

Nru 18

10. 10. 2022

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Jonathan Attard, M.P., Ministru għall-Ġustizzja, u moqri għall-Ewwel darba fis-Seduta tal-4 ta' Ottubru 2022.

A BILL introduced by the Honourable Jonathan Attard, M.P., Minister for Justice, and read the First time at the Sitting of the 4th October 2022.

ATT sabiex jemenda l-Kostituzzjoni ta' Malta bil-għan li jissahha id-dritt tal-libertà tal-espressjoni, id-dritt tal-privatezza u l-libertà tal-midja.

AN ACT to amend the Constitution of Malta with the aim of strengthening the right to freedom of expression, the right to privacy and freedom of the media.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT sabiex jemenda l-Kostituzzjoni ta' Malta bil-għan li jissahħaħ id-dritt tal-libertà tal-espressjoni, id-dritt tal-privatezza u l-libertà tal-midja.

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

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2022 li jemenda l-Kostituzzjoni ta' Malta u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Kostituzzjoni ta' Malta, hawn iżjed 'il quddiem imsejha "l-Kostituzzjoni". Titolu fil-qosor.

2. Minnufih wara l-artikolu 20A tal-Kostituzzjoni għandu jiżdied dan l-artikolu ġdid li ġej: Żieda ta' artikolu 20B ġdid fil-Kostituzzjoni.

"Protezzjoni tal-libertà tal-midja.

20B. L-istat jirrikonoxxi l-libertà tal-midja u l-irwol tal-midja bħala għassies pubbliku flimkien mad-dritt tal-eżerċizzju ta' ġurnaliżmu hieles bħala elementi fundamentali fid-demokrazija. L-Istat għandu jħares u jippromwovi l-libertà tal-midja inkluż billi jipprovdi għall-protezzjoni tal-ġurnalisti u tas-sorsi tagħhom."

3. L-artikolu 38 tal-Kostituzzjoni għandu jiġi sostitwit b'dan l-artikolu ġdid li ġej: Sostituzzjoni tal-artikolu 38 tal-Kostituzzjoni.

"Protezzjoni tal-hajja privata u tal-familja, tal-intimità tad-dar u proprjetà oħra.

38. (1) Kulhadd għandu d-dritt għar-rispett tal-hajja privata tiegħu u tal-familja tiegħu, ta' daru u tal-komunikazzjonijiet tiegħu.

(2) Hlief bil-kunsens tiegħu stess jew b'dixxiplina tal-ġenituri, hadd ma għandu jiġi assoġġettat għat-tfittix fuq il-persuna tiegħu jew proprjetà tiegħu jew għad-dhul minn oħrajn fil-post tiegħu.

(3) Ebda haġa li hemm fi jew li hija magħmula skont l-awtorità ta' xi liġi ma għandha titqies li tkun inkonsistenti ma' jew bi ksur ta' dan l-artikolu safejn dik il-liġi tagħmel provvediment:

(a) li jkun raġonevolment meħtieġ fl-interess tad-difiża, sigurtà pubblika, ordni pubbliku, moralità jew deċenza pubblika, saħħa pubblika, pjani regolaturi ta' bliet u rħula, l-iżvilupp u utilizzazzjoni ta' risorsi minerali, jew l-iżvilupp u utilizzazzjoni ta' xi proprjetà b'dak il-mod biex jingiebu 'il quddiem il-benefiċċju pubbliku;

(b) li jkun raġonevolment meħtieġ sabiex jingiebu 'l quddiem id-drittijiet u l-libertajiet ta' persuni oħra;

(ċ) li jawtorizza dipartiment tal-Gvern ta' Malta, jew awtorità tal-gvern lokali, jew għaqda korporata mwaqqfa b'liġi għal skop pubbliku, li jidhul fil-post ta' xi persuna sabiex jispezzjona dak il-post jew xi haġa li jkun hemm fih għall-fini ta' xi taxxa, rata jew drittijiet jew sabiex jagħmel xogħol li għandu x'jaqsam ma' xi proprjetà jew xi installazzjoni li tkun legalment f'dak il-post u li tkun ta' dak il-Gvern, dik l-awtorità, jew dik l-għaqda korporata, skont il-każ; jew

(d) li jawtorizza, għall-fini ta' esekuzzjoni ta' sentenza jew ordni ta' qorti, it-tfittix ta' xi persuna jew proprjetà b'ordni ta' qorti jew dhul f'xi post b'ordni bħal dak, jew li jkun meħtieġ sabiex jiġu evitati jew mikxufa reati kriminali,

u hlief safejn dak il-provvediment jew, skont il-każ, il-haġa magħmula skont l-awtorità tiegħu, hija murija li ma tkunx ġustifikabbli raġonevolment f'soċjetà demokratika".

Emenda tal-artikolu 41 tal-Kostituzzjoni.

4. L-artikolu 41 tal-Kostituzzjoni għandu jiġi emendat kif ġej:

(a) is-subartikoli (1) u (2) tiegħu għandhom jiġu sostitwiti b'dawn is-subartikoli ġodda li ġejjin:

"(1) Il-libertà tal-espressjoni għandha tkun garantita kif provdut f'dan l-artikolu. Dan id-dritt għandu jinkludi l-libertà ta' kull persuna li jkollha opinjonijiet u li tircievi u

tagħti informazzjoni u ideat mingħajr indħil mill-awtorità pubblika u mingħajr ma jittiehed kont ta' fruntieri.

(2) Il-libertà u l-pluraliżmu tal-midja u l-importanza tal-irwol tal-ġurnalisti għandhom ikunu rispettati.";

(b) minnufih wara s-subartikolu (2) tiegħu għandu jiżdid dan is-subartikolu ġdid li ġej:

"(2A) (a) L-eżerċizzju tal-libertajiet garantiti b'dan l-artikolu, billi jġib miegħu dmirijiet u responsabbiltajiet, jista' jkun soġġett għal dawk il-formalitajiet, kondizzjonijiet, restrizzjonijiet jew penalitajiet kif preskritti bil-liġi u li jkunu meħtieġa f'soċjetà demokratika fl-interessi tas-sigurtà nazzjonali, tal-integrità territorjali jew tas-sigurtà pubblika, sabiex tiġi evitata d-dizordni jew it-twertiq ta' reati, għall-protezzjoni tas-saħħa jew tal-morali, għall-protezzjoni tar-reputazzjoni jew tad-drittijiet ta' haddiehor, sabiex jiġi evitat l-iżvelar ta' tagħrif riċevut b'mod kunfidenzjali jew sabiex tinzamm l-awtorità u l-indipendenza tal-ġudikatura.

(b) Jistgħu jiġu imposti b'liġi restrizzjonijiet proporzjonati fuq il-libertà tal-espressjoni ta' uffiċjali pubbliċi fil-limiti provduti f'dan is-subartikolu bil-għan li tinzamm il-fiducja fis-servizz pubbliku.";

(c) is-subartikolu (3) tiegħu għandu jiġi emendat kif ġej:

(i) il-kliem "gazzetta jew ġurnal publikat kull jum jew perjodikament:" għandhom jiġu sostitwiti bil-kliem "gazzetta, ġurnal jew midja oħra pubblikati."; u

(ii) il-proviso tiegħu għandu jiġi mħassar.

(d) is-subartikolu (4) tiegħu għandu jiġi sostitwit b'dan is-subartikolu ġdid li ġej:

"(4) Dan l-artikolu ma għandux jiġi interpretat bħala li jipproteġi l-espressjoni ta' mibegħda bħal dik fuq bażi ta' nazzjonalità, razza, ġeneru jew reliġjon illi, meħuda in konsiderazzjoni xierqa ċ-ċirkostanzi li fihom issir, tkun tikkostitwixxi inċitament għad-diskriminazzjoni, l-ostilità jew il-vjolenza."; u

(e) is-subartikolu (5) tiegħu għandu jiġi mħassar.

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Emenda tal-
artikolu 45 tal-
Kostituzzjoni.

5. Fis-subartikolu (7) tal-artikolu 45 tal-Kostituzzjoni, il-kliem "41(2)" għandhom jiġu sostitwiti bil-kliem "41(2A)".

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Liġi huwa sabiex jaġġorna l-Kostituzzjoni billi jissahħu d-drittijiet fundamentali tal-libertà tal-espressjoni u tal-privatezza u l-libertà tal-midja għall-implimentazzjoni aħjar tas-saltna tad-dritt f'soċjetà demokratika.

**A BILL
entitled**

AN ACT to amend the Constitution of Malta with the aim of strengthening the right to freedom of expression, the right to privacy and freedom of the media.

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 authority of the same, as follows:-

1. The short title of this Act is the Constitution of Malta (Amendment) Act, 2022 and this Act shall be read and construed as one with the Constitution of Malta, hereinafter referred to as "the Constitution".

Short title.

2. Immediately after article 20A of the Constitution there shall be added the following new article:

Addition of new article 20B to the Constitution.

"Protection of freedom of the media.

20B. The State recognises the freedom of the media and the role of the media as a public watchdog together with the right to exercise free journalism as fundamental elements of democracy. The State shall protect and promote freedom of the media including by providing for the protection of journalists and of their sources."

3. Article 38 of the Constitution shall be substituted by the following new article:

Substitution of article 38 of the Constitution.

"Protection of private and family life, privacy of the home and other property.

38. (1) Everyone has the right to respect for his private and family life, home and communications.

(2) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question makes provision:

(a) that is reasonably required in the interest of defence, public safety, public order, public morality or decency, public health, town and country planning, the development and utilisation of mineral resources, or the development and utilisation of any property in such a manner as to promote the public benefit;

(b) that is reasonably required for the purpose of promoting the rights and freedoms of other persons;

(c) that authorises a department of the Government of Malta, or a local government authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property or installation which is lawfully on those premises and which belongs to that Government, that authority, or that body corporate, as the case may be; or

(d) that authorises, for the purpose of enforcing a judgment or order of a court, the search of any person or property by order of a court or entry upon any premises by such order, or that is necessary for the purpose of preventing or detecting criminal offences,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

Amendment of article 41 of the Constitution.

4. Article 41 of the Constitution shall be amended as follows:

(a) sub-articles (1) and (2) thereof shall be substituted by the following new sub-articles:

"(1) Freedom of expression shall be guaranteed as provided in this article. This right shall include freedom of any person to hold opinions and to receive and impart information and ideas without interference by the public authority and regardless of frontiers.

(2) The freedom and pluralism of the media and

the importance of the role journalists shall be respected.";

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(2A) (a) The exercise of the freedoms guaranteed by this article, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and independence of the judiciary.

(b) Proportionate restrictions on the freedom of expression of public officers may be imposed by law within the limits provided for in this sub-article for the purpose of maintaining confidence in the public service.";

(c) sub-article (3) thereof shall be amended as follows:

(i) the words "newspaper or journal published daily or periodically:" shall be substituted by the words "newspaper, journal or other published media."; and

(ii) the proviso thereof shall be deleted;

(d) sub-article (4) thereof shall be substituted by the following new sub-article:

"(4) This article shall not be interpreted as protecting the expression of hatred such as on the basis of nationality, race, gender or religion which, taking into consideration the circumstances in which it is done, constitutes incitement to discrimination, hostility or violence."; and

(e) sub-article (5) thereof shall be deleted.

5. In sub-article (7) of article 45 of the Constitution, the words "41(2)" shall be substituted by the words "41(2A)".

Amendment of article 45 of the Constitution.

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Objects and Reasons

The objects and reasons of this Bill are to update the Constitution in order to strengthen the fundamental rights to freedom of expression and to privacy and media freedom for the better implementation of the rule of law in a democratic society.

