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**Nru. 15**

15. 2. 77

**MALTA**

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**KAMRA TAD-DEPUTATI**

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**HOUSE OF REPRESENTATIVES**

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ABBOZZ ta' Ligġi mressaq mill-Onorevoli Joseph Cassar, M.P., Ministru tal-Gustizzja, Artijiet, Djar u Affarijiet tal-Parlament, u moqri għall-Ewwel darba fis-Seduta tal-31 ta' Jannar, 1977.

A BILL introduced by the Honourable Joseph Cassar, M.P., Minister of Justice, Lands, Housing and Parliamentary Affairs, and read the First time at the Sitting of the 31st January, 1977.

**ATT biex ikompli jemenda l-Kodiċi Civili, Kap. 23.**

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**AN ACT further to amend the Civil Code, Cap. 23.**

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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 Ċivili, Kap. 23.*

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-sehh.

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1977 li jemenda l-Kodiċi Ċivili, u għandu jinqara u jiftiehem haġa waħda mal-Kodiċi Ċivili, hawnhekk iżjed 'il quddiem imsejjah "il-liġi prinċipali".

(2) Dan l-Att għandu jitqies li beda jsehh fl-1 ta' Jannar, 1977:

Iżda ebda haġa f'dan l-Att ma għandha tolqot il-validità ta' digriet ta' adozzjoni magħmul qabel dik id-data.

Sostituzzjoni  
ta' l-artikolu 132  
tal-liġi prinċipali.

2. Minflok l-artikolu 132 tal-liġi prinċipali għandu jidhol dan li ġej:

"Restriz-  
zjonijiet  
fl-ghoti ta'  
digrjeti ta'  
adozzjoni.

132. (1) Digriet ta' adozzjoni ma jingħatax hlief jekk ir-rikorrent jew, fil-każ ta' rikors minn aktar minn persuna waħda flimkien, wieħed mir-rikorrenti —

(a) ikun laħaq l-età ta' tletin sena iżda mhux l-età ta' sittin sena u ma jkollux mill-anqas wieħed u għoxrin sena iżjed mill-persuna li tkun se tiġi adottata; jew

(b) ikun l-omm jew il-missier tal-persuna li tkun se tiġi adottata u jkun laħaq l-età maġġuri.

(2) Digriet ta' adozzjoni ma jingħatax —

(a) dwar persuna li tkun laħqet l-età ta' tmintax-il sena hlief favur rikorrent waħdieni li jkun l-omm jew il-missier tal-persuna li tkun se tiġi adottata; jew

(b) dwar persuna ta' sess femminil favur rikorrent waħdieni li jkun ta' sess maskil, kemm-il darba l-Qorti ma tkunx sodisfatta li jkun hemm ċirkostanzi

speċjali li jiġġustifikaw bħala miżura eċċezzjonali l-ghoti ta' digriet ta' adozzjoni; jew

(ċ) favur persuna li tkun hadet l-ordni sagri jew tkun marbuta bil-voti solenni ta' professjoni reliġjuża,

(d) favur tutur dwar il-persuna li tkun jew kienet taħt it-tutela tiegħu, hlief wara li jkun ta kont ta' l-amministrazzjoni tiegħu jew ta garanzija xierqa ta' l-ghoti ta' dak il-kont.

(3) Bla hsara għad-disposizzjonijiet ta' l-artikolu 134 ma jinghatax digriet ta' adozzjoni —

(a) f'kull każ, barra minn fil-każ ta' persuna illeġittima, hlief bil-kunsens ta' kull wieħed mill-ġenituri tal-persuna li tkun se tiġi adottata li tkun hajja;

(b) fil-każ ta' persuna illeġittima, hlief bil-kunsens ta' l-omm, jekk din tkun hajja;

(ċ) fuq rikors magħmul mir-raġel jew mill-mara skond id-disposizzjonijiet tas-subartikolu (2) ta' l-artikolu 131, hlief bil-kunsens tal-mizzewweg l-iehor;

(d) meta l-persuna li tkun se tiġi adottata tkun għalqet l-erbatax-il sena, hlief bil-kunsens tagħha.

(4) Bla hsara għad-disposizzjonijiet ta' l-artikolu 134, qabel ma taghti digriet ta' adozzjoni l-Qorti għandha —

(a) fil-każ ta' persuna illeġittima, tisma' lill-missier naturali jekk dan ikun għaraf b'ibnu lill-persuna li tkun se tiġi adottata jew jekk il-Qorti tkun sodisfatta li jkun ikkontribwixxa għall-manteniment tagħha jew ikun wera interess ġenwin u kontinwu fiha;

(b) meta l-persuna li tkun se tiġi adottata tkun taħt tutela jew tkun qed tghix ma' persuna li ma tkunx l-omm jew il-missier tagħha iżda li jkollha fil-fatt il-kura u kustodja tagħha, tisma' lit-tutor jew lill-persuna li jkollha fil-fatt dik il-kura u kustodja, skond il-każ.”

3. Minflok l-artikolu 133 tal-liġi prinċipali għandu jidhol dan li ġej:

“Kura u pussess ta' persuni li jkunu se jiġu adottati qabel l-adozzjoni.

133. (1) Hlief meta r-rikorrent jew wieħed mir-rikorrenti jkun l-omm jew il-missier tal-persuna li tkun se tiġi adottata, ma jinghatax digriet ta' adozzjoni jekk il-persuna li tkun se tiġi adottata ma kinitx kontinwament fil-kura u l-pussess tar-rikorrent għal mill-inqas tliet xhur konsekuttivi minnufih qabel id-data tad-digriet ta' adozzjoni, bla ma jinghadd ebda żmien qabel id-data li tidher lill-Qorti li tkun id-data li fiha l-persuna li tkun se tiġi adottata tkun għalqet l-età ta' sitt ġinghat.

(2) Hlief meta r-rikorrent jew wieħed mir-rikorrenti jkun l-omm jew il-missier tal-persuna li tkun se tiġi adottata, ma jinghatax digriet ta' adozzjoni dwar persuna li waqt is-smiegh tar-rikors tkun taħt l-oghla limiti ta' l-età ta' tagħlim obligatorju kemm-il darba r-rikorrent, mill-anqas tliet xhur qabel dak id-digriet, ma jkunx ta avviż bil-miktub lill-awtorità preskritta dwar il-hsieb tiegħu li jitlob digriet ta' adozzjoni dwar dik il-persuna.

Sostituzzjoni ta' l-artikolu 133 tal-liġi prinċipali.

(3) Waqt li rikors għal adozzjoni jkun pendent quddiem xi Qorti, kull omm jew missier tal-persuna li tkun se tiġi adottata li jkun ta l-kunsens tiegħu għall-ghoti ta' digriet ta' adozzjoni wara r-rikors u kull tutur ma jkollux dritt, hliet bil-permess tal-Qorti, li jnehhi lill-persuna li tkun se tiġi adottata mill-kura u pussess tar-rikorrent; u meta tqis jekk taghtix jew tiċhadx il-permess il-Qorti għandha tiegħu qies tal-gid tal-persuna li tkun se tiġi adottata.”.

Emenda ta' l-artikolu 135 tal-liġi prinċipali.

4. Fis-subartikolu (2) ta' l-artikolu 135 tal-liġi prinċipali minflok il-kelma “minuri” kull fejn tinsab għandhom jidhlu f'kull każ il-kliem “persuna li tkun se tiġi adottata”.

Emenda ta' l-artikolu 137 tal-liġi prinċipali.

5. Fl-artikolu 137 tal-liġi prinċipali minflok il-kelma “minuri” kull fejn tinsab għandhom jidhlu f'kull każ il-kliem “persuna li tkun se tiġi adottata”.

Emenda ta' l-artikolu 139 tal-liġi prinċipali.

6. L-artikolu 139 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) minflok il-kelma “minuri” kull fejn tinsab għandha tidhlo f'kull każ il-kelma “persuna”; u

(b) fis-subartikolu (2) minflok il-kelma “minuri” għandha tidhlo il-kelma “persuna” u minflok il-kliem “il-minuri” għandhom jidhlu f'kull każ il-kliem “dik il-persuna”.

### Għanijiet u Raġunijiet

L-Għan ta' dan l-Abbozz huwa li jirrestringi l-adozzjoni għal persuni li bejniet-hom tista' titwaqqaf rabta legali ta' bejn ġenituri u wlied minflok ir-rabta naturali. Għaldaqshekk, b'seħħ mill-1 ta' Jannar, 1977, l-adozzjoni tkun ristretta għal minuri, u persuni li jkollhom 'il fuq min sittin sena ma jkunux jistgħu jadottaw. B'danakollu qed issir eċċezzjoni dwar il-ġenituri naturali ta' l-ulied.

**A BILL****entitled**

*AN ACT further to amend the Civil Code, Cap. 23.*

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. (1) This Act may be cited as the Civil Code (Amendment) Act, 1977, and shall be read and construed as one with the Civil Code, hereinafter referred to as "the principal law".

Short title and commencement.

(2) This Act shall be deemed to have come into force on the 1st day of January, 1977:

Provided that nothing in this Act shall affect the validity of any adoption decree made before that date.

2. For section 132 of the principal law there shall be substituted the following:

Substitution of section 132 of the principal law.

"Restrictions on making of adoption decrees.

132. (1) An adoption decree shall not be made unless the applicant or, in the case of a joint application, one of the applicants —

(a) has attained the age of thirty years but has not attained the age of sixty years and is at least twenty-one years older than the person to be adopted; or

(b) is the mother or father of the person to be adopted and has attained majority.

(2) An adoption decree shall not be made —

(a) in respect of a person who has attained the age of eighteen years except in favour of a sole applicant who is the mother or the father of the person to be adopted; or

(b) in respect of a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption decree; or

(c) in favour of a person who is in holy orders or bound by solemn religious vows,

(d) in favour of a tutor in respect of the person who is or was under his tutorship, except after having rendered an account of his administration or given adequate guarantee of the rendering of such account.

(3) Subject to the provisions of section 134, an adoption decree shall also not be made —

(a) in any case, other than the case of an illegitimate person, except with the consent of every person who is a parent of the person to be adopted and is alive;

(b) in the case of an illegitimate person, except with the consent of the mother if she is alive;

(c) on the application of one of two spouses under the provisions of subsection (2) of section 131, except with the consent of the other spouse;

(d) when the person to be adopted has attained the age of fourteen years, except with his consent.

(4) Subject to the provisions of section 134, before an adoption decree is made the Court shall —

(a) in the case of an illegitimate person, hear the natural father if he has acknowledged the person to be adopted as his child or if the Court is satisfied that he has contributed towards his maintenance or has shown a genuine and continuing interest in him;

(b) where the person to be adopted is under tutorship or is living with a person who is not his parent but who has his care and custody in fact, hear the tutor or the person who has such care and custody in fact, as the case may be.”

Substitution of section 133 of the principal law.

3. For section 133 of the principal law there shall be substituted the following:

“Care and possession of persons to be adopted before adoption.

133. (1) Except where the applicant or one of the applicants is a parent of the person to be adopted an adoption decree shall not be made unless the person to be adopted has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree, not counting any time before the date which appears to the Court to be the date on which the person to be adopted attained the age of six weeks.

(2) Except where the applicant or one of the applicants is a parent of the person to be adopted, an adoption decree shall not be made in respect of a person who at the hearing of the application is below the upper limit of the compulsory schoolage unless the applicant has, at

least three months before the date of the decree, given notice in writing to the prescribed authority of his intention to apply for an adoption decree in respect of that person.

(3) Where an application for adoption is pending in any Court, any parent of the person to be adopted who has signified his consent to the making of an adoption decree in pursuance of the application and any tutor shall not be entitled, except with the leave of the Court, to remove the person to be adopted from the care and possession of the applicant; and in considering whether to grant or refuse such leave the Court shall have regard to the welfare of the person to be adopted."

4. In subsection (2) of section 135 of the principal law for the word "minor" wherever it occurs there shall be substituted in each case the words "person to be adopted". Amendment of section 135 of the principal law.

5. In section 137 of the principal law for the word "minor" wherever it occurs there shall be substituted in each case the words "person to be adopted". Amendment of section 137 of the principal law.

6. Section 139 of the principal law shall be amended as follows: Amendment of section 139 of the principal law.

(a) in subsection (1) for the word "minor" wherever it occurs there shall be substituted in each case the word "person"; and

(b) in subsection (2) for the word "minor" there shall be substituted the word "person" and for the words "the minor" wherever they occur there shall be substituted in each case "that person".

### Objects and Reasons

The Object of this Bill is to restrict adoption to persons between whom a parent-child relationship can be established by law to replace that resulting from natural parenthood. Consequently, with effect from 1st January, 1977, adoption will be restricted to minors, and persons over the age of sixty years will not be capable of adopting. An exception is, however, made in respect of the natural parents of the child.