

Naghti l-kunsens tieghi.

(L.S.)

EDWARD FENECH ADAMI
President

25 ta' Mejju, 2004

ATT Nru. IV ta' l-2004

ATT biex jemenda l-Ordinanza dwar il-Kostituzzjoni tal-Kariga ta' Avukat Ġenerali u dik ta' Avukat tar-Repubblika, Kap. 90

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. (1) It-titolu fil-qosor ta' dan l-Att huwa Att ta' l-2004 li jemenda l-Ordinanza dwar il-Kostituzzjoni tal-Kariga ta' Avukat Ġenerali u dik ta' Avukat tar-Repubblika. Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jinqara u jiftiehem haġa waħda ma' l-Ordinanza dwar il-Kostituzzjoni tal-Kariga ta' Avukat Ġenerali u dik ta' Avukat tar-Repubblika, hawnhekk iżjed 'il quddiem msejha "lil-liġi prinċipali" u għandu jidhol fis-sehh f'dik id-data li l-Ministru responsabbli għall-Ġustizzja jista' b'avviż fil-Gazzetta jistabilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet u għanijiet differenti ta' l-Att.

2. Minflok it-titolu t-twil tal-liġi prinċipali għandu jidhol dan li ġej: Sostituzzjoni tat-titolu t-twil tal-liġi prinċipali.

"Biex tippovdi dwar il-Kariga ta' Avukat Ġenerali".

Emenda ta' l-artikolu 1 tal-liġi prinċipali.

3. Fl-artikolu 1 tal-liġi prinċipali minflok il-kliem “l-Ordinanza dwar il-Kostituzzjoni tal-Kariga ta’ Avukat Ġenerali u dik ta’ Avukat tar-Repubblika” ghandhom jidhlu l-kliem “l-Ordinanza dwar L-Avukat Ġenerali”.

Sostituzzjoni ta' l-artikolu 2 tal-liġi prinċipali.

4. Minflok l-artikolu 2 tal-liġi prinċipali, ghandu jidhol dan li ġej:

“Avukat Ġenerali.

2. (1) L-Avukat Ġenerali jkun il-konsulent legali prinċipali tal-Gvern u jkollu r-rappreżentanza ġuridika tal-Gvern fl-atti u l-azzjonijiet ġudizzjarji fejn il-liġi ma tipprovdix li dik ir-rappreżentanza ghandha tkun tvesti f’xi persuna jew awtorita’ oħra.

(2) L-Avukat Ġenerali jkun l-Uffiċjal Prosekutur Ewlieni f’Malta u jkollu dawk is-setgħat f’dak li ghandu x’jaqsam ma’ proċedimenti kriminali u kif jista’ minn żmien għal żmien jiġi provdut bil-liġi. Fit-twettiq tas-setgħat tiegħu li jibda, imexxi jew itemm proċedimenti kriminali l-Avukat Ġenerali ghandu jeżerċita dawk is-setgħat skond il-ġudizzju personali tiegħu.

(3) Meta taht xi liġi l-Avukat Ġenerali jkun marbut li jagixxi jew jeżerċita xi setgħa skond il-ġudizzju personali tiegħu, huwa ma ghandu jkun soġġett għal ebda ordni jew kontroll minn xi persuna jew awtorita’ oħra.

(4) Meta l-Uffiċjali ta’ l-Avukat Ġenerali jkunu qegħdin jaġixxu taht l-ordnijiet ta’ l-Avukat Ġenerali f’xi haġa li fiha l-Avukat Ġenerali jkollu jaġixxi skond il-ġudizzju personali tiegħu, huma ghandu jkollhom l-istess protezzjoni bil-liġi bhallikieku dak li jagħmlu jew iħallu milli jsir kien att magħmul jew ommess milli jiġi magħmul mill-Avukat Ġenerali.”.

Emenda ta' l-artikolu 3 tal-liġi prinċipali.

5. L-artikolu 3 tal-liġi prinċipali ghandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem “Deputat Avukat Ġenerali” u uffiċjali li jissejjhu rispettivament “Assistenti għall-Avukat Ġenerali”, “Avukat tar-Repubblika Anzjan” u “Avukat tar-Repubblika”, ghandhom jidhlu l-kliem “Deputat Avukat Ġenerali u Uffiċjali oħra ta’ l-Avukat Ġenerali”;

(b) fis-subartikolu (2) tiegħu minflok il-kliem “id-Deputat Avukat Ġenerali, l-Assistenti għall-Avukat Ġenerali,

l-Avukati tar-Repubblika Anzjani u l-Avukati tar-Repubblika” ghandhom jidhlu l-kliem “id-Deputat Avukat Ġenerali u l-Uffiċjali l-oħra ta’ l-Avukat Ġenerali”;

(ċ) minnufih wara s-subartikolu (2) tieghu ghandhom jiżdiedu dawn is-subartikoli li ġejjin:

“(3) L-Uffiċċju ta’ l-Avukat Ġenerali qiegħed b’dan jissema bhala Aġenzija tal-Gvern u d-disposizzjonijiet tas-subartikoli (5) sa (9) ta’ dan l-artikolu ghandhom japplikaw għal dik l-aġenzija.

(4) L-Avukat Ġenerali jista’ wkoll jaġixxi permezz ta’ dawk il-kuntratturi li huwa jahtar minn żmien għall-iehor:

Iżda dawk il-kuntratturi ghandhom f’kull żmien jaġixxu skond dawk l-istruzzjonijiet li jistghu jinghatawllhom mill-Avukat Ġenerali.

(5) (a) L-Uffiċċju ta’ l-Avukat Ġenerali ghandu bhala aġenzija tal-gvern ikollu bhala kap lill-Avukat Ġenerali u jkun il-mezz li bih l-Avukat Ġenerali jwettaq il-funzjonijiet tieghu skond il-ligi.

(b) Dik l-aġenzija ghandha tkun korp magħqud li jkollu personalità legali distinta u li jkun kapaċi li jagħmel kuntratti, li jimpjega persunal, li jikseb, iżomm għandu u jiddisponi minn kull xorta ta’ proprjetà għall-finijiet tal-hidmiet li jagħmel u li jharrek u li jiġi mharrek.

(ċ) Ir-rappreżentanza legali u ġuridika ta’ l-Uffiċċju ta’ l-Avukat Ġenerali tvesti fl-Avukat Ġenerali.

(d) L-istess aġenzija ghandha tagħmel ftehim dwar it-tweqqif tagħha stess mal-Gvern li permezz tieghu jiġu stabbiliti l-finanzjament ta’ l-aġenzija kif ukoll il-hidmiet li ghandhom jiġu indirizzati u miksubin minnha:

Iżda l-Ministru responsabbli għall-aġenzija għandu, bla hsara għad-disposizzjonijiet ta’ xi ligi kuntrarja, jkollu jedd jagħti ordnijiet bil-miktub lill-aġenzija, u l-aġenzija u l-kap tagħha jkun marbuta li josservaw dawk id-direttivi:

Iżda wkoll id-disposizzjonijiet tal-proviso hawn qabel imsemmi ma ghandhomx japplikaw meta l-Avukat

Ġenerali jkollu skond il-Kostituzzjoni jew kull liġi oħra jaġixxi skond il-gudizzju personali tiegħu innifsu, f'liema każ l-aġenzija għandha taġixxi skond l-uniċi ordnijiet ta' l-Avukat Ġenerali.

(6) L-Avukat Ġenerali u l-impjegati ta' dik l-aġenzija għandhom jikkonformaw ma' kull Kodiċi ta' Etika li jkun japplika għal uffiċjali pubbliċi u għandu jkollhom, bla hsara għal kull liġi kuntrarja, l-istess obbligi tahtu:

Iżda l-Avukat Ġenerali għandu bi ftehim mal-Ministru responsabbli għall-aġenzija jabbozza valuri ta' servizz u Kodiċijiet ta' Etika dwar l-aġenzija sabiex jissupplimenta kull Kodiċi ta' Etika tas-servizz pubbliku.

(7) (a) L-Avukat Ġenerali għandu jzomm kotba bil-kontijiet kif imiss b'dak il-mod li l-Ministru responsabbli għall-finanzi jista' minn żmien għal żmien jordna. Dawk il-kontijiet għandhom jiġu verifikati minn awditur li jinhatar għal dak l-ghan mill-Avukat Ġenerali bi ftehim mal-Ministru responsabbli għall-finanzi u għandu iktar minn hekk ikun soġġett għall-verifika li ssir mill-Awditur Ġenerali.

(b) Is-sena finanzjarja ta' l-Uffiċċju ta' l-Avukat Ġenerali għandha tibda fl-1 ta' Jannar u tintemm fil-31 ta' Diċembru:

Iżda l-ewwel sena finanzjarja għandha tibda mad-dhul fis-seħh ta' dan is-subartikolu u tintemm fil-31 ta' Diċembru tas-sena ta' wara.

(c) L-Avukat Ġenerali għandu mhux iktar tard minn sitt ġimgħat wara tmiem kull sena finanzjarja jippreżenta lill-Ministru responsabbli għall-aġenzija l-kontijiet verifikati flimkien ma' rapport fuq il-hidmiet ta' l-aġenzija, f'liema rapport għandu jiġi dikjarat il-mod li bih tkun hadmet l-aġenzija sabiex twettaq il-funzjonijiet tagħha u l-pjanijiet li jkollha għall-futur.

(d) Il-kontijiet u r-rapport imsemmija fil-paragrafu (c) għandhom jitqegħdu fuq il-Mejda tal-Kamra mill-Ministru mhux iżjed tard minn sitt ġimgħat minn meta jaslulu, jew inkella jekk f'dak iż-żmien il-Kamra ma tkunx qegħda tiltaqa', mhux iżjed tard mit-tieni ġimgħa wara li l-Kamra tkompli bis-seduti tagħha.

(8) (a) Il-Prim Ministru jista' b'ordni jinkariga lil xi uffiċjal pubbliku biex jaqdi dmirijietu ma' dik l-aġenzija għal dak iż-żmien u taht dawk il-kondizzjonijiet li jistgħu jiġu stabbiliti fir-rigward ta' dak l-uffiċjal li jkun ġie hekk inkarigat.

(b) Il-Prim Ministru jista' f'kull żmien jirrevoka kull ordni bħal dik.

(ċ) Meta uffiċjal jiġi inkargat biex iwettaq dmirijietu ma' l-aġenzija, dak l-uffiċjal għandu, f'dak iż-żmien li matulu dik l-ordni tkun għadha ssehh, jkun taht id-direzzjoni amministrattiva u l-kontroll ta' l-Avukat Ġenerali, iżda għandu xort'ohra jibqa', u jzomm id-drittijiet u d-dmirijiet kollha bhala, uffiċjal pubbliku u għall-finijiet ta' kull liġi li għandha x'taqsam mal-pensjonijiet tal-gvern, is-servizz ma' l-aġenzija jitqies li jkun servizz mal-Gvern:

Iżda ma għandu jittiehed ebda kont fl-istima ta' l-emolumenti pensjonabbli ta' dak l-uffiċjal għall-finijiet ta' xi liġi li jkollha x'taqsam mal-pensjonijiet tas-servizz tal-gvern dwar kull *allowance*, *bonus* jew gratwità mhallsa lil dak l-uffiċjal mill-aġenzija b'eċċess għal dak li għandu jedd għalih bhala uffiċjal pubbliku:

Iżda wkoll matul iż-żmien li dak l-uffiċjal jiġi hekk inkarigat biex iwettaq dmirijiet ma' l-aġenzija, il-pattijiet u l-kondizzjonijiet tas-servizz tiegħu ma għandhomx ikunu inqas favorevoli minn dawk relattivi għall-hatra tiegħu taht il-Gvern matul il-perjodu hawn qabel imsemmi. Dawk il-pattijiet u l-kondizzjonijiet ma għandhomx jitqiesu li jkunu inqas favorevoli sempliċement għaliex ma jkunux f'kull rigward identiċi ma', jew superjuri għal, dawk gawduti mill-uffiċjal involut fid-data ta' dak l-ordni, jekk dawk il-pattijiet u l-kondizzjonijiet, mehudin bhala haġa wahda, fil-fehma tal-Prim Ministru jkunu joffru benefiċċji sostanzjalment ekwivalenti jew ta' xorta ahjar.

(9) Kull uffiċjal pubbliku li jkun qed jaqdi dmirijietu fl-Uffiċċju ta' l-Avukat Ġenerali fid-data tad-dhul fis-sehh ta' dan l-Att għandu jitqies illi minn dik id-data ġie inkarigat b'ordni tal-Prim Ministru biex jaqdi dmirijietu ma' l-Uffiċċju ta' l-Avukat Ġenerali, kif imsemmi bhala Aġenzija tal-Gvern, skond id-disposizzjonijiet tas-subartikolu (8) ta' dan l-artikolu u d-disposizzjonijiet ta' l-istess subartikolu għandhom jibdedw japplikaw għal dak

l-uffiċjal pubbliku li ghandu jkompli jaqdi dmirijietu kif fuq imsemmi sa dak iż-żmien meta l-Prim Ministru jista' jirrevoka dak l-ordni kif provdut fil-paragrafu (b) tas-subartikolu (8) ta' dan l-artikolu:

Izda meta l-Prim Ministru jirrevoka xi ordni kif fuq imsemmi l-uffiċjal li dwaru jkun gie revokat dak l-ordni ghandu jzomm il-grad fis-servizz pubbliku li huwa kellu minnufih qabel ma gie inkarigat biex jaqdi dmirijietu ma' l-Uffiċċju ta' l-Avukat Ġenerali, kif imsemmi bhala Aġenzija tal-Gvern, bis-sahha ta' dan is-subartikolu jew ghandu jidhol jokkupa dak il-grad oghla li huwa kien jokkupa kieku ma gie inkarigat kif fuq imsemmi.”.

Emenda ta' l-artikolu 4 ta' l-liġi prinċipali.

6. Fl-artikolu 4 tal-liġi prinċipali minflok il-kliem minn “L-Avukat Ġenerali” sal-kliem “u l-Avukati tar-Repubblika” ghandhom jidhlu l-kliem “L-Avukat Ġenerali u d-Deputat Avukat Ġenerali u Uffiċjali ohra ta' l-Avukat Ġenerali”.

Emendi konsegwenzjali tal-Kap. 79.

7. L-Ordinanza dwar il-Kummissjunarji b'setgha li jaghtu Ġurament, Kap. 79, ghandha tigi emendata kif ġej:

(a) is-subartikolu (1A) ta' l-artikolu 3 tagħha ghandu jithassar;

(b) minflok l-artikolu 6 tieghu, ghandu jidhol dan li ġej:

“Kummissjunarji b'setgha li jaghtu Ġurament *ex officio*.”

6. (1) L-Avukat Ġenerali, id-Deputat Avukat Ġenerali u dawk l-uffiċjali l-ohra ta' l-Avukat Ġenerali skond ma l-istess Avukat Ġenerali jista' minn żmien għal żmien jinnomina b'avviż fil-Gazzetta, kif ukoll il-Maġistrati, ghandhom *ex officio* jkunu Kummissjunarji għall-Ġuramenti.

(2) In-nomina msemmija fis-subartikolu (1) tista' ssir b'riferenza għal xi persuna jew persuni jew billi tissemma l-kariga jew il-grad li ghandu jkollu uffiċjal.”.

8. L-Att ta' l-2002 li jemenda l-Ordinanza dwar il-Kostituzzjoni tal-Kariga ta' Avukat Ġenerali u dik ta' Avukat tar-Repubblika, qiegħed b'dan jiġi mhassar.

Thassir ta' l-Att ta' l-2002 li jemenda l-Ordinanza dwar il-Kostituzzjoni tal-Kariga ta' Avukat Ġenerali u dik ta' Avukat tar-Repubblika. Att X ta' l-2002.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 130 tas-17 ta' Mejju, 2004.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

EDWARD FENECH ADAMI
President

25th May, 2004

ACT No. IV of 2004

*AN ACT to amend the Attorney General and Counsel for the Republic
(Constitution of Office) Ordinance, Cap. 90.*

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.

1. (1) The short title of this Act is the Attorney General and Counsel for the Republic (Constitution of Office) (Amendment) Act, 2004.

(2) This Act shall be read and construed as one with the Attorney General and Counsel for the Republic (Constitution of Office) Ordinance, hereinafter referred to as “the principal law” and shall come into force on such date as the Minister responsible for Justice may by notice in the Gazette establish, and different dates may be established for different premises and purposes thereof.

Substitution of long title to the principal law.

2. For the long title to the principle law there shall be substituted the following:

“To provide for the Office of Attorney General”.

Amendment of article 1 of the principal law.

3. In article 1 of the principal law for the words “Attorney General and Counsel for the Republic (Constitution of Office) Ordinance” there shall be substituted the words “Attorney General Ordinance”.

4. For article 2 of the principal law there shall be substituted the following:

Substitution of Article 2 of the principal law.

“Attorney General.

2. (1) The Attorney General shall be the chief legal advisor to the Government and shall have the judicial representation of the Government in judicial acts and actions where the law does not provide that such representation shall vest in some other person or authority.

(2) The Attorney General shall be the Chief Prosecuting Officer in Malta having such powers in connection with Criminal proceedings and as may from time to time be by law provided. In the exercise of his powers to institute, undertake or discontinue criminal proceedings the Attorney General is to exercise such powers in his individual judgement.

(3) Where under any law the Attorney General is to act or exercise any power in his individual judgment he shall not be subject to the direction or control of any other person or authority.

(4) The Officers of the Attorney General when acting under the direction of the Attorney General in anything in which the Attorney General is to act in his own individual judgment, shall have the same protection at law as if the action done or omitted to be done were an act done or omitted to be done by the Attorney General.”.

5. Article 3 of the principal law shall be amended as follows:

Amendment of article 3 of the principal law.

(a) in sub-article (1) thereof for the words “ “Deputy Attorney General” and other officers to be styled respectively: “Assistants to the Attorney General”, “Senior Counsel for the Republic” and “Counsel for the Republic” ”, there shall be substituted the words “Deputy Attorney General and other Officers of the Attorney General”; and

(b) in sub-article (2) thereof for the words “the Deputy Attorney General, the Assistants to the Attorney General, the Senior Counsel for the Republic and the Counsel for the Republic” there shall be substituted the words “the Deputy Attorney General and the other Officers of the Attorney General”, and

(c) immediately after sub-article (2) thereof there shall be added the following sub-articles:

“(3) The Office of the Attorney General is hereby designated as a Government Agency and the provisions of subarticles (5) to (9) of this article shall apply to the said agency.

(4) The Attorney General may also act through such contractors as he may from time to time appoint”:

Provided that such contractors shall at all times act in accordance with such instructions as may be given to them by the Attorney General.

(5) (a) The Office of the Attorney General shall as a government agency be headed by the Attorney General and shall be the medium through which the Attorney General carries out his functions according to law.

(b) The said agency shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations and of suing and of being sued.

(c) The legal and judicial representation of the Office of the Attorney General shall lie in the Attorney General.

(d) The said agency shall enter into an agency performance agreement with the Government whereby the funding of the agency as well as the tasks to be addressed and achieved by it are determined:

Provided that the Minister responsible for the agency shall, subject to the provisions of any law to the contrary, be entitled to give directions in writing to the agency and the agency and its head shall be bound to observe such directives:

Provided further that the provisions of the above proviso shall not apply where the Attorney General is in accordance with the Constitution or any other law to act in accordance with his own individual judgement, in which case the agency is to act according to the sole directions of the Attorney General.

(6) The Attorney General and the employees of the said agency shall abide by any Code of Ethics applicable to public officers and shall, subject to any law to the contrary, have the same obligations thereunder:

Provided that the Attorney General shall with the concurrence of the Minister responsible for the agency draw up service values and Codes of Ethics in respect of the agency to supplement any public service Code of Ethics.

(7) (a) The Attorney General shall keep proper books of account in such manner as the Minister responsible for finance may from time to time direct. Such accounts shall be audited by an auditor appointed for the purpose by the Attorney General with the concurrence of the Minister responsible for finance and shall moreover be subject to audit by the Auditor General.

(b) The financial year of the Office of the Attorney General shall commence on the 1st January and shall end on the 31st December:

Provided that the first financial year shall commence upon the coming into force of this subarticle and shall end on the 31st December of the following year.

(c) The Attorney General shall not later than six weeks after the end of each financial year present to the Minister responsible for the Agency the audited accounts together with a report on the workings of the agency, which report shall state the manner in which the agency has operated to fulfil its functions and its plans for the future.

(d) The accounts and report mentioned in paragraph (c) shall be laid on the Table of the House by the Minister not later than six weeks after its receipt, or where the House is during the period not in session not later than the second week after the House resumes its sittings.

(8) (a) The Prime Minister may by direction detail a public officer for duty with the said agency for such term and under such conditions as may be established in relation to the officer so detailed.

(b) The Prime Minister may at any time revoke any such direction.

(c) Where any officer is detailed for duty with the agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the Attorney General, but shall otherwise remain, and retain all rights and duties as, a public officer, and for the purposes of any law relating to government service pensions, service with the agency shall be deemed to be service with the Government:

Provided that no account shall be taken in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions of any allowances, bonuses or gratuities paid to such officer by the agency in excess to what he is entitled to as a public officer:

Provided further that during the time in respect of which such officer is so detailed to perform duties with the agency, the terms and conditions of his service shall not be less favourable than those which are attached to his appointment under the Government during the period aforesaid. Such terms and conditions shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such direction, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(9) Any public officer serving in the Office of the Attorney General on the date of the coming into force of this Act shall from such date be deemed to have been detailed by direction of the Prime Minister for duty with the Office of the Attorney General as a government agency under the provisions of subarticle (8) of this article, and thereupon the provisions of the same subarticle shall apply to such officer who shall continue to be detailed for duty as aforesaid until such time as the Prime Minister may revoke such direction as provided in paragraph (b) of subarticle (8) of this article:

Provided that where the Prime Minister revokes any direction as aforesaid the officer in whose respect the direction is revoked shall retain such grade in the public

service which he held immediately before being detailed for duty with the Office of the Attorney General as a government agency by virtue of this article or shall occupy such other higher grade which he would have occupied had he not been detailed as aforesaid.”.

6. In article 4 of the principal law for the words from “The Attorney General” to the words “and Counsel for the Republic” there shall be substituted the words “The Attorney General and the Deputy Attorney General and other Officers of the Attorney General”.

Amendment of article 4 of the principal law.

7. The Commissioner for Oaths Ordinance, Cap. 79, shall be amended as follows:

Consequential amendments of Cap. 79.

(a) subarticle (1A) of article 3 thereof shall be deleted;

(b) for article 6 thereof there shall be substituted the following:

“Commissioners for Oaths *ex officio*.”

6. (1) The Attorney General, the Deputy Attorney General and such of the other Officers of the Attorney General as the said Attorney General may from time to time designate by notice in the Gazette, as well as the magistrates, shall *ex-officio* be Commissioners for Oaths.

(2) The designation referred to in subarticle (1) may be made by reference to a person or persons or by designation of the office or rank held.”.

8. The Attorney General (Constitution of Office) (Amendment) Act, 2002 is hereby repealed.

Repeal of the Attorney General (Constitution of Office) Amendment Act, 2002. Act X of 2002.

Passed by the House of Representatives at Sitting No. 130 of 17th May, 2004.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives