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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Ian Borg, M.P., Ministru għat-Trasport, Infrastruttura u Proġetti Kapitali, f'isem il-Ministru għall-Affarijiet Ewropej u l-Ugwaljanza, u moqri għall-Ewwel darba fis-Seduta tat-13 ta' Mejju 2019.

A BILL introduced by the Honourable Ian Borg, M.P., Minister for Transport, Infrastructure and Capital Projects, on behalf of the Minister for European Affairs and Equality, and read the First time at the Sitting of the 13th May 2019.

ATT li jemenda l-Kodiċi Kriminali, Kap. 9, u l-Att dwar il-Vjolenza abbażi ta' Ġeneru u Vjolenza Domestika, Kap. 581.

AN ACT to amend the Criminal Code, Cap. 9, and the Gender Based Violence and Domestic Violence Act, Cap. 581.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT li jemenda l-Kodiċi Kriminali, Kap. 9, u l-Att dwar il-Vjolenza abbażi ta' Ġeneru u Vjolenza Domestika, Kap. 581.

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

1. It-titolu ta' dan l-Att huwa l-Att tal-2019 li jemenda l-Kodiċi Kriminali u l-Att dwar il-Vjolenza abbażi ta' Ġeneru u Vjolenza Domestika. Titolu fil-qosor.

TAQSIMA I
Emenda għall-Kodiċi Kriminali

2. Din it-Taqsima temenda l-Kodiċi Kriminali, u għandha tinqara u tinftiehem haġa waħda mal-Kodiċi Kriminali, hawnhekk iżjed 'il quddiem imsejjaħ "il-Kodiċi". Emendi għall-Kodiċi Kriminali. Kap. 9.

3. Fl-artikolu 18 tal-Kodiċi l-kliem "jew dispożizzjonijiet relatati tal-liġi" għandhom jiġu mhassra. Emenda tal-artikolu 18 tal-Kodiċi.

4. L-artikolu 208E tal-Kodiċi għandu jiġi emendat kif ġej: Emenda tal-artikolu 208E tal-Kodiċi.

(a) in-nota marginali tiegħu għandha tiġi sostitwita kif ġej:

"Teħid jew żvelar mhux konsenswali ta' *films* u ritratti sesswali privati.";

(b) fis-subartikolu (1) tiegħu, minnufih wara l-kliem "jew ħsara ta' kull xorta," għandhom jiżdiedu l-kliem "jieħu jew";

(c) fis-subartikolu (2)(a) tiegħu, minnufih qabel il-kliem

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"tkun żvelat" għandhom jidhlu l-kliem "f'każ illi tkun ħadet ir-ritratt jew *film* sesswali bil-kunsens tal-persuna jew persuni murija jew irrappreżentati f'dak ir-ritratt jew *film*,"; u

(d) fis-subartikolu (4) tiegħu, minnufih wara l-kliem "F'dan l-artikolu:" għandha tiżdied it-tifsira li ġejja:

"teħid" għandha tirreferi għat-teħid mhux awtorizzat ta' ritratti u *films* sesswali privati, b'kull mezz,".

Emenda tal-artikolu 251I tal-Kodiċi.

5. Is-subartikolu (2) tal-artikolu 251I tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fil-paragrafu (b) tiegħu, minnufih wara l-kliem "resident permanenti" għandhom jiżdiedu l-kliem "jew abitwali";

(b) fil-paragrafu (ċ) tiegħu, minnufih wara l-kliem "resident permanenti" għandhom jidhlu l-kliem "jew abitwali".

Emenda tal-artikolu 382A tal-Kodiċi.

6. Is-subartikolu (3) tal-artikolu 382A tal-Kodiċi għandu jiġi sostitwit b'dan li ġej:

"(3) Jekk mingħajr skuża raġonevoli l-ħati jikser xi projbizzjoni jew restrizzjoni imposta fuqu b'ordni taħt dan l-artikolu, huwa jkun ħati ta' reat u jista', meta jinstab ħati jehel multa ta' sebat elef euro (€7,000) jew prigunerija ta' mhux iżjed minn sentejn jew dik il-multu u prigunerija flimkien."

Sostituzzjoni tal-artikolu 540A tal-Kodiċi.

7. L-artikolu 540A tal-Kodiċi għandu jiġi sostitwit b'dan li ġej:

"540A. (1) Meta l-Pulizija Eżekuttiva tirċievi rapport, denunzja jew kwerela li fuqhom għandhom isiru proċeduri kontra persuna, minn persuna jew persuni indikati fl-artikolu 12(a) tal-Att dwar il-Vittmi tal-Kriminalità, uffiċjal tal-Pulizija għandu minnufih jagħmel valutazzjoni, flimkien ma' professjonist imħarreġ mill-aġenzija msemmija skont l-Att dwar il-Vjolenza Abbażi ta' Ġeneru u Vjolenza Domestika, tar-riskju tal-persuna offiża jew ta' xi individwu ieħor, skont il-każ:

Kap. 539.

Kap. 581.

Iżda minnufih wara l-imsemmija valutazzjoni, uffiċjal tal-Pulizija ta' grad mhux inqas minn dak ta' spettur għandu minnufih jibda' investigazzjoni, waqt liema investigazzjoni għandu jinstema', fost oħrajn, l-allegat awtur.

(2) Jekk, wara dik l-investigazzjoni, jkun jidher biċ-ċar li persuna tkun f'riskju serju ta' ħsara, il-Pulizija Eżekuttiva

għandha minnufih tagħmel rikors quddiem Maġistrat fejn titlob il-ħruġ ta' ordni ta' protezzjoni temporanja, fejn tniżżel ir-raġunijiet għalfejn saret din it-talba u tagħti lill-Maġistrat it-tagħrif kollu meħtieġ biex jgħin lill-Maġistrat jiddeċiedi fuq dik it-talba:

Iżda dak ir-rikors għandu jsir mhux iktar tard minn tnax-il siegħa minn meta l-imsemmija valutazzjoni tkun giet konkluzja.

(3) Qabel ma jiddeċiedi jekk tinħariġx l-ordni ta' protezzjoni temporanja, il-Maġistrat jista' jitlob lill-ufficjal, lill-professjonist, jew lill-persuna li qieghda tagħmel ir-rapport jew kwerela li qieghda tagħti t-tagħrif, sabiex tikkonferma taht ġurament it-tagħrif mgħoddi minnha u l-ordni ta' protezzjoni temporanja għandha tinħareġ hekk kif il-Maġistrat ikun sodisfatt li hemm raġunijiet sufficjenti għall-ħruġ tal-ordni ta' protezzjoni temporanja:

Iżda dik id-deċiżjoni għandha tittiehed fi żmien tmien sigħat minn meta r-rikors gie riċevut:

Iżda wkoll l-aġenzija msemmija għandha, immedjatament wara li ssir il-valutazzjoni skont is-subartikolu (1), tipprovdi akkomodazzjoni mkennija lill-allegatament vittma skont l-artikolu 19(3)(d) tal-Att dwar il-Vjolenza Abbażi ta' Ġeneru u Vjolenza Domestika, skont il-bżonn. Kap. 581.

(4) F'każ ta' urġenza massima, it-talba għall-ħruġ tal-ordni ta' protezzjoni temporanja u l-ordni ta' protezzjoni temporanja jistgħu jiġu komunikati wkoll b'mezzi elettronici:

Iżda l-ordni ta' protezzjoni temporanja originali għandha, kemm jista' jkun malajr, tiġi mgħoddija minhabba raġunijiet ta' żamma ta' provi.

(5) Is-subartikoli (3), (7), (8), (11) u (12) tal-artikolu 412Ċ għandhom japplikaw *mutatis mutandis* għall-ordni ta' protezzjoni temporanja maħruġa taht dan l-artikolu, u għall-finijiet ta' dan l-artikolu, "ordni ta' protezzjoni temporanja" għandu jkollha l-istess tifsira ta' "ordni ta' protezzjoni" taht l-artikolu 412Ċ.

(6) Ordni ta' protezzjoni temporanja maħruġa taht dan l-artikolu għandha tibqa' fis-seħħ:

(a) sa massimu ta' tletin jum mill-ħruġ tal-ordni ta' protezzjoni temporanja; jew

(b) sa l-ewwel seduta kontra l-allegat awtur,

skont liema waħda minnhom tiġi l-ewwel:

Iżda l-Pulizija għandhom jibdew il-proċeduri kriminali kontra l-allegat awtur sa mhux aktar tard minn tletin jum mill-ħruġ tal-ordni ta' protezzjoni temporanja.

(7) Ordni ta' protezzjoni temporanja maħruġa taħt dan l-artikolu tista' tiġi revokata jew estiża għal perjodu itwal ta' żmien mill-Maġistrat li jkun ħareġ l-ordni, jekk tiġi pruvata l-eżistenza ta' kawża ġusta:

Iżda tista' tiġi estiża ukoll mill-Qorti waqt l-ewwel seduta, jekk tintalab li tinħareġ ordni ta' protezzjoni taħt l-artikolu 412Ċ.

(8) Ordni ta' protezzjoni temporanja maħruġa taħt dan l-artikolu għandha taqa' hekk kif:

(a) jiġi determinat li l-ebda proċeduri kriminali m'għandhom jittieħdu kontra l-allegat awtur; jew

(b) jgħaddu tletin jum mill-ħruġ tal-ordni ta' protezzjoni temporanja; jew

(ċ) isseħħ l-ewwel seduta kontra l-allegat awtur; jew

(d) tinħareġ ordni ta' protezzjoni taħt l-artikolu 412Ċ:

Iżda fil-każ tal-paragrafu (a), il-Pulizija Eżekuttiva għandha minnufih tinforma lill-Maġistrat b'din id-deċiżjoni, u titlob ir-revoka tal-ordni ta' protezzjoni temporanja."

Emenda tal-artikolu 646 tal-Kodiċi.

8. Il-verżjoni bl-Ingliż tal-ewwel proviso tas-subartikolu (2) tal-artikolu 646 tal-Kodiċi għandu jiġi sostitwit kif ġej:

"Provided that the witness is also produced in Court to be examined *viva voce* as provided in sub-article (1) unless, when assessing the circumstances of the case, it is apparent to the Court that appearing for *viva voce* examination may cause the witness to suffer psychological harm, or when the witness is dead, absent from Malta or cannot be found and saving the provisions of sub-article (8):".

TAQSIMA II
Emenda għall-Att dwar il-Vjolenza Abbażi ta’
Ġeneru u Vjolenza Domestika

9. Din it-Taqsima temenda l-Att dwar il-Vjolenza Abbażi ta’ Ġeneru u Vjolenza Domestika, u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Vjolenza Abbażi ta’ Ġeneru u Vjolenza Domestika, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Emendi għall-Att dwar il-Vjolenza Abbażi ta’ Ġeneru u Vjolenza Domestika. Kap. 581.

10. Fl-artikolu 2 tal-Att prinċipali, it-tifsira "ġeneru" għandha tiġi sostitwita b’dan li ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

" "ġeneru" tfisser l-irwoli, aspettativi, attivitajiet, imġiba u attributi mibnija soċjalment li s-soċjetà fi kwalunkwe żmien tassoċja ma’ persuna ta’ kwalunkwe sess, li tassumi kwalunkwe identità tal-ġeneru, jew espressjoni tal-ġeneru;"

11. Fis-subartikolu (1) tal-artikolu 7 tal-Att prinċipali l-kliem "u mhux inqas minn sitta iżda mhux iktar minn tnax-il membru ieħor" għandhom jiġu sostitwiti bil-kliem "u mhux inqas minn sitta iżda mhux iktar minn tnax-il membru ieħor, li wieħed minnhom ikun persuna b’diżabilità,".

Emenda tal-artikolu 7 tal-Att prinċipali.

Għanijiet u Raġunijiet

L-għanijiet u raġunijiet ta’ dan l-abbozz huma sabiex jemenda l-Kodiċi Kriminali u l-Att dwar il-Vjolenza Abbażi ta’ Ġeneru u Vjolenza Domestika sabiex isaħħaħ dispożizzjonijiet relatati ma’ vjolenza abbażi tal-ġeneru u vjolenza domestika, u jassigura rappreżentanza ta’ persuni b’diżabilità fuq il-Kummissjoni dwar il-Vjolenza Abbażi ta’ Ġeneru u Vjolenza Domestika.

**A BILL
entitled**

An ACT to amend the Criminal Code, Cap. 9, and the Gender Based Violence and Domestic Violence Act, Cap 581.

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.

1. The short title of this Act is the Criminal Code and the Gender Based Violence and Domestic Violence (Amendment) Act, 2019.

**PART I
Amendment to the Criminal Code**

Amendments to
the Criminal
Code.
Cap. 9.

2. This Part amends the Criminal Code, and it shall be read and construed as one with the Criminal Code, hereinafter in this Part referred to as "the Code".

Amendment of
article 18 of the
Code.

3. In article 18 of the Code the words "or of related provisions of the law" shall be deleted.

Amendment of
article 208E of
the Code.

4. Article 208E of the Code shall be amended as follows:

(a) the marginal note thereof shall be substituted by the following:

"Non-consensual taking or disclosure of private sexual photographs and films.";

(b) in sub-article (1) thereof immediately after the words "or harm of any nature," there shall be added the words "takes or";

(c) in sub-article (2)(a) thereof immediately before the words "he has disclosed the sexual photograph or film" there

shall be added the words "where the sexual photograph or film were taken with the consent of the person or persons displayed or depicted in such photograph or film,"; and

(d) in sub-article (4) thereof, immediately after the words "In this article:" there shall be added the following new definition:

" "taking" shall refer to the unauthorised taking of sexual private photos and films, by any means;".

5. Sub-article (2) of article 251I of the Code shall be amended as follows: Amendment of article 251I of the Code.

(a) in paragraph (b) thereof immediately after the words "or permanent" there shall be added the words "or habitual"; and

(b) in paragraph (c) thereof, immediately after the words "or permanent" there shall be added the words "or habitual".

6. Sub-article (3) of article 382A of the Code shall be substituted by the following: Amendment of article 382A of the Code.

"(3) If without reasonable excuse the offender contravenes any prohibition or restriction imposed upon him by an order under this article, he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of seven thousand euro (€7,000) or to imprisonment not exceeding two years or to both such fine and imprisonment.".

7. Article 540A of the Code shall be substituted by the following: Substitution of article 540A of the Code.

"540A. (1) Upon the receipt of any report, information or complaint requiring proceedings to be taken against a person from a person or persons indicated in article 12(a) of the Victims of Crime Act, a police officer, together with a professional, trained by the designated agency in accordance with the Gender-Based Violence and Domestic Violence Act, shall immediately conduct an assessment of the risk of the injured person or of any other individual, as the case may be: Cap. 539.
Cap. 581.

Provided that immediately after said assessment, a Police officer not below the rank of inspector shall immediately initiate an investigation, during which investigation there shall be heard, amongst others, the alleged offender.

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(2) Where, following such investigation, it becomes apparent that any person is at a serious risk of harm, the Executive Police shall immediately apply to a Magistrate requesting the issue of a temporary protection order stating the grounds for the request and giving the Magistrate all such information that will enable the Magistrate to decide upon the request:

Provided that said application shall be made by not later than twelve hours from the conclusion of said assessment.

(3) Before deciding whether to issue the temporary protection order, the Magistrate may require the police officer, the professional, or the person making the report or complaint giving the information, to confirm on oath the information supplied by him and the temporary protection order shall be issued once the Magistrate is satisfied that sufficient grounds for the issuing of the order exist:

Provided that such a decision shall be taken within eight hours of receipt of the application:

Provided also that said agency shall, immediately after the assessment is carried out according to sub-article (1), provide sheltered accommodation to the alleged victim, according to article 19(3)(d) of the Gender-Based Violence and Domestic Violence Act, as needed.

Cap. 581.

(4) In cases of utmost urgency, the request for the issue of the temporary protection order and the order may be communicated even by electronic means:

Provided that, as soon as practicable, the original temporary protection order shall be delivered for record purposes.

(5) Sub-articles (3) (7), (8), (11) and (12) of article 412C shall apply *mutatis mutandis* to a temporary protection order issued under this article, and for the purposes of this article, "temporary protection order" shall have the same meaning assigned to "protection order" under article 412C.

(6) A temporary protection order issued under this article shall remain in force:

(a) up to a maximum of thirty days from the issue of the temporary protection order; or

(b) until the first sitting against the alleged offender,

whichever is the earlier:

Provided that the Police shall institute criminal proceedings against the alleged offender by not later than thirty days from the issue of the temporary protection order.

(7) A temporary protection order issued under this article can be revoked or extended for a further period by the Magistrate who issued the order, on just cause being shown:

Provided that it can also be extended by the Court during its first sitting, if a request is made to issue a protection order under article 412C.

(8) A temporary protection order issued under this article shall lapse upon:

(a) the determination that no criminal proceedings shall be instituted against the alleged offender; or

(b) the lapse of thirty days from the issue of the temporary protection order; or

(c) the hearing of the first sitting against the alleged offender; or

(d) the issue of a protection order under article 412C:

Provided that in the case of paragraph (a), the Executive Police shall immediately inform the Magistrate of this decision, and request the revocation of the temporary protection order."

8. The first proviso to sub-article (2) of article 646 of the Code shall be substituted by the following:

Amendment of article 646 of the Code.

"Provided that the witness is also produced in Court to be examined *viva voce* as provided in sub-article (1) unless, when assessing the circumstances of the case, it is apparent to the Court that appearing for *viva voce* examination may cause the witness to suffer psychological harm, or when the witness is dead, absent from Malta or cannot be found and saving the provisions of sub-article (8):".

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PART II
Amendment to the Gender-Based Violence
and Domestic Violence Act

Amendments to the Gender-Based Violence and Domestic Violence Act. Cap. 581.

9. This Part amends the Gender-Based Violence and Domestic Violence Act, and it shall be read and construed as one with the Gender-Based Violence and Domestic Violence Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

10. In article 2 of the principal Act, the definition "gender" shall be substituted by the following:

" "gender" means the socially constructed roles, expectations, activities, behaviours and attributes that society at any given time associates with a person of any sex, assuming any form of gender identity or gender expression;"

Amendment of article 7 of the principal Act.

11. In sub-article (1) of article 7 of the principal Act, for the words "and not less than six but not more than twelve other members", there shall be substituted the words "and not less than six but not more than twelve other members, one of whom shall be a person with disability,".

Objects and reasons

The objects and reasons of this Bill are to amend the Criminal Code and the Gender-Based Violence and Domestic Violence Act to strengthen dispositions related to gender-based violence and domestic violence, and ensure representation of persons with disability on the Gender-Based Violence and Domestic Violence Commission.

VERŻJONI ELETTRONIKA