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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Fenech, M.P., Ministru tal-Gustizzja, u moqri għall-Ewwel darba fis-Seduta tal-15 ta' Frar, 1993.

ATT biex jipprovdi għall-ghoti ta' setghat lill-Kummissjoni għall-Amministrazzjoni tal-Gustizzja u biex jirregola l-proċeduri tal-Kummissjoni msemmija.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

A **BILL** introduced by the Honourable Joseph Fenech, M.P., Minister of Justice, and read the First time at the Sitting of the 15th February, 1993.

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

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT biex jipprovdi għall-ġhoti ta' setgħat lill-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja u biex jirregola l-proċeduri tal-Kummissjoni msemmija.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

1. Dan l-Att jista' jissejjah l-Att ta' l-1992 dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja. Titolu
fil-qosor.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra: Tifsir.

“imġieba hażina” tfisser kull kondotta abużiva jew negligenti li jsiru minn imħallef, maġistrat, avukat jew prokuratur legali fl-eżerċizzju tal-kariga jew professjoni tagħhom; kull kondotta li titqies bħala li mhux xierqa għad-dekor, dinjità jew etika tal-kariga jew professjoni tagħhom; jew dik il-kondotta li tista' tolqot b'mod serju il-fiduċja li għandu jkollhom minhabba fil-kariga jew professjoni tagħhom;

“kumitat kompetenti” tfisser il-kumitat li jkollu kompetenza fis-suġġett li jkun qed jiġi trattat skond dan l-Att;

“Kummissjoni” tfisser il-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja imwaqqfa bis-saħħa ta' l-artikolu 101 tal-Kostituzzjoni; u

“Sehem” tfisser ammont ta' flus li jiswa daqs wiehed fil-mija tas-salarju li għandu fis-sena l-Avukat Generali hekk kif f'dak iż-żmien jkun stabbilit skond il-liġi.

3. (1) Il-Kumitat għall-Qrati Superjuri jkollu kompetenza fuq l-Imħallfin, komprisi dawk l-Imħallfin li joqgħodu f'kull tribunal jew f'kull Awtorità gudizzjarja oħra u jkun kompost minn:

(a) Il-Prim Imħallef jew Imħallef anzjan nominat minnu biex joqgħod minfloku għal xi seduta partikolari, li jkun *chairman*;

(b) żewġ membri mahturin mill-Kummissjoni minn fost l-imħallfin għal żmien erba' snin;

(c) żewġ membri oħra li jkollhom il-kariga ta' Imħallef, jew li kellhom il-kariga ta' Mħallef, mahturin mill-President fuq il-parir tal-Prim Ministru għal żmien erba' snin.

(2) Il-Kumitat għall-Qrati Inferjuri jkollu kompetenza fuq il-Maġistrati, komprizi dawk il-Maġistrati li joqgħodu f'kull tribunal jew f'kull Awtorità oħra u jkun kompost minn:

(a) Il-Prim Imħallef jew Imħallef anzjan nominat minnu biex joqgħod minfloku għal xi seduta partikolari, li jkun *chairman* tal-kumitat;

(b) żewġ membri mahturin mill-Kummissjoni minn fost il-Maġistrati għal żmien erba' snin;

(c) żewġ membri oħra li jkollhom il-kariga ta' Maġistrat, jew li kellhom il-kariga ta' Maġistrat, mahturin mill-President fuq il-parir tal-Prim Ministru għal żmien erba' snin.

(3) Il-Kumitat għall-Avukati u Prokuraturi Legali jkun kompost minn:

(a) Il-President tal-Kamra ta' l-Avukati li jkun *chairman*;

(b) avukat li jkun ilu mill-inqas jipprattika l-professjoni għal għaxar snin li jigi mahtur mill-Kummissjoni għal żmien erba' snin;

(c) avukat li jigi mahtur mill-Avukat Ġenerali għal żmien erba' snin;

(d) żewġ avukati mahturin mill-Kamra ta' l-Avukati għal żmien erba' snin, b'dan illi meta l-kumitat ikun qed jittratta sugġett li għandu x'jaqsam mal-professjoni tal-prokuraturi legali, jew li għandu x'jaqsam mal-kondotta ta' prokuratur legali, il-president u s-segretarju tal-kamra tal-Prokuraturi Legali joqgħodu minflok iż-żewġ avukati mahturin mill-Kamra ta' l-Avukati.

(4) Iċ-*Chairman* ta' kull kumitat ikollu sew vot originali kif ukoll *casting vote*.

(5) (a) Membru ta' kumitat jista' jigi rikuzat u għandu jastjeni fl-istess ċirkostanzi bħal dawk imsemmija fis-subartikolu (5) ta' l-artikolu 101 tal-Kostituzzjoni.

(b) Meta l-membru li jkun gie rikuzat jew li jkun astjena jkun ukoll membru tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja, il-President jahtar membru sostitut għalih bl-istess mod kif hemm provdut fis-subartikolu (5) ta' l-artikolu 101 tal-Kostituzzjoni. Fil-każijiet l-oħra kollha il-President jaġixxi skond il-gudizzju tiegħu innifsu biss, u jahtar bħala membru sostitut biex joqgħod fil-kumitat kull meta jkun possibbli, persuna li fil-fehma tiegħu ikollha kemm jista jkun l-istess kwalitajiet u kwalifiki daqs dak il-membru li jkun qiegħed jiġi sostitwit.

(6) Meta l-membri li għandhom jinhatru bis-saħħa tal-paragrafu (d) tas-subartikolu (3) ta' dan l-artikolu ma jinhatrux fi żmien gimghatejn minn meta ssir sejha għall-hatra tagħhom mis-Segretarju tal-Kummissjoni, il-hatra taż-żewġ avukati msemmija għaldaqshekk issir mill-President li fl-għemil ta' dik il-hatra jaġixxi skond il-gudizzju tiegħu innifsu biss.

(7) Kull Imhallee, li mhux il-Prim Imhallee, jew Imhallee li jinhatar membru tal-kumitat għandu jibqa' kwalifikat u jibqa' membru ta' dak il-kumitat għaž-żmien kollu tal-kariga tiegħu minkejja li jkun temm il-kariga ta' imhallee jew magiŕtrat għaliex ikun għalaq l-età ta' meta għandu jirtira skond il-liġi.

4. (1) Il-Kummissjoni għandha tirreferi lill-Kumitat kompetenti kull kwistjoni li tirtigwarda l-imġieba hażina ta' imhallee, jew ta' magiŕtrat, jew ta' avukat jew ta' prokuratur legali fl-eżerċizzju tal-professjoni tagħhom, u, hlief fil-każ ta' appell, il-Kummissjoni ma għandhiex taġixxi xort'oħra fuq dik il-kwistjoni hlief wara li tkun irċeviet rapport tal-Kumitat kompetenti u skond ir-riżultanzi fl-istess rapport. B'dan illi, meta rapport tar-riżultanzi tal-Kumitat kompetenti ma jkunx għadu gie preżentat lill-Kummissjoni fi żmien xahrejn mill-jum meta l-kwistjoni tkun tressqet l-ewwel darba quddiem il-Kumitat kompetenti, jew f'dak il-perijodu ieħor jew perijodi oħrajn li l-Kummissjoni tista' tippermetti għal raġunijiet verament eċċezzjonali, liema perijodu jew perijodi ma għandhom fl-ebda każ jaqbzu l-erba' xhur, il-Kummissjoni għandha minnufih tinvestiga il-kwistjoni u taqtagħha hi nnifisha.

Il-Kummissjoni taġixxi permezz tal-Kumitati tagħha.

(2) Minkejja d-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, meta fl-opinjoni tal-Kummissjoni allegazzjoni kontra imhallee jew magiŕtrat tkun tali, li jekk tiġi pruvata din tikkostitwixxi dik l-imġieba hażina jew dik l-inkapaċità li wieħed ma jkunx jista' jwettaq dmirijietu, li tiġġustifika l-għemil ta' indirizz skond l-artikolu 97 tal-Kostituzzjoni, il-Kummissjoni ma għandhiex tirreferi l-kwestjoni lil xi Kumitat iżda jkun l-obbligu tal-Kummissjoni li tinvestiga u taqta' l-kwistjoni hi nnifisha; u jekk dik l-allegazzjoni tirtirizulta fondata, għandha tirtakkomanda lill-Prim Ministru li jippreżenta mozzjoni fil-Kamra tad-Deputati kif imsemmi f'dak l-istess artikolu; kull investigazzjoni li tkun meħtieġa skond is-subartikolu (3) ta' l-artikolu 97 tal-Kostituzzjoni għandha bl-istess mod issir mill-Kummissjoni mingħajr ma' din tiġi riferita lil ebda Kumitat.

5. (1) Fl-eżercizzju ta' dmirijiethom, il-Kummissjoni u kull wiehed mill-Kumitati tagħha, ikollhom is-setgħat kollha li għandha il-Prim'Awla tal-Qorti Ċivili permezz tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

(2) Hames membri tal-Kummissjoni jagħmlu *quorum* fil-laqgħat tal-Kummissjoni, u tliet membri jagħmlu *quorum* f'laqgħat tal-Kumitati tal-Kummissjoni.

(3) Bla hsara u mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikolu (12) ta' l-artikolu 101 tal-Kostituzzjoni, u d-dispożizzjonijiet ta' qabel ta' dan l-artikolu, il-Kummissjoni tista' minn żmien għal żmien tistabbilixxi regoli ta' proċedura kemm għaliha innifisha u kif ukoll għall-Kumitati, u tista' minn żmien għal żmien temenda, tissostitwixxi jew tirrevoka dawk ir-regoli.

6. (1) Bla hsara għad-dispożizzjonijiet tas-subartikoli (2) u (3) ta' l-artikolu 97, tas-subartikolu (4) ta' l-artikolu 100, u tal-proviso għall-paragrafu (f) tas-subartikolu (7) ta' l-artikolu 101 tal-Kostituzzjoni u tas-subartikolu (2) ta' l-artikolu 4 ta' dan l-Att, kull Kumitat kompetenti għandu, minn jeddu stess jew wara li ssir talba mill-Kummissjoni jew wara li jsir ilment minn xi persuna, ikollu s-setgħa u d-dmir:

(a) li jinvestiga, jagħmel inkjesta dwar u jaqta' fuq kull imġieba hażina ta' persuna li tkun taqa' taħt il-kompetenza partikolari tiegħu, u fil-każ tal-kumitat għall-avukati u prokuraturi legali wkoll fuq kull inkapaċità ta' avukat jew prokuratur legali li jeżercità li professjoni tiegħu minhabba f'inkapaċità tal-moħħ;

(b) mingħajr preġudizzju għall kull azzjoni oħra li tista' tittiehed taħt kull liġi oħra, li jimponi pieni dixxiplinarji u li jiehu kull miżura oħra li jista' jqis xierqa u kif hemm provdut dwarhom f'dan l-Att.

(2) Kull investigazzjoni jew inkjesta imsejsa fuq imġieba hażina jistgħu biss jinbdew mill-Kummissjoni jew minn Kumitat fi żmien tliet xhur mid-data li l-Kummissjoni, Kumitat jew min jagħmel l-ilment isiru jafu b'dik l-imġieba hażina, u f'kull każ mhux iktar tard minn hames snin minn meta tkun saret dik l-imġieba hażina.

7. (1) Hemm dritt ta' appell lill-Kummissjoni minn deċiżjoni tal-Kumitat kompetenti.

(2) (a) Sew il-persuna li l-Kummissjoni tiddeciedi kontriha kif ukoll min ikun għamel l-ilment għandu dritt ta' appell lill-Kummissjoni:

Izda meta appell jiġi dikjarat frivolu jew vessatorju mill-Kummissjoni, il-Kummissjoni tista' twaħhal penali ta' flus lil min jappella f'ammont li ma jkunx iktar minn għaxar Ishma, liema penali għandha tingabar bhala dejn ċivili mis-Segretarju tal-Kummissjoni.

(b) Il-Kummissjoni għandha minn żmien għal żmien tistabbilixxi regoli ta' proċedura għal dawk l-appelli.

(ċ) Min isir ilment kontrih ikollu jedd iħarrek lil min jagħmel l-ilment għad-danni sa ammont ta' hamest elef lira Maltija jekk jinstab li l-ilment ikun infondat u jiġi pruvat li jkun sar b'negligenza kbira, jew b'mod malizzjuż jew vessatorju.

8. (1) Min jilmenta u l-persuna li l-kondotta tagħha tkun qegħda tiġi investigata għandhom il-jedd li jkunu preżenti waqt li jkun għaddej il-proċess investigattiv kollu, li jipproduċu xhieda li jsostnu l-ilment tagħhom, jew li jsostnu id-difisa, u li jkunu assistiti minn avukat jew prokuratur legali. Sakemm il-persuna li tkun qegħda tiġi investigata ma titlobx xort'ohra, is-smiegh quddiem il-Kumitat kompetenti u l-Kummissjoni għandu jsir *in camera*. Ir-rapport għandu jinqara biss fil-pubbliku meta is-smiegh ma jkunx sar *in camera*.

Il-proċedimenti
isiru
in camera.

(2) Għall-finijiet tas-subartikolu (1) ta' dan l-artikolu, persuna titqies biss li ma tkunx giet liberata mill-akkużi, meta ż-żmien mogħti għal appell minn deċiżjoni tal-kumitat kompetenti jkun skada, u ma jkun sar ebda appell.

(3) Id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu għandhom ikunu jghoddu *mutatis mutandis* fil-każ ta' investigazzjoni magħmula skond is-subartikolu (3) ta' l-artikolu 97 tal-Kostituzzjoni.

9. (1) Meta jkun allegat li l-Imħallef jew maġistrat ma jkunx jista' jaqdi d-dmirijiet tal-kariga tiegħu minħabba f'xi inkapaċità fiżika jew tal-moħħ, u din l-allegazzjoni tiġi kontestata, il-Kummissjoni tista' tordna li jsir eżami mediku ta' l-imħallef jew maġistrat minn Bord Mediku li jinhatar għal dan il-għan mill-President, u l-imħallef jew maġistrat, skond il-każ, għandu jattendi għal dak l-eżami mediku fiż-żmien speċifikat mill-Kummissjoni.

Bord Mediku.

(2) Il-Bord Mediku għandu jippreżenta rapport lill-Kunsill fejn jiddikjara jekk l-inkapaċità fiżika jew tal-moħħ teżistix u jekk teżisti hijiex wahda tali li tirrendi lill-imħallef jew maġistrat inkapaċi li jwettaq il-funzjonijiet tal-kariga tiegħu.

(3) Jekk l-imħallef jew maġistrat jirrifjuta li joqghod għall-eżami mediku li l-Bord Mediku jqis li jkun meħtieġ, il-Bord għandu jagħmel rapport lill-Kummissjoni fejn isemmi li l-imħallef jew maġistrat ikun irrifjuta li jagħmel dak l-eżami, u l-Kummissjoni tista', meta tirċievi dak ir-rapport, tipprezumi li l-imħallef jew maġistrat ikollu dik l-inkapaċità fiżika jew tal-moħħ li tkun qegħda tiġi allegata fil-mozzjoni relattiva imsemmija fil-paragrafu (a) tas-subartikolu (3) ta' l-artikolu 97 tal-Kostituzzjoni.

(4) Il-provedimenti tad-dispożizzjonijiet ta' qabel ta' dan l-artikolu għandhom ikunu jghoddu *mutatis mutandis* meta jiġi allegat li avukat jew prokuratur legali ma jkunx kapaci jeżercita l-professjoni tiegħu minħabba f'inkapaċità tal-moħħ.

Kumitat għall-Qrati Superjuri.

10. Ikun id-dmir tal-Kumitat għall-Qrati Superjuri:

(a) illi jassisti lill-Prim Imħallef dwar rakkomandazzjonijiet li jagħmel lill-Ministru responsabbli għall-Gustizzja rigward l-assenjazzjoni ta' dmirijiet u dwar is-surroga ta' l-imħallfin; u

(b) li jinvestiga, jistudja u jirraporta ir-riżultanzi tiegħu lill-Kummissjoni, dwar kull kwestjoni li taqa' taħt il-kompetenza tiegħu.

Kompetenza tal-Kumitat għall-Qrati Superjuri.

11. Il-Kumitat għall-Qrati Superjuri jkollu kompetenza dwar kull kwestjoni li taqa' taħt il-funzjonijiet tal-Kummissjoni u li jkollha x'taqsam ma' l-imġieba hażina jew inkapaċità ta' l-imħallfin, inklużi dawk l-imħallfin li joqogħdu f'xi tribunal jew f'xi awtorità ġudizzjarja, jew li jkollha b'xi mod ieħor x'taqsam mal-Qrati Superjuri, minbarra dawk il-funzjonijiet li bis-saħħa tad-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu (4) ta' dan l-Att għandhom jitwettqu mill-Kummissjoni innifisha u ma għandhomx jigu riferiti lil ebda Kumitat.

Setgħat tal-Kumitat għall-Qrati Superjuri f'ċerti każi.

12. Meta l-Kumitat għall-Qrati Superjuri jaqta' li kien hemm imġieba hażina minn xi imħallef jew jaqta' li jkun hemm xi inkapaċità fiżika jew tal-moħħ ta' imħallef, il-Kumitat għandu:—

(a) meta fil-fehma tiegħu dik l-imġieba hażina jew inkapaċità tkun tisthoqq azzjoni mill-Kummissjoni skond is-subartikolu (2) ta' l-artikolu 4 ta' dan l-Att, il-Kumitat għandu jagħmel rapport dwar ir-riżultanzi tiegħu u jippreżenta kopja tiegħu, b'mod konfidenzjali, lill-Kummissjoni, lil min għamel l-ilment jekk ikun il-każ, u lill-imħallef;

(b) fil-każi l-oħra kollha, il-Kumitat għandu jew iwiddeb lill-imħallef, jew inkella jagħmel dawk ir-rakkomandazzjonijiet lill-imħallef kif jidhirlu xierqa fiċ-ċirkostanzi.

Kompetenza tal-Kumitat għall-Qrati Inferjuri.

13. (1) Il-Kumitat għall-Qrati Inferjuri jkollu kompetenza fuq il-maġistrati, inklużi dawk il-maġistrati li joqogħdu f'xi tribunal jew f'xi awtorità ġudizzjarja oħra.

(2) Id-dispożizzjonijiet ta' l-artikoli 10, 11 u 12 ta' dan l-Att għandhom jgħoddu għall-Kumitat għall-Qrati Inferjuri b'dak il-mod illi kull referenza fihom għall-Kumitat għall-Qrati Superjuri, għal imħallef jew għall-Qrati Superjuri għandha tinqara u tiftiehem bħala referenza għall-Kumitat għall-Qrati Inferjuri, għal maġistrat jew għall-Qrati Inferjuri, rispettivament.

Kompetenza tal-Kumitat għall-Avukati u Prokuraturi Legali.

14. (1) Il-Kumitat għall-Avukati u Prokuraturi Legali jkollu kompetenza dwar dawk il-ħwejjeġ kollha li huma responsabbiltà tal-Kummissjoni dwar il-kondotta professjonali ta' avukati u prokuraturi legali u dwar l-eżercizzju tal-professjoni tagħhom b'mod ġenerali.

(2) Id-dispożizzjonijiet tal-paragrafu (b) ta' l-artikolu 10 ta' dan l-Att għandhom ikunu jgħoddu *mutatis mutandis* għall-Kumitat għall-Avukati u Prokuraturi Legali.

15. (1) Meta l-Kumitat jaqta' li kien hemm imġieba hażina minn xi avukat jew prokuratur legali fl-eżerċizzju tal-professjoni tiegħu jew meta il-Kumitat jaqta' li l-Avukat jew Prokuratur Legali jkollu inkapaċità tal-moħħ li tista' serjament teffettwah fl-eżerċizzju tal-professjoni tiegħu, il-Kumitat jista:—

Setgħat tal-Kumitat għall-Avukati u Prokuraturi Legali.

(a) jitlob lill-Kummissjoni li tirrakkomanda lill-Prim Ministru li jagħti parir lill-President ta' Malta li l-avukat jew prokuratur legali jingħata sospensjoni perpetwa jew għal żmien determinat mill-eżerċizzju tal-professjoni tiegħu; jew

(b) jimponi piena pekunjarja, li tkun somma ta' mhux iktar minn għaxar Işhma li tingabar bħala debitu ċivili mis-Segretarju tal-Kummissjoni; jew

(ċ) iwiddeb lill-avukat jew prokuratur legali; jew

(d) jagħmel dawk ir-rakkomandazzjonijiet lill-avukat jew prokuratur legali hekk kif jidhirlu xieraq fiċ-ċirkostanzi.

(2) Meta l-Kumitat ikun jidhirlu hekk xieraq, jista', minkejja kull ma jinsab fis-subartikolu (1) ta' l-artikolu 8, jagħmel pubblika kull azzjoni meħuda minnu bis-saħħa ta' dan l-artikolu.

16. Meta jsir appell il-Kummissjoni jkollha l-istess setgħat li għandu l-kumitat kompetenti rispettiv bis-saħħa ta' l-artikoli 12 u 15 ta' dan l-Att.*

Setgħat tal-Kummissjoni meta jsir appell.

17. Il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jiġi emendat kif ġej:

Emendi konsegwenzjali. Kap. 12.

(a) fis-subartikolu (2) ta' l-artikolu 84 tiegħu, minflok il-kliem "tal-Kummissjoni Ħidma fil-Qrati" għandhom jidhlu l-kliem "tal-Kummissjoni għall-Amministrazzjoni tal-Gustizzja";

(b) minflok it-*Titolu X* ta' l-Ewwel Ktieb tal-Kodiċi, għandu jidhol dan li ġej:

"Titolu X

Imġieba illegali minn Avukati u Prokuraturi Legali

97. (1) Ikun abbuż fit-tweġtieq tal-professjoni tiegħu —

Imġieba mhux legali.

(a) li avukat jew prokuratur legali xjentement, direttament jew indirettament, jimpjega jew jaċċetta s-servizzi ta' xi sensal; jew

(b) li avukat jiftiehem ma' prokuratur legali jew nutar pubbliku jew li prokuratur legali jiftiehem ma' xi avukat jew nutar pubbliku, li jagħti jew jirċievi xi sehem mid-drittijiet jew xi rimunerazzjoni oħra maqluġha minn xi wieħed minnhom dwar xogħol professjonali.

(2) F'dan l-artikolu, l-espressjoni "sensal" tfisser kull persuna li bi hlas ta' xi dritt, rigal jew rimunerazzjoni, sew bil-flus jew bi hwejjeg oħra jew b'xi tpattija oħra, tindaħal biex issib klijenti għal xi avukat jew prokuratur legali."

Kif japplika is-subartikolu (16) ta' l-artikolu 101 tal-Kostituzzjoni.

18. Is-subartikolu (16) ta' l-artikolu 101 tal-Kostituzzjoni għandu japplika għal dan l-Att u d-dispożizzjonijiet ta' l-artikoli 1 sa 16 ta' dan l-Att ma għandhomx jinbidlu jew jiġu emendati hlief bil-mod provdut fis-subartikolu (2) ta' l-artikolu 66 tal-Kostituzzjoni.

Għanijiet u Ragunijiet

L-Għan ta' l-Abbozz huwa sabiex jipprovdi b'mod iktar dettaljat dwar is-setgħat u l-proċeduri tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja imwaqqaf bl-artikolu 101 tal-Kostituzzjoni. L-Abbozz jipprovdi wkoll għall-*entrenchment* tad-dispożizzjonijiet tiegħu li għandhom x'jaqsmu ma' l-imsemmija Kummissjoni.

A BILL
entitled

AN ACT to make provision conferring powers upon the Commission for the Administration of Justice and regulating the procedures of the said Commission

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. This Act may be cited as the Commission for the Administration of Justice Act, 1993. Short title.

2. In this Act, unless the context otherwise requires: Interpretation.

“appropriate committee” means the committee having competence in the matter under discussion in accordance with this Act;

“Commission” means the Commission for the Administration of Justice established by section 101 of the Constitution;

“misconduct” means any abusive conduct or negligence by any judge, magistrate, advocate or legal procurator in the exercise of their office or profession; any conduct considered repugnant to the decorum, dignity or ethics of their office or profession; or such conduct which could seriously effect the trust conferred on them by their office or profession;

“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.

3. (1) The Superior Courts Committee shall have competence over Judges, including Judges sitting on any tribunal or any other judicial Authority and shall consist of:—

(a) The Chief Justice or a senior Judge nominated by him to act as his substitute for a particular sitting, who shall be chairman;

(b) Two members appointed for a term of four years by the Commission from among the judges;

(c) Two other members who hold the office of Judge, or persons who have held the office of a Judge, appointed for a term of four years by the President acting on the advice of the Prime Minister.

(2) The Inferior Courts Committee shall have competence over Magistrates, including Magistrates sitting on any tribunal or any other Authority and shall consist of:—

(a) The Chief Justice or a senior Judge nominated by him to act as his substitute for a particular sitting, who shall be chairman;

(b) Two members appointed for a term of four years by the Commission from among the Magistrates;

(c) Two other members who hold the office of Magistrate, or persons who have held the office of a Magistrate, appointed for a term of four years by the President acting on the advice of the Prime Minister.

(3) The Committee on Advocates and Legal Procurators shall consist of:

(a) The President of the Chamber of Advocates who shall be chairman;

(b) An advocate of at least ten years standing appointed by the Commission for a period of four years;

(c) An advocate appointed by the Attorney General for a period of four years;

(d) Two advocates appointed by the Chamber of Advocates for a period of four years, so however that where the committee is dealing with any matters relating to the profession of legal procurators, or relating to the conduct of a legal procurator, the president and the secretary of the Chamber of Legal Procurators shall sit instead of the two advocates appointed by the Chamber of Advocates.

(4) The Chairman of any committee shall have an original and a casting vote.

(5) (a) Any member of a committee may be challenged and shall abstain in the same circumstances as are referred to in subsection (5) of section 101 of the Constitution.

(b) Where the member who has been challenged or has abstained is also a member of the Commission for the Administration of Justice, the President shall appoint a substitute member in the same manner as is provided in subsection (5) of section 101 of the Constitution. In all other cases the President acting in accordance with his own deliberate judgement 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.

(6) Where the members to be appointed under paragraph (d) of subsection (3) of this section are not appointed within two weeks from a call for their appointment by the Secretary of the Commission, then the appointment of the said two advocates shall be made by the President, who in making such appointment shall act in accordance with his own deliberate judgement.

(7) Any Judge, other than the Chief Justice, or Magistrate appointed as a member of a committee shall continue to be qualified and shall remain a member of that committee for the full period of his term of office notwithstanding that he shall have ceased to be a judge or magistrate because he has reached retiring age in terms of law.

4. (1) The Commission shall refer to the appropriate Committee any matter concerning the misconduct of a judge, or magistrate, or an advocate or legal procurator in the exercise of their profession, and, saving in the case of an appeal, the Commission shall not act otherwise than on receipt of, and in accordance with, the findings of the appropriate Committee in any such matter. So however that, where a report of the findings by the appropriate Committee has not been submitted to the Commission within two months from the day on which the matter was brought before the appropriate Committee, or within such further period or periods which shall in no case exceed a further four months, unless for very exceptional reasons, as the Commission shall allow, the Commission shall thereupon itself investigate and determine the matter.

Commission
to act
through
Committees.

(2) Notwithstanding the provisions of subsection (1) hereof, where in the opinion of the Commission an allegation against a judge or magistrate is such that if proved would constitute such misbehaviour or such inability to perform one's functions as would justify the making of an address in accordance with section 97 of the Constitution, it shall not refer the matter to any Committee but it shall thereupon be incumbent upon the Commission to investigate and determine the matter itself, and where such allegation is proved founded, it shall recommend to the Prime Minister to present a motion in the House of Representatives as is referred to in that section; any investigation required in terms of subsection (3) of section 97 of the Constitution shall likewise be carried out by the Commission without referring it to any Committee.

Powers of
Commission.
Cap. 12.

5. (1) In the exercise of their functions, the Commission and each of its Committees shall have all the powers conferred on the Civil Court, First Hall by the Code of Organisation and Civil Procedure.

(2) Five members of the Commission shall constitute a quorum at meetings of the Commission, and three members of any of its committees shall constitute a quorum at meetings of any Committee of the Commission.

(3) Subject to and without prejudice to the provisions of subsection (12) of section 101 of the Constitution, and of the foregoing provisions of this section, the Commission may from time to time establish rules of procedure for itself and its Committees, and may from time to time amend, substitute or revoke such rules.

Supervisory
power of
Committees.

6. (1) Subject to the provisions of subsections (2) and (3) of section 97, subsection (4) of section 100, and of the proviso to paragraph (f) of subsection (7) of section 101 of the Constitution, and of subsection (2) of section 4 of this Act, each appropriate Committee shall, of its own motion or at the request of the Commission or on the complaint of any person, have the power and duty:

(a) to investigate, inquire into and decide upon any misconduct of any person falling within its particular competence and in case of the committee on advocates and legal procurators, also upon the inability of an advocate or legal procurator to exercise his profession because of infirmity of mind;

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

(2) Any investigation or inquiry based on misconduct may only be commenced by the Commission or a Committee within three months from the date the Commission, Committee or complainant become aware of the misconduct, and in any case not later than five years from the date of such misconduct.

Right of
Appeal.

7. (1) There shall be a right of appeal to the Commission from a decision of the appropriate Committee.

(2) (a) The person against whom a Committee makes a finding and the complainant 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 against whom a complaint is made shall be entitled to sue the complainant for damages up to a sum of five thousand maltese liri if the complaint proves unfounded and he can prove that the complaint was the result of gross negligence, or malice, or was vexatious.

8. (1) The complainant and the person 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 being investigated requests otherwise, the hearing before the appropriate Committee and the Commission shall be held in camera. The finding shall only be delivered in public where the hearing is not held in camera.

Proceedings
to be held
in camera.

(2) For the purpose of subsection (1) hereof, a person shall be deemed not to have been cleared of the charges only when the time limit for an appeal from the decision of the appropriate committee has elapsed, and no appeal has been entered.

(3) The provisions of subsection (1) of this section shall *mutatis mutandis* apply in the case of an investigation made in terms of subsection (3) of section 97 of the Constitution.

9. (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.

Medical Board.

(2) The Medical Board shall submit a report to the Commission stating therein whether there exists an 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 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 relative motion referred to in paragraph (a) of subsection (3) of section 97 of the Constitution.

(4) The provisions of the foregoing provisions of this section 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.

The Superior Courts Committee.

10. It shall be the duty of the Superior Courts Committee:

(a) to assist the Chief Justice on any recommendation to the Minister responsible for Justice on the assignment of duties and on the subrogation of judges; and

(b) to investigate, study and report its findings to the Commission on any matter falling within its competence.

Competence of the Superior Courts Committee.

11. The Superior Courts Committee shall have competence in all matters falling under the functions of the Commission and relating to misconduct or infirmity of judges, (including Judges sitting on any tribunal or judicial authority), or otherwise relating to the Superior Courts, other than those functions which in virtue of the provisions of subsection (2) of section 4 of this Act are to be carried out by the Commission itself and are not to be referred to any Committee.

Powers of the Superior Courts Committee in certain cases.

12. Where the Superior Courts Committee finds that there has been any misconduct by a judge or where it finds that there is infirmity of body or mind on the part of the judge it shall:—

(a) where in its opinion such misconduct or infirmity is such as to warrant action by the Commission in terms of subsection (2) of section 4 of this Act, it shall make a report of its findings and forward, in confidence, a copy thereof to the Commission, the complainant, if any, and the judge;

(b) in all other cases it may either admonish the judge, or make such recommendations to the judge as it may deem appropriate in the circumstances.

Competence of the Inferior Courts Committee.

13. (1) The Inferior Courts Committee shall have competence over magistrates, including magistrates sitting on any tribunal or other judicial authority.

(2) The provisions of sections 10, 11 and 12 of this Act shall apply to the Inferior Courts Committee in such manner that any reference therein to the Superior Courts Committee, to a judge or to the Superior Courts, shall be read as a reference to the Inferior Courts Committee, to a magistrate or to the Inferior Courts, respectively.

Competence of the Committee on Advocates and Legal Procurators.

14. (1) The Committee on Advocates and Legal Procurators 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.

(2) The provisions of paragraph (b) of section 10 of this Act, shall *mutatis mutandis* apply to the Committee on Advocates and Legal Procurators.

Powers of the Committee on Advocates and Legal Procurators.

15. (1) Where the Committee finds that there has been misconduct by an advocate or legal procurator in the exercise of his profession 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) impose a pecuniary penalty, recoverable as a civil debt by the Secretary of the Commission, not exceeding ten Units; or

(c) admonish the advocate or legal procurator; or

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

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

16. The Commission shall, upon an appeal made to it, have the same powers as the respective appropriate committee has under sections 12 and 15 of this Act.

Powers of the Commission upon an appeal.

17. The Code of Organisation and Civil Procedure shall be amended as follows:

Consequential amendments. Cap. 12.

(a) in subsection (2) of section 84 thereof, for the words "of the Workings of the Law Courts Commission" there shall be substituted the words "of the Commission for the Administration of Justice:";

(b) for Title X of Book First thereof, there shall be substituted the following:

**"Title X
Illegal practices by Advocates and Legal Procurators**

97. (1) It shall be an abuse in the exercise of his profession:

(a) for any advocate or legal procurator to knowingly, directly or indirectly employ or accept the services of any tout; or

(b) for any advocate to agree with a legal procurator or a notary public, or for a legal procurator to agree with any advocate or notary public, to give or to receive any share of the fees or other remuneration earned by any of them in respect of professional work.

(2) In this section, the expression "tout" means any person who undertakes in return for a fee, reward or remuneration, whether in cash or in kind or for any other consideration, to find clients for any advocate or legal procurator."

Applicability
of subsection
(16) of section
101 of the
Constitution.

18. Subsection (16) of section 101 of the Constitution shall apply to this Act and the provisions of sections 2 to 16 of this Act shall not be altered or amended except in the manner provided for in subsection (2) of section 66 of the Constitution.

Objects and Reasons

The Object of the Bill is to provide in a more detailed form on the powers and procedures of the Commission for the Administration of Justice established by section 101 of the Constitution. The Bill also provides for the entrenchment of its provisions relating to the said Commission.