

## ABBOZZ TA' LIĠI msejjah

*ATT biex jemenda l-Kodiċi Ċivili, Kap. 16.*

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. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2010 li jemenda l-Kodiċi Ċivili, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Kodiċi Ċivili, hawnhekk iżjed 'il quddiem f'dan l-Att imsejjah "il-Kodiċi".

Titolu fil-qosor  
u bidu fis-sehh.  
Kap. 16.

(2) Dan l-Att għandu jidhol fis-sehh f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. L-artikolu 70 tal-Kodiċi għandu jiġi emendat kif ġej:

Emenda tal-  
artikolu 70 tal-  
Kodiċi.

(a) is-subartikolu (2) tiegħu għandu jiġi sostitwit bis-subartikolu li ġej:

"(2) Id-dikjarazzjoni tal-omm fis-sens li żewġha mhux missier it-tifel għandha tingħata konsiderazzjoni f'kawża li tkun tirrigwarda l-esklużjoni tal-paternità tar-raġel."; u

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "Il-qorti tista f'kawża għaċ-ċaħda" għandhom jidhlu l-kliem "Il-Qorti tal-Familja fis-sezzjoni volontarja tagħha tista f'kawża għaċ-ċaħda".

Sostituzzjoni  
tal-artikolu 77  
tal-Kodiċi.

**3. L-artikolu 77 tal-Kodiċi għandu jiġi sostitwit bl-artikolu  
ġdid li ġejj:**

"Impossibbiltà  
fiżika ta' raġel  
li jgħammar  
ma' martu jew  
provi oħra.

77. Bla ħsara għal dak li jiddisponi l-  
artikolu 81, il-filjazzjoni ta' tifel imwieled  
matul iż-żwieġ tista' tiġi attakkata wkoll minn  
kull min ikollu interess:

(a) jekk jipprova illi, fiż-żmien  
bejn it-tliet mitt ġurnata u l-mija u t-  
tmenin ġurnata qabel it-twelid tat-tifel,  
ir-raġel kien fl-impossibbiltà fiżika li  
jgħammar ma' martu minhabba li kien  
bogħod minnha jew minhabba xi  
aċċident ieħor; jew

(b) jekk jipprova li fiż-żmien  
hawn fuq imsemmi l-mara kienet  
wettqet adulterju u barra minn hekk  
jipprova xi fatt ieħor li jista' wkoll ikun  
testijiet u provi ġenetiċi u xjentifiċi li  
x'aktarx jeskludu lir-raġel bħala l-  
missier naturali tat-tifel."

Żjieda  
ta' artikoli  
ġodda mal-  
Kodiċi.

**4. Minnufih wara l-artikolu 77 tal-Kodiċi għandhom jiżiedu  
l-artikoli ġodda li ġejjin:**

"Rikors għal  
dikjarazzjoni  
ta' paternità.

77A. Bla ħsara għal dak li jiddisponi l-  
artikolu 81, kull min jgħid li huwa l-missier  
naturali ta' tifel mwieled fiż-żwieġ, jew il-  
werrieta tiegħu jekk huwa jkun miet qabel ma  
jitwielew it-tifel, jista' jmexxi b'rikors  
ġuramentat quddiem il-qorti kompetenti  
kontra l-mara, ir-raġel u t-tifel, jew il-werrieta  
rispettivi tagħhom jekk xi hadd minnhom  
ikun mejjet, sabiex huwa jiġi dikjarat bħala l-  
missier naturali tat-tifel u dan jekk kemm-il  
darba huwa jirnexxilu jipprova li fiż-żmien  
bejn it-tliet mitt ġurnata u l-mija u t-  
tmenin ġurnata qabel it-twelid tat-tifel il-mara kienet  
wettqet adulterju miegħu u barra minn hekk  
jipprova xi fatt ieħor li jista' wkoll ikunu  
testijiet u provi ġenetiċi u xjentifiċi li x'aktarx  
jeskludu lir-raġel tagħha bħala l-missier  
naturali tat-tifel.

Talba tista' tigi eżerċitata wkoll mill-mara.

77B. It-talba ġudizzjarja għad-dikjarazzjoni ta' paternità kif imsemmija fl-artikolu ta' qabel dan tista' wkoll tigi eżerċitata mill-mara permezz ta' rikors ġuramentat quddiem il-qorti kompetenti kontra r-raġel tagħha, il-missier naturali u t-tifel tagħha imwieled fiż-żwieġ jekk kemm-il darba hija tipprova li fiż-żmien bejn it-tliet mitt ġurnata u l-mija u t-tmenin ġurnata qabel it-twelid tat-tifel hija kienet wettqet adulterju ma' dik il-persuna li qegħda tintalab li tigi ddikjarata bħala l-missier naturali tat-tifel u barra minn hekk tipprova xi fatt ieħor li jista' wkoll ikunu testijiet u provi ġenetiċi u xjentifiċi li x'aktarx jindikaw lil dik il-persuna bħala l-missier naturali tat-tifel.

Rikors ġuramentat fi żmien sitt xhur mit-twelid tat-tifel.

77Ċ. Fil-każijiet imsemmija fl-artikoli 77, 77 A u 77 B il-persuna li tghid li hija l-missier tat-tifel imwieled fiż-żwieġ, jew il-mara skont il-każ, jistgħu jipproċedu b'kawża għal dikjarazzjoni ta' paternità jekk huma jressqu r-rikors ġuramentat tagħhom fi żmien sitt xhur mit-twelid tat-tifel:

Iżda l-Qorti tal-Familja fis-sezzjoni volontarja tagħha tista', wara li jsir rikors mill-persuna li tghid li hija l-missier tat-tifel imwieled fiż-żwieġ jew mill-mara u, jekk ikun possibli wara li tkun semgħet lill-partijiet interessati kollha, u wara li tkun qieset id-drittijiet tar-rikorrenti u tat-tifel, f'kull żmien tawtorizza lill-persuna li tghid li hija l-missier tat-tifel imwieled fiż-żwieġ jew lill-mara biex jibdew kawża għal dikjarazzjoni ta' paternità kif imsemmi fl-artikoli 77A u 77 B:

Iżda wkoll, meta l-filjazzjoni ta' persuna tkun giet dikjarata mill-qorti, kull min b'konsegwenza ta' dik id-dikjarazzjoni jkun ser jassumi kunjom li ma jkunx il-kunjom użat minnu qabel dik id-dikjarazzjoni, jew ir-rappreżentant legittimu tiegħu, jista' jitlob lill-qorti kompetenti b'rikors kontra d-Direttur tar-Reġistru Pubbliku li jithalla juża' dak il-kunjom l-iehor, u jekk il-qorti tkun sodisfatta li b'dak l-użu ma jkunux ser jiġu preġudikati terzi u, fejn ir-rikors ikun sar għan-nom ta' minuri, li dak l-użu jkun fl-ahjar interess tal-minuri, hija għandha tilqa' dik it-talba u tordna lid-Direttur inizzel annotazzjoni tad-deċiżjoni mogħtija minnha fuq l-att ta' twelid rilevanti ta' min tkun giet hekk dikjarata l-filjazzjoni tiegħu.

Eżamijiet kif imsemmija fl-artikolu 70(3).

77D. F'kawżi li għalihom jagħmlu referenza l-artikoli 77, 77A, 77B u 77Ċ, il-qorti tista' tistieden lill-partijiet biex jissottomettu ruhhom għal eżamijiet kif imsemmija fl-artikolu 70(3)."

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### **Għanijiet u Raġunijiet**

L-għan ta' dan l-Abbozz ta' Liġi huwa biex jiġu aġġornati d-disposizzjonijiet dwar il-filjazzjoni fil-Kodiċi Ċivili.

**A BILL  
entitled**

*AN ACT to amend the Civil Code, Cap. 16.*

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) The short title of this Act is the Civil Code (Amendment) Act, 2010, and this Act shall be read and construed as one with the Civil Code, hereinafter in this Act referred to as "the Code".

Short title and commencement.

Cap. 16.

(2) This Act shall come into force on such a date as the Minister responsible for Justice may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act.

**2.** Article 70 of the Act shall be amended as follows:

Amendment of article 70 of the Code.

(a) sub-article (2) thereof shall be substituted by the following sub-article:

"(2) The declaration of the mother to the effect that the husband is not the father of the child shall be given consideration in an action regarding the exclusion of the paternity of the husband"; and

(b) in sub-article (3) thereof, for the words "The court may in an action of disavowal" there shall be substituted the words "The Family Court in its voluntary jurisdiction may in an action of disavowal".

Substitution of article 77 of the Code.

**3. Article 77 of the Code shall be substituted by the following new article:**

"Husband's physical impossibility of cohabitation.

77. Without prejudice to the provisions of article 81, the filiation of a child born in wedlock may also be impeached by any person interested:

(a) if he proves that, during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child, the husband was in the physical impossibility of cohabiting with his wife on account of his being away from her or some other accident; or

(b) if he proves that, during the said time the wife had committed adultery, and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude the husband as the natural father of the child."

Addition of new articles to the Code.

**4. Immediately after article 77 of the Code there shall be added the following new articles::**

"Application for declaration of paternity.

77A. Without prejudice to the provisions of article 81, any person claiming to be the natural father of a child born in wedlock, or his heirs if the person was deceased before the child is born, may proceed by sworn application before the competent court against the wife, husband and child, or their respective heirs if any one of them is deceased, in order to be declared as the natural father of the child and only if he produces evidence that during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child, the wife had committed adultery with him and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to exclude the husband as the natural father of the child.

Demand may also be exercised by the wife.

77B. A judicial demand for a declaration of paternity as mentioned in the previous article may also be exercised by the wife by sworn application before the competent court against her husband, the natural father and her child born in wedlock only if she produces evidence that during the time from the three-hundredth day to the one-hundred-and-eightieth day before the birth of the child she had committed adultery with the person who is demanding to be declared as the natural father and furthermore produces evidence of any other fact which may also be genetic and scientific tests and data that tends to indicate that person as the natural father of the child.

Sworn application filed within six months from the birth of the child.

77C. In the cases referred to in articles 77, 77A and 77B the person claiming to be the father of the child born in wedlock, or the wife as the case may be, may proceed with the action for the declaration of paternity if their sworn application is filed within six months from the birth of the child:

Provided that the Family Court in its voluntary jurisdiction may, after the sworn application of the person claiming to be the father of the child born in wedlock or the wife and, if possible after having heard all the parties interested, and after having considered the rights of the plaintiff and the child, at any time authorise the person claiming to be the father of the child born in wedlock or the wife to institute an action for the declaration of paternity as mentioned in articles 77A and 77B:

Provided further that, when the filiation of a person has been declared by the court, any person who in consequence of such declaration is to assume a surname other than the surname used by such person before such declaration, or his legitimate representative, may request the competent court by application against the Director of the Public Registry to be allowed to continue to use such other surname, and the court if it is satisfied that third parties will not be prejudiced thereby and, where the application has been done on behalf of the minor, that such use shall be in the best interest of the minor, shall accede to such request and order the Director to make an annotation of its decision on the relevant Act of Birth of the person whose filiation has been so declared.

Examinations  
as referred to in  
article 70(3).

77D. In actions which are referred to in articles 77, 77A, 77B and 77C, the court may invite the parties to submit to examinations as referred to in article 70(3)."

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### **Objects and Reasons**

The objective of this Bill of Law is the update of the filiation provisions in the Civil Code.