

ABBOZZ TA' LIĠI
msejjah

ATT biex jemenda l-Kostituzzjoni ta' Malta.

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 ta' dan l-Att hu l-Att tal-2013 sabiex jemenda l-Kostituzzjoni ta' Malta, u dan l-Att għandu jinqara u jiftiehem haġa waħda mal-Kostituzzjoni ta' Malta, hawn iżjed 'il quddiem imsejjha "il-Kostituzzjoni". Titolu fil-qosor.

2. Fl-artikolu 32 tal-Kostituzzjoni, minflok il-kliem "twemmin jew sess tagħha" għandhom jidhlu l-kliem "twemmin, sess jew orjentazzjoni sesswali tagħha". Emenda tal-artikolu 32 tal-Kostituzzjoni.

3. L-artikolu 45 tal-Kostituzzjoni għandu jiġi emendat kif ġej: Emenda tal-artikolu 45 tal-Kostituzzjoni.

(a) fis-subartikolu (3) għu, minflok il-kliem "fidi jew sess" għandhom jidhlu l-kliem "fidi, sess jew orjentazzjoni sesswali"; u

(b) fil-paragrafu (b) tas-subartikolu (5) tiegħu, minflok il-kliem "(li ma jkunux kwalifiki li jirrigwardaw is-sess speċifikament)" għandhom jidhlu l-kliem "(li ma jkunux kwalifiki li jirrigwardaw is-sess jew l-orjentazzjoni sesswali speċifikament)".

Ghanijiet u ragunijiet

L-għan ta' dan l-Abbozz ta' liġi huwa sabiex jemenda l-artikolu 45 tal-Kostituzzjoni ta' Malta, Kapitolu IV, Drittijiet u Libertajiet Fundamentali tal-Individwu, disposizzjoni li tagħti protezzjoni kontra d-diskriminazzjoni.

L-emenda tintroduci b'mod immedjat protezzjoni minn diskriminazzjoni fuq bażi ta' orjentazzjoni sesswali sabiex b'hekk ebda liġi ma tagħmel xi disposizzjoni li tkun diskriminatorja sew fiha nnifisha jew fl-effett tagħha, u hadd ma jiġi trattat b'mod diskriminatorju minn xi persuna li taġixxi bis-saħħa ta' xi liġi miktuba jew fil-qadi tal-funzjonijiet ta' xi kariga pubblika jew xi awtorità pubblika abbażi tal-orjentazzjoni sesswali tiegħu. Din l-emenda hija mistennija ttiprovdi protezzjoni minn diskriminazzjoni f'oqsma differenti tal-liġi u fil-varji esperjenzi tal-ħajja ta' persuna. L-introduzzjoni ta' protezzjoni fil-Kostituzzjoni tkompli ssaħħaħ l-impenn tal-Parlament f'dan il-qasam; impenn li beda bl-introduzzjoni ta' protezzjoni minn diskriminazzjoni taħt l-Att dwar l-Impjiegi u r-Relazzjonijiet Industrijali, l-Att dwar l-Ugwaljanza għall-Irġiel u Nisa u liġijiet sussidjarji magħmula taħthom, kif ukoll ir-rikonoxximent bhala reat kriminali ta' aġir omofobiku fil-Kodiċi Kriminali.

Huwa mistenni li din l-emenda tkun mezz ta' rimedju għal vittmi ta' diskriminazzjoni f'oqsma li illum ma jinkludux obbligu ta' ugwaljanza abbażi ta' orjentazzjoni sesswali. Dawn l-oqsma l-oħra jinkludu fosthom il-qasam tas-saħħa, edukazzjoni, integrità tal-persuna u ħajja privata.

L-emenda żzomm id-diskrezzjoni tal-Istat li jilleġiżla u jirregola hwejjeg ta' liġi personali u għalhekk ma ttiprovdi għal żwieġ bejn persuni tal-istess sess. Ir-regolamentazzjoni ta' dan il-qasam ta' liġi huwa wiehed li jiddependi hafna fuq konnotazzjonijiet soċjali u kulturali li għandom gheruq fondi fis-soċjetà Maltija u li jirrigwardaw id-dritt għaž-żwieġ li sa llum ma jinkludix fih dritt għal żwieġ bejn kopja ta' l-istess sess.

L-emenda ukoll iġġib 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 tal-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 amend the Constitution of Malta.

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 short title of this Act is the Constitution of Malta (Amendment) Act, 2013, and this 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, for the words "creed or sex" there shall be substituted the words "creed, sex or sexual orientation". Amends article 32 of the Constitution

 3. Article 45 of the Constitution shall be amended as follows: Amends article 45 of the Constitution
 - (a) in sub-article (3) thereof, for the words "creed or sex" there shall be substituted the words "creed, sex or sexual orientation"; and

 - (b) in paragraph (b) of sub-article (5) thereof, for the words "(not being qualifications specifically relating to sex)" there shall be substituted the words "(not being qualifications specifically relating to sex or sexual orientation)".
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Objects and reasons

The objects of the Bill are to amend the provision of protection from discrimination provided in article 45 of the Constitution of Malta, Chapter IV, Fundamental Rights and Freedoms of the Individual.

The amendment will introduce immediate protection from discrimination on the ground of sexual orientation 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 sexual orientation. This is expected to provide protection from discrimination in different areas of law and in one's various life experiences. Introducing protection within the Constitution further strengthens Parliament's commitment in this area; a commitment that started with the introduction of protection from discrimination under the Employment and Industrial Relations Act, the Equality for Men and Women Act and subsidiary legislation made thereunder, as well as the criminal sanctioning of homophobic actions under the Criminal Code.

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

The amendment retains the State's discretion to legislate and regulate areas related to matters of personal law and thereby does not provide for same sex marriages. The regulation of this area of law is one that relies heavily on deep-rooted social and cultural connotations, and revolves around the right to marry which is to date not established to include a right to same-sex marriages.

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.