

Malta constitution of 1849 as an important experiment. (45) But the early blossoming tree was not the first to yield the ripe fruit, for the new representative system appeared in Malta only in 1887, sixteen years later than in the Leeward Islands and five years later than in Cyprus, and then only to disappear again in 1903 with a reversion to the 1849 situation.

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(45) Grey to O'Ferrall, 22 May 1849, C.O.159/22.

**ADVOCATES UNDER THE CODE DE ROHAN
AND THE PRESENT LAWS**

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In the same way as under the present legal system there is a special title (Title VII) of the Code of Organization and Civil Procedure dealing with the subject of Advocates, so also in the Code de Rohan there was a special chapter (Capo XL, Libro 1) on the subject. Indeed, it would seem that the Code de Rohan dealt with the institute of Advocates, their rights and duties, even more fully than the present laws do. The reason probably lies in the fact that the legislator, in the case of the Code de Rohan, unlike the comparatively modern legislator, did not find the tradition of the Maltese bar already established on a firm basis and guaranteed by high standards of professional rectitude. However, even a cursory view of the two Codes will show that, in the main, the basic principles have remained the same.

This fact appears clearly at the very outset. Just as the present law starts by saying that no person may exercise the profession of Advocate without the authority of the Governor granted by warrant under the Public Seal of Malta (S.77, Ch.15), so also the first provision of the Code de Rohan states that no person may exercise the profession of Advocate without previously obtaining the necessary licence from the Grand Master.

On obtaining the warrant, in terms of the Code of Organization and Civil Procedure, the person concerned is to take the oath of allegiance and the oath of office before the Court of Appeal in a public sitting of the same Court (S.78). So also under the Code de Rohan, after obtaining the licence from the Grand Master, the person concerned was required to take the oath before the Castellano of the Gran Corte della Castellania (§ IV Capo XL and § 13 Capo 11, Libro 1).

Both Codes also deal with the qualifications required. These qualifications are substantially the same in both Codes. In fact, according to the present law, the person concerned must be of good conduct and good morals, and he must have obtained the Academical degree of Doctor of Laws (LL.D.) in accordance with the provisions of the Statute of the Royal University of Malta after having studied law in Malta or abroad; under the Code de Rohan, to obtain the licence of the Grand Master, the applicant was required to be of good moral character (*si richiede la probità*) and to be in possession of the degree of Doctor of Civil and Canon Law conferred on him by the Malta University or, in case he had pursued his studies abroad, by *any* university.

The Code de Rohan, therefore, in this respect appears to have been more liberal than the present law which does not recognise as an alternative qualification the fact of the conferment of a degree of laws by *any* university but limits the alternative to the case of the person concerned being a barrister-at-law in England or Northern Ireland or an Advocate in Scotland.

However, the Code de Rohan goes on to say that such person must have passed a test ("*esperimento*") of the Malta University and obtained the approbation of the college of Advocates which was being set up by that Code (11). He was also to be well versed in the Municipal Laws and in all that regarded the practice of the Courts and the judicial procedure (11).

So also whilst under the present law the person concerned after obtaining the necessary academic degree, has to be duly examined and approved by two of His Majesty's Judges, under the Code de Rohan he was subject to an examination by the "*Uditori*", who were appointed for that purpose by the Grand Master, and before whom the requisite documents were to be produced. In this connection of particular interest is tit. 4 § 5 of the *Prammatiche* of Caraffa (a much earlier law than the Code de Rohan) which orders the *Uditori* to examine lawyers with great severity and to

give a report in writing after the examination to the Grand Master.

The present Code, however, contains a qualification not mentioned in the Code de Rohan — that the person concerned must have for a period of not less than one year, regularly attended at the office of a practising Advocate of the Bar of Malta. Curiously enough a somewhat similar provision existed in previous laws of the Grand Masters — the *Prammatiche* of Caraffa, tit. 7 § 1 and the Code Manoel, tit. 8 § 1. These laid down that advocates could not apply for a licence to exercise their profession before first registering their "*privilege*" in the acts of the Gran Corte and receiving training in the exercise of their profession at the hands of a senior and registered lawyer (*anziano e matricolato*) for at least two continuous years.

The Code de Rohan contains other detailed provisions, amongst which the following:—

(1) advocates are to be diligent in the defence of the cause and are not to accept any brief which is unjust or calumnious (V).

(2) they are to do their best to reach a compromise with the other party whenever there is a likelihood of succeeding and, for this purpose, they are to cooperate with the judges who also have the duty to cooperate in settling matters amicably (VI). This provision is a literal reproduction of a "*bando*" of Grand Master de la Sengle, one of the first Grand Masters in Malta.

(3) they are to abstain from giving rise to conflicts between tribunals in matters of jurisdiction and, before instituting any proceedings, they are to make the General Advocate a party to the suit and obtain from him the necessary licence by his setting the *Vidit* on the document regarding this matter of jurisdiction (VI).

(4) They may not be Judges in those causes in which they were advocates or had given an opinion. This provision corresponds to Section 735 (d) (i) of the Code of Organisation and Civil Procedure in terms of which a Judge may be

challenged or abstain from sitting in a cause. The Code de Rohan, moreover, contained a specific provision to the effect that advocates may be arbitrators (*arbitri e giudici compromissarii*) if so appointed by the common consent of the parties (VIII).

(5) Advocates may not be compelled to attest or give evidence on matters of which they may have become aware in the exercise of their profession (IX). This rule is repeated by Section 587 (1) of the Code of Organization and Civil Procedure which lays down that no Advocate or Legal Procurator without the consent of the client may be questioned on such circumstances as may have been stated by the client to the Advocate or Legal Procurator in professional confidence in reference to the cause.

(6) Advocates may not give their professional services to a party in second instance in those causes in which in first instance they were the advocates of the other party (X). No corresponding provision is to be found in the Code of Civil Procedure, but the Criminal Code (Section 120) contemplates the case of an advocate or legal procurator who, having already commenced to act on behalf of one party, in the same lawsuit, or in any other involving the same matter and interest, changes over, without the consent of such party, and acts on behalf of the opposite party, and provides that in any such case the Advocate or legal procurator shall, on conviction, be liable to a fine (*multa*) and to temporary interdiction from the exercise of his profession for a term from four months to one year. The Maltese Courts have at all times condemned in scathing terms any procedure which might in any way suggest collusion. — In a reported case (*Ricorso di Deroga del Barone Giuseppe Attard*, 10th March, 1911) Judge Stefano Micallef took prompt measures to repress the abuse of a lawyer who, after having signed the plaintiff's claim, subsequently signed a note of admission of the claim by the defendant curators.

(7) Advocates may not, either directly or indirectly, enter into or make any agreement or stipulation *quotae*

litis i.e. any agreement in terms of which an advocate is to take part in a suit as if it were his own under the condition of receiving one-half or one-third or one-fourth of the proceeds thereof (XI). This rule is similar to that contained in Section 81 of the Code of Organization and Civil Procedure.

(8) When assisting in the drawing up of a contract or will they are to give their opinion according to law and to be careful not to prejudice anyone. With regard to testamentary dispositions, they are not to tolerate any dispositions which are prejudicial to wives, children or others (XVI). This provision is similar to a *Prammatica* of Grand Master Verdale, a much earlier Grand Master.

(9) Advocates are forbidden, when pleading, from indulging in deceitful or misleading or calumnious statements (*raggiri, tergiversazioni e calunnie*) and they are to assist their clients and make their submissions with modesty, courtesy and gravity (XVII).

As may be seen, the present laws do not cover all the points mentioned in the old law. This, however, is not to be taken to mean that today in practice advocates are not subject substantially to the duties laid down in the Code de Rohan. It is probable that the modern legislator did not deem it necessary to enunciate in great detail the duties of advocates since these are more properly related to the sphere of professional ethics which every advocate should of course hold in very high esteem. The position, however, was probably different at the time of the promulgation of the Code de Rohan nearly two hundred years ago.

The causes of disqualification in the two Codes are worth noting. Under the Code de Rohan, those Advocates who foment vexatious and unjust litigation to increase the number of their briefs are no longer allowed to exercise their profession (XXI). Moreover, there is a general provision disqualifying those advocates who do not comply with the duties laid down in the Code (XXII). The Code de Rohan does not mention the person by whom the disqualification is generally to be declared. It does, however, when dealing

specifically with certain duties, state that if such duties are not complied with, the advocate is to be suspended from the exercise of his profession during the Grand Master's pleasure.

The present Code of Civil Procedure mentions specifically a cause of disqualification not to be found in the Code de Rohan — that is, a conviction by any competent tribunal for any crime liable to the punishment of death or to hard labour for any term or to imprisonment for a term exceeding one year other than involuntary homicide or other crime against the person excusable in terms of the Criminal Code (S.82 (1)). Such disability is to be declared by the Governor by means of a letter to the Registrars of the Courts of Justice and to the Advocate so disqualified, unless the Advocate is interdicted by the sentence itself (S.82 (2)). Moreover, in terms of Section 992, any Advocate who, by any indecent word or gesture during the sitting, commits any act of contempt of Court, or insults any other person, may, in serious cases, be also forthwith condemned by the Judge or Magistrate to interdiction from the exercise for his profession for a period not exceeding one month. In this connexion the following Minute by His Excellency the Governor of the 28th October, 1816, although absorbed, from the legal point of view, in the enactments now extant, has certainly a historical interest:

"In consequence of a late occurrence in the First Hall of His Majesty's Civil Court, His Excellency the Governor deems it expedient to state to His Majesty's Judges that they have no power to suspend an Advocate from his functions except for notorious, flagrant and evident corruption and misconduct, or for actual contempt of Court; but that in all other cases they are to notify any exception against such Advocate to the Chief Secretary to Government for the information of His Excellency the Governor or His Honour the Lieutenant Governor for the time being". Legally, the only thing that may be said is that the Minute smacks very much of interference of the Executive with the Judiciary.

Finally it is worth noting that under the Code de Rohan official recognition was given to a special status enjoyed by advocates called "avvocati di collegio", which was very similar to the institution of King's Counsel in England (when a barrister "takes silk"). — These *Avvocati di Collegio* were appointed by the Grand Master, wore a *silk* gown, were allowed a special seat in the well of the Court, and were on the list of candidates eligible for any vacancy in the Bench.

In connection with the above it is to be observed that the institution of King's Counsel existed under British rule for a short period of seven years. By Proclamation of the 14th August, 1832, the office of King's Counsel (*Avvocati del Re*) was instituted, and by Government Notice of the same day Doctors of Laws Emmanuele Caruana, Benedetto Bardon and Odoardo Dingli were appointed King's Counsel. The office was however abolished by Ordinance No. 1 of 1839.