

MALTA

ATT Nru. XI ta' l-1994

ATT mahruġ b'ligi mill-Parlament ta' Malta.

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

ACT No. XI of 1994

AN ACT enacted by the Parliament of Malta.

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

Naghti l-kunsens tieghi.

(L.S.)

UGO MIFSUD BONNICI
President

3 ta' Ġunju, 1994

ATT Nru. XI ta' l-1994

ATT biex jipprovdi għall-ghoti ta' setghat 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'ligi dan li ġej:—

1. Dan l-Att jista' jissejjah l-Att ta' l-1994 dwar Kummissjoni għall-Amministrazzjoni tal-Ġustizzja.

Titolu
fil-qosor.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra:

Tifsir.

“imġieba hażina” għar-rigward ta' avukat jew prokuratur legali tfisser kull ksur ta' kodiċi jew kodiċijiet ta' etika relattivi għall-professjoni ta' avukat jew prokuratur legali, skond il-każ;

“Kodiċi ta' Etika” tfisser kodiċi jew kodiċijiet ta' kondotta magħmulin taht l-artikolu 101A tal-Kostituzzjoni li jirregolaw il-kondotta tal-persuni li għalihom japplika l-kodiċi, mal-kollegi, il-qrati, membri ta' professjonijiet oħra u l-pubbliku ġenerali. Il-Kodiċijiet ta' Etika li għandhom isiru taht l-artikolu 101A tal-Kostituzzjoni għandhom jagħmlu provvedimenti speċifiċi kontra dawk l-abbużi u dik in-negliġenza kif jista' jitqies meħtieġ li jiġi

speċifikat u għandu wkoll jipprovdi li jkun ksur ta' etika li wiehed iġib ruhu b'mod abbużiv jew negligenti jew b'mod mhux xieraq għad-dekor, dinjità jew unur tal-kariga jew professjoni tiegħu, jew b'mod li jista' jolqot serjament il-fiduċja li għandhom igawdu dawk il-persuni minhabba l-kariga jew professjoni tagħhom;

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

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

Kumitat għall-Avukati u Prokuraturi Legali.

3. (1) Il-Kummissjoni għandha f'kull żmien ikollha kumitat li jkun magħruf bħala l-Kumitat għall-Avukati u Prokuraturi Legali.

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

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

(ii) avukat li jiġi mahtur mill-Avukat Ġenerali għal żmien erba' snin;

(iii) tliet avukati mahturin mill-Kamra ta' l-Avukati għal żmien erba' snin, b'dana li meta l-kumitat ikun qed jittratta hwejjeg li għandhom x'jaqsmu mal-professjoni ta' prokuraturi legali, jew li għandhom x'jaqsmu mal-kondotta ta' xi prokuratur legali, tliet prokuraturi legali mahtura mill-Kamra tal-Prokuraturi Legali għandhom joqgħodu minflok it-tliet avukati mahtura mill-Kamra ta' l-Avukati.

(b) *Ic-chairman* tal-kumitat għandu jiġi elett mill-membri tal-kumitat minn fosthom stess.

(3) (a) Membru tal-kumitat jista' jiġi rikuzat u għandu jastjeni fl-istess ċirkostanzi bħal imhallet tal-qrati superjuri.

(b) Meta membru jkun ġie rikuzat jew ikun astjena, il-President li jaġixxi skond il-ġudizzju tiegħu innifsu biss, jahtar bħala membru sostitut biex joqgħod fil-kumitat kull fejn hu possibbli, persuna li fil-fehma tiegħu ikollha kemm jista' jkun l-istess kwalitajiet u kwalifiki daqs dak il-membru li jkun qiegħed jiġi sostitwit.

(4) Meta l-membri li għandhom jinhatru taht is-subparagrafu (iii) tal-paragrafu (a) tas-subartikolu (2) ta' dan l-artikolu ma jinhatrux fi żmien ġimghatejn minn meta ssir sejha għall-hatra tagħhom mis-Segretarju tal-Kummissjoni, il-hatra tal-membri imsemmija għaldaqshekk issir mill-President li fl-għemil ta' dik il-hatra jaġixxi skond il-ġudizzju tiegħu nnifsu biss.

(5) Il-Kumitat ikun kompetenti f'dawk il-materji li jaqghu taht il-funzjonijiet tal-Kummissjoni li għandhom x'jaqsmu mal-kondotta professjonali ta' avukati u prokuraturi legali u ma' l-eżercizzju tal-professjoni tagħhom in ġenerali.

(6) Il-Kumitat għandu jagħmel rapport lill-Kummissjoni dwar il-konklużjonijiet tiegħu f'kull investigazzjoni jew studju magħmul minnu.

(7) Meta l-Kumitat isib illi jkun hemm imġieba hażina minn avukat jew prokuratur legali fl-eżercizzju tal-professjoni tiegħu jew meta il-Kumitat isib illi avukat jew prokuratur legali jsofri minn inkapaċità mentali li tista' b'mod serju taffettwa l-eżercizzju tal-professjoni tiegħu, hu jista':

(a) jitlob lill-Kummissjoni biex tirrikmanda lill-Prim Ministru biex jagħti parir lill-President ta' Malta li dak l-avukat jew prokuratur legali jiġi sospiż perpetwament jew għal żmien speċifikat mill-eżercizzju tal-professjoni tiegħu; jew

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

(ċ) iwiddeb l-avukat jew il-prokuratur legali; jew

(d) jagħmel dawk ir-rakkomandazzjonijiet lill-avukat jew lill-prokuratur legali li jista' jidhirlu xierqa fiċ-ċirkostanzi.

(8) Meta l-kumitat jidhirlu xieraq, hu jista', minkejja kull haġa fis-subartikolu (1) ta' l-artikolu 8, jagħmel pubbliku l-azzjoni li jkun ha taht dan l-artikolu.

(9) Il-Kummissjoni, meta jsir appell lilha, jkollha l-istess setgħat *mutatis mutandis* li għandu l-Kumitat taht is-subartikoli (7) u (8) ta' dan l-artikolu.

4. (1) Fl-eżercizzju ta' dmirijiethom, il-Kummissjoni u l-Kumitat għall-Avukati u Prokuraturi Legali jkollhom is-setgħat kollha li għandha l-Prim'Awla tal-Qorti Ċivili permezz tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Setgħat.

Kap. 12.

(2) Tliet membri tal-Kumitat għall-Avukati u Prokuraturi Legali jikkostitwixxu *quorum* fil-laqgħat tiegħu. Hlief kif provdut fl-artikolu 101A tal-Kostituzzjoni jew f'xi regoli li tista' tagħmel għal dak l-iskop il-Kummissjoni, dak il-Kumitat għandu jirregola l-proċedura tiegħu nnifsu.

5. (1) Il-Kumitat għall-Avukati u Prokuraturi Legali għandu, minn jeddu stess, jew fuq talba tal-Kummissjoni, jew wara li jsir ilment minn xi persuna, is-setgħa u d-dover li:

Setgħa tal-Kumitat għall-Avukati u Prokuraturi Legali li jissorvelja.

(a) jinvestiga, jagħmel inkjesta dwar u jaqta' fuq kull imġieba hażina ta' xi avukat jew prokuratur legali fl-eżercizzju tal-

professjoni jew dwar kull inkapaċità ta' avukat jew prokuratur legali li jeżerċita l-professjoni tiegħu minhabba f'inkapaċità tal-mohh;

(b) minghajr hsara għal kull azzjoni oħra li tista' tittiehed taht kull ligi oħra, li jimponi pieni dixxiplinarji u li jiehu dik il-miżura oħra li jista' jqis xierqa u kif hemm provdut dwarhom f'dan l-Att.

(2) Kull investigazzjoni jew inkjesta dwar kull imġieba hażina ta' xi avukat jew prokuratur legali tista' tinbeda mill-Kumitat biss fi żmien tliet xhur mid-data li fiha l-Kummissjoni, l-Kumitat jew il-persuna li tagħmel l-ilment isiru jafu b'dik l-imġieba hażina, u f'kull każ mhux aktar tard minn hames snin minn meta tkun saret dik l-imġieba hażina.

Dritt ta' appell.

6. (1) Hemm dritt ta' appell lill-Kummissjoni minn deċiżjoni tal-Kumitat għall-Avukati u Prokuraturi Legali.

(2) (a) Sew il-persuna li l-Kumitat jiddeċiedi kontriha kif ukoll il-Kamra ta' l-Avukati meta l-ilment ikun kontra avukat, u l-Kamra tal-Prokuraturi Legali meta l-ilment ikun kontra Prokuratur Legali, għandhom dritt ta' appell lill-Kummissjoni:

Iżda 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 Işhma, 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 iharrek lil min jagħmel l-ilment minbarra d-danni li jistgħu jintalbu taht xi ligi li tkun fis-seħh dak iż-żmien dwar telf jew hsara attwali, l-Qorti tista' tagħti lill-persuna li kontra tagħha jkun sar l-ilment somma ta' mhux iżjed minn elfejn lira Maltija jekk jinstab li l-ilment ikun infondat u jiġi pruvat li jkun sar b'negligenza kbira, jew b'mod malizzjuż jew vessatorju.

Il-proċedimenti jsiru *in camera*.

7. (1) Min jilmenta 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'oħra, is-smiegh quddiem il-Kumitat għall-Avukati u Prokuraturi Legali u l-Kummissjoni għandu jsir *in camera*. Ir-rapport għandu jinqara biss fil-pubbliku meta is-smiegh ma jkunx sar *in camera*.

(2) Minkejja id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, il-Kumitat għall-Avukati u Prokuraturi Legali għandu jibgħat lill-kumitat tal-Kamra ta' l-Avukati kopja ta' kull deċiżjoni mogħtija minnu fuq ilment kontra avukat, u għandu jibgħat lill-kumitat tal-Kamra tal-Prokuraturi Legali kopja ta' kull deċiżjoni mogħtija minnu fuq ilment kontra prokuratur legali. Il-Kumitati ta' l-imsemmija kmamar u kull membru tagħhom għandu, fejn is-smiegh fuq l-ilmenti

ikun *in camera*, jittratta dik l-informazzjoni bħala sigrieta u konfidenzjali.

8. Il-Kummissjoni għandha minbarra l-funzjonijiet mogħtija lilha taħt l-artikolu 101A tal-Kostituzzjoni jew taħt xi liġi oħra, ikollha l-funzjoni u s-setgħat li tagħmel investigazzjonijiet fuq kull imħallef jew maġistrat in konnessjoni ma' xi indirizz kif imsemmi fl-artikolu 97 tal-Kostituzzjoni skond l-artikoli 10 u 11 ta' dan l-Att.

Setgħat addizzjonali tal-Kummissjoni.

9. (1) Meta jingħata avviż fil-Kamra tad-Deputati dwar mozzjoni għall-ghemil ta' indirizz lill-President kif imsemmi fis-subartikolu (2) ta' l-artikolu 97 tal-Kostituzzjoni, l-*Speaker* għandu, mingħajr ma jippermetti li din tingħata xi pubbliċità, iżomm il-mozzjoni pendent, u għandu jirreferi din l-istess lill-Kummissjoni.

Proċedura li għandha tiġi addotta taħt l-artikolu 97 tal-Kostituzzjoni.

(2) Il-mozzjoni għandu jkun fiha akkużi ċari kontra l-imħallef jew il-maġistrat, skond il-każ, li fuq il-bażi tagħhom ikunu ser isiru l-investigazzjonijiet. Flimkien mal-mozzjoni għandha tiġi ppreżentata dikjarazzjoni li tkun turi r-raġunijiet li fuqhom kull wahda minn dawk l-akkużi tkun ibbażata.

(3) Dawk l-akkużi flimkien ma' dik id-dikjarazzjoni għandhom jiġu notifikati lill-imħallef jew il-maġistrat skond il-każ, u l-istess jingħata opportunità raġonevoli li jippreżenta dikjarazzjoni bil-miktub fiż-żmien li jista' jiġi speċifikat mill-Kummissjoni.

(4) Il-Kummissjoni għandha tagħmel l-investigazzjoni neċessarja u tagħmel rapport fuq l-istess lill-*Speaker*. Jekk ir-rapport tal-Kummissjoni jkun jgħid li m'hemmx imġieba hażina jew li l-imħallef jew maġistrat ma jkollu ebda inkapaċità, ma għandha tittiehed ebda azzjoni oħra fil-Kamra dwar dak ir-rapport u ma għandhom isiru ebda proċeduri oħra dwar il-mozzjoni pendent quddiem il-Kamra.

(5) Jekk ir-rapport tal-Kummissjoni ikun sab *prima facie* li l-imġieba hażina jew l-inkapaċità tkun pruvata, il-mozzjoni msemmija fis-subartikolu (2) ta' l-artikolu 97 tal-Kostituzzjoni għandha, flimkien mar-rapport tal-Kummissjoni, tiġi kkunsidrata mill-Kamra.

(6) Jekk wara konsiderazzjoni mill-Kamra, din tkun sodisfatta li l-imġieba hażina jew l-inkapaċità huma ppruvati, u jekk il-mozzjoni tiġi mgħoddija mill-Kamra skond id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 97 tal-Kostituzzjoni, allura l-imġieba hażina jew l-inkapaċità ta' l-imħallef jew maġistrat titqies li tkun għet ippruvata u għandu jiġi ppreżentat mill-Kamra indirizz lill-President li fih tintalab it-tneħħija ta' l-imħallef jew maġistrat fl-istess sessjoni li fiha tkun għaddiet il-mozzjoni.

(7) Il-proċeduri tal-Kummissjoni taħt dan l-artikolu għandhom jinżammu *in camera*. Il-membru tal-Kamra li jkun ippreżenta l-mozzjoni, u l-imħallef jew il-maġistrat li l-imġieba tiegħu tkun qed tiġi investigata, ikollhom id-dritt li jkunu preżenti ma' tul il-proċess kollu, li jipproduċu xhieda in sostenn ta' l-akkużi jew tad-difiża, u li jkunu assistiti minn avukat jew prokuratur legali.

Bord mediku.

10. (1) Meta jkun allegat li imħallef jew magistrat ma jkunx jista' jaqdi d-dmirijiet tiegħu minhabba xi inkapaċità fiżika jew tal-mohħ, u din l-allegazzjoni tiġi kontestata, il-Kummissjoni tista' tordna li jsir eżami mediku ta' l-imħallef jew magistrat minn bord mediku li jinhatar għal dan il-ghan mill-President, u l-imħallef jew magistrat, skond il-każ, għandu jattendi għal dak l-eżami mediku speċifikat mill-Kummissjoni.

(2) Il-bord mediku għandu jippreżenta rapport lill-Kummissjoni fejn jiddikjara jekk l-inkapaċità fiżika jew tal-mohħ teżistix, u jekk teżisti hijiex waħda tali li tirrendi lill-imħallef jew magistrat inkapaċi li jwettaq il-funzjonijiet tal-kariga tiegħu.

(3) Jekk l-imħallef jew magistrat jirrifjuta li joqghod għal xi eżami mediku li l-bord mediku jqis meħtieġ, il-bord għandu jagħmel rapport lill-Kummissjoni fejn isemmi li l-imħallef jew magistrat ikun irrifjuta li joqghod għal dak l-eżami, u l-Kummissjoni tista', meta tirċievi dak ir-rapport, tipprezumi li l-imħallef jew magistrat ikollu dik l-inkapaċità fiżika jew tal-mohħ li tkun qegħda tiġi allegata fil-mozzjoni msemmija fis-subartikolu (1) ta' l-artikolu 10 ta' dan l-Att.

(4) Id-dispożizzjonijiet tas-subartikoli ta' qabel ta' dan l-artikolu għandhom japplikaw *mutatis mutandis* meta jiġi allegat li avukat jew prokuratur legali ma jkunx jista' jeżerċita l-professjoni tiegħu minhabba inkapaċità tal-mohħ.

Rapporti minn
Imħallfin u
Maġistrati lill-
Kummissjoni
għall-
Amministrazzjoni
tal-Gustizzja.

11. Kull imħallef u magistrat li jippresjedi fuq xi qorti għandu salhmistax ta' Jannar ta' kull sena, jagħmel rapport lill-Kummissjoni għall-Amministrazzjoni tal-Gustizzja li fih jagħti lista tal-kawżi kollha pendenti quddiem il-qorti li fuqha jippresjedi u liema ikunu ilhom hekk pendenti għal hames snin jew aktar, u jindika f'dak ir-rapport ir-raġuni l-għala kull każ ikun għadu hekk pendenti u ż-żmien li fih l-imħallef jew il-maġistrat, skond il-każ, jistenna li l-istess qorti tkun iddisponiet mill-każ.

Emendi
konsegwenzjali.
Kap. 12.

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

(a) fis-subartikolu (2) ta' l-artikolu 84 tiegħu, minflok il-kliem "tal-Kummissjoni Fidma 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

Imġieba mhux legali. 97. (1) Ikun abbuż fit-twettieq tal-professjoni tiegħu —

(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 wiehed 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 hwejjeġ oħra jew b'xi tpattija oħra, tindaħal biex issib klijenti għal xi avukat jew prokuratur legali.”.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 266 tat-18 ta' Mejju, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati.

I assent.

(L.S.)

UGO MIFSUD BONNICI
President
3rd June, 1994

ACT No. XI of 1994

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:—

Short title.

1. This Act may be cited as the Commission for the Administration of Justice Act, 1994.

Interpretation.

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

“Code of Ethics” means a code or codes of conduct, made under section 101A of the Constitution to regulate the conduct of persons to which the code applies, with their colleagues, the courts, members of other professions and the public in general. The Codes of Ethics to be made under section 101A of the Constitution shall make specific provision against such abusive or negligent conduct as may be deemed necessary to be specified, and shall further provide that it shall be a breach of ethics to conduct oneself abusively or negligently or in a manner repugnant to the decorum, dignity or honour of one’s office or profession, or in such manner which could seriously effect the trust conferred on such persons by their office or profession;

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

“misconduct” in relation to advocates or legal procurators means any breach of a code or codes of ethics relative to the profession of advocate or legal procurator, as the case may be;

“Unit” means a sum of money equivalent to one percentum of the annual salary of the Attorney General as at the time established according to law.

3. (1) The Commission shall at all times have a committee to be styled the Committee on Advocates and Legal Procurators.

Committee on
Advocates and
Legal
Procurators.

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

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

(ii) an advocate appointed by the Attorney General for a period of four years;

(iii) three advocates appointed by the Chamber of Advocates for a period of four years, so however that where the committee is dealing with any matter relating to the profession of legal procurators, or relating to the conduct of a legal procurator, three legal procurators appointed by the Chamber of Legal Procurators shall sit instead of the three advocates appointed by the Chamber of Advocates.

(b) The chairman of the committee shall be elected by the members of the committee from among themselves.

(3) (a) Any member of the committee may be challenged and shall abstain in the same circumstances as a judge of the superior courts may be challenged or may abstain.

(b) Where a member has been challenged or has abstained 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.

(4) Where the members to be appointed under subparagraph (iii) of paragraph (a) of subsection (2) 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 members shall be made by the President, who in making such appointment shall act in accordance with his own deliberate judgement.

(5) The Committee 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.

(6) The Committee shall make a report to the Commission of its findings in any investigation or study carried out by it.

(7) 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.

(8) 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.

(9) The Commission shall, upon an appeal made to it, have the same powers *mutatis mutandis* as the Committee has under subsections (7) and (8) of this section.

Powers.

4. (1) In the exercise of their functions the Commission and the Committee for Advocates and Legal Procurators shall have all the powers as are assigned to the First Hall of the Civil Court by the Code of Organization and Civil Procedure.

Cap. 12.

(2) Three members of the Committee for Advocates and Legal Procurators shall constitute a *quorum* in its meetings. Save as is provided in section 101A of the Constitution and in any rules made for the purpose by the Commission that Committee shall regulate its own procedures.

Supervisory
power of
Committee on
Advocates and
Legal
Procurators.

5. The Committee for Advocates and Legal Procurators 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 advocate or legal procurator in the exercise of the profession or upon the inability of any 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 such other measures as it considers appropriate and as are provided for under this Act.

(2) Any investigation or inquiry on any misconduct of an advocate or legal procurator may only be commenced by the 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.

6. (1) There shall be a right of appeal to the Commission from a decision of the Committee for Advocates and Legal Procurators.

Right of appeal.

(2) (a) The person against whom a Committee makes a finding and the Chamber of Advocates where the complaint is against an advocate, and the Chamber of Legal Procurators where the complaint is against a Legal Procurator, 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 in addition to the damages which may be due under any law for the time being in force in respect of any actual loss, or injury, the Court may grant to the person against whom the complaint is made a sum not exceeding two 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.

7. (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 Committee for Advocates and Legal Procurators 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) Notwithstanding the provisions of subsection (1) of this section, the Committee for Advocates and Legal Procurators shall transmit to the committee of the Chamber of Advocates a copy of any decision delivered by it on a complaint against an advocate, and shall transmit to the committee of the Chamber of Legal Procurators a copy of any decision delivered by it on a complaint against a legal procurator. The committees of the said chambers and every member thereof shall, where the complaint is heard *in camera*, treat such information as secret and confidential.

8. The Commission shall in addition to the functions conferred by it under section 101A of the Constitution or under any other law, have the functions and powers to carry out investigations on any judge or magistrate in connection with an address as is referred to in section 97 of the Constitution in accordance with sections 10 and 11 of this Act.

Additional powers of the Commission.

Procedure to be followed under section 97 of the Constitution.

9. (1) Where notice is given in the House of Representatives of a motion for presenting an address to the President as is referred to in subsection (2) of section 97 of the Constitution, the Speaker shall, without allowing any publicity, keep the motion pending, and shall refer the same for investigation to the Commission.

(2) The motion shall contain definite charges against the judge or the magistrate, as the case may be, on the basis of which the investigations are to be held. Together with the motion there shall be filed a statement showing the grounds on which each of such charges is based.

(3) Such charges together with such statement shall be communicated to the judge or magistrate as the case may be, and he shall be given a reasonable opportunity to present a written statement of defence within such time as may be specified by the Commission.

(4) The Commission shall carry out the necessary investigation and make a report thereon to the speaker. If the report of the Commission contains a finding that there is no misbehaviour or that the judge or magistrate does not suffer from any inability, then, no further steps shall be taken in the House in relation to the report and the motion pending in the House shall not be proceeded with.

(5) If the report of the Commission contains a finding *prima facie* that the misbehaviour or incapacity has been proved then, the motion referred to in subsection (2) of section 97 of the Constitution shall, together with the report of the Commission, be taken up for consideration by the House.

(6) If upon consideration by the House, it is satisfied that the misbehaviour or incapacity has been proved and if the motion is adopted by the House in accordance with the provisions of subsection (2) of section 97 of the Constitution then the misbehaviour or inability of the judge or magistrate, as the case may be, to perform the functions of his office shall be deemed to have been proved and an address praying for the removal of the judge or magistrate as the case may be, shall be presented to the President by the House in the same session in which the motion has been adopted.

(7) Proceedings by the Commission under this section shall be held *in camera*. The member of the House presenting the motion and the judge or magistrate whose conduct is being investigated shall have a right to be present during the whole process, to produce witnesses in support of the charges set in the motion or in defence, and to be assisted by any advocate or legal procurator.

Medical Board.

10. (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.

(2) The medical board shall submit a report to the Commission stating therein whether there exists any 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 any 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 subsection (1) of section 10 of this Act.

(4) The provisions of the foregoing subsections 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.

11. Every judge and magistrate presiding over any court shall not later than the fifteenth day of January of every year, make a report to the Commission for the Administration of Justice giving a list of all cases pending before the court over which he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending and the time within which the judge or magistrate, as the case may be, expects the case to be disposed of by the said court.

Reports by Judges and Magistrates to the Commission for the Administration of Justice.

12. The Code of Organization 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."

Passed by the House of Representatives at Sitting No. 266 of the 18th May, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.