

Nru. 28

18. 11. 92

MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Fenech, M.P., Ministru tal-Ġustizzja, u moqri għall-Ewwel darba fis-Seduta tas-16 ta' Novembru, 1992.

ATT biex jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, Kap. 12.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Joseph Fenech, M.P., Minister of Justice, and read the First time at the Sitting of the 16th November, 1992.

AN ACT to amend the Code of Organization and Civil Procedure, Cap. 12.

RICHARD J. CAUCHI
Clerk to the House of Representatives

Emenda ta' l-artikolu 29 tal-Kodiċi.

4. L-artikolu 29 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu minflok il-kliem minn "mill-Prim Imħallef" sal-kliem "Hidma fil-Qrati" għandhom jidhlu l-kliem "mill-Prim Imħallef, minn żewġ imħallfin mahtura mill-President ta' Malta, u mill-president tal-Kamra ta' l-Avukati"; u fil-paragrafu (ċ) tiegħu minflok il-kliem "biex joqgħodu f'qorti partikolari" għandhom jidhlu l-kliem "biex joqgħodu f'qorti partikolari jew sezzjoni partikolari ta' qorti"; u

(b) fis-subartikolu (2) tiegħu minflok il-kliem "u żewġ membri oħra ma' jkunux preżenti." għandhom jidhlu l-kliem "u membru ieħor ma' jkunux preżenti."

Emenda ta' l-artikolu 39 tal-Kodiċi.

5. Fl-artikolu 39 tal-Kodiċi minflok il-kliem "L-imħallef tal-Qorti tal-Kummerċ" għandhom jidhlu l-kliem "kull Imħallef li joqgħod fil-Qorti tal-Kummerċ jew f'xi sezzjoni tagħha".

Zieda ta' artikolu ġdid 39A mal-Kodiċi.

6. Minnufih wara l-artikolu 39 tal-Kodiċi għandu jiżdied dan l-artikolu ġdid li ġej:

"39A. (1) Minkejja d-dispożizzjonijiet tas-subartikolu (1) ta' l-artikolu 32, ta' l-artikolu 33 u tas-subartikolu (1) ta' l-artikolu 36 il-Prim'Awla tal-Qorti Ċivili, is-Sekond'Awla tal-Qorti Ċivili u l-Qorti tal-Kummerċ jistgħu kull waħda minnhom tkun magħmula minn aktar minn sezzjoni waħda, hekk kif il-President ta' Malta jista' b'Ordni jistabbilixxi.

(2) Għandu jkun hemm imħallef li joqgħod f'kull sezzjoni bħal dik, u sezzjoni ta' qorti bħal dik għandha thaddem u jkollha s-setgħat kollha mogħtija lil dik il-qorti b'kull liġi."

Emenda ta' l-artikolu 41 tal-Kodiċi.

7. L-artikolu 41 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) is-subartikoli (1) u (2) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (5) u (6) rispettivament;

(b) fis-subartikolu (5) tiegħu kif enumerat mill-ġdid, minflok il-kliem "Il-Qorti ta' l-Appell hija magħmula mill-President u żewġ imħallfin oħra; u hija tisma" għandhom jidhlu l-kliem "Hija tisma"; u

(ċ) minnufih qabel is-subartikolu (5) kif enumerat mill-ġdid għandhom jiżdiedu dawn is-subartikoli li ġejjin:

"(1) Il-Qorti ta' l-Appell hija magħmula minn sezzjoni waħda jew iktar minn waħda li kull sezzjoni minnhom tkun magħmula mill-Prim Imħallef u żewġ imħallfin oħra. Kull sezzjoni għandha thaddem u jkollha s-setgħat kollha li huma b'dan il-Kodiċi jew b'kull liġi oħra vestiti fil-Qorti ta' l-Appell.

(2) L-għadd ta' sezzjonijiet jiġi stabbilit b'Ordni magħmul mill-President ta' Malta.

(3) Meta jintgħamel Ordni mill-President ta' Malta li jkun jipprovdi għall aktar minn sezzjoni waħda tal-Qorti ta' l-Appell, il-bord bis-setgħa li jagħmel regoli stabbiliti bis-saħħa ta' l-artikolu 29 ta' dan il-Kodiċi għandu jipprovdi dwar il-mod kif il-kawżi għandhom jitqassmu bejn id-diversi sezzjonijiet.

(4) (a) Ordni bħal dak imsemmi fis-subartikolu (3) ta' dan l-artikolu jista' jipprovdi li meta wiehed mill-imħallfin, li ma jkunx il-Prim Imħallef, li joqgħod f'waħda mis-sezzjonijiet, jastjeni jew mod ieħor jiġi rikuzat, il-kawża li fiha sseħħ dik l-astensjoni jew rikuża għandha tinstemà minn sezzjoni oħra li tiġi hekk stabbilita bl-Ordni.

(b) Meta jiġi rikuzat jew jastjeni l-Prim Imħallef, għandu jiġi surrogat minflok il-Prim Imħallef fis-sezzjoni fejn tkun qegħda tinstema' l-kawża, l-imħallef bl-aktar preċedenza (li ma jkunx il-Prim Imħallef) f'dik is-sezzjoni li tista' tiġi hekk stabbilita bl-Ordni.

(c) Meta, minkejja d-disposizzjonijiet ta' kull ordni magħmul bis-saħħa tal-paragrafi (a) u (b) ta' dan is-subartikolu, il-kawża ma tkunx tista' tinstemà minn ebda sezzjoni skond kif provdut f'dik l-ordni minhabba fir-rikuża jew astensjoni tal-Prim Imħallef jew xi wiehed mill-imħallfin l-oħra, il-President ta Malta jissurroga imħallef ieħor jew imħallfin oħra biex joqgħod jew joqogħdu minflok l-imħallfin li jkunu ġew rikuzati jew legittimament impediti fis-sezzjoni fejn il-kawża tkun l-ewwel giet assenjata taħt id-dispożizzjonijiet tas-subartikolu (3) ta' dan l-artikolu.”.

8. Fl-artikolu 216 tal-Kodiċi minflok il-kliem “minn wiehed minnhom.” għandhom jidhlu l-kliem “minn wiehed minnhom; iżda b'dan illi l-imħallef jew il-maġistrat li jippresjedi dik il-qorti jista' jagħti sentenza hu mingħajr ma jattendu l-membri l-oħra tal-qorti sakemm dik is-sentenza tkun iffirmata mill-anqas minn żewġ membri tal-qorti.”.

Emenda ta'
l-artikolu 216
tal-Kodiċi.

Għanijiet u Raġunijiet

L-Għan ta' l-Abbozz huwa sabiex inehhi kull dubju dwar l-interpretazzjoni tal-Kodiċi fuq is-setgħat tal-President fl-assenjament ta' l-Imħallfin fi qrati differenti, kif ukoll fuq l-għadd ta' sezzjonijiet f'kull qorti. L-Abbozz jipprovdi wkoll dwar għadd fiss ta' imħallfin li joqogħdu fil-Qrati Superjuri.

**A Bill
entitled**

*AN ACT to amend the Code of Organization and Civil Procedure,
Cap. 12.*

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.
Cap. 12.

1. (1) This Act may be cited as the Code of Organization and Civil Procedure (Amendment) Act, 1992, and shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as “the Code”.

(2) This Act shall come into force on such date as the Minister responsible for Justice may by order in the Gazette establish.

Amendment of
section 6
of the Code.

2. Section 6 of the Code shall be amended as follows:

(a) the present section shall be renumbered as subsection (1) thereof; and

(b) immediately after subsection (1) thereof as renumbered there shall be added the following subsection:

“(2) Besides the Chief Justice, the judges of the Superior Courts shall be thirteen or such greater number as the President of Malta may by Order prescribe.”.

Amendment of
section 11
of the Code.

3. In subsection (1) of section 11 of the Code for the words “the court in which he is to sit” there shall be substituted the words “the court or the chamber of the court in which he is to sit”, and immediately at the end thereof there shall be added the following proviso:

“Provided that a judge may be assigned to sit in more than one court or more than one chamber of one or more courts.”.

4. Section 29 of the Code shall be amended as follows:

Amendment of
section 29
of the Code.

(a) in subsection (1) thereof for the words from "the Chief Justice" to the words "Commission" there shall be substituted the words "the Chief Justice, two judges appointed by the President of Malta, and the president of the Chamber of Advocates"; and in paragraph (c) thereof for the words "to sit in a particular court" there shall be substituted the words "to sit in a particular court or a particular chamber of a court;"; and

(b) in subsection (2) thereof for the words "two other members are present." there shall be substituted the words "one other member are present."

5. In section 39 of the Code, for the words "The Judge of the Commercial Court" there shall be substituted the words "Any Judge sitting in the Commercial Court or any chamber thereof".

Amendment of
section 39
of the Code.

6. Immediately after section 39 of the Code there shall be added the following section:

Addition of
new section 39A
to the Code.

"39A. (1) Notwithstanding the provisions of subsection (1) of section 32, section 33 and subsection (1) of section 36 the First Hall of the Civil Court, the Second Hall of the Civil Court and the Commercial Court may each be composed of more than one chamber, as the President of Malta may by Order determine.

(2) A judge shall sit in each such chamber, and a chamber of any such court shall exercise and have all the powers as are conferred on such court by any law."

7. Section 41 of the Code shall be amended as follows:

Amendment of
section 41
of the Code.

(a) subsections (1) and (2) thereof shall be renumbered as subsections (5) and (6) respectively;

(b) in subsection (5) thereof as renumbered, for the words "The Court of Appeal shall consist of the President and two other of the judges; and it shall hear" there shall be substituted the words "It shall hear"; and

(c) immediately before subsection (5) thereof as renumbered there shall be added the following subsections:

"(1) The Court of Appeal shall consist of one or more chambers each consisting of the Chief Justice and two other of the judges. Each chamber shall exercise and have all powers as are by this Code or any other law vested in the Court of Appeal.

(2) The number of chambers shall be determined by an Order of the President of Malta.

(3) Where an Order is made by the President of Malta providing for more than one chamber of the Court of Appeal, the rule-making board established under section 29 of the Code shall provide the manner in which cases shall be distributed between the various chambers.

(4) (a) An Order as is referred to in subsection (3) hereof may provide that where one of the judges, other than the Chief Justice, sitting in one of the chambers, abstains or is otherwise challenged, the case in which such abstention or challenge takes place shall be heard by such other of the chambers as is prescribed in the Order.

(b) Where the Chief Justice is challenged or abstains, the senior judge (other than the Chief Justice) in such other chamber as may be determined in the Order, shall be surrogated for the Chief Justice in the chamber where the case is being heard.

(c) Where notwithstanding the provisions of any orders made under paragraphs (a) and (b) hereof the case may not be heard by any of the chambers as provided for in such order because of a challenge or abstention of the Chief Justice or any other of the judges, the President of Malta shall surrogate another judge or other judges to sit in lieu of the judges challenged or lawfully impeded in the chamber in which the case was first assigned under the provisions of subsection (3) hereof.”.

Amendment of
section 216
of the Code.

8. In section 216 of the Code for the words “by one of such judges or magistrates.” there shall be substituted the words “by one of such judges or magistrates; so however that it shall be lawful for the judge or magistrate presiding that court to deliver the judgement in the absence of the other members of the court provided that the judgement is signed by at least two of the members of the court.”.

Objects and Reasons

The Object of the Bill is to remove doubt as to the interpretation of the Code as to the powers of the President in the assignment of Judges to different courts, as well as to the number of chambers of each court. The Bill also provides for the fixing of the number of judges of the Superior Courts.