

Nru. 47

27. 9. 83

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Joseph Cassar, M.P., Deputat Prim Ministru Anzjan u Ministru tal-Gustizzja u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tad-19 ta' Settembru, 1983.

A BILL introduced by the Honourable Joseph Cassar, M.P., Senior Deputy Prime Minister and Minister of Justice and Parliamentary Affairs and read the First time at the Sitting of the 19th September, 1983.

ATT biex ikompli jemenda l-Kodiċi Kriminali, Kap. 12.

AN ACT further to amend the Criminal Code, Cap. 12.

C. MIFSUD
Skrivan tal-Kamra tad-Deputati

C. MIFSUD
Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT biex ikompli jemenda l-Kodiċi Kriminali, Kap. 12.

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

Titolu fil-qosor
u bidu fis-sehħ.

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1983 li jemenda l-Kodiċi Kriminali (Emenda Nru. 2) u għandu jinqara u jiftiehem hekk waħda mal-Kodiċi Kriminali, hawnhekk iżjed 'il quddiem imsejjah "il-liġi prinċipali".

(2) Dan l-Att għandu jibda jsehħ fl-1 ta' Jannar, 1984.

Żieda ta'
artikoli godda
mal-liġi
prinċipali.

2. Minnufih wara l-artikolu 400 tal-liġi prinċipali għandhom jżiedu l-artikoli godda li ġejjin:

"Il-Qorti
tista'
tordna l-
hłas ta'
danni.

400A. (1) Meta bis-saħħa ta' xi waħda mid-dispożizzjonijiet ta' dan il-Kodiċi l-Qorti tal-Pulizija Ġudizzjarja tkun kompetenti biex tipproċessa xi wieħed mir-reati msemmija fl-artikoli 239, 240 jew 342 ta' dan il-Kodiċi magħmul f'incident tat-traffiku, il-Qorti għandha fis-sentenza tagħha tordna li l-persuna misjuba hatja ta' xi reat bħal dak tħallas bħala danni lill-parti offiża dik is-somma li l-Qorti tista' tistabilixxi:

Izda meta l-parti offiża ma tkunx magħrufa jew meta t-titolu tagħha biex tirċievi hłas ta' danni ma jkunx stabbilit, il-Qorti tista' tordna li s-somma stabbilita bħala danni tiġi depożitata fir-Registru ta' dik il-qorti kif il-Qorti tista' tiddeċiedi, u dak id-depożitu ma jiġix irtirat mingħajr l-awtorizzazzjoni ta' dik il-Qorti:

Izda wkoll l-ordni jista' jsir mill-Qorti minkejja d-dispożizzjonijiet tal-Kodiċi ta' l-Organizzazzjoni u Proċedura Ċivili dwar il-ġurisdizzjoni u ta' l-Att ta' l-1957 dwar il-*Probation* ta' Ħatjin.

(2) Meta, fuq eċċezzjoni ta' l-akkużat li l-offiża lill-proprietà jew persuni msemmija fl-akkuża kienet kawżata minn xi persuna oħra, jew il-Qorti minn jeddha jidhrilha spedjenti li hekk tagħmel, il-Qorti tista' tordna lill-Pulizija Eżekuttiva biex tħarrekk kull persuna biex tidher quddiemha fuq akkuża għal xi wieħed mir-reati msemmija fis-subartikolu (1) ta' dan l-artikolu, u l-Qorti għandha mbagħad tkompli bil-kawża fuq dawk l-akkużi flimkien ma' jew separatament minn, il-kawża li fiha jkun ingħata dak l-ordni, skond kif tordna l-Qorti.

(3) Meta offiża ssir lill-persuna jew proprietà ta' iktar minn persuna waħda jew meta jkun hemm iktar minn persuna waħda misjuba hatja tar-reat, il-Qorti għandha tistabbilixxi l-ammont tad-danni li għandu jithallas lil jew minn kull waħda minn dawk il-persuni.

(4) Għall-finijiet ta' dan l-artikolu "parti offiża" tinkludi l-werrieta tagħha jew assenjatarji tal-jeddiijiet ta' dik il-parti jew persuni oħra li jagħmlu talba għal dik il-parti.

Appell.

400B. (1) Jista' jsir appell minn kull ordni magħmul mill-Qorti bis-saħħa ta' l-artikolu 400A ta' dan il-Kodiċi mill-persuna, ordnata tħallas id-danni fl-istess żmien u fl-istess forma u htigiet bħal kull appell ieħor minn sentenza tal-Qorti tal-Pulizija Ġudizzjarja lill-Qorti ta' l-Appelli Kriminali:

Izda dak l-appell jista' jsir flimkien ma' l-appell minn sejba ta' htija jew sentenza, u wkoll jekk ma jkunx sar appell minn sejba ta' htija jew sentenza.

(2) Il-Qorti ta' l-Appelli Kriminali għandha, minkejja d-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar ġurisdizzjoni u ta' kull liġi oħra, ikollha ġurisdizzjoni li tikkonferma, tibdel jew tirrevoka l-ordni magħmul mill-Qorti tal-Pulizija Ġudizzjarja.

Ma jsirux ordnijiet f'ċerti każijiet.

400Ċ. Ordni għall-ħlas ta' danni lil persuna taħt id-dispożizzjonijiet ta' l-artikolu 400A jew 400B ta' dan il-Kodiċi m'għandux isir meta d-danni dovuti lil dik il-persuna jkunu ġew likwidati jew ordnati li jithallsu bis-saħħa ta' sentenza ta' Qorti ta' ġurisdizzjoni ċivili li tkun saret *res judicata*.

Eżekuzzjoni ta' ordni magħmul bis-saħħa ta' l-artikolu 400A jew 400B.

400D. (1) Kull ordni għall-ħlas ta' danni magħmul mill-Qorti bis-saħħa ta' l-artikolu 400A jew 400B ta' dan il-Kodiċi, għandu, meta jsir *res judicata*, ikun titolu eżekuttiv meġius bħala inkluż fost is-sentenzi msemmija fl-artikolu 251 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u jkun eżegwibbli wara jumejn mid-data li isir mill-Qorti li, skond id-dispożizzjonijiet tas-subartikoli (2) u (3) ta' dan l-artikolu ssir kompetenti biex teġgwi dawk l-ordni; u dak l-ordni jista' jiġi hekk eżegwit bil-mezz ta' kull att eżekuttiv imsemmi f'dak il-Kodiċi, bl-istess mod u taħt l-istess kondizzjonijiet kif jiġu eżegwiti atti bħal dawk.

(2) Meta l-ammont tad-danni deċiż mill-Qorti bis-saħħa tad-dispożizzjonijiet ta' l-artikolu 400A jew 400B ta' dan il-Kodiċi jkun iżjed minn Lm250, l-eżekuzzjoni ta' l-ordni msemmija fis-subartikolu (1) ta' dan l-artikolu għandha ssir mill-Qorti Ċivili, Prim'Awla, jew mill-Qorti tal-Maġistrati għall-Gżejjer ta' Għawdex u Kemmuna fil-ġurisdizzjoni ċi-

vili superjuri tagħha skond il-każ — liema ġurisdizzjoni ta' dik il-qorti tiġi stabbilita skond ir-regoli li jinsabu fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar il-ġurisdizzjoni bejn il-Qrati ta' dawn il-Gzejjer.

(3) Meta l-ammont tad-danni deċiż mill-Qorti bis-saħħa tad-dispożizzjonijiet ta' l-artikolu 400A jew 400B ta' dan il-Kodiċi ma jkun iżjed minn Lm250 l-eżekuzzjoni ta' l-ordni msemmija fis-subartikolu (1) ta' dan l-artikolu ssir mill-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja għall-Gżira ta' Malta jew mill-Qorti tal-Pulizija Ġudizzjarja għall-Gzejjer ta' Għawdex u Kemmuna, fil-ġurisdizzjoni ċivili inferjuri tagħha — liema ġurisdizzjoni ta' dik il-qorti tiġi stabbilita skond ir-regoli li jinsabu fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar il-ġurisdizzjoni bejn il-Qrati ta' dawn il-Gzejjer.

(4) Ir-Registatur tal-Qrati għandu jiehu ħsieb li jinżammu kopja ta' l-ordnijiet magħmula mill-Qorti taħt id-dispożizzjonijiet ta' l-artikoli 400A u 400B ta' dan il-Kodiċi u indiċi ta' dawk l-ordnijiet.

Azzjoni
ċivili għal
danni.

400E. (1) Ordni magħmul mill-Qorti tal-Pulizija Ġudizzjarja bis-saħħa ta' l-artikolu 400A jew mill-Qorti ta' l-Appelli Kriminali bis-saħħa ta' l-artikolu 400B ta' dan il-Kodiċi m'għandux iżomm lil xi persuna milli tagħmel talba quddiem il-qorti kompetenti ta' ġurisdizzjoni ċivili għal-likwidazzjoni u l-ħlas ta' danni li jinqalgħu mill-eġemil jew min-nuqqas li jikkostitwixxu r-reat li dwaru jsir l-ordni:

Iżda meta l-ammont hekk likwidat mill-Qorti ta' ġurisdizzjoni ċivili ikun iżjed mill-ammont tad-danni ordnat li jitħallas bis-saħħa ta' l-artikolu 400A jew 400B ta' dan il-Kodiċi, kull somma hekk ordnata li titħallas lil xi persuna għandha tiġi meqjusa f'kull deċiżjoni tal-Qorti ta' ġurisdizzjoni ċivili li tagħti danni lil dik il-persuna dwar l-istess għemil jew nuqqas li għalih jirreferi l-ordni:

Iżda wkoll ebda qorti ta' ġurisdizzjoni ċivili ma tista' tnaqqas xi somma ordnata li titħallas skond l-artikolu 400A jew 400B ta' dan il-Kodiċi.

(2) F'azzjoni quddiem xi qorti ta' ġurisdizzjoni ċivili għal-likwidazzjoni u l-ħlas ta' danni li jinqalgħu minn reat imsemmi fl-artikolu 400A ta' dan il-Kodiċi li tiegħu tkun instabet ħatia, persuna ma tistax iġġib eċċezzjoni għad-difiża tagħha nuqqas ta' responsabbiltà għall-omicidju involontarju, offiża involontaria fuq il-persuna jew tħassir jew ħsara involontarja fi proprjetà, skond il-każ:

Iżda l-Qorti ma tkunx imfixkla milli tiegħu konjizzjoni ta' xi eċċezzjoni dwar ir-responsabbiltà ta' xi persuna oħra li tikkontribwixxi għad-danni li dwarhom l-ordni msemmi fl-artikolu 400A jew 400B ta' dan il-Kodiċi ikun magħmul.

Il-Qorti
Ċivili
tista'
twaqqaf
proċeduri.

400F. Il-Qorti kompetenti ta' ġurisdizzjoni ċivili tista', minkejja d-dispożizzjonijiet ta' l-artikolu 3 ta' dan il-Kodiċi, twaqqaf proċeduri quddiemha sakemm tkun pendenti quddiemha xi proċess dwar xi wieħed mir-reati msemmija fl-artikolu 400A ta' dan il-Kodiċi.

Sospensjoni
ta' certi
żminijiet
legali.

400Ġ. Minkejja kull dispożizzjoni tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, il-persuna li fuq it-talba tagħha xi mandat kawtelatorju jew mandat ta' sekwestru jkun inġareg dwar talba għal danni li jinqalgħu minn reat imsemmi fl-artikolu 400A ta' dan il-Kodiċi ma tkunx obligata li tibda l-azzjoni għal-likwidazzjoni u l-ħlas ta' danni dwar dak ir-reat fiż-żmien stabbilit fl-imsemmi Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jekk, f'dak l-istess żmien, azzjoni kriminali dwar l-egħmil jew in-nuqqas imsemmi fil-mandat jew fis-sekwestru tkun pendent quddiem il-Qorti tal-Pulizija Ġudizzjarja jew f'appell mid-deċiżjoni ta' dik il-qorti, skond il-każ.”.

Ghanijiet u Raġunijiet

L-Abbozz jipprovdi sabiex il-Qorti tal-Pulizija Ġudizzjarja u l-Qorti ta' l-Appelli Kriminali jiġu vestiti b'gurdizzjoni li jordnaw lil persuna misjuba hatja thallas danni lill-parti offiża f'każijiet ta' omiċidju involontarju, offiża involontarja fuq il-persuna jew thassir jew hsara involontarja fi proprejta, u jipprovdi għall-eżekuzzjoni ta' ordni bħal dak.

A BILL
entitled

AN ACT further to amend the Criminal Code, Cap. 12.

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 Criminal Code (Amendment) (No. 2) Act, 1983, and shall be read and construed as one with the Criminal Code, hereinafter referred to as “the principal law”.

(2) This Act shall come into force on the 1st January, 1984.

Addition of new sections to the principal law.

2. Immediately after section 400 of the principal law there shall be added the following new sections:

“Court may order payment of damages.

400A. (1) Where by virtue of any of the provisions of this Code the Court of Judicial Police is competent to try any of the offences mentioned in sections 239, 240 or 342 of this Code arising out of a traffic accident, the Court shall in its judgment order the person found guilty of any such offence to pay by way of damages to the injured party such sum as the Court may establish:

Provided that where the injured party is not known or where his title to receive payment of damages is not established, the Court may order that the sum established by way of damages be deposited in the Registry of such court as the Court may determine, and such deposit shall not be withdrawn without the authorization of such Court:

Provided further that the order may be made by the Court notwithstanding the provisions of the Code of Organization and Civil Procedure relating to jurisdiction and of the Probation of Offenders Act, 1957.

(2) Where, on a plea of the accused that the injury to the property or persons mentioned in the charge

was caused by any other person, or the Court on its own motion deems it expedient so to do, the Court may direct the Executive Police to summon any person to appear before it on a charge for any of the offences referred to in subsection (1) of this section, and the Court shall then proceed with the trial of such charges simultaneously with, or separately from, the trial in which such direction may have been given, as the Court may direct.

(3) Where injury is caused to the person or property of more than one person or where there are more than one person found guilty of the offence, the Court shall establish the entity of the damages due to or by each of such persons.

(4) For the purposes of this section “injured party” includes his heirs or assignees of the rights of such party or other persons claiming under him.

Appeal.

400B. (1) Any order made by the Court in virtue of section 400A of this Code may be appealed against by the person ordered to pay the damages within the same time and in the same form and requirements as any other appeal from a judgment of the Court of Judicial Police to the Court of Criminal Appeal:

Provided that such appeal may be made together with the appeal from a conviction or sentence, and even though an appeal from the conviction or sentence is not made.

(2) The Court of Criminal Appeal shall, notwithstanding the provisions of the Code of Organization and Civil Procedure relating to jurisdiction and of any other law, have jurisdiction to confirm, vary or revoke the order made by the Court of Judicial Police.

Orders not to be made in certain cases.

400C. An order for the payment of damages to a person under the provisions of section 400A or 400B of this Code shall not be made where damages due to such person have been liquidated or ordered to be paid in virtue of a judgment of a Court of civil jurisdiction which has become *res judicata*.

Enforcement of order made in virtue of section 400A or 400B.

400D. (1) Any order for the payment of damages made by the Court in virtue of section 400A or 400B of this Code, shall, on becoming *res judicata*, be an executive title deemed to be included amongst the judgments mentioned in section 251 of the Code of Organization and Civil Procedure and shall be enforceable after two days from the date it is made by the Court which, in accordance with the provisions of subsections (2) and (3) of this section is made competent to enforce such order; and such order may be so enforced by means of any executive act mentioned in the said Code, in the same manner and under the same conditions in which such acts are executed.

(2) Where the amount of the damages awarded by the Court in virtue of section 400A or 400B of this Code exceeds Lm250, the enforcement of the order referred to in subsection (1) of this section shall be effected by the Civil Court, First Hall, or by the Court of Magistrates for the Islands of Gozo and Comino in its superior civil juris-

dition as the case may be — the jurisdiction of such court being determined in accordance with the rules contained in the Code of Organization and Civil Procedure relating to the jurisdiction as between the Courts of these Islands.

(3) Where the amount of the damages awarded by the Court in virtue of the provisions of section 400A or 400B of this Code does not exceed Lm250 the enforcement of the order referred to in subsection (1) of this section shall be effected by the Court of Magistrates of Judicial Police for the Island of Malta or by the Court of Judicial Police for the Islands of Gozo and Comino, in its inferior civil jurisdiction — the jurisdiction of such court being determined in accordance with the rules contained in the Code of Organization and Civil Procedure relating to the jurisdiction as between the Courts of these Islands.

(4) The Registrar of the Courts shall cause to be kept a copy of the orders made by the Court under the provisions of sections 400A and 400B of this Code and an index of such orders.

Civil action for damages.

400E. (1) An order made by the Court of Judicial Police in virtue of section 400A or by the Court of Criminal Appeal in virtue of section 400B of this Code shall not bar any claim by any person before the competent court of civil jurisdiction for the liquidation and payment of damages arising out of the act or omission constituting the offence in respect of which the order is made:

Provided that where the amount so liquidated by the Court of civil jurisdiction exceeds the amount of the damages ordered to be paid in virtue of section 400A or 400B of this Code, any sum so ordered to be paid to any person shall be taken into account in any decision of the Court of civil jurisdiction awarding damages to such person in respect of the same act or omission to which the order refers:

Provided further that no court of civil jurisdiction may reduce any sum ordered to be paid in terms of section 400A or 400B of this Code.

(2) In an action before any court of civil jurisdiction for the liquidation and payment of damages arising out of an offence referred to in section 400A of this Code for which he has been found guilty, a person may not plead in his defence absence of responsibility for the involuntary homicide, involuntary bodily harm or involuntary spoil or damage to property, as the case may be:

Provided that the Court shall not be precluded from taking cognizance of any plea regarding the liability of any other person contributing to the damages in respect of which the order referred to in section 400A or 400B of this Code is made.

Civil court may stay proceedings.

400F. The competent court of civil jurisdiction may, notwithstanding the provisions of section 3 of this Code, stay proceedings before it during the pendency of any trial for any of the offences referred to in section 400A of this Code.

Suspension of certain legal times.

400G. Notwithstanding any provisions of the Code of Organization and Civil Procedure, it shall not be incumbent upon the person at whose request any precautionary warrant or garnishee order has been issued in respect of a claim for damages arising out of an offence referred to in section 400A of this Code, to bring the action for the liquidation and payment of damages in respect of such offence within the time laid down in the said Code of Organization and Civil Procedure if, at that same time, a criminal action in respect of the act or omission stated in the warrant or garnishee order is pending before the Court of Judicial Police or in appeal from the judgment of such court, as the case may be.”.

Objects and Reasons

The Bill provides for vesting the Court of Judicial Police and the Court of Criminal Appeal with jurisdiction to order the person convicted to pay damages to the injured party in cases of involuntary homicide, involuntary bodily harm or involuntary spoil or damage to property, and provides for the enforcement of such order.