

Memorandum
for the Cabinet

by the Hon. Minister of Justice and Parliamentary Affairs on the draft Bill amending the Code of Organization and Civil Procedure and on a consequential amendment to the Tariff of Fees of Advocates and Legal Procurators.

1. The object of the said Bill mainly is to increase the civil jurisdiction, by reason of the value of the claim, of the Court of Magistrates of Judicial Police, as a Court of first instance, and of the Court of Magistrates of Judicial Police for the Islands of Gozo and Comino, as an appellate Court. The jurisdiction of the former Court, which at present is in respect of claims whose value does not exceed £10, is raised so as to include claims whose value does not exceed £50. The jurisdiction of the latter Court (as an appellate Court) is raised from claims not exceeding £100 to claims not exceeding £300. The present provision whereby the said appellate Court may deal with any appeal, irrespective of the amount involved, if all the parties agree, is retained.

2. At present, the issue of a warrant of imprisonment for debt, of impediment of departure and of "meditatio fugae" cannot be obtained unless the amount due to the creditor is at least of £20. This figure is being replaced by £100. Moreover, stricter guarantees are being established against the obtaining by creditors of the issue of any such warrant maliciously or without cause.

3. A very important amendment concerns the granting of free legal aid to poor persons in civil matters. The present requirement that a person should not possess property which is worth £25 or more in order that he may qualify for free legal aid is replaced

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by the requirement that he should not possess property which is worth £500 or more and should not have a yearly income which amounts to £365 or more.

4. Advocates and Notaries are enabled to file written pleadings in the Registry of the Court of Voluntary Jurisdiction.

5. The names of Ministers and of Heads of Departments filing written pleadings or against whom written pleadings are filed need no longer be mentioned in such pleadings but it will be sufficient to designate the office of any such party to the judicial proceedings.

6. The provision requiring any person, who wishes to obtain the warrant of legal procurator, to attend and train himself for one year at the office of a practising Advocate, is brought into line with the similar provision governing the warrant to practise as an advocate, namely such training may start after the 31st day of December of the last academic year of the course during which such person is to obtain the diploma of legal procurator and not after the end of February of such academic year, as heretofore.

7. The Bill contains other provisions which are intended to simplify and supplement certain rules laid down in the Code of Organization and Civil Procedure: in the former category, there is a very important provision which simplifies the procedure of appeal when the question of the jurisdiction of a court of first instance "ratione materiae" arises.

8. Concurrently, with the amendment raising the jurisdiction "ratione valoris" of the Court of Magistrates, an amendment becomes necessary to the Tariff of Fees of Advocates and Legal Procurators.

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9. The present paragraph 50 of the said Tariff (L.N. 7 of 1968) establishes the following fees in relation to cases dealt with by the said Courts:-

"Where the amount in issue does not exceed £2	£0. 10. 0.
Where the amount in issue exceeds £2 but does not exceed £5	£1. 0. 0.
Where it exceeds £5 (and does not exceed £10)	£2. 0. 0."

10. At present, the fee of an advocate in a suit before the Superior Courts where the amount in issue is over £10 is not less, in any case, than £4.

11. It is proposed to amend the said paragraph 50 of the Tariff as follows:-

"Where the amount in issue does not exceed £2 (<u>as at present</u>)	£0. 10. 0.
Where the amount in issue exceeds £2 but does not exceed £5 (<u>as at present</u>)	£1. 0. 0.
Where the amount in issue exceeds £5 but does not exceed £25	£2. 0. 0.
Where the amount in issue exceeds £25 but does not exceed £50	£3. 0. 0."

Hon. Ministers are requested to approve that the said Bill and a Resolution to give effect to the said amendments of the Tariff of Fees be presented to the House of Representatives.

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A B I L L
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AN ACT further to amend the Code of
Organization and Civil Procedure (Cap. 15)

BE IT ENACTED by the Queen's most
Excellent Majesty, by and with the advice and
consent of the House of Representatives of Malta,
in this present Parliament assembled, and by the
authority of the same as follows:-

1. (1) This Act may be cited as the Code
of Organization and Civil Procedure (Amendment)
Act, 1971, and shall be read and construed as
one with the Code of Organization and Civil
Procedure, hereinafter referred to as "the
principal law".

(2) This Act shall come into force
on the third day after the day of its publication
in the Government Gazette.

2. Immediately after subsection (3) of
section 11 of the principal law there shall be
added the following new subsections:-

"(4) Any assignment of duties, transfer
or surrogation, and any distribution of duties in
general, in respect of Her Majesty's Judges, shall
be deemed to have been properly and sufficiently
notified for all purposes if notice thereof is
posted up in the Registry of the Superior Courts
before or at the beginning of the period during
which such assignment, transfer, surrogation or
distribution is to take effect.

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Amendment of
section 11
of the
principal
law.

(5) The Registrar shall keep a record of all notices posted up in terms of the last preceding subsection and of the date of such posting."

Amendment of section 46 of the principal law.

3. In subsections (1) and (3) of section 46 of the principal law, for the words "ten pounds sterling" there shall be substituted the words "fifty pounds".

Amendment of section 47 of the principal law.

4. In section 47 of the principal law, for the words "ten pounds sterling" there shall be substituted the words "fifty pounds".

Amendment of section 50 of the principal law.

5. In section 50 of the principal law, for the words "one hundred pounds sterling" there shall be substituted the words "three hundred pounds".

Amendment of section 51 of the principal law.

6. In subsection (1) and in paragraph (b) of subsection (2), of section 51 of the principal law, for the words "one hundred pounds sterling" there shall be substituted the words "three hundred pounds".

Amendment of section 174 of the principal law.

8. There shall be added the following proviso at the end of paragraph (b) of subsection (1) of section 174 of the principal law:-

"Provided that in any case as is referred to in subsection (1) of section 180A it shall be sufficient to designate the office of the party pleading or of the party against whom the pleading is directed, as the case may be."

Amendment of section 85 of the principal law.

7. In paragraph (d) of section 85 of the principal law for the words "at any time after the end of February" there shall be substituted the words "at any time after the 31st day of December".

Amendment of section 180 of the principal law.

9. Subsection (1) of section 180 of the principal law shall be amended as follows:-

(a) for the words "written pleading may be filed" there shall be substituted the words "subject to the provisions of section 180A, written pleadings may be filed";

(b) immediately after paragraph (f) there shall be added the following new paragraph:-

"(g) by an Advocate, a Notary or Legal Procurator who has signed the written pleading, if such pleading is to be filed in the Civil Court, Second Hall, or in the Court of Magistrates of Judicial Police for the Islands of Gozo and Comino as a Court of voluntary jurisdiction."

Addition of new section 180A in the principal law.

10. Immediately after section 180 of the principal law there shall be added the following new section:-

"written pleadings filed by a Minister or a public officer.

180A. (1) When a written pleading is to be filed by the Prime Minister or other Minister, by a head of department or other public administrator, it shall be sufficient if there is designated in such pleading the office of the person filling it and it shall not be necessary to name the person for the time being holding such office.

(2) No formality shall be necessary in the records of a case or in any Court proceedings upon any change in the person of the holder of any office designated as afore-

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said or on the appointment of any person in an acting capacity in any such office.

(3) The provision of the last preceding subsection shall apply also where there is named in any written pleading the person for the time being filling the office designated in such pleading, provided that such office is clearly designated.

(4) The provisions of subsections (1), (2) and (3) of this section shall apply also in respect of the party against whom the pleading is to be directed where such party is the holder of an office referred to in the said subsection (1)."

Amendment of section 181 of the principal law.

11. In subsection (1) of section 181 of the principal law, for the words "of the last preceding section" there shall be substituted the words "of section 180".

Amendment of section 226 of the principal law.

12. In subsection (2) of section 226 of the principal law, for the words "five pounds" there shall be substituted the words "ten pounds".

Amendment of section 360 of the principal law.

13. In section 360 of the principal law, for the words "twenty pounds sterling" there shall be substituted the words "one hundred pounds".

Amendment of section 368 of the principal law.

14. In section 368 of the principal law, for the words "only in cases where the debt exceeds twenty pounds sterling, or in cases of deceit or fraud" there shall be substituted the words "and

the creditor shall be entitled to recover from him any sum deposited under the last preceding section and not withdrawn".

Amendment of section 534 of the principal law.

15. Immediately after subsection (2) of section 534 of the principal law there shall be added the following new subsection:-

"(3) Any will delivered in terms of subsection (1) of this section shall not be deemed to be cancelled from the book referred to in section 529 for the purpose of any document certifying the existence or non-existence of secret wills, and there shall be indicated in any such document, in respect of any such will, the name of the notary who published it and the date of its publication."

Amendment of section 702 of the principal law.

16. For subsection (4) of section 702 of the principal law there shall be substituted the following:-

"(4) If the party to whose oath reference is required fails to appear on the day appointed for the trial -

(a) the questions as taken down by the Court shall be deemed to be admitted, unless good cause is shown for his non-appearance, in any case in which the claim before the Court does not exceed the amount of ten pounds;

(b) the Court shall adjourn the trial, unless the party making the reference renounces thereto, in any case in which the claim before the Court exceeds the amount of ten pounds, and the questions taken down by the Court shall be deemed to be admitted if the party to

whose oath reference is required, without good cause being shown for his non-appearance, fails again to appear on the day to which the Court has adjourned the trial as aforesaid."

Amendment of section 764 of the principal law.

17. Immediately after subsection (3) of section 764 of the principal law there shall be added the following new subsection:-

"(4) The default of a valuation made under subsection (1) of this section within the period therein prescribed shall not be a cause of the nullity of the appeal if, upon a valuation made in pursuance of an order of the Court before whom the appeal has been brought, it results that the matter of the claim is, by reason of its value, within the appellate jurisdiction of that Court."

Substitution of section 779 of the principal law.

18. For section 779 of the principal law there shall be substituted the following:-

"Question of jurisdiction ratione materiae.

779. (1) Where in any of the Superior Courts of first instance the question of the jurisdiction of the Court, by reason of the subject-matter of the claim, is raised either by the Court of its own motion, or by plea, the Court shall, after summarily hearing the parties, determine the question, and if it affirms its own jurisdiction such decision shall be final; but, if the Court declares that it has no jurisdiction, it shall order the records of the case to be transmitted through the Registrar, within seven working days of its decision, to the Court of Appeal, which shall determine finally

which is the competent Court.

(2) Any party to a case which is transmitted to the Court of Appeal for the purpose of the last preceding subsection may, by a note filed in the Registry of the said Court within the said period of seven working days, submit to the Court of Appeal its reasons why the decision of the Court of first instance should be confirmed or otherwise.

(3) If all the parties to the case file a note in the Registry of the Court of Appeal to the effect that they agree that the proceedings in respect of the matter referred to the Court of Appeal under subsection (1) of this section need not be heard in public and that the Court need not take cognizance of any submissions other than those contained in any notes filed under the last preceding subsection, the Court of Appeal may decide upon such matter in chambers.

(4) The Registrar shall, within seven working days from the decision of the Court of Appeal as to which Court is competent, transmit the records of the case to the Court declared so competent which shall proceed to deal with the case on such records.

(5) The decisions of the Court of first instance and of the

Court of Appeal under subsection (1) of this section, concerning the competent Court, shall be given by Decree and no fees shall be charged for the transmission of the records under sub-sections (1) and (4) of this section."

Amendment of section 861 of the principal law.

19. In section 861 of the principal law, for the words "the warrant contains sufficient particulars for the identification of the person restrained" there shall be substituted the words "the warrant contains particulars which are sufficient for the identification of the person restrained and are such as to avoid that the said person is mistaken for another person having the same particulars as those contained in the warrant".

Substitution of section 862 of the principal law.

20. For section 862 of the principal law there shall be substituted the following:-

"Powers of execution officer in the execution of warrant of impediment of departure of ship.

862. By virtue of the warrant of impediment of departure of a ship or other vessel the Marshal is authorized to adopt all such measures as he may deem necessary for the due execution of the warrant."

Amendment of section 864 of the principal law.

21. In subsection (1) of section 864 of the principal law, for the words "twenty pounds sterling" there shall be substituted the words "one hundred pounds".

Amendment of section 869 of the principal law.

22. For subsection (3) of section 869 of the principal law there shall be substituted the following:-

"(3) The penalty shall in no case be less than one hundred pounds".

Amendment of
section 871
of the
principal
law.

23. In section 871 of the principal law, for the words "in a fixed sum not exceeding one hundred pounds" there shall be substituted the words "in a fixed sum not less than one hundred pounds".

Amendment of
section 879
of the
principal
law.

24. In section 879 of the principal law, for the words "twenty pounds" there shall be substituted the words "one hundred pounds".

Amendment of
section 883
of the
principal
law.

25. In subsection (3) of section 883 of the principal law, for the words "not exceeding one hundred and fifty pounds" there shall be substituted the words "not less than one hundred and fifty pounds".

Amendment of
section 915
of the
principal
law.

26. In section 915 of the principal law, there shall be substituted the following paragraph for paragraph (b):-

"(b) that, excluding the subject-matter of the proceedings, he does not possess property of any sort, not including wearing apparel whereof the value, without deducting the debts to which the said property may be liable, amounts to the sum of five hundred pounds and that his yearly income is less than three hundred and sixty five pounds."

Amendment of
section 925
of the
principal
law.

27. For subsection (1) of section 925 of the principal law there shall be substituted the following:-

"(1) The Court shall dispauper the person admitted to proceed in forma pauperis and order him to pay all the costs of the suit, if it is shown, at any stage of the cause, that he possesses property of the value of five

hundred pounds or more or has a yearly income of three hundred and sixty-five pounds or more, or that he is proceeding vexatiously."

Amendment of section 928 of the principal law.

28. Section 928 of the principal law shall be amended as follows:-

(a) at the end of paragraph (c) there shall be added the word "or";

(b) immediately after paragraph (c) there shall be added the following new paragraph:-

"(d) in the interest of any commercial partnership or any body of persons which has a distinct legal personality if the person or persons vested with the legal representation thereof is or are absent from these Islands."

Transitory provisions.

29. (1) The amendments made by sections 3, 4, 5, 6 and 12, of this Act shall not apply in respect of any case which was introduced in the Court of first instance before the coming into force of this Act.

(2) The amendments made by sections 13, 14, 21, 22, 23, 24 and 25 of this Act shall not apply to any warrant, or extension thereof, which is already filed in the Registry of the Court on the date of the coming into force of this Act but shall apply to any application filed on or after the said date for the extension or further extension of any such warrant.

(3) The amendments made by sections 26 and 27 of this Act shall not apply to any proceedings in respect of which a person has been admitted to sue or defend in forma pauperis before the coming into force of this Act.

Objects and Reasons

The object of this Bill is: (a) to increase the jurisdiction, by reason of the value of the claim, of the Court of Magistrates of Judicial Police, as a Court of first instance, and of the Court of Magistrates of Judicial Police for the Islands of Gozo and Comino, as an appellate Court; (b) to increase the minimum amount which is necessary for the issue of a warrant of imprisonment for debt, of impediment of departure and of "meditatio fugae"; and to provide for stricter guarantees against the obtaining by creditors of the issue of any such warrant maliciously or without cause.

The present requirement that a person should not possess property which is worth £25 or more in order that he may qualify for free legal aid is replaced by the requirements that he should not possess property which is worth £500 or more and should not have a yearly income which amounts to £365 or more.

Advocates and Notaries are enabled to file written pleadings in the Registry of the Court of Voluntary Jurisdiction.

The names of Ministers and of Head of Departments filing written pleadings or against whom written pleadings are filed need no longer be mentioned in such pleadings, but it will be sufficient to designate the office of any such party to the judicial proceedings.

The Bill contains other provisions which are intended to simplify or to supplement certain rules laid down in the Code of Organization and Civil Procedure: in the former category, is a provision which simplifies the procedure of appeal when the question of the jurisdiction of a court of first instance "ratione materiae" arises.

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