L.N. 35 of 1993

CODE OF ORGANIZATION AND CIVIL PROCEDURE (CAP. 12)

Court Practice and Procedure Rules, 1993

THE President of Malta approved the following Rules of Court made by the Rule Making Board constituted in terms of section 29 of the Code of Organization and Civil Procedure. These Rules consolidate previous Rules of Court.

Citation and coming into force.

1. These Rules shall be cited as the Court Practice and Procedure Rules, 1993, and shall come into force on the 15th April, 1993.

Proceedings before the Civil Court First Hall, and Constitutional Court to be by application.

2. Proceedings before the Civil Court First Hall under subsection (1) of section 46 of the Constitution of Malta and proceedings before the Constitutional Court in cases referred to in subsection (2) of section 95 of the Constitution of Malta shall be instituted by appllication.

Contents of application under sections 46(1) and 95(2)(b)(c) and (d) of the Constitution.

3. (1) An application before the Civil Court First Hall shall state concisely and clearly the facts out of which the complaint arises and shall indicate the provision or provisions of the Constitution alleged to have been, to be or likely to be contravened.

(2) The application shall also specify the redress sought by the applicant:

Provided that it shall be lawful for the Court, if the application is allowed, to give any other redress within its jurisdiction which it may consider to be more appropriate.

(3) In cases referred to in paragraph (a) of subsection (2) of section 95 of the Constitution of Malta, the application before the Constitutional Court shall state clearly and concisely the circumstances out of which the question arises, the demand and the provision or provisions of the Constitution or of any other law on which the applicant relies.

(4) In cases referred to in paragraphs (b), (c) and (d) of subsection (2) of section 95 of the Constitution of Malta, the application shall state clearly and concisely the circumstances out of which the appeal arises, the reasons of appeal and the prayer for the reversal or a specific variation of the decision appealed from.

(5) Default of compliance in the application with the requirements of paragraphs (1), (2), (3) and (4) of this Rule shall not render the application null; but the Court may, in any such case, order the applicant to file within such time as the Court shall fix, a note containing the particulars required and the costs of such order shall be borne by the applicant.

Proceedings on appeal.

4. (1) In the cases referred to the Civil Court First Hall as provided in subsection (1) of section 46 or in the cases referred to in paragraphs (b), (c) and (d) of subsection (2) of section 95 of the Constitution of Malta, the application shall be served on the defendant or the respondent without delay and the Court shall fix a date for hearing within eight working days from the date of the filing of the application, or from the filing of a reply by respondent within the time limit therefor, or if no such reply is filed from the expiry of such time.

(2) The application of appeal shall be made within eight working days from the date of the decision appealed from, and the respondent may file a written reply within six working days from the date of service.

(3) The Court by which a decision is given, subject to appeal to the Constitutional Court, may in urgent cases upon demand, even verbal by any of the parties immediately upon delivery of such decision, abridge the time for making the appeal or for the filing of a reply.

If no such demand is made by any of the parties immediately upon the delivery of the judgement, any one of the parties may make such a demand by application, upon which, the court which gave the decision shall, after summarily hearing the parties if it thinks necessary, give the requisite order.

Reference of questions.

5. (1) In the cases referred to in subsection (3) of section 46 and in the proviso to subsection (2) of section 95 of the Constitution of Malta the order of reference shall state concisely and clearly the facts and the circumstances out of which the question arises, the terms of such question and indicate the provision or provisions of the Constitution allegedly contravened.

(2) When any such reference has been made, it shall be the duty of the Registrar to ensure that the record of the proceedings is brought before the Court to which the reference is made without any delay and with urgency.

(3) The Court to which the reference has been made shall, upon any such reference, set down the cause for hearing at an early date, in no case later than eight working days from the date on which the record is brought before it and shall cause notice of such date to be given to the parties.

Expeditious hearing and disposal of hearing.

6. Once a case has been set down for hearing the Court shall ensure that, consistently with the due and proper administration of justice, the hearing and disposal of the case shall be expeditious, and the hearing of the cause shall continue to be heard on consecutive days, and where this is not possible on dates close to one another.

Application of Code of Organization and Civil Procedure.

7. Saving what is provided for in these Rules, the Court practice and procedures shall *mutatis mutandis* apply before the Civil Courts First Hall and the Constitutional Court referred to in Rule 2 aforementioned.

Urgent causes to be heard in the afternoons where necessary.

Cap. 319.

8. (1) Causes made under the Constitution and under the European Convention Act, as well as those causes that are to be heard with urgency shall be set down for hearing in the afternoon wherever this is necessary so as not to disrupt the pre-planned work schedule of the Court, and shall continue to be so heard on consecutive days until the hearing of the cause is closed, and the cause is adjourned for judgment.

(2) However, the Court may not appoint for hearing between the 1st of July and the 30th of September of each year proceedings referred to in Rule 2 of these Rules when these are commenced within the period if in the opinion of the Court such proceedings of their very nature need not be dealt with any particular haste and none of the parties will suffer any prejudice if the hearing takes place in the month of October.

Causes to be heard etc. in chronological order.

9. In making the list referred to in section 194 of the Code of Organization and Civil Procedure, the Registrar shall act in accordance with such instructions as may be given to him by the Court which shall ensure that, as far as possible, causes shall be heard and decided in the chronological order of the date of filing of the act with which the cause was introduced, in the Registry of the Court. Not all causes ready for hearing shall be inserted in the list, but only as many as the judge considers he can deal with in any particular sitting:

So however that without prejudice to anything contained in any other law, priority shall be given in setting a cause for hearing and in the hearing thereof to —

(i) cases of retrial;

(ii) spoliation suits referred to in section 791 of the Code of Organization and Civil Procedure;

(iii) cases of contempt of Court;

(iv) cases which of their nature require to be treated with greater expeditiousness.

Witnesses summoned for a particular sitting shall as far as possible be heard at such sitting.

Adjournment of cases.

10. For the purposes of sections 195 and 212 of the Code of Organization and Civil Procedure, the following may be deemed to be exceptional circumstances justifying an application for the adjournment of a cause:

(a) the temporary illness of counsel;

(b) the agreement between the parties for the adjournment of the cause received by the Court at least 48 hours before the date of hearing, unless in the opinion of the court such agreement unreasonably delays the conclusion of the proceedings; and

(c) any other exceptional circumstances which the court considers to be very serious and sufficient.

In every case the circumstances justifying the request and concession of an adjournment shall be recorded in the acts of the proceedings.

Conduct of proceedings.

11. (1) Evidence in a cause shall be heard either directly by the Court or by means of an affidavit except in those cases where the nature of the case requires proof by a technical referee who shall as far as possible assist the Court when the evidence is heard by it *viva voce*, and where a need arises such evidence may be heard by the referee, also with the assistance of a Legal Referee or a Judicial Assistant, in a sitting fixed for the purpose.

(2) The Court shall on the first sitting of a cause ensure that the disputed issues of fact and of law in the cause are identified and recorded in the acts of the proceedings, and that the parties shall indicate and record in the acts of the proceedings the specific object of each witness indicated by them according to section 561, also to ensure, among other things, the proper application of section 558 of the Code of Organization and Civil Procedure.

(3) During the first sitting of each case the court shall:

(a) either fix a date or consecutive dates for the hearing of all the witnesses of the parties up to the adjournment of the cause for judgment, and where it is not possible to fix consecutive dates, to fix dates which are as near as possible to one another, in order to reach the same conclusion;

(b) or if the parties agree (to a request made by one of the parties) that all evidence be produced by means of affidavits (or when the Court is unable to fix a date for the hearing of evidence *viva voce*), the Court shall order specific periods during which each party is to produce all its evidence by means of an affidavit and subsequently, fix the date when the cross examination of the witnesses who had made an affidavit shall be heard, if such cross examination were to be requested.

(4) The terms referred in paragraph (3) of this Rule may be extended by the Court for valid and serious reasons which shall be indicated in the order granting the extension.

(5) Where a witness refuses to co-operate with any of the parties and refuses to make an affidavit, such party shall file an application as is referred to in subsection (1) of section 8 of the Judicial Assistants and Evidence by Affidavit Act, in sufficient time so that such witness shall appear and give evidence befor the Judicial Assistant in accordance with the said section 8.

Cap. 309.

(6) In the filing of new suits the plaintiff, or if more than one, one of the plaintiffs, and the defendant, or if more than one, one of the defendants, together with the writ of summons and the note of pleas respectively shall file a declaration confirmed on oath containing a clear and detailed statement of the facts to prove what is alleged in the writ of summons or the note of pleas. The party making the declaration is to confirm that he is personally aware of the facts stated, and this declaration shall be the evidence of that party in the suit.

Appointment of Legal Referees shall be restricted.

12. (1) The appointment of legal referees shall be restricted to special and particular cases where a real necessity arises because the cause requires specialized knowledge in a particular field of law. On any such appointment the Court shall indicate clearly and precisely in the decree the reasons and justification for such an appointment.

(2) In cases where such legal referees are appointed, evidence shall be produced by means of a sworn statement to be made before the same legal referee and the provisions of subparagraph (b) of paragraph (3), and of paragraph (5) of Rule 11 shall apply for the production of evidence before such legal referees. The Court shall in each case order the legal referee to report to it on such dates as indicated by the Court, so that the Court shall be in a position to ascertain that its orders have been complied with. The court shall fix a date for the definitive filing of the report.

(3) Where before the coming into force of these Rules a legal referee has already been appointed, the provisions of the foregoing paragraph of this Rule shall be applied by the Court with regard to the evidence of any witness who at that time is still required to be heard, and a date fixed for the definitive filing of the report.

Wearing apparel for advocates.

13. Advocates appearing before any of the Superior Courts at the hearing of any cause shall wear a dark blue, charcoal grey or black suit or pin-striped trousers and black jacket, a white shirt with a black, grey or white tie or bow-tie and black gown.

Lady advocates shall wear black or blue or charcoal grey suits, or a white blouse and a black skirt under a black gown.

Any advocate not complying entirely with these requirements shall not have the right of audience.

14. The Rules of Court made by Government Notices No. 206 of 1912 and No. 106 of 1937 and by Legal Notices 52 of 1961, 48 of 1964 and 49 of 1964 are hereby repealed, while the Rules of Court made by Government Notices No. 108 of 1884, No.35 of 1908, No. 381 of 1911, No. 182 of 1913, No. 256 of 1913, No. 40 of 1915, No. 274 of 1916, No. 423 of 1930, No. 394 of 1934, No. 166 of 1936 and No. 286 of 1950, by Notice published in the Government Gazette on the 24th March, 1951, and by Legal Notices 2 of 1973, 46 of 1980 and 38 of 1990 shall continue in force with such modifications as may be required because of amendments to various laws coming into operation since their enactment.

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