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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Fenech, M.P., Ministru tal-Ġustizzja, u moqri għall-Ewwel darba fis-Seduta tas-16 ta' Novembru, 1992.

ATT biex jemenda l-Att dwar il-Probation ta' Hatjin, Kap. 152.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Joseph Fenech, M.P., Minister of Justice, and read the First time at the Sitting of the 16th November, 1992.

AN ACT to amend the Probation of Offenders Act, Cap. 152.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjaħ

ATT biex jemenda l-Att dwar il-Probation ta' Ħatjin, Kap. 152.

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

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1992 li jemenda l-Att dwar il-*Probation* ta' Ħatjin, u għandu jinqara u jiftiehem ħaġa waħda ma' l-Att dwar il-*Probation* ta' Ħatjin, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 152.

2. Fl-artikolu 2 ta' l-Att prinċipali, minflok il-kliem "“il-Qorti Kriminali” għandha titqies li tinkludi l-Qorti ta' l-Appell Kriminali u kull riferenza għal dikjarazzjoni ta' ħtija minn jew quddiem il-Qorti Kriminali għandha titqies li tinkludi dikjarazzjoni ta' ħtija jew konferma ta' dikjarazzjoni ta' ħtija mill-Qorti ta' l-Appell Kriminali;" għandhom jidhlu l-kliem "“dikjarata ħatja ta' reat” tinkludi dikjarazzjoni ta' ħtija mill-Qorti ta' l-Appell Kriminali u l-konferma mill-imsemmija qorti ta' dikjarazzjoni ta' ħtija mill-qorti ta' l-ewwel grad jew ta' sejbien ta' ħtija mill-ġuri;"

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

3. Is-subartikolu (1) ta' l-artikolu 4 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 4 ta' l-Att prinċipali.

(a) minflok il-paragrafu (ċ) tiegħu għandu jidhol dan il-paragrafu li ġej:

“(ċ) li jirrapporta mill-anqas darba kull sitt xhur lill-qorti dwar l-imġieba, dwar il-mod ta' għixien u b'mod ġenerali dwar il-progress, jekk ikun hemm, tal-persuna taħt *probation*;" u

(b) fil-paragrafu (d) tiegħu minflok il-kliem "jġib ruħu ta' ħabib ma' dik il-persuna," għandhom jidhlu l-kliem "jġib ruħu ta' ħabib ma' dik il-persuna taħt *probation*," .".

Emenda ta' l-artikolu 5 ta' l-Att prinċipali.

4. L-artikolu 5 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "li ma jkunx reat li" għandhom jidhlu l-kliem "li ma jkunx reat li għalih hemm biss piena ta' multa jew ta' ammenda u li ma jkunx reat li,"; u

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "jew eġhmil ta' reati oħra:" għandhom jidhlu l-kliem "jew eġhmil ta' reati oħra, u l-qorti tista' wkoll tagħti lill-uffiċjal tal-*probation* dawk id-direttivi li tista' tqis li jkunu meħtieġa sabiex jitwettqu dawn l-għanijiet:".

Emenda ta' l-artikolu 6 ta' l-Att prinċipali.

5. Minflok is-subartikolu (2) ta' l-artikolu 6 ta' l-Att prinċipali għandu jidhol dan is-subartikolu li ġej:

"(2) Il-qorti ma għandhiex taħtar l-uffiċjal prinċipali tal-*probation* biex jissorvelja ħati, u, meta ċ-ċirkostanzi jkunu jippermettu, għandha taħtar uffiċjal tal-*probation* espert fit-trattament tat-tfal jew zgħażaġh biex jissorvelja ħati li jkollu anqas minn sittax-il sena."

Emenda ta' l-artikolu 7 ta' l-Att prinċipali.

6. Fis-subartikolu (2) ta' l-artikolu 7 ta' l-Att prinċipali, minflok il-kliem "wara applikazzjoni magħmula" għandhom jidhlu l-kliem "wara li tirċievi rapport mill-uffiċjal tal-*probation* jew wara applikazzjoni magħmula".

Emenda ta' l-artikolu 8 ta' l-Att prinċipali.

7. L-artikolu 8 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu —

(i) minflok il-kliem "Izda ebda taħrika" għandhom jidhlu l-kliem "Izda, hliet meta n-nuqqas allegat jingiebb għall-konjizzjoni tal-qorti f'rapport magħmul mill-uffiċjal tal-*probation*, ebda taħrika"; u

(ii) minflok il-kliem "mill-Qorti Kriminali" għandhom jidhlu l-kliem "mill-Qorti Kriminali jew mill-Qorti ta' l-Appell Kriminali,";

(iii) minflok il-kliem "minn qorti tal-Pulizija ġudizzjarja," għandhom jidhlu l-kliem "mill-Qorti tal-Maġistrati (Malta), mill-Qorti tal-Maġistrati (Għawdex), jew mill-Qorti tal-Minorenni,"; u

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "għaxar liri," għandhom jidhlu l-kliem "ħamsin lira Maltija,".

Emenda ta' l-artikolu 9 ta' l-Att prinċipali.

8. Fis-subartikolu (1) ta' l-artikolu 9 ta' l-Att prinċipali, minflok il-kliem "li ma jkunx reat li," għandhom jidhlu l-kliem "li ma jkunx reat li għalih hemm biss piena ta' multa jew ta' ammenda u li ma jkunx reat li,".

Emenda ta' l-artikolu 10 ta' l-Att prinċipali.

9. L-artikolu 10 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) id-dispożizzjoni li hemm għandha tiġi enumerata mill-ġdid bhala s-subartikolu (1) tiegħu; u

(b) minnufih wara s-subartikolu (1) tiegħu kif enumerat mill-gdid għandhom jizjedu dawn is-subartikoli godda li ġejjin:

“(2) Bla hsara għad-dispożizzjonijiet tas-subartikolu (3), meta persuna tiġi trattata għar-reat li għalih tkun tqegħdet taht *probation* jew li dwaru tkun ġiet liberata taht kondizzjoni, il-qorti ma tistax tqieghdha taht *probation* jew tagħmel ordni dwarha kif provdut fis-subartikolu (1) ta’ l-artikolu 9 ta’ dan l-Att dwar dak ir-reat.

(3) Is-subartikolu (2) ma għandux japplika meta r-reat, magħmul matul il-perijodu ta’ *probation* jew matul il-perijodu tal-liberazzjoni taht kondizzjoni u li dwaru l-persuna sussegwentement tinsab hatja, ikun kontravvenzjoni jew ikun reat li jsir b’nuqqas ta’ hsieb jew bi traskuraġni, jew b’nuqqas ta’ hila fl-eżercizzju ta’ xi arti jew professjoni, jew b’nuqqas ta’ tharis ta’ regolamenti.

(4) Għall-finijiet tas-subartikolu (1) —

(a) il-Qorti tal-Maġistrati (Malta), il-Qorti tal-Maġistrati (Għawdex) u l-Qorti tal-Minorenni għandhom jittqiesu li huma l-istess qorti;

(b) il-Qorti ta’ l-Appell Kriminali fid-deċiżjoni ta’ appelli minn sentenzi tal-Qorti tal-Maġistrati (Malta), tal-Qorti tal-Maġistrati (Għawdex) u tal-Qorti tal-Minorenni għandha titqies li tkun qorti differenti mill-Qorti ta’ l-Appell Kriminali fid-deċiżjoni ta’ appelli minn deċiżjonijiet tal-Qorti Kriminali.”.

10. Fis-subartikolu (1) ta’ l-artikolu 11 ta’ l-Att prinċipali, minflok il-kliem “mitejn lira.” għandhom jidhlu l-kliem “ħames mitt lira Maltija.”.

Emenda ta’
l-artikolu 11 ta’
l-Att prinċipali.

11. Is-subartikolu (3) ta’ l-artikolu 12 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

Emenda ta’
l-artikolu 12 ta’
l-Att prinċipali.

(a) minflok il-kliem “Id-dispożizzjonijiet hawn fuq imsemmija ta’ dan l-artikolu” għandhom jidhlu l-kliem “Id-dispożizzjonijiet tas-subartikolu (1) ta’ l-artikolu 5, tas-subartikolu (1) ta’ l-artikolu 9 u tas-subartikoli (1) u (2) ta’ dan l-artikolu”;

(b) minflok il-paragrafu (ċ) tiegħu, għandu jidhol dan il-paragrafu li ġej:

“(ċ) il-ħdim ta’ l-artikolu 23 tal-Kodiċi Kriminali (Kap. 9) u ta’ kull dispożizzjoni oħra ta’ dak il-Kodiċi jew ta’ xi liġi oħra dwar il-konfiska ta’ xi proprjetà, jew ta’ xi dritt fi jew fuq xi proprjetà, kemm jekk mobbli jew immobbli, jew it-tizimim ta’ xi proprjetà mir-registratur ta’ kull qorti jew minn ufficjal ieħor awtorizzat mil-liġi li jaqbad jew li jzomm xi proprjetà li jkollha x’taqsam ma’ proċeduri kriminali;”; u

(ċ) minflok il-paragrafu (g) tiegħu, għandu jidhol dan il-paragrafu li ġej:

“(g) il-ħdim tas-subartikoli (3), (5) u (6) ta’ l-artikolu 35 tal-Kodiċi Kriminali;”.

Kap. 9.

Emenda ta' l-artikolu 13 ta' l-Att prinċipali.

12. Minnufih wara s-subartikolu (3) ta' l-artikolu 13 ta' l-Att prinċipali għandu jiżdied dan is-subartikolu li ġej:

“(4) Id-dispożizzjonijiet tas-subartikoli ta' hawn qabel għandhom japplikaw, *mutatis mutandis*, għal proċeduri quddiem il-Qorti ta' l-Appell Kriminali.”.

Għanijiet u Raġunijiet

L-Għan ta' l-Abbozz hu sabiex jaġġorna l-Att dwar il-*Probation* ta' Ħatjin billi, fost affarijiet ohra, jillimita l-applikazzjoni ta' l-Ordinijiet ta' *Probation* u ta' Ordinijiet ta' Liberazzjoni taħt Kondizzjoni jew mingħajr Kondizzjoni; iżid l-informazzjoni li tingħata minn Uffiċjali tal-*Probation* lill-qorti; u jżid l-ammont ta' danni għal hsara jew kumpens għal telf li persuna taħt *probation* jew persuna liberata taħt kondizzjoni jew mingħajr kondizzjoni tista' tiġi ordnata thallas.

A BILL
entitled

AN ACT to amend the probation of Offenders Act, Cap. 152.

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. This Act may be cited as the Probation of Offenders (Amendment) Act, 1992, and shall be read and construed as one with the Probation of Offenders Act, hereinafter referred to as “the principal Act”.

Short title.

Cap. 152.

2. In section 2 of the principal Act, for the words ““the Criminal Court” shall be deemed to include the Court of Criminal Appeal and any reference to a conviction by or before the Criminal Court shall be deemed to include a conviction or the affirmation of a conviction by the Court of Criminal Appeal;” there shall be substituted the words ““convicted of an offence” includes conviction by the Court of Criminal Appeal and the affirmation by the said court of a conviction by the court of first instance or of a finding of guilt by a jury;”.

Amendment
of section 2
of the
principal
Act.

3. Subsection (1) of section 4 of the principal Act shall be amended as follows:

Amendment
of section 4
of the
principal
Act.

(a) for paragraph (c) thereof there shall be substituted the following paragraph:

“(c) to report at least once every six months to the court as to the behaviour, mode of life and generally upon the progress, if any, of the probationer;” and

(b) in paragraph (d) thereof for the words “befriend him,” there shall be substituted the words “befriend the probationer,”.

4. Section 5 of the principal Act shall be amended as follows:

Amendment
of section 5
of the
principal
Act.

(a) in subsection (1) thereof, for the words "not being an offence which," there shall be substituted the words "not being an offence punishable only with a fine (*multa* or *ammenda*) and not being an offence which,"; and

(b) in subsection (2) thereof, for the words "the commission of other offences:" there shall be substituted the words "the commission of other offences, and the court may also give to the probation officer such directions as it may deem necessary for securing these purposes:".

Amendment
of section 6
of the
principal
Act.

5. For subsection (2) of section 6 of the principal Act there shall be substituted the following subsection:

"(2) The court shall not appoint the principal probation officer to supervise an offender, and, where the circumstances permit, shall appoint a probation officer experienced in dealing with children or young persons to supervise an offender who is under the age of sixteen years."

Amendment
of section 7
of the
principal
Act.

6. In subsection (2) of section 7 of the principal Act, for the words "upon application made" there shall be substituted the words "upon receipt of a report from the probation officer or upon application made".

Amendment
of section 8
of the
principal
Act.

7. Section 8 of the principal Act shall be amended as follows:

(a) in subsection (1) thereof —

(i) for the words "Provided that no such summons" there shall be substituted the words "Provided that, except where the alleged failure is brought to the attention of the court in a report by the probation officer, no such summons"; and

(ii) for the words "by the Criminal Court," there shall be substituted the words "by the Criminal Court or by the Court of Criminal Appeal,"; and

(iii) for the words "by a court of judicial Police," there shall be substituted the words "by the Court of Magistrates (Malta), by the Court of Magistrates (Gozo) or by the Juvenile Court,"; and

(b) in subsection (2) thereof, for the words "ten liri," there shall be substituted the words "fifty Maltese liri,".

Amendment
of section 9
of the
principal
Act.

8. In subsection (1) of section 9 of the principal Act, for the words "not being an offence which," there shall be substituted the words "not being an offence punishable only with a fine (*multa* or *ammenda*) and not being an offence which,".

Amendment
of section 10
of the
principal
Act.

9. Section 10 of the principal Act shall be amended as follows:

(a) the present provision shall be renumbered as subsection (1) thereof; and

(b) immediately after subsection (1) thereof as renumbered there shall be added the following new subsections:

“(2) Subject to the provisions of subsection (3), where a person is dealt with for the offence for which he was placed on probation or conditionally discharged, it shall not be lawful for the court to place him on probation or to make an order as provided in subsection (1) of section 9 of this Act in respect of that offence.

(3) Subsection (2) shall not apply where the offence, committed during the probation period or during the period of conditional discharge and for which the person is subsequently convicted, is a contravention or is a crime committed through imprudence or carelessness, or through unskilfulness in the exercise of any art or profession, or through non-observance of regulations.

(4) For the purposes of subsection (1) —

(a) the Court of Magistrates (Malta), the Court of Magistrates (Gozo) and the Juvenile Court shall be deemed to be the same court;

(b) the Court of Criminal Appeal in the determination of appeals from judgements of the Court of Magistrates (Malta), the Court of Magistrates (Gozo) and the Juvenile Court shall be deemed to be a different court from the Court of Criminal Appeal in the determination of appeals from decisions of the Criminal Court.”.

10. In subsection (1) of section 11 of the principal Act, for the words “two hundred liri.” there shall be substituted the words “five hundred Maltese liri.”.

Amendment
of section 11
of the
principal
Act.

11. Subsection (3) of section 12 of the principal Act shall be amended as follows:

Amendment
of section 12
of the
principal
Act.

(a) for the words “The foregoing provisions of this section” there shall be substituted the words “The provisions of subsection (1) of section 5, of subsection (1) of section 9 and of subsections (1) and (2) of this section”;

(b) for paragraph (c) thereof, there shall be substituted the following paragraph:

“(c) the operation of section 23 of the Criminal Code (Cap. 9) and of any other provision of that Code or of any other law relating to the forfeiture of any property, and of any right in or over any property, whether movable or immovable, or the retention of any property by the registrar of any court or by any other officer authorised by law to seize or to retain any property connected with criminal proceedings; ”; and

(c) for paragraph (g) thereof, there shall be substituted the following paragraph:

Cap. 9. “(g) the operation of subsections (3), (5) and (6) of section 35 of the Criminal Code;”.

Amendment of section 13 of the principal Act.

12. Immediately after subsection (3) of section 13 of the principal Act there shall be added the following subsection:

“(4) The provisions of the foregoing subsections shall apply, *mutatis mutandis*, to proceedings before the Court of Criminal Appeal.”.

Objects and Reasons

The Object of the Bill is to update the Probation of Offenders Act by, among other things, restricting the application of Probation Orders for Conditional and Unconditional Discharge; increasing the feedback by the Probation Officers to the court; and increasing the amount of damages for injury or compensation for loss which a probationer or a person discharged conditionally or absolutely may be ordered to pay.