

ABBOZZ TA' LIĠI msejjah

ATT biex jemenda l-Att dwar ir-Rifuġjati, Kap. 420.

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

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2005 li jemenda l-Att dwar ir-Rifuġjati, u għandu jinqara u jiftiehem haġa waħda ma' l-Att dwar ir-Rifuġjati, hawn iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jidhol fis-sehh f'dik id-data li l-Ministru responsabbli għall-immigrazzjoni jista' b'avviż fil-Gazzetta jistabbilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal disposizzjonijiet differenti u għal għanijiet differenti ta' l-istess Att.

2. L-artikolu 2 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

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

(a) minnufih wara l-paragrafu (j) tat-tifsira "applikazzjoni manifestament infondata", għandu jidhol dan il-paragrafu ġdid li ġej:-

“(k) li tkun sostanzjalment l-istess bħal waħda diġà pprezentata mill-applikant jew minn applikant iehor u li kienet, wara li tkun ġiet eżaminata, rifjutata minn Kummissarju;”;

(b) minnufih wara t-tifsira “applikazzjoni manifestament infondata”, ghandha tidhol din it-tifsira g'dida li g'ejja:-

““il-Bord” tfisser il-Bord ta' l-Appelli dwar ir-Rifugjati, mwaqqaf bl-artikolu 5 ta' dan l-Att;”;

(c) minflok it-tifsira “il-Kummissarju” ghandu jidhol dan li g'ejj:

“ “il-Kummissarju” tfisser kull persuna mahtura Kummissarju ghar-Rifugjati skond l-artikolu 4 ta' dan l-Att u tinkludi, skond il-limitu u l-awtorità moghtija, lil kull persuna ohra temporanjament awtorizzata f'dik il-kapaçità mill-Ministru;” u

(d) minnufih wara t-tifsira “rifugjat”, ghandha tidhol din it-tifsira g'dida li g'ejja:-

“ “is-Segretarju” tfisser is-Segretarju mal-Kummissarji mahtur taht l-artikolu 4(4) ta' dan l-Att;”.

Emenda tat-**Titolu I**
fit-Taqsima II ta'
l-Att
prinçipali.

3. Fit-**Titolu I** tat-Taqsima II ta' l-Att prinçipali, minflok il-kliem “Il-Kummissarju ghar-Rifugjati” ghandhom jidhlu l-kliem “Il-Kummissarji ghar-Rifugjati”.

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

4. L-artikolu 4 ta' l-Att prinçipali ghandu jiġi emendat kif g'ejj:

(a) minflok is-subartikolu (1) tiegħu, ghandu jidhol dan li g'ejj:

“(1) Ghandu jkun hemm ghadd ta' persuni li jkunu magħrufin bhala Kummissarji ghar-Rifugjati.”;

(b) fis-subartikolu (2) tiegħu, minflok il-kliem “Il-Kummissarju jinhatar” ghandhom jidhlu l-kliem “Il-Kummissarji ghar-Rifugjati jinhatru”; u

(c) minflok is-subartikolu (4) tiegħu, ghandhom jidhlu dawn is-subartikoli li g'ejjin:

“(4) Ghandu jkun hemm Segretarju mal-Kummissarji li jkun persuna li tiġi hekk mahtura mill-Prim Ministru jew uffiçjal pubbliku nominat mill-Prim Ministru biex jaqdi l-funzjonijiet ta' Segretarju.

(5) Il-Kummissjoni ghandu wkoll ikollha kull persunal iehor skond ma l-Prim Ministru jista' jqis li jkun mehtieg u li huwa jahtar jew jinnomina kif hawn qabel imsemmi.

(6) L-applikazzjonijiet jigu assenjati mis-Segretarju lill-Kummissarji b' sistema ta' rotazzjoni, jew skond ma' jigi ordnat taht dan l-Att, hekk li kull Kummissarju jkollu, dwar kaz assenjat lilu, il-poteri kollha moghtijin b'dan l-Att lil Kummissarju ghar -Rifugjati.”.

5. Fis-subartikolu (1) ta' l-artikolu 10 ta' l-Att prinċipali, minflok il-kliem “u li tirċievi servizz u kura medika statali.” ghandhom jidhlu l-kliem,

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

“u li tirċievi servizz u kura medika statali:

Izda, salvi d-disposizzjonijiet ta' l-artikolu 46 tal-Kostituzzjoni u ta' l-artikolu 4 ta' l-Att dwar il-Konvenzjoni Ewropea, meta l-Kummissarju ghar-Rifugjati jiddikjara fid-deċiżjoni tieghu li applikazzjoni tkun manifestament infondata, l-applikant jista' jitnehha minnufih minn Malta minkejja kull appell taht l-artikolu 7 ta' dan l-Att.

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Izda wkoll meta l-Bord jiddeċiedi favur l-applikant u l-applikant ikun sadattant tnehha minn Malta, id-dikjarazzjoni tal-Ministru taht l-artikolu 7(10) ta' dan l-Att ghandha ssemmi wkoll li l-persuna li tkun giet hekk imnehhija jkollha jedd li terga' lura lejn Malta minghajr ma tkun tehtieg ebda visa.”.

6. Minnufih wara l-artikolu 19 ta' l-Att prinċipali ghandu jidhol dan l-artikolu 19A gdid li gej:-

Żjieda ta' artikolu 19A gdid ma' l-Att prinċipali.

“Regolamenti li jistabbilixxu servizz ta' detenzjoni.

19A. Il-Ministru jista' wkoll jagħmel regolamenti biex jistabbilixxi korp magħqud jew mhux magħqud li jkun responsabbli biex iżomm f'detenzjoni lil dawk il-persuni li jistgħu jinżammu f'detenzjoni taht id-disposizzjonijiet ta' dan l-Att jew taht regolamenti magħmulin tahtu u minghajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, dawk ir-regolamenti jistgħu jkunu jipprovdu dwar kull haġa li tkun tirrigwarda l-funzjonijiet, finanzjament, persunal, organizzazzjoni u amministrazzjoni ta' korp bhal dak kif ukoll dwar kull haġa oħra li l-Ministru iqis li tkun mehtieġa jew spedjenti biex dak il-korp ikun jista' jwettaq il-funzjonijiet tiegħu taht ir-regolamenti u għal kull għan iehor konsegwenzjali jew anċillari għal dak hawn qabel imsemmi.”.

7. L-Att dwar l-Immigrazzjoni ghandu jiġi emendat kif ġej:

(a) l-artikolu 15 tiegħu ghandu jiġi emendat kif ġej:

(i) minnufih wara s-subartikolu (2), ghandhom jiżdiedu dawn is-subartikoli ġodda li ġejjin:

“(3) Fuq talba ta’ l-Uffiċjal Prinċipali ta’ l-Immigrazzjoni, it-trasportatur ghandu ukoll ireġġa’ lura, skond ma hemm speċifikat fis-subartikolu (2), lil xi ċittadin ta’ pajjiż terz li jkollu passagġ minn Malta jekk it-trasportatur li kien ser jiehdu fil-pajjiż lejn fejn ikun sejjer jirrofta milli jtellghu abbord jew jekk l-awtoritajiet tal-pajjiż lejn fejn ikun sejjer ikunu irroftaw li jdahhluh u jkunu bagħtuh lura Malta.

(4) Trasportatur li ma jkunx jista’ jreġġa’ lura persuna skond ma hemm stabbilit fis-subartikoli (2) u (3), ghandu jsib il-mezz biex dik il-persuna tkun tista’ tiġi minnufih trasportata lejn fejn tkun sejra għas-spejjeż tiegħu, jew, jekk it-trasport lejn fejn dik il-persuna tkun sejra ma jkunx jista’ jsir minnufih, it-trasportatur ghandu jassumi r-responsabbiltà għall-ispejjeż imġarrba matul iż-żmien li dik il-persuna toqghod f’Malta u biex hija terġa’ lura.”; u

(ii) is-subartikolu (3) tiegħu ghandu jiġi enumerat mill-ġdid bhala s-subartikolu (5) u f’dak is-subartikolu, kif enumerat mill-ġdid, minnufih wara l-kliem “hamest elef lira” ghandhom jiżdiedu l-kliem “għal kull persuna li tingarr”; u

(b) l-artikolu 25A tiegħu ghandu jiġi emendat kif ġej:

(i) minnufih wara l-paragrafu (b) tas-subartikolu (1) tiegħu, ghandu jidhol dan il-paragrafu ġdid li ġej:

“(ċ) Il-Bord ikollu ġurisdizzjoni li jisma u jiddeċiedi appelli jew applikazzjonijiet bis-sahha tad-disposizzjonijiet ta’ dan l-Att jew ta’ regolamenti magħmulin tahtu jew bis-sahha ta’ kull liġi oħra.”;

(ii) fis-subartikolu (10) tiegħu, minflok il-kliem “ma jkun hemm ebda prospett raġonevoli li tkun ser issehh deportazzjoni fi żmien raġonevoli” ghandhom jidhlu l-kliem:

“ma jkun hemm ebda prospett raġonevoli li tkun ser issehh deportazzjoni fi żmien raġonevoli:

Iżda meta persuna, li l-applikazzjoni taghha ghal harsien taht l-Att dwar ir-Rifuġjati tkun ġiet rifjutata b’deċiżjoni finali, ma tikkoperax ma’ l-Uffiċjal Prinipali dwar l-Immigrazzjoni dwar li tiġi rimpatrijata lejn il-pajjiż ta’ l-orijini taghha, jew lejn xi pajjiż iehor li jkun aċċetta li jirċievi lil dik il-persuna, il-Bord jista’ jirrifjuta li jordna ir-rilaxx ta’ dik il-persuna.”; u

(iii) fis-subartikolu (12) tiegħu, minflok il-kliem “li jkun hemm prospett raġonevoli ta’ deportazzjoni” ghandhom jidhlu l-kliem “li jkun hemm prospett raġonevoli ta’ deportazzjoni jew li dik il-persuna ma tkunx qed tikkopera ma’ l-Uffiċjal Prinipali ta’ l-Immigrazzjoni dwar ir-rimpatriju taghha lejn il-pajjiż ta’ l-orijini taghha jew lejn xi pajjiż iehor li jkun aċċetta li jirċievi lil dik il-persuna.”.

Għanijiet u Raġunijiet

L-għan ewlieni ta’ dan l-Abbozz hu biex ihaffef il-proċess ta’ rimpatriju ta’ persuni li jkunu jridu jinghataw asil u li l-każ taghhom għall-protezzjoni jiġi dikjarat bhala manifestament infondat mill-Kummissarju għar-Rifuġjati, u ta’ persuni li permezz ta’ deċiżjoni finali jkunu ġew dikjarati li m’għandhomx dritt għall-protezzjoni taht il-liġi dwar ir-rifuġjati. Għan iehor hu biex jimponi obbligu fuq it-trasportatur li jiehu lura dawk il-passiġġieri li jkollhom passaqgġ minn Malta u ma jithallewx jivvjaġġaw lejn il-pajjiż lejn fejn ikunu sejrjn.

**A BILL
entitled**

An Act to amend the Refugees Act (Cap. 420)

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 Refugees (Amendment) Act, 2005, and shall be read and construed as one with the Refugees Act, hereinafter referred to as “the principal Act”

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

Amendment of Article 2 of the Principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition of “asylum seeker” therein there shall be inserted the following new definition:

“ “the Board” means the Refugee Appeals Board established by article 5 of this Act;”;

(b) the definition of “the Commissioner” therein shall be substituted by the following:

““the Commissioner” shall mean any person appointed as Commissioner for Refugees under article 4 of this Act, and includes to the extent and authority given, any other person temporarily authorized in that behalf by the Minister;”;

(c) immediately after paragraph (j) of the definition of “manifestly unfounded application” therein, there shall be inserted the following new paragraph:

“(k) which is substantially the same as one already submitted by the applicant or by another applicant and which was, after examination, refused by a Commissioner;” and

(d) immediately after the definition of “safe third country” there shall be inserted the following new definition:

““the Secretary” means the Secretary to the Commissioners appointed under article 4(4) of this Act;”.

3. In Title I of Part II of the principal Act, the words “The Refugee Commissioner” shall be substituted by the words “Refugee Commissioners”. Amendment of Title I of Part II of the Principal Act.

4. Article 4 of the principal Act shall be amended as follows: Amendment of Article 4 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

“(1) There shall be a number of persons who shall be known as Refugee Commissioners.”

(b) in sub-article (2) thereof, for the words “The Commissioner shall be appointed” there shall be substituted the words “Refugee Commissioners shall be appointed”

(c) for sub-article (4) thereof there shall be substituted the following sub-articles:

“(4) There shall be a Secretary to the Commissioners who shall be a person appointed as such by the Prime Minister or a public officer designated by the Prime Minister to perform the functions of Secretary.

(5) The Commission shall also have such other staff as the Prime Minister may deem necessary and appoint or designate as aforesaid.

(6) Applications shall be assigned by the Secretary to Commissioners on a rotation basis or as may be prescribed under this Act, such that each Commissioner shall, in relation to a case assigned to him, enjoy all powers granted by this Act to a Refugee Commissioner.”

Amendment of article 10 of the Principal Act.

5. In sub-article (1) of article 10 of the principal Act, the words “and to receive state medical care and services.” shall be substituted by the words:

“and to receive state medical care and services:

Provided that, saving the provisions of article 46 of the Constitution and of article 4 of the European Convention Act, when the Refugee Commissioner declares in his decision that an application is manifestly ill founded the applicant may be immediately removed from Malta notwithstanding any appeal under article 7 of this Act:

Provided further that where the Board finds in favour of the applicant and the applicant has in the meantime been removed from Malta, the declaration of the Minister under article 7(10) of this Act shall also state that the person so removed is entitled to return to Malta without the need of any visa”.

Addition of new article 19A to the Principal Act.

6. Immediately after article 19 of the principal Act there shall be inserted the following new article 19A:

“Regulations establishing a detention service.

19A. The Minister may also make regulations to establish a body corporate or unincorporate which shall be responsible for keeping in detention, persons liable to be kept in detention under the provisions of this Act or under regulations made thereunder and without prejudice to the generality of the aforesaid, such regulations may make provision for any matter whatsoever concerning the functions, funding, staffing, organization and administration of such body as well as for any other matter deemed necessary or expedient by the Minister to enable that body to carry out its functions under the regulations and for any other purpose consequential or ancillary to the aforesaid.”.

7. The Immigration Act shall be amended as follows:

(a) article 15 thereof shall be amended as follows:

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

“(3) At the request of the Principal Immigration Officer the carrier shall also return, as specified in sub-article (2), a third country national in transit through Malta if the carrier which was to take him to his country of destination refuses to take him on board or the authorities of the state of destination have refused him entry and have sent him back to Malta.

(4) A carrier which cannot return a person as laid down in sub-articles (2) and (3), shall find the means of onward transportation immediately and bear the costs thereof, or, if immediate onward transportation is not possible, he shall assume responsibility for the costs of the stay and return of the person concerned.”; and

(ii) sub-article (3) thereof shall be renumbered as sub-article (5), and in the said sub-article as renumbered immediately after the words “five thousand liri” there shall be added the words “for each person carried”; and

(b) article 25A thereof shall be amended as follows:

(i) immediately after paragraph (b) of sub-article (1) thereof, there shall be inserted the following new paragraph:

“(c) The Board shall have jurisdiction to hear and determine appeals or applications in virtue of the provisions of this Act or regulations made thereunder or in virtue of any other law.”;

(ii) in sub-article (10) thereof, for the words “there is no reasonable prospect of deportation within a reasonable time.” there shall be substituted the words:

“there is no reasonable prospect of deportation within a reasonable time:

Provided that where a person, whose application for protection under the Refugees Act has been refused by a final decision, does not co-operate with the Principal Immigration Officer with respect

to his repatriation to his country of origin or to any other country which has accepted to receive him, the Board may refuse to order that person's release.”; and

(iii) in sub-article (12) thereof, for the words “that there exists a reasonable prospect of deportation” there shall be substituted the words “that there exists a reasonable prospect of deportation or that such person is not co-operating with the Principal Immigration Officer with respect to his repatriation to his country of origin or to another country which has accepted to receive him,”.

Objects and Reasons

The main purpose of this Bill is to accelerate the process of repatriation of asylum seekers whose case for protection is declared to be manifestly unfounded by the Refugee Commissioner, and of those who by a final decision have been declared not to enjoy any protection under refugee law. Another purpose is to impose an obligation on carriers to take back passengers in transit who are not allowed to proceed to their country of destination.