

The Child Protection (Alternative Care) Act: A First for Maltese Legal History

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This article will discuss the new Child Protection (Alternative Care) Act, and the subsequent changes impacting civil and family law in Malta.

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TAGS: Family Law

The Child Protection (Alternative Care) Act, Chapter 569 of the Laws of Malta, is considered to be somewhat of a breakthrough in Maltese legislation pertaining to child protection. From a legislative perspective, the main purposes of this Act are to replace the Foster Care Act, the Children and Young Persons (Care Orders) Act and the Placing of Minors Regulations. It also aims to introduce orders for child protection and ensure that children lacking parental care or at a severe risk of reaching this position are provided with suitable protection and alternative care.

One of the most notable inclusions is the fact that the Minister need no longer be entrusted with the care and custody of minors in need of protection. Neither such Minister, nor the government, will be involved in the issuance of care orders, and this will be taken care of by either one of the Juvenile Court or the Review Board. The latter shall equal a quasi-judicial tribunal, rather than being a point of referral for consultation. It shall be comprised of seasoned professionals, whose expertise in child protection will only aid the Board's accountability and transparency.

However, this does not mean that the government shall be entirely deprived of all responsibility on the matter. On the contrary, the duty to undertake any appropriate measures necessary for the child's well-being and the provision of the required support services remain in the government's hands.

This Act specifically targets children placed in out-of-home care, who will now be the responsibility of heads of homes, foster carers, next-of-kin and Appoġġ Agency. This is an important development, as it avoids potential bureaucratic issues which the children would have otherwise faced should they need to leave the country for leisure or health-related reasons. Also, these children may now be released for adoption should a request by an interested party or the agency be issued. The Court is bound to take the parents' views on the matter into consideration, but may dispense with their consent.

On the note of adoption, the concept of open adoption shall now be extended to all ages, rather than the previous stipulation allotting this only to children older than 11. This way, children in out-of-home care may enjoy the benefits that come with adoption at all ages, and may engage in a new family environment without losing contact with their siblings or biological family.

Moreover, as a time-saving measure, the Appoġġ Agency and the Looked After Children Department shall now have the power to amend

a social contract without the parent's consent, if the situation concerned involves the minor losing education and health benefits. However, the parents will still reserve the right to challenge the agencies' actions in court. This contrasts the prior situation in which Appoġġ needed to resort to the courts before being legally authorised to act in such scenarios.

This Act also presents a first for Maltese legal history, as it implies the introduction of a secure therapeutic centre. Here, the centre's Director, who will ensure that they are provided with appropriate therapy for a period to be determined by the court. Said court will, in turn, scrutinise and examine all potential actions to be taken, as well as shall detain misbehaved and deviant minors.

Foster care is also covered under this Act, which allows foster carers to file an application to adopt a child they have been fostering. The two prior age restrictions have been done away with, these being:

- The 45-year age difference between the minor and the prospective adoptive parents;
- The limit restricting prospective adoptive parents older than 61 from adopting.

It is also notable that this law enables unaccompanied minors to enjoy the same rights as any other. Any professionals providing assistance to the minor may, as an added form of protection, file an application in court requesting a special guardian to be appointed with the aim of protecting the minor's interests.

Apart from this, due to the Central Authority now being considered the regulatory body for child protection, a system of checks and balances has been introduced. Through this Act, one may also appeal, as long as all possible remedies are exhausted. This brings Malta in line with the obligations set out by the European Convention on Human Rights and Fundamental Freedoms.

This Act is a representation of the child's independence and the law's impartiality, remedying a situation in which the State could previously interfere in matters involving the child's well-being without taking the matter to a Court of Law. The notion of the 'best interests of the child' is what guides this Act and its motives, and this law has enabled children to have a greater voice in issues, which have a personal impact on their daily lives.