May, 1995.

Tribunal for the Investigation of Injustices.

3. (1) There shall be one or more tribunals, each of which is to be known as the Tribunal for the Investigation of Injustices and each consisting of a chairman, appointed by the President of Malta acting on the advice of the Prime Minister.

(2) The chairman shall be a person who holds, or has held the office of a judge or of a magistrate in Malta or who has practised as an advocate in Malta for periods amounting in the aggregate to not less than twelve years; provided that an advocate appointed as chairman of the tribunal shall not be allowed the private practice of his profession.

**See* article 1 of the Act as originally enacted, part of which has been omitted under the Statute Law Revision Act, 1980, and Legal Notice 63 of 1997.

(3) A person shall not be qualified to hold office as chairman of the tribunal -

(*a*) if he is or has been a member of or a candidate for election to the House of Representatives; or

(*b*) if he is or has been a member of a local council.

(4) Subject to the provisions of this article, the office of chairman of the tribunal shall become vacant:

(*a*) at the expiration of the term for which the tribunal is appointed;

(*b*) if any circumstances arise that, if he were not chairman of the tribunal would cause him to be disqualified for appointment as such;

(*c*) in the case of a chairman who is a judge or magistrate on his ceasing to be a judge or magistrate and in the case of a chairman who is not a judge or magistrate if he resigns his office by letter to the President of Malta.

(5) (*a*) The chairman of the tribunal shall not be removed from his office except by the President of Malta upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

Cap. 369.

(*b*) The provisions of the Commission for the Administration of Justice Act shall apply, *mutatis mutandis*, to a motion as is referred to in paragraph (*a*) as it applies to a motion under article 97(2) of the Constitution.

(6) If the office of chairman of the tribunal is vacant or if, for any reason, he is unable to perform the functions of his office, the President of Malta acting on the advice of the Prime Minister may appoint a person who is qualified to be appointed chairman of the tribunal to be a temporary chairman of the tribunal, and any person so appointed shall, subject to the provisions of subarticles (4) and (5), cease to be such a chairman when a person has been appointed to fill the vacancy or, as the case may be, when the chairman who was unable to perform the functions of his office resumes those functions.

(7) The chairman of the tribunal may be challenged or shall abstain in the same circumstances as a judge of the superior courts; and in any such case the registrar of the tribunal shall assign that case to another tribunal whenever such other tribunal is in office, so however that where only one tribunal is in office or when abstentions or challenges are raised in all the tribunals in office, the President of Malta acting on the advice of the Prime Minister shall appoint a person qualified for such appointment to be chairman of the tribunal for the particular case or cases in respect of which the chairman has been challenged or has abstained.

(8) A person other than a judge or magistrate appointed as chairman of the tribunal shall during the tenure of his office enjoy the same salary, allowances and benefits of a judge of the superior courts.

Term of the tribunal.

4. The term of the tribunal shall expire on the expiration of four years from the coming into force of this Act:

Provided that the said term may, at any time before its expiry, be extended by resolution of the House of Representatives for a further period or periods each of not more than one year.

Application of the provisions of this Act.

5. (1) Subject to the provisions of subarticle (3), this Act applies to the Government, and to any statutory body as defined in article 2 (hereinafter in this Act referred to as "the persons to whom this Act applies").

(2) In this Act, reference to the Government includes a reference to any Government department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member of, or servant of, an authority of the Government. Reference to a statutory or other body includes a reference to any director, member, manager or other officer or servant of such body.

(3) (*a*) This Act does not apply to the persons or bodies listed in Part A of the First Schedule.

(*b*) This Act shall not apply to the bodies listed in Part B of the First Schedule, unless proof to the satisfaction of the tribunal is produced showing that all available means of redress have been exhausted.

(*c*) The Prime Minister may by order in the Gazette amend, vary or substitute the lists in Part A and Part B of the First Schedule. No order under this paragraph shall have effect unless it is approved by a resolution of the House of Representatives.

(*d*) The tribunal shall not entertain a complaint that requires the investigation in respect of such action or matter as is described in Part C of the First Schedule.

(4) This Act shall not apply to any act or omission occurring before the 9th May, 1987 or after the 15th May, 1995.

Powers of the tribunal.

6. (1) The tribunal shall have the power to hear and determine any written complaint made by any person who claims to have sustained injustice in consequence of any undue distinction, exclusion or preference which has been made or given to his prejudice, or of any disability or restriction to which he has been subjected, by any action taken by any person to whom this Act applies in respect of any of the following:

(*a*) appointments, promotions or transfers of public officers;

(*b*) appointments, promotions or transfers of members, officers or employees of any body established by law;

(*c*) recruitment for employment;

(*d*) licences or permits required by law;

(*e*) any other matter which may be approved by resolution of the House of Representatives.

(2) Notwithstanding the provisions of subarticle (1), the tribunal shall decline to exercise its powers under this article in any case where a complaint thereon has been investigated by the Commission set up under the Investigation of Injustices Act or action has been taken on the matter before a court of law.

Cap. 320.

Procedure.
Amended by: L.N. 425 of 2007.

7. (1) Complaints before the tribunal shall be made by application substantially in the form set out in the Second Schedule.

(2) The application shall contain a statement as to the facts on which it is based, and shall be accompanied by:

(*a*) a list of witnesses together with their full address stating in respect of each of them the proof by the testimony of each witness it is intended to establish by their evidence; and

(*b*) any document in support of the application.

(3) The application together with the said list and documents if any shall be filed in the Registry of the tribunal during the time in which the Registry of the Superior Courts is kept open. A copy of the said application, list and documents if any, shall be served upon the person to whom this Act applies against whom the complaint is directed (hereinafter referred to as "the respondent").

(4) The respondent shall file a reply in the said Registry by not later than twenty days of the receipt of the application. The reply shall contain:

(*a*) a statement of the fact upon which the respondent bases his rebuttal of the claim and shall be accompanied by a list of his witnesses together with their full addresses stating in respect of each of them the proof it is intended to establish by his evidence; and

(*b*) any document in rebuttal of the claim.

The reply, lists and documents shall be served on the complainant.

(5) After the lapse of the period referred to in subarticle (4) the tribunal shall fix a date and time for the hearing of the complaint. This date and time is to be notified to the complainant and the respondent by the registrar who shall also issue the necessary summons for the hearing of witnesses. On that day the tribunal shall hear, under oath, the evidence of the complainant and the respondent as well as that of the other witnesses; the complainant and the respondent shall then make their submissions to the tribunal.

(6) During the hearing the parties may be assisted by a lawyer or legal procurator or any other person who enjoys their trust:

Provided that no person may claim fees for assisting a person

before the tribunal which are higher than those which may be charged by an advocate for the same service.

(7) Every such hearing shall be conducted in public.

(8) The tribunal shall give the parties a fair hearing within a reasonable time.

(9) (*a*) The decision of the tribunal shall be delivered in public.

(*b*) In its decision the tribunal shall decide whether the complaint is justified and in arriving at its decision it shall take into consideration the laws, regulations or provisions of the Estacode in force at the time of the act or omission upon which the complaint is based.

(*c*) Where the tribunal decides that the complaint is justified in whole or in part, it shall, subject to the provisions of paragraph (*d*), recommend redress in kind, bearing in mind the laws, regulations and the provisions of the Estacode as are in force on the date of the recommendation.

(*d*) Where in accordance with such laws, regulations or provisions of the Estacode it is not possible for the tribunal to order redress in kind, the tribunal may recommend the payment of compensation which shall in no case exceed the sum of eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87).

(*e*) The decision of the tribunal shall be final and no appeal shall lie therefrom.

(10) It shall be the duty of the registrar to ensure that the decision of the tribunal be sent to the Prime Minister within ten days of its delivery.

(11) It shall be the duty of the Prime Minister to implement the recommendations of the tribunal by setting up such procedures and giving such directives as are necessary for the implementation of the said recommendations.

(12) The provisions of article 460(1) of the Code of Organization and Civil Procedure shall not apply to any proceedings before the tribunal. Cap. 12.

(13) The Minister responsible for justice may by regulations establish the fees payable to the Registry of the tribunal.

Summoning of witnesses and administration of oaths. *Amended by: L.N. 425 of 2007.*

8. (1) The tribunal shall have power, exercisable through its chairman -

(*a*) to summon witnesses;

(*b*) to administer the oath to any witness and require him to give evidence.

(2) Summonses for attendance of witnesses shall be in the form set out in the Second Schedule, and shall be signed by the registrar of the tribunal.

Cap. 12.

(3) The provisions relating to service under Title IV of Part I of Book Second of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the service of summons under this Act as well as to the service of complaints, replies, lists and other documents referred to in article 7 as well as any other Acts filed by the parties or issued by the tribunal.

(4) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause, to answer or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by or with the concurrence of the tribunal, or refuses or fails, without sufficient cause, to produce any document he was required to produce by or with the concurrence of the tribunal, shall be liable, on conviction, to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) or to imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that, notwithstanding the generality of the provisions of subarticle (1)(*b*), no person giving evidence before the tribunal may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given by him before the tribunal be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

(5) Proceedings in respect of any offence against this article shall be instituted at the instance of the Attorney General.

Period of complaint.

9. A complaint made under this Act shall not be entertained if it is made after the lapse of six months from the date of the coming into force of this Act.

Report.

10. The tribunal shall, every six months starting from the date of commencement of this Act, make a report of its decisions to the House of Representatives; such report shall be submitted by the registrar to the Speaker who shall cause it to be brought to the notice of the House of Representatives.

Registrar and other staff of the tribunal.

11. (1) There shall be a registrar to the tribunal who shall be vested with the responsibility for the administration of the office of the tribunal, and who shall ensure a fair distribution of duties between the various chairmen by assigning to them the applications filed as aforesaid as far as may be by rotation in accordance with the date of filing of the applications, so however that the registrar may in his discretion take into account the subject matter of each application so as to ensure that applications of the same nature are, as far as may be, dealt by the same tribunal.

(2) The registrar shall be a person appointed by the Prime Minister or a public officer designated by the Prime Minister to perform the functions of registrar.

(3) The tribunal shall have such other staff as the Prime Minister may deem necessary and appoint or designate as aforesaid.

Oaths of allegiance and of office to be taken by the chairman.

12. (1) The chairman, including a temporary chairman shall, before entering on the execution of his office, take, before the President of Malta, the oath of allegiance set out in the Constitution of Malta and the following oath:

Oath of Office

I .....do swear that I will faithfully perform the duties of chairman of the tribunal for the Investigation of Injustices without favour or partiality, according to justice and right, and in accordance with the laws and customs of Malta, to the honour of God and the Republic of Malta, and that I will not hold, either directly or indirectly, any communication with any complainant or respondent in any case before the said tribunal, his advocates or legal procurators, or with any other person on behalf of such person, in regard to any application pending or about to be filed in the said tribunal, except in the tribunal in public hearing saving the cases expressly provided for by law; and that I will disclose in the tribunal and make known to the President of Malta any such communication as may be made to me. And I do further swear that I will not act, either directly or indirectly, as an Advocate, or arbitrator, nor give in any case counsel or advice to any person in regard to any complaint already entered or to be entered in the said tribunal, saving the cases excepted by law, without the permission of the President of Malta first had and obtained upon an application to that effect. So help me God.

(2) Where any communication as is referred to in the form of oath contained in subarticle (1) consists in an anonymous letter or in a letter the writer whereof cannot be readily identified, or where any such communication contains insulting or offensive expressions, the chairman need not read out the communication but may instead during a public hearing disclose the fact of such receipt and shall in any case make the content thereof known to the President of Malta.

Chairman not to be called to give evidence.

13. The chairman of the tribunal shall not be called upon to give evidence in any proceedings, on matters coming to his knowledge in the course of any proceedings in connection with any complaint under this Act.

Expenses of administration.

14. Any salary or expense payable in carrying this Act into effect shall be defrayed out of the Consolidated Fund without any further appropriation other than this Act.

Provisions of Code of Organization and Civil Procedure to apply. Cap. 12.

15. Subject to the provisions of this Act, the provisions of the Code of Organization and Civil Procedure relating to practice and procedure before the Civil Court shall *mutatis mutandis* apply to the practice and procedure before the tribunal.

Amended by:
XVI. 1997.8.

FIRST SCHEDULE

(Article 5)

PART A

The President

The House of Representatives

The Cabinet

The Judiciary

Any tribunal constituted by or under any law

The Commission for the Administration of Justice

The Electoral Commission

The Malta Broadcasting Authority

The Employment Commission

The Permanent Commission against Corruption

The Commission for Investigation of Injustices

The Attorney General in the exercise of the powers referred to in article 91(3) of the Constitution

Any Counsel or Legal Adviser to the Government acting in such a capacity

The Auditor General in respect of the functions under article 108(5) and (8) of the Constitution

The Armed Forces of Malta except as provided in Part B hereof

The Security Services.

PART B

The Public Service Commission

The Armed Forces of Malta in respect only of appointments, promotions, transfers, pay and pension rights of officers and men of the Force.

PART C

Matters not subject to Investigation.

1. Any matter certified by the Prime Minister to affect the internal or external security of Malta.

2. Action taken in matters certified by the Minister responsible for foreign affairs to affect relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments.

3. Action taken by the Minister responsible for justice under the Extradition Act (Cap. 276).

4. The commencement or conduct of civil or criminal

proceedings before any court of law or any tribunal in Malta, or of proceedings in respect of military offences under the Malta Armed Forces Act (Cap. 220) or of proceedings before any international court or tribunal.

5. The exercise of the power of the Prime Minister under article 515 of the Criminal Code (Cap. 9).

6. Any criminal investigation by the Police.

SECOND SCHEDULE

Substituted by: L.N. 425 of 2007.

(Article 7)

A. Application for complaint

In the Tribunal for the Investigation of Injustices

AB
(complainant)

versus

CD
(respondent)

Application of AB

Respectfully states:

That between the 9th May, 1987 and the 15th May, 1995 and more precisely on or around the.....(state date) he suffered injustice in that he was.....(state here the undue distinction, exclusion or preference which has been made or given to the prejudice of complainant or the disability or restriction to which he has been subjected).

That the facts of the case were briefly as follows .... (state briefly facts of case).

That he intends to produce in support of his complaint the witnesses shown in the attached list which shows with respect to each witness the facts that the complainant intends to prove by his testimony.

The applicant therefore humbly requests this tribunal to hear and determine this complaint in accordance with the Tribunal for the Investigation of Injustices Act, 1997, and to grant me redress by ordering..... (state here form of redress possible), or where such redress is not possible to order the payment of compensation to me in the sum of ..... (state sum which may not exceed €11,646.87).

Signature of complainant

or person on his behalf

Address of complainant.

Address of respondent.

(Article 8)

B. Summons to Witness

The Tribunal for the Investigation of Injustices Act, 1997

To A.B. (name of person summoned and his address)

You are hereby summoned to appear before the above tribunal at (place)

on (date and time)

and to give evidence respecting

(the matter of the inquiry).

Given under my hand this day of of the year

(Signature of Registrar).