

125. L-Onorevoli Stephen Spiteri u l-Onorevoli Mario de Marco jipponu:

L-Ewwel Qari tal-Abbozz ta' Ligi msejjaħ Att tal-2014 li jemenda l-Kostituzzjoni ta' Malta (Emenda Nru. 1).

06.05.14

ABBOZZ TA' LIGI

Msejjah

ATT sabiex ikompli jemenda l-Kostituzzjoni

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

1. It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2014 li jemenda l-Kostituzzjoni ta' Malta Titolu fil-Qosor (Emenda Nru. 1) u l-Att għandu jinqara u jiftiehem haga waħda mal-Kostituzzjoni ta' Malta, hawn izjed 'il quddiem imsejjha "il-Kostituzzjoni".
2. Artikolu 32 tal-Kostituzzjoni qiegħed jiġi emendat billi l-kliem 'sess, orjentazzjoni sesswali u identita tal-generu' jigu sostwieti bil-kliem, 'sess, orjentazzjoni sesswali, identita tal-generu jew dizabilita' sabiex Artikolu 32 jinqara: Emenda ta' Artikolu 32

"Billi kull persuna f'Malta hija intitolata għad-drittijiet u libertajiet fundamentali tal-individwu, jiġifieri, id-dritt, tkun xi tkun ir-razza, post ta' orġini, fehmiet politiċi, kulur, twemmin, sess, orjentazzjoni sesswali, identita tal-generu jew dizabilita tagħha, izda suġġett għar-rispett tad-drittijiet u l-libertajiet ta' oħrajn u tal-interess pubbliku, għal kull waħda u kollha kemm huma dawn li ġejjin, jiġifieri-

- (a) il-ħajja, libertà, sigurtà tal-persuna, it-tgawdija ta' proprjetà u l-protezzjoni tal-ligi;
- (b) il-libertà ta' kuxjenza, ta' espressjoni u ta' għaqda u assoċjazzjoni paċifika; u
- (c) ir-rispett għall-ħajja privata u familjari tiegħu,

id-disposizzjonijiet li ġejjin ta' dan il-Kapitolu jkollhom effett sabiex jagħtu protezzjoni għad-drittijiet u libertajiet imsemmija qabel, salvi dawk il-limitazzjonijiet ta' dik il-protezzjoni kif jinsabu f'dawk id-disposizzjonijiet li huma limitazzjonijiet maħsuba biex jiżguraw illi t-tgawdija tal-imsemmija drittijiet u libertajiet minn xi

individwu ma tippregudikax id-drittijiet u libertajiet ta' oħrajn jew l-interess pubbliku.”

3. Artikolu 45 tal-Kostituzzjoni qieghed jigi emendat kif gej:

Emenda ta'

(a) Wara l-kelma 'identita tal-generu' fis-sub-artikolu (3) ta' l-imsemmi artikolu għandha tiddaħhal il-kelma 'dizabilita' sabiex Artikolu 45(3) jinqara:

Artikolu 45

“F'dan l-artikolu, il-kelma "diskriminatorju" tfisser għoti ta' trattament differenti lil persuni differenti attribwibbli għal kollox jew prinċipalment għad-deskrizzjoni tagħhom rispettiva skont ir-razza, post ta' oriġini, opinjonijiet politiċi, kulur, fidi, sess, orjentazzjoni sesswali, identita tal-generu jew dizabilita li minhabba fihom persuni ta' deskrizzjoni waħda bħal dawn ikunu suġġetti għal inkapaċitajiet jew restrizzjonijiet li persuni ta' deskrizzjoni oħra bħal dawn ma jkunux suġġetti għalihom jew ikunu mogħtija privileġġi jew vantaġġi li ma jkunux mogħtija lil persuni ta' deskrizzjoni oħra bħal dawn.”

Għanijiet u ragunijiet

L-għan ta' dan l-Abbozz ta' Ligi huwa li jemenda l-Artikoli 32 u 45 tal-Kostituzzjoni, Kapitolu IV, Drittijiet u Libertajiet Fundamentali tal-Individwu, provvedimenti li jagħtu protezzjoni kontra d-diskriminazzjoni.

L-emenda tintroduci b'mod immedjat protezzjoni minn diskriminazzjoni fuq bazi ta' dizabilita sabiex b'hekk ebda ligi ma tagħmel xi disposizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett tagħha, u hadd ma jigi trattat b'mod diskriminatorju minn xi persuna li tagħxi bis-saħħa ta' xi ligi miktuba jew fil-qadi tal-funzjonijiet ta' xi kariga pubblika jew xi awtorita pubblika għab-bazi tad-dizabilita tiegħu. Din l-emenda hija mistennija tipprovdi protezzjoni minn diskriminazzjoni f'oqsma differenti tal-ligi u fil-varji esperjenzi tal-ħajja ta' persuna. Bil-kelma 'dizabilita' l-ghan huwa li tinghata protezzjoni lil kull forma

ta' dizabilita, u cioe kemm dik fizika, mentali, intellettuali jew sensorju ghal zmien twil li flimkien ma' ostakli diversi, jista jillimita lil persuna milli tippartecipa b'mod shih u effettiv fis-socjeta b'mod ugwali daqs l-ohrajn. Din id-definizzjoni hija diga inkorporata fil-ligi u cioe f'Kapitolu 413 tal-Ligijiet ta' Malta, Att dwar Opportunitajiet Indaq (Persuni B'Dizabilita).

L-introduzzjoni ta' protezzjoni fil-Kostituzzjoni tkompli ssaħħah l-impenn tal-Istat Malti fil-qasam ta' opportunitajiet indaq ghal persuni b'dizabilita u tkun qedgha twassal ghal ratifikazzjoni aktar effettiva tal-Konvenzjoni tan-Nazzjonijiet Uniti ghad-Drittijiet tal-Persuni b'Dizabilita. Din il-Konvenzjoni giet ratifikata kwazi sentejn ilu.

Huwa mistenni li din l-emenda tkun mezz ta' rimedju għal vittmi ta' diskriminazzjoni f'oqsma li illum mhux necessarjament huma koperti b'xi ligi ordinarja. Dawn l-oqsma l-ohra jinkludu fosthom il-qasam tas-saħħa, integrita tal-persuna u hajja privata.

L-emenda ukoll iggib il-protezzjoni minn diskriminazzjoni fil-Kostituzzjoni eqreb lejn dik il-protezzjoni provduta fil-Konvenzjoni Ewropea għall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali u fil-Karta tad-Drittijiet Fundamentali ta' l-Unjoni Ewropea. Din il-protezzjoni issir ukoll enforzabbli mill-qrati u tagħti l-poter lil vittmi sabiex iffittxu rimedju.

A BILL

entitled

An ACT to further amend the Constitution

Be it enacted by the President, by and with the advice and consent of the House of Representatives, in the present Parliament assembled and by the authority of the same, as follows:-

1. The short title of this Act is the Constitution of Malta (Amendment No. 2) Act, 2014 and the Act shall be read and construed as one with the Constitution of Malta, hereinafter referred to as ‘the Constitution’. Short title.

2. In Article 32 of the Constitution shall be amended by substituting the words ‘sex, sexual orientation or gender identity’ with the words ‘sex, sexual orientation, gender identity or disability’ so that Article 32 shall read: Amendment
article 32

“Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation, gender identity or disability but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

 - (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
 - (b) freedom of conscience, of expression and of peaceful assembly and association; and
 - (c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

3. Article 45 of the Constitution shall be amended as follows:

Amendment of

(a) In sub-article (3) thereof the words ‘or disability’ shall be inserted following the word ‘gender identity’ so that Article 45(3) shall read:

article 45

“In this article, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed, sex, sexual orientation, gender identity or disability whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

Objects and reasons

The object of the Bill is to amend the provisions of protection from discrimination provided in Articles 32 and 45 of the Constitution, Chapter IV, Fundamental Rights and Freedoms of the Individual.

The amendment will introduce immediate protection from discrimination on the ground of disability thereby ensuring that no law shall make any provision that is discriminatory either of itself or in its effect, nor any person acting by

virtue of any written law or in the performance of the functions of any public office or any public authority may cause a person to experience discriminatory treatment on the ground of disability. This is expected to provide protection from discrimination in different areas of law and in one's various life experiences. The term 'disability' is to include a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one's full and effective participation in society on an equal basis with others. This definition is already incorporated in law and that is in Chapter 413 of the Laws of Malta, Equal Opportunities (Persons with Disability Act).

Introducing protection within the Constitution further strengthens Malta's commitment towards equal opportunities for persons with disability and will also lead to a more effective ratification of the United Nations Convention on Rights of Persons with Disabilities. This Convention was ratified almost two years ago.

It is expected that this amendment will provide redress to victims of discrimination in other areas which do not necessarily at present include an obligation of equality on the ground of disability. These other areas will include for example health, personal integrity and personal life.

The amendment also brings the protection from discrimination contained in the Constitution in line with the protection contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union, and makes such protection justiciable, thereby empowering victims to seek redress.
