

Nru. 147

6. 6. 80

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Brincat, M.P., Ministru tal-Gustizzja, Artijiet, Djar u Affarijiet tal-Parlament f'isem l-Onor. Vincent Moran, M.P., Ministru tas-Sahħa u ta' l-Ambjent, u moqri għall-Ewwel Darba fis-Seduta tas-27 ta' Mejju, 1980.

A BILL introduced by the Honourable Joseph Brincat, M.P., Minister of Justice, Lands, Housing and Parliamentary Affairs on behalf of the Hon. Vincent Moran, M.P., Minister of Health and Environment, and read the First time at the Sitting of the 27th May, 1980.

ATT biex ikompli jemenda l-Ordinanza dwar il-Mediċini Perikulużi, Kap. 161.

AN ACT further to amend the Dangerous Drugs Ordinance, Cap. 161.

C. MIFSUD

Skrivan tal-Kamra tad-Deputati

C. MIFSUD

Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjah

ATT biex ikompli jemenda l-Ordinanza dwar il-Mediċini Perikolużi, Kap. 161.

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.

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1980 li jemenda l-Ordinanza dwar il-Mediċini Perikolużi, u għandu jinqara u jiftiehem haġa waħda ma' l-Ordinanza dwar il-Mediċini Perikolużi, hawnhekk iżjed 'il quddiem imsejja "il-liġi prinċipali".

Emenda ta' l-artikolu 2 tal-liġi prinċipali.

2. Fl-artikolu 2 tal-liġi prinċipali, minflok it-tifsira ta' "qanneb Indjan" għandu jidhol dan li ġej:

"qanneb Indjan" tfisser il-pjanta magħrufa bl-isem ta' *Cannabis sativa*, u tinkludi kull parti minnha;".

Sostituzzjoni ta' l-artikolu 8 tal-liġi prinċipali.

3. Minflok l-artikolu 8 tal-liġi prinċipali għandu jidhol dan li ġej:

"8. Ikun ħati ta' reat kontra din l-Ordinanza kull min —

(a) ikollu fil-pussess tiegħu (ħlief fil-kors ta' transitu minn dawn il-Gżejjer jew mill-ibħra territorjali tagħhom), ir-raża meħuda mill-pjanta *Cannabis sativa* jew xi preparazzjonijiet li jkollhom bħala bażi din ir-raża; jew

(b) jipproduċi, ibiegh jew xort'oħra jittraffika fir-raża meħuda mill-pjanta *Cannabis sativa* jew f'xi preparazzjonijiet li jkollhom bħala bażi din ir-raża; jew

(ċ) jikkoltiva l-pjanta *Cannabis sativa*; jew

(d) ikollu fil-pussess tiegħu (ħlief fil-kors ta' transitu minn dawn il-Gżejjer jew mill-ibħra territorjali tagħhom) il-pjanta *Cannabis sativa* kollha jew biċċa minnha (minbarra l-preparazzjonijiet mediċinali tagħha); jew

(e) ibiegh jew xort'oħra jittraffika fil-pjanta *Cannabis sativa* kollha jew biċċa minnha (minbarra l-preparazzjonijiet mediċinali tagħha)."

4. Is-subartikolu (2) ta' l-artikolu 21 tal-liġi prinċipali għandu jit-

Emenda ta'
l-artikolu 21
tal-liġi prinċipali.

5. L-artikolu 22 tal-liġi prinċipali għandu jiġi emendat kif ġej:

Emenda ta'
l-artikolu 22
tal-liġi prinċipali.

(a) minflok is-subartikoli (2) u (3) ta' l-artikolu 22 tal-liġi prinċipali għandu jidhol dan li ġej:

“(2) Kull persuna akkużata b'reat kontra din l-Ordinanza għandha titressaq jew quddiem il-Qorti Kriminali jew quddiem il-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja skond kif jordna l-Avukat Ġenerali, u jekk tinsab hatja tehel, għal kull reat —

(a) meta tinsab hatja mill-Qorti Kriminali priġunerija għal żmien ta' mhux inqas minn tnax-il xahar iżda mhux iżjed minn għaxar snin u multa ta' mhux inqas minn mitejn lira iżda mhux iżjed minn għaxart elef lira; jew

(b) meta tinsab hatja mill-Qorti tal-Maġistrati —

(i) fil-każ ta' l-ewwel reat, barra minn meta tinsab hatja ta' reat taħt il-paragrafu (b), (ċ) jew (e) ta' l-artikolu 8, multa ta' mhux inqas minn mitt lira iżda mhux iżjed minn elf lira jew priġunerija għal żmien ta' mhux inqas minn tlitt xhur iżda mhux iżjed minn tnax-il xahar, jew dik il-multa u priġunerija flimkien;

u

(ii) fil-każ li tinsab hatja ta' reat taħt il-paragrafu (b), (ċ) jew (e) ta' l-artikolu 8, u fil-każ li tinsab hatja t-tieni darba jew drabi oħra wara priġunerija għal żmien ta' mhux inqas minn sitt xhur iżda mhux iżjed minn erba' snin u multa ta' mhux inqas minn mitejn lira iżda mhux iżjed minn elfejn lira;

u f'kull każ li persuna tinsab hatja ta' reat kontra din l-Ordinanza, l-oġġetti kollha li dwarhom ikun sar ir-reat jiġu konfiskati favur il-Gvern, u kull oġġett hekk ikkonfiskat għandu, jekk il-Qorti hekk tordna, jiġi distrutt jew isir minnu xort'oħra kif jista' jiġi provdut fl-ordni:

Izda meta l-Avukat Ġenerali jew il-Qorti, skond il-każ, ikunu sodisfatti li min jagħmel ir-reat ma jkun persuna li tikkoltiva, tipproduċi, tbiegħ jew xort'oħra tittraffika f'xi mediċina, u r-reat jikkonsisti biss fil-pussess ta' mediċina perikoluża għall-użu ta' min jagħmel ir-reat biss, jew ta' strumenti għal dak l-għan, jew jikkonsisti fit-tehid ta' xi mediċina bħal dik —

(i) kull persuna bħal dik ma għandhiex titressaq quddiem il-Qorti Kriminali u ma tkunx sugġetta għall-priġunerija, u

(ii) meta xi persuna kif intqal qabel tkun, fid-data li fiha jkun magħruf li sar ir-reat, registrata bħala persuna li tkun qed tircievi kura għal dipendenza fuq mediċini, f'dak il-mod u skond dawk l-arrangamenti li jkunu saru mill-Ministru responsabbli għas-saħħa, u tkun ċertifikata taħt dawk l-arrangamenti li tkun qed tagħmel il-kura preskritta lilha, dik il-persuna tkun eżentata minn kull piena dwar kull wieħed mill-imsemmija reati li jkunu saru waqt li tkun registrata kif intqal qabel.

(3) Meta reat kontra din l-Ordinanza li dwaru persuna tkun instabet hatja jkun, jew ikollu x'jaqsam ma', kultivazzjoni

ta' pjanta f'għalqa, għnien jew xi post ieħor bħal dan, il-Qorti għandha, b'zieda ma' kull piena oħra tordna l-konfiska favur il-Gvern tal-proprjetà kollha mobbli li fiha jkun sar ir-reat kif deskritt fl-att ta' l-akkuża jew fl-akkuża:

Iżda meta ebda waħda mill-persuni misjuba hatja kif intqal qabel ma tkun il-proprjetarju assolut jew komproprietarju jew proprjetarju sugġett għall-użufrutt tal-proprjetà immobbli, u tkun għand min jagħmel ir-reat b'xi titolu ieħor, il-Qorti għandha tordna l-konfiska ta' dak it-titolu favur il-Gvern.”; u

(b) minnufih wara s-subartikolu (5) tiegħu għandhom jizdiedu s-subartikoli godda li ġejjin:

“(6) Meta reat li dwaru persuna tinsab hatja taħt din l-Ordinanza jkun jikkonsisti fil-produzzjoni, il-bejgħ jew traffikar ieħor f'medicina msemmiya f'din l-Ordinanza, u dik il-persuna jew ikollha liċenza taħt din l-Ordinanza jew taħt l-Ordinanza dwar il-Professjoni Medika jew il-Professjonijiet li għandhom x'jaqsmu magħha, jew ikollha *warrant* maħruġ taħt dik l-Ordinanza biex teżerċita professjoni, jew xogħol jew sengħa, jew ir-reat isir f'post li dwaru jkun hemm liċenza taħt din l-Ordinanza jew taħt l-Ordinanza qabel imsemmija, il-Qorti għandha, fuq it-talba tal-prosekuzzjoni u b'zieda ma' kull piena oħra, tordna r-revoka ta' dik il-liċenza jew ta' dak il-*warrant* u malli jkun sar dak l-ordni kull liċenza bħal dik jew *warrant* bħal dak għandu jieqaf milli jkollu effett għall-finijiet kollha tal-liġi u b'mod partikolari għall-finijiet ta' din l-Ordinanza u ta' l-Ordinanza msemmiya qabel.

(7) Kull deċiżjoni kif imsemmija fis-subartikolu (3) li tordna l-konfiska ta' xi titolu ta' proprjetà immobbli għandha titqies li hi u għandha tiġi eżegwita bħal sentenza Ċivili li tittrasferixxi dak it-titolu favur il-Gvern, u l-Avukat Ġenerali għandu, għall-finijiet ta l-artikolu 237 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jitqies li hu l-parti nteressata li tista' tikseb ir-registrazzjoni ta' dak it-trasferiment.

(8) Meta jirriżulta lill-Qorti, li min jagħmel ir-reat ma jkunx persuna illi tikkoltiva, tipproduċi, tbiegħ jew xort'oħra tittraffika f'xi medicina, u jkun jinħtieġ ħarsien u għajnuna medika biex jiġi rijabilitat, il-Qorti tista', minflok li tapplika xi waħda mill-pieni provduti fis-subartikoli ta' qabel, tordna li min jagħmel ir-reat jintbagħat f'istituzzjoni msemmiya għal dak l-għan mill-Ministru responsabbli għas-saħħa sabiex ikun jista' jingħata l-kura meħtieġa.

Il-Qorti għandha tara li dak l-ordni jintbagħat minnufih lill-Ministru responsabbli għas-saħħa, u l-Ministru għandu jagħti dawk id-direttivi li jidhirlu xierqa għall-ħarsien u kura ta' dik il-persuna.”.

Għanijiet u Ragunijiet

L-Għan ewlieni ta' l-Abbozz huwa li jimponi pieni aktar ħorox fuq *pushers* ta' drogi u li jipprova li jirrijabilita, iktar milli jikkastiga, lil dawk li jiddependu fuq id-drogi.

A BILL
entitled

AN ACT further to amend the Dangerous Drugs Ordinance, Cap. 161.

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:—

- | | |
|--|--|
| <p>1. This Act may be cited as the Dangerous Drugs (Amendment) Act, 1980, and shall be read and construed as one with the Dangerous Drugs Ordinance, hereinafter referred to as “the principal law”.</p> | <p>Short title.</p> |
| <p>2. In section 2 of the principal law, for the definition of ‘Indian hemp’ there shall be substituted the following:
 ‘Indian hemp’ means the plant known as <i>Cannabis sativa</i>, and includes any part thereof;”.</p> | <p>Amendment of section 2 of the principal law.</p> |
| <p>3. For section 8 of the principal law there shall be substituted the following:
 “8. If any person —
 (a) has in his possession (otherwise than in the course of transit through these Islands or the territorial waters thereof) the resin obtain from the plant <i>Cannabis sativa</i> or any preparations of which such resin formed the base; or
 (b) produces, sells or otherwise deals in the resin obtain from the plant <i>Cannabis sativa</i> or any preparations of which such resin formed the base; or
 (c) cultivates the plant <i>Cannabis sativa</i>; or
 (d) has in his possession (otherwise than in the course of transit through these Islands or the territorial waters thereof) the whole or any portion of the plant <i>Cannabis sativa</i> (excluding its medicinal preparations); or
 (e) sells or otherwise deals in the whole or any portion of the plant <i>Cannabis sativa</i> (excluding its medicinal preparations),
 he shall be guilty of an offence against this Ordinance.”.</p> | <p>Substitution of section 8 of the principal law.</p> |

Amendment of section 21 of the principal law.

4. Subsection (2) of section 21 of the principal law shall be deleted.

Amendment of section 22 of the principal law.

5. Section 22 of the principal law shall be amended as follows:

(a) for subsections (2) and (3) of section 22 of the principal law there shall be substituted the following:

“(2) Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates of Judicial Police as the Attorney General may direct and if he is found guilty shall, in respect of each offence, be liable —

(a) on conviction by the Criminal Court to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than two hundred pounds but not exceeding ten thousand pounds; or

(b) on conviction by the Court of Magistrates —

(i) in the case of a first conviction, other than a conviction for an offence under paragraph (b), (c) or (e) of section 8, to a fine (*multa*) of not less than hundred pounds but not exceeding one thousand pounds or to imprisonment for a term of not less than three months but not exceeding twelve months, or to both such fines and imprisonment; and

(ii) in case of a conviction for an offence under paragraph (b), (c) or (e) of section 8, and in the case of a second or subsequent conviction to imprisonment for a term of not less than six months but not exceeding four years and to a fine (*multa*) of not less than two hundred pounds but not exceeding two thousand pounds;

and in every case of conviction for an offence against this Ordinance, all articles in respect of which the offence was committed shall be forfeited to the Government, and any such forfeited article shall, if the Court so orders, be destroyed or otherwise disposed of as may be provided in the order:

Provided that where the Attorney General or the Court, as the case may be, is satisfied that the offender is not a person who cultivates, produces, sells or otherwise deals in any drug, and the offence consists only in the possession of a dangerous drug for the exclusive use of the offender, or of utensils for that purpose, or consists in the taking of any such drug —

(i) any such person shall not be tried before the Criminal Court and shall not be liable to imprisonment, and

(ii) where any such person as aforesaid is, on the date on which the offence is discovered, registered as a person who is under treatment for addiction to drugs, in such manner and in accordance with such

arrangements as may have been made by the Minister responsible for health, and, is certified under those arrangements to be following the treatment prescribed to him, such person shall be exempt from any punishment in respect of any of the said offences committed while he was registered as aforesaid.

(3) Where an offence against this Ordinance in respect of which a person has been found guilty consists in or refers to the cultivation of a plant in a field, garden or similar tenement, the Court shall, in addition to any other punishment order the forfeiture in favour of the Government of the entire immovable property in which the offence took place as described in the bill of indictment or in the charge:

Provided that where none of the persons found guilty as aforesaid is an absolute owner or co-owner or bare-owner of the immovable property, and the offender holds it on any other title, the Court shall order the forfeiture of such title in favour of the Government.”; and

(b) immediately after subsection (5) thereof there shall be added the following new subsection:

“(6) Where the offence in respect of which a person is found guilty under this Ordinance consists in the production, selling or otherwise dealing in a drug mentioned in this Ordinance, and such person is either licensed under this Ordinance or under the Medical and Kindred Professions Ordinance, or is in possession of a warrant issued under that Ordinance to practise a profession, or a calling or a trade, or the offence is committed in a place licensed under this Ordinance or the Ordinance aforesaid, the Court shall, at the request of the prosecution and in addition to any other punishment, order the revocation of such licence or warrant, and upon such order being made any such licence or warrant shall cease to have effect for all purposes of law and in particular for the purposes of this Ordinance and of the Ordinance aforesaid.

Cap. 51

(7) Any decision as is mentioned in subsection (3) ordering the forfeiture of any title to immovable property shall be deemed to be and shall be enforceable as a Civil judgment transferring that title in favour of the Government, and the Attorney General shall, for the purposes of section 237 of the Code of Organisation and Civil Procedure, be considered as the interested party that may obtain the registration of such transfer.

(8) Where it results to the Court, that the offender, not being a person who cultivates, produces, sells or otherwise deals in any drug, is in need of medical care and assistance for his rehabilitation, the Court may, instead of applying any of the punishments provided for in the foregoing subsections, order that the offender be remitted to an institution designated for the purpose by the Minister responsible for health in order that he may be given the necessary treatment.

The Court shall cause such order to be forthwith conveyed to the Minister responsible for health, who will give such directives as he may deem fit for the care and treatment of any such person."

Objects and Reasons

The main Object of the Bill is to impose harsher punishments on the "pushers" of drugs and to attempt to rehabilitate, rather than punish, drug addicts.