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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Austin Gatt, M.P., Ministru tal-Ġustizzja u Gvern Lokali, u moqri għall-Ewwel Darba fis-Seduta ta' l-20 ta' Marzu, 2002.

A BILL introduced by the Honourable Austin Gatt, M.P., Minister of Justice and Local Government, and read the First time at the Sitting of the 20th March, 2002.

ATT biex jemenda l-Kodiċi Ċivili, Kap. 16, biex jagħmel disposizzjonijiet dwar il-hlas ta' danni f'każijiet ta' korruzzjoni u biex jagħmel disposizzjonijiet anċillari dwar dan.

AN ACT to amend the Civil Code, Cap. 16, to make provisions with regard to the payment of damages in cases of corruption and to make other provisions ancillary thereto.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT biex jemenda l-Kodiċi Ċivili, Kap. 16, biex jagħmel disposizzjonijiet dwar il-ħlas ta' danni f'kazijiet ta' korruzzjoni u biex jagħmel disposizzjonijiet anċillari dwar dan.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att ta' l-2002 li jemenda l-Kodiċi Ċivili. Titolu fil-qosor.

(2) Dan l-Att għandu jinqara u jiftiehem haġa waħda ma' "il-Kodiċi Ċivili" Kap. 16, hawnhekk iżjed 'il quddiem imsejjah "il-Kodiċi".

2. Minnufih wara l-artikolu 1051 tal-Kodiċi għandu jiżdied dan l-artikolu 1051A ġdid li ġej: Zjieda ta' artikolu 1051A ġdid mal-Kodiċi.

"Rimedji
ċivili
f'kazijiet
ta'
korruzzjoni.

1051A. (1) Għall-finijiet ta' dan l-artikolu "korruzzjoni" tfisser li titlob, toffri, tagħti jew taċċetta direttament jew indirettament, tixhim jew xi vantaġġ iehor mhux dovut jew li jkun prospettat, li jghawweg it-twettiq kif imiss ta' xi dmir jew imġieba mehtieġa minn min jircievi t-tixhim, bil-vantaġġ mhux dovut jew kif ikun prospettat.

(2) Kull min ivanta li jkun sofra danni bħala riżultat ta' korruzzjoni għandu jkollu l-jedd li jiehu azzjoni biex jikseb kumpens għad-dannu kaġunat lilu bl-att ta' korruzzjoni kontra l-persuni li jkunu għamlu jew awtorizzaw l-att ta' korruzzjoni jew li jkunu naqsu li jiehdu passi raġonevoli biex jipprevjenu l-att ta' korruzzjoni.

(3) Il-persuni li jkunu għamlu r-reat jew awtorizzaw l-att ta' korruzzjoni u l-persuni li jkunu naqsu milli jieħdu passi raġonevoli biex jipprevjenu l-att ta' korruzzjoni għandhom ikunu solidament responsabbli għad-danni msemmija fis-subartikolu (2).

(4) Meta l-att ta' korruzzjoni jkun sar minn uffiċjal jew minn impjegat tal-Gvern jew minn korp magħqud stabbilit bil-liġi, il-Gvern jew skond ma jkun il-każ il-korp magħqud stabbilit bil-liġi għandu hu nnifsu jkun responsabbli biex jagħmel il-hlas dovut għad-dannu kaġunat bl-att ta' korruzzjoni meta:-

(a) min ikun qiegħed ivanta l-pretensjoni li jkun sofra d-danni jkun ta, meta jkun sar jaf bl-imġieba mhux xierqa ta' l-uffiċjal jew ta' l-impjegat, avviz bħal dak lill-Gvern jew lill-korp magħqud, skond il-każ, biex jieħu dawk il-miżuri preventivi li jkunu raġonevoli fiċ-ċirkostanzi biex jipprevjenu l-għemil ta' l-att ta' korruzzjoni;

(b) min ikun qed ivanta li sofra d-danni ma jkunx hu nnifsu għar-rigward ta' l-istess kwistjoni giegħel lil xi uffiċjal jew impjegat jagħmel l-att ta' korruzzjoni, jew b'xi mod kien parti f'dak l-att;

(c) min ikun sofra d-danni jkun ha kull azzjoni kontra l-persuna responsabbli għad-danni skond is-subartikolu (3) biex jirkupra d-danni; u

(d) il-Gvern jew il-korp magħqud, skond il-każ, ikun sar parti fil-kawża kontra l-persuni responsabbli għad-danni skond is-subartikolu (3) sabiex jiddefendi l-interessi tiegħu taht dan is-subartikolu:

Iżda l-Gvern jew il-korp magħqud, skond il-każ, ikun biss responsabbli għal dik il-parti tad-danni li ma tkunx qed tiġi rkuprata mill-persuni responsabbli għal dawk id-danni skond is-subartikolu (3) ta' dan l-artikolu.

(5) Ma għandu jkun hemm ebda dritt għall-hlas ta' danni b'kumpens meta l-parti li tvanta li tkun sofriet id-danni kienet hi nnifisha xjentement parti fl-att ta' korruzzjoni:

Izda ebda haġa f'dan is-subartikolu ma ghandha tiftiehem bħala li tipprekludi lil xi persuna milli tirkupra xi hlas li jkun sar jew xi haġa li tkun ġiet mogħtija, jew il-valur tagħha, meta l-hlas ikun sar jew il-haġa tkun ġiet mogħtija għal xi korrispettiv li ma jkunx skond il-liġi.

(6) Kull azzjoni għall-irkupru ta' danni taħt dan l-artikolu għandha tingieb qabel ma jiskadu tliet snin mid-data meta min ikun qed jitlob id-danni jkun sar jaf jew imissu raġonevolment ikun sar jaf li tkun ġrat il-hsara jew li jkun sar att ta' korruzzjoni u min tkun il-persuna responsabbli għaldaqstant jew qabel ma jiskadu għaxar snin mid-data ta' l-att ta' korruzzjoni, skond liema jiġi l-ewwel, u ma tista' tingieb ebda azzjoni wara li jiskadi dak iż-żmien.

(7) Meta jsir xi kuntratt minn xi persuna (inkluż il-Gvern jew xi korp magħqud stabbilit bil-liġi) u l-kuntratt jew xi klawsole relattiva jkunu ġew mitmuma minn xi impjegat, uffiċjal jew aġent ta' dik il-persuna minhabba f'xi att ta' korruzzjoni favur dak l-uffiċjal, impjegat jew aġent, il-persuna li tkun marbuta b'dak il-kuntratt u li jkollha lil dak l-uffiċjal, impjegat jew aġent tagħha li jkun garrab dak l-att ta' korruzzjoni, għandu jkollha, mingħajr preġudizzju għal kull dritt ta' azzjoni biex tirkupra d-danni skond dan l-artikolu, dritt li tibda azzjoni mhux aktar tard minn sena wara li ssir taf b'dak l-att ta' korruzzjoni jew minn meta hija kien imissha raġonevolment saret taf b'dan, biex tannulla l-kuntratt jew xi klawsole minnu li tkun iddahhlet minhabba f'dik il-korruzzjoni:

Izda ma tista' tingieb ebda azzjoni wara li jiskadu għaxar snin mid-data ta' l-att ta' korruzzjoni.”.

3. Minnufih wara l-artikolu 1627 tal-Kodiċi, għandu jżied dan l-artikolu 1627A ġdid li ġej:

Żjieda ta' l-artikolu 1627A ġdid mal-Kodiċi.

“Projbizzjoni ta' dis-kriminazzjoni.

1627A. Hadd ma jista' jiehu ebda azzjoni jew sanzjoni diskriminatorja kontra xi wieħed mill-uffiċjali, impjegati jew aġenti tiegħu minhabba f'li daww l-uffiċjali jew impjegati, billi jkollhom tassew għaliex jissuspettaw li jkun hemm xi korruzzjoni, jkunu rrapportaw b'mod bonafidi s-suspett tagħhom lil persuni jew awtoritajiet responsabbli, u kull min seta' kien il-vittima ta' tali azzjoni jew sanzjoni

diskriminatorja għandu, minghajr preġudizzju għal kull dritt ieħor li jkollu taht xi liġi oħra, jkollu l-jedd għal kumpens għad-danni lilu kaġunati b'dik l-azzjoni jew sanzjoni diskriminatorja.”.

Għanijiet u Raġunijiet

L-għan ta' l-Abbozz hu biex jintroduci d-dritt li jintalab kumpens għal danni kaġunati permezz ta' korruzzjoni.

**A BILL
entitled**

AN ACT to amend the Civil Code, Cap. 16, to make provisions with regard to the payment of damages in cases of corruption and to make other provisions ancillary thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Civil Code (Amendment) Act, 2002. Short title.

(2) This Act shall be read and construed as one with "the Civil Code" Cap 16, hereinafter referred to as the "the Code".

2. Immediately after article 1051 of the Code their shall be added the following article 1051A: Addition of new article 1051A to the Code.

"Civil remedies in cases of corruption.

1051A. (1) For the purposes of this article "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, by the undue advantage or the prospect thereof.

(2) Any person who claims to have suffered damage as a result of corruption shall have a right of action to obtain compensation for the damage caused to him by the act of corruption against the persons who have committed or authorised the act of corruption or who have failed to take reasonable steps to prevent the act of corruption.

(3) The persons who have committed or authorised the act of corruption and the persons who have failed to take reasonable steps to prevent the act of corruption shall be jointly and severally liable for the damages referred to in subarticle (2).

(4) Where the act of corruption has been committed by an officer or employee of the Government or of a body corporate established by law, the Government or as the case may be the body corporate established by law shall itself be liable to make payment for the damage caused by the act of corruption where:-

(a) the person claiming to have suffered the damage has, on becoming aware of the improper behaviour of the officer or employee, given such notice to the Government or the body corporate, as the case may be, to take such preventive measures as are reasonable in the circumstances to prevent the commission of the act of corruption;

(b) the person claiming to have suffered the damages has not himself in relation to the same matter induced any officer or employee to commit the act of corruption, or in any manner been party to it;

(c) the person suffering the damage has taken all action against the person liable for the damages in accordance with subarticle (3) to recover the damages; and

(d) the Government or the body corporate, as the case may be, has been made a party to the suit against the persons liable for the damages in accordance with subarticle (3) in order to defend its interests under this subarticle:

Provided that the Government or the body corporate, as the case may be, shall only be liable for such part of the

damages as are not recovered from the persons liable therefor in accordance with subarticle (3) of this article.

(5) No right for compensation for damages shall lie where the party claiming to have suffered the damages has himself wilfully been a party to the act of corruption:

Provided that nothing in this subarticle shall be construed as precluding any person from recovering any payment made or thing given, or the value thereof, where the payment has been made or the thing has been given for an unlawful consideration.

(6) An action to recover damages under this article shall be brought before the lapse of three years from the date that the person claiming damages becomes aware or should have reasonably become aware that damage has occurred or that an act of corruption has taken place and of the identity of the person responsible therefor or before the lapse of ten years from the date of the act of corruption, whichever is the earlier, and no action may be brought after the lapse of such time.

(7) Where any contract has been entered into by any person (including the Government or any body corporate established by law) and the contract or any clause thereon has been concluded by an employee, officer or agent of such person following an act of corruption in favour of such officer, employee or agent, the person bound by such contract and whose officer, employee or agent has been so corrupted, shall without prejudice to any right of action to recover damages in accordance with this article have a right to take action not later than a year after becoming aware of such corruption or from the time when he should reasonably have become aware, to annul the contract or any clause thereof which has been entered because of such corruption:

Provided that no action may be brought after the lapse of ten years from the date of the act of corruption.”.

3. Immediately after article 1627 of the Code, there shall be added the following new article 1627A:

Addition of new article 1627A to the Code.

“Prohibition of discrimination.

1627A. No person may take any discriminatory action or sanction against any of his officers, employees or agents on the grounds that such officers or employees, having reasonable grounds to suspect corruption reported in good

faith their suspicion to responsible persons or authorities, and any person who may have been the victim of such discriminatory action or sanction shall, without prejudice to any other right under any other law, have a right to compensation for any damage caused to him by such discriminatory action or sanction.”.

Objects and Reasons

The object of the Bill is to introduce a right to claim compensation for damages caused by corruption.

