
Nru. 60

28. 5. 93

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Fenech, M.P., Ministru tal-Ġustizzja, u moqri għall-Ewwel darba fis-Seduta tas-17 ta' Mejju, 1993.

A BILL introduced by the Honourable Joseph Fenech, M.P., Minister of Justice, and read the First time at the Sitting of the 17th May, 1993.

ATT biex jemenda l-Kodiċi Kriminali, Kap. 9.

AN ACT to amend the Criminal Code, Cap. 9.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjaħ

ATT biex jemenda l-Kodiċi Kriminali, Kap. 9.

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. (1) Dan l-Att jista' jissejjaħ l-Att ta' l-1993 li jemenda l-Kodiċi Kriminali, u għandu jinqara u jiftiehem ħaġa waħda mal-Kodiċi Kriminali, hawnhekk iżjed 'il quddiem imsejjaħ "il-liġi prinċipali".

Titolu fil-qosor
u bidu fis-seħħ.

(2) Dan l-Att għandu jibda jseħħ f'dik id-data li l-Ministru responsabbli għall-Ġustizzja jista' jstabilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal dispozizzjonijiet differenti ta' dan l-Att.

2. Minflok il-paragrafu (g) ta' l-artikolu 87 tal-liġi prinċipali għandu jidhol dan li ġej:

Emenda ta'
l-artikolu 87
tal-liġi prinċipali.

"(g) jekk id-delitt ikun sar bhala mezz biex persuna tiġi mgiegħla tagħmel xi ħaġa jew toqgħod għal xi ħaġa li toffendi l-misthija tas-sess ta' dik il-persuna."

3. Minflok is-subartikoli (2), (3), (4) u (5) ta' l-artikolu 197 tal-liġi prinċipali għandu jidhol dan li ġej:

Emenda ta'
l-artikolu 197
tal-liġi prinċipali.

“ta’ mara miżżewġa jew ta’ raġel miżżewwieg, taht l-età, jew ta’ minuri, mir-raġel jew mill-mara jew mit-tutor. (2) L-istess piena tingħata lir-raġel jew lill-mara jew lit-tutor illi, bi vjolenza jew b’theddid, igiegħlu, jew, bil-qerq, iħajru għall-prostituzzjoni lil marthom jew lil żewġhom taht l-età jew lill-minuri li tiegħu ikollhom it-tutela.

ta’ dixxendent jew mara miżżewġa jew raġel miżżewwieg, ta’ l-età, minn axxendent jew mir-raġel jew mill-mara. (3) L-axxendent jew ir-raġel jew il-mara illi, bi vjolenza jew b’theddid, igiegħlu, jew, bil-qerq, iħajru għall-prostituzzjoni lid-dixxendent jew lil marthom jew lil żewġhom, li jkunu ta’ l-età, huwa jew hija jehlu, meta jinsabu hatja, il-piena ta’ prigunerija minn sena sa erba’ snin, bir-rekluzjoni jew mingħajrha.

Kon-segwenzi tal-kundanna. (4) Il-kundanna taht dan l-artikolu gġib it-telfa ta’ kull awtorità u ta’ kull jedd mogħtija lill-ħati fuq il-persuna jew il-beni tar-raġel jew tal-mara jew tad-dixxendent li bi ħsara tiegħu jew tagħha jkun sar ir-reat, u, għat-tutor, it-tneħħija tiegħu mit-tutela u l-interdizzjoni perpetwa mill-eżercizzju ta’ kull kariga oħra ta’ tutor.”.

Emenda ta’ l-artikolu 200 tal-liġi prinċipali.

4. Fis-subartikolu (2) ta’ l-artikolu 200 tal-liġi prinċipali, minflok il-kliem “wara li jisraq tifla, jizzewwigha,” għandhom jidhlu l-kliem “wara li jisraq persuna, jizzewwieg lil dik il-persuna,”.

Emenda ta’ l-artikolu 203 tal-liġi prinċipali.

5. L-artikolu 203 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kelma “sentejn” kull fejn din tinsab għandhom jidhlu l-kliem “tliet snin”;

(b) fis-subartikolu (2) tiegħu, minflok il-kliem “tas-subartikolu (5)” għandhom jidhlu l-kliem “tas-subartikolu (4)”;

(c) fis-subartikolu (3) tiegħu, minflok il-kliem “tas-setgħa ta’ missier” fil-paragrafu (b) tat-tieni proviso, għandhom jidhlu l-kliem “tas-setgħa ta’ ġenitur”.

Emenda ta’ l-artikolu 204 tal-liġi prinċipali.

6. L-artikolu 204 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (c) tal-proviso li hemm mas-subartikolu (1) tiegħu, minflok il-kliem “mir-raġel jew mit-tutor tal-persuna minuri,” għandhom jidhlu l-kliem “mir-raġel jew mill-mara jew mit-tutor tal-persuna minuri,”; u

(b) fis-subartikolu (2) tiegħu —

(i) minflok il-kliem “tas-subartikolu (4) u (5)” għandhom jidhlu l-kliem “tas-subartikolu (4)”;

(ii) minflok il-kliem “mir-raġel,” għandhom jidhlu l-kliem “mir-raġel jew mill-mara.”

7. Minflok l-artikolu 205 tal-liġi prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 205 tal-liġi prinċipali.

“Min iġieghel jew iħajjar għall-prostitutzjoni persuna ta' l-età.

205. Kull min, biex jissodisfa ż-żina ta' haddiehor, iġieghel bil-vjolenza, jew iħajjar b'qerq, persuna ta' l-età, għall-prostitutzjoni, jekk il-fatt ma jkunx jikkostitwixxi delitt akbar, jeħel, meta jinsab hati, il-piena ta' prigunerija għal żmien mhux iżjed minn sentejn, bir-rekluzjoni jew mingħajrha:

Iżda l-piena tkun ta' prigunerija minn sena sa erba' snin, jekk id-delitt isir —

(a) b'abbuż ta' awtorità, ta' fiduċja jew ta' relazzjonijiet familjari; inkella

(b) bħala drawwa jew bi hsieb ta' qliegh.”

8. Fl-artikolu 240 tal-liġi prinċipali, minflok il-kliem “Jekk mara li tiled tarbija,” għandhom jidhlu l-kliem “Jekk persuna li minnufih wara t-twelid ta' tarbija.”

Emenda ta' l-artikolu 240 tal-liġi prinċipali.

9. Minflok il-paragrafu (y) ta' l-artikolu 338 tal-liġi prinċipali għandu jidhol dan li ġej:

Emenda ta' l-artikolu 338 tal-liġi prinċipali.

“(y) iħalli fil-bżonn lill-mara jew lir-raġel jew lit-tfal tiegħu, minħabba ħajja bla qies jew nuqqas ta' kont għax-xogħol;”

10. Minflok l-artikolu 352 tal-liġi prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 352 tal-liġi prinċipali.

“Dmir tal-Pulizija Esekuttiva li tgharraf lill-persuni sugġetti għall-arrest.

352. L-uffiċjal tal-Pulizija Esekuttiva li jarresta jew jagħmel xi perkwiżizzjoni għandu jgħarraf lill-persuna sugġetta għall-arrest jew għall-perkwiżizzjoni, meta tkun hemm, bis-setgħa tiegħu u bir-raġuni ta' l-arrest jew tal-perkwiżizzjoni, kemm-il darba ma jkunx qabadha fil-fatt.”

11. Fis-subartikolu (2) ta' l-artikolu 359 tal-liġi prinċipali, minflok il-kliem “u l-isem tal-persuna li” għandhom jidhlu l-kliem “u l-isem tal-persuna, jekk ikun magħruf, li”.

Emenda ta' l-artikolu 359 tal-liġi prinċipali.

12. Minflok is-subartikolu (1) ta' l-artikolu 391 tal-liġi prinċipali għandu jidhol dan li ġej:

Emenda ta' l-artikolu 391 tal-liġi prinċipali.

“Eżami tax-xhieda.

(1) Ix-xhieda jiġu eżaminati mill-qorti. L-isem u l-kunjom tax-xhud, isem missieru u, meta x-xhud ikun persuna

Kap. 258.

li għaliha japplika l-artikolu 3 ta' l-Att dwar il-Karti ta' l-Identità, in-numru, jekk ix-xhud ikun jafu, tal-karta ta' l-identità tiegħu mahruġa taħt l-imsemmi Att, kif ukoll il-lok tat-twelid u ta' fejn joqgħod ix-xhud u l-ilsien li bih jagħti x-xiehda tiegħu, għandhom jitniżżlu fil-bidu nett ta' kull xiehda:

Iżda l-qorti tista' f'ċirkostanzi eċċezzjonali u sabiex tipprovdi għas-sigurezza tax-xhud, tħalli barra l-partikolaritajiet ta' hawn fuq, hlief għall-isem u l-kunjom tax-xhud u l-ilsien li bih jagħti x-xiehda tiegħu, u tagħmel nota f'dan is-sens fl-atti tal-kawża.”.

Emenda ta' l-artikolu 392 tal-liġi prinċipali.

13. Is-subartikolu (1) ta' l-artikolu 392 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (a) tiegħu, minflok il-kliem “l-isem ta' missieru” għandhom jidhlu l-kliem “l-isem u l-kunjom ta' missieru”; u

(b) il-paragrafu (b) tiegħu għandu jithassar.

Emenda ta' l-artikolu 516 tal-liġi prinċipali.

14. Minflok is-subartikolu (3) ta' l-artikolu 516 tal-liġi prinċipali għandhom jidhlu dawn is-subartikoli li ġejjin:

“(3) Għandu jkun hemm Bord li jkun magħmul mill-Prim Imħallef, minn imħallef nominat mill-President ta' Malta minn fost l-imħallfin li ordinarjament joqogħdu fil-Qorti Kriminali, mill-Avukat Ġenerali u mill-president tal-Kamra ta' l-Avukati b'setgħa li jagħmlu regoli msejhin Regoli tal-Qorti għal kull wieħed mill-iskopijiet imsemmija fl-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, safejn applikabbli, billi r-riferenza għal dak il-kodiċi f'dak l-artikolu tkun tiftiehem bhala riferenza għal dan il-kodiċi:

Kap. 12.

Iżda xejn f'dawn ir-regoli m'għandu jkun inkompatibbli jew kuntrarju għad-dispożizzjonijiet ta' dan il-kodiċi jew ta' liġijiet oħra.

(4) Il-Bord jista' jagħxi minkejja kull vakanza fost l-għadd tal-membri tiegħu iżda m'għandux jagħxi jekk għall-inqas il-Prim Imħallef u membru ieħor ma jkunux preżenti.

(5) Ir-regoli magħmula mill-Bord huma suġġetti għall-approvazzjoni tal-President ta' Malta u għandhom jiġu ppubblikati fil-Gazzetta tal-Gvern.”.

Emenda ta' l-artikolu 530 tal-liġi prinċipali.

15. Is-subartikolu (2) ta' l-artikolu 530 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-paragrafu (a) tal-proviso tiegħu, għandu jidhol dan li ġej:

“(a) ta' xhud ta' età żgħira li, jekk jitqiegħed fil-post tax-xhieda, jista', bil-misthija jew xort'oħra, jinfixel jew jaqbd u l-

biza' waqt li jkun qed jixhed u b'hekk ikun ta' hsara għall-finijiet tal-gustizzja;"

(b) minflok il-kliem "età jew mard," fil-paragrafu (b) tal-proviso tiegħu, għandhom jidhlu l-kliem "xjuhija, mard jew kondizzjoni fizika,".

16. Minflok l-artikolu 532 tal-liġi prinċipali għandu jidhol dan li ġej:

Sostituzzjoni ta' l-artikolu 532 tal-liġi prinċipali.

532. Bla hsara għad-dispożizzjonijiet tas-subartikoli (3), (4) u (5) ta' l-artikolu 516, il-qorti għandha s-setgħa li tagħti ordnijiet sabiex ix-xogħol jitmexxa sewwa u bla dewmien, u biex jiġi mħares u miżmum il-bon-ordni tas-seduti tagħha, basta li f'dawn l-ordnijiet ma jkun hemm xejn kuntrarju għal-liġi."

"Setgħa tal-qorti li tirregola t-tmexxija tal-kawża, eċc.

17. L-artikolu 605 tal-liġi prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 605 tal-liġi prinċipali.

(a) il-proviso li hemm għas-subartikolu (1) tiegħu għandu jithassar; u

(b) is-subartikolu (14) tiegħu għandu jithassar.

18. Minnufih wara s-subartikolu (5) ta' l-artikolu 607 tal-liġi prinċipali għandhom jidiedu dawn is-subartikoli li ġejjin:

Emenda ta' l-artikolu 607 tal-liġi prinċipali.

"(6) Il-fatt li persuna tkun qed tiegħu hsieb persuna minuri taht l-età ta' tmax-il sena jew persuna li tkun qed tbat minn xi mard fiziku jew mentali għandu, kemm-il darba l-qorti ma tkunx sodisfatta li jistgħu jsiru arrangamenti adegwati sabiex jittiehed hsieb ta' dik il-persuna minuri jew ta' dik il-persuna marida għat-tul ta' żmien mistenni tal-kawża jew kawżi, jitqies li jkun raġuni speċjali u tajba għall-helsien milli wiehed iservi ta' ġurat għall-finijiet tas-subartikoli (1), (2) u (5) ta' dan l-artikolu u tas-subartikolu (5) ta' l-artikolu 611.

(7) Qabel ma tehles persuna milli sservi ta' ġurat kif provdut fis-subartikoli (2) u (5) ta' dan l-artikolu u fis-subartikolu (5) ta' l-artikolu 611, il-qorti tista' titlob li tisma' lill-persuna li titlob dak il-helsien bil-ġurament."

Għanijiet u Raġunijiet

L-għan prinċipali ta' dan l-Abbozz huwa biex inehhi mill-Kodiċi Kriminali dawk id-dispożizzjonijiet li huma diskriminatorji minhabba s-sess. L-Abbozz jaġġorna wkoll id-dispożizzjoni li taħtha huwa kostitwit il-Bord tar-regoli, u jaġmel emendi żgħar oħra li saru meħtieġa li jsiru fil-Kodiċi Kriminali.

**A BILL
entitled**

AN ACT to amend the Criminal Code, Cap. 9.

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:—

Short title
and
commencement.

1. (1) This Act may be cited as the Criminal Code (Amendment) Act, 1993, and shall be read and construed as one with the Criminal Code, hereinafter referred to as the “principal law”.

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions of this Act.

Amendment of
section 87
of the
principal law.

2. For paragraph (g) of section 87 of the principal law there shall be substituted the following:

“(g) if the crime is committed as a means of compelling a person to do an act or to submit to treatment injurious to the modesty of that person’s sex.”.

Amendment of
section 197
of the
principal law.

3. For subsections (2), (3), (4) and (5) of section 197 of the principal law there shall be substituted the following:

“Prostituting of spouse under age or of minor by husband or wife or tutor. (2) The same punishment shall be applied to any husband or wife or tutor who, by the use of violence or by threats, compels, or, by deceit, induces to prostitution his or her spouse under age or the minor under his tutorship.

Prostituting of descendant or spouse of age, by ascendant or husband or wife. (3) If the ascendant or the husband or wife, by the use of violence or by threats, compels, or, by deceit, induces the descendant or his or her spouse, of age, to prostitution, he or she shall, on conviction, be liable to imprisonment of a term from one to four years, with or without solitary confinement.

Consequences of conviction. (4) A conviction under this section shall entail the forfeiture of every authority and right granted to the offender over the person or property of the husband or wife or of the descendant to whose prejudice the offence shall have been committed, and, in the case of the tutor, his removal from the tutorship and his perpetual disability from holding the office of tutor.”.

4. In subsection (2) of section 200 of the principal law, for the words “after abducting a girl, shall marry her,” there shall be substituted the words “after abducting a person, shall marry such person,”. Amendment of section 200 of the principal law.

5. Section 203 of the principal law shall be amended as follows: Amendment of section 203 of the principal law.

(a) in subsection (1) thereof, for the word “two” wherever it occurs, there shall be substituted the word “three”;

(b) in subsection (2) thereof, for the words “of subsection (5)” there shall be substituted the words “of subsection (4)”;

(c) in subsection (3) thereof, for the words “of paternal authority” in paragraph (b) of the second proviso, there shall be substituted the words “of parental authority”.

6. Section 204 of the principal law shall be amended as follows: Amendment of section 204 of the principal law.

(a) in paragraph (c) of the proviso to subsection (1) thereof, for the words “by the husband or tutor of the minor,” there shall be substituted the words “by the husband or wife or tutor of the minor,”; and

(b) in subsection (2) thereof —

(i) for the words “of subsections (4) and (5)” there shall be substituted the words “of subsection (4)”;

(ii) for the words “by the husband,” there shall be substituted the words “by the husband or the wife,”.

Substitution of section 205 of the principal law.

7. For section 205 of the principal law there shall be substituted the following:

“Compelling or inducing person of age to prostitution.

205. Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, induces a person of age, to practise prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding two years, with or without solitary confinement:

Provided that the offence shall be punishable with imprisonment for a term from one to four years, if it is committed —

(a) with abuse of authority, of trust or of domestic relations; or

(b) habitually or for gain.”.

Amendment of section 240 of the principal law.

8. In section 240 of the principal law, for the words “Any woman who, being delivered of a child,” there shall be substituted the words “Any person who, immediately after the delivery of a child,”.

Amendment of section 338 of the principal law.

9. For paragraph (y) of section 338 of the principal law there shall be substituted the following:

“(y) leaves his or her spouse or children in want, whether in consequence of disorderly living or indolence;”.

Substitution of section 352 of the principal law.

10. For section 352 of the principal law there shall be substituted the following:

“Duty of the Executive Police to inform persons subject to arrest or search.

352. The officer of the Executive Police effecting any arrest or search shall inform the person subject to such arrest or search, if present, of his authority and of the reason for the arrest or search, unless he shall have detected such person in the very act of committing the offence.”.

Amendment of section 359 of the principal law.

11. In subsection (2) of section 359 of the principal law, for the words “and the name of the person by whom” there shall be substituted the words “and the name of the person, if known, by whom”.

Amendment of section 391 of the principal law.

12. For subsection (1) of section 391 of the principal law there shall be substituted the following:

“Examination of witnesses.

Cap. 258.

(1) The witnesses shall be examined by the court. The name and surname of the witness, the name of his father and, if the witness is a person to whom section 3 of the Identity Card Act applies, the number, if known to the witness, of his identity card issued under the said Act, as well as the place of

birth and abode of the witness and the language in which he shall have deposed, shall be noted down at the head of every deposition:

Provided that the court may, in exceptional circumstances and to provide for the safety of the witness, omit the above particulars, other than the name and surname of the witness and the language in which he shall have deposed, making a note to that effect in the record of the proceedings.”.

13. Subsection (1) of section 392 of the principal law shall be amended as follows:

Amendment of section 392 of the principal law.

(a) in paragraph (a) thereof, for the words “the name of his father” there shall be substituted the words “the name and surname of his father”; and

(b) paragraph (b) thereof shall be deleted.

14. For subsection (3) of section 516 of the principal law there shall be substituted the following subsections:

Amendment of section 516 of the principal law.

“(3) There shall be a Board composed of the Chief Justice, a judge appointed by the President of Malta from among the judges ordinarily sitting in the Criminal Court, the Attorney General and the president of the Chamber of Advocates with power to make rules to be called Rules of Court for any of the purposes referred to in section 29 of the Code of Organization and Civil Procedure, in so far as applicable, the reference to that code in that section being construed as a reference to this code:

Cap. 12.

Provided that nothing contained in such rules shall be inconsistent with, or repugnant to, the provisions of this code or any other law.

(4) The Board may act notwithstanding any vacancy in its membership but shall not act unless at least the Chief Justice and one other member are present.

(5) Any rules made by the Board shall be subject to the approval of the President of Malta and shall be published in the Gazette.”.

15. Subsection (2) of section 530 of the principal law shall be amended as follows:

Amendment of section 530 of the principal law.

(a) for paragraph (a) of the proviso thereof, there shall be substituted the following:

“(a) of a witness of tender age who, if placed in the witness-box, might, from shyness or otherwise, become

confused or frightened in giving evidence and thereby prejudice the ends of justice;"; and

(b) for the words "age or infirmity," in paragraph (b) of the proviso thereof, there shall be substituted the words "old age, infirmity or physical condition,".

Substitution of section 532 of the principal law.

16. For section 532 of the principal law there shall be substituted the following:

"Power of court to regulate conduct and despatch of business, etc.

532. Subject to the provisions of subsections (3), (4) and (5) of section 516, the court shall have power to give directions for the conduct and despatch of business and for the enforcement and maintenance of good order during its sittings, provided that nothing contained in such directions shall be contrary to law."

Amendment of section 605 of the principal law.

17. Section 605 of the principal law shall be amended as follows:

(a) the proviso to subsection (1) thereof shall be deleted; and

(b) subsection (14) thereof shall be deleted.

Amendment of section 607 of the principal law.

18. Immediately after subsection (5) of section 607 of the principal law there shall be added the following subsections:

"(6) The fact that a person has the care of a minor under the age of twelve years or of a person who suffers from any physical or mental infirmity shall, unless the court is satisfied that adequate arrangements may be made for the care of such minor or infirm person for the expected duration of the trial or trials, be deemed to be a special and good reason for exemption from serving as a juror for the purposes of subsections (1), (2) and (5) of this section and subsection (5) of section 611.

(7) Before exempting a person from serving as a juror as provided in subsections (2) and (5) of this section and in subsection (5) of section 611, the court may require to hear on oath the person requesting such exemption."

Objects and Reasons

The principal Object of the Bill is to remove from the Criminal Code those provisions which are discriminatory on the grounds of sex. The Bill also updates the provision under which the rule making Board is constituted, and makes other minor amendments to the Criminal Code which have become necessary.