

I assent.

(L.S.)

AGATHA BARBARA
President

24th July, 1985

ACT No. XII of 1985

AN ACT further to amend the Code of Organisation 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:—

1. (1) This Act may be cited as the Code of Organisation and Civil Procedure (Amendment) Act, 1985, and shall be read and construed as one with the Code of Organisation and Civil Procedure, hereinafter referred to as “the principal law”. Short title and commencement.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or for different purposes of this Act.

2. In section 46 of the principal law for the words “fifty pounds” wherever they occur there shall be substituted the words “two hundred and fifty Maltese liri”. Amendment of section 46 of the principal law.

3. In section 47 of the principal law for the words “fifty pounds” there shall be substituted the words “two hundred and fifty Maltese liri”. Amendment of section 47 of the principal law.

4. In section 50 of the principal law for the words “three hundred pounds” there shall be substituted the words “five hundred Maltese liri”. Amendment of section 50 of the principal law.

Amendment of section 51 of the principal law.

5. In section 51 of the principal law for the words "three hundred pounds" wherever they occur there shall be substituted the words "five hundred Maltese liri".

Amendment of section 226 of the principal law.

6. In subsection (2) of section 226 of the principal law for the words "ten pounds" there shall be substituted the words "fifty Maltese liri".

Substitution of section 250 of the principal law.

7. For section 250 of the principal law there shall be substituted the following:

"Mode of enforcement of executive titles. 250. Saving any other provision of the law in respect of warrants *in factum*, execution by any of the means mentioned in section 274 may be issued only in virtue of an executive title."

Deletion of section 252 of the principal law.

8. Section 252 of the principal law shall be deleted.

Amendment of section 274 of the principal law.

9. Paragraph (c) of section 274 of the principal law shall be deleted.

Amendment of section 276 of the principal law.

10. In subsection (1) of section 276 of the principal law for the words "ten pounds" there shall be substituted the words "fifty Maltese liri".

Amendment of section 355 of the principal law.

11. In subsection (2) of section 355 of the principal law for the words "fifty pounds" there shall be substituted the words "two hundred and fifty Maltese liri".

Repeal of Sub-Title III of Title VII of Part I of Book Second of the principal law.

12. Sub-Title III of Title VII of Part I of Book Second of the principal law shall be repealed.

Substitution of section 387 of the principal law.

13. For section 387 of the principal law there shall be substituted the following:

"Maintenance at the expense of person demanding issue of warrant.

387. (1) No warrant *in factum* shall be executed unless the person demanding the issue of the warrant shall have first delivered to the Marshal a sum, to be fixed by the Court, to be given, through the gaoler, to the person against whom the warrant has been issued in respect of his maintenance for seven days, including the day of apprehension; and the gaoler shall not take the person apprehended in custody until such deposit is made.

(2) A like sum shall be deposited in the hands of the gaoler every seven days in advance and not later than twelve noon of the last day of each weekly period. Such sum shall be immediately delivered to the person apprehended.

(3) The Marshal and the gaoler respectively shall give a receipt for the said deposit."

14. Immediately after paragraph (d) of section 645 of the principal law there shall be added the following proviso thereto:

Amendment of
section 645
of the
principal law.

“Provided that at the request of the Registrar, the Court may at any time prior to the date of such adjournment, order the referees to return the records of the cause that are in their possession, to the Registry of such Court there to remain for such time as shall be specified in that order.”.

15. For subsection (4) of section 702 of the principal law there shall be substituted the following:

Amendment of
section 702
of the
principal law.

“(4) If the party to whose oath reference is required fails to appear on the day appointed for the trial —

(a) the questions as taken down by the Court shall be deemed to be admitted, unless good cause is shown for his non-appearance, in any case other than cases for ejectment or eviction from immovable property, in which the claim before the Court does not exceed the amount of fifty Maltese liri;

(b) the Court shall adjourn the trial, unless the party making the reference renounces thereto, in any case for ejectment or eviction from immovable property or in any case in which the claim before the Court exceeds the amount of fifty Maltese liri, and the questions as taken down by the Court shall be deemed to be admitted if the party to whose oath reference is required, without good cause being shown for his non-appearance, fails again to appear on the day to which the Court has adjourned the case as aforesaid.”.

16. Paragraph (f) of subsection (1) of section 833 of the principal law shall be repealed.

Amendment of
section 833
of the
principal law.

17. Section 840 of the principal law shall be amended as follows:

Amendment of
section 840
of the
principal law.

(a) in subsection (1) thereof the words “or any *meditatio fugae* warrant” shall be deleted; and

(b) for subsections (3) and (4) thereof there shall be substituted the following:

“(3) It shall not be lawful to issue any warrant of seizure, garnishee order, or warrant of impediment of departure, in security of any right or claim against any of the persons mentioned in paragraph (a) of subsection (4) of this section, or any warrant of impediment of departure in security of any right or claim against any of the persons mentioned in paragraphs (b) or (c) of the said subsection.

(4) The persons to whom subsection (3) of this section refers are:

(a) any person belonging to the armed forces of any country or any person belonging to any vessel wholly chartered in the service of the Government of Malta if

such person is in these Islands or in the waters of these Islands with the force or vessel to which he belongs;

(b) any master, seaman or other person regularly enrolled, if the ship to which he belongs has obtained her clearance; and

(c) any engineer of any rank, employed on any steam vessel.

(5) (a) If any such warrant or order has been unduly issued and carried into effect against any of the persons above-mentioned, it shall be lawful to obtain the rescission of the warrant or order or of anything done thereunder by making an application to that effect stating out the cause for his exemption, and producing in support thereof any certificate, document, or other evidence to the satisfaction of the Judge or Magistrate by whom the warrant or order was issued.

(b) The release of the person from the warrant or order may also be applied for as aforesaid by the officer commanding the vessel on which such person is enrolled, or by the officer commanding the force, the regiment or the company to which such person belongs, or by any other military, naval or airforce authority.”.

Amendment of section 851 of the principal law.

18. In section 851 of the principal law for the words “ten pounds” there shall be substituted the words “fifty Maltese liri”.

Amendment of section 864 of the principal law.

19. In section 864 of the principal law for the words “£20” appearing in the marginal note thereto and the words “one hundred pounds” in subsection (1) thereof there shall be substituted the words “Lm250” and “two hundred and fifty Maltese liri” respectively.

Amendment of section 869 of the principal law.

20. In subsection (3) of section 869 of the principal law for the words “one hundred pounds” there shall be substituted the words “two hundred and fifty Maltese liri”.

Amendment of section 871 of the principal law.

21. For the words “one hundred pounds” in section 871 of the principal law, there shall be substituted the words “two hundred and fifty Maltese liri”.

Addition of new section 871A to the principal law.

22. Immediately after section 871 of the principal law there shall be added the following new section:

“Party against whom warrant is issued may apply for its revocation.

871A. (1) Without prejudice to any other right under this or any other law, the person against whom or against whose ship a warrant of impediment of departure has been issued, may, make an application to the Court issuing the warrant praying that the warrant be revoked on any of the following grounds:

(a) that any of the conditions requested by law for the issue of the warrant does not in fact subsist;

(b) that other adequate security for the satisfaction of the claim of the person at whose request the warrant was issued is available either by the issue of any other precautionary act or otherwise to the satisfaction of the Court; or

(c) that in the case of a warrant for the impediment of departure of a person that such person requires to leave these islands for medical treatment or attention and where in the opinion of the Court there are serious and special circumstances that justify that such treatment or attention be obtained outside these Islands.

(2) The Court shall appoint the application for hearing within four days of the filing of the application referred to in subsection (1) of this section.

(3) A copy of the application shall be served on the person at whose request the warrant was issued who shall not later than the day fixed for the hearing of the application state his reasons, if any, why such request should not be acceded to. In default of such opposition the Court shall accede to the request.

(4) After hearing the parties, the Court shall by a separate decree which may be given *in camera*, either reject the application or accede to the request in the application under those conditions which it may deem fit and in a case falling under paragraph (c) of subsection (1) of this section the Court shall direct that the Passport Officer shall restrict the passport of the applicant to those countries where such medical treatment or attention is to be obtained.

(5) A decree acceding to an application referred to in this section, shall be final and irrevocable, and no warrant of impediment of departure may be issued in security of the same claim against the person against whom the warrant so revoked was issued, by the person at whose request such warrant had been issued, unless in the application for the issue of such new warrant the applicant declares that circumstances have arisen since the revocation of the previous warrant, which justify the issue of a new warrant, and the provisions of this section shall thereupon apply to the warrant issued on the basis of such application."

23. Sub-Title VI of Title VI of Book Third of the principal law shall be repealed.

Repeal of
Sub-Title VI of
Title VI of
Book Third of
the principal
law.

24. In the Maltese text of section 928 of the principal law, for the words "jew jekk ebda persuna jew persuni kif imsemmija ma jkolhom dik il-personalità ġuridika distinta" there shall be substituted the words "jew jekk ebda persuna jew persuni kif imsemmija ma jkunu mogħtija dik ir-rappreżentanza ġuridika."

Amendment of
section 928
of the
principal law.

Transitory
provision.

25. (1) Without prejudice to subsection (2) of this section, the amendments made by this Act other than those effected by sections 9, 16 and 18 shall not apply in respect of any case which was pending before the Courts before the coming into force of this Act, or to any warrant or extension thereof, which is already filed in the Registry of the Court before the coming into force of this Act.

(2) In the case of a warrant of impediment of departure which is currently in force on the coming into force of this Act, no extension as provided for under subsection (2) of section 874 of the principal law shall be granted where the amount of the debt or claim is less than two hundred and fifty Maltese liri.

Passed by the House of Representatives at Sitting No. 267 of the 10th July, 1985.

DANIEL MICALLEF
Speaker

C. MIFSUD
Clerk to the House of Representatives