

SUBSIDIARY LEGISLATION 12.09
COURT PRACTICE AND PROCEDURE
AND GOOD ORDER RULES

11th November, 2008;
5th January, 2009

LEGAL NOTICE 279 of 2008, as amended by Legal Notice 333 of 2008.

1. (1) The title of these Rules is the Court Practice and Procedure and Good Order Rules.
- (2) These rules, other than rule 13, shall come into force on the 11th November, 2008.
- (3) Rule 13 shall come into force on the 5th January, 2009.

Citation and coming into force.

Part I - Court Practice and Procedure
concerning Constitutional Matters

2. Proceedings before the Civil Court, First Hall, under article 46(1) of the Constitution of Malta and under article 4(1) of the European Convention Act and proceedings before the Constitutional Court in cases referred to in article 95(2) of the Constitution of Malta shall be instituted by application.

Proceedings before the Civil Court, First Hall, and Constitutional Court to be by application. Cap. 319.

3. (1) An application before the Civil Court, First Hall, shall state concisely and clearly the facts out of which the complaint arises and shall indicate the provision or provisions of the Constitution of Malta or of the European Convention for the Protection of Human Rights and Fundamental Freedoms alleged to have been, to be or likely to be contravened.

Contents of application under articles 46 and 95 of the Constitution and article 4(1) of the European Convention Act. Cap. 319.

(2) The application shall also specify the redress sought by the applicant:

Provided that it shall be lawful for the court, if the application is allowed, to give any other redress within its jurisdiction which it may consider to be more appropriate.

(3) In cases referred to in article 95(2)(a) of the Constitution of Malta, the application before the Constitutional Court shall state clearly and concisely the circumstances out of which the question arises, the demand and the provision or provisions of the Constitution or of any other law on which the applicant relies.

(4) In cases referred to in article 95(2)(c), (d), (e) and (f) of the Constitution of Malta, the application shall state clearly and concisely the circumstances out of which the appeal arises, the reasons of appeal and the prayer for the reversal or a specific variation of the decision appealed from.

(5) Default of compliance in the application with the requirements of sub-rules (1), (2), (3) and (4) shall not render the application null; but the court may, in any such case, order the applicant to file, within such time as the court shall fix, a note

containing the particulars required and the costs of such order shall be borne by the applicant.

Hearing of proceedings.

Cap. 319.

4. (1) Subject to the provisions of sub-rule (3) of this rule and rule 8, in the cases referred to the Civil Court, First Hall, as provided in article 46(1) of the Constitution of Malta, in article 4(1) of the European Convention Act, and in the cases referred to in article 95(2)(c), (d), (e) and (f) of the Constitution of Malta, the application shall be served on the defendant or the respondent without delay and the court shall fix a date for hearing within eight working days from the date of the filing of the application, or from the filing of a reply by respondent within the time limit therefor, or if no such reply is filed from the expiry of such time:

Provided that where the Court considers that the subject matter of the application is not of an urgent nature, the defendant or respondent shall always be given twenty days for the filing of the reply.

(2) The application of appeal shall be made within twenty days from the date of the decision appealed from, and the respondent may file a written reply within eight working days from the date of service:

Cap. 319.

Provided that where the appeal is from a decision given upon a reference made in accordance with article 46(3) of the Constitution of Malta or article 4(3) of the European Convention Act, such appeal shall be made within eight working days from the date of the decision appealed from.

(3) The court by which a decision is given and which is subject to appeal to the Constitutional Court, may, in urgent cases, upon demand even verbal, by any of the parties immediately upon delivery of such decision, abridge the time for making the appeal or for the filing of a reply. If no such demand is made by any of the parties immediately upon the delivery of the judgment, any one of the parties may make such a demand by application, upon which, the court which gave the decision shall, after summarily hearing the parties if it thinks necessary, give the requisite order.

Reference of questions.
Cap. 319.

5. (1) In the cases referred to in article 46(3) of the Constitution of Malta, article 4(3) of the European Convention Act, and article 95(2)(b) of the Constitution of Malta, the order of reference shall state concisely and clearly the facts and the circumstances out of which the question arises, the terms of such question and indicate the provision or provisions of the Constitution of Malta or of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the case may be, allegedly contravened.

(2) When any such reference has been made, it shall be the duty of the Registrar, Civil Courts and Tribunals, to ensure that the record of the proceedings or any authenticated copy thereof is brought before the court to which the reference is made without any delay and with urgency.

(3) The court to which the reference has been made shall, upon any such reference, set down the cause for hearing at an early date,

in no case later than eight working days from the date on which the record is brought before it and shall cause notice of such date to be given to the parties and to the Attorney General.

6. Once a case has been set down for hearing the court shall ensure that, consistently with the due and proper administration of justice, the hearing and disposal of the case shall be expeditious, and the hearing of the cause shall as far as possible continue to be heard on consecutive days, and, where this is not possible, on dates close to one another.

Expeditious hearing and disposal of hearing.

7. Saving what is provided for in these rules, the provisions of the Code of Organization and Civil Procedure, hereinafter referred to as "the Code", and any subsidiary legislation made thereunder shall *mutatis mutandis* apply before the Civil Court, First Hall, and the Constitutional Court referred to in rule 2.

Application of Code.
Cap. 12.

Part II - Court Practice and Procedure concerning Non-Urgent Causes

8. Notwithstanding the foregoing provisions of these rules, the court may opt not to appoint for hearing, between the 16th of July and the 15th of September of each year, proceedings referred to in rule 2 when these are commenced within the said period if, in the opinion of the court, such proceedings of their very nature need not be dealt with any particular haste and none of the parties will suffer any prejudice if the hearing takes place after the 15th of September.

Criteria establishing when causes need not be appointed for hearing in the summer months.

Part III - Court Practice and Procedure concerning Drawing up of Lists, Hearings to be Held by Appointment, Adjournment of Causes and Conduct of Proceedings

9. (1) In making the list referred to in article 194 of the Code, the Registrar, Civil Court and Tribunals, or the Registrar, Gozo Courts and Tribunals, as the case may be, shall act in accordance with such instructions as may be given to him by the court, which shall ensure that, as far as possible, causes shall be heard and decided in the chronological order of the date of filing of the act with which the cause was introduced in the registry of the court. Not all causes ready for hearing shall be inserted in the list, but only as many as the Judge or Magistrate, as the case may be, considers he can deal with in any particular sitting:

Causes to be heard, etc., in chronological order.
Cap. 12.

Provided that, without prejudice to anything contained in any other law, priority shall be given in setting a cause for hearing and in the hearing thereof to -

- (i) cases of retrial;
- (ii) spoliation suits referred to in article 791 of the Code;
- (iii) cases of contempt of court;
- (iv) appeals from decisions of the Civil Court (Family Section);
- (v) cases dealing with recognition and enforcement of foreign judgments;
- (vi) arbitration cases; and

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(vii) cases which of their nature require to be treated with greater expeditiousness.

(2) Witnesses summoned for a particular sitting shall, as far as possible, be heard at such sitting.

(3) The hearing of a cause, whether at pre-trial or trial stage, or other procedure shall, as far as possible, be by appointment for a given time as determined by the court or by the judicial assistant, as the case may be.

(4) Where several causes or other procedures are to be heard during the course of any sitting, the court or the judicial assistant shall stagger the said causes or procedures at reasonable intervals to ensure that the parties, and witnesses if any, are not required to attend at the same time.

Adjournment of causes.

10. (1) A cause may be adjourned in exceptional circumstances only if the court is satisfied that such circumstances exist and so states in the decree ordering the adjournment specifying those circumstances, and only on an application filed by the party requesting the adjournment not later than fifteen working days before the day due for hearing or, if the cause of the adjournment arises after the expiration of the said time limit, as soon as practicable thereafter; and the application shall specify in detail the circumstances justifying the request and shall be confirmed on oath by the applicant or, if the applicant is absent from Malta or is otherwise unable to confirm the application in person, such fact shall be stated in the application.

(2) The following may be deemed to be exceptional circumstances for the purposes of the foregoing sub-rule:

- (a) the temporary illness of counsel;
- (b) the agreement between the parties to refer the cause to arbitration or mediation; and
- (c) any other exceptional circumstances which the court considers to be serious and sufficient.

(3) In every case the circumstances justifying the request and concession of an adjournment shall be recorded in the acts of the proceedings.

Conduct of proceedings.

11. (1) Evidence in a cause shall be heard either directly by the court or by means of an affidavit except in those cases where the nature of the case requires proof by a technical referee, who shall as far as possible assist the court when the evidence is heard by it *viva voce*, and where a need arises such evidence may be heard by the referee, also with the assistance of a legal referee or a judicial assistant, in a sitting fixed for the purpose.

(2) Where no pre-trial hearing has taken place, the court shall on the first sitting of a cause ensure that the disputed issues of fact and of law in the cause are identified and recorded in the acts of the proceedings, and that the parties shall indicate and record in the acts of the proceedings the specific object of each witness indicated by them according to article 561 of the Code, also to ensure, among other things, the proper application of article 558 of the said Code.

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- (3) During the first sitting of each case the court shall -
- (a) either fix a date or consecutive dates for the hearing of all the witnesses of the parties up to the adjournment of the cause for judgment, and where it is not possible to fix consecutive dates, to fix dates which are as near as possible to one another, in order to reach the same objective; or
 - (b) if the parties agree (to a request made by one of the parties) that all evidence be produced by means of affidavits (or when the court is unable to fix a date for the hearing of evidence *viva voce*), the court shall order specific periods during which each party is to produce all its evidence by means of an affidavit, and shall subsequently fix the date when the cross examination of the witnesses who had made an affidavit shall be heard, if such cross examination is requested.

(4) The terms referred in sub-rule (3) may be extended by the court for valid and serious reasons which shall be indicated in the order granting the extension.

(5) Where a witness refuses to co-operate with any of the parties and refuses to make an affidavit, such party shall file an application as is referred to in article 173(2) of the Code, in sufficient time so that such witness shall appear and give evidence before the judicial assistant in accordance with the said article.

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12. (1) The appointment of legal referees shall be restricted to special and particular cases where a real necessity arises because the cause requires specialized knowledge in a particular field of law. On any such appointment the court shall indicate clearly and precisely in the decree the reasons and justification for such an appointment.

Appointment of legal referees shall be restricted.

(2) In cases where such legal referees are appointed, evidence shall be produced by means of a sworn statement (affidavit) or otherwise as the court may direct and within such time as shall be stated in the decree appointing the referees. The court may in each case order the legal referee to report to it on such dates as indicated by the court, so that the court shall be in a position to ascertain that its orders have been complied with. The court shall fix a date for the definitive filing of the report.

Part IV - Court Practice and Procedure: The Pre-Trial Procedure

13.* (1) When a cause has been assigned to a Judge he shall, as soon as practicable, give such orders as provided in article 173 of the Code as may be conducive to an expeditious conclusion of the written pleadings.

Pre-trial hearings before the Civil Court, First Hall. Cap. 12.

(2) The Registrar shall keep a record of when a cause has been assigned to a Judge and of the date and time when the Deputy

*will come into force on 5th January, 2009.

Registrar assigned to the Judge shall have signed for the relevant act or acts.

(3) Without prejudice to sub-rule (1) and to any other law providing for special procedures, a Judge shall in any case order, not later than fifteen days from when the Deputy Registrar shall have signed for the relevant act or acts, that the acts by which the proceedings are commenced be served on the defendant or respondent, as the case may be.

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(4) Before the conclusion of the written pleadings, orders in terms of article 173 of the Code shall, as a rule, be limited to seeking more detailed information or clarification regarding the acts by which the proceedings are commenced.

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(5) After the written pleadings have been concluded, the Judge may give such orders as provided in article 173 of the Code as may be conducive to the proper conduct of the pre-trial or trial hearing.

(6) Unless a cause is appointed for a trial hearing, it shall be appointed for a pre-trial hearing. A cause shall be appointed for a pre-trial hearing not later than two months after the conclusion of the written pleadings:

Provided that causes which are pending on the date of entry into force of this rule and which have not been appointed for a pre-trial hearing shall be so appointed within a period of six months from the said date.

(7) The pre-trial hearing shall be presided by the Judge or by a judicial assistant acting under the guidance and directives of the Judge. Whenever possible, pre-trial hearings shall be held in the afternoon.

(8) Unless otherwise provided by any other law, pre-trial hearings shall be held in open court, but hearings and decrees or orders of the Judge or judicial assistant dealing solely with the management of the case may be held or given, as the case may be, *in camera*.

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(9) A list of causes set down for pre-trial hearings shall be posted by the registrar as provided in article 194 of the Code.

(10) The purpose of the pre-trial hearing is to:

- (a) identify the factual and legal issues involved in the case;
- (b) examine the possibility of an agreed settlement or application for conciliation or mediation process before proceeding further with the cause;
- (c) establish who the interested parties are, make any necessary corrections to their designation and establish whether any other parties should be joined to the suit or should intervene in the cause;
- (d) establish whether any corrections need to be made to the written pleadings and enter such corrections in the records of the cause;
- (e) determine with exactness the demand of the plaintiff

relative to the amount being claimed or the object being sought;

- (f) examine the need or otherwise to appoint technical referees and their precise terms of reference, and, when so necessary, to appoint such referees;
- (g) list the points of fact that the parties agree upon and the points of fact that the parties do not agree upon and on which the Judge or judicial assistant will require evidence as being points of fact crucial to the determination of the cause;
- (h) list the points of law which will require argument and determination and the time within which the advocates of the parties may present written arguments in such form or manner as the Judge or judicial assistant shall direct;
- (i) identify the witnesses and documents which the Judge or judicial assistant determine as being necessary for determining the cause, the ruling on the admissibility of witnesses and documents, and whether witnesses will be heard *viva voce* or by affidavit and the time within which the Judge or judicial assistant will require each party to present such evidence;
- (j) determine any other thing or process (including the collection of evidence) and to establish any other procedure or time limit which in the opinion of the Judge or judicial assistant may bring the cause to an early determination:

Provided that whenever a pre-trial hearing is presided by a judicial assistant the provisions of article 97C of the Code shall be observed.

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(11) Subject to the provisions of any other law dealing with mediation, conciliation or arbitration, the Judge or judicial assistant may refer the parties -

- (a) to a mediation or conciliation process if he deems fit that the cause is susceptible to a mediated agreement and that the parties have shown their willingness to attempt such conciliation, or
- (b) to arbitration if the parties so request.

The Judge or judicial assistant shall resume the pre-trial hearing of the cause not later than three weeks after either party has informed the court in writing that the conciliation or mediation process has not succeeded, and shall resume the said hearing in any case not later than three months from the date on which the parties were referred to mediation or conciliation.

(12) The pre-trial hearing of a cause may be held in the course of a number of sittings; but a cause shall not, except for special reasons to be expressly noted in the relative minute, be adjourned for a period exceeding three months.

Cap. 12. (13) When the Judge or judicial assistant consider that the cause should proceed to the trial hearing, the said cause shall be set down for trial hearing on a specified date and at a specified time, and the provisions of article 195(4) of the Code shall apply. When such date and time has not been determined during a pre-trial hearing it shall be sufficient if the notice of the trial hearing be communicated to the advocates of the parties at least two months prior to the date fixed for the hearing.

(14) All evidence or remaining evidence shall be produced, and submissions shall be made, during the trial hearing, after which the cause shall be put off for judgment, which may be delivered on the same day of the hearing.

(15) The foregoing provisions of this rule shall not apply to the Civil Court (Family Section), the Court of Magistrates (Malta) and to the Court of Magistrates (Gozo) in its inferior jurisdiction.

Part V - Court Practice and Procedure:
Services and Communications

Trial of causes
before the Civil
Court, First Hall.

14. The following rules shall be observed by the Civil Court, First Hall, and by the Court of Magistrates (Gozo) in its superior jurisdiction in effecting services and communications:

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(a) when a court orders in terms of article 173 of the Code that an order or a directive in camera is to be communicated to an advocate and in the case of any other communication to an advocate, such communication shall be executed by an executive officer of the court either personally or by means of a registered letter addressed to such advocate at the address provided by him in terms of article 174(2)(c) of the said Code;

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(b) when a court orders in terms of article 173 of the Code that service of an order or a directive in camera is to be served upon an advocate, it shall be served in terms of article 187 of the said Code as the court shall direct;

(c) when a time limit has been established in an order or directive made as aforesaid, the said time limit shall be a reasonable one; and such time limit shall begin to run from the date when the communication or the service, as the case may be, has been effected: provided that where the communication or service, as the case may be, is effected by means of a registered letter, such time limit shall commence to run from the date that the registered letter has been consigned at the given address;

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(d) the Registrar, Civil Courts and Tribunals, and the Registrar, Gozo Courts and Tribunals, as the case may be, shall refuse to accept the filing of a written pleading or any other judicial act which is to be served unless such written pleading or judicial act complies with the provisions of article 174(2)(c) of the Code; and the said Registrars shall not accept any such

written pleading or judicial act where the professional address of an advocate is indicated as that being within the precincts of the courts' building;

- (e) the communication of an act to an advocate which is not mandatory at law but is made by the court by way of courtesy (as is the case with communication of a court minute or deposition of witnesses) shall continue to be effected by being left at the office of the Chamber of Advocates: provided that were the necessary arrangements are made for copies of such court minutes, evidence and other judicial acts, to be communicated by electronic mail, such documents shall be marked as "informal" and shall be forwarded by a member of the judiciary team to the said advocate.

Part VI - Service of Judicial and Extrajudicial Documents

15. (1) The provisions of Council Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters continue to apply to matters falling within the scope of that Regulation as published in the Official Journal of the European Communities on 10 December, 2007 (L324/79 to 120).

Service of judicial and extrajudicial documents between EU Member States.
Amended by:
L.N. 333 of 2008.

(2) The provisions of Part II of the Legal Procedures (Ratification of Conventions) Act incorporating into Maltese Law the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters which was signed at The Hague on 15th November, 1965, shall continue to apply to those state parties to the said Convention and to those European Union Member States who are not participating and bound by the provisions of Council Regulation EC No 1393/2007 aforesaid (and any amendments thereto which might be applicable to Malta from time to time).

Cap. 443.

(3) The central authority or the receiving agency, as the case may be, shall cause the document to be served by attaching the document to a judicial letter filed in the Registry of the Civil Court, First Hall, in the case of documents to be served in the Island of Malta, and in the Registry of the Court of Magistrates (Gozo) in its superior jurisdiction, in the case of documents to be served in the Islands of Gozo and Comino, to be served on the person addressed together with such document, and such judicial letter and accompanying document shall be served in accordance with the methods prescribed in -

- (a) article 187(1), (2), (4) or (7) of the Code of Organization and Civil Procedure, as the circumstances of the case may require:

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Provided that the reference to curators appointed by the court in the said article 187(7) shall not apply; or

- (b) article 187(8) of the Code of Organization and Civil Procedure:

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Provided that the proviso to the said article 187(8)

shall not apply,

as the central authority may deem fit to specify in the circumstances of each case.

(4) Where in any civil or commercial matter pending before a court or tribunal of a foreign country which is not bound by the Regulation mentioned in sub-rule (1) and by the Convention mentioned in sub-rule (2), a letter of request from such court or tribunal for service on any person, in Malta, of any process or citation in such matter, is transmitted to any of the superior courts, with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted:

- (a) the letter of request for service shall, unless it is drawn up in the English language, be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language;
- (b) service of the process or citation shall be effected by one of the court executive officers of the superior courts;
- (c) such service shall be effected in accordance with the provisions of article 187 of the Code;
- (d) after service has been effected, the process server shall return to the Registrar, Civil Courts and Tribunals, or the Registrar, Gozo Courts and Tribunals, as the case may be, one copy of the process together with the evidence of service by a declaration on oath of the person effecting the service, and particulars of charges for the cost of effecting such service;
- (e) the particulars of charges for the cost of effecting service shall be submitted to the Registrar, Civil Courts and Tribunals, or to the Registrar, Gozo Courts and Tribunals, as the case may be, who shall certify the correctness of the charges or such other amount as shall be properly payable for the cost of effecting service;
- (f) the Registrars shall transmit through the Attorney General to the Minister of Foreign Affairs the letter of request for services received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed. Such certificate shall be in the form numbered 3 as set out in the Annex A to these rules.

Cap. 12.

(5) In the execution of commissions rogatoires and letters of request emanating from a court out of Malta, in the examination of witnesses in regard to civil and commercial matters pending before a court out of Malta, the forms numbered 1 and 2 set out in the Annex A to these rules shall be used.

Part VII - Taking of Evidence Abroad

16. (1) Notwithstanding the provisions of Part III of the Legal Procedures (Ratification of Conventions) Act, the provisions of Council Regulation (EC) No 1206/2001 of the 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters continue to apply to matters falling within the scope of that Regulation as published in the Official Journal of the European Communities on 27 June 2001 (L 174/1 to 24).

Taking of evidence
abroad between
EU Member
States.
Cap. 443.

(2) The provisions of Part III of the Legal Procedures (Ratification of Conventions) Act incorporating into Maltese Law the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters which was signed at The Hague on 18th March, 1970, shall continue to apply to those state parties to the said Convention and to those European Union Member States who are not participating and bound by the provisions of the Council Regulation (EC) No 1206/2001 aforesaid (and any amendments thereto which might be applicable to Malta from time to time).

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(3) The Civil Court, First Hall, the Civil Court (Family Section), the Court of Magistrates (Malta) and the Court of Magistrates (Gozo) sitting both in its superior and inferior jurisdiction, shall have jurisdiction to execute letters of request made in terms of Council Regulation (EC) No 1206/2001.

Part VIII - Recognition and Enforcement of Judgments

17. (1) Further to the provisions of article 825A of the Code, the provisions of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters continue to apply to matters falling within the scope of that Regulation as published in the Official Journal of the European Communities on 16 January 2001.

Recognition and
enforcement of
judgments.
Cap. 12.

(2) The Civil Court, First Hall, in the case of judgments to be recognised or enforced in the Island of Malta, and the Court of Magistrates (Gozo) in its superior jurisdiction, in the case of judgments to be recognised or enforced in Gozo or Comino and, on appeal, the Court of Appeal, and in the case of a maintenance judgment the Registrar, Civil Courts and Tribunals, and the Registrar, Gozo Court and Tribunals, as the case may be, shall have jurisdiction to recognised or enforce foreign judgments in civil and commercial matters made in terms of Council Regulation (EC) No 44/2001 (and any amendments thereto which might be applicable to Malta from time to time).

Part IX - Jurisdiction, Recognition and Enforcement of
Matrimonial and Parental Responsibility Judgments

Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility.
Cap. 410.
Council Regulation (EC) No 2201/2003.

18. (1) Notwithstanding the provisions of the Child Abduction and Custody Act, hereinafter in this Part referred to as "the Act", the provisions of Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility continue to apply to matters falling within the scope of that Regulation as published in the Official Journal of the European Communities on 23 December 2003 (L 174/1 to 24).

(2) The Civil Court (Family Section) or the Court of Magistrates (Gozo) (Family Section) (Superior Jurisdiction), as the case may be, and on appeal, the Court of Appeal, shall ensure that it complies with the provisions of Council Regulation (EC) No 2201/2003 of 27 November 2003 (and any amendments thereto which might be applicable to Malta from time to time) and, without prejudice to the generality of the foregoing, in the case of wrongful removal or retention of a child from within a Member State to which that Regulation applies, the court seized of the matter, when applying Articles 12 and 13 of the 1980 Hague Convention aforesaid, shall ensure that it applies the provisions of Article 11 of the aforesaid Council Regulation.

(3) Proceedings under article 11 of the aforesaid Council Regulation shall be instituted by application. The application shall state the facts clearly and concisely and shall be accompanied by such documents referred to in rule 19(3). Rules 19(4) to 19(11) shall also *mutatis mutandis* apply.

Proceedings and registration of decisions under the Act.
Cap. 410.

19. (1) The provisions of this rule and of Parts I and II of the Act incorporating into Maltese Law the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on the 25th October 1980 and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20th May, 1981, shall continue to apply to those state parties to the said Convention and to those European Union Member States who are not participating and bound by the provisions of Council Regulation (EC) No 2201/2003 aforesaid.

Cap. 410.

(2) Proceedings under article 6 of the Act, before the Civil Court (Family Section) or the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section), as the case may be, may be instituted by application.

Cap. 410.

(3) For the purposes of article 6 of the Act, the application shall state the facts clearly and concisely and shall be accompanied by a duly authenticated copy of the decision or determination where available or other documentation which the central authority may deem proper, delivered in another Contracting State other than Malta of the Convention on the Civil Aspects of International Child Abduction, which was signed at the Hague on the 25th October, 1980.

(4) In any application filed in the Court of Appeal, the

application shall state clearly and concisely the circumstances out of which the appeal arises, the reasons of appeal and the prayer for the reversal or a specific variation of the decision appealed from.

(5) Default of compliance in the application with the requirements of sub-rules (3) and (4) shall not render the application null; but the court may, in any such case, order the applicant to file, within such time as the court shall fix, a note containing the particulars required, and the costs of such order shall be borne by the applicant.

(6) The Civil Court (Family Section) or the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section), as the case may be, shall set the case for hearing within four working days from the day when the application is filed in court.

(7) The application shall be served on the respondent without delay.

(8) Once a case has been set down for hearing, the court seized of the matter shall ensure that the hearing of the case shall be expeditious, and the hearing of the case shall continue to be heard on consecutive days, and where this is not possible on dates close to one another. The court shall subsequently give its decision without any delay.

(9) Any application for appeal shall be made within eight working days from the date of the delivery of the decision and the respondent may file a written reply within eight working days from the date of service or within such shorter period as the court may determine.

(10) The Court of Appeal shall fix a date for hearing within eight working days from the date of the filing of the application, or from the filing of a reply by the respondent within the time limit therefor, or if no such reply is filed from the expiry of such time.

(11) The Court of Appeal shall give a final decision without any delay.

20. (1) An application for the registration of a custody decision made by any authority in a Contracting State, other than Malta, of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children signed in Luxembourg on the 20th May, 1980, shall be made in the Registry of the Court of Appeal and shall be accompanied by an authentic copy of the decision.

Registration of custody decisions.

(2) The application shall include any other relevant documents and the names and addresses of the persons who have to be notified about the filing of the application.

(3) The Court of Appeal may by order give directions to ensure the disclosure of any information about any child who is the subject of proceedings under Part II of the Act and to safeguard his or her welfare.

Cap. 410.

(4) Upon registration of a custody decision, the Deputy Registrar of the Court of Appeal shall notify the Director

responsible for Welfare and such other person as the court may deem necessary of such registration and date thereof.

Cap. 410.

(5) Where any registration of a decision as provided for in article 19(1) and (2) of the Act is cancelled or varied, the Court of Appeal shall notify such cancellation or variation to the persons who had been notified of the registration of the decision, the Director responsible for Welfare and such other person as the court may deem necessary.

Part X - References to the Court of Justice of the European Communities

References to the Court of Justice of the European Communities under Article 234 of the EC Treaty.

21. (1) It shall be the responsibility of the court, not the parties, to settle the terms of the reference to the Court of Justice of the European Communities. The reference shall identify as clearly, succinctly and simply as the nature of the case permits the question to which the Maltese court seeks an answer. It is very desirable that language should be used which lends itself readily to translation.

(2) The referring court shall in a single document scheduled to the order:

- (a) identify the parties and summarise the nature and history of the proceedings;
- (b) summarise the salient facts, indicating whether these are proved or admitted or assumed;
- (c) make reference to the rules of national law (substantive and procedural) relevant to the dispute;
- (d) summarise the contentions of the parties so far as relevant;
- (e) explain why a ruling of the Court of Justice of the European Communities is sought, identifying the provisions of Community law whose effect is in issue;
- (f) formulate, without avoidable complexity, the question(s) to which an answer is requested.

(3) Where the document is in effect a decree, as will often be convenient, passages which are not relevant to the reference shall be omitted from the text scheduled to the order. Incorporation of appendices, annexes or enclosures as part of the document shall be avoided, unless the relevant passages lend themselves readily to translation and are clearly identified.

(4) The referring court shall ensure that the order of reference, when finalised, is promptly passed to the Registrar, Civil Courts and Tribunals, or the Registrar, Gozo Courts and Tribunals, as the case may be, so that it may be transmitted to the Court of Justice of the European Communities without avoidable delay.

(5) The title of the referring court shall also be clearly stated.

Part XI - Court Practice and Procedure regarding Witnesses Not Subpoenaed

Witnesses not subpoenaed.

22. Whoever, not being served with a subpoena to give evidence in a cause pending in the superior courts, is requested by

any of the parties to give his deposition, shall, whenever he attends at the court, without being examined, give notice of the said request to the deputy registrar who shall make a record thereof to be inserted in the proceedings.

23. In proceedings before referees, the said notice shall be given, at the end of the sitting, to the referee, who shall make the record aforesaid.

Proceedings before referees.

24. In default of such notice, no fee shall be allowed by the registrar for any attendance in regard to which that notice shall not have been given.

Fee for attendance.

Part XII - Of Wearing Apparel for Advocates and Legal Procurators, and Members of a Disciplined Force

25. (1) Advocates appearing before any of the superior courts and before the Court of Magistrates (Gozo) in its superior jurisdiction at the hearing of any cause shall wear a dark blue, charcoal grey or black suit or pin-striped trousers and black jacket, a white shirt with a black, grey or white tie or bow-tie and black gown. Lady advocates appearing before the said courts shall wear black or blue or charcoal grey suits, or a white blouse and a black skirt or trousers, under a black gown. A Judge or Magistrate may for good reason dispense an advocate from wearing a gown.

Wearing apparel for advocates and legal procurators. Amended by: L.N. 333 of 2008.

(2) Any advocate not complying entirely with these requirements shall not have the right of audience.

(3) Advocates and lady advocates appearing before any of the inferior courts shall comply with the provisions of sub-rule (1) but shall be dispensed from the need to wear a gown.

(4) The provisions of sub-rule (3) shall apply, *mutatis mutandis*, to legal procurators.

- (5) (a) Members of a disciplined force appearing before any of the superior courts and before the Court of Magistrates (Gozo) in its superior jurisdiction in the course of the exercise of their duties or in connection with their duties, shall wear their normal uniform. If such uniform includes a jacket or tunic, this is also to be worn. Commissioned and Gazetted officers shall always wear their jacket or tunic.
- (b) Members of a disciplined force appearing before any of the Inferior Courts in the course of the exercise of their duties or in connection with their duties, shall also wear their normal uniform.
- (c) The court may dispense a member of a disciplined force from wearing a uniform.

Part XIII - Maintenance of Good Order in the Courts of Justice

26. (1) No person shall, under the penalties laid down in article 990 of the Code -

Maintenance of good order. Cap. 12.

- (a) except in such areas as may be designated for the purpose by the Director General (Courts) with the consent of the Chief Justice, expose for sale or sell any

kind of food or other things within the precincts of the Courts of Justice, or, except in such areas as so designated, eat or partake of food or beverages within such precincts; or

- (b) smoke within the precincts of the Courts of Justice in such areas to which the public have access other than in such areas as may be designated for that purpose by the Director General (Courts) with the consent of the Chief Justice; or
- (c) vociferate, within the precincts of the Courts of Justice, in a manner to disturb the sittings of the court; or
- (d) keep any ringing mechanism of any mobile or cellular phone or any other similar device switched on within any hall where the court sits, during a sitting of the court or tribunal; or
- (e) bring within the precincts of the Courts of Justice, any child under the age of thirteen years, except where such child has been summoned as a witness before a court or other tribunal sitting within the said precincts, or where such court or tribunal is of the opinion that the presence of the child is required in connection with any proceedings before it, or as may otherwise be provided by the Director General (Courts) with the consent of the Chief Justice; or
- (f) enter within the precincts of the Courts of Justice without complying with the security procedures in force as established by the Director General (Courts); or
- (g) during the hearing of a case in any hall take, or attempt to take, any photograph or film by any means whatsoever, except when the taking of such photograph or film has been ordered or authorised by a court or tribunal in connection with any proceedings before it; or
- (h) take or attempt to take anywhere within the precincts of the Courts of Justice any photograph or film by any means whatsoever without the permission of the Director General (Courts) and the Chief Justice; or
- (i) except as provided for by law with the permission of the Director General and the Chief Justice take or attempt to take any voice recording.

(2) Where any act as is mentioned in sub-rule (1) occurs during the hearing of a case, the Judge or Magistrate, or in the case of a collegial court, the president of that court shall summarily proceed as provided in article 990 of the Code after hearing the person to whom the act is attributed; and in all other cases the procedure prescribed in article 68(3) of the said Code shall be followed.

Cap. 12.

Improper dress.

27. (1) Every court executive officer may refuse entry into the precincts of the Courts of Justice or into any courtroom to any

person who, in his opinion, is not properly dressed:

Provided that where such person has been summoned to appear before a court or tribunal the said officer shall, before proceeding further, inform the Judge, Magistrate or member of the tribunal before whom that person was due to appear, and shall take instructions from the said Judge or Magistrate or member of the tribunal as to how he should proceed.

(2) The Director General (Courts) shall, from time to time, inform the general public as to the type of dress which is regarded as unacceptable within the precincts of the Courts of Justice.

Part XIV - Forensic Year Sessions, Court Vacations
and Leave of Absence

28. (1) The forensic year shall commence on first October of each year and the forensic year is divided into three sessions:

Forensic year sessions and court vacations.

- (a) the first is called the Victory session and commences on the first of October;
- (b) the second is called the session of Epiphany and commences on the seventh of January; and
- (c) the third is called the session of Pentecost and commences on the Thursday after Easter Sunday.

(2) In each session there shall be vacations in the superior courts, with the exception of the Voluntary Jurisdiction Section and the Family Section of the Civil Court.

(3) Court vacations shall be as follows:

- (a) in the Victory session from the seventeenth of December to the sixth of January inclusively;
- (b) in the session of Epiphany, the vacations shall be from Wednesday in Holy Week to the Wednesday after Easter Sunday inclusively; and
- (c) in the session of Pentecost, from the sixteenth of July to the fifteenth of September inclusively.

(4) The vacations in the inferior courts shall be during the month of August of each year and during the periods mentioned in sub-rule 3(a) and (b).

(5) Notwithstanding the provisions of sub-rules (3) and (4), the superior and inferior courts may sit on any day and at any time for reasons of urgency as decided by the court on the request or with the approval of both parties or for any other reason whatsoever as determined by the court provided that the said reason is registered in the records of the case.

29. (1) Except where a Judge is away from Malta on a visit, or to attend a seminar, conference or other similar meeting, as approved by the Chief Justice or by the Judicial Studies Committee, he shall apply to the Senior Administrative Judge for leave of absence, including where necessary leave to be away from Malta, at least three days before such leave is required. The Senior Administrative Judge shall, before granting such leave, ensure that

Leave of absence.

adequate arrangements have been made for urgent matters, which may arise in the court to which that Judge is assigned, to be dealt with by another Judge and, where the Judge seeking such leave ordinarily sits in a collegial court, the Senior Administrative Judge shall consult with the president of that court.

Cap. 9.

(2) Without prejudice to the provisions of article 547(2) of the Criminal Code, except where a Magistrate is away from the Islands on a visit, or to attend a seminar, conference or other similar meeting, as approved by the Chief Justice or by the Judicial Studies Committee, he shall apply to the Senior Magistrate for leave of absence, including where necessary leave to be away from Malta, at least three days before such leave is required. The Senior Magistrate shall, before granting such leave, ensure that adequate arrangements have been made for urgent matters, which may arise in the court to which that Magistrate is assigned, to be dealt with by another Magistrate.

(3) The provisions of the foregoing sub-rules, shall, *mutatis mutandis*, apply to the Senior Administrative Judge and the Senior Magistrate, so however that in their case they shall apply to the Chief Justice.

ANNEX A

[Rule 15(4)]

Form No. 1

Order for the Examination of Witnesses

The Court of Appeal

In the manner of a (civil or commercial) proceeding now pending before (a)
intituled as follows

Between

Applicant

and

Respondent.

Upon reading the affidavit (if any) of
filed the _____ day of _____ 20____
and the certificate of (b)
that proceedings are pending in (a)
in (c) _____ and
that such Court is desirous of obtaining the testimony of (d)

It is ordered that the said witness do attend before (e) _____ who
is hereby appointed examiner herein, at (f) _____ on the day of
20____ at _____ o'clock, or such other day and time as the said
examiner may appoint, and do there submit to be examined upon oath or affirmation,
touching the testimony so required as aforesaid, and do then and there produce (g)

And it is further ordered that the said examiner do take down in writing the
evidence of the said witness or witnesses, according to the rules laid down in the
Code of Organization and Civil Procedure; and do cause each and every such witness
to sign his or her deposition in his, the said examiner's, presence; and do sign the
deposition taken in pursuance of the order, and when so completed, do transmit the
same together with this order, to the Registrar of Courts for transmission through the
official channel to the president of the said tribunal desiring the evidence of such
witness or witnesses.

Dated this day of 20____

-
- (a) Description of foreign tribunal.
 - (b) Name and description of the Ambassador, Minister, Diplomatic Agent or Consul of the foreign country.
 - (c) Name of foreign country.
 - (d) Names of witnesses.
 - (e) Name and address of examiner.
 - (f) Place appointed for examination.
 - (g) Description of documents, if any, required to be produced.
- _____

Form No. 2

Certificate

I, _____ Registrar of Courts, hereby certify that the documents annexed hereto are:

(i) the original order of the Court of Appeal dated the _____ day of _____ 20____ made in the matter of _____

pending in the Court of _____

at _____

in the _____ of _____

directing the examination of certain witnesses to be taken before _____

; and

(ii) the examination and the depositions taken by the _____, pursuant to the said order and duly signed and completed by him on the _____ day of 20____

Dated this _____ day of _____ 20____

Form No. 3

Certificate of Service of Foreign Process

I, Registrar, Civil Courts and Tribunals, in Malta, hereby certify that the documents annexed hereto are as follows:

(i) the original letter of request for service of process received from the court or tribunal _____

at _____

in the _____ of _____

versus _____

and _____

(2) The process received with such letter of request; and

(3) The evidence of service upon the person named in such letter of request.

And I certify that such service so proved is such as is required by the Code of Organization and Civil Procedure of Malta and its Dependencies. And I certify that the cost of effecting such service amounts to the sum of € _____

Dated this _____ day of _____ 20____
