

A Bill to Reform the Courts in Gozo and to Simplify Proceedings between the Courts in Malta and those in Gozo

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Introduction

A draft Bill has been approved by the House of Representatives' Select Committee on the Recodification and Consolidation of Laws on Monday 26 March 2012 which proposes amendments to the Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta. Essentially the main aim of the Bill is that the courts in Gozo be upgraded to reflect their counterparts in Malta and to facilitate the presentation of documents and the issue of precautionary and executive acts between the courts in Malta and those in Gozo. This paper very briefly discusses the history of the Courts in Gozo, motion no 222 on the judicial process in Gozo, the petition of ten Gozitan advocates in support of motion no 222, the salient points raised in the discussion on the said motion, the proceedings before the House of Representatives Select Committee on Recodification and Consolidation of Laws, the text of the draft Bill and the Committee's Report thereupon.

History of the Courts in Gozo

It is not the intention of this paper to discuss the history of the courts in Gozo. Such a task has been admirably done by Dr Aaron Attard Hili in his Doctor of Laws (LL.D.) thesis entitled *The History and Jurisdiction of the Courts of Law in Gozo* (Attard Hili, 1995). Suffice it here to state that already in 1335 Gozo had its own judges. Such judicial system remained operational under the Knights of St. John, the French and in the very early part of the British colonial period. Indeed it was on 15 October 1814 when Governor Thomas Maitland issued a proclamation abolishing the

office of judge in Gozo and substituting the two judges sitting in Gozo by two magistrates (Attard Hili, 1995: 128). Interestingly enough the 1812 Royal Commission report had recommended that the office of judge should be kept in Gozo (Attard Hili, 1995: 124-124). So it was only from the British period onwards that judges were banished from the Gozo courts. Since then the situation has remained essentially the same except for two important amendments made in 1995 and 1997.

Through Act No XXIV of 1995, the Code of Organization and Civil Procedure was amended through the insertion of article 41(7) which reads as follows:

Where the Court of Appeal is to hear appeals from the Court of Magistrates (Gozo) in its inferior jurisdiction, it shall hold its sitting in the building of the Courts in Gozo, and for the purpose of such appeals the registry of the Court of Magistrates (Gozo) shall also be the Registry of the Court of Appeal.¹

The 1995 enactment also abolished the Court of Magistrates (Gozo) composed of three magistrates constituted as an appellate court in terms of article 50(3) of the said Code. Article 24(d) of the Code of Organization and Civil Procedure (Amendment) Act, 1995 abolished the appellate jurisdiction of the Court of Magistrates (Gozo). Since the 1995 amendments, appeals are now heard by a judge sitting in Gozo as per article 41(7) of the Code.

In so far as the criminal courts are concerned, the Judicial Procedures (Special Provisions) Act, 1997² amended article 418 of the Criminal Code so that the Court of Criminal Appeal holds its

¹ Article 18 of the Code of Organization and Civil Procedure (Amendment) Act, 1995 (Act No. XXIV of 1995).

² Act No. XXXII of 1997.

sittings also in Gozo. The relevant provision reads as follows:

(2) For the hearing of appeals from decisions of the Court of Magistrates (Gozo) as a court of criminal judicature the Court of Criminal Appeal shall hold its sittings in Gozo.³

Essentially the position today is that whilst in Malta the functions of the Civil Court, First Hall, the Civil Court (Family Section) and the Civil Court (Voluntary Jurisdiction Section) are carried out by a judge, in Gozo these same functions are performed by a magistrate except in the case of the Civil Court, First Hall, sitting in its constitutional competence which is not carried out in Gozo and is reserved only for Malta. Moreover, the Court of Appeal sitting in its superior competence (composed of three judges) does not sit in Gozo. The same can be said for the Civil Court, First Hall, sitting in its constitutional competence, the Criminal Court (composed of a judge with or without a jury), the Court of Criminal Appeal sitting in its superior competence (composed of three judges) and the Constitution Court (composed of three judges).

The Petition of the Ten Gozitan Advocates

The ten advocates who practice in Gozo signed a petition, which was laid on the Table of the House of Representatives by the Hon. Justyne Caruana during sitting number 433 of 12 December 2011, confirming their support for Motion No 222.

Motion No 222 on the Judicial Process in Gozo

The Hon. Dr Justyne Caruana proposed, and the Hon. Giovanna Debono, Minister for Gozo, seconded, the motion on the Judicial Process in Gozo, motion no 222. In the motion it was pointed out that in Gozo, although the Court of Magistrates enjoyed a superior and an inferior jurisdiction, the inferior court was granted a superior competence like the Civil Court but there was no judge assigned to Gozo to hear such cases. Instead these cases were heard by a magistrate. This further implied that there were certain cases which could not be heard in Gozo because of this

limitation and Gozitans had to travel over to Malta for these cases to be heard. This brought with it an element of inequality and discriminated between the exercise of the administration of justice in Malta and in Gozo. It was held that this impinged on the status of the judicial system in Malta and detracted from the concept of Gozo being granted regional institutions. Hence Motion number 222 requested the House of Representatives to call upon the Select Committee of the House on Recodification and Consolidation of Laws to carry out the pertinent exercise to evaluate the Code of Organization and Civil Procedure and then to draw up a bill proposing amendments to the said Code to be discussed by the House.

The Salient Points raised in the Discussion on the Motion

When the Private Member's Motion was discussed in the House of Representatives, the following Members of Parliament intervened: the Hon. Justyne Caruana, as mover of the motion, the Hon. Giovanna Debono, as seconder of the motion, the Hon. Jose' Herrera, the Hon. Anton Refalo, the Hon. Frederick Azzopardi and the Hon. Carmelo Mifsud Bonnici, Minister for Justice and Home Affairs.

In brief the following main points were raised as to why the structure of the courts in Gozo needed revisiting. It was pointed out that if, during the hearing of a cause, a constitutional issue arose in Gozo, the matter could not be brought before a court in Gozo but had to be heard in Malta. Not only so, but there are new laws which specifically vest jurisdiction in a superior court of civil jurisdiction and not in a court which sits in Gozo. As Gozitans would have to travel to Malta to pursue such litigation, this was causing an element of discomfort as they have to spend considerable time travelling, would have to take vacation leave for this purpose and ended up spending considerable time to attend a court sitting in Malta. This was considered to amount to a denial of justice and limiting the fundamental right to access to a court. The MPs were not however requesting that all the courts of superior jurisdiction hear cases in Gozo. For

³ Article 3(a)(ii) of Act No. XXXII of 1997.



Gozo Law Courts in Citadel Square, Victoria.
(Source: <http://obeliskauctions.com> - Nov 2012)

instance, they were not demanding that trials by jury be held in Gozo.

Moreover, it was stated in the debate on the motion that the fact that a judge presides the Superior Courts in Gozo contributes to raising the prestige of the courts in Gozo and contributes to the establishment of a regional court in Gozo, thereby giving Gozo an identity of a region whilst ameliorating the proper administration of justice in Gozo. Nonetheless, the current court structure was creating an inconvenience to the parties and to their lawyers who had to travel over to Malta when such cases could easily be heard before a judge in Gozo. Such a situation brought about undue discrimination and distinction which was not objectively justifiable between the courts in Malta and those in Gozo.

Furthermore, in Gozo it was a magistrate who was hearing cases which in Malta were heard by a judge. The magistrate was in fact paid less than a judge but was carrying out duties above his or her official duties than those of a magistrate. It was also noted that the practice was to assign to Gozo the most junior magistrate to perform duties in the Gozo court. The said magistrate is normally the least experienced, yet has to perform duties ordinarily performed by a judge in the

courts in Malta. Once the junior magistrate gained the required experience he is then reassigned duties in Malta and the last appointed magistrate replaces him or her in the courts in Gozo. It was stressed that Gozo had, prior to British colonial times, courts presided by judges and it was thus important to restore the judicial system in Gozo in the form and with the powers it had in pre-British times. In this way, the court in Gozo was given back the dignity it deserved and obtained the full status of a superior court with a judge sitting in the Gozitan courts, it was noted that in Gozo there is a civil law tradition which had served as the training ground for those magistrates serving in those courts who eventually were appointed judges.

Another inconvenience in the current judicial set up is that certain judicial acts and written pleadings have to be filed in the courts in Malta rather than those in Gozo. In order to file an appeal from a judgment of the Court of Magistrates (Gozo) sitting in its superior competence, an appeal and all consequential judicial acts and written pleadings have to be filed in Malta. It makes considerable sense today to allow the filing of judicial acts in the court of Gozo for onward transmission by the registrar of that court to his counterpart in Malta. Moreover, witnesses can be heard in the court



Pjazza l-Assedju 1551 in Victoria, was being proposed by the government as a building site for the law courts.

building in Gozo without the need to travel to Malta as this was possible through developments in technology. This cuts down on the travelling involved, wasted time and expenses incurred. However, it was pointed out that there were still problems with Industrial Tribunal sittings as these were not held in Gozo.

It was also necessary to upgrade the facilities at the premises which house the courts in Gozo as these were not sufficient to cater for the needs of its users. Mention was also made of the reallocation of the courts to other premises. Security measures required improving, monitors needed to be introduced to provide information to the public and customer care facilities should be introduced together with leaflets containing essential information on the services provided by the courts. The mediator lacked office space in the courts building. A final suggestion was made to the effect that witnesses in Malta should not be required to go physically to Gozo to give evidence but should do so in Malta via video conferencing and vice-versa.

Motion No 222 on the Judicial Process

On 12 December 2011, the Hon. Franco Debono, Chairman of the House of Representatives' Standing Committee on the Recodification and Consolidation of Laws, informed the Committee that the House of Representatives had that same day approved motion no 222 on the Judicial Process in Gozo and that the House had referred it to the Committee for its attention. The present author – who was drafting an Administrative Code for the said Committee – was entrusted with the drawing up of a draft Bill to amend the Code of Organization and Civil Procedure to give effect to the motion's requirements. On 7 February 2012 the Committee discussed the draft Bill proposed by the present author. The English language draft version of the Bill was submitted to Dr Vanni Bruno at the Justice Unit to translate the Bill and provide feedback on its contents. He did so on 12 February 2012. On 13 February 2012, the Committee discussed the draft Bill with Dr Grazio Mercieca and Dr Vincent Galea, both practising advocates in the courts in Gozo.

During the 20 February 2012 sitting, the Chairman circulated submissions on the draft Bill by Dr Grazio Mercieca and feedback on the draft Bill prepared by the Attorney General, Dr Peter Grech, as instructed by the Minister for Justice, Public Consultation and the Family, Hon. Dr Chris Said. These submissions were discussed by the Committee and accepted for inclusion in the draft Bill. The Committee also considered written submissions by Dr Carmelo Galea and the feedback thereupon by Dr Grazio Mercieca. Various suggestions were taken on board by the drafter of the draft Bill. The Hon. Members agreed to authorise the Chairman of the Committee to lay the report of the Chairman of the Committee and the draft Bill in Maltese and English on the table of the House of Representatives.

The Bill

The Bill is entitled ‘An Act to abolish the Court of Magistrates (Gozo) sitting in its superior jurisdiction and to extend the jurisdiction of the Civil Court, First Hall, the Civil Court (Family Section) and the Civil Court (Voluntary Jurisdiction) to the Islands of Gozo and Comino, to establish one Court of Magistrates having general jurisdiction over all the islands in Malta, and to make ancillary and consequential provisions thereto.’ It consists in 48 clauses. The objects and reasons of this Bill ‘is to give effect to motion no. 222 on judicial proceedings in Gozo approved by the House of Representatives on 12 December 2011 whereby the Court of Magistrates (Gozo) sitting in its superior jurisdiction is being abolished and the jurisdiction of the Civil Court, First Hall, the Civil Court (Family Section) and the Civil Court (Voluntary Jurisdiction Section) is being extended to the Islands of Gozo and Comino. The Court of Appeal sitting in its superior jurisdiction is being empowered to hold its sittings in Gozo in order to hear appeals lodged from decisions of the Civil Court, First Hall, and the Civil Court (Family Section) when both the latter two sections of the Civil Court hold their sittings in Gozo. The Court of Magistrates is established as one court with general jurisdiction over all islands in Malta and continuing to hold sittings both in the Island of Malta and in the Island of Gozo. Finally, the Bill facilitates the transfer of cases between courts and tribunals, whether on the same island or otherwise,

and the transfer of judicial acts, written pleadings and other documents between the courts and tribunals in Malta to the courts and tribunals in Gozo and vice-versa.’

Once the Bill is enacted into law, the amendments to the Code of Organization and Civil Procedure and other laws will come into force on such a date as the Minister responsible for justice may by notice in the Government Gazette appoint.

The Bill provides that the Civil Court, First Hall, the Civil Court (Family Section) and the Civil Court (Voluntary Jurisdiction Section) will sit both in Malta and in Gozo. Furthermore, the words “(Gozo)” may be added to any written pleading, judicial act, court decree, *proces-verbal*, form or any other document whatsoever filed or used by these three sections of the Civil Court. The Bill also requires the Court of Appeal composes of three judges to hear appeals in Gozo from decisions of the Civil Court, First Hall, when it holds its sittings in Gozo; the Civil Court (Family Section), when it holds its sittings in Gozo; the Court of Magistrates (Gozo); or judgments or decisions of any board or tribunal delivered by such board or tribunal when sitting in Gozo. However, in so far as the Constitutional Court is concerned, no changes are being made and this court will not be hearing appeals in Gozo but will continue to hold its sittings in Malta.

New provisions will be introduced in the Code to expedite the transfer of judicial acts and written pleadings between Courts in Malta and Courts in Gozo. This is done in the following way. A judicial act or a written pleading may be filed in the registry of the Civil Court, First Hall, in Malta, for onwards transmission by the registrar of that court to the registrar of the competent civil court or tribunal sitting in Gozo indicated in the judicial act or written pleading. Where such an act or pleading is to be served in the Island of Gozo or Comino, it shall be sufficient for all purposes of law for a true copy of a judicial act or written pleading to be scanned in the registry of the Civil Court, First Hall, in Malta, and e-mailed to the registrar of the competent civil court or tribunal in Gozo indicated in the judicial act or written pleading. This procedure applies also when a judicial act or a written pleading is filed in the registry of the Civil



Malta Law Courts in Republic Street, Valletta.
(Source: <http://tvm.com.mt> - Nov 2012)

Court, First Hall, in Gozo, for onward transmission to the competent civil court or tribunal in Malta indicated in the judicial act or written pleading. The registrar receiving the scanned copy as aforesaid shall acknowledge its receipt by return e-mail to the registrar sending the scanned true copy of the judicial act or written pleading. The officer effecting service of the scanned copy of a judicial act or written pleading as aforesaid shall deliver to the registrar of the Civil Court, First Hall, in Gozo the certificate of service, duly confirmed on oath before the registrar himself who shall transmit it to the registrar of the competent civil court or tribunal in Malta indicated in the judicial act or written pleading and vice-versa. Such delivery may also be made by electronic mail and the registrar receiving the certificate of service as aforesaid shall acknowledge its receipt by return e-mail to the registrar sending the certificate of service.

Another provision deals with the transfer and execution of warrants and orders between courts in Malta and courts in Gozo. The law will provide that when a request for the issue of a warrant or garnishee order by a civil court or tribunal in Gozo may be filed in the registry of the Civil Court, First Hall, in Malta. The registrar of the Civil Court,

First Hall, in Malta, will transmit such a request to the registrar of the competent civil court or tribunal in Gozo indicated in the request. The registrar of the competent civil court or tribunal in Gozo will forward such a request to the competent civil court or tribunal in Gozo indicated in the request to deal with it in terms of law.

If the competent civil court or tribunal in Gozo decrees that such warrant or order is to be executed in the Island of Gozo or Comino, a copy thereof will be transmitted by the registrar of the competent civil court or tribunal in Gozo indicated in the request to the registrar of the competent civil court or tribunal in Malta from where the request originated. A copy of the decree will be served on the person requesting the issue of such warrant or order. The officer effecting execution will deliver to the registrar of the competent civil court or tribunal in Gozo indicated in the request the certificate of service or execution, duly confirmed on oath before the registrar himself who will transmit it to the registrar of the competent court or tribunal in Malta from where the request originated. The procedure laid down above will also apply when a judicial act is filed in the registry of a competent civil court or tribunal in Gozo for

onward transmission to the competent civil court or tribunal in Malta.

A new article allows for the transfer of cases between courts and tribunals. When a case is declared to have been filed wrongly before a court or tribunal by any court or tribunal sitting in Malta or Gozo, the court or tribunal delivering such decision will order that such case be transferred to the competent court or tribunal so that such a case may continue to be heard and determined before the competent court or tribunal, whether such court or tribunal sits in the same or a different island.

Where the name of the court or a tribunal in which a judicial act or written pleading is filed is not indicated correctly, the said court or tribunal may *ex officio* or upon the request of any of the parties authorise the required correction. Such correction will not have any delaying or legally adverse effect on the proceedings or on the parties thereto. If, however, the receiving court or tribunal does not consider itself to be the competent court or tribunal to hear the case, the registrar will refer such case to the Court of Appeal sitting in its inferior jurisdiction which will, if need be after hearing the parties, decide which of the courts or tribunals is competent to hear such case.

The decision of the Court of Appeal will be final and the court or tribunal which has been identified by the Court of Appeal as being the competent court or tribunal to hear the case shall do so without any further delay. The Court of Appeal will forward the records of the proceedings to the competent court or tribunal. Prior to doing so, the registrar will, where there is an assignment to a different court or tribunal to hear the case, verify that the proper fees have been paid. Should this not be the case, the registrar will request the party concerned to pay any difference in such fees. Should the fees have been paid in excess the registrar will refund the fees paid in excess. The registrar will then forward the record of the proceedings to the competent court or tribunal as identified by the Court of Appeal.

The Court of Magistrates will be established as a general court for all Maltese islands and will hear cases both in Malta and in Gozo.

Consequential amendments are proposed to a number of laws to bring them in line with the Code of Organization and Civil Procedure (Amendment) Act. Such is the case with regard to the Civil Court (Establishment of Sections) Order, S.L. 12.19; the Civil Court (Family Section), the First Hall of the Civil Court and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations, SL12.20; the Civil Procedure (Regulation of Registries, Archives and Functions of Director General (Courts) And Other Court Executive Officers) Regulations, SL 12.21.

The Minister responsible for justice may make regulations for the better implementation of the provisions of this Act. These regulations may provide for the transfer of cases pending or formerly pending before the Court of Magistrates (Gozo) sitting in its superior jurisdiction to another court; the hearing of appeals from judgments of the Court of Magistrates (Gozo) which are pending on the date of coming into force of this Act; and the making and implementing any transitory, ancillary or consequential measure that may in the opinion of the Minister be required for the purpose of the proper implementation of the purposes of this Act.

Conclusion

At the time of writing this article the Bill has yet to be given a First Reading and discussed by the House. As Motion 222 was approved by both the Government and Opposition, it is not envisaged that there will be any difficulties with the passage of this Bill from the House of Representatives except perhaps to some fine tuning which might take place during the Committee stage. One augurs that this process is expedited and that the court structure in Gozo is updated to better reflect today's needs.

References

Attard Hili, A. (1995). *The History and Jurisdiction of the Courts of Law in Gozo*. Malta: Faculty of Laws, University of Malta, LL.D. thesis.

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