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30. 09. 2016

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Helena Dalli, M.P., Ministru għad-Djalogu Soċjali, Affarijiet tal-Konsumatur u Libertajiet Ċivili, u moqri għall-Ewwel darba fis-Seduta tal-15 ta' Diċembru, 2015.

A BILL introduced by the Honourable Helena Dalli, M.P., Minister for Social Dialogue, Consumer Affairs and Civil Liberties, and read the First time at the Sitting of the 15th December, 2015.

ATT li jafferma li l-persuni kollha għandhom orjentazzjoni sesswali, identità tal-ġeneru u espressjoni tal-ġeneru, u li l-ebda kombinazzjoni ta' dawn it-tlett karatteristiċi ma tikkostitwixxi diżordni, marda, defiċjenza, diżabilità u, jew nuqqas ieħor; u biex jipprojbixxi prattiċi ta' konverżjoni bħala prattiċi qarrieqa u malinni jew interventi kontra l-orjentazzjoni sesswali, l-identità tal-ġeneru u, jew l-espressjoni tal-ġeneru.

AN ACT to affirm that all persons have a sexual orientation, a gender identity and a gender expression, and that no particular combination of these three characteristics constitutes a disorder, disease, illness, deficiency, disability and, or shortcoming; and to prohibit conversion practices as a deceptive and harmful act or interventions against a person's sexual orientation, gender identity and, or gender expression.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

Abbozz ta' Ligi msejjah

ATT li jafferma li l-persuni kollha għandhom orjentazzjoni sesswali, identità tal-ġeneru u espressjoni tal-ġeneru, u li l-ebda kombinazzjoni ta' dawn it-tlett karatteristiċi ma tikkostitwixxi diżordni, marda, defićjenza, diżabilità u, jew nuqqas ieħor; u biex jipprojbixxi prattiċi ta' konverżjoni bħala prattiċi qarrieqa u malinni jew interventi kontra l-orjentazzjoni sesswali, l-identità tal-ġeneru u, jew l-espressjoni tal-ġeneru.

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

1. It-titolu ta' dan l-Att huwa l-Att tal-2015 dwar l-Affermazzjoni tal-Orientazzjoni Sesswali, l-Identità tal-Ġeneru u l-Espressjoni tal-Ġeneru. Titolu fil-qosor.

2. F'dan l-Att, sakemm ir-rabta tal-kliem ma teħtieġx Tifsir xort'ohra:

"dizordni mentali" tfisser disfunzjoni mentali jew ta' mgiba sinifikanti, murija b'sinjali u, jew sintomi li jindikaw distorsjoni fil-funzjonament mentali, inkluż disturbji f'xi qasam wiehed jew aktar tal-ħsieb, burdati, rieda, perċezzjoni, fehma, orjentament jew memorja li jkunu daqstant preżenti hekk li jitqiesu li jkunu patoloġiċi kif klassifikati fi *standards* mediċi u dijanjostiċi aċċettati internazzjonalment, bl-esklużjoni ta' kwalunkwe forma ta' patoloġizzazzjoni tal-orjentazzjoni sesswali, identità tal-ġeneru u, jew espressjoni tal-ġeneru hekk kif jistgħu jkunu klassifikati taht il-lista tal-Klassifikazzjoni Internazzjonali tal-Mard jew klassifikazzjonijiet simili oħra rikonoxxuti internazzjonalment, u "mard mentali" għandha tiftiehem b'dan il-mod, u għall-fini ta' kull haġa li għandha x'taqsam ma' proċedimenti kriminali, għandha tinkludi "genn" kif dan jiftiehem għall-fini tal-Kodiċi Kriminali;

"espressjoni tal-ġeneru" tirreferi għall-manifestazzjoni ta' kull persuna tal-identità tal-ġeneru tagħha, u, jew dik li hija perċepita mill-oħrajn;

"identità tal-ġeneru" tirreferi għall-esperjenza tal-ġeneru interna u individwali ta' kull persuna, li tista' tikkorrispondi jew ma tikkorrispondix mas-sess assenjat mat-twelid, inkluż is-sens personali tal-ġisem (li jista' jinvolvi, b'għażla ħielsa, tibdil fl-apparenza tal-ġisem, u, jew funzjonijiet permezz ta' mezzi mediċi, kirurġiċi jew xort'oħra) u espressjonijiet oħra tal-ġeneru, inkluż l-isem, l-ilbies, id-diskors u l-komportament;

"orjentazzjoni sesswali" tirreferi għall-kapaċità ta' kwalunkwe persuna li jkollha emozzjonijiet profondi, attrazzjonijiet affezzjonali u sesswali lejn, u relazzjonijiet intimi u sesswali ma', persuni ta' ġeneru differenti, tal-istess ġeneru jew ta' aktar minn ġeneru wiehed;

"persuna vulnerabbli" tirreferi għal kwalunkwe persuna:

- (a) ta' taht it-tmintax-il sena; jew
- (b) li tbatu minn dizordni mentali; jew
- (ċ) ikkunsidrata li tkun partikolarment taht riskju mill-qorti kompetenti wara li tkun ħadet f'kunsiderazzjoni l-età tal-persuna, il-livell ta' maturità tagħha, saħħitha, dizabilità mentali, kundizzjonijiet oħra illi jinkludu kwalunkwe sitwazzjoni ta' dipendenza, l-istat psikoloġiku u, jew l-istat emozzjonali ta' dik il-persuna;

"prattiċi ta' konverżjoni" tirreferi għal kwalunkwe trattament, prattika jew sforz sostnut li l-għan tiegħu hu dak illi jibdel, irazzan u, jew jelimina l-orjentazzjoni sesswali, l-identità tal-ġeneru u, jew l-

espressjoni tal-ġeneru ta' persuna; dawn il-prattiċi ma jinkludux -

(a) kwalunkwe servizz relatat mal-esplorazzjoni, jew żvilupp ħieles ta' persuna u, jew affermazzjoni tal-identità fir-rigward ta' waħda jew aktar mill-karatteristiċi li huma affermati minn dan l-Att, permezz ta' *counselling*, servizzi psikoterapewtiċi u, jew servizzi simili; u, jew

(b) kwalunkwe servizz tas-saħħa relatat mal-iżvilupp ħieles u, jew l-affermazzjoni tal-identità tal-ġeneru u, jew l-espressjoni tal-ġeneru ta' persuna;

"professjonist" tirreferi għal persuna li tkun fil-pussess ta' kwalifika uffiċjali u, jew ta' *warrant* ta' prattika bħala *counsellor*, edukatur, terapista tal-familja, prattikant mediku, infermier, patologu, psikjatra, psikologu, psikoterapista, *social worker*, u, jew *youth worker*.

3. Dawn li ġejjin jitqiesu bħala reati kriminali -

Prattiċi illegali ta' konverżjoni.

(a) li xi persuna:

(i) twettaq prattiċi ta' konverżjoni fuq persuni vulnerabbli; jew

(ii) twettaq prattiċi ta' konverżjoni b'mod involontarju u, jew sfurzat fuq persuna; jew

(iii) tirreklama prattiċi ta' konverżjoni; u, jew

(b) li professjonist:

(i) joffri u, jew iwettaq prattiċi ta' konverżjoni fuq kwalunkwe persuna irrispettivament mill-fatt jgħix ikkumpensat għal tali servizzi; jew

(b) jirreferi kwalunkwe persuna għand persuna oħra sabiex din twettaq prattiċi ta' konverżjoni fuq xi persuna.

4. (1) Kull minn jinsab ħati taht id-dispożizzjonijiet tal-artikolu 3(a) jehel, meta jinsab ħati, multa ta' mhux anqas minn elf euro (€1,000) u mhux aktar minn ħamest elef euro (€5,000), jew priġunerija għal żmien mhux anqas minn xhar u mhux aktar minn ħames xhur, jew dik il-multa u priġunerija flimkien:

Kriminalizzazzjoni ta' prattiċi ta' konverżjoni.

Iżda l-piena stabbilita taht dan is-subartikolu għandha tiżdied minn grad sa żewġ gradi f'dawk l-istanzi meta persuna

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twettaq prattiċi ta' konverzjoni fuq persuni vulnerabbli.

(2) Kull professjonist li jinsab ħati taħt id-dispożizzjonijiet tal-artikolu 3(a) u, jew (b) jehel, meta jinsab ħati, multa ta' mhux anqas minn elfejn euro (€2,000) u mhux aktar minn għaxart elef euro (€10,000), jew prigunerija għal żmien mhux anqas minn tlett xhur u mhux aktar minn sena, jew dik il-multa u prigunerija flimkien:

Izda l-piena stabbilita taħt dan is-subartikolu għandha tiżded minn grad sa żewġ gradi f'dawk l-istanzi meta professjonist iwettaq prattiċi ta' konverzjoni fuq persuni vulnerabbli.

Għanijiet u Raġunijiet

L-għan prinċipali ta' dan l-Abbozz ta' Ligi huwa dak illi jafferma illi l-persuni kollha għandhom orjentazzjoni sesswali, identità tal-ġeneru u espressjoni tal-ġeneru, u li l-ebda kombinazzjoni ta' dawn it-tlett karatteristiċi ma jikkostitwixxi diżordni, defiċjenza, diżabilità, marda u, jew nuqqas. Dan l-Abbozz ta' Ligi jipprojbixxi prattiċi ta' konverzjoni magħmula kemm minn professjonisti u kif ukoll minn persuni ordinarji kontra l-varjazzjonijiet fl-orjentazzjoni sesswali, identità tal-ġeneru u, jew espressjoni tal-ġeneru, b'mod speċjali fuq persuni vulnerabbli. Dan l-Abbozz ta' Ligi jipprojbixxi wkoll il-patoloġizzazzjoni ta' kwalunkwe orjentazzjoni sesswali, identità tal-ġeneru u, jew espressjoni tal-ġeneru.

**A Bill
entitled**

AN ACT to affirm that all persons have a sexual orientation, a gender identity and a gender expression, and that no particular combination of these three characteristics constitutes a disorder, disease, illness, deficiency, disability and, or shortcoming; and to prohibit conversion practices as a deceptive and harmful act or interventions against a person's sexual orientation, gender identity and, or gender expression.

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. The title of this Act is the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, 2015. Short title.

2. In this Act, unless the context otherwise requires: Interpretation.

"conversion practices" refers to any treatment, practice or sustained effort that aims to change, repress and, or eliminate a person's sexual orientation, gender identity and, or gender expression; such practices do not include -

(a) any services related to the exploration, free development and, or affirmation of one's identity with regard to one or more of the characteristics being affirmed by this Act, through counselling, psychotherapeutic services and, or similar services, and, or;

(b) any healthcare service related to the free development and, or affirmation of one's gender identity and, or

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gender expression;

"gender expression" refers to each person's manifestation of their gender identity, and, or the one that is perceived by others;

"gender identity" refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms;

"mental disorder" means a significant mental or behavioural dysfunction, exhibited by signs and, or symptoms indicating a distortion of mental functioning, including disturbances in one or more of the areas of thought, mood, volition, perception, cognition, orientation or memory which are present to such a degree as to be considered pathological in accordance with internationally accepted medical and diagnostic standards, with the exclusion of any form of pathologisation of sexual orientation, gender identity and, or gender expression as may be classified under the International Classification of Diseases or other similar internationally recognised classifications, and "mental illness" shall be construed accordingly, and for the purpose of any matter related to criminal proceedings, it shall include "insanity" as understood for the purpose of the Criminal Code;

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"professional" refers to a person who is in possession of an official qualification and, or a warrant to practice as a counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker, and, or youth worker;

"sexual orientation" refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, persons of a different gender, the same gender or more than one gender;

"vulnerable person" refers to any person:

- (a) under the age of eighteen years; or
- (b) suffering from a mental disorder; or
- (c) considered by the competent court to be particularly at risk when taking into account the person's age, maturity, health, mental disability, other conditions including any situation of dependence, the psychological state and, or

emotional state of that person.

3. It shall be unlawful -

Unlawful
conversion
practices.

(a) for any person to:

(i) perform conversion practices on a vulnerable person; or

(ii) perform involuntary and, or forced conversion practices on a person; or

(iii) advertise conversion practices; and, or

(b) for a professional to:

(i) offer and, or perform conversion practices on any person irrespective of whether compensation is received in exchange; or

(ii) make a referral to any other person to perform conversion practices on any person.

4. (1) Any person found guilty under the provisions of article 3(a) shall, upon conviction, be liable to a fine (*multa*) of not less than one thousand euro (€1,000) and not exceeding five thousand euro (€5,000), or to imprisonment for a term of not less than one month and not exceeding five months, or to both such fine and imprisonment:

Criminalisation
of conversion
practices.

Provided that the punishment prescribed for under this sub-article shall be increased by one to two degrees in those instances where any person performs conversion practices on a vulnerable person.

(2) Any professional found guilty under the provisions of article 3(a) and, or (b) shall, upon conviction, be liable to a fine (*multa*) of not less than two thousand euro (€2,000) and not exceeding ten thousand euro (€10,000), or to imprisonment for a term of not less than three months and not exceeding one year, or to both such fine and imprisonment:

Provided that the punishment prescribed for under this sub-article shall be increased by one to two degrees in those instances where any person performs conversion practices on a vulnerable person.

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Objects and Reasons

The main object of this Bill is to affirm that all persons have a sexual orientation, a gender identity and a gender expression, and that no particular combination of these three characteristics constitutes a disorder, disease, illness, deficiency, disability and, or shortcoming. This Bill provides for a ban on conversion practices offered and, or performed by both professionals and individuals against variations of sexual orientation, gender identity and, or gender expression, particularly on vulnerable persons. This Bill also prohibits the pathologisation of any sexual orientation, gender identity and, or gender expression.

