

Naghti l-kunsens tieghi.

(L.S.)

GUIDO DE MARCO
President

25 ta' Lulju, 2003

ATT Nru. VII ta' l-2003

ATT biex jipprovdi għall-ħatra ta' Kummissarju għat-Tfal bis-setgħa li jinvestiga kull ksur jew kontravvenzjoni tad-drittijiet tat-tfal.

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:-

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2003 dwar il-Kummissarju għat-Tfal. Titolu fil-qosor u dhul fis-sehh.

(2) Dan l-Att għandu jidhol fis-sehh f'dik id-data li l-Ministru jista', b'ordni fil-Gazzetta, jistabbilixxi, u jistghu jiġu hekk stabbiliti għanet differenti għal disposizzjonijiet differenti u għanijiet differenti ta' dan l-Att.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ Tifsir. xort'ohra –

“drittijiet tat-tfal” tinkludi d-drittijiet tat-tfal imsemmija fil-Konvenzjoni dwar id-Drittijiet tat-Tfal adottata mill-Assemblea Ġenerali tan-Nazzjonijiet Uniti fl-20 ta' Novembru 1989;

“min jagħmel ilment” tfisser persuna li tirrapporta, bil-miktub jew bil-fomm, dwar ksur allegat ta' xi dritt tat-tfal iżda ilment li jsir bil-fomm għandu dejjem wara jsir bil-miktub;

“Kummissarju” tfisser il-Kummissarju għat-Tfal mahtur taht l-artikolu 3 u tinkludi lil kull uffiċċjal li jinhatar biex jassisti lill-Kummissarju u li jkun awtorizzat minnu għal dak l-iskop;

“Kumitat” tfisser il-Kumitat dwar l-Affarijiet Soċjali tal-Kamra tad-Deputati jew xi kumitat iehor li jissostitwih;

“Ministru” tfisser il-Ministru responsabbli għat-tfal u l-familja;

“tfal”, “tifel” jew “tifla” tfisser kull persuna li tkun għadha ma laħqitx l-età maġġuri.

Hatra ta’
Kummissarju.

3. (1) Ikun hemm Kummissarju għat-Tfal li jinhatar mill-Prim Ministru wara konsultazzjoni mal-Kumitat.

(2) Persuna ma tkunx kwalifikata biex ikollha l-kariga ta’ Kummissarju jekk dik il-persuna:

(a) tkun Ministru, Segretarju Parlamentari, jew Membru tal-Kamra tad-Deputati; jew

(b) tkun qed isservi bhala mhallef jew maġistrat; jew

(c) tkun legalment inkapaċitata; jew

(d) kienet għet dikjarata falluta jew tkun għamlet transazzjoni jew arrangament mal-kredituri tagħha; jew

(e) tkun insabet hatja ta’ delitt li jolqot il-fiduċja pubblika jew ta’ serq jew frodi, jew li tkun xjentement irċeviet proprjetà miksuba b’serq jew frodi, ta’ delitt li jolqot il-bon ordni tal-familja, jew ta’ reat kontra dan l-Att.

(3) Meta l-persuna mahtura Kummissarju tkun qabel dik il-hatra diġa uffiċċjal pubbliku, din il-persuna għandha tibqa’ żżomm dik il-kariga imma ma tista’ tokkupa ebda kariga li tkun mhux kompatibbli mal-qadi kif imiss tad-dmirijiet uffiċċjali tiegħu jew tagħha bhala Kummissarju għat-Tfal jew ma’ l-imparzjalità u l-indipendenza mistennija minn din il-kariga jew mill-fiduċja pubblika fiha.

Indipendenza tal-
funzjonijiet.

4. Fl-eżerċizzju tal-funzjonijiet stabbiliti taht dan l-Att, il-Kummissarju għandu jaġixxi indipendentement u ma għandu jkun soġġett għad-direzzjoni jew il-kontroll ta’ ebda persuna jew awtorità oħra.

5. Dokument li jaghti x'tifhem li jkun strument magħmul jew mahruġ u ffirmat mill-Kummissarju għandu jintlaqa' bi prova u għandu, sakemm ma jiġix ippruvat il-kuntrarju, jitqies bhala strument magħmul jew mahruġ mill-Kummissarju.

Rappreżentanza tal-Kummissarju.

6. (1) Bla hsara għad-disposizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, il-Kummissarju għandu jibqa' fil-kariga għal żmien tliet snin u għandu jkun eliġibbli biex jerga' jinhatar mill-ġdid meta jiskadi dak iż-żmien tal-kariga.

Żmien tal-kariga.

(2) Sakemm il-kariga ma tivvakax qabel, persuna mahtura bhala Kummissarju għandha tibqa' fil-kariga sakemm jinhatar Kummissarju ġdid.

(3) Il-Kummissarju jista' f'kull żmien jirriżenja mill-kariga tiegħu billi jikteb lill-Ministru.

7. Kummissarju jista' f'kull żmien jitnehha jew ikun sospiż mill-kariga mill-Prim Ministru wara konsultazzjoni mal-Kumitat għal raġunijiet ta' nuqqas ta' kapacità bil-provi biex jaqdi l-funzjonijiet ta' l-uffiċċju ta' Kummissarju (kemm jekk dan jirriżulta minn debulizza tal-ġisem jew tal-mohħ jew minn xi kawża ohra) jew għal imġiba hażina bil-provi:

Tnehhija jew sospensjoni mill-kariga.

Iżda jekk il-Kumitat ma jkunx kostitwit jew jekk il-Parlament ma jkunx qed jiltaqa', il-Kummissarju jista' jkun sospiż mill-kariga mill-Prim Ministru, li jaġixxi skond id-diskrezzjoni tiegħu nnifsu, minhabba nuqqas ta' hila li jaqdi l-funzjonijiet ta' l-uffiċċju jew minhabba mġiba hażina bil-provi għas-sodisfazzjon tal-Prim Ministru, imma dik is-suspensjoni m'għandhiex tibqa' fis-seħh għal żmien aktar minn xahrejn minn meta jiġi kostitwit il-Kumitat u jkun qed jiltaqa' l-Parlament.

8. (1) Il-Prim Ministru jista', f'kull żmien waqt il-mard jew l-assenza tal-Kummissarju jew għal xi fini temporanju iehor meta l-Kummissarju jidhirlu mehtieg li jagħmel hekk, jahtar persuna sabiex taġixxi fil-kariga ta' Kummissarju skond dan l-artikolu, sakemm il-Kummissarju jerga' jidhol lura għal xoghlu .

Hatra temporanja ta' Kummissarju għat-Tfal.

(2) Persuna ma għandhiex tkun kwalifikata biex tinhatar taht dan l-artikolu jekk dik il-persuna tkun skwalifikata milli tinhatar għall-kariga ta' Kummissarju taht is-subartikolu (2) ta' l-artikolu 3 ta' dan l-Att:

Iżda persuna mahtura taht dan l-artikolu tista' teżercita kull attività għal profitt jew qligh li ma tkun b'ebda mod inkompatibbli mad-disposizzjonijiet tas-subartikolu (2) ta' l-artikolu 3 ta' dan l-Att.

9. Il-Kummissarju ghandu jkollu dawn il-funzjonijiet li ġejjin:
- (a) li jippromwovi u jaqbeż ghad-drittijiet u l-interessi tat-tfal;
 - (b) li jiżgura li t-tfal ikunu qed jinghataw l-opportunità li jesprimu l-fehmiet tagħhom u li dawn fil-fatt jiġu kkunsidrati;
 - (c) li jippromwovi l-harsien ta' l-għaqda tal-familja;
 - (d) li jġib 'il quddiem kull appoġġ adegwat lill-ġenituri fit-trobbija tat-tfal tagħhom;
 - (e) li jrawwem l-iżvilupp ta' kura alternattiva għal tfal li jehtiguha b'referenza speċjali għall-*fostering* u għall-adozzjoni;
 - (f) li jfittex li jiżgura li d-drittijiet u l-interessi tat-tfal jitqiesu kif għandu jkun minn dipartimenti tal-gvern, awtoritajiet lokali, korpi pubbliċi u organizzazzjonijiet volontarji u pubbliċi ohra meta jittiehdu deċiżjonijiet fuq *policies* li jolqtu lit-tfal;
 - (g) li jippromwovi l-harsien tat-tfal minn hsara fiżika jew morali u telqien, inkluż kull abbuż jew sfruttament sesswali;
 - (h) li jippromwovi l-oghla *standards* ta' servizzi ta' sahha u servizzi soċjali għan-nisa waqt it-tqala tagħhom u li jippromwovi l-harsien u l-protezzjoni speċjali, inkluża l-protezzjoni legali xierqa, għat-tfal kemm qabel kif ukoll wara t-twelid;
 - (i) li jippromwovi l-oghla *standards* ta' servizzi ta' sahha, edukazzjoni u servizzi soċjali għat-tfal;
 - (j) li jippromwovi l-oghla *standards* ta' mistrieh, logħob u faċilitajiet rikreattivi għat-tfal;
 - (k) li jiżgura li jittiehdu l-miżuri kollha possibbli mill-awtoritajiet rilevanti biex jipprevjenu u jirrimedjaw il-faqar u l-eskluzjoni soċjali minn fost it-tfal;
 - (l) li jippromwovi konformità mal-Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet tat-Tfal kif ratifikata minn Malta u ma' kull trattat internazzjonali, konvenzjoni jew ftehim iehor bħal dawk li jkollhom x'jaqsmu mat-tfal kif inhuma jew jistgħu jkunu ratifikati jew xort'ohra jsir aċċess għalihom minn Malta.

10. Il-Kummissarju ghandu jkollu bi gwida dawn il-prinċipji generali li ġejjin: Prinċipji ta' direzzjoni.

- a. li l-aqwa interessi tat-tfal u tal-familja jiġu l-ewwel u qabel kollox;
- b. li t-tfal kollha ghandhom jiġu ttrattati b'dinjità, rispettu u sens ta' ġustizzja;
- ċ. li tfal b'diżabilità u tfal li jghixu f'ċirkustanzi familjari jew soċjali żvantaġġati ghandhom igawdu l-istess kwalità ta' hajja bhat-tfal l-oħra kollha;
- d. li t-tfal u l-familji tagħhom ghandu jkollhom kull opportunità li jippartecipaw f'deċiżjonijiet li jolqtuom u fid-definizzjoni, l-ippjanar u l-evalwazzjoni ta' servizzi lit-tfal; u
- e. li l-gvern, il-familji u l-komunitajiet jaqsmu kull responsabbiltà għall-promozzjoni ta' l-iżvilupp u l-ġid tat-tfal.

11. Bil-ghan li jippromwovi l-ġid tat-tfal u jzomm kontroll kontinwu fuq il-kondizzjonijiet li tahtom it-tfal jiżviluppaw, il-Kummissarju ghandu: Il-promozzjoni ta' l-aqwa interessi tat-tfal

- a. jipprovdi edukazzjoni u informazzjoni pubblika mahsuba biex jippromwovu kull gharfien tad-drittijiet tat-tfal;
- b. jaghti bidu għal miżuri biex jiġu asseriti d-drittijiet u jingiebu 'l quddiem l-interessi tat-tfal;
- ċ. jiġbor informazzjoni u jinvestiga kull ksur allegat tad-drittijiet tat-tfal inkluża l-mewt ta' xi tifel jew tifla jekk il-Kummissarju jqis li investigazzjoni bħal dik tkun meħtieġa;
- d. jistabbilixxi *standards* li ghandhom jiġu applikati minn ministeri, dipartimenti jew aġenziji tal-Gvern sabiex jiġi żgurat li l-proċessi ta' reviżjoni interni tagħhom ikunu jwieġbu għall-ilmenti dwar deċiżjonijiet li jkollhom x'jaqsmu ma' l-ġhoti ta' servizzi mahsubin għat-tfal;
- e. jikkontrolla dwar jekk il-ministeri, id-dipartimenti jew l-aġenziji tal-Gvern imsemmija fil-paragrafu (d) jkunux qegħdin jilhqqu l-istandards stipulati taht dak il-paragrafu;
- f. jiġbor informazzjoni, u jmexxi jew jinkoraġġixxi rikerka dwar materji rilevanti għas-servizzi għat-tfal;

ġ. jiżgura li dawk is-servizzi fir-rigward tat-tfal ikunu:

- i. aċċessibbli,
- ii. bbażati fil-komunità,
- iii. koordinati u integrati,
- iv. inklusivi ta' sess, kultura u lsien, u
- v. iwieġbu għal htigiet individwali;

h. jipprovdi edukazzjoni u informazzjoni pubblika maħsubin biex jippromwovu għarfien tal-hidma tal-Kummissarju, u jistieden kummenti mill-pubbliku fuqu;

i. jikkontrolla u jistma kull *policy* u prattika ta' servizzi ta' *welfare* soċjali li jolqtu lit-tfal;

j. jiżgura li l-leġislazzjoni relatata mal-harsien ta' l-interessi tat-tfal tiġi osservata;

k. jaġixxi ta' portavuċi għad-drittijiet, htigiet u interessi tat-tfal u johroġ bi proposti għal miżuri li jistgħu jsolvu jew jipprevjenu konflitti bejn it-tfal u s-soċjetà;

l. jagħti pariri lill-Gvern u jipproponi lill-Gvern dawk il-miżuri li jistgħu jkunu meħtieġa sabiex ikun jista' jiġi provdut dwar id-drittijiet u l-interessi tat-tfal.

Kunsill għat-Tfal.

12. (1) Għandu jkun hemm Kunsill għat-Tfal mahtur mill-Ministru sabiex jgħin lill-Kummissarju, magħmul mill-Kummissarju li jippresjedi u sitt membri ohra kif ġej:

- (a) persuna wahda mahtura mill-Ministru;
- (b) persuna wahda mahtura mill-Ministru responsabbli għas-saħha;
- (ċ) persuna wahda mahtura mill-Ministru responsabbli għall-edukazzjoni;
- (d) persuna wahda mahtura mill-Ministru responsabbli għall-intern;

(e) persuna wahda mahtura mill-Ministru responsabbli għall-ġustizzja; u

(f) il-president tal-Kumitat.

(2) Il-Kunsill ikollu d-dritt li jeleġgi b'għażla sa seba' persuni ohra li, fl-opinjoni tal-Kunsill, jirrappreżentaw l-aħjar lit-tfal u d-drittijiet tat-tfal. Sakemm ikun possibbli, dawn il-persuni għandhom ikunu tfal u persuni involuti fil-promozzjoni tad-drittijiet tat-tfal.

(3) Il-Kunsill m'għandux jaġixxi kemm-il darba l-president u żewġ membri ohra ma jkunux preżenti.

(4) Il-Kunsill għandu jiltaqa' mill-inqas darba kull tliet xhur u għandu jitlaqqa' mill-president. Il-president għandu wkoll jsejjah laqgħa tal-Kunsill meta mill-inqas żewġ membri ta' l-istess Kunsill jitolbuh jagħmel dan.

(5) Il-Kunsill għandu, bla hsara għad-disposizzjonijiet ta' qabel, jirregola l-proċeduri tiegħu nnifsu.

(6) Il-funzjonijiet tal-Kunsill ikunu:

(a) li jissorvelja li jkun hemm konformità mal-Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet tat-Tfal kif ratifikata minn Malta u ma' kull trattat, konvenzjoni u ftehim internazzjonali simili iehor li jkollhom x'jaqsmu mat-tfal kif ikunu jew jistgħu jiġu ratifikati jew xort'ohra Malta taderixxi għalihom;

(b) b'mod ġenerali biex jagħti pariri u jgħin lill-Kummissarju fil-qadi tal-funzjonijiet tal-Kummissarju kif elenkati f'dan l-Att;

(ċ) biex jagħti pariri u jgħin lill-Kummissarju fil-promozzjoni tal-*welfare* tat-tfal kif speċifikat fl-artikolu 11 ta' dan l-Att.

13. Il-Kummissarju, il-membri tal-Kunsill u kull membru tal-persunal fl-uffiċju tal-Kummissarju għandhom iżommu s-segretezza fir-rigward ta' kull haġa personali li jsiru jafu biha fl-eżerċizzju tas-setgħat tagħhom u fil-kors tal-qadi tad-dmirijiet u l-funzjonijiet tagħhom taht dan l-Att, u ma għandhom jikxfu ebda haġa li jsiru jafu biha kif hawn qabel imsemmi hlief għall-iskop ta' xi investigazzjoni, jew prosekuzzjoni għal reat kontra dan l-Att jew xi reat iehor kontra l-persuna ta' xi tifel jew tifla.

Konfidenzjalità.

Investigazzjonijiet.

14. (1) Salv dak li hu provdut fis-subartikolu (2) ta' dan l-artikolu, il-Kummissarju jista' jagħmel investigazzjoni għal kull skop konness ma' l-eżekuzzjoni tad-dmirijiet tal-Kummissarju kemm wara lment bil-miktub magħmul lill-Kummissarju minn xi persuna jew fuq inizjattiva tal-Kummissarju nnifsu.

(2) Il-Kummissarju ma għandu jagħmel ebda investigazzjoni dwar konflitti speċifiċi individwali bejn tfal u l-ġenituri jew tuturi tagħhom, jew bejn il-ġenituri jew it-tuturi inklużi affarijiet li għandhom x'jaqsmu ma' l-eżerizzju tar-responsabbiltà tagħhom ta' ġenituri u kull haga oħra li taqa' taht il-kompetenza ta' xi qorti jew tribunal stabbilit bil-liġi u f'kull każ bħal dak il-Kummissarju għandu jippreżenta lil min jagħmel l-ilment, ir-raġuni għaliex ikun qiegħed jirrifjuta.

(3) Meta l-Kummissarju jirrifjuta li jagħmel investigazzjoni, dan għandu jkun finali.

(4) Meta jiehu deċiżjoni li jinvestiga lment, il-Kummissarju għandu javża lil min jagħmel l-ilment bid-deċiżjoni li jinvestiga u għandu javża lil kull dipartiment, aġenzija jew entità involuta bl-intenzjoni li jinvestiga.

(5) Il-Kummissarju jista' jagħti parir lil min jagħmel ilment li jsegwi kull rimedju jew proċess amministrattiv jew ġudizzjarju għall-ilmenti disponibbli għal min jagħmel l-ilment qabel jew minflok ma jkompli għaddej bl-ilment tiegħu quddiem il-Kummissarju.

(6) Jekk il-Kummissarju jirriżultalu fil-kors ta' l-investigazzjoni li l-azzjoni ta' individwu tkun jew tista' tkun qegħda tikser xi liġi ta' xorta penali, il-Kummissarju għandu minnufih jirrapporta l-fatt lill-Avukat Ġenerali.

(7) Il-Kummissarju għandu jipprepara u jippubblika rapport tar-riżultanzi f'xi investigazzjoni formali u għandu jinkludi fih dawk ir-rakkomandazzjonijiet li jkunu jidhrulu li huma meħtieġa jew spedjenti.

Aċċess għal informazzjoni.

15. (1) Għall-finijiet ta' xi investigazzjoni l-Kummissarju jista' jeħtieġ lil kull persuna li jkollha dokumenti jew informazzjoni rilevanti għall-investigazzjoni biex:

- a. tipproduċi dawk id-dokumenti; u, jew
- b. tghaddi l-informazzjoni bil-miktub; u, jew

ċ. tattendi f'hin u post speċifikati u taghti informazzjoni bil-fomm taht ġurament.

(2) Il-Kummissarju ghandu jkollu s-setgħa li jharrek xhieda u li jamministra ġurament lil kull persuna involuta fl-investigazzjoni u jitlobha taghti l-informazzjoni rilevanti.

(3) Minkejja d-disposizzjonijiet taż-żewġ subartikoli preċedenti, ebda persuna ma ghandha tkun imġieghla taghti informazzjoni jew tipproduċi dokumenti li dik il-persuna ma tistax tkun imġieghla taghti jew tipproduċi fi proċeduri ċivili jew kriminali quddiem xi Qorti.

16. (1) Il-Kummissarju jista' jagħmel rakkomandazzjonijiet għal azzjoni biex tittiehed minn persuni oħra jew minn xi korp iehor skond kif mehtieġ jew spedjenti u jista' jippubblika dawk ir-rakkomandazzjonijiet, jekk il-Kummissarju jidhirlu li jkun hekk xieraq, bla ma jikxef l-identità tal-persuna li r-rapport ikun jirreferi għaliha.

Rakkomandazzjonijiet.

(2) F'dawk il-każi meta l-Kummissarju jiddeċiedi li jagħmel rakkomandazzjonijiet, ghandu jitfassal rapport mill-Kummissarju fejn ifisser ir-raġunijiet għar-rakkomandazzjonijiet u ghandu jibghat kopja ta' dak ir-rapport lil kull persuna jew korp li r-rakkomandazzjonijiet ikunu intiżi għalihom.

17. (1) Jekk il-Kummissarju jkun jidhirlu li xi persuna jew korp partikolari ma jkunux qed jikkonformaw mad-disposizzjonijiet tal-Konvenzjoni tan-Nazzjonijiet Uniti dwar id-Drittijiet tat-Tfal kif ratifikata minn Malta, għaldaqstant il-Kummissarju jista' jagħmel rakkomandazzjonijiet fl-għamla ta' avviz ta' konformità li jkun jagħti l-fehma tal-Kummissarju dwar il-mod kif ma jkunx hemm konformità mad-disposizzjonijiet tal-Konvenzjoni u dwar l-azzjoni li jkollha tittiehed għar-rigward ta' dik il-konformità.

Konformità mal-Konvenzjoni tan-N.U. dwar id-Drittijiet tat-Tfal.

(2) Kull persuna jew korp li jirċievi rakkomandazzjoni skond is-subartikolu ta' qabel għandhom iqisu r-rakkomandazzjoni u javżaw lill-Kummissarju fiż-żmien li l-Kummissarju jista' jistipula fl-avviz ta' konformità, bl-azzjoni li tkun ittiehdet jew li jkun hemm hsieb li tittiehed bi tweġiba għar-rakkomandazzjoni.

(3) Meta persuna jew korp li tintbagħtilhom rakkomandazzjoni ma jkunux bi hsiebhom jikkonformaw magħha, huma għandhom jagħtu lill-Kummissarju r-raġunijiet għaliex ma jkunux se jagħmlu dan, u l-Kummissarju jista', jekk jidhirlu li jkun hekk xieraq, jippubblika dawk ir-raġunijiet.

(4) Il-Kummissarju jista' jitlob lil xi persuna jew korp li tkun intbaghtitilhom rakkomandazzjoni biex jgħaddu dik l-informazzjoni li tista' tkun raġonevolment meħtieġa sabiex jiġi verifikat jekk ir-rakkomandazzjoni tkunx tharset jew le.

(5) Il-Kummissarju għandu jistabbilixxi u jżomm Regjistru ta' Avviżi ta' Konformità u dak ir-regjistru jista' jiġi spezzjonat minn kulhadd.

Dikjarazzjoni ta' Impatt fuq it-Tfal.

18. (1) Kull meta jkun jidher meħtieġ jew spedjenti, il-Kummissarju jista' jagħmel jew jordna li ssir Dikjarazzjoni ta' Impatt fuq it-Tfal rigward xi deċiżjoni jew proposta fuq xi *policy* li tolgot it-tfal.

(2) Dikjarazzjoni ta' Impatt fuq it-Tfal għandha tispjega l-impatt probabbli fuq it-tfal tad-deċiżjoni jew tal-proposta fuq *policy*.

(3) Il-Kummissarju jista' jippubblika d-Dikjarazzjoni ta' Impatt fuq it-Tfal.

Rapport annwali.

19. (1) Il-Kummissarju għandu, mhux aktar tard minn sitt ġimghat wara tmien kull sena kalendarja, jagħmel u jibgħat lill-Ministru, rapport annwali li għandu jinkludi -

a. rapport ta' l-attivitajiet tal-Kummissarju tul is-sena;

b. deskrizzjoni ġenerali tal-qagħda tat-tfal f'Malta u *survey* ta' l-iżviluppi li jkunu laqtuhom;

ċ. rakkomandazzjonijiet dwar il-htieġa ta' leġislazzjoni jew bidla fir-regoli jew *policies*; u

d. kull reazzjoni li tkun saret lill-Kummissarju skond dan l-Att.

(2) Il-Ministru għandu, ma' l-ewwel opportunità u mhux aktar minn tmien ġimghat wara li jkun irċieva kopja ta' kull rapport bhal dak, jew jekk f'xi żmien tul dak il-perjodu l-Kamra tad-Deputati ma tkunx qed tiltaqa', fi żmien tmien ġimghat mill-bidu tas-sessjoni li jmiss, jordna li kopja ta' kull rapport bhal dak titqiegħed fuq il-Medja tal-Kamra tad-Deputati.

(3) Ir-rapport imsemmi fis-subartikolu (2) ta' dan l-artikolu għandu jiġi diskuss mill-Kumitat.

20. Persuna li xjentement timpedixxi jew tostakola lill-Kummissarju milli jaqdi jew jeżercita s-setghat jew il-funzjonijiet mogħtija taħt dan l-Att; jew tirrifjuta li tagħti xi informazzjoni meħtieġa mill-Kummissarju jew xjentement tagħti informazzjoni kif meħtieġa taħt dan l-Att falza jew qarrieqa, tkun haġja ta' reat u tista', meta tinsab haġja, tehel multa ta' mhux aktar minn hames mitt lira, iżda meta l-att li jsir mill-hati jkun jikkostitwixxi reat aktar serju taħt xi liġi oħra, id-disposizzjonijiet ta' dik il-liġi l-oħra għandhom ikunu japplikaw fir-rigward ta' dak l-att.

Reati.

21. Id-disposizzjonijiet ta' l-artikoli 3, 6, 7 u 9 ta' dan l-Att għandhom ikunu b'żjeda mad-disposizzjonijiet tal-Kostituzzjoni u ma għandhomx jidderogaw minnhom għar-rigward tal-hatra, d-dixxiplina u t-tneħħija ta' uffiċċjali pubbliċi.

Disposizzjonijiet ta' dan l-Att ma jidderogawx mid-disposizzjonijiet tal-Kostituzzjoni.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 28 tal-21 ta' Lulju, 2003.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GUIDO DE MARCO
President

25th July, 2003

ACT No. VII of 2003

An Act to provide for the appointment of a Commissioner for Children with power to investigate any breaches or infringements of the rights of children.

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) The short title of this Act is The Commissioner for Children Act, 2003.

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

Interpretation.

2. In this Act, unless the context otherwise requires –

“Child” means any person who has not attained majority;

“complainant” means any person who reports, in writing or verbally, an alleged breach of the rights of any child provided that a verbal complaint should always be subsequently put in writing;

“Commissioner” means the Commissioner for Children appointed under article 3 and includes any officer assigned to assist the Commissioner and authorised by him in that behalf;

“Committee” means the Social Affairs Committee of the House of Representatives or any other committee substituting the same.

“Minister” means the Minister responsible for children and family affairs;

“rights of children” include the rights of children enunciated in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

3. (1) There shall be a Commissioner for Children who shall be appointed by the Prime Minister after consultation with the Committee, Appointment of Commissioner.

(2) A person shall not be qualified to hold office as Commissioner if such person:

(a) is a Minister, Parliamentary Secretary, or a Member of the House of Representatives, or

(b) is serving as a judge or magistrate; or

(c) is legally incapacitated; or

(d) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(e) has been convicted of a crime affecting public trust or theft or fraud, or of knowingly receiving property obtained by theft or fraud, a crime affecting the good order of families, or of an offence against this Act.

(3) Where the person appointed Commissioner is prior to such appointment already a public officer, such person shall continue to retain such office but shall not hold any position which is incompatible with the correct performance of his or her official duties as Commissioner for Children or with the impartiality and independence expected from this office or with public confidence therein.

4. In the exercise of the functions established under this Act, the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority. Independence of functions.

5. Any document purporting to be an instrument made or issued and signed by the Commissioner shall be received in evidence and shall, Representation of the Commissioner.

until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

Tenure of Office.

6. (1) Subject to the provisions of subarticle (2) hereof, the Commissioner shall hold office for a term of three years and shall be eligible for reappointment on the expiration of such term of office.

(2) Unless the office sooner becomes vacant, a person appointed as Commissioner shall hold office until a successor is appointed.

(3) The Commissioner may at any time resign from office by writing addressed to the Minister.

Removal or suspension from office.

7. A Commissioner may at any time be removed or suspended from office by the Prime Minister after consultation with the Committee on the grounds of proved inability to perform the functions of the office of Commissioner (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour:

Provided that if the Committee is not constituted or if Parliament is not in session, the Commissioner may be suspended from office by the Prime Minister, acting in accordance with his own discretion, for inability to perform the functions of the office or misbehaviour proved to the satisfaction of the Prime Minister, but any such suspension shall not continue in force beyond two months after the Committee is constituted and Parliament is in session.

Temporary appointment of Commissioner for Children.

8. (1) The Prime Minister may, at any time during the illness or absence of the Commissioner or for any other temporary purpose where the Commissioner considers it necessary to do so, appoint a person to act in the office of Commissioner in accordance with this article, until the resumption of office of the Commissioner.

(2) A person shall not be qualified to be appointed under this article if such person is disqualified to be appointed to the Office of Commissioner under subarticle (2) of article 3 of this Act:—

Provided that a person appointed under this article may exercise any activity for profit or reward which is not in any way incompatible with the provisions of subarticle (2) of article 3 of this Act.

Functions of the Commissioner.

9. The Commissioner shall have the following functions:—

(a) to promote and advocate for the rights and interests of children;

(b) to ensure that children are being given the opportunity to express their opinions and that these are in fact considered;

(c) to promote the protection of family unity;

(d) to advocate for adequate support to parents for the upbringing of their children;

(e) to foster the development of alternative care to children who need such care with special reference to fostering and adoption;

(f) to seek to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organisations when decisions on policies affecting children are taken;

(g) to promote the protection of children from physical or mental harm and neglect, including sexual abuse or exploitation;

(h) to promote the highest standards of health and social services for women during pregnancy and to promote special care and protection, including adequate legal protection, for children both before and after birth;

(i) to promote the highest standards of health, and education and social services for children;

(j) to promote the highest standards of leisure, play and recreational facilities for children;

(k) to ensure that all possible measures are taken by the relevant authorities to prevent and remedy poverty and social exclusion among children;

(l) to promote compliance with the United Nations Convention on the Rights of the Child as ratified by Malta and with such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta.

10. The Commissioner shall be guided by the following general principles: Guiding principles.

a. that the best interests of children and the family are paramount;

b. that all children are to be treated with dignity, respect and fairness;

c. disabled children and children with disadvantaged family or social circumstances should enjoy the same quality of life like all other children;

d. that children and their families are to be provided with opportunities to participate in decisions that affect them and in defining, planning and evaluating services to children; and

e. that government, families and communities share the responsibility for the promotion of the development and well-being of children.

Promoting the best interests of children.

11. In order to promote the welfare of children and to monitor the conditions under which children develop, the Commissioner shall:

a. provide public education and information designed to promote an understanding of the rights of children;

b. initiate measures for asserting the rights and promote the interests of children;

c. collect information and investigate any alleged breaches of the rights of children including the death of any child if the Commissioner considers such an investigation to be necessary;

d. set standards to be applied by ministries, departments or agencies of the Government to help ensure that their internal review processes are responsive to complaints about decisions concerning the provision of designated services to children;

e. monitor whether ministries, government departments and agencies referred to in paragraph (d) are meeting the standards set under that paragraph;

f. collect data about, conduct or encourage research into, matters relevant to services for children;

g. ensure that such services in relation to children are –

- i. accessible,
- ii. community-based,
- iii. co-ordinated and integrated,
- iv. inclusive of gender, culture and language, and
- v. responsive to individual needs;

h. provide public education and information designed to promote an understanding of, and to invite public comment on, the work of the Commissioner;

i. monitor and assess the policies and practices of social welfare services affecting children;

j. ensure that legislation relating to the protection of children's interests is observed;

k. act as a spokesperson for the rights, needs and interests of children and put forward proposals for measures which can solve or prevent conflicts between children and society;

l. advise the Government and propose to the Government such measures as may be required in order for the rights and interests of children to be provided for.

12. (1) There shall be a Council for Children appointed by the Minister to assist the Commissioner, composed of the Commissioner who shall be the chairperson and six other members as follows:-

Council for
Children.

- (a) one person appointed by the Minister;
- (b) one person appointed by the Minister responsible for Health;
- (c) one person appointed by the Minister responsible for Education;
- (d) one person appointed by the Minister responsible for Home Affairs;
- (e) one person appointed by the Minister responsible for Justice; and
- (f) the Chairperson of the Committee.

(2) The Council shall have the right to co-opt up to seven other persons who, in the opinion of the Council, best represent children and the rights of children. These persons shall, as far as possible, be children and people involved in the promotion of children's rights.

(3) The Council shall not act unless the chairperson and two other members are present.

(4) The Council shall meet at least once every three months and shall be convened by the chairperson. The chairperson shall also convene a meeting of the Council when requested to do so by at least two members thereof.

(5) The Council shall, subject to the foregoing provisions regulate its own procedures.

(6) The functions of the Council shall be:

(a) to monitor compliance with the United Nations Convention on the Rights of the Child as ratified by Malta and with all such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta;

(b) generally to advise and assist the Commissioner in the performance of the functions of the Commissioner as listed in this Act;

(c) to advise and assist the Commissioner in the promotion of the welfare of children as specified in article 11 of this Act.

Confidentiality.

13. The Commissioner, the Council members and every member of the staff of the Commissioner's Office shall maintain secrecy in respect of all personal matters that come to their knowledge in the exercise of their powers and the carrying out of their duties and functions under this Act, and shall not divulge any matter coming to their knowledge as aforesaid except for the purpose of an investigation, or prosecutions for an offence against this Act or any other offence against the person of a child.

Investigations.

14. (1) Saving what is provided in sub-article (2) of this article, the Commissioner may carry out an investigation for any purpose connected with the execution of the Commissioner's duties either on a written complaint made to the Commissioner by any person or on the Commissioner's own motion.

(2) The Commissioner shall not carry out investigations concerning specific, individual conflicts between a child and its parents or guardians, or between the parents or guardians including matters concerning the exercise of parental responsibility and any other matter that falls within the competence of any court or tribunal established by law and in any such case the Commissioner shall submit to the complainant, the reason for the refusal.

(3) A rejection by the Commissioner to carry out an investigation shall be final.

(4) Upon rendering a decision to investigate a complaint, the Commissioner shall notify the complainant of the decision to investigate and shall notify any department, agency or entity involved of the intention to investigate.

(5) The Commissioner may advise a complainant to pursue all administrative or judicial remedies or channels of complaint open to the complainant before or in lieu of pursuing a complaint with the Commissioner.

(6) If the Commissioner finds in the course of an investigation that an individual's action is or may be in violation of any law of a penal nature, the Commissioner shall immediately report that fact to the Attorney General.

(7) The Commissioner shall prepare and publish a report of the findings in any formal investigation and shall include in it such recommendations as appear to be necessary or expedient.

15. (1) For the purpose of an investigation the Commissioner may require any person who possesses documents or information relevant to the investigation to:

Access to
Information.

- a. produce such documents; and, or
- b. furnish the information in writing; and, or
- c. attend at a specified time and place and give oral information on oath.

(2) The Commissioner shall have the power to summon witnesses and to administer an oath to any person concerned in the investigation and require them to give the relevant information.

(3) Notwithstanding the provisions of the preceding two sub-articles, no person shall be compelled to give information or produce documents which such person could not be compelled to give or produce in civil or criminal proceedings before a Court.

Recommendations.

16. (1) The Commissioner may make recommendations for action to be taken by other persons or body as may be necessary or expedient and may publish such recommendations, if the Commissioner deems fit, without revealing the identity of the person to whom the report refers.

(2) In those cases where the Commissioner decides to make recommendations, a report shall be drawn up by the Commissioner explaining the reasons for the recommendations and the Commissioner shall send a copy of such report to any person or body to whom the recommendations are directed.

Compliance with the UN Convention on the Rights of the Child.

17. (1) If it appears to the Commissioner that a particular person or body is not complying with the provisions of the United Nations Convention on the Rights of the Child as ratified by Malta, then the Commissioner may make recommendations in the form of a compliance notice, which shall state the Commissioner's opinion as to the way in which the provisions of the Convention are not being complied with and what action should be taken to comply.

(2) Any person or body receiving a recommendation in accordance with the preceding sub-article, shall consider the recommendation and notify the Commissioner within such time as the Commissioner may stipulate in the compliance notice, of the action which has been taken or it is intended to take in response to the recommendation.

(3) Where any person or body to whom a recommendation is directed intends not to comply with it, they shall furnish the Commissioner with reasons for not doing so, and the Commissioner may, if deemed fit, publish these reasons.

(4) The Commissioner may require a person or body to whom a recommendation has been directed to furnish such information as may be reasonably required to verify whether the recommendation has been complied with or not.

(5) The Commissioner shall establish and maintain a Register of Compliance Notices and the register may be inspected by any person.

18. (1) Whenever it appears necessary or expedient, the Commissioner may carry out or cause to be carried out a Child Impact Statement relating to any decision or proposal on policy which affects children.

Child Impact Statement.

(2) Any Child Impact Statement shall set out the probable impact on children of the decision or proposal on policy.

(3) The Commissioner may publish the Child Impact Statement

19. (1) The Commissioner shall, not later than six weeks after the end of each calendar year make and transmit to the Minister, an annual report which shall include

Annual Report.

- a. a report of the Commissioner's activities during the year;
- b. a general description of the circumstances of children in Malta and a survey of the developments which have affected them;
- c. any recommendations regarding the need for legislation or change in rules or policies; and
- d. any responses made to the Commissioner in accordance with this Act.

(2) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session cause a copy of every such report to be laid on the Table of the House of Representatives.

(3) The report mentioned in sub-article (2) of this article shall be discussed by the Committee.

20. Any person who knowingly impedes or obstructs the Commissioner in performing or exercising powers or functions given under this Act; or refuses to give any information required by the Commissioner or knowingly provides false or misleading information as required under this Act, shall be guilty of an offence and shall on conviction be liable to a fine (multa) not exceeding five hundred liri provided that when the act committed by an offender constitutes a more serious offence under any other law, the provisions of that other law shall apply in respect of that act.

Offences.

Provisions of this Act not to derogate from provisions of the Constitution.

21. The provisions of articles 3, 6, 7 and 9 of this Act shall be in addition to and shall not derogate from the provisions of the Constitution with regard to the appointment, discipline and removal of public officers.

Passed by the House of Representatives at Sitting No. 28 of 21st July, 2003.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives