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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Charles Mangion, M.P., Ministru tal-Ġustizzja u Kunsilli Lokali u moqri għall-Ewwel Darba fis-Seduta tad-29 ta' April, 1997.

ATT biex jipprovdi dwar ċerti proċeduri quddiem qrati.

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Charles Mangion, M.P., Minister of Justice and Local Councils and read the First time at the Sitting of the 29th April, 1997.

AN ACT to provide for certain judicial procedures.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjaħ

ATT biex jipprovi dwar ċerti proċeduri quddiem qrati.

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' jissejjaħ l-Att ta' l-1997 biex jagħmel Titolu fil-qosor. Provedimenti Speċjali dwar Proċeduri quddiem Qrati.

2. (1) Minkejja d-dispożizzjonijiet ta' l-artikolu 24 ta' l-Ordinanza li tirregola t-Tiġdid tal-Kiri ta' Bini, kif emendat bl-Att ta' l-1993 dwar Emenda fil-Liġijiet dwar Bordijiet, u ta' l-artikolu 10 ta' l-Att dwar it-Tiġdid ta' Kiri ta' Raba', kif emendat bl-imsemmi Att ta' l-1993 dwar Emenda fil-Liġijiet dwar Bordijiet, appelli mill-Bord li jirregola l-Kera u mill-Bord dwar il-Kontroll tal-Kiri ta' Raba', appuntati għas-smiġħ quddiem il-Qorti ta' l-Appell, kif ordinarjament magħmula, bejn l-1 ta' Ottubru, 1993 u d-dhul fis-seħħ ta' dan l-Att, għandhom, minkejja li dawn ma ġewx appuntati għas-smiġħ quddiem dik il-qorti kif magħmula skond is-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jitqiesu bhala li ġew validament Għoti ta' validità lil ċerti proċeduri. Kap. 69. Att XIX ta' l-1993. Kap. 199. appuntati u għandhom ikomplu jinstemgħu u jiġu deċiżi mill-imsemmija qorti kif ordinarjament magħmula, u kull appell li jkun ġie hekk appuntat quddiem l-imsemmija qorti, kif ordinarjament magħmula, u li jkun ġie deċiż qabel id-dhul fis-seħħ ta' dan l-Att, għandu jitqies bhala li jkun ġie validament deċiż minkejja li l-Qorti ta' l-Appell ma kinetx magħmula skond ma hemm fis-subartikolu (6) ta' l-artikolu 41 ta' dak il-Kodiċi. Kap. 12.

Kap. 12.

(2) Minkejja d-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, appelli mill-Qorti tal-Maġistrati (Ghawdex) fil-kompetenza superjuri tagħha li mill-1 ta' Jannar, 1996 sad-dhul fis-sehh ta' dan l-Att ġew appuntati għas-smigh quddiem il-Qorti ta' l-Appell magħmula skond is-subartikolu (6) ta' l-artikolu 41 imsemmi, għandhom, minkejja li dawn ma ġewx appuntati għas-smigh quddiem dik il-qorti magħmula diversament, jitqiesu bhala li ġew validament appuntati u għandhom ikomplu jinstemghu u jiġu deċiżi mill-istess qorti kif magħmula skond is-subartikolu (6) ta' l-artikolu 41 imsemmi, u kull appell li jkun ġie hekk appuntat quddiem l-imsemmija qorti u li jkun ġie deċiż qabel id-dhul fis-sehh ta' dan l-Att għandu jitqies bhala li jkun ġie validament deċiż minkejja li l-Qorti ta' l-Appell ma kinetx magħmula skond ma hemm fis-subartikolu (1) ta' l-artikolu 41 ta' dak il-Kodiċi.

Att XXIV ta' l-1995.

Kap. 12.

(3) L-appelli kollha mid-deċiżjonijiet tal-Qorti tal-Maġistrati għall-Gzejjer ta' Ghawdex u Kemmuna li, minnufih qabel ġie fis-sehh il-paragrafu (d) ta' l-artikolu 24 ta' l-Att ta' l-1995 li jemenda l-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, kienu pendenti quddiem l-istess qorti magħmula bhala Qorti fi grad ta' appell skond is-subartikolu (3) ta' l-artikolu 50 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili qabel ġie mhassar l-istess subartikolu bil-paragrafu (d) imsemmi ta' l-artikolu 24 imsemmi għandhom, minkejja d-dispożizzjonijiet tas-subartikolu (5) ta' l-artikolu 41 ta' l-istess Kodiċi, jiġu mill-ġdid appuntati għas-smigh u għall-eventwali deċiżjoni quddiem il-Qorti tal-Appell magħmula kif maħsub fis-subartikolu (6) ta' l-imsemmi artikolu 41 u d-dispożizzjonijiet tas-subartikolu (7) ta' l-istess artikolu 41 għandhom japplikaw għal dawk l-appelli kollha irrISPETTIVAMENT minn jekk l-appell huwiex mill-Qorti tal-Maġistrati għall-Gzejjer ta' Ghawdex u Kemmuna fl-attribuzzjoni superjuri jew inferjuri tagħha.

3. Il-Kodiċi Kriminali għandu jiġi emendat kif ġej:

Emenda tal-Kodiċi
Kriminali.
Kap. 9.

(a) fl-artikolu 418 tiegħu:

(i) id-dispożizzjoni preżenti għandha tiġi enumerata mill-ġdid bhala subartikolu (1); u

(ii) minnufih wara s-subartikolu (1) kif enumerat mill-ġdid għandu jiżdied is-subartikolu ġdid li ġej:

“(2) Għas-smigh ta' appelli minn deċiżjonijiet tal-Qorti tal-Maġistrati (Ghawdex) bhala qorti ta' ġudikatura kriminali l-Qorti ta' l-Appell Kriminali għandha żzomm is-seduti tagħha f'Ghawdex.”;

(b) fl-artikolu 646 tiegħu:

(i) fis-subartikolu (2) tiegħu –

(1) minflok il-kliem “tista’ tingieb bhala prova jekk –” ghandhom jidhlu l-kliem “tista’ tingieb bhala prova:

Basta li x-xhud jingieb ukoll fil-Qorti biex jiġi eżaminat *viva voce* kif provdut fis-subartikolu (1) hliet jekk ix-xhud ikun mejjet, ikun barra minn Malta jew ma jkunx jista’ jinsab u bla hsara ghad-dispożizzjonijiet tas-subartikolu (8).”; u

(2) il-paragrafi (a) u (b) tieghu ghandhom jithassru;

(ii) fis-subartikolu (4) tieghu, minflok il-kliem “bhal ma jinghad fl-artikolu 550.” ghandhom jidhlu l-kliem “bhal ma jinghad fl-artikolu 550 u x-xiehda tax-xhieda annessa mal-proċess verbal tista’ tingieb bhala prova sew kontra sew favur l-imputat jew akkużat bla hsara ghad-dispożizzjonijiet tal-*proviso* tas-subartikolu (2) li ghandhom japplikaw.”;

(iii) is-subartikoli (8), (9) u (10) tieghu ghandhom jiġu enumerati mill-ġdid (9), (10) u (11) rispettivament;

(iv) minflok is-subartikolu (7) tieghu ghandhom jidhlu dawn is-subartikoli li ġejjin:

“(7) Minkejja d-dispożizzjonijiet ta’ dan il-Kodiċi jew ta’ kull liġi oħra, ċertifikat li jkun jidher li ġie mahruġ minn tabib reġistrat dwar l-eżami tieghu ta’ xi persuna, sew jekk hajja jew mejta, jew dwar xi offiża fuq il-persuna li xi hadd isofri jew dwar xi marda fiżika jew tal-mohh li xi hadd ikollu, jista’ jingieb bhala prova u, sakemm ma jiġix ippruvat il-kuntrarju, ghandu jkun prova tal-kontenut tieghu, basta li ċ-ċertifikat ikollu t-timbru li jinqara ċar tat-tabib li johroġ dak iċ-ċertifikat li jkun juri ismu, il-kwalifiki professjonali tieghu, l-ispeċjalizzazzjoni tieghu u l-indirizz tieghu: iżda wkoll, il-parti l-wahda u l-oħra jistghu jgibu lill-imsemmi tabib biex jiġi eżaminat fil-qorti u *viva voce*, u l-qorti tista’ wkoll *ex officio* tordna dak l-eżami.

(8) Ix-xiehda ta’ tabib reġistrat jew kirurgu dentali reġistrat annessa ma’ proċess verbal, jew ta’ tabib jew kirurgu dentali bhal dak li jkun ġie mismugh matul il-kompilazzjoni dwar l-eżami tieghu ta’ xi persuna, sew

jekk hajja sew jekk mejta, jew dwar xi offiża fuq il-persuna li xi hadd isofri jew dwar xi marda fiżika jew tal-mohh li xi hadd ikollu, tista' tingieb bhala prova minghajr il-htieġa li l-imsemmi tabib jew kirurgu dentali jingieb fil-qorti kif provdut fil-*proviso* tas-subartikolu (2): iżda, hlief jekk ix-xhud ikun mejjet, ikun barra minn Malta jew ma jkunx jista' jinstab, il-parti l-wahda u l-oħra jistghu jitolbu, jew il-qorti tista' *ex officio* tordna, li dak ix-xhud jerga' jigi eżaminat fil-qorti u *viva voce*.”; u

(v) fis-subartikolu (11) tieghu, kif enumerat mill-ġdid, minflok il-kliem “li xi xhud miet jew siefer,” ghandhom jidhlu l-kliem “li xi xhud miet, siefer jew ma jkunx jista' jinstab,” u minflok il-kliem “il-qorti tista' tippermetti li tingieb ix-xiehda tieghu fuq ir-rapport” ghandhom jidhlu l-kliem “il-qorti tista' tqis l-allegazzjoni ippruvata bir-rapport”; u

(ċ) minnufih wara s-subartikolu (5) ta' l-artikolu 650 tieghu ghandu jiddied dan is-subartikolu ġdid li ġej:

“(6) Id-deċiżjoni tal-qorti li tahtar periti ghandha titniżżel bil-miktub u ghandha tigi notifikata lill-esperti hekk mahtura.”.

Għanijiet u Raġunijiet

L-għan ewlieni ta' l-Abbozz hu sabiex jagħmel validi ċerti proċeduri quddiem il-Qorti ta' l-Appell u biex jipprovdi għas-smiġh f'Għawdex ta' appelli mill-Qorti tal-Maġistrati (Għawdex) bhala qorti ta' ġudikatura kriminali, u sabiex jipprovdi għad-dispensa mis-smiġh *viva voce* ta' ċerti xhieda f'każijiet partikolari u b'ċerti prekawzjonijiet.

**A BILL
entitled**

AN ACT to provide for certain judicial procedures.

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 Judicial Procedures (Special Provisions) Act, 1997. Short title.

2. (1) Notwithstanding the provisions of section 24 of the Reletting of Urban Property (Regulation) Ordinance, as amended by the Laws (Boards) (Amendment) Act, 1993, and of section 10 of the Agricultural Leases (Reletting) Act, as amended by the said Laws (Boards) (Amendment) Act, 1993, appeals from the Rent Regulation Board and the Agricultural Leases Control Board, appointed for hearing before the Court of Appeal, as ordinarily constituted, between the 1st October, 1993 and the coming into force of this Act, shall, notwithstanding that they were not appointed for hearing before the said court as constituted in terms of subsection (6) of section 41 of the Code of Organization and Civil Procedure, be deemed to have been validly appointed and shall continue to be heard and determined by the said court as ordinarily constituted, and any case so appointed before the said court, as ordinarily constituted, and determined before the coming into force of this Act, shall be deemed to have been validly determined notwithstanding that the Court of Appeal was not constituted in terms of subsection (6) of section 41 of the said Code. Validation of certain procedures. Cap. 69. Act XIX of 1993. Cap. 199. Cap. 12.

Cap. 12.

(2) Notwithstanding the provisions of subsection (6) of section 41 of the Code of Organization and Civil Procedure, appeals from the Court of Magistrates (Gozo) in its superior jurisdiction which from the 1st of January, 1996 until the coming into force of this Act were appointed for hearing before the Court of Appeal as constituted in terms of subsection (6) of the said section 41, shall, notwithstanding that they were not appointed for hearing before the same court differently constituted, be deemed to have been validly appointed and shall continue to be heard and determined by the said court as constituted in terms of subsection (6) of the said section 41, and any appeal so appointed before the said court and determined before the coming into force of this Act shall be deemed to have been validly determined notwithstanding that the Court of Appeal was not constituted in terms of subsection (1) of section 41 of the said Code.

Act XXIV of 1995.

Cap. 12.

(3) All appeals from decisions of the Court of Magistrates for the Islands of Gozo and Comino which, immediately before the coming into force of paragraph (d) of section 24 of the Code of Organization and Civil Procedure (Amendment) Act, 1995, were pending before the same court constituted as an appellate Court in terms of subsection (3) of section 50 of the Code of Organization and Civil Procedure before the said subsection was repealed by the said paragraph (d) of the said section 24 shall, notwithstanding the provisions of subsection (5) of section 41 of the same Code, be reappointed for hearing and eventual judgment before the Court of Appeal constituted as provided in subsection (6) of the said section 41 and the provisions of subsection (7) of the same section 41 shall apply to all such appeals irrespective of whether the appeal is from the Court of Magistrates for the Islands of Gozo and Comino in its superior or inferior jurisdiction.

Amendment
of the
Criminal Code,
Cap. 9.

3. The Criminal Code shall be amended as follows:

(a) in section 418 thereof:

(i) the present provision shall be renumbered as subsection (1); and

(ii) immediately after subsection (1) as renumbered there shall be added the following new subsection:

“(2) For the hearing of appeals from decisions of the Court of Magistrates (Gozo) as court of criminal judicature the Court of Criminal Appeal shall hold its sittings in Gozo.”;

(b) in section 646 thereof:

(i) in subsection (2) thereof –

(1) for the words “shall be admissible as evidence if –” there shall be substituted the words “shall be admissible as evidence:

Provided that the witness is also produced in Court to be examined *viva voce* as provided in subsection (1) unless the witness is dead, absent from Malta or cannot be found and saving the provisions of subsection (8).”;
and

(2) paragraphs (a) and (b) thereof shall be deleted;

(ii) in subsection (4) thereof, for the words “in terms of section 550.” there shall be substituted the words “in terms of section 550 and the deposition of witnesses annexed to the *procès-verbal* shall be admissible as evidence whether against or in favour of the person charged or accused subject to the provisions of the proviso to subsection (2) which shall apply.”;

(iii) subsections (8), (9) and (10) thereof shall be renumbered (9), (10) and (11) respectively;

(iv) for subsection (7) thereof there shall be substituted the following subsections:

“(7) Notwithstanding the provisions of this Code or of any other law, a certificate purporting to be issued by a registered medical practitioner concerning his examination of any person, whether alive or dead, or concerning any bodily harm suffered by, or any physical or mental infirmity afflicting, any person, shall be admissible as evidence and shall, until the contrary is proved, be evidence of its contents, provided the certificate bears the clearly legible stamp of the medical practitioner issuing it showing his name, professional qualifications, expertise and address: provided further that it shall be lawful for either of the parties to produce the said medical practitioner for the purpose of examining him in court and *viva voce*, as well as for the court *ex officio* to require such examination.

(8) The deposition of any registered medical practitioner or registered dental surgeon annexed to a *procès-verbal*, or of any such medical practitioner or

dental surgeon examined in the course of the inquiry, in relation to his examination of any person, whether alive or dead, or in relation to any bodily harm suffered by, or any physical or mental infirmity afflicting, any person, shall be admissible as evidence without the need of producing the said medical practitioner or dental surgeon in court as provided in the proviso to subsection (2): provided that, unless the witness is dead, absent from Malta or cannot be found, it shall be lawful for either of the parties to demand, or for the court *ex officio* to require, that such witness be again examined in court and *viva voce*.”; and

(v) in subsection (11) thereof, as renumbered, for the words “that a witness is dead or absent,” there shall be substituted the words “that a witness is dead, absent or cannot be found,” and for the words “for the court to admit his deposition on” there shall be substituted the words “for the court to consider the allegation proved by”; and

(c) immediately after subsection (5) of section 650 thereof, there shall be added the following new subsection:

“(6) The Court’s decision to appoint experts shall be reduced to writing and shall be served on the experts so appointed.”.

Objects and Reasons

The main object of the Bill is to validate certain procedures before the Court of Appeal and to provide for the hearing in Gozo of appeals from decisions of the Court of Magistrates (Gozo) as court of criminal judicature, and to provide for the dispensation from hearing *viva voce* of certain witnesses in particular cases and under certain safeguards.