CHAPTER 9

CRIMINAL CODE

To amend and consolidate the Penal Laws and the Laws of Criminal Procedure.

10th June, 1854

ORDER-IN-COUNCIL of the 30th of January, 1854, as amended by Ordinances: IV of 1856, VIII and IX of 1857, X of 1858, IX of 1859, V of 1868, VI of 1871, IV of 1874, III of 1877, I of 1879, III and VII of 1880, IV of 1882, III of 1885, II of 1886, IV and XVI of 1888, XIV of 1889, II of 1892, VIII of 1893, IV of 1894, III and X of 1896, IV of 1897; the Malta (Use of English Language in legal proceedings) Order-in-Council, 1899; Ordinances: III, VI, XI and XIII of 1899, XI, XII and XVI of 1900, VI and XVI of 1901, I of 1903, I and XII of 1904, XI of 1905, VIII of 1909, IV of 1910, IX of 1911, XII of 1913, II, VI and XII of 1914, IV of 1916, XIII and XIV of 1918; the Malta Constitution Letters Patent, 1921; Ordinance XVI of 1921; Acts: XII of 1922, I of 1924, XXVI of 1927, XVI of 1929; Ordinances: VI and VIII of 1930, XIII and XXVI of 1931, XVI of 1932, VI of 1933; Acts: XXVIII, XXXV and XLI of 1933; Ordinances: XXII, XXX and XXXVII of 1934, IX and XIII of 1935, XIV and XX of 1936, III and XV of 1937, I, XXIV, XXVII and XXXV of 1938, I and VI of 1939, XXIX of 1940; Government Notices Nos. 124 and 248 of 1941. Incorporating also Article 3 of Ordinance II of 1867, Ordinance IV of 1872, Article 30 of Ordinance VI of 1880 and Ordinance XXXVII of 1934.

This Code was subsequently amended by Ordinances: VIII, XII and XXI of 1944, XXIV of 1946, VI of 1947; Acts: X of 1949, IX of 1950, IV of 1951, V of 1956, XII of 1957; Emergency Ordinance XX of 1959; Ordinances: XV of 1959, X of 1960, XXV of 1962; Legal Notice 4 of 1963; Acts: XVI and XXIII of 1963, XIII of 1964, XIX and XXXII of 1965; Legal Notice 46 of 1965; Acts: XXXI and XLIII of 1966, II, XXV and XXXI of 1967, XXVII of 1970, III and XXI of 1971, XXXIII of 1972, II, III, XI, XV, XXXVIII and XLVI of 1973, IV, VIII, XXXV and LVIII of 1974, XXIV, XXVII and XXXVII of 1975, III, XIV, XVIII, XIX and XXII of 1976, XI of 1977, XIII and XVIII of 1980, XLIX and LIII of 1981, IX of 1982, XIII and XIV of 1983, I of 1984, XXXII of 1986, XIII of 1987, XXII of 1988, XXIX of 1989, VIII and XXIX of 1990, XII of 1991, XIX of 1992, XXI of 1993, IV and XXIV of 1994, XXIV of 1995, XVI and XVII of 1996, XXXII of 1997, II and X of 1998, VII of 1999, X of 2000, III and VI of 2001, III, XIII, XXIV and XXXI of 2002, IX of 2003, III of 2004, I, V, VI, XIII, XX and XXII of 2005, XVI of 2006; Legal Notice 274 of 2007; Acts VI, XXIV and XXXI of 2007; Legal Notice 407 of 2007; Acts VIII of 2008, XI of 2009, VII and XXII of 2010, XXI of 2011 and VIII of 2012; Legal Notice 426 of 2012; Acts IV and XVIII of 2013; Legal Notice 246 of 2013; Acts I, II, III, IV, V, IX, XXIV, XXXI and XXXIV of 2014; Legal Notice 37 of 2015; and Acts II, III, VIII and XXXVII of 2015, XXVIII, XLIX and LI of 2016, VIII of 2017, XIV of 2017, XV of 2017, XXIII of 2017 and I of 2018, XI of 2018, XIII of 2018, XVI of 2018, XXXII of 2018, XLII of 2018 and XXIV,XVII, XXXI and XXVIII of 2019, III,XVIII XXVII, XXIX, XLI and LII of 2020 and II, III, IX, X, XXVIII, XXIX, XLIII, L, LIII of 2021, LXIV, LXV of 2021, III of 2022, V, VII , X and XII of 2022 and IV , XIV, XIX, XXII, XXIX , XXXV and XXXVI of 2023 and III, IV , V , VI , VII , X , XI and XXXIII of 2024 and IV of 2025.

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1. The title of this Code is Criminal Code.

Title.

PRELIMINARY PROVISIONS

2. Offences are divided into crimes and contraventions.

Classification of offences. *Amended by: XI.1900.1.*

3. (1) Every offence gives rise to a criminal action and a civil action.

Actions arising from an offence. *Amended by: VI.1871.1.*

(2) The criminal action is prosecuted before the courts of criminal jurisdiction, and the punishment of the offender is thereby demanded.

(3) The civil action is prosecuted before the courts of civil jurisdiction, and compensation for the damage caused by the offence is thereby demanded.

4. (1) The criminal action is essentially a public action and is vested in the State and is prosecuted in the name of the Republic of Malta, through the Executive Police or the Attorney General, as the case may be, according to law.

Nature of criminal action. *Amended by: L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.2; III.2002.2.*

(2) A criminal action is prosecuted *ex officio* in all cases where the complaint of the private party is not requisite to set the action in motion or where the law does not expressly leave the prosecution of the action to a private party.

Prosecution.

5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta -

Persons subject to prosecution. *Amended by: VI.1899.1; XI.1899.107; I.1903.1; XXXI.1966.2; XXXIII.1972.2; XI.1973.377; XXIV.1975.2; XXIX.1990.2; XVII.1996.19; III.2002.3; XIII.2002.10; XXIV.2002.13; XXIV.2014.3; XLIX.2016.8.*

(*a*) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;

(*b*) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;

(*c*) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be;

For the purposes of this paragraph the expression "air space" means the air space above the land areas and territorial waters of Malta;

(*d*) without prejudice to the preceding paragraphs of this sub-article, against any citizen of Malta or permanent resident in Malta who in any place or on board any ship or vessel or on board any aircraft wherever it may be shall have become guilty of the offences mentioned in article 54A or of an offence against the safety of the Government or of the offences mentioned in articles 133, 139A, or of the offences mentioned in articles 188B, 188C, 188D, or of the offences mentioned in

articles 311 to 318 and in article 320 when these are committed or are directed against or on a state or government facility, an infrastructure facility, a public place or a place accessible to the public, a public transportation system, or of forgery of any of the Government debentures referred to in article 166 or of any of the documents referred to in article 167, or of the offence mentioned in article 196, or of any other offence against the person of a citizen of Malta or of any permanent resident in Malta;

For the purposes of this paragraph:

"permanent resident" means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in article 7 of the of the Immigration Act;

Cap. 217.

"offence against the person" includes the offences mentioned in articles 86 to 90 and in articles 198 to 205;

the expressions "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them respectively by article 314A(4);

(*e*) against any person who being in Malta -

(i) shall have become guilty of any offence under article 87(2) or articles 198, 199, 211, 214 to 218, 220, 249 to 251, 311, 312, 314A, 314B, 314C, 316 or 317 when committed or directed on or against the person of a protected person or to the prejudice or injury of such person or likely to endanger the life or to cause serious injury to the property, life or health of such a person, or in connection with an attack on any relevant premises or on any vehicle ordinarily used by a protected person or when a protected person is on or in the premises or vehicle; or

(ii) shall have committed any act which if committed in Malta would constitute an offence and such act involved the use of a bomb, grenade, rocket, automatic firearm, letter bomb or parcel bomb which endangered persons; or

(iii) shall have committed any of the offences under articles 188B to 188D,

although the offences referred to in this paragraph shall have been committed outside Malta:

Provided that for the purposes of sub-paragraph (i) of this paragraph it shall be immaterial whether the offender knew that the person was a protected person;

(*f*) against any person who -

(i) commits any offence in premises or in a building outside Malta having diplomatic immunity due

to the fact that it is being used as an embassy, a residence or for such other purpose connected with the diplomatic service of Malta; or

(ii) commits an offence in a place outside Malta when such person enjoys diplomatic immunity by virtue of such service;

(*g*) against any person who being in Malta, shall be a principal or an accomplice in any of the crimes referred to in article 87(2), or in articles 139A, 198, 199, 211, 214 to 218, 220, 249 to 251, 298, or in articles 311 to 318 or in article 320 when these are committed in the circumstances mentioned in paragraph (*d*) or (*e*) of this sub-article, or in a crime which is committed by any act as is mentioned in paragraph (*e*)(ii) of this sub-article, or conspires with one or more persons for the purpose of committing any of the said crimes, although the crimes shall have been committed outside Malta;

(*h*) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;

(*i*) against any person who commits an offence which, by express provision of law, constitutes an offence even when committed outside Malta:

Exception.

Provided that no criminal action shall be prosecuted against the President of Malta in respect of acts done in the exercise of the functions of his office.

(2) For the purposes of sub-article (1)(*b*) and (*c*), a ship or vessel or an aircraft shall be deemed to belong to Malta if it is registered in Malta or, if it is not registered anywhere, is owned wholly by persons habitually resident in Malta or by bodies corporate established under and subject to the laws of Malta and having their principal place of business in Malta.

(3) For the purposes of sub-article (1)(*e*):

"a protected person" means, in relation to an alleged offence, any of the following:

(*a*) a person who at the time of the alleged offence is a Head of State, a member of a body which performs the functions of Head of State under the constitution of the State, a Head of Government or a Minister for Foreign Affairs and is outside the territory of the State in which he holds office;

(*b*) a person who at the time of the alleged offence is a representative or an official of a State or an official or agent of an international organisation of an inter-governmental character, is entitled under international law to special protection from attack on his person, freedom or dignity and does not fall within the preceding paragraph;

(*c*) a person who at the time of the alleged offence is a member of the family of another person mentioned in either of the preceding paragraphs and -

(i) if the other person is mentioned in paragraph (*a*) above, is accompanying him,

(ii) if the other person is mentioned in paragraph (*b*) above, is a member of his household;

"relevant premises" means premises at which a protected person resides or is staying or which a protected person uses for the purpose of carrying out his functions as such a person; and

"vehicle" includes any means of conveyance;

and if in any proceedings a question arises as to whether a person is or was a protected person, a certificate issued by or under the authority of the Minister responsible for foreign affairs and stating any fact relating to the question shall be conclusive evidence of that fact.

Extension of applicability to exclusive economic zone area or environment protection area. *Added by: XXXV.2023.3.* Cap. 362. Cap. 625.

5A. The provisions of this Code and of any subsidiary legislation made thereunder shall also apply, in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea as ratified by the Law of the Sea (Ratification) Act, to an exclusive economic zone area or an environment protection area as defined in the Exclusive Economic Zone Act. Any artificial island, installation, structure, equipment or device therein shall, solely for the purposes of this Code and any subsidiary legislation made thereunder, be treated as if they were situated in Malta itself.

Criminal and civil actions are independent of each other.

6. The criminal action and the civil action are prosecuted independently of one another.

Criminal actions to be resolved without unreasonable delay. *Added by: XIII.2018.24.*

6A. Criminal actions shall be resolved without any unreasonable delay having due regard to the need to protect the safety and well-being of the injured party.

BOOK FIRST

PENAL LAWS

PART I

OF PUNISHMENTS AND GENERAL RULES FOR THEIR APPLICATION, OF THE WILL AND AGE OF THE OFFENDER, OF ATTEMPTED OFFENCE, OF ACCOMPLICES AND OF RECIDIVISTS

Title I

OF PUNISHMENTS AND GENERAL RULES FOR THEIR APPLICATION

Sub-title I

OF PUNISHMENTS TO WHICH OFFENCES ARE SUBJECT

Punishments to which crimes and contraventions are subject. *Amended by: II.1886.1; XVI.1888.1; XI.1900.2; IX.1911.1; XXI.1971.2; XLIX.1981.4; II.2015.2.*

7. (1) Saving the exceptions laid down in the law, the punishments that may be awarded for crimes are -

(*a*) imprisonment;

(*b*) solitary confinement;

(*c*) interdiction;

(*d*) fine (*multa*).

(2) Subject to the provisions of article 53 or of any other special law, the punishments that may be awarded for contraventions are -

(*a*) detention;

(*b*) fine (*ammenda*);

(*c*) reprimand or admonition.

Punishment restrictive of personal liberty.

(3) The expression "punishments restrictive of personal liberty" includes the punishments of imprisonment and detention.

(4) Any law, inflicting the punishment of death, imprisonment, solitary confinement, fine (*multa* or *ammenda*), detention, or reprimand, shall be deemed to inflict the corresponding punishment

established by this Code for all the effects and consequences of this punishment, in the same manner as if the provisions of such law formed part of this Code, subject, however, to the limitations laid down by such law.

(5) Any law inflicting, in general terms, the punishments established for contraventions, shall be deemed to inflict all the punishments which, under the provisions of articles 341 and 344 may, separately or cumulatively, be applied to the contraventions referred to in this Code.

(6) Any law directing the ascent or descent from one punishment to another shall be deemed to refer to the scale of punishments and to the other provisions contained in article 31.

(7) Any other provision of this Code shall be applicable in the case of any offence referred to in any special law, unless such provision be inconsistent with the provisions of such law.

Imprisonment.

8. (1) Persons sentenced to imprisonment shall be confined in the prison or in that part of the prison appointed for persons sentenced to that punishment, and they shall be subject to the restrictions prescribed in the prison regulations lawfully made.

(2) The duration of the punishment of imprisonment is established by law in each particular case.

Solitary confinement. *Amended by: XLIX.1981.4; III.2002.4.*

9. (1) The punishment of solitary confinement is carried into effect by keeping the person sentenced to imprisonment, during one or more terms in the course of any such punishment, continuously shut up in the appointed place within the prison, without permitting any other person, not employed on duty nor specially authorized by the Minister responsible for the prisons, to have access to him.

Duration of each term of solitary confinement.

(2) No term of solitary confinement shall exceed ten continuous days.

Rules to be observed.

(3) More terms of solitary confinement may only be applied with an interval of two months between one term and another.

(4) Nevertheless, solitary confinement may be applied during those intervals in case of any infringement of the prison regulations, or for any other offence committed during the said intervals, provided that the terms be of short duration and that they shall not together exceed fifteen days in any one interval.

(5) Where the law prescribes the punishment of solitary confinement and does not specify the particular number of terms, it shall not be lawful to inflict more than twelve terms of solitary confinement.

(6) The punishment of solitary confinement is applied in the cases prescribed by law.

(7) Before awarding the punishment of solitary confinement the court shall satisfy itself, if necessary by medical evidence, which may include a medical examination of the person convicted, that the person convicted is fit to undergo the said punishment.

(8) Where, in the course of the execution of the punishment of

solitary confinement, the medical officer of the prison certifies in writing that the prisoner is no longer fit to undergo such punishment, the execution of that punishment shall be suspended until such time as the prisoner is again certified to be medically fit to undergo such punishment.

Interdiction. *Amended by: XI.1900.3; VIII.1909.1; VI.1947.3.*

10. (1) Interdiction is either general or special.

General interdiction.

(2) General interdiction disqualifies the person sentenced for any public office or employment, generally.

Special interdiction.

(3) Special interdiction disqualifies the person sentenced from holding some particular public office or employment, or from the exercise of a particular profession, art, trade, or right, according to the law in each particular case.

Duration of interdiction.

(4) Either kind of interdiction may be for life or for a stated time.

(5) Temporary interdiction shall be for a time not exceeding five years, except where the law especially prescribes a longer time.

(6) Interdiction, whether for life or for a stated time, may, upon the application of the person sentenced to such punishment and on good grounds being shown to the satisfaction of the court by which the sentence was awarded, be discontinued at any time by order of the said court.

Publication of sentence of interdiction.

(7) The court shall order a sentence awarding general or special interdiction or a decree ordering the discontinuance thereof to be published in the Gazette, but, in respect of a decree ordering discontinuance as aforesaid, at the expense of the person concerned.

Penalty for non-fulfilment of obligations.

(8) If any person sentenced to interdiction, shall infringe any of the obligations arising from that punishment, he shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (*multa*).

Fine (*multa*). *Amended by: XI.1900.4; XII.1914.1; XXII.1934.2; XXVII.1938.2; V.1956.2; III.1971.2; XXXIII.1972.3; XXII.1976.4. Substituted by: XIII.1980.2. Amended by: XIII.1983.5; III.2002.5; L.N. 407 of 2007; XXI.2011.45.*

11. (1) Where it is not otherwise specifically provided, the maximum of a fine (*multa*) is one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and the minimum is twenty-three euro and twenty-nine cents (€23.29).

(2) Where the maximum of a fine (*multa*) prescribed in this Code or in any other law is less than twenty-three euro and twenty-nine cents (€23.29), the maximum shall be twenty-three euro and twenty-nine cents (€23.29) and the minimum shall be eleven euro and sixty-five cents (€11.65).

(3) In default of payment of a fine (*multa*) within the period prescribed in article 14, such fine (*multa*) shall be converted into imprisonment at the rate of one day for every thirty-five euro (€35) or part thereof:

Provided that in no case (save as provided in article 17(*g*) and in article 29(1)) shall imprisonment in substitution of a fine

(*multa*) exceed six months if the fine is not higher than seven thousand euro (€7,000), one year if the fine is not higher than thirty thousand euro (€30,000), eighteen months if the fine is not higher than eighty thousand euro (€80,000) and two years if it is higher than eighty thousand euro (€80,000).

Detention. *Amended by: IV.1874.1; II.1886.2: XVI.1888.2; XXV.1962.3; L.N.4 of 1963; L.N.46 of 1965; XXXI.1966.2. Substituted by: III.2002.6.*

12. (1) Persons sentenced to detention shall be detained in the prison or in that part of the prison appointed for persons sentenced to that punishment.

(2) Where it is not otherwise specifically provided, no term of detention shall exceed two months.

Fine (*ammenda*). *Amended by: II.1886.3; XVI.1888.3; XI.1900.5; IX.1911.2; XII.1914.2,3; XXII.1934.3; V.1956.3; III.1971.3; XIII.1980.3; XIII.1983.5; L.N. 407 of 2007.*

13. (1) Where it is not otherwise specifically provided, the maximum of a fine (*ammenda*) is fifty-eight euro and twenty-three cents (€58.23) and the minimum is six euro and ninety- nine cents (€6.99).

Conversion of fine (*ammenda*) into detention.

(2) In default of payment of a fine (*ammenda*) within the period prescribed in article 14, the fine (*ammenda*) shall be converted into detention at the rate of one day for every eleven euro and sixty-five cents (€11.65) or fraction thereof:

Provided that in no case (save as provided in article 29(1), in article 17(*g*) and in article 53) shall detention in substitution for a fine (*ammenda*) exceed one month.

Time for payment of fine (*multa* or *ammenda*). *Added by: XXII.1934.4. Amended by: XIV.1936.2: VI.1947.4; V.1956.4; III.2002.7; L.N. 407 of 2007.*

14. (1) A person sentenced to a fine (*ammenda* or *multa*) shall pay the same forthwith. Nevertheless the court may, for a reason to be recorded, order that the person sentenced shall pay the fine to the registrar within such period as the court in passing sentence shall direct:

Provided that, in the case of a fine (*ammenda*) of fifty-eight euro and twenty-three cents (€58.23) or less, the said period shall not be more than ten days, and, in the case of a fine (*ammenda*) of more than fifty-eight euro and twenty-three cents (€58.23), or in the case of a fine (*multa*), the said period shall not be more than one month:

Provided that in default of payment of the fine (multa or ammenda) within the time laid down by the court in its sentence or, failing a time-limit in the sentence, within the time of one week from the date of the sentence, the said fine shall be converted forthwith into imprisonment or detention as provided in articles 11 and 13 as the case may be, and the police shall, by virtue of the authority conferred upon them by the sentence and by this proviso, arrest the person sentenced and shall escort him to the place

designated according to law for the confinement of persons sentenced to a fine convertible into imprisonment or detention according to law:

Power of court to fix other period of detention or imprisonment.

Provided further that the court may, notwithstanding the provisions of articles 11 and 13, in passing sentence of a fine (*ammenda* or *multa*) determine any other period of detention or imprisonment which the offender shall undergo in default of payment thereof forthwith or within the prescribed time, as the case may be; but the period of detention or imprisonment so determined shall in no case exceed the period laid down in articles 11 and 13, respectively.

(2) The court may also in its discretion in passing sentence or at any time thereafter direct that any fine (*ammenda* or *multa*) to which any person is sentenced, may be paid by instalments in such amounts and in relation to such recurrent intervals as the court may deem fit, but so nevertheless that the period over which the whole amount shall be paid shall in no case exceed three years, and that in default of payment of any one such instalment the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code applicable to a sentence of fine (*ammenda*) or of fine (*multa*) and to arrest and detention or imprisonment, as the case may be, in default of payment thereof, shall apply to the same accordingly.

Reprimand or admonition. *Repealed by: II.1886.4. and re-enacted by: XVI.1888.4.*

15. (1) The reprimand or admonition shall be made in open court by the judge or magistrate who tried the offence.

(2) Whosoever shall receive the reprimand or admonition with overt acts of contempt or want of respect, shall be liable to detention or to a fine (*ammenda*).

Compensation for victims of crime. *Added by: XIII.2018.24. Amended by: XXXII.2018.3.*

15A. (1) In addition to any punishment to which the person convicted of an offence may be sentenced, the Court may order the offender to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence, or to pay to such party such sum of money as may be determined by the Court as compensation for any such loss as aforesaid or for any damages or other injury or harm, including, only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First and of willful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for Justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, moral harm and or psychological harm, caused to such party by or through the offence, and any such order may include both a direction to make restitution and, or, to pay as aforesaid. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure. Cap. 12.

(2) When issuing an order under sub-article (1), the Court may direct that such costs or damages are paid in instalments, in particular, having regard to any other obligations which the offender has towards

the victim or any of the victim's dependants.

Sub-title II

GENERAL PROVISIONS RESPECTING THE INFLICTION AND EXECUTION OF PUNISHMENTS

Reckoning of punishment.

16. Where the punishment is for a term of days, a day of punishment shall be reckoned at twenty-four hours; where the punishment is for a term of months, but not more than three months, each month shall be reckoned at thirty days; where the punishment is of longer duration, the months and years shall be reckoned according to the calendar.

Concurrent offences and punishments. *Amended by: IX.1859.1; XI.1900.6; IX.1911.3,4; XII.1914.4; XXXIII.1972.4; XXXVIII.1973.2; XLIX.1981.4,6; XVI.1996.6; XXIV.2014.4.*

17. In the case of concurrent offences and punishments, the following provisions shall apply:

(*a*) a person guilty of more than one crime liable to punishments restrictive of personal liberty, one of which is for life, shall be sentenced to this punishment with the addition of solitary confinement;

(*b*) a person guilty of more than one crime liable to temporary punishments restrictive of personal liberty, shall be sentenced to the punishment for the graver crime with an increase varying from one-third to one-half of the aggregate duration of the other punishments;

(*c*) a person guilty of more than one contravention shall be sentenced to the punishment established for each contravention:

Provided that if the accused is sentenced to detention, the aggregate duration of the punishment to be awarded shall in no case exceed the period of three months;

(*d*) a person guilty of one or more crimes and of one or more contraventions, shall only be sentenced to the punishment established for the crime or to the punishment to which the offender may be liable for the commission of more crimes according to the rules laid down in the preceding paragraphs, if the punishment to be inflicted for the crimes is not less than three months' imprisonment. Where the punishment to be inflicted for the crimes is less than three months' imprisonment, the punishment established for the contravention or the punishment to which the offender may be liable for the commission of more contraventions according to the rules laid down in the preceding paragraph, shall also be applied;

(*e*) where the law prescribes the punishment of temporary interdiction, that which is of the longest duration shall be applied with an increase varying from one-third to

one-half of the aggregate duration of the others:

Provided that the term awarded shall in no case exceed twenty years;

(*f*) a person found guilty of more than one offence liable to pecuniary punishments shall be sentenced to the punishment of the higher or highest fine (*multa* or *ammenda*), as the case may be, in addition to one-half of each of the other fines (*multa* or *ammenda*);

(*g*) in the case of conversion of more than one pecuniary punishment into a punishment restrictive of personal liberty, the duration of this punishment shall not exceed three years, in the case of a fine (*multa*), or six months in the case of a fine (*ammenda*); and if both fines (*multa* and *ammenda*) have been awarded, the conversion shall be made into detention or imprisonment as the court shall direct;

(*h*) when several offences, which taken together do not constitute an aggravated crime, are designed for the commission of another offence, whether aggravated or simple, the punishment for the graver offence shall be applied.

Continuous offence. *Amended by: XI.1900.6; XIII.2018.24; XXIV.2019.3.*

18. Where the several acts committed by the offender, even if at different times, constitute violations of the same provision of the law, and are committed in pursuance of the same design, such acts shall be deemed to be a single offence, called a continuous offence, but the punishment may be increased by one or two degrees.

Rules respecting the award of punishments.

19. Every punishment established for any offence shall be deemed to be so established without prejudice to any higher punishment prescribed for the offence in any other law, whenever the circumstances mentioned in such other law concur in the offence.

Punishment not awardable in its minimum. *Amended by: XI.1900.7; IX.1911.5; XLIX.1981.6.*

20. When the law expressly provides that a punishment shall not be awarded in its minimum, the punishment to be awarded shall always include at least one-third of the difference between the minimum and the maximum.

Punishment below prescribed minimum. *Added by: XII.1944.2. Amended by: XXI.1971.4; V.2024.2.*

21. Saving the provisions of article 492, the court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence or under the provisions of article 20, without prejudice to the provisions of article 7:

Provided that where a person who was under eighteen (18) years of age at the time of the commission of the offence is convicted of an offence in accordance with articles 204A, 204B, 208, 208A or 208C and the court is satisfied that the said person was a victim of sexual abuse and was compelled to commit the said offence, the court

may, upon conviction, decide not to impose any punishment on the person convicted.

Computation of sentences of imprisonment. *Added by: VI.1947.6. Substituted by: III.2002.8.*

22. Except in the case of a sentence of imprisonment for life or of imprisonment or detention in default of payment of a fine (*multa* or *ammenda*), any time prior to conviction and sentence during which the person sentenced is in prison for the offence or offences for which he has been so convicted and sentenced, not being time in prison in execution of a sentence, shall count as part of the term of imprisonment or detention under his sentence; but where he was previously subject to a probation order, an order for conditional discharge or to a suspended sentence in respect of such offence or offences, any such period falling before that order was made or suspended sentence passed shall be disregarded for the purposes of this article:

Provided that where any time prior to conviction as aforesaid has, by virtue of this article, been counted as part of the term of imprisonment or detention under the sentence in respect of that conviction, such time shall not be counted as part of the term of imprisonment or detention under any other sentence.

Forfeiture of *corpus delicti*. *Amended by: VI.1947.7; XXXI.2007.3.*

23. (1) The forfeiture of the *corpus delicti*, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.

(2) In case of contraventions, such forfeiture shall only take place in cases in which it is expressly stated in the law.

(3) In the case of things the manufacture, use, carrying, keeping or sale whereof constitutes an offence, the forfeiture thereof may be ordered by the court even though there has not been a conviction and although such things do not belong to the accused.

(4) Notwithstanding the provisions of sub-articles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

Freezing of property of person accused. Cap. 621. *Added by: III.2002.9. Amended by: III.2004.69; VII.2010.3. Substituted by: VI.2024.3.* Cap. 373.

23A. (1) The freezing of property of any person charged or accused of a relevant offence shall be regulated by the provisions of the Proceeds of Crime Act:

Provided that the above shall not apply when a person is charged or accused with an offence against the provisions of the Medical and Kindred Professions Ordinance or of the Dangerous Drugs Ordinance both if the charges are only for offences against the said laws and if they are for offences under the said laws and offences under other laws:

Cap. 31.
Cap. 101.

Provided further that where, before the coming into force of this proviso, a Freezing Order was issued in respect of an offence against the Medical and Kindred Professions Ordinance or the Dangerous Drugs Ordinance under the Medical and Kindred Professions Ordinance or Dangerous Drugs Ordinance or under article 23A of this Code as in force at the time of the issuing of the said order, whether the charges were only for offences against the Medical and Kindred Professions Ordinance or the Dangerous Drugs Ordinance or for offences under those laws together with charges for offences under other laws every Freezing Order so issued shall be deemed to have been issued under the Medical and Kindred Professions Ordinance and the Dangerous Drugs Ordinance, and shall, after the coming into force of this proviso, continue to be in force and shall be regulated in accordance with the Medical and Kindred Professions Ordinance and the Dangerous Drugs Ordinance.

Cap. 31.
Cap. 101.

(2) In this article and in articles 23B, 23C and 23D the words "property" and "relevant offence" have the same meaning as assigned to them in the Proceeds of Crime Act and the word "proceeds" has the same meaning as assigned to the words "Proceeds of crime" in the Proceeds of Crime Act.

Cap. 621.

(3) Where this article and articles 23B, 23C and 23D provide for the forfeiture of proceeds of crime in a manner which is not provided for in the Proceeds of Crime Act the provisions of this article and of articles 23B, 23C and 23D shall be applied before the provisions of the Proceeds of Crime Act. The provisions of the Proceeds of Crime Act shall apply only subsidiarily in accordance with article 5(3) of the Proceeds of Crime Act.

Cap. 621.

Forfeiture of proceeds.
Added by: III.2002.9.
Amended by: XXXI.2007.4; VIII.2015.2; XLII.2018.3.

23B. (1) Without prejudice to the provisions of article 23 the court shall, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D.

(1A) *Repealed by VI.2024.4.*

(1B) *Repealed by VI.2024.4.*

(2) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

Cap. 12.

(3) *Repealed by VI.2024.4.*

Forfeiture of property derived from criminal activity. *Added by: XXXI.2007.5. Amended by: XXIV.2014.5; VIII.2015.3; VI.2024.5.*

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court can reasonably presume that it is substantially more probable, that the property in question has been obtained from the criminal activity of that person rather than from other activities, that property shall be liable to forfeiture.

(2) (a) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (7) of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* in the circumstances mentioned in those paragraphs.

Cap. 101.

(b) the Court shall order the forfeiture in favour of the Government of such moneys or other movable property and such immovable property of the person found guilty of the relevant offence which constitute the proceeds of the said offence even if the movable or immovable property has since the offender was charged passed into the hands of third parties and even if the said moneys, movable property or immovable property are situated in any place outside Malta.

(3) Where a person has been charged or accused of a relevant offence which is liable to give rise, directly or indirectly, to an economic benefit, and proceedings cannot continue due to the illness or absconding of the said person, and the court based on specific facts is fully convinced that such proceedings could have led to the conviction of the person charged or accused had he appeared in the proceedings or stood trial, it shall be lawful for the court to order the confiscation of the instrumentalities and proceeds of the said offence:

For the purposes of this sub-article "illness" shall mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue under normal conditions.

(4) Saving the provisions of sub-article (2) the Court shall in addition to any other punishment, in its sentence or at any time thereafter, order the forfeiture of all proceeds or other property the value of which corresponds to proceeds, which, directly or

indirectly, were transferred by a suspected or accused person to a third party, or which were acquired by a third party from a suspected or accused person, when the third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation.

(5) Nothing shall preclude the detection and tracing of property as provided for under this Code or any other law, to be frozen and confiscated after a final conviction for an offence or following proceedings in terms of sub-article (3), and to ensure the effective execution of a confiscation order, when such an order has already been issued.

(6) *Repealed by Act VI.2024.5.*

The Director of the Asset Recovery Bureau to conduct enquiries. *Added by: VII.2010.5. Amended by: IV.2014.3; XXXI.2019.3.*

23D. (1) Where the court makes any order as is mentioned in articles 23A to 23C, both articles inclusive, it shall order the Director of the Asset Recovery Bureau to conduct inquiries to trace and ascertain the whereabouts of any moneys or other property, due or pertaining to or under the control of the person charged or accused or convicted, as the case may be:

Provided that for the purposes of this sub-article "property" and "proceeds" shall have the meaning assigned to them respectively by article 23B(3).

(2) Whosoever is required by the Director of the Asset Recovery Bureau to provide information for the purpose of sub-article (1) shall comply with the demand within thirty days from the day of receipt of the demand.

(3) The demand made by the Director of the Asset Recovery Bureau, and any reply thereupon in terms of this article, may be made by electronic mail.

Liability of person having the charge of another, in case of contravention. *Added by: VIII.1909.2.*

24. In the case of any contravention committed by a person who is under the authority, control or charge of another person, not only the person committing the contravention but also such other person shall be liable to punishment, if the contravention is against some provision the observance of which such other person was bound to enforce, and if the contravention could have been prevented by the exercise of diligence on the part of such other person.

Abolition of disabilities arising out of punishments. *Amended by: VI.1871.2; XXI.1971.5.*

25. All disabilities arising, under the provisions of any law whatsoever, out of any punishment, are abolished.

Right of civil action unaffected. *Amended by: VIII.1909.3.*

26. (1) Any sentence to a punishment established by law shall always be deemed to have been awarded without prejudice to the right of civil action.

(2) A pardon commuting or remitting a punishment lawfully awarded shall not operate so as to bar the civil action.

Difference between punishment at the time of the offence and that at the time of trial.

27. If the punishment provided by the law in force at the time of the trial is different from that provided by the law in force at the time when the offence was committed, the less severe kind of punishment shall be awarded.

Rules as to the serving of punishments. *Amended by: XII.1914.5.*

28. (1) When more punishments of the same kind are awarded at the same time against the same offender, they shall be undergone one after the termination of the other; if they are of different kinds, the heavier punishment shall be undergone first, and immediately on its termination, the less severe punishment shall commence.

(2) If any person, while actually undergoing one punishment, shall be sentenced to another punishment either of the same or of a less severe kind, he shall continue to undergo the first punishment, and immediately on its termination, he shall undergo the second punishment.

(3) If the second punishment be heavier than the first, the person sentenced shall at once be subjected to the second punishment, and on its termination, he shall immediately revert to the first punishment and undergo the remainder thereof.

(4) The punishment of interdiction shall take effect from the date of the sentence awarding such punishment.

Suspended sentence of imprisonment. *Added by: XXIX.1990.3. Amended by: III.2002.10.*

28A. (1) Subject to sub-articles (2) to (7) and to articles 28B to 28I, a court which passes a sentence of imprisonment for a term of not more than two years for an offence may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than four years from the date of the order, the offender commits another offence punishable with imprisonment and thereafter a court competent to do so orders under article 28B that the original sentence shall take effect; and in this article and whenever it occurs in articles 28B to 28G and in article 28I "operational period", in relation to a suspended sentence, means the period so specified.

(2) A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under sub-article (1).

(3) A court which passes a suspended sentence on any person for an offence shall not make in his case a probation order, as provided in the Probation Act, in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

Cap. 446.

(4) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under article 28B if during the operational period he commits an offence punishable with imprisonment.

(5) A suspended sentence which has not taken effect shall for all intents and purposes of law be deemed, except as provided in sub-article (1), to be a sentence awarding punishment and nothing

in this article shall be deemed to effect -

(*a*) the applicability of any other punishment which may be awarded, or any suspension, cancellation, disqualification, forfeiture, loss or removal which may be ordered, together with the punishment of imprisonment so suspended; and

(*b*) the operation of articles 383, 384, 385, 386, 387 and 533.

(5A) Without prejudice to the provisions of article 28F, the punishment awarded under a suspended sentence when that sentence has not taken effect shall, for the purposes of article 50, be deemed to have expired on the expiration of the original operational period referred to in sub-article (1) or of the operational period substituted therefore as provided in article 28B(2)(*b*).

(6) The provisions of sub-article (1) shall not apply to any imprisonment awarded in default of payment of a fine (*multa*) or of costs.

(7) An order under sub-article (1) shall not be made in any of the following cases -

(*a*) where the person sentenced is already serving a sentence of imprisonment;

(*b*) where the person sentenced is a recidivist within the terms of article 50;

(*c*) where the offence has been committed during a period of probation or of conditional discharge under the Probation Act. Cap. 446.

(8) The registrar shall keep a special register of offenders dealt with by means of a suspended sentence.

Commission of an offence during the operational period. *Added by: XXIX.1990.3.*

28B. (1) Where an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and either he is so convicted by or before a court competent under article 28C to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such a court, then, unless the sentence has already taken effect, that court shall order that the suspended sentence shall take effect.

(2) If the further offence committed during the operational period is of an involuntary nature or if, in the case of any other kind of offence, the court is of opinion, in view of all the circumstances including the facts of such further offence, that it would be unjust to make an order under sub-article (1), it may deal with the offender by one of the following methods -

(*a*) it may abstain from making an order under sub-article (1) and the operational period shall then remain in force; or

(*b*) it may by order vary the original order under article 28A(1) by substituting for the operational period specified therein a period expiring not later than four

years from the date of the variation:

Provided that if it does not make an order under sub-article (1) the court shall state its reasons.

(3) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Criminal Court any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall, notwithstanding the provisions of article 436(2) and of article 467, be determined by the court and not by the verdict of a jury.

(4) Where a court deals with an offender under this article in respect of a suspended sentence passed by another court the registrar shall, by means of a copy, notify forthwith the court which passed the sentence of the method adopted.

(5) Where a court deals with an offender under this article the registrar shall make the necessary annotations in the special register mentioned in article 28A(8).

Competent court for dealing with suspended sentence. *Added by: XXIX.1990.3. Amended by: VIII.1990.3; III.2002.11.*

28C. (1) An offender may be dealt with in respect of a suspended sentence by the Court of Criminal Appeal, by the Criminal Court or, where the sentence was passed by the Court of Magistrates, by such court.

(2) Where an offender is convicted by the Court of Magistrates of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Criminal Court, that court shall commit the offender in custody or on bail before the Criminal Court for the purpose of being dealt with in respect of the suspended sentence:

Provided that where the Court of Magistrates is of the opinion that the appropriate punishment for the further offence is imprisonment, the provisions of article 28E(3) shall apply.

(3) For the purposes of this article and of articles 28D and 28E -

(*a*) a suspended sentence passed on an offender on appeal shall be deemed to have been passed by the court from which the appeal was made;

(*b*) the Juvenile Court shall be deemed to be a Court of Magistrates (Malta) or a Court of Magistrates (Gozo), as the case may be.

Suspended sentence not dealt with on conviction of further offence. *Added by: XXIX.1990.3. Amended by: VIII.1990.3; III.2002.12.*

28D. (1) If it appears to the Court of Criminal Appeal, to the Criminal Court or to the Court of Magistrates that an offender has been convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, that court shall, either *ex officio* or on the application of the Attorney General or of the Executive Police, as the case may require, issue a summons ordering the offender to appear before it on a date and at a time specified therein, or a warrant for his arrest.

(2) A summons or warrant issued under this article shall direct the offender to appear or to be brought before the court in order to be dealt with in respect of the suspended sentence.

Concurrent offences and punishments in relation to suspended sentence. *Added by: XXIX.1990.3. Amended by: VIII.1990.3; III.2002.13.*

28E. (1) Where an offender is sentenced for more than one crime in accordance with the provisions of article 17(*b*), an order under article 28A(1) may be made if the single term of imprisonment deemed appropriate and fixed by the court in the sentence so suspended does not exceed two years and if the other conditions for a suspended sentence to be passed apply.

(2) *Deleted by: III.2002.13.*

(3) Where the Court of Magistrates convicts an offender of an offence punishable with imprisonment committed during the operational period of a suspended sentence passed by the Criminal Court, it shall, after making the declaration of guilt of the offender in respect of such offence and stating its conclusion, where it is so satisfied, that the appropriate punishment for that offence is imprisonment, refer the case for the determination of the punishment to the Criminal Court by committing the offender to that court as provided in article 28C(2) without pronouncing the term of imprisonment for the further offence:

Provided that if the Criminal Court does not make an order under article 28B(1), it shall determine the term of imprisonment for the further offence only.

(4) *Deleted by: III.2002.13.*

(5) No court dealing with an offender as provided in article 28C and in this article may vary the term of imprisonment awarded in the suspended sentence by reducing such term, except in so far as may be necessary for the purpose of compliance with the provisions of article 17(*b*).

Recidivists. *Added by: XXIX.1990.3.*

28F. In dealing with an offender for an offence punishable with imprisonment committed during the operational period of a suspended sentence the court shall consider him a recidivist within the meaning of article 49 for the purpose of assessing any punishment to which he is liable for such further offence, but the punishment awarded under the suspended sentence shall not be taken into account for the purposes of article 50 unless such sentence has taken effect and until the expiration or remission of such punishment.

Suspended sentence supervision order. *Added by: XXIX.1990.3. Amended by: III.2002.14; L.N. 407 of 2007; XXIV.2014.6.*

28G. (1) Where a sentence of more than six months imprisonment is suspended in accordance with the provisions of article 28A(1), the court may in addition make a suspended sentence supervision order (hereinafter referred to as "a supervision order") placing the offender under the supervision of a supervising officer for a period specified in the order, being a period not exceeding the operational period.

(1A) Where a supervision order is made in accordance with the provisions of sub-article (1), the court may, in addition to the order, make a community service order as defined in article 11 of the Cap. 446. Probation Act and the provisions of the Probation Act shall, *mutatis mutandis*, apply to any such order.

(2) A supervision order shall specify the name, address and other identification particulars of the offender, and the supervising Cap. 446. officer shall be a probation officer appointed under the Probation Act and named in the supervision order; and the supervision order may moreover require the offender to comply, during the whole or any part of the period of supervision, with such requirements as may be imposed by the court under the provisions of article 7 of the said Act.

(3) An offender in respect of whom a supervision order is in force shall keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

(4) The court by which a supervision order is made shall cause a copy of the order to be served forthwith on the supervising officer.

(5) A supervision order shall cease to have effect if before the end of a period specified in it -

(*a*) a court orders that the suspended sentence passed in the proceedings in which the supervision order was made shall have effect; or

(*b*) the order is discharged or replaced in accordance with the following provisions of this article.

(6) A supervision order may be discharged on the application of the supervising officer or the offender by the court which made the order. If such order was made on appeal, the court from which the appeal was made shall be deemed to be the court which made the order.

(7) The court which made the supervision order may replace it by an order extending its duration in accordance with any variation of the operational period of the suspended sentence made under article 28B(2).

(8) On making or replacing a supervision order the court shall explain its effect in ordinary language to the offender.

(9) If at any time while the supervision order is in force it appears to the court that made the order, on the written report of the supervising officer, that the offender has failed to comply with any of the requirements of sub-articles (2) and (3), the court shall cause the offender to be brought before it on an appointed day and at an appointed time, and if the court, after hearing the offender, is satisfied that such failure has occurred, it may either in serious or repeated cases order that the suspended sentence passed in the proceedings in which the supervision order was made shall have effect or, without prejudice to the continuation of the order, impose on him a fine (*ammenda*) not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94).

(10) Any reference to a supervision order shall be deemed to include a community service order.

Court direction for restitution or compensation. *Added by: XXIX.1990.3. Amended by: XIII.2018.24; XXXII.2018.4.*

28H. (1) When making an order for suspended sentence under sub-article (1) of article 28A, the court may enter in such order a direction obliging the offender to make restitution to the injured party of anything stolen or knowingly received or obtained by fraud or other unlawful gain by the offender to the detriment of such party by or through the offence to which the suspended sentence relates, or to pay to such party such sum of money as may be determined by the court in that direction as compensation for any such loss as aforesaid or for any damages or other injury or harm, including, only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First and of willful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First, up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, moral harm and, or psychological harm. caused to such party by or through the offence; and any such order may include both a direction to make restitution and, in default, to pay as aforesaid.

(2) In any case in which it enters such a direction in its order under article 28A(1) the court shall, in that direction, fix the time-limit, not being longer than six months from the date of the direction, within which the restitution or payment of compensation specified in the direction shall be made by the offender.

(3) When issuing an order under sub-article (1), the Court may direct that such costs or damages are paid in instalments, in particular, having regard to any other obligations which the offender has towards the victim or any of the victim's dependants.

(4) The court shall determine the amount of any compensation directed to be paid under this article after summarily hearing the parties, if they so wish, and any other evidence, including that of experts, it may deem relevant, but the amount of compensation so determined shall be without prejudice to the rights of either of the parties, or any other person interested, ensuing from the final liquidation of the amount due, if any, as may be subsequently agreed or adjudicated upon in a civil action or in any other manner permitted by law.

(5) If the offender fails to comply with a direction entered under this article within the time fixed by the court in that direction, the court shall on the sworn application of the party to whom such restitution or compensation is due, to be served on the offender, appoint a date and time not later than seven days from the date of service of the application, for hearing the parties.

(6) If the court, after such hearing, is satisfied that the offender has failed to comply with its direction under this article, it shall order that the suspended sentence shall take effect. The court may, however, for reasonable cause, grant to the offender a further peremptory period not exceeding one month, for complying with

the direction.

(7) The court shall abstain from taking cognizance of an application as is mentioned in sub-article (5) if such application is filed after the lapse of three months from the expiration of the time-limit fixed by the court for compliance with such direction.

(8) On entering a direction under this article the court shall explain to the offender in ordinary language his liability under this article if he fails to comply with that direction.

Appeals. *Added by: XXIX.1990.3.*

28I. (1) For the purposes of any right of appeal an order made by a court under article 28B(1) or article 28H(5) that a suspended sentence shall take effect shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

(2) Nothing in this article shall affect the right of appeal of any person against conviction or sentence provided for in this Code but no appeal shall be permitted on any of the following matters:

(*a*) the length of the operational period fixed under article 28A(1);

(*b*) any variation of the operational period made under article 28B(2)(*b*);

(*c*) any direction entered under article 28H for the making of restitution or the payment of compensation, the length of the time-limit fixed for the making of such restitution or the payment of such compensation under sub-article (2) of that article, or the determination of the amount of compensation payable under sub-article (3) of that article.

Procedure in default of payment of fine (*ammenda* or *multa*). *Amended by: IV.1856.2; II.1886.5; XVI.1888.5; XII.1914.6; XXII.1934.5; I.1939.2; III.2002.15.*

29. (1) Any person sentenced to the payment of a fine (*ammenda* or *multa*) and who is granted the benefit of time by order of the court according to the provisions of article 14(2), and who does not pay such fine in accordance with the conditions laid down in the same order, shall be liable to be arrested and brought before the court; and the court, upon ascertaining the identity of the person sentenced and that payment has not been paid according to the conditions of the order, shall commit such person to undergo the detention or imprisonment prescribed in substitution for the fine (*ammenda* or *multa*), or in substitution of the balance of the fine (*ammenda* or *multa*) still unpaid, as the case may be. The arrest shall take place upon a warrant to be issued by the court.

(2) The aforesaid warrant shall be issued within four days from the date of any breach of the conditions laid down by the court in its order or from the date of the expiration of the period prescribed for payment under article 14:

Provided that no plea in favour of the person sentenced shall be admissible by reason of the fact that the issue of such warrant was, for any reason whatsoever, delayed beyond the said period of four days.

(3) The court may, on the application of the Police and on reasonable cause being shown, upon hearing the person sentenced, determine the period prescribed under article 14 at any time during the course of such period and commit the person sentenced to undergo the punishment prescribed in substitution for the fine (*ammenda* or *multa*).

(4) A person sentenced may at any time obtain his release from the substituted punishment by paying the fine (*ammenda* or *multa*) with the deduction of such amount thereof as corresponds to the portion of the punishment undergone at the rates laid down in articles 11 and 13 respectively, and also at similar rates may obtain his release from any unexpired period of detention or imprisonment awarded to him under the provisions of sub-article (1).

Disqualifications in case of convictions. *Added by: XXIV.1938.2. Substituted by: V.1956.6. Amended by: III.2002.16. XXVIII.2021.2.*

30. (1) Without prejudice to the provisions of any other law imposing or authorising the suspension or cancellation of, or disqualification from holding or obtaining, any warrant, licence, permit or other authority held from the Government or any other public authority, where any person is convicted, whether as a principal or an accomplice, of a criminal offence which has been committed -

(*a*) in or in connection with the exercise of any profession, art, trade, calling or other occupation for which a warrant, licence, permit or authority has been or may be issued to him by the Government or any other public authority; or

(*b*) in the use or by means of any instrument, vehicle, substance or other thing whatsoever for the carrying, keeping or using of which a licence, permit or authority has been or may be issued to him,

the court may, in addition to sentencing the person convicted as aforesaid to any punishment provided by law for the offence, order such person to be disqualified from holding or obtaining, for such time as the court deems fit, such warrant, licence, permit or authority.

(2) Where, by virtue of a conviction under this Code or any other law, any person has a warrant, licence, permit or authority suspended, or is disqualified from holding or obtaining any warrant, licence, permit or authority, the court may, on the application of such person, as it thinks expedient, having regard to his character, to his conduct subsequent to the conviction, to the nature of the offence and to any other circumstances of the case, and after hearing Attorney General or the Police in the case of an application before the Court of Magistrates or the Attorney General in the case of an application before any other court, either remove the suspension or disqualification as from such date as it may specify or refuse the application:

Provided that, where an application under this sub-article is refused, a further application thereunder shall not be entertained if made within three months after the date of the refusal.

Sub-title III

OF THE ASCENT AND DESCENT FROM ONE PUNISHMENT TO ANOTHER

Scale of punishments. *Amended by: IV.1856.3,4,5; V.1868.2, 3; VI.1871.3; II.1886.6; XVI.1888.6; XI.1900.9; IX.1911.6; XXI.1971.6; XLIX.1981.4; XVI.1996.6; XXIV.2014.7.*

31. (1) The ascent or descent from one degree of punishment to another shall be as follows:

(*a*) subject to any special provision contained in this Code, from the punishment of imprisonment for life the descent shall be in accordance with the scale of punishments of imprisonment as specified in paragraph (*b*);

(*b*) subject to any special provision contained in this Code, the following shall be the scale of punishments of imprisonment:

(i) from ten years to forty years;

(ii) from eight years to thirty years,

(iii) from seven to twenty years,

(iv) from six to twelve years,

(v) from five to nine years,

(vi) from four to six years,

(vii) from three to five years,

(viii) from two to four years,

(ix) from eighteen months to three years,

(x) from thirteen months to two years,

(xi) from nine to eighteen months,

(xii) from seven months to one year,

(xiii) from five to nine months,

(xiv) from two to six months,

(xv) from one to three months;

(*c*) the descent from the fifteenth degree shall be to imprisonment for a term not exceeding twenty days, or to detention or to a fine (*ammenda*);

(*d*) in the ascent from one degree to another, the order shall be inverted, commencing from the fifteenth degree;

(*e*) in default of an express provision to the contrary, the ascent from the first degree shall be made by adding to the punishment of imprisonment the punishment of solitary confinement for not more than twelve terms, or by adding other aggravations of punishment established by the prison regulations;

(*f*) the ascent from the punishment of a fine (*multa*) shall be to imprisonment for a term not exceeding three months, and the descent shall be to the punishments established for contraventions;

(*g*) the ascent from the punishments established for contraventions shall be to the punishment of a fine (*multa*) or imprisonment for a term not exceeding three months.

(2) The law establishing in general terms a descent from one punishment to another, shall not be deemed to include cases of contraventions or of crimes liable to the punishments for contraventions.

Gradation in the scale of punishments. *Amended by: XI.1900.9.*

32. (1) Where the punishment includes a latitude of more degrees, the ascent or descent shall be made by raising or lowering the maximum and the minimum to the nearest degree respectively.

(2) When the punishment of solitary confinement is added to another punishment, the ascent or descent shall be reckoned on such other punishment:

Provided that in cases of descent, the court may restrict the punishment of solitary confinement to any smaller number of terms or omit such punishment altogether.

TITLE II

OF THE WILL AND AGE OF THE OFFENDER

Defect of will. *Amended by: XI.1900.10; V.1956.7; XVIII.1976.52.*

33. Every person is exempt from criminal responsibility if at the time of the act or omission complained of, such person -

(*a*) was in a state of insanity; or

(*b*) was constrained thereto by an external force which he could not resist.

Increase in punishment for offences committed by prisoners in prison. *Added by: XIII.2005.3.* Cap. 446. Cap. 260.

33A. (1) Where an offence is committed by a person who is a prisoner the punishment for the offence shall in case of a conviction be increased by one or two degrees and the provisions of articles 21 and 21 of the Probation Act shall not apply.

(2) For the purposes of this article "prisoner" has the same meaning assigned to it by article 2 of the Prisons Act and includes a prisoner deemed to be confined in a prison according to the provisions of article 3(3) of the same Act.

Intoxication. *Added by: XIII.1935.2. Amended by: V.1956.8.*

34. (1) Save as provided in this article, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if -

(*a*) by reason thereof the person charged at the time of the act or omission complained of was incapable of understanding or volition and the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(*b*) the person charged was by reason of the intoxication insane, temporarily or otherwise, at the time of such

act or omission.

(3) Where the defence under sub-article (2) is established, then, in a case falling under paragraph (*a*) thereof, the person charged shall be discharged, and, in a case falling under paragraph (*b*), the provisions of articles 620 to 623 and 625 to 628 shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purposes of this article "intoxication" shall be deemed to include a state produced by narcotics or drugs.

Minors under fourteen years of age.
Amended by: III.1899.10; XI.1900.11; XII.1913.1. Substituted by: V.1956.9. Amended by: XVIII.1980.15; XIII.1983.5; XXIX.1990.4; L.N. 407 of 2007. Substituted by: III.2014.2.
Cap. 285.

35. (1) Without prejudice to the powers of the Minister under the Children and Young Persons (Care Orders) Act and any other law which from time to time provides for measures of protection, help, care and education of minor persons who would have been identified as persons who have committed crimes or contraventions, a minor under fourteen years of age shall be exempt from criminal responsibility for any act or omission.

Powers of the court.

(2) Nevertheless, in a case referred to in sub-article (1), the court may, on the application of the Police, require the parent or other person charged with the upbringing of the minor to appear before it, and, if the fact alleged to have been committed by the minor is proved and is contemplated by the law as an offence, the court may bind over the parent or other person to watch over the conduct of the minor under penalty for non-compliance of a sum of not less than one hundred euro (€100) and not exceeding two thousand euro (€2,000), regard being had to the means of the person bound over and to the gravity of the fact.

(3) If the fact committed by the minor is contemplated by the law as an offence punishable with a fine (*ammenda*), the court may, in lieu of applying the provisions of sub-article (2), award the punishment against the parent or other person charged with the upbringing of the minor, if the fact could have been avoided by his diligence.

(4) For the purpose of the application of the provisions of the preceding sub-articles of this article, the parent or other person charged with the upbringing of the minor as aforesaid, shall be required to appear, by summons, in accordance with the provisions contained in Book Second of this Code.

36. (*Repealed by Act III.2014.3.*).

Minors under fourteen but over nine years acting with discretion. *Amended by: IV.1856.6,7; VI.1871.4; II.1886.7; XVI.1888.7; XI.1900.12. Substituted by: V.1956.10. Amended by: XVIII.1980.15. Substituted by: III.2002.17.*

37. (1) The minor under sixteen years of age shall also be exempt from criminal responsibility for any act or omission done without any mischievous discretion.

(2) In the case where the act or omission is committed by a minor who is aged between fourteen to sixteen years of age with mischievous discretion and in the case where the minor is aged between sixteen and eighteen years, the applicable penalty shall be decreased by one or two degrees.

Minors under sixteen years of age acting without mischievous discretion. *Added by: XI.1900.12. Amended by: XII.1913.2. Substituted by: V.1956.11. Amended by: XVIII.1980.15. Substituted by: III.2014.4.*

38. *Repealed by: XVIII.1980.15.*

Definition of "Approved Institution". *Amended by: XII.1913.3. Substituted by: V.1956.12. Amended by: L.N. 4 of 1963; XXXI.1966.2.*

39. (*Repealed by Act III.2014.5.*).

Rules concerning deaf-mutes. *Added by: III.1899.13. Amended by: XI.1900.13.*

40. The following rules shall be observed in the case of deaf-mutes who have acted with a mischievous discretion:

Other rules concerning deaf-mutes. *Added by: III.1899.13. Amended by: XI.1900.13; XXI.1971.7; XLIX.1981.4.*

(*a*) if at the time of the offence they have attained the age of fourteen but not the age of eighteen years, the provisions contained in articles 36 and 37 shall apply;

(*b*) if at the time of the offence they have attained the age of eighteen years -

(i) in the case of a crime liable to the punishment of imprisonment for life, they shall be liable to imprisonment for a term not exceeding twenty years;

(ii) in the case of any other crime, they shall be liable to the punishment established by law diminished by one-third;

(iii) in the case of contraventions, they shall be liable to the punishments established for contraventions.

TITLE III

OF ATTEMPTED OFFENCE

Attempted crime.

41. (1) Whosoever with intent to commit a crime shall have manifested such intent by overt acts which are followed by a commencement of the execution of the crime, shall, save as otherwise expressly provided, be liable on conviction -

(*a*) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;

(*b*) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.

Attempted contravention.

(2) An attempt to commit a contravention is not liable to punishment, except in the cases expressly provided for by law.

TITLE IV

OF ACCOMPLICES

Complicity in crime. *Amended by: VIII.1909.4.*

42. A person shall be deemed to be an accomplice in a crime if he -

(*a*) commands another to commit the crime; or

(*b*) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or

(*c*) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or

(*d*) not being one of the persons mentioned in paragraphs (*a*), (*b*) and (*c*), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or

(*e*) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid

or reward after the fact.

Punishment for complicity.

43. Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal.

Personal circumstances not communicable.

44. Where two or more persons take part in the commission of a crime, the circumstances which refer solely to the person of any one of them individually, whether he be a principal or an accomplice, and which may exclude, aggravate, or mitigate the punishment in regard to him, shall not operate either in favour of, or against the other persons concerned in the same crime.

Real circumstances when communicable.

45. Where two or more persons take part in the commission of a crime, any act committed by any of such persons, whether he be a principal or an accomplice, which may aggravate the crime, shall only be imputable -

(*a*) to the person who commits the act;

(*b*) to the person with whose previous knowledge the act is committed; and

(*c*) to the person who, being aware of the act at the moment of its commission, and having the power to prevent it, does not do so.

Accomplice liable to punishment independently of the principal.

46. Where the actual commission of a crime is established, an accomplice shall be liable to be punished, independently of the principal, notwithstanding that such principal shall die or escape or be pardoned or otherwise delivered before conviction, or notwithstanding that the principal is not known.

Constraint to commit offence, etc.
Added by: V.1956.13.

47. Any person who -

(*a*) constrains another person by an external force which such other person could not resist, to commit an offence; or

(*b*) participates by any of the acts specified in article 42 in an offence committed by any other person who is according to law exempt from criminal responsibility,

shall himself be guilty of that offence as a principal offender.

Complicity in contraventions.

48. The provisions contained in this Title shall also apply to contraventions.

TITLE IV BIS

Added by: III.2002.18.

OF CONSPIRACY

Conspiracy.
Added by: III.2002.18.
Amended by: XI.2018.25

48A. (1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment shall be guilty of the offence of conspiracy to commit that offence.

(2) The conspiracy referred to in sub-article (1) shall subsist from the moment in which any mode of action whatsoever is

planned or agreed upon between such persons.

(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of two or three degrees.

(4) For the purposes of sub-article (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating that offence.

TITLE V

OF RECIDIVISTS

Definition of recidivist. *Amended by: IV.1856.8; XI.1900.14; XXXI.2007.6. Substituted by: XXIV.2014.8.*

49. (1) A person is deemed to be a recidivist if, after being sentenced for any offence by a judgement, even when delivered by a foreign court, which has become res judicata, he commits another offence.

(2) In any proceedings under or for the purposes of this article, a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of that State, or part of that State, shall be admissible as evidence of the fact and date of the conviction without any need for further evidence.

(3) A document shall be deemed to be duly authenticated if one of the following conditions applies:

(*a*) it purports to be signed by a judge, magistrate or officer of the sentencing State; or

(*b*) it purports to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the sentencing State; or

(*c*) it purports to be authenticated by the oath, declaration or affirmation of a witness.

(4) Any document which is to be sent in connection with proceedings under this article may be transmitted by any secure means capable of producing written records and under conditions permitting the ascertainment of its authenticity.

(5) In this article, "oath" includes an affirmation or a declaration; and nothing in this article shall be construed as prejudicing the admission in evidence of any document which is admissible in evidence under any other provision of law.

Effect of previous conviction for crime. *Amended by: XI.1900.14.*

50. Where a person sentenced for a crime shall, within ten years from the date of the expiration or remission of the punishment, if the term of such punishment be over five years, or within five years, in all other cases, commit another crime, he may be sentenced to a punishment higher by one degree than the punishment established for such other crime.

51. Where, however, a person, while undergoing a punishment for life and restrictive of personal liberty, commits another crime subject to a lesser punishment, he shall be liable to one or more terms of solitary confinement.

Solitary confinement in the case of relapsers serving a life sentence. *Amended by: XI.1900.14.*

52. For the purposes of the provisions contained in the foregoing articles of this Title, any sentence in respect of any crime committed through imprudence or negligence, or through unskilfulness in the exercise of any art or profession, or through non-observance of regulations, shall not be taken into account in awarding punishment for any other crime, and vice versa.

Exceptions. *Amended by: XI.1900.14.*

53. Where a person sentenced for a contravention shall, within three months from the date of the expiration or remission of the punishment, commit another contravention, he may be sentenced to detention for a term not exceeding two months, or to a fine (*multa*), or to imprisonment for a term not exceeding one month.

Effect of previous conviction for contravention. *Amended by: XI.1900.14; IX.1911.7; XLIX.1981.4.*

54. A person sentenced shall continue to be considered as such for the purpose of the provisions concerning recidivists notwithstanding any pardon commuting the punishment lawfully awarded to him.

Effect of pardon in respect of recidivists. *Amended by: XI.1900.14.*

PART II

OF CRIMES AND PUNISHMENTS

Title I

OF GENOCIDE, CRIMES AGAINST HUMANITY, WAR CRIMES AND CRIMES OF AGGRESSION

Substituted by: XXIV.2014.9.

54A. (1) It is a crime for a person to commit genocide, a crime against humanity, a war crime or a crime of aggression.

General. *Added by: XXIV.2002.13. Amended by: XXIV.2014.10.*

(2) In this Title -

"the ICC Treaty" means the Statute of the International Criminal Court, done at Rome on 17th July, 1988;

"the ICC" means the International Criminal Court established by the ICC Treaty;

"genocide" means an act of genocide as defined in article 54B;

"crime against humanity" means a crime against humanity as defined in article 54C;

"war crime" means a war crime as defined in article 54D;

"crime of aggression" means a war crime as defined in article 54DA;

"Minister" means the Minister responsible for Justice.

(3) In interpreting and applying the provisions of this Title the court shall take into account the original text of the ICC Treaty and of any treaty and convention referred to in the ICC Treaty.

(4) In interpreting and applying the provisions of articles 54B, 54C, 54D and 54DA, hereinafter, in this Title, referred to as "the relevant articles", the court shall take into account -

(*a*) any relevant Elements of Crimes adopted in accordance with article 9 of the ICC Treaty, and

(*b*) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30th June, 2000.

(5) The Minister may set out in regulations the text of the Elements of Crimes referred to in sub-article (2), as amended from time to time.

(6) The relevant articles shall for the purposes of this Title be construed subject to and in accordance with any relevant reservation or declaration made by Malta when ratifying any treaty or agreement relevant to the interpretation of those articles.

(7) The Minister may by regulations set out the terms of any reservation or declaration referred to in sub-article (5) and where any such reservation or declaration is withdrawn in whole or in part may revoke or amend any regulations as aforesaid which contain the terms of that reservation or declaration.

(8) In interpreting and applying the provisions of the relevant articles the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

Genocide.
Added by: XXIV.2002.13.

54B. (1) Genocide is committed where any of the following acts is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such -

(*a*) killing members of the group;

(*b*) causing serious bodily or mental harm to members of the group;

(*c*) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(*d*) imposing measures intended to prevent births within the group;

(*e*) forcibly transferring children of the group to another group.

(2) Whosoever directly and publicly incites others to commit genocide shall be guilty of a crime.

Crimes against humanity. *Added by: XXIV.2002.13.*

54C. (1) A crime against humanity is committed where any of the following acts is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(*a*) murder;

(*b*) extermination;

(*c*) enslavement;

(*d*) deportation or forcible transfer of population;

(*e*) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(*f*) torture;

(*g*) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(*h*) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in sub-article (3), or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this sub-article or any crime under article 54A;

(*i*) enforced disappearance of persons;

(*j*) the crime of apartheid;

(*k*) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(2) For the purpose of sub-article (1) -

(*a*) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in sub-article (1) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(*b*) "extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(*c*) "enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(*d*) "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(*e*) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(*f*) "forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(*g*) "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(*h*) "the crime of apartheid" means inhumane acts of a character similar to those referred to in sub-article (1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(*i*) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

(3) For the purpose of this Title, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

War crimes.
Added by: *XXIV.2002.13.*
Amended by: *XXIV.2014.11.*

54D. A war crime is committed where any of the following acts is committed:

(*a*) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) wilful killing;

(ii) torture or inhuman treatment, including biological experiments;

(iii) wilfully causing great suffering, or serious injury to body or health;

(iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) unlawful deportation or transfer or unlawful confinement;

(viii) taking of hostages;

(*b*) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the

deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) declaring that no quarter will be given;

(xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) pillaging a town or place, even when taken by assault;

(xvii) employing poison or poisoned weapons;

(xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

..... *omissis* .....

(xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 54C(2)(*f*), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;

(*c*) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) violence to life and person, in particular murder of all kind, mutilation, cruel treatment and torture;

(ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) taking of hostages;

(iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable;

(*d*) paragraph (*c*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;

(*e*) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against buildings, material, medical units and transport, and

personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) pillaging a town or place, even when taken by assault;

(vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 54C(2)(*f*), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) killing or wounding treacherously a combatant adversary;

(x) declaring that no quarter will be given;

(xi) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(xiii) employing poison or poisoned weapons;

(xiv) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or

devices;

(xv) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(*f*) paragraph (*e*) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

Crime of aggression. *Added by: XXIV.2014.12.*

54DA. (1) A crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

(2) For the purposes of this article an "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

(3) Any of the following acts, regardless of a declaration of war, shall, in accordance with UN General Assembly Resolution 3314(XXIX) of 14 December 1974, qualify as an act of aggression:

(*a*) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(*b*) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(*c*) the blockade of the ports or coasts of a State by the armed forces of another State;

(*d*) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(*e*) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(*f*) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression

against a third State; and

(*g*) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Responsibility of commanders and other superiors. *Added by: XXIV.2002.13.*

54E. (1) This article applies in relation to offences under this Part.

(2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where -

(*a*) he either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and

(*b*) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in sub-article (2), a superior is responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where -

(*a*) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences,

(*b*) the offences concerned activities that were within his effective responsibility and control, and

(*c*) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(4) A person responsible under this article for an offence is regarded as an accomplice in the commission of the offence.

(5) In interpreting and applying the provisions of this article (which corresponds to article 28 of the ICC Treaty) the court shall take into account any relevant judgment or decision of the ICC and account may also be taken of any other relevant international jurisprudence.

(6) Nothing in this article shall be read as restricting or excluding -

(*a*) any liability of the commander or superior apart from this article, or

(*b*) the liability of persons other than the commander or superior.

Mental element. *Added by: XXIV.2002.13.*

54F. (1) References in this Part to a person committing -

(*a*) genocide,

(*b*) a crime against humanity, or

(*c*) a war crime,

shall be construed in accordance with this article.

(2) Unless otherwise provided by -

(*a*) the articles mentioned in the definition in article 54A(1) of the crimes specified in sub-article (1)(*a*) to (*c*) of this article, or in any relevant Elements of Crimes referred to in article 54A(3),

(*b*) article 54E,

a person is regarded as committing a crime referred to in sub-article (1) only if the material elements of the crime are committed with intent and knowledge.

(3) For this purpose -

(*a*) a person has intent -

(i) in relation to conduct, where he means to engage in the conduct, and

(ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events, and

(*b*) "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying the provisions of this article (which corresponds to article 30 of the ICC Treaty) the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

Jurisdiction. *Added by: XXIV.2002.13; VIII.2015.4.*

54G. (1) Without prejudice to the provisions of article 5, a criminal action for an offence under this Title may also be prosecuted in Malta -

(*a*) against any person subject to military law in terms of articles 178, 179 and 180 of the Malta Armed Forces Act even if the offence was committed outside Malta; or

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(*b*) against any citizen of Malta or permanent resident in Malta who outside Malta conspires to commit any offence under this Title even if the offence is to be committed outside Malta.

(2) For the purposes of this article, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

Protection of victims and witnesses. *Added by: XXIV.2002.13.*

54H. The provisions of any law which make provision for the protection of victims and witnesses of certain offences shall apply *mutatis mutandis* to any victim or witness of an offence under this Title.

Supplementary provisions for offences under this Title. *Added by: XXIV.2002.13.*

54I. (1) The following provisions apply in relation to offences under this Title.

(2) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General.

(3) A person convicted of an offence involving murder shall be dealt with as for an offence consisting in the killing of a person in such circumstances as would, if committed in Malta, constitute wilful homicide.

(4) In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding thirty years.

(5) The provisions of Title VI of Part III of Book Second of this Code do not apply.

Title I Bis

OF CRIMES AGAINST THE SAFETY OF THE GOVERNMENT

Attempts against the President of Malta. *Amended by: XXI.1971.8. Substituted by: XXVII.1975.3. Amended by: XLIX.1981.4.*

55. Whosoever shall take away the life or the liberty of the President of Malta, or shall endanger his life by bodily harm, shall, on conviction, be liable to the punishment of imprisonment for life.

Incitement to take away the life and liberty of the President of Malta or of any Minister *Added by: XI.2018.25.*

55A. Whosoever by any means shall incite others to take away the life or liberty of the President of Malta or of any Minister shall, for the mere incitement, be liable on conviction to imprisonment for a term not exceeding nine years or to a fine (*multa*) not exceeding five thousand euro (€5,000) or to both such fine and imprisonment.

Insurrection or *coup d'état*. *Substituted by: XXI.1971.9. Amended by: XXVII.1975.4; XLIX.1981.4.*

56. (1) Whosoever shall subvert or attempt to subvert the Government of Malta by committing any of the acts hereunder mentioned, shall, on conviction, be liable to the punishment of imprisonment for life:

(*a*) taking up arms against the Government of Malta for the purpose of subverting it;

(*b*) bearing arms in the service of any foreign Power against the Republic of Malta;

(*c*) aiding the enemies of the Republic of Malta in any other manner whatsoever against the said Republic;

(*d*) usurping or unlawfully assuming any of the executive powers of the Government of Malta, for the purpose of subverting it;

(*e*) taking up arms for the purpose of compelling the Government of Malta to change its measures or counsels, or of obstructing the exercise of its lawful authority.

Extenuating circumstances.

(2) The punishment, however, shall be diminished by one or two degrees, where the crime is not carried into effect, in consequence of the voluntary determination of the offender not to complete the crime.

Conspiracy against the State. *Amended by: V.1868.4; XLIX.1981.4.*

57. (1) Whosoever shall take part in a conspiracy having for its object any of the crimes referred to in the last preceding two articles, shall, on conviction, be liable to imprisonment for a term from three to six years.

Aggravating circumstance.

(2) Where, besides the mere conspiracy, preparatory measures for carrying the crime into effect shall also have been taken, the punishment shall be of imprisonment for a term from five to nine years.

Commencement of conspiracy.

58. A conspiracy shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between two or more persons.

Provocation to perpetrate crimes against the safety of the Government.

59. (1) Whosoever, by any speech delivered in any public place or at any public meeting, shall directly provoke the perpetration of any of the crimes referred to in this Title, shall, on conviction, be liable to the punishment for the crime provoked by him, diminished by one degree.

(2) If the provocation shall produce no effect, the punishment shall be decreased from one to three degrees.

Exemption from punishment.

60. In the crimes referred to in the preceding articles of this Title, any of the offenders who shall, before the commission of the crime or before any attempt to commit the crime, and prior to the commencement of any proceedings, give information thereof to the Government or to the authorities of the Government, shall be exempted from punishment.

Failure to disclose.

61. Whosoever, knowing that any of the crimes referred to in the preceding articles of this Title is about to be committed, shall not, within twenty-four hours, disclose to the Government or to the authorities of the Government, the circumstances which may have come to his knowledge, shall, for the mere omission, be liable, on conviction, to imprisonment for a term from nine to eighteen months.

Exemptions. *Amended by: XXIII.2017.3.*

62. The provisions of the last preceding article shall not apply to the spouse, the ascendants or descendants, the brother or sister, parents of either spouse, spouses of either child, the uncle or aunt, the nephew or niece, and the brother-in-law or sister-in-law of a principal or an accomplice in the crime so not disclosed.

TITLE II

OF CRIMES AGAINST THE PUBLIC PEACE

When offence is deemed to be accompanied with public violence. *Amended by: IX.1859.2.*

63. Any offence committed by three or more persons assembled with intent to commit an offence, and two of whom carry arms proper, shall be deemed to be accompanied with public violence.

Definition of "arms proper" and "arms improper". *Amended by: XI.1900.15.*

64. (1) Arms proper are all fire-arms and all other weapons, instruments and utensils which are mainly intended for defensive or offensive purposes.

(2) All other weapons, instruments or utensils are not considered as arms, except when they are actually made use of for any offensive or defensive purpose, in which case they are called arms improper.

Punishment for offences accompanied with public violence. *Amended by: IX.1859.3.*

65. (1) The punishment for an offence accompanied with public violence, shall be higher by one degree than the punishment provided for the same offence when not accompanied with public violence.

(2) In no case shall the punishment be less than that provided in article 66.

Assembly under arms. *Amended by: IX.1859.4.*

66. The persons assembled as provided in article 63 shall, for the mere fact of having so assembled, be liable to imprisonment for a term from one to three months.

Conspiracy.

67. Any crime committed by any of the persons mentioned in article 63, shall, for the purposes of punishment, be considered as being accompanied with public violence if in the commission of the crime such persons shall have acted in pursuance of a common design.

Unlawful assembly. *Amended by: IX.1859.5; VIII.1909.5.*

68. (1) Whosoever shall incite an assembly of persons, who when so incited shall be ten or more in number, for the purpose of committing an offence, shall, for the mere fact of the incitement, be liable, on conviction, to imprisonment for a term from one to three months or to a fine (*multa*).

(2) Whosoever shall take an active part in an assembly of ten or more persons for the purpose of committing an offence, although the said assembly may not have been incited by any one in particular, shall, on conviction, be liable to imprisonment for a term from three days to three months or to a fine (*multa*).

(3) Where the offence which such assembly of persons intended to commit is committed, then, if the punishment established for the offence is less than the punishments aforesaid, these punishments shall be applied with an increase of one degree; if, however, the punishment established for the offence is greater than, or equal to, the punishments aforesaid, then that punishment shall be applied with an increase of one degree.

Instigation to commit an offence. *Amended by: XLIX.1981.4.*

69. Whosoever shall publicly instigate any other person to commit an offence, shall, for the mere fact of the instigation, be liable, on conviction, to -

(*a*) imprisonment for a term from two to five years, in the case of a crime liable to a punishment higher than the punishment of imprisonment for a term of three years; or

(*b*) imprisonment for a term not exceeding two years, in the case of a crime liable to the punishment of imprisonment for a term not exceeding three years; or

(*c*) a fine (*multa*) or detention, in the case of any other offence.

Incitement to disobey the law.

70. Whosoever shall publicly incite any other person to disobey the law, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (*multa*), or, in minor cases, to detention or to a fine (*ammenda*).

Unlawful endeavour to compel Government to alter measures or counsels. *Amended by: XXI.1971.10; XXVII.1975.5.*

71. Whosoever shall, by any unlawful means not amounting to the crime referred to in article 56, endeavour to compel the President of Malta or the Government of Malta, to change his or their measures or counsels, shall, on conviction, be liable to imprisonment for a term from six months to two years.

Contempt of the President. *Amended by: XXVII.1975.6.*

72. *Deleted by XI.2018.25.*

Unlawful assembly with seditious violent intent. *Amended by: XXI.1971.11; XXVII.1975.7; XLIX.1981.4; XI.2018.25.*

73. If three or more persons shall unlawfully assemble, or being unlawfully assembled, shall continue so together, with intent, by public speeches, exhibition of flags, inscriptions, or other means or devices whatsoever, to excite other persons to attempt to alter any matter established by law, by violent means, every person so offending shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

Seditious conspiracy. *Amended by: XXVII.1975.8; XLIX.1981.4; XI.2018.25.*

74. If two or more persons shall conspire to incite other persons to attempt the alteration of any matter established by law, by violent means, every person so offending shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

False imputation of misconduct in the administration of the Government. *Amended by: XXVII.1975.9.*

75. *Deleted by XI.2018.25.*

Administering unlawful oath.

76. (1) Whosoever shall administer, or cause to be administered or taken, any oath or engagement intended to bind the person taking the same to engage in any mutinous or seditious purpose, or to disturb the public peace, or to be of any association, society or confederacy formed for any such purpose, shall, on conviction, be liable to imprisonment for a term from seven months to two years.

(2) The punishment established in sub-article (1) shall also apply, where the oath or engagement is intended to bind the person taking the same in any of the modes following:

(*a*) to obey the orders of any committee or body of men not lawfully constituted, or of any leader or other person not having authority by law for that purpose;

(*b*) not to inform or give evidence against any associate or other person, or not to reveal or discover any illegal act done, attempted, or intended to be done by such person or any other.

Person taking unlawful oath. *Amended by: IX.1982.2.*

77. The punishment established in the last preceding article shall apply to any person who shall take any such oath or engagement as provided in that article, unless he shall have been compelled thereto:

Provided that compulsion shall not justify or excuse any person taking such oath or engagement, unless he shall, within four days after such compulsion shall cease, report the fact to the public authorities.

Inciting to sedition or to mutiny. *Amended by: XXVII.1975.10; XLIX.1981.4.*

78. Whosoever shall endeavour to seduce any person serving in the Armed Forces of Malta from his duty and allegiance to the Republic of Malta, or to incite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall, on conviction, be liable to imprisonment for a term from nine months to three years.

Tumultuous assembly. *Amended by: XXVII.1975.10; XLIX.1981.4.*

79. (1) If three or more persons shall assemble or shall continue together, for any purpose whatsoever, in such manner and under such circumstances of violence, threats, tumults, numbers, display of arms or otherwise, as are calculated to create terror and alarm among persons in Malta, every such assembly shall be deemed unlawful, and every person forming part of such assembly shall, on conviction, be liable to imprisonment for a term from four to twelve months.

Aggravating circumstance.

(2) Where the unlawful assembly shall proceed, either wholly or in part, to execute their common design, or shall attempt so to do, any person so assembling shall, on conviction, be liable to imprisonment for a term from six to eighteen months.

Disobedience of order for dispersal.

80. If twelve or more persons being unlawfully assembled together to the disturbance of the public peace, and being formally warned or required by any competent authority to disperse themselves and peaceably to depart to their habitations or to their lawful business, shall, to the number of twelve or more, unlawfully remain or continue together for the space of one hour after such public warning shall have been given, every such offender shall, on conviction, be liable to imprisonment for a term from nine months to three years.

Assembly when not unlawful. *Amended by: XXVII.1975.12.*

81. There shall not be deemed to be an unlawful assembly under the provisions of the preceding articles, where three or more persons shall assemble for the common purpose of assisting in the

defence of the possession of the dwelling-house or other property of any one of them or in the defence of the person of any one of them although they may execute or endeavour to execute such purpose, or otherwise conduct themselves violently and tumultuously, or in such manner and under such circumstances as are calculated to create terror and alarm among persons in Malta.

Spreading of false news. *Added by: VI.1933.2. Amended by: XI.2018.25.*

82. Whosoever shall maliciously spread false news which is likely to alarm public opinion or disturb public good order or the public peace or to create a commotion among the public or among certain classes of the public, shall, on conviction, be liable to imprisonment for a term from one to three months:

Provided that if any disturbance ensues in consequence of the offence, or if the offence has contributed to the occurrence of any disturbance, the offender shall be liable to imprisonment for a term of not less than one month but not exceeding six months and to a fine (*multa*) not exceeding one thousand euro (€1,000) or both such fine and imprisonment.

Incitement to racial hatred, etc. *Added by: III.2002.19. Amended by: XI.2009.2; VIII.2012.2; XXIV.2014.13; XXXVII.2016.2. Substituted by: LXV.2021.2.*

82A. (1) Whosoever uses any threatening, abusive or insulting words or behaviour, or displays any written or printed material which is threatening, abusive or insulting, or otherwise conducts himself in such a manner, with intent thereby to stir up violence or hatred against another person or group of persons on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, age, disability, religion or belief or political or other opinion or whereby such violence or hatred is likely, having regard to all the circumstances, to be stirred up shall, on conviction, be liable to imprisonment for a term from six (6) to eighteen (18) months:

Provided that, for the purposes of this Code, unless the context otherwise requires, "disability" means the same as the meaning assigned to it in article 2 of the United Nations Convention on the Rights of Persons with Disabilities Act. Cap. 627.

(2) For the purposes of sub-article (1) "violence or hatred" means violence or hatred against a person or against a group of persons in Malta defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion.

Condoning, denying or trivialising genocide, etc., against a group. *Added by: XI.2009.3. Amended by: XXIV.2014.14.*

82B. Whosoever publicly condones, denies or grossly trivialises genocide, crimes against humanity and war crimes directed against a group of persons or a member of such a group defined by reference to race, colour, religion, citizenship, descent or national or ethnic origin when the conduct is carried out in a manner -

(*a*) likely to incite to violence or hatred against such a group or a member of such a group;

(*b*) likely to disturb public order or which is threatening, abusive or insulting,

shall, on conviction, be liable to imprisonment for a term from eight months to two years:

Provided that for the purposes of this article "genocide", "crimes against humanity" and "war crimes" shall have the same meaning assigned to them in article 54A.

Condoning, denying or trivialising crimes against peace against a group.
Added by: XI.2009.3.
Amended by: VIII.2012.3; XXIV.2014.15; LXV.2021.3.

82C. (1) Whosoever publicly condones, denies or grossly trivialises crimes against peace directed against a person or a group of persons defined by reference to gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion when the conduct is carried out in a manner-

(*a*) likely to incite to violence or hatred against such a person or group; or

(*b*) likely to disturb public order or which is threatening, abusive or insulting,

shall, on conviction, be liable to imprisonment for a term from eight months to two years.

(2) For the purposes of this article a crime against peace means conduct consisting of:

(*a*) the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances;

(*b*) participation in a common plan or conspiracy for the accomplishment of any of the acts referred to in paragraph (*a*).

Aiding, abetting or instigating offences under articles 82A to 82C.
Added by: XI.2009.3.

82D. Whosoever aids, abets or instigates any offence under articles 82A to 82C, both inclusive, shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Applicability of articles 121D, 208B(5), 248E(4) and 328.
Added by: XI.2009.3.

82E. (1) The provisions of articles 121D, 208B(5) and 248E(4) shall apply *mutatis mutandis* to an offence under articles 82A to 82D, both articles inclusive.

(2) The provisions of article 328K shall also apply *mutatis mutandis* to any offence under articles 82A to 82D, both articles inclusive, as if the reference to article 328J in article 328K were a reference to article 121D.

Promotion of political object by use or display of physical force.
Added by: XV.1959.2.
Substituted by: XV.1973.2.
Amended by: XIII.1983.5; L.N. 407 of 2007; XXIV.2014.16.

83. Any person who establishes, maintains on his own or with other persons or belongs to any association of persons who are organised and trained or organised and equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object shall be guilty of an offence and liable, on conviction, to a fine (*multa*) not exceeding five thousand euro (€5,000) or to imprisonment for a term from nine months to five years, or to both such fine and imprisonment.

Promoting, etc., an organization of two or more persons with a view to commit criminal offences. *Added by: III.2002.20. Amended by: L.N. 407 of 2007; XXIV.2014.17; VIII.2015.5.*

83A. (1) Any person who -

(*a*) promotes, constitutes, organises or finances an organization with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more; or

(*b*) knowing or having reasonable cause to suspect the aim or general activity of the organization set up for the purpose mentioned in paragraph (*a*), actively takes part in the organisation's criminal activities, including but not limited to the provision of information or material means or the recruitment of new members,

shall be guilty of an offence and shall liable, on conviction, to the punishment of imprisonment for a term from four to nine years.

(2) Any person who belongs to an organisation referred to in sub-article (1) shall for that mere fact be liable to the punishment of imprisonment for a term from two to seven years.

(3) Where the number of persons in the organisation is ten or more the punishment in the preceding sub-articles shall be increased form one to two degrees.

(4) Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable as follows:

(*a*) where the offence of which the person was found guilty is the offence in sub-article (1), to the payment of a fine (*multa*) of not less than thirty-four thousand and nine hundred and forty euro and sixty cents (€34,940.60) and not more than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67);

(*b*) where the offence of which the person was found guilty is the offence in sub-article (2), to the payment of a fine (*multa*) of not less than twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) and not more than sixty-nine thousand and eight hundred and eighty-one euro and twenty cents (€69,881.20);

(*c*) where the offence of which the person was found guilty is punishable as provided in sub-article (3) of this article -

(i) where the offence is that provided in sub-article (1), to the punishment of a fine (*multa*) of not less than forty-six thousand and five hundred and eighty-seven euro and forty-seven cents

(€46,587.47) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (€1,164,686.70);

(ii) where the offence is that provided in sub-article (2), to the punishment of a fine (*multa*) of not less than thirty-four thousand and nine hundred and forty euro and sixty cents (€34,940.60) and not more than one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67).

(5) The criminal action for an offence against the provisions of this article may be prosecuted in Malta notwithstanding that the organization of persons is based or pursues its criminal activities outside Malta.

Amended by: *XXIV.2014*.18; *LXV.2021.4.*

GENERAL PROVISION APPLICABLE TO OFFENCES WHICH ARE RACIALLY OR DISABILITY OR AGE AGGRAVATED OR MOTIVATED BY XENOPHOBIA OR HOMOPHOBIA

General provision. *Added by: XI.2009.4. Amended by: VIII.2012.4; XXIV.2014.19; LXV.2021.5.*

83B. The punishment established for any offence shall be increased by one to two degrees when the offence is aggravated or motivated, wholly or in part by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A:

Provided that the provisions of this article shall not apply where an aggravation of punishment in respect of the motives mentioned in this article is already provided for under this Code or any other law.

Offences committed by a body corporate. *Added by: XXIV.2014.20. Amended by: VIII.2015.6.*

83C. Whenever an offence is committed for the benefit, in part or in whole, of a body corporate by a person who has the power of representation of the body corporate, authority to take decisions on behalf of the body corporate, or authority to exercise control of the body corporate, without prejudice to any other punishment to which the body corporate may be liable under any other provision of this Code or of any other law, the said body corporate may be subject to:

(*a*) exclusion from entitlement to public benefits or aid;

(*b*) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;

(*c*) placing under judicial supervision;

(*d*) the compulsory winding up of the body corporate; or

(*e*) the temporary or permanent closure of any establishment which may have been used for the commission of the offence:

Provided that the provisions of this article shall not apply

where the punishment mentioned in this article is already provided for under this Code or any other law.

TITLE III

OF CRIMES AGAINST THE ADMINISTRATION OF JUSTICE AND OTHER PUBLIC ADMINISTRATIONS

Sub-title I

OF THE USURPATION OF PUBLIC AUTHORITY AND OF THE POWERS THEREOF

OF THE USURPATION OF FUNCTIONS

Unlawful exercise of public functions.

84. Whosoever shall assume any public function, whether civil or military, without being entitled thereto, and shall perform any act thereof, shall, on conviction, be liable to imprisonment for a term from four months to one year.

OF THE UNLAWFUL ASSUMPTION BY PRIVATE PERSONS OF POWERS BELONGING TO PUBLIC AUTHORITY

Arbitrary exercise of pretended rights. *Amended by: XVI.2006.2. XIII.2018.24; XXVIII.2019.35.*

85. (1) Whosoever, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any other manner unlawfully interfere with the property of another person, shall, on conviction, be liable to imprisonment for a term from one to three months:

Provided that the court may, at its discretion, in lieu of the above punishment, award a fine (*multa*):

Provided further that it shall be a defence for the person accused of this offence to prove that such disturbance was done as a temporary measure imposed by actual necessity either in lawful self-defence or in the lawful defence of another person:

Provided further that in cases of arbitrary or forced evictions of an occupant from the property which he occupies as his primary residence, including any unpermitted entry into the property, removal of furniture, appliances or personal belongings from the property, or the suspension or interruption of water and electricity services, in whichever manner, including the installation of devices which enable the owner to suspend the direct supply of water and electricity services

to the property, the fine *(multa*) shall not be less than one thousand five hundred euro (€1,500) and not more than four thousand euro (€4,000).

(2) The provisions of article 377(5) shall apply in the case of any conviction under sub-article (1) and when the conduct of the offender has resulted in a person being despoiled the Court shall apply the provisions of that sub-article in order to ensure that the person despoiled is fully revested in the position before he was despoiled.

Illegal arrest, detention or confinement. *Amended by: XLIX.1981.4.*

86. Whosoever, without a lawful order from the competent authorities, and saving the cases where the law authorizes private individuals to apprehend offenders, arrests, detains or confines any person against the will of the same, or provides a place for carrying out such arrest, detention or confinement, shall, on conviction, be liable to imprisonment for a term from seven months to two years:

Provided that the court may, in minor cases, award imprisonment for a term from one to three months or a fine (*multa*).

Aggravating circumstances. *Amended by: XLIX.1981.4; IV.1994.2; XVII.1996.19; XX.2005.10; LII.2020.2; LXIV.2021.3.*

87. (1) The punishment for the crime referred to in the last preceding article, shall be imprisonment for a term from thirteen (13) months to six (6) years if any one or more of the following circumstances results:

(*a*) if the detention or confinement continues for more than twenty days;

(*b*) if the arrest is effected with the unauthorized use of a uniform, or under an assumed name, or under a warrant falsely purporting to be issued by a public authority;

(*c*) if the individual arrested, detained or confined, is subjected to any bodily harm, or is threatened with death;

(*d*) if the detention or confinement is continued by the offender notwithstanding his knowledge that a writ or warrant for the release or delivery of the person detained or confined has been issued by the competent authority;

(*e*) if the crime is committed with the object of extorting money or effects, or of compelling any other person to agree to any transfer of property belonging to such person;

(*f*) if the crime is committed for the purpose of forcing another person to do or to omit an act, which, if voluntarily done or omitted, would be a crime;

(*g*) if the crime is committed as a means of compelling a person to do an act or to submit to treatment injurious to the modesty of that person's sex;

(*h*) if the crime is committed on the person of the father, mother or on any person mentioned in article 202(*h*).

(2) Where a person who commits the crime referred to in the

last preceding article threatens to kill, to injure or to continue to detain or confine the person arrested, detained or confined, with the object of compelling a state, an international governmental organisation or person to do or to abstain from doing an act he shall be liable to the punishment of imprisonment from seven years to life.

Punishment for illegal arrest, etc., accompanied with bodily harm. *Amended by: XLIX.1981.4.*

88. Where the bodily harm referred to in paragraph (*c*) of the last preceding article is liable to a punishment higher than the punishment of imprisonment for a term of two years, or is committed or accompanied with any kind of torture, the punishment shall be imprisonment for a term from four to six years.

Extenuating circumstance.

89. The punishment for the illegal arrest, detention or confinement of a person, without the concurrence of any of the circumstances mentioned in article 87(*b*), (*c*), (*d*), (*e*), (*f*) and (*g*), and in the last preceding article, shall be imprisonment for a term from seven months to one year, where the offender, before the commencement of any proceedings at law, restores to liberty the person arrested, detained or confined, within twenty-four hours after the arrest, detention or confinement, provided that during this interval the offender has not attained the object for which such person has been arrested, detained or confined.

Removal from Malta of a minor in breach of an order of any authority. *Added by: LXIV.2021.4.* Cap. 602.

89A. (1) Whosoever removes from Malta or retains a minor under the age of sixteen (16) years abroad in breach of an order given by the Maltese court or in breach of a care order issued by a competent authority in accordance with the Minor Protection (Alternative Care) Act shall, on conviction, be liable to imprisonment from thirteen (13) months to three (3) years.

(2) For the purposes of this article:

(*a*) "removes from Malta" means the removal from Malta of a minor, even if by deceit or fraud and even if by a person having parental authority over the minor in breach of a court order or of a care order as referred to in sub-article (1);

(*b*) "retain" means the retention outside Malta for a period of more than three (3) days of a minor, even if by deceit or fraud and even if by a person having parental authority over the minor in breach of a court order or of a care order as referred to in sub-article (1).

Unlawful removal of persons to a foreign country or unlawful confinement therein. *Amended by: XXVII.1975.13.*

90. Whosoever unlawfully and forcibly removes any person to any other country, or wrongfully detains, arrests or confines any citizen of Malta in any other country, shall, on conviction, be liable to the punishment laid down in article 87.

Sub-title II

OF OUTRAGE AND VIOLENCE AGAINST PUBLIC OFFICERS

Violence and threats against public officers. *Amended by: V.2014.2.*

91. Whosoever by violence or threats compels a public officer to do or not to do any act appertaining to his office, shall, on conviction, be liable to imprisonment for a term from one to five years and to a fine (*multa*) of not less than four thousand euro (€4,000) and not more than ten thousand euro (€10,000).

Definition of "public officer".

92. The general expression "public officer", includes not only the constituted authorities, civil and military, but also all such persons as are lawfully appointed to administer any part of the executive power of the Government, or to perform any other public service imposed by law, whether it be judicial, administrative or mixed.

Reviling or threatening judge, Attorney General, magistrate or juror. *Amended by: VI.1871.6; XI.1900.16; L.N. 46 of 1965; LVIII.1974.68; V.2014.3.*

93. (1) Whosoever reviles or threatens a judge, or the Attorney General, or a magistrate or a juror, while in the exercise of his functions or because of his having exercised his functions, or with intent to intimidate or unlawfully influence him in the exercise of his functions, shall, on conviction, be liable to imprisonment for a term from nine to eighteen months and to a fine (*multa*) of not less than five hundred euro (€500) and not more than one thousand five hundred euro (€1,500).

Aggravating circumstance.

(2) If the object of the vilification is that of damaging or diminishing the reputation of the person against whom it is directed, the punishment shall be imprisonment for a term from twelve months to two years and to a fine (*multa*) of not less than seven hundred euro (€700) and not more than two thousand and five hundred euro (€2,500).

(3) Where the threat is of a crime, the punishment shall be imprisonment for a term from eighteen months to three years and to a fine (*multa*) of not less than one thousand five hundred euro (€1,500) and not more than four thousand euro (€4,000), and if the threat be made by means of any writing, whether anonymous or signed in one's own name or in a fictitious name, the punishment shall be increased by one degree, and in either case, the offender may be required to enter into a recognizance as provided in articles 383, 384 and 385, with or without surety, according to circumstances.

(4) Where the offences referred to in this article are committed against an officer of the Attorney General's office, when acting under the direction of the Attorney General in anything in which the Attorney General is to act in his own individual judgement or in connection with his office, the offender shall be liable to the same punishment established in the preceding sub-articles.

Bodily harm caused to judge, Attorney General, magistrate or juror. *Amended by: IX.1859.6; XI.1900.I7; XLIX.1981.4; V.2014.4.*

94. (1) Whosoever shall cause a bodily harm to any of the persons mentioned in the last preceding article, while in the exercise of his functions or because of his having exercised his functions, or with intent to intimidate or unduly influence him in the exercise of his functions, shall, on conviction, be liable to imprisonment for a term from four to seven years and to a fine (*multa*) of not less than five thousand euro (€5,000) and not more than twenty five thousand euro (€25,000).

(2) Where the bodily harm is of such a nature that, if caused to any person other than those mentioned in the last preceding article, it would render the offender liable to a higher punishment, such higher punishment shall be awarded, with an increase of one degree.

Vilification, threats or bodily harm against any person lawfully charged with a public duty, including public officers and public employees. Cap. 595. *Amended by: IV.1856.10; XI.1900.18, 19; XLIX.1981.4; V.2014.5. Substituted by: IV.2025.2.*

95. Whosoever, in any other case not referred to in the last preceding two articles, reviles, or threatens, or causes a bodily harm to any person lawfully charged with a public duty, including a public officer and a public employee as defined in article 2 of the Public Administration Act, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall on conviction be liable to the punishment established for the vilification, threats, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (*multa*) of not less than one thousand and two hundred euro (€1,200) and not more than seven thousand and five hundred euro (€7,500).

Assault or resistance. Cap. 595. *Amended by: XLIX.1981.4; V.2014.6. Substituted by: IV.2025.3.*

96. Whosoever assaults or resists by violence or active force not amounting to public violence, any person lawfully charged with a public duty, including a public officer and a public employee as defined in article 2 of the Public Administration Act, when in the execution of the law or of a lawful order issued by a competent authority, shall on conviction be liable:

(*a*) where the assault or resistance is committed by one (1) or two (2) persons, to imprisonment for a term from one (1) year to four (4) years and to a fine (*multa*) of not less than six thousand euro (€6,000) and not more than fifteen thousand euro (€15,000);

(*b*) where the assault or resistance is committed by three (3) or more persons, to imprisonment for a term from eighteen (18) months to six (6) years and to a fine (*multa*) of not less than seven thousand and five hundred euro (€7,500) and not more than twenty-two thousand and five hundred euro (€22,500).

Aggravating circumstance. *Amended by: IX.1859.7; V.1956.14; XLIX.1981.4; V.2014.7; IV.2025.4.*

97. If any of the offenders mentioned in the last preceding article shall use any arm proper in the act of the assault or resistance, or shall have previously provided himself with any such arm with the design of aiding such assault or resistance, and shall, on apprehension, be found in possession of any such arm, he shall be liable to imprisonment for a term from eighteen months to six years and to a fine (*multa*) of not less than twelve thousand euro (€12,000)

and not more than thirty thousand euro (€30,000).

Assault or resistance accompanied with public violence. *Amended by: XLIX.1981.4. Substituted by: IV.2025.5.*

98. Where any of the crimes referred to in article 96 is accompanied by public violence, the punishment shall be imprisonment for a term from three years to seven years and to a fine (*multa*) of not less than ten thousand euro (€10,000) and not more than twenty-five thousand euro (€25,000).

Non-applicability of articles 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I and article 22 of the Probation Act. *Added by: IV.2025.6.* Cap. 446.

98A. The provisions of articles 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I of this Code and article 22 of the Probation Act shall not apply to articles 96, 97 and 98 of this Code.

Exemption from punishment in case of desistance.

99. No punishment shall be awarded for the mere act of the assault or resistance mentioned in articles 96 and 98 against any person who, although he shall have attempted to commence or shall have actually commenced to act, shall, at the first warning given by the person assaulted or to whom resistance is offered, or by any public authority, desist from the further commission of the crime.

General provisions. *Added by: V.2014.8.*

99A. (1) The following provisions shall apply to the offences under this Sub-title.

(2) The provisions of article 21 shall not apply in respect of any person convicted of an offence under this Sub-title.

(3) Any fine (*multa*) to which the person convicted has been sentenced to pay may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure. Cap. 12.

Sub-title III

OF CALUMNIOUS ACCUSATIONS, OF PERJURY AND OF FALSE SWEARING

Amended by: IV.1856.11.

Interpretation. *Added by: XXI.1971.13. Substituted by: III.2002.21.* Cap. 220.

100. In this Sub-title "criminal proceedings" includes the inquiry referred to in Sub-title II of Title II of Part I of Book Second of this Code and any proceedings under the Malta Armed Forces Act.

Calumnious accusations. *Amended by: IX.1859.8; V.1956.15; XLIX.1981.4.*

101. (1) Whosoever, with intent to harm any person, shall accuse such person before a competent authority with an offence of which he knows such person to be innocent, shall, for the mere fact of having made the accusation, on conviction, be liable -

(*a*) to imprisonment for a term from thirteen to eighteen months, if the false accusation be in respect of a crime liable to a punishment higher than the punishment of imprisonment for a term of two years;

(*b*) to imprisonment for a term from six to nine months, if the false accusation be in respect of a crime liable to a

punishment not higher than the punishment of imprisonment for a term of two years, but not liable to the punishments established for contraventions;

(*c*) to imprisonment for a term from three days to three months, if the false accusation be in respect of any other offence.

Aggravating circumstances.

(2) Where the crime is committed with intent to extort money or other effects, the punishment shall be increased by one degree.

Subornation or attempted subornation of witness, referee or interpreter. *Amended by: XI.1900.20; III.2002.22; XXXI.2007.7.*

102. Whosoever, in any civil or criminal proceedings, suborns a witness, a referee, or an interpreter, to give false evidence or to make a false report or a false interpretation, shall, on conviction, be liable -

(*a*) where the false evidence, report or interpretation has been given or made, to the punishment to which a person giving false evidence would be liable;

(*b*) where there has only been an attempt of subornation of a witness, a referee, or an interpreter, to the same punishment decreased by one or two degrees;

(*c*) where the subornation has been committed by the use of force, threats, intimidation or by promising, offering or giving of an undue advantage to induce false testimony, to the punishment mentioned in paragraph (*a*) increased by one or two degrees.

Preparation or production of false documents.

103. Whosoever, in any civil or criminal proceedings, shall cause a false document to be prepared or shall knowingly produce a false document, shall be liable to the same punishment as the forger thereof.

Perjury in certain criminal trials. *Amended by: VIII.1909.6; XXI.1971.12; XLIX.1981.4; XIV.1983.2; III.2002.23; XVI.2006.3.*

104. (1) Whosoever shall give false evidence in any criminal proceedings for a crime liable to a punishment higher than the punishment of imprisonment for a term of two years, either against or in favour of the person charged or accused, shall, on conviction, be liable to imprisonment for a term from two to five years.

(2) Where, however, the person accused shall have been sentenced to a punishment higher than that of imprisonment for a term of five years, the witness who shall have given false evidence against such person in the trial, or of whose evidence use shall have been made against such person in the trial, shall be liable to such higher punishment.

Perjury in other criminal trials. *Amended by: IX.1859.9; XLIX.1981.4; III.2002.24.*

105. Whosoever shall give false evidence in any criminal proceedings for an offence not referred to in the last preceding article, either against or in favour of the person charged or accused, shall, on conviction, be liable to imprisonment for a term from nine months to two years.

Perjury in civil proceedings. *Amended by: XII.1914.7; XLIX.1981.4; III.2002.25.*

106. (1) Whosoever shall give false evidence in civil matters, shall, on conviction, be liable to imprisonment for a term from seven months to two years.

(2) The provisions of sub-article (1) shall apply to any person who, being a party to a civil action, shall make a false oath.

(3) Whosoever shall make a false affidavit, whether in Malta or outside Malta, knowing that such affidavit is required or intended for any civil proceedings in Malta, shall, on conviction, be liable to the punishment mentioned in sub-article (1).

Perjury by referee or interpreter.

107. (1) Any referee who, in any civil or criminal proceedings, shall knowingly certify false facts, or maliciously give a false opinion, shall, on conviction, be liable to the punishment to which a false witness is liable under the preceding articles of this Sub-title.

(2) The same punishment shall apply to any person who, when acting as interpreter in any judicial proceedings and upon oath, shall knowingly make a false interpretation.

False swearing. *Amended by: XI.1900.21,22; XLIX.1981.4; III.2002.26.*

108. (1) Whosoever, in any other case not referred to in the preceding articles of this Sub-title, shall make a false oath before a judge, magistrate or any other officer authorized by law to administer oaths, shall, on conviction, be liable -

(*a*) to imprisonment for a term from four months to one year, if the oath be required by law, or ordered by a judgment or decree of any court in Malta;

(*b*) to imprisonment for a term not exceeding three months, if the oath be not so required or ordered.

(2) The provisions of this article shall not apply to promissory oaths.

Interdiction in sentences for calumnious accusations, perjury and false swearing.

109. (1) The court shall, in passing sentence against the offender for any crime referred to in this Sub-title, expressly award the punishment of general interdiction, as well as interdiction from acting as witness, except in a court of law, or from acting as referee in any case whatsoever.

(2) Such interdiction shall be for a term from five to ten years in the cases referred to in the last preceding article, and for a term from ten to twenty years in any other case referred to in the other preceding articles of this Sub-title.

Fabrication of false evidence. *Amended by: IX.1911.9; XLIX.1981.4.*

110. (1) Whosoever shall fraudulently cause any fact or circumstance to exist, or to appear to exist, in order that such fact or circumstance may afterwards be proved in evidence against another person, with intent to procure such other person to be unjustly charged with, or convicted of, any offence, shall, on conviction, be liable to the punishment established for a false witness, in terms of the preceding articles of this Sub-title.

Simulation of offence.

(2) Whosoever shall lay before the Executive Police an information regarding an offence knowing that such offence has not been committed, or shall falsely devise the traces of an offence in such a manner that criminal proceedings may be instituted for the ascertainment of such offence, shall, on conviction, be liable to imprisonment for a term not exceeding one year.

111. (1) Whosoever shall hinder any person from giving the necessary information or evidence in any civil or criminal proceedings, or to or before any competent authority, shall, on conviction, be liable to imprisonment for a term from four months to one year or to a fine (*multa*).

Hindering person from giving necessary information or evidence. *Amended by: VIII.1909.7; XLIX.1981.4; XIII.1983.5; L.N. 407 of 2007.*

(2) Whosoever, in any case not otherwise provided for in this Code, shall knowingly suppress, or in any other manner destroy or alter the traces of, or any circumstantial evidence relating to an offence, shall, on conviction, be liable -

Suppression, destruction or alteration of traces of crime.

(*a*) if the offence is a crime liable to a punishment not less than that of imprisonment for a term of one year, to the punishment laid down in sub-article (1);

(*b*) in the case of any other offence, to imprisonment for a term not exceeding three months or to detention or to a fine (*ammenda*) of not less than two euro and thirty- three cents (€2.33).

Sub-title IV

OF ABUSE OF PUBLIC AUTHORITY

OF UNLAWFUL EXACTION, OF EXTORTION AND OF BRIBERY

112. Any officer or person employed in any public administration, or any person employed by or under the Government, whether authorized or not to receive moneys or effects, either by way of salary for his own services, or on account of the Government, or of any public establishment, who shall, under colour of his office, exact that which is not allowed by law, or more than is allowed by law, or before it is due according to law, shall, on conviction, be liable to imprisonment for a term from three months to one year.

Unlawful exaction. *Amended by: XLIX.1981.4.*

113. Where the unlawful exaction referred to in the last preceding article, is committed by means of threats or abuse of authority, it shall be deemed to be an extortion, and the offender shall, on conviction, be liable to imprisonment for a term from thirteen months to three years.

Extortion. *Amended by: XLIX.1981.4.*

114. Where the crimes referred to in the last two preceding articles are accompanied with circumstances which render such crimes liable also to other punishments, the higher punishment shall be applied with an increase of one degree.

Aggravating circumstances.

Bribery.
Amended by: XII.1914.8, 9; IV.1974.2; XLIX.1981.4; III.2002.27; III.2004.70; IV.2013.2.

115. (1) Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

(*a*) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;

(*b*) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;

(*c*) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.

(2) Notwithstanding any other provision of this Code or of any other law, when the offence against the provisions of this article is committed by a person who, at the time when the offence was committed, held the office of Minister, Parliamentary Secretary, Member of the House of Representatives, Mayor or Local Councillor and the offence involved the abuse of such office, the provisions of Title VI of Part III of Book Second of this Code shall not apply to the said person or to any accomplice.

Where failure of duty consists in passing sentence on defendant or person accused.
Amended by: XXI.1971.14; IV.1974.3; XLIX.1981.4; X.2000.11; III.2004.71.

116. (1) Where the crime referred to in paragraph (*c*) of the last preceding article consists in sentencing a defendant or person accused, the punishment shall be imprisonment for a term from eighteen months to ten years:

Provided that in no case shall the punishment be lower than that to which the defendant or person accused has been sentenced.

(2) Where the punishment to which the defendant or person accused is sentenced is higher than the punishment of imprisonment for ten years, such higher punishment shall be applied.

Where failure of duty consists in releasing a person charged or in discharging a defendant or person accused.
Amended by: IV.1974.4; XLIX.1981.4; III.2004.72; IV.2013.3.

117. Where the crime referred to in article 115(*c*) consists in the release of a person charged with an offence, or in the discharge of a defendant or person accused, the punishment shall be as follows:

(*a*) where the charge, complaint, or indictment be in respect of a crime liable to a punishment higher than that of imprisonment for a term of two years, the punishment shall be imprisonment for a term from three years to nine years;

(*b*) where it be in respect of an offence liable to a punishment not higher than that of imprisonment for a

term of two years, but not falling in the class of contraventions, the punishment shall be imprisonment for a term from eighteen months to five years;

(*c*) where it be in respect of a contravention, the punishment shall be imprisonment for a term from nine months to two years.

Bribery of member of House of Representatives. *Added by: IV.1974.5. Amended by: XLIX.1981.4; XIII.2002.10; III.2004.73; IV.2013.4.*

118. (1) Any member of the House of Representatives who requests, receives or accepts, for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage given or made with the object of influencing him in his conduct as a member of the House shall, on conviction, be liable to imprisonment for a term from one year to eight years.

(2) Notwithstanding any other provision of this Code or of any other law the provisions of Title VI of Part III of Book Second of this Code shall not apply to an offence under this article in respect of the said Member of the House of Representatives or any accomplice.

Cases in which punishment of general interdiction is applied. *Amended by: XLIX.1981.4; VII.2010.6.*

119. The punishment of perpetual general interdiction or perpetual special interdiction, or both, as the case may be, shall be added to the punishments established in the preceding articles of this Sub-title when the maximum of such punishments exceeds two years' imprisonment; when the maximum of the said punishments does not exceed two years' imprisonment, then the punishment of temporary general interdiction or temporary special interdiction, or both, as the case may be, shall be added.

Punishment for persons bribing public officers or servants. *Added by: I.1903.3. Substituted by: IV.1974.6. Amended by: XLIX.1981.4; III.2004.74; IV.2013.5.*

120. (1) In the cases referred to in articles 115, 116, 117 and 118, the person who bribes the public officer or servant or the member of the House of Representatives, or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice.

(2) Where the public officer or servant or other person does not commit the crime, the person who attempts to induce such officer or servant or other person to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to three years:

Provided that when the crime is that referred to in article 117(*c*), the punishment shall not exceed eighteen months imprisonment.

(3) Where the member of the House of Representatives does not commit the crime, the person who attempts to induce such member to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to four years.

Embracery and corruption of other persons. *Amended by: VI.1871.7. Substituted by: IV.1974.7. Amended by: III.2002.28; XIII.2002.10; III.2004.75; VII.2010.7.*

121. (1) The provisions of this Sub-title shall apply to and in relation to any person who is entrusted with or has functions relating to the administration of a statutory or other corporate body having a distinct legal personality, or who is employed with such a body, as they apply to or in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115.

(2) Articles 115 to 117, article 119 and article 120(1) and (2) shall apply to and in relation to jurors as they apply to or in relation to a public officer or servant referred to in article 115:

Provided that the term "juror" shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial within the judicial system of a state other than Malta.

(3) The provisions of this Sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this sub-article the expression "breach of duty" includes any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question.

(4) The provisions of this Sub-title shall also apply to any conduct falling within the descriptions set out in the provisions of this Sub-title and in which is involved:

(*a*) a public officer or servant of any foreign State including any member of a domestic public assembly of any foreign State which exercises legislative or administrative powers; or

(*b*) any officer or servant, or any other contracted employee, of any international or supranational organization or body or of any of its institutions or bodies, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee; or

(*c*) any member of a parliamentary assembly of any international or supranational organisation; or

(*d*) any holder of judicial office or any official of any international court; or

(*e*) any member, officer or servant of a Local Council; or

(*f*) any person mentioned in the preceding paragraphs and the offence was committed outside Malta by a Maltese

citizen or by a permanent resident in Malta;

For the purposes of this paragraph, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*); or

(*g*) as the person who committed the offence, any person mentioned in paragraph (*b*) and the organisation, institution or body in question has its headquarters in Malta;

(*h*) any person:

(i) called upon to act as arbitrator in accordance with the provisions of the Arbitration Act, whether such arbitration is domestic or international; Cap. 387.

(ii) who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to such person by the parties to the agreement; and

(iii) who is an arbitrator exercising his functions under the national legislation of any state other than Malta:

Provided that:

(i) where the person involved is any person mentioned in paragraphs (*a*), (*b*), (*d*) or (*e*) the provisions of articles 115, 116, 117 and 120 shall apply; and

(ii) where the person involved is any person mentioned in paragraph (*c*) the provisions of articles 118 and 120 shall apply.

Trading in influence. *Added by: III.2002.29. Amended by: VI.2007.2; XXXI.2007.8; IV.2013.6.*

121A. (1) Any person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles of this Sub-title and of any other person, in order to induce such other person to exercise such influence, whether such undue advantage is for such other person or anyone else, shall on conviction be liable to the punishment of imprisonment for a term from three years to six years.

(2) Any person who requests, receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in sub-article (1) shall on conviction be liable to the punishment laid down in that sub-article.

(3) The offences referred to in sub-articles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

Accounting offences. *Added by: III.2002.29. Amended by: VI.2007.3; IV.2013.7.*

121B. Whosoever, with intent to commit, conceal or disguise any offence, creates or uses an invoice or any other accounting document or record containing false or incomplete information or unlawfully omits to make a record of payment, shall on conviction be liable to the punishment of imprisonment from three months to eighteen months without prejudice to any other punishment to which he may be liable under any other provision of this Code or of any other law.

Jurisdiction. *Added by: III.2002.29. Amended by: XIII.2002.10; VIII.2015.7.*

121C. Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this Sub-title where:

(*a*) only part of the action giving execution to the offence took place in Malta; or

(*b*) the offender is a Maltese national or permanent resident in Malta within the meaning of article 5(1)(*d*), a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or

(*c*) the offence involves a public officer or servant of Malta or is a member of the House of Representatives or of a Local Council; or

(*d*) the offence involves any of those persons to whom reference is made in article 121(4)(*b*), (*c*) or (*d*) and that person is at the same time a citizen or permanent resident in Malta within the meaning of article 5(1)(*d*).

Corporate liability for offences under this title. *Added by: III.2002.29. Amended by: L.N. 407 of 2007. Substituted by: VIII.2015.8.*

121D. Where an offence under this title has been committed by a person who at the time of the said offence is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the said offence was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure:

Cap. 12.

Provided that where legal representation no longer vests in the said person, for purposes of this article, legal representation shall vest in the person occupying the office in his stead or in such person as is referred to in this article.

Applicability of article 248E(4) of the Code. *Added by: XXXI.2007.9.*

121E. The provisions of article 248E(4) shall apply *mutatis mutandis* to any person found guilty of any of the offences under this Sub-title.

OF ABUSES COMMITTED BY ADVOCATES AND

LEGAL PROCURATORS

122. Any advocate or legal procurator who, having already commenced to act on behalf of one party, shall, in the same lawsuit, or in any other involving the same matter and interest, in opposition to such party or to any person claiming under him, change over, without the consent of such party or person, and act on behalf of the opposite party, shall, on conviction, be liable to a fine (*multa*), and to temporary interdiction from the exercise of his profession for a term from four months to one year.

Prevarication by advocate or legal procurator.

123. Any advocate or legal procurator who shall betray the interests of his client in such a manner that, in consequence of his betrayal or deceitful omission, the client shall lose the cause, or any right whatsoever shall be barred to his prejudice, shall, on conviction, be liable to imprisonment for a term from seven to eighteen months, and to perpetual interdiction from the exercise of his profession.

Betrayal of interests of client.
Amended by: XLIX.1981.4.

OF MALVERSATION BY PUBLIC OFFICERS AND SERVANTS

124. Any public officer or servant who shall overtly or covertly or through another person take any private interest in any adjudication, contract, or administration, whether he holds wholly or in part the direction or superintendence thereof, or held such direction or superintendence at the time when such adjudication, contract, or administration commenced, shall, on conviction, be liable to imprisonment for a term from one to six months and to perpetual interdiction from his public office or employment.

Private interest in adjudications, etc.

125. Any public officer or servant who takes any private interest in any matter in respect of which he is entrusted with the issuing of orders, the winding up of accounts, the making of arrangements or payments of any sort, shall, on conviction, be liable to the punishments laid down in the last preceding article.

Private interest in the issuing of orders, etc.

126. Whenever, in the cases referred to in the last two preceding articles, any loss is fraudulently caused to the administration to which the matter belongs, the punishment shall be imprisonment for a term from eighteen months to three years, with interdiction as provided in those articles.

Aggravating circumstance.
Amended by: XLIX.1981.4.

127. (1) Any public officer or servant who for his own private gain or for the benefit of another person or entity, misapplies or purloins any money, whether belonging to the Government or to private parties, credit securities or documents, bonds, instruments, or movable property, entrusted to him by virtue of his office or employment, shall, on conviction, be liable to imprisonment for a term from two to six years, and to perpetual general interdiction.

Embezzlement.
Amended by: XLIX.1981.4; XXXI.2007.10; IV.2013.8.

(2) The provisions of sub-article (1) shall, *mutatis mutandis*, also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an

intermediary and in breach of his duties, conducts himself in any manner provided for in the said sub-article.

OF ABUSES RELATING TO PRISONS

Turnkey or gaoler taking person in custody without warrant.

128. Any turnkey or gaoler who shall take any prisoner in custody without a lawful warrant or order from a person authorized by law to issue such warrant or order, shall, on conviction, be liable to imprisonment for a term from one to three months.

Arbitrary acts or restrictions by turnkeys or gaolers.

129. (1) Any turnkey or gaoler who shall subject any person under his custody to any arbitrary act or restriction not allowed by the prison regulations, shall, on conviction, be liable to the punishment established in the last preceding article.

Aggravating circumstance.

(2) Where the restriction or arbitrary act aforesaid of itself constitutes a crime liable to an equal or a higher punishment, such punishment shall be applied with an increase of one degree.

Detention of persons under arrest in place other than a public prison.

130. Any public officer or servant who, without authority or necessity, detains or causes to be detained, any person under arrest, in any place other than a place appointed as a public prison, shall, on conviction, be liable to imprisonment for a term from one to three months or to a fine (*multa*).

OF THE REFUSAL OF A SERVICE LAWFULLY DUE

Refusal to perform a lawful duty.

131. Any public officer or servant who has under his orders the civil police force and who, on a lawful request made by any competent authority, fails to afford the assistance of such force, shall, on conviction, be liable to imprisonment for a term from four to six months.

Allegation of false excuse by juror, witness or referee.

132. Any juror, witness or referee who, with the object of not affording assistance to the competent authority lawfully requiring such assistance, or of explaining his non-appearance before such authority, alleges an excuse which is shown to be false, shall, in addition to the punishment established for his non-appearance, be liable, on conviction, to imprisonment for a term from one to three months.

Amended by: VI.1899.3.

OF ABUSE OF AUTHORITY, AND OF BREACH OF DUTIES PERTAINING TO A PUBLIC OFFICE

Disclosing official secrets. *Added by: VI.1899.4. Amended by: I.1903.4.*

133. Any public officer or servant who communicates or publishes any document or fact, entrusted or known to him by reason of his office, and which is to be kept secret, or who in any manner facilitates the knowledge thereof, shall, where the act does not constitute a more serious offence, be liable, on conviction, to

imprisonment for a term not exceeding one year or to a fine (*multa*).

Unlawful continuance in office or employment.

134. Any public officer or servant who, having been dismissed, interdicted, or suspended, and having had due notice thereof, continues in the exercise of his office or employment, shall, on conviction, be liable to imprisonment for a term from one to six months.

Obstruction of execution of law by public functionaries. *Amended by: XLIX.1981.4.*

135. Any person vested with public authority who, by any unlawful measures devised with other persons, hinders the execution of the law, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.

Promotion of violence or racial hatred by public officers. *Added by: XXIV.2014.21.*

135A. Any public officer or servant who, under colour of his office, creates or assumes leadership of a group which promotes violence or racial hatred within the meaning of sub-articles (3) to (6), both inclusive, of article 222A, shall, where the act committed does not constitute a more serious offence, be liable to the punishment of imprisonment for a term from one to five years.

Unlawful domiciliary entry by public officials. *Amended by: VI.1871.8.*

136. (1) Any public officer or servant who, under colour of his office, shall, in cases other than those allowed by law, or without the formalities prescribed by law, enter any house, or other building or enclosure belonging to any person, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (*multa* or *ammenda*).

Aggravating circumstances.

(2) Where it is proved that the entry has taken place for an unlawful purpose or for a private advantage, the offender shall, on conviction, be liable to imprisonment for a term from one to twelve months.

Failure or refusal of magistrates or Police to perform certain duties.

137. Any magistrate who, in a matter within his powers, fails or refuses to attend to a lawful complaint touching an unlawful detention, and any officer of the Executive Police, who, on a similar complaint made to him, fails to prove that he reported the same to his superior authorities within twenty-four hours, shall, on conviction, be liable to imprisonment for a term from one to six months.

Malicious violation of official duties. *Amended by: V.1868.5; VI.1871.9; I.1903.5.*

138. Any public officer or servant who shall maliciously, in violation of his duty, do or omit to do any act not provided for in the preceding articles of this Title, to the oppression or injury of any other person, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (*multa*):

Provided that the court may, in minor offences, award any of the punishments established for contraventions.

Aggravating circumstance.

139. Where the injurious or oppressive act is one of those mentioned in articles 86, 87, 88 and 89, the offender shall, on conviction, be liable to the punishment laid down in those articles respectively, increased by one degree.

Torture and other cruel, inhuman or degrading treatment or punishment. *Added by: XXIX.1990.5.*

139A. Any public officer or servant or any other person acting in an official capacity who intentionally inflicts on a person severe pain or suffering, whether physical or mental -

(*a*) for the purpose of obtaining from him or a third person information or a confession; or

(*b*) for the purpose of punishing him for an act he or a third person has committed or is suspected of having committed; or

(*c*) for the purpose of intimidating him or a third person or of coercing him or a third person to do, or to omit to do, any act; or

(*d*) for any reason based on discrimination of any kind,

shall, on conviction, be liable to imprisonment for a term from five to nine years:

Provided that no offence is committed where pain or suffering arises only from, or is inherent in or incidental to, lawful sanctions or measures:

Provided further that nothing in this article shall affect the applicability of other provisions of this Code or of any other law providing for a higher punishment.

Additional punishment of interdiction.

140. In the cases referred to in articles 133 to 139 inclusively, the court may, in addition to the punishment therein laid down, award the punishment of temporary or perpetual general interdiction.

Substituted by: III.2002.30.

GENERAL PROVISION APPLICABLE TO PUBLIC OFFICERS

General provision. *Amended by: IX.1859.10.*

141. Saving the cases where the law specifically prescribes the punishment to which offences committed by public officers or servants are subject, any public officer or servant who shall be guilty of any other offence over which it was his duty to watch or which by virtue of his office he was bound to repress, shall, on conviction, be liable to the punishment laid down for such offence, increased by one degree.

Sub-title V

OF THE VIOLATION OF PUBLIC ARCHIVES, PUBLIC OFFICES, PUBLIC PLACES OF CONFINEMENT, AND PUBLIC MONUMENTS

OF THE BREAKING OF SEALS, AND OF THE PURLOINING OF DOCUMENTS OR DEPOSITS FROM THE PUBLIC ARCHIVES OR OTHER PUBLIC OFFICES

Breaking of seals.

142. (1) Whosoever shall be guilty of breaking any seal

affixed by order of a public authority, shall, on conviction, be liable to imprisonment for a term from one to three months.

(2) Where there has been negligence on the part of the person in charge, such person shall, for the mere negligence, be liable to the same punishment laid down in sub-article (1). Negligence of person in charge.

(3) In either case, the court may, in lieu of the said punishment, award a fine (*multa*).

143. Every theft committed by means of the breaking of any seal affixed by order of a public authority shall be deemed to be a theft aggravated by "breaking". Theft aggravated by "breaking".

144. (1) In cases of embezzlement, destruction, mutilation or purloining of documents, records or other papers, registers, acts or any effects whatsoever existing in the public archives, or in any other public offices, or delivered to any public depositary or functionary whatsoever in virtue of his office, the offender shall, on conviction, be liable to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (€465.87) and not more than twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) or to imprisonment for a term from thirteen months to seven years or to both such fine and imprisonment. Embezzlement, etc., of documents, etc., from places of public deposit. *Amended by: XLIX.1981.4; V.2005.37; L.N. 407 of 2007.*

(2) Where there has been negligence on the part of the archivist, registrar, recording officer, notary, or other functionary, such archivist, registrar, recording officer, notary or other functionary shall, for the mere negligence, be liable, on conviction, to imprisonment for a term from four to six months or to a fine (*multa*). Negligence of functionaries.

(3) Where the destruction, mutilation, damage, or alteration of any thing referred to in sub-article (1) is caused through imprudence, negligence, unskilfulness in an art or profession or through non-observance of any regulation the offender shall be liable to a fine (*multa*) of not more than nine thousand and three hundred and seventeen euro and forty-nine cents (€9,317.49) or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

145. Where any of the crimes referred to in the preceding articles of this Sub-title is committed with violence against the person, the offender shall, on conviction, be liable to imprisonment for a term from two to six years. Aggravating circumstance of "violence". *Amended by: XLIX.1981.4.*

146. *Repealed by: XVII.1996.19.* Fraudulent withdrawal of letters or packets. *Amended by: XLIX.1981.4.*

Fraudulent retention, etc., of postal packets or parcels. *Amended by: V.1868.6; XVI.1900.136; XLIX.1981.4.*

147. *Repealed by: XVII.1996.19.*

Unlawful opening of letters, etc., by post office officials. *Amended by: XLIX.1981.4.*

148. *Repealed by: XVII.1996.19.*

Suppression of letters, etc., by post office officials. *Amended by: XLIX.1981.4.*

149. *Repealed by: XVII.1996.19.*

Aggravation of punishment in the case of public officers.

150. Saving the cases of negligence referred to in articles 142 and 144, any public officer or servant who shall, in the execution of his office, commits or connives at any of the crimes mentioned in the preceding articles of this Sub-title, shall, on conviction, be liable to the punishment established for the crime, increased by one degree, and to the punishment of perpetual general interdiction.

OF THE VIOLATION OF PUBLIC PLACES OF CONFINEMENT, OF THE ESCAPE OF PERSONS IN CUSTODY OR SUSPECTED OR SENTENCED, AND OF THE HARBOURING OF OFFENDERS

Simple escape of a person sentenced. *Substituted by: VII.1999.6.*

151. Any person under sentence and any other prisoner who shall be guilty of simple escape or who escapes from the custody of the person or persons charged with his custody, shall, on conviction, be liable to imprisonment for a term of not less than six months but not more than one year.

In this article "prisoner" means any person who is confined in prison and includes a prisoner while he is being moved to or from a prison or from one prison to another or while he is under treatment or observation in any hospital.

Prison breaking. *Substituted by: VII.1999.6.*

152. Any prisoner who shall be guilty of escape from any place of confinement or of punishment, or from a hospital where he is under treatment or observation, or from the custody of the person or persons charged with his custody, shall, when the escape has been effected by violence on the person, or with breaching the places mentioned, be liable, on conviction, to imprisonment for a term from two years to four years saving any other punishment to which he may be subject under any other provision of this Code or any other law.

In this article "prisoner" has the same meaning assigned to it in article 151.

Negligence or imprudence of person charged with the custody, etc., of person escaping. *Amended by: XXI.1971.15; XLIX.1981.4.*

153. Where the escape of any person under arrest or sentence is effected in consequence of the negligence or imprudence of the person charged with his custody, care or conveyance, the person so charged shall, on conviction, be liable -

(*a*) if the party escaping is accused of, or sentenced for any crime liable to a punishment not exceeding two years' imprisonment, or if he is in lawful custody for any cause other than a crime, to imprisonment for a term from one to three months;

(*b*) if the party escaping is accused of, or sentenced for any crime liable to a punishment exceeding two years but not exceeding five years' imprisonment, to imprisonment for a term from four to six months;

(*c*) if the party escaping is accused of, or sentenced for any crime liable to a punishment exceeding five years' imprisonment, to imprisonment for a term from seven months to one year.

Connivance, etc., of person charged with the custody, etc., of person escaping. *Amended by: XXI.1971.16; XLIX.1981.4,*

154. Where the escape of any person under arrest or sentence is effected with the connivance of or by bribing the person charged with his custody, care, or conveyance, the person so charged shall, in the cases referred to in paragraphs (*a*), (*b*) and (*c*) of the last preceding article, be liable, on conviction, to imprisonment for the term as respectively fixed in the said paragraphs, increased by one degree and to the punishment of perpetual general interdiction.

Aggravating circumstances.

155. The punishment laid down in the last two preceding articles shall be increased by one degree, where the escape is effected by any of the means mentioned in article 152, or by conveying into the place of confinement or of punishment any instrument or weapon to facilitate the escape.

Aiding and abetting on the part of person not charged with the custody, etc., of person escaping. *Amended by: IX.1982.2.*

156. Whosoever, not being charged with the custody, care, or conveyance of any person under arrest or sentence, shall facilitate or be an accomplice in the escape of such person, shall, on conviction, be liable to the punishment established for the person so charged and conniving, decreased by one degree:

Provided that in the cases referred to in the last preceding article, the offender shall be liable to the same punishment established for the person so charged and conniving.

Assisting criminals to escape from Malta. *Amended by: XXI.1971.17; II.1973.2; XLIX.1981.4.*

157. Whosoever shall knowingly provide the means for effecting an escape from Malta, whether of a person accused of a crime or of a person under arrest or sentence for a crime, or of a person under warrant of arrest for a crime, or of a person who has committed a crime although not yet sentenced nor under arrest or warrant of arrest, shall, on conviction, be liable -

(*a*) where the said crime as regards the fugitive is not liable to a punishment exceeding two years' imprisonment, to imprisonment for a term from one to three months;

(*b*) where the said crime as regards the fugitive is liable to a punishment exceeding two years' but not five years'

imprisonment, to imprisonment for a term from four to six months;

(*c*) where the said crime as regards the fugitive is liable to a punishment exceeding five years' imprisonment, to imprisonment for a term from seven months to one year.

Harbouring of criminals. *Amended by: VIII.1857.1; XXI.1971.18; XLIX.1981.4.*

158. Whosoever shall knowingly harbour or cause to be harboured any person against whom there is a warrant of arrest for any offence liable to imprisonment for a term exceeding three months, or for whom the Executive Police is searching for the purpose of arresting him for any such offence, or who has escaped from arrest for any such offence, shall, on conviction, be liable to imprisonment for a term from three days to three months.

Exemptions. *Amended by: XXIII.2017.4.*

159. Nevertheless, the spouse, the ascendant or descendant, the brother or sister, parents of either spouse, spouses of either child, the uncle or aunt, the nephew or niece and the brother-in-law or sister-in-law of any fugitive or person so harboured, shall be exempted from the punishments laid down in the last two preceding articles.

Escape from places of custody. *Added by: I.1903.6.*

160. The provisions of articles 151 to 159 inclusively shall apply in the case of escape of any person lawfully confined from any place appointed for his custody.

OF THE VIOLATION OF PUBLIC MONUMENTS

Damage to monuments, etc. *Amended by: III.2002.31; L.N. 407 of 2007; XXIV.2014.22.*

161. Whosoever shall destroy, throw down, deface, or otherwise damage any monument, statue, or other object of art, destined for public utility or public embellishment, and erected by, or with the permission of the public authority, shall, on conviction, be liable to imprisonment for a term from six to eighteen months or to a fine (*multa*) not exceeding three thousand and five hundred euro (€3,500):

Provided that the court may, in minor cases, apply any of the punishments established for contraventions.

Violation of tombs. *Amended by: III.2002.32; L.N. 407 of 2007; XXIV.2014.23; XVII.2019.39.*

162. Whosoever shall violate any tomb or burial place, burial place, or columbarium publicly acknowledged as such, shall, on conviction, be liable to imprisonment for a term from nine months to two years or to a fine (*multa*) not exceeding five thousand euro (€5,000).

Title IV

OF CRIMES AGAINST THE RELIGIOUS SENTIMENT

Added by: XXVIII.1933.1.

163. *Repealed by Act XXXVII.2016.3.*

Vilification of the Roman Catholic Apostolic Religion. *Added by: XXVIII.1933.2.*

164. *Repealed by Act XXXVII.2016.3.*

Vilification of other cults tolerated by law. *Added by: XXVIII.1933.2.*

165. (1) Whosoever impedes or disturbs the performance of any function, ceremony or religious service of any religion tolerated by law, which is carried out with the assistance of a minister of religion or in any place of worship or in any public place or place open to the public shall, if the impediment or disturbance causes no serious danger to public order be liable to a punishment of up to six months imprisonment and if such a serious danger results the punishment shall be increased by one degree.

Obstruction of religious services. *Added by: XXVIII.1933.2. Amended by: XXXVII.2016.4.*

(2) If any act amounting to threat or violence against the person is committed, the punishment shall be imprisonment for a term from six months to two years.

Title V

OF CRIMES AFFECTING PUBLIC TRUST

Sub-title I

OF FORGERY OF PAPERS, STAMPS AND SEALS

166. (1) Whosoever shall forge any Government debenture for sums advanced on loan to the Government, shall, on conviction, be liable to imprisonment for a term from three to five years, with or without solitary confinement.

Forgery of Government debentures. *Amended by: XII.1913.4; XLIX.1981.4.*

(2) The same punishment shall apply where the forgery consists in opening a credit relative to such loan in the books of the Government Treasury.

(3) Where the forgery consists in the endorsement of a genuine Government debenture, the offender shall, on conviction, be liable

to imprisonment for a term from thirteen months to four years, with or without solitary confinement.

Forgery of documents. *Amended by: XII.1913.5; XLIX.1981.4.*

167. (1) Whosoever shall forge any schedule, ticket, order or other document whatsoever, upon the presentation of which any payment may be obtained, or any delivery of goods effected, or a deposit or pledge withdrawn from any public office or from any bank or other public institution established by the Government, or recognized by any public act of the Government, shall, on conviction, be liable to imprisonment for a term from thirteen months to four years, with or without solitary confinement.

(2) The same punishment shall apply where the crime consists in the forgery of any entry in the books of any such office, bank or other institution, relating to any such payment, goods, deposit, or pledge.

(3) Where the forgery consists only in the endorsement of a genuine schedule, ticket, order, or document, the offender shall, on conviction, be liable to imprisonment for a term from nine months to three years, with or without solitary confinement.

Forgery of Government debentures and documents by public officers. *Amended by: IV.1882.1.*

168. (1) Any public officer or servant who, by abuse of his office or employment, becomes guilty of any of the crimes referred to in the last two preceding articles, shall, on conviction, be liable to the punishment therein prescribed for any such crime, increased by one degree.

(2) The same punishment shall apply to any public officer or servant who shall knowingly re-issue any order for payment of money or any of the documents mentioned in the last preceding article, after the payment or the delivery of the goods obtainable upon the presentation of such order or document has been effected.

Use of forged debentures or documents.

169. Whosoever shall knowingly make use of any of the instruments specified in articles 166, 167 and 168 shall, on conviction, be liable to the same punishment as the principal offender.

Forgery of Government, judicial or official acts. *Amended by: XXVII.1975.14; XLIX.1981.4.*

170. (1) Whosoever shall forge any act containing an order or resolution of the Government of Malta, and whosoever shall forge any judgment, decree, or order of any court, judge, magistrate, or public officer, whereby any obligation is imposed or terminated, or any claim allowed or disallowed, or whereby any person is acquitted or convicted on any criminal charge, shall, on conviction, be liable to imprisonment for a term from two to four years, with or without solitary confinement.

Making use of forged acts.

(2) Whosoever shall knowingly make use of any such forged act, judgment, decree or order, shall, on conviction, be liable to the same punishment as the principal offender.

Forgery of acts or use of forged acts by public officer or servant.

(3) Where the person guilty of any of the crimes referred to in this article is a public officer or servant specially charged with the drawing up, registration, or custody of any such act, judgment, decree or order, the punishment shall be increased by one degree.

171. Whosoever shall counterfeit the Public Seal of Malta, or shall knowingly make use of such counterfeited seal, shall, on conviction, be liable to imprisonment for a term from three to five years, with or without solitary confinement.

Counterfeiting the Public Seal of Malta.
Amended by: XV.1937.3; XXVII.1975.15; XLIX.1981.4.

172. (1) Whosoever, except in the cases referred to in the last preceding article, shall counterfeit any seal, stamp, or other mark, used for sealing, stamping, marking, authenticating or certifying, in the name of the Government or of any of the authorities thereof, documents or effects, whether public or private property, or which are under the public guarantee, shall, on conviction, be liable to imprisonment for a term from thirteen months to three years, with or without solitary confinement.

Counterfeiting of seals, stamps, or other Government marks.
Amended by: XLIX.1981.4; III.2002.33.

(2) Whosoever shall knowingly make use of any such seal, stamp, or mark and whosoever shall knowingly and without lawful authority be in possession of the said objects, shall be liable to the same punishment.

Making use of counterfeited seal, stamp, or mark.

173. Whosoever shall counterfeit postage stamps, or shall knowingly make use of counterfeited postage stamps, shall, on conviction, be liable to imprisonment for a term not exceeding two years, with or without solitary confinement.

Counterfeiting postage stamps, and making use of same.
Added by: XVI.1900.137.
Amended by: XLIX.1981.4.

174. (1) Whosoever, without the special permission of the Government, shall knowingly keep in his possession counterfeited postage stamps, dies, machines or instruments intended for the manufacture of postage stamps, shall, on conviction, be liable to the punishment established in the last preceding article.

Possessing counterfeited postage stamps, dies, etc.
Added by. XVI.1900.137.
Amended by: XXVII.1975.16.

(2) The provisions contained in this and in the last preceding article shall also apply in regard to any stamp denoting a rate of postage of any foreign country.

175. The same punishment established in article 173 shall apply to any person who, without lawful authority or excuse, (the proof whereof shall lie on the person accused), knowingly purchases or receives, or takes or has in his custody or possession any paper exclusively manufactured or provided by or under the authority of the Government of Malta, for use as envelopes, wrappers or postage stamps, and for receiving the impression of stamp dies, plates or other instruments provided, made or used by or under the authority of the Government for postal purposes, before such paper has received such impression and has been issued for public use.

Purchasing or having in possession certain paper before it has been duly stamped and issued.
Added by: XVI.1900.137.
Amended by: VIII.1909.9.

176. There shall be forgery within the meaning of articles 171 and 172, not only if a false instrument is made or affixed but also if the genuine instrument is fraudulently affixed.

Act of counterfeiting Public Seal of Malta, stamps, etc., defined.

Punishment for counterfeiting Public Seal of Malta, stamps, etc., when committed by public officers.

177. Where the person guilty of any of the crimes referred to in articles 171, 172 and 176 is a public officer or servant charged with the direction, custody, or proper application of the seals, stamps, or other instruments, the punishment shall be increased by one degree.

Exemption from punishment. *Substituted by: IX.1982.2.*

178. Any person guilty of any of the crimes referred to in articles 166 to 177 inclusively, shall be exempted from punishment if, before the completion of such crime and previously to any proceedings, he shall have given the first information thereof and revealed the offenders to the competent authorities.

Sub-title II

OF FORGERY OF OTHER PUBLIC OR PRIVATE WRITINGS

Forgery of acts by public officer. *Amended by: XLIX.1981.4.*

179. Saving the cases referred to in the preceding Sub-title, any public officer or servant who shall, in the exercise of his functions, commit forgery by any false signature, or by the alteration of any act, writing, or signature, or by inserting the name of any supposititious person, or by any writing made or entered in any register or other public act, when already formed or completed, shall, on conviction, be liable to imprisonment for a term from two to four years, with or without solitary confinement.

Fraudulent alteration of acts by public officer. *Amended by: XLIX.1981.4.*

180. Any public officer or servant who, in drawing up any act within the scope of his duties, shall fraudulently alter the substance or the circumstances thereof, whether by inserting any stipulation different from that dictated or drawn up by the parties, or by declaring as true what is false, or as an acknowledged fact a fact which is not acknowledged as such, shall, on conviction, be liable to the punishment established in the last preceding article or to imprisonment for a term from eighteen months to three years, with or without solitary confinement.

Delivery of writings falsely purporting to be copies of public acts which do not exist. *Amended by: XLIX.1981.4.*

181. Any public officer or servant who shall give out any writing in a legal form, representing it to be a copy of a public act when such act does not exist, shall, on conviction, be liable to imprisonment for a term from thirteen months to two years, with or without solitary confinement.

Delivery of copies of acts differing from the original.

182. (1) The punishment laid down in the last preceding article shall be applied where the forgery is committed by the public officer or servant on a legal and authentic copy, by giving out the same in virtue of his office, in a manner contrary to or different from the original, without this being altered or suppressed.

Penalty in case of negligence.

(2) Where such copy is so given out by the mere negligence of the public officer or servant, he shall, on conviction, be liable to a fine (*multa*).

Forgery of public, commercial or private bank documents by person not being a public officer. *Amended by: VI.1871.10; XLIX.1981.4.*

183. Any other person who shall commit forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove, shall, on conviction, be liable to imprisonment for a term from thirteen months to four years, with or without solitary confinement.

Malicious use of false documents.

184. Any person who shall knowingly make use of any of the false acts, writings, instruments or documents mentioned in the preceding articles of this Sub-title, shall, on conviction, be liable to the punishment established for the forger.

Issue of false declarations or certificates. *Amended by: VI.1871.11; XLIX.1981.4.*

185. (1) Saving the cases referred to in the preceding articles of this Title, where any public officer or servant who, by reason of his office, is bound to make or issue any declaration or certificate, shall falsely make or issue such declaration or certificate, he shall, on conviction, be liable to imprisonment for a term from nine months to three years.

(2) Where the falsification is committed by any person, other than a public officer or servant acting with abuse of authority, the punishment shall be imprisonment for a term from seven months to two years.

Malicious use of false declarations or certificates.

186. Whosoever shall knowingly make use of any of the documents mentioned in the last preceding article, shall, on conviction, be liable to the same punishment established for the author thereof.

Forgery of private writings. *Amended by: XLIX.1981.4.*

187. (1) Whosoever shall, by any of the means specified in article 179, commit forgery of any private writing tending to cause injury to any person or to procure gain, shall, on conviction, be liable to imprisonment for a term from seven months to three years, with or without solitary confinement.

Malicious use of forged private writings.

(2) Whosoever shall knowingly make use thereof, shall be liable to the same punishment.

False declarations or information to a public authority. *Added by: XIII.1980.4. Amended by: VII.2010.8.*

188. (1) Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*):

Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.

(2) Where the document referred to in sub-article (1) is not one intended for any public authority the punishment shall be that of imprisonment not exceeding one year or a fine (*multa*).

Added by: *XLIX.2016*.9.

Sub-title III

OF COUNTERFEITING OF CURRENCY

Reference to currency. *Added by: XLIX.2016.9.*

188A. For the purposes of the following provisions of this Sub-title, any reference to the term "currency" shall be a reference to euro banknotes or euro coins or any other note or coin by whatever name called, which is legal tender in the country outside Malta in which it is issued and which is designated for circulation as legal tender, even if it has not been issued yet.

Forgery and uttering of currency. *Added by: XLIX.2016.9.*

188B. (1) Whosoever fraudulently makes, alters, or forges any currency or utters any forged currency knowing the same to be forged shall be liable, on conviction, to imprisonment for a term of not less than two years and not exceeding nine years:

Provided that where the forged currency is uttered by a person who proves that at the time at which it came into his custody or possession he did not know the same to be forged, the punishment shall be reduced to a term of imprisonment of not less than two months and not exceeding three years.

(2) Whosoever makes use of legal facilities or materials to manufacture any currency in violation of the rights and conditions under which such facilities or materials are to be used shall be liable, on conviction, to imprisonment for a term of not less than two years and not exceeding ten years.

Import, export, transportation and possession of forged currency. *Added by: XLIX.2016.9.*

188C. Whosoever without lawful authority imports, exports, transports, purchases, receives, obtains, or has in his custody or possession forged currency knowing the same to be forged shall be liable, on conviction, to imprisonment for a term of not less than thirteen months and not exceeding five years.

Making, receiving, obtaining or having in possession paper or implements for forgery. *Added by: XLIX.2016.9.*

188D. Whosoever without lawful authority -

(*a*) makes, receives, obtains, uses or knowingly has in his custody or possession, any paper intended to resemble and pass as special paper such as is provided and used for the making of any currency note, or any such special paper;

(*b*) makes, receives, obtains, uses or knowingly has in his custody or possession, any frame, mould or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices, peculiar to and used in or on any such paper;

(*c*) engraves or in any way makes upon any plate, wood, stone, or other material, or produces in electronic or digital form, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part the words, figures, letters, marks, lines or devices, peculiar to and used in or on any currency;

(*d*) makes, receives, obtains, uses or knowingly has in his custody or possession any plate, wood, stone or other material, or any other electronic or digital storage device upon which any such words, letters, figures,

marks, lines, or devices, have been engraved, produced or stored in electronic or digital form, or in any way made as aforesaid;

(*e*) makes, receives, obtains, uses or knowingly has in his custody or possession any paper or other material whatsoever made upon which any such words, figures, letters, marks, lines, devices, holograms or other components or security features which serve to protect against counterfeiting, have been printed or in any way made as aforesaid;

(*f*) makes, receives, obtains, uses or knowingly has in his custody or possession instruments, articles, computer programmes and data, and any other means specifically adapted for the counterfeiting or altering of currency;

(*g*) makes, receives, obtains, uses or knowingly has in his custody or possession any die or other instrument or machine exclusively intended for coinage,

shall be liable, on conviction, to imprisonment for a term of not less than thirteen months and not exceeding five years.

Mutilation and defacement of currency. *Added by: XLIX.2016.9.*

188E. Whosoever without lawful authority or lawful or reasonable excuse mutilates, cuts, tears, melts down, impairs, or perforates with holes, any currency or in any way defaces any currency by writing, printing, drawing, or by any means whatsoever, or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, shall be liable, on conviction, to a fine (*multa*) not exceeding one hundred and fifteen euro (€115).

Consultation with the Central Bank of Malta. *Added by: XLIX.2016.9. Amended by: IX.2021.2.*

188F. (1) If, in the course of criminal proceedings, the court deems it necessary to order the destruction of counterfeit currency, it shall consult with the Central Bank of Malta beforehand and shall, if and as the Central Bank of Malta may require, refrain from ordering their destruction and proceed to consign such currency to the Central Bank of Malta for examination.

(2) If, in the course of criminal proceedings, the need arises for the analysis, identification and detection of further counterfeits, upon request by the prosecution, the Court shall without delay, transmit any exhibited samples to the Central Bank of Malta for further examination, provided that a report by an expert appointed by that Court is made and presented beforehand containing copies of such samples and all material facts relating to such sample or samples.

Medals and tokens similar to euro coins. *Added by: XLIX.2016.9.*

188G. (1) In accordance with the provisions of Council Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins, and as subsequently amended, whosoever, unless authorised by the Commission of the European Union, produces, sells, imports or distributes for sale or for other commercial purposes medals and tokens, other than exempted medals and tokens as provided in the said Regulation, similar to euro coins, shall be guilty of an offence and shall, on conviction, be

liable to a fine (*multa*) not exceeding twenty-three thousand euro (€23,000), or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) The provisions of sub-article (1) shall not apply to medals and tokens issued before 6 December 2004.

Liability of legal persons.

188H. The provisions of articles 121D and 248E(4) shall apply *mutatis mutandis* to offences under articles 188B to 188D.

Persons against whom criminal action may be brought under this sub-title. *Added by: IX.2021.2.*

188I. Saving the provisions of article 5 and any other provisions of this Code or of any other law conferring jurisdiction upon the courts of Malta to try offences, the criminal action referred to in this sub-title of this Code may be prosecuted in Malta according to the provisions of this sub-title:

(*a*) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta, both if the offence takes place wholly or partly in the territory of Malta;

(*b*) against any person who commits the offences referred to in articles 188B and 188C, where counterfeit euro banknotes or euro coins are detected in the territory of Malta and also if the counterfeiting has taken place outside of Malta.

GENERAL PROVISIONS APPLICABLE TO THIS TITLE

Other kinds of forgery and use of forged documents. *Amended by: IX.1911.10. Substituted by: V.1956.16.*

189. Whosoever shall commit any other kind of forgery, or shall knowingly make use of any other forged document, not provided for in the preceding articles of this Title, shall be liable to imprisonment for a term not exceeding six months, and if he is a public officer or servant acting with abuse of his office or employment, he shall be punishable with imprisonment for a term from seven months to one year.

Definition of document, etc. *Added by: III.2002.34.*

189A. For the purposes of this Title, "document", "instrument", "writing" and "book" include any card, disc, tape, soundtrack or other device on or in which information is or may be recorded or stored by mechanical, electronic or other means.

Additional punishment of perpetual general interdiction.

190. In all crimes of forgery when committed by public officers or servants, the punishment of perpetual general interdiction shall always be added to the punishment laid down for the crime.

Added by: XVIII.2020.2.

Sub-title III

OF FRAUD AGAINST THE EUROPEAN UNION'S FINANCIAL INTERESTS

The measures in this Sub-title transpose the provisions of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

Scope and applicability.

190A. (1) This Sub-title establishes rules concerning the combating of fraud and other illegal activities affecting the European Union's financial interests.

(2) In respect of revenue arising from VAT own resources, this Sub-title shall apply only in cases of serious offences against the common VAT system. For the purposes of this Sub-title, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in paragraph (d) of article 190C are connected with the territory of Malta and another Member State or Member States of the European Union and involve a total damage of at least ten million euro (€10,000,000).

(3) Nothing in this Sub-title shall affect the structure and functioning of the tax administration of Malta.

(4) The sanctions for the offences under this Sub-title shall be without prejudice to the exercise of disciplinary powers by the competent authorities against public officers.

(5) The application of administrative measures, penalties and fines as laid down in European Union law, in particular those within the meaning of Articles 4 and 5 of Regulation (EC, Euratom) No. 2988/95, or in national law adopted in compliance with a specific obligation under European Union law, shall be without prejudice to this Sub-title. Any criminal proceedings initiated on the basis of this Sub-title shall not unduly affect the proper and effective application of administrative measures, penalties and fines that cannot be equated to criminal proceedings, laid down in European Union or national law.

Interpretation. *Amended by: XIV.2023.2.*

190B. For the purposes of this Sub-title the following definitions, unless the context otherwise requires, shall apply:

"public officer" shall have the same meaning as is assigned to it in article 92 and shall also include a Union official or a national official of a Member State of the European Union and any national official of a third country;

(i) "Union Official" means a person who is:

- an official or other servant engaged under contract by the European Union within the meaning of the Staff Regulations of Officials and

the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No. 259/68 (the 'Staff Regulations'), or

- seconded to the European Union by a Member State or by any public or private body, who carries out functions equivalent to those performed by Union officials or other servants:

Provided that, without prejudice to the provisions on privileges and immunities contained in Protocols No. 3 and No. 7 annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Members of the European Union institutions, bodies, offices and agencies, set up in accordance with the Treaties and the staff of such bodies shall be assimilated to Union officials, inasmuch as the Staff Regulations do not apply to them;

(ii) "national official" shall include any person holding an executive, administrative or judicial office at national, regional or local level. Any person holding a legislative office at national, regional or local level shall be assimilated to a national official;

(iii) any other person assigned and exercising a public service function involving the management of or decisions concerning the Union's financial interests in Member States or third countries;

"European Union's financial interests" shall mean all revenues, expenditure and assets covered by, acquired through, or due to:

(*a*) the European Union budget;

(*b*) the budgets of the European Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them.

Fraud affecting the Union's financial interests.

190C. (1) Whosoever intentionally commits fraud affecting the European Union's financial interests shall be liable, on conviction, to imprisonment for a term of six (6) months to four (4) years.

(2) For the purposes of this Sub-title, the following shall be regarded as fraud affecting the European Union's financial interests:

(*a*) in respect of non-procurement-related expenditure, any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget or budgets managed by the European Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;

(*b*) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the European Union's financial interests, any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the European Union budget or budgets managed by the European Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the European Union's financial interests;

(*c*) in respect of revenue other than revenue arising from VAT own resources referred to in paragraph (d), any act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the European Union budget or budgets managed by the European Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) misapplication of a legally obtained benefit, with the same effect;

(*d*) in respect of revenue arising from VAT own

resources, any act or omission committed in cross-border fraudulent schemes in relation to:

(i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the European Union budget;

(ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or

(iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds.

Penalties.

190D. (1) Any public officer who, directly or through an intermediary, requests or receives advantages of any kind for himself or for a third party, or accepts a promise of such an advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the European Union's financial interests shall be liable, on conviction, to imprisonment for a term of six (6) months to four (4) years.

(2) Whosoever promises, offers or gives, directly or through an intermediary, an advantage of any kind to a public officer for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in a way which damages or is likely to damage the European Union's financial interests shall on conviction be liable to a term of imprisonment of six (6) months to four (4) years.

Mis-appropriation against the European Union's financial interests.

190E. Any public officer who is directly or indirectly entrusted with the management of funds or assets, and who commits or disburses funds or appropriates or uses assets contrary to the purpose for which they were intended in any way which damages the European Union's financial interests shall be liable, on conviction, to imprisonment, for a term of three (3) to eighteen (18) months.

Incitement, aiding and abetting and attempts.

190F. Whosoever incites, aids, abets or attempts any offence under articles 190C, 190D or 190E shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Corporate liability for offences under this Sub-title.

190G. (1) Where any offence under this Sub-title is committed for the benefit, in part or in whole, of a body corporate by a person acting individually or as part of an organ of the body corporate, and having a leading position within the body corporate, based on:

(*a*) a power of representation of the body corporate,

(*b*) an authority to take decisions on behalf of the body corporate, or

(*c*) an authority to exercise control within the body corporate,

such body corporate shall be liable to the payment of a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure. Cap. 12.

(2) A body corporate shall also be held liable for an offence under this Sub-title where the lack of supervision or control by a person referred to in sub-article (1) has made possible the commission of the offence, by any person under its authority, for the benefit of that body corporate, which shall upon conviction be liable to the punishment laid down in sub-article (1).

(3) Corporate liability pursuant to sub-articles (1) and (2) shall not exclude the possibility of criminal proceedings against natural persons who are perpetrators of the criminal offences referred to in articles 190C, 190D or 190E or who are criminally liable under article 190F.

(4) Without prejudice to the application of the punishments under sub-articles (1) and (2), where a body corporate is held liable pursuant to this article the following sanctions may simultaneously be applied:

(*a*) exclusion from entitlement to public benefits or aid;

(*b*) temporary or permanent exclusion from public tender procedures;

(*c*) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;

(*d*) placing under judicial supervision;

(*e*) the compulsory winding up of the body corporate; or

(*f*) the temporary or permanent closure of establishments which have been used for the commission of the criminal offence.

(5) This article shall not apply to States or public bodies

exercising State authority, or to public international organisations.

Considerable damage or advantage. *Amended by: XIV.2023.3.*

190H. (1) Where the offences referred to in articles 190C, 190D, 190E and 190F involve considerable damage or advantage, the offender shall be liable, on conviction, to imprisonment, for a term of four (4) to eight (8) years.

(2) The damage or advantage resulting from the criminal offences referred to in article 190C(2)(a), (b), (c) and articles 190D and 190E shall be presumed to be considerable where the damage or advantage involves more than one hundred thousand euro (€100,000).

(3) The damage or advantage resulting from criminal offences referred to in article 190C(2)(d) and in respect of article 190A(2) shall always be deemed to be considerable.

Aggravating circumstances.

190I. The punishment for the offences referred to in articles 190C, 190D, 190E and 190F shall be increased by one to two degrees where the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/ 841/JHA of 24 October 2008 on the fight against organised crime.

Jurisdiction.

190J. (1) Article 121C shall apply *mutatis mutandis* to the offences under this Sub-title.

(2) Without prejudice to the generality of sub-article (1), the Maltese courts shall also have jurisdiction over the offences laid down in this Sub-title where the offender is subject to the Staff Regulations of Officials of the European Union at the time of commission of the criminal offence, and that person is at the same time a citizen or permanent resident in Malta within the meaning of article 5(1)(d):

Provided that the application of this sub-article shall fully respect the principle of *ne bis in idem*.

Recovery.

190K. (1) This Sub-title shall be without prejudice to the recovery of any VAT not paid in the context of the commission of the offences referred to in article 190C(2)(d) or in articles 190D, 190E or 190F.

(2) This Sub-title shall be without prejudice to the application of any administrative measures, penalties and fines laid down in law, and any criminal proceedings initiated pursuant to this Sub-title shall not unduly affect the proper and effective application of such administrative measures, penalties and fines.

Title VI

OF CRIMES AGAINST PUBLIC TRADE

Amended by: XI.1900.23.

OF BANKRUPTCY OFFENCES

Fraudulent bankruptcy. *Amended by: IX.1859.12; VI.1871.12; XI.1900.23; XLIX.1981.4.*

191. A bankrupt trader shall be declared guilty of fraudulent bankruptcy and shall be punishable with imprisonment for a term from eighteen months to three years, in each of the cases following:

(*a*) if he conceals or falsifies his books;

(*b*) if he misapplies, conceals or dissembles any part of his assets;

(*c*) if he simulates fictitious debts;

(*d*) if in his books or in any public or private writing he fraudulently acknowledges himself debtor of any sum which is not due.

Circumstances which give rise to simple bankruptcy. *Amended by: IX.I859.13; VI.1871.12; XI.1900.23.*

192. A bankrupt trader shall be declared guilty of simple bankruptcy and shall be punishable with imprisonment for a term from seven months to one year, in each of the cases following:

(*a*) if his personal expenses or those of his family have been excessive, having regard to his means;

(*b*) if he has spent a considerable part of his estate in purely hazardous or obviously rash transactions;

(*c*) if, with the object of delaying his bankruptcy, he has purchased goods with the intention of re-selling them below the market value and has actually so re-sold them, or if he has had recourse to loans, to indorsement of mercantile documents or to other ruinous means for the purpose of obtaining funds;

(*d*) if, after having stopped payments, he has continued to carry on business;

(*e*) if, after having stopped payments, he has paid or given any undue preference to any creditor to the prejudice of the general body of creditors:

Provided that the court may, according to circumstances, decrease the punishment laid down in this article, from one to three degrees.

Bankruptcy of broker. *Amended by: XI.1900.23.*

193. Any broker who, in the course of the habitual exercise of his trade, becomes a bankrupt, shall be liable to the punishment laid down in the last preceding article.

Circumstances which may give rise to simple bankruptcy. *Amended by: XI.1900.23.*

194. A bankrupt trader can be declared guilty of simple bankruptcy and be liable to the punishment laid down in article 192, in each of the cases following:

(*a*) if he has not kept the books prescribed by law, or has irregularly kept such books, or if such books do not show his true financial position, (debit and credit);

(*b*) if, being lawfully summoned for examination before the competent authority and not being lawfully prevented, he fails to attend within the period fixed for

his appearance.

Complicity in bankruptcy. *Amended by: XI.1900.23.*

195. Complicity in bankruptcy shall be restricted solely to those persons who collude with the bankrupt to defraud his creditors:

Provided that no charge of complicity shall lie against any person -

(*a*) who, having simulated claims against the bankrupt, shall not have made such claims in the bankruptcy proceedings, either in his own name or through an intermediary;

(*b*) who, having colluded with the bankrupt for misapplying, concealing, or dissembling any part of his assets, shall first disclose the fact to the competent authority and shall furnish or indicate the means by which the things misapplied, concealed, or dissembled may be recovered.

Title VII

Substituted: XIII.2018.24.

OF CRIMES AFFECTING THE DIGNITY OF PERSONS

Sub-title I

OF CRIMES RELATING TO THE RECIPROCAL DUTIES OF THE MEMBERS OF A FAMILY

Bigamy. *Amended by: XLIX.1981.4; XXIII.2017.5; Substituted by: XXVII.2020.33.*

196. Any:

(*a*) spouse;

(*b*) civil union partner; or

(*c*) cohabitant in a registered or unilaterally declared cohabitation according to the Cohabitation Act, or a registered cohabitation by means of a public deed in accordance to the Cohabitation Act, 2020,

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Act No. XXVII of 2020.

who, during the subsistence of a valid and lawful marriage, civil union or cohabitation, contracts another marriage, civil union or cohabitation, shall, on conviction, be liable to imprisonment for a term from thirteen (13) months to four (4) years.

Bigamy involving a civil union and cohabitation. *Added by: IX.2014.15. Substituted by: XV.2017.48.*

196A. Deleted by *XXVII.2020.34.*

197. (1) Any ascendant by consanguinity or affinity who, by the use of violence or by threats, compels, or, by deceit, induces any descendant under age to prostitution, shall, on conviction, be liable to imprisonment for a term from six to twelve years.

Prostituting of descendant under age by ascendant.
Amended by: VIII.1909.10; XIV.1918.2; XLVI.1973.108; XLIX.1981.4; IV.1994.3; II.2014.2; XXIII.2017.6; XIII.2018.24.

(2) The same punishment shall be applied to anyone of the spouses or tutor who, by the use of violence or by threats, compels, or, by deceit, induces to prostitution his or her spouse under age or the minor under his or her tutorship.

Prostituting of spouse under age or of minor by husband or wife or tutor.

(3) If the ascendant or any one of the spouses, by the use of violence or by threats, compels, or, by deceit, induces the descendant or his or her spouse, of age, to prostitution, he or she shall, on conviction, be liable to imprisonment of a term from three to six years.

Prostituting of descendant or spouse of age, by ascendant or husband or wife.

(4) The punishment prescribed for the crimes referred to in the preceding sub-articles shall be increased by one to two degrees in the cases referred to in article 202, as applicable.

(5) A conviction under this article shall entail the forfeiture of every authority and right granted to the offender over the person or property of the spouse or of the descendant to whose prejudice the offence shall have been committed, and, in the case of the tutor, his removal from the tutorship and his perpetual disability from holding the office of tutor:

Consequences of conviction.

Provided that where the rights of the offender over the person to whose prejudice the offence has been committed consists of rights of parental authority the forfeiture provided for in this sub-article shall not apply automatically but may be imposed by the court after it has considered all the circumstances of the case and in imposing such forfeiture the court may also impose conditions:

Provided further that in the cases referred to in the above proviso the court may, upon the application of the offender, and only after appointing any expert that it may deem fit to appoint, remove or vary the conditions of the forfeiture, after being satisfied that a material change in circumstances justifies such revocation or variation of conditions.

Sub-title II

OF SEXUAL OFFENCES

Amended by: XI.1900.24. Substituted by: XXXVII.2016.5.

Rape.
Amended by: XI.1900.26; XLIX.1981.4. Substituted by: XIII.2018.24. Amended by: LXIV.2021.5.

198. (1) Whosoever shall engage in non-consensual carnal connection, that is to say, vaginal, anal or oral penetration with any sexual organ of the body of another person, shall, on conviction, be liable to imprisonment for a term from six (6) to twelve (12) years:

Provided that whosoever shall engage in non-consensual vaginal, anal, or oral penetration with any other part of the body not mentioned in sub-article (1) on the body of another person, shall, on conviction, be liable to imprisonment for a term from three (3) to nine (9) years:

Provided further that penetration with any bodily part shall be deemed to be complete by its commencement, and it shall not be necessary to prove any further acts.

(1A) Whosoever shall engage in non-consensual vaginal, anal or oral penetration of a sexual nature with an object, whether the object is intended for activities of a sexual nature or otherwise, shall, on conviction, be liable to imprisonment for a term from three (3) to twelve (12) years:

Provided that penetration with an object shall be deemed to be complete by the commencement of the penetration with that object, and it shall not be necessary to prove any further acts.

(2) Whosoever by force, bribery, deceit, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct, causes another person to engage in any of the non-consensual acts described in the preceding sub-articles with any person shall, on conviction, be liable to the punishment mentioned in the same sub-articles.

(3) The acts referred to in sub-articles (1) and (1A) shall be deemed to be non-consensual unless consent was given voluntarily, as the result of the person's free will, assessed in the context of the surrounding circumstances and the state of that person at the time, taking into account that person's emotional and psychological state, amongst other considerations.

(4) In addition to any punishment to which the person convicted of an offence under this article may be sentenced, the Court may order the offender to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence, or to pay to such party such sum of money as may be determined by the Court as compensation for any such loss as aforesaid or for any damages or other injury or harm, including moral and, or, psychological harm caused to such party by or through the offence, and any such order may include both a direction to make restitution and, in default, to pay as aforesaid. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

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(5) When issuing an order under sub-article (4), the Court may direct that such costs or damages are paid in instalments, in particular, having regard to any other obligations which the offender has towards the victim or any of the victim's dependants.

Abduction.
Amended by: XLIX.1981.4. Substituted by: XIII.2018.24.

199. (1) Whosoever shall, abduct any person with the intent to harm such person, shall, on conviction, be liable to imprisonment for a term from six to twelve years.

(2) The punishment laid down in sub-article (1) shall be increased by one or two degrees where any person abducts, by fraud or seduction, any person under the age of eighteen years.

Where offender restores person abducted.
Amended by: VIII.1909.15; IV.1994.4.

200. *Deleted by Act XIII.2018.24.*

Where offender marries person abducted.
Non-consent in cases of carnal knowledge and indecent assault.
Amended by: XI.1900.27; XIII.2018.24.

201. Unlawful carnal knowledge and any other indecent assault, shall be presumed to be non-consensual:

(*a*) when it is committed on any person under twelve years of age;

(*b*) when the person abused was unable to offer resistance owing to physical or mental infirmity, or for any other cause independent of the act of the offender, or in consequence of any fraudulent device used by the offender.

Aggravating circumstances.
Amended by. XI.1900.28; XX.2005.11; IV.2014.4; XIII.2018.24; LXIV.2021.6.

202. The punishment prescribed for any of the crimes referred to in the preceding articles of this Sub-title, shall be increased by one to two degrees if any one or more of the following circumstances results:

(*a*) when the offender has availed himself of his capacity of public officer, or when the offender is a servant of the injured party, with salary or other remuneration, or any person otherwise having abused of his authority over the injured party;

(*b*) when the crime is committed by any ascendant, tutor, or institutor;

(*c*) when the crime is committed on any prisoner by the person charged with the custody or conveyance of such prisoner;

(*d*) when the offender has, in the commission of the crime, been aided by one or more persons;

(*e*) when the offender has, in the commission of the crime, made use of any arms proper or improper;

(*f*) when the person on whom the crime is committed, or any other person who has come to the assistance of that person, has sustained any bodily harm;

(*g*) when the offence is committed on a minor;

(*h*) when the crime is committed on the person of:

(i) the current or former spouse, civil union partner or cohabitant; or

(ii) the brother or sister; or

(iii) an ascendant or descendant; or

(iv) another person having or having had a child in common with the offender; or

(v) another person living in the same household as the offender or who had lived with the offender before the offence was committed;

(vi) another person who is or was in a relationship with the offender whether with the intention of marriage or not;

(vii) other persons who are related to each other by consanguinity or affinity up to the third degree inclusively:

Provided that in this paragraph "spouse" includes the person whose marriage with the offender has been dissolved or declared null;

(*i*) when the crime is committed in the presence of, or within hearing distance of a minor;

(*j*) the offence, or related offences, were committed repeatedly;

(*k*) the offence was committed against a vulnerable person within the meaning of article 208AC(2);

(*l*) the offence was committed with the threat of a weapon;

(*m*) the offence resulted in severe physical or psychological harm for the victim;

(*n*) the offender has been previously convicted of offences of a similar nature:

Provided that where an aggravation of punishment in respect of the circumstances mentioned in this article is already provided for under this Code or any other law, the higher punishment may be applied.

Defilement of persons under sixteen (16) years of age. *Amended by: III. I885.1; VIII.1909.16; XIV.1918.3; II.1973.4; XLIX.1981.4; IV.1994.5; XXIII.2017.7. XIII.2018.24; III.2020.2; LXIV.2021.7.*

203. (1) Whosoever, by lewd acts, defiles a person who has not completed the age of sixteen years, shall, on conviction, be liable to imprisonment for a term from four to eight years:

Provided that the offence shall be punishable with imprisonment for a term from six to twelve years, where any one or more of the circumstances results:

(*a*) if the offence is committed on a person who has not completed the age of twelve years, or with violence, be it physical or psychological;

(*b*) if the offence is committed on a person who has not completed the age of sixteen years by means of threats or deceit;

(*c*) if the offence is committed by any ascendant by consanguinity or affinity, or by the adoptive parents, or

by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person who has not completed the age of sixteen years;

(*d*) when the offender abuses of a recognised position of trust, authority, influence or during his duties as a professional in the possession of an official qualification and, or warrant to practice as counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker and, or youth worker over the person who has not completed the age of sixteen years and one of the circumstance referred to below occurs:

(i) the offender wilfully or recklessly endangered the life of the person who has not completed the age of sixteen years;

(ii) the offence involves violence or grievous bodily harm to such person;

(iii) the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).

(1A) When the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees.

Applicability of article 197(5).

(2) The provisions of article 197(5) shall also apply in the case of an offence under this article, when the offence is committed by any ascendant or tutor.

Complaint of injured party.

(3) Provided that where the injured party withdraws his complaint, the Court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of the complainant, any person under the age of sixteen (16) involved, and any other relevant third parties, and shall cause such request and decision to be registered in the records of the case:

Provided further that proceedings shall be instituted *ex officio* when the act is committed with abuse of parental authority or of tutorship.

Instigation, etc., of defilement of minors.
Added by: III.2002.35.
Amended by: XIII.2018.24; LXIV.2021.8.

203A. Whosoever, by any means other than those mentioned in article 203(1), instigates, encourages or facilitates the defilement of a minor of either sex, shall, on conviction be liable to imprisonment for a term from three to six years and the provisions of article 203(2) and (3) shall, *mutatis mutandis*, apply to an offence under this article:

Provided that the offence shall be punishable with imprisonment for a term from four to eight years in any of the cases referred to in the proviso to article 203(1):

Provided further that when the act is consensual between peers

who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees.

Inducing, etc., persons under age to prostitution. *Added by: XIV.1918.4. Amended by: IX.1935.2; XLIX.1981.4; XXIX.1990.6; IV.1994.6; IV.2014.5; XXIII.2017.8; XIII.2018.24; LXIV.2021.9.*

204. (1) Whosoever in order to gratify the lust of any other person induces a person under age to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from three to six years:

Aggravating circumstances.

Provided that the offence shall be punishable with imprisonment for a term from six to nine years, if any one or more of the following circumstances results:

(*a*) if the offence is committed to the prejudice of a person who has not completed the age of twelve years;

(*b*) if the offence is committed by deceit;

(*c*) if the offence is committed by any ascendant by consanguinity or affinity, by any one of the adoptive parents, by the spouse or tutor of the minor, or by any other person charged, even though temporarily, with the care, eduction, instruction, control or custody of the minor;

(*d*) if the offence is committed habitually or for gain.

(2) The provisions of article 197(5) shall also apply in the case of any offence under this article, when the offence is committed by the spouse, by an ascendant or by the tutor.

Instigation with violence of persons under age to prostitution or to participation in a pornographic performance. *Added by: XXXI.2007.11. Amended by: IV.2014.6; XIII.2018.24; LXIV.2021.10.*

204A. (1) Whosoever -

(*a*) with violence, threats, coercion or force compels a person under age into prostitution or into participating in a pornographic performance, or

(*b*) knowingly makes any gain or derives any benefit from the conduct referred to in paragraph (*a*),

shall, on conviction, be liable to imprisonment for a term from six to twelve years.

(2) The punishment for the offence in sub-article (1)(*b*) shall be increased by one or two degrees, with or without solitary confinement, if any one or more of the following circumstances results:

(*a*) when the offender wilfully or recklessly endangered the life of the person under age;

(*b*) when the offence involves violence or grievous bodily harm on such person;

(*c*) when the offence is committed with the involvement of

a criminal organisation within the meaning of article 83A(1);

(*d*) when the offender abuses of a recognised position of trust, authority or influence over the person under age.

Inducing persons under age to prostitution or to participation in a pornographic performance. *Added by:* XXXI.2007.11. *Amended by:* IV.2014.7. XIII.2018.24; LXIV.2021.11.

204B. (1) Whosoever in order to gratify the lust of any other person engages, recruits or causes a person under age to practice prostitution, or to participate in pornographic performances, or profits from or otherwise exploits a person under age for such purposes, shall, on conviction, be liable to imprisonment for a term from five to ten years.

(2) The offence shall be punishable with imprisonment for a term from six to twelve years, if any one or more of the following circumstances results:

(*a*) when the offender wilfully or recklessly endangered the life of the person under age;

(*b*) when the offence involves violence or grievous bodily harm on such person;

(*c*) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);

(*d*) when the offender abuses of a recognised position of trust, authority or influence over the person under age.

Participation in sexual activities with persons under the age of sixteen. *Added by:* XXXI.2007.11. *Amended by:* IV.2014.8. *Substituted:* XIII.2018.24. *Amended by:* LXIV.2021.12.

204C. (1) Whosoever takes part in sexual activities with a person who has not completed the age of sixteen years shall, on conviction, be liable to imprisonment for a term from five to ten years.

(2) The punishment for the offence in sub-article (1) shall be increased by one or two degrees if any one or more of the following circumstances results:

(*a*) if the offence is committed on a person who has not completed the age of sixteen years with violence, coercion, force or threats;

(*b*) where money or other forms of remuneration or consideration is given as payment in exchange for a person who has not attained the age of sixteen years taking part in sexual activities; or

(*c*) when the offender abuses of a recognised position of trust, authority, influence or during his duties as a professional in the possession of an official qualification and, or warrant to practice as counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker and, or youth worker over the person who has not completed the age of sixteen years and one of the circumstance referred to below occurs:

(i) the offender wilfully or recklessly endangered

the life of the person who has not completed the age of sixteen years;

(ii) the offence involves violence or grievous bodily harm to such person;

(iii) the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).

(3) When the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees.

Unlawful sexual activities.
Added by: VII.2010.9.
Amended by: IV.2014.9; XIII.2018.24; LXIV.2021.13.

204D. (1) Whosoever:

(*a*) compels, coerces, forces or threatens a person under age to perform sexual activities with another person, or

(*b*) knowingly causes, for sexual purposes, a person under age to witness sexual abuse or sexual activities, even without causing the said person to participate in the activities, or

(*c*) knowingly causes, for sexual purposes, a person under age to participate in real or simulated sexually explicit conduct or exhibition of sexual organs, including through information and communication technologies, or

(*d*) participates in sexual activities with a person under age, where recourse is made to child prostitution, or

(*e*) knowingly attends a pornographic performance involving the participation of a person under age,

shall, on conviction, be liable to imprisonment for a term from five to ten years.

(2) The punishment for the offence in sub-article (1) shall be increased by one degree, if any one or more of the following circumstances results:

(*a*) when the offender wilfully or recklessly endangered the life of the person under age;

(*b*) when the offence involves violence or grievous bodily harm on such person;

(*c*) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);

(*d*) when the offender abuses of a recognised position of trust, authority or influence over the person under age.

Compelling or inducing person of age to prostitution. *Added by: XIV.1918.4. Amended by: XLIX.1981.4. Substituted by: IV.1994.7. Amended by: IV.2014.10; XIII.2018.24.*

205. Whosoever in order to gratify the lust of any other person, by the use of violence, compels or, by deceit, induces a person of age, to practise prostitution, shall, where the act committed does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term from three to seven years:

Provided that the offence shall be punishable with imprisonment for a term of four to nine years, if it is committed -

(*a*) with abuse of authority, of trust or of domestic relations; or

(*b*) habitually or for gain.

Proof of carnal connection. *Substituted by: II.1973.6.*

206. The crimes referred to in this Title to constitute which there must be a carnal connection shall be deemed to be complete by the commencement of the connection, and it shall not be necessary to prove any further acts.

Non-consensual act of a sexual nature. *Amended by: VI.1871.13; XI.1900.30; VIII.1909.17; XLIX.1981.4; XIII.2018.24.*

207. Whosoever shall be guilty of any non-consensual act of a sexual nature which does not, in itself, constitute any of the crimes, either completed or attempted, referred to in the preceding articles of this Sub-title, shall, on conviction, be liable to imprisonment for a term from three to seven years:

Provided that in the cases referred to in article 202, the punishment shall be increased by one degree.

Display of pornographic material in public places. *Added by: XXVII.1975.17. Amended by: XIII.1983.5; L.N. 407 of 2007; VII.2010.10. Substituted by: XXXVII.2016.6.*

208. (1) Whosoever displays or permits to display any pornographic material in a public place shall, on conviction, be liable to a fine (*multa*) of not less than one thousand euro (€1,000) and not more than three thousand euro (€3,000).

(2) For the purposes of this article, "public place" means any place to which the public have or are permitted to have access, whether on payment or otherwise:

Provided that for the purposes of this article a "public place" shall not include a place to which the public are permitted to have access only on payment which is or includes payment for the said display, or to a shop or establishment, or to any part of such shop or establishment, to which the public can only gain access by passing beyond an adequate warning notice:

Provided further that these exclusions shall only apply where minors are not permitted to enter while the display in question is continuing.

(3) This article shall not apply to any material:

(*a*) that is included by any person in a television broadcasting service regulated by the Broadcasting Authority within the meaning of the Broadcasting Act; or — Cap. 350

(*b*) included in the display of an art gallery or museum and visible only within the gallery or museum where the organiser of the display has taken reasonable precautions for the protection of minors; or

(*c*) included in a film exhibition which is subject to the Cinema and Stage-Age Classification Regulations; or — S.L. 542.01

(*d*) which otherwise serves the public good on the ground that it is in the interests of science, literature, art or learning or other objects of general concern.

(4) For the purposes of this article, material shall include anything capable of being displayed, except that it does not include an actual human body or any part thereof and nothing in this article shall be construed as permitting any show of live and actual sexual activity involving the sexual organs made solely or principally for the purpose of sexual arousal. In determining for the purpose of this article whether any displayed material is pornographic:

(*a*) there shall be disregarded any part of that material which is not exposed to view;

(*b*) account may be taken of the effect of juxtaposing one thing with another.

(5) A warning notice shall not be adequate for the purposes of this article unless it complies with the following requirements:

(*a*) The warning notice must contain the following words, and no others:

"WARNING Persons passing beyond this notice will find material on display which they may consider indecent. No admittance to persons under 18 years of age.";

(*b*) the word "WARNING" must appear as a heading;

(*c*) no pictures or other matter shall appear on the notice;

(*d*) the notice must be so situated that no one could reasonably gain access to the shop or establishment, or part of the shop or establishment in question, without being aware of the notice and it must easily be legible by any person gaining such access.

Indecent photographs, films, etc., of persons under age.
Added by: III.2002.36. Amended by: L.N. 407 of 2007; XXXI.2007.12; VII.2010.11; Amended by: IV.2014.11; VIII.2015.9; XXIII.2017.9; LXIV.2021.14.

208A. (1) Any citizen or permanent resident of Malta whether in Malta or outside Malta, as well as any person in Malta, who makes or produces or permits to be made or produced any indecent material involving or showing persons under age or produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows such indecent material shall, on conviction, be liable imprisonment for a term from twelve months to five years.

(1A) The offence in sub-article (1) shall be punishable with imprisonment for a term from two to eight years, with or without solitary confinement, in each of the following cases:

(*a*) when the offender wilfully or recklessly endangered the life of the person under age;

(*b*) when the offence involves violence or grievous bodily harm on such person;

(*c*) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1).

(1B) Any person who acquires, knowingly obtains access through information and communication technologies to, or is in possession of, any indecent material which shows, depicts or represents a person under age, shall, on conviction, be liable to imprisonment for a term from not exceeding three years.

(1C) For the purposes of sub-article (1) the expression "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

(2) A photograph, film, video recording or electronic image shall, if it shows a person under age and is indecent, be treated for all purposes of this article as an indecent photograph, film, video recording or electronic image.

(3) Where the offences in sub-articles (1) and (1B) are committed by any ascendant by consanguinity or affinity, or by any one of the adoptive parents, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under age shown, depicted or represented in the indecent material, or where such person under age has not completed the age of nine years or where the indecent material shows, depicts or represents a minor involved in acts of bestiality, brutality, sadism or torture:

(*a*) in the case of the offence in sub-article (1), the punishment shall be of imprisonment for a term from two to nine years, and

(*b*) in the case of the offence in sub-article (1B), the punishment shall be of imprisonment for a term from six months to four years,

and the provisions of article 197(4) shall also apply.

(4) Where a person is charged with distributing or showing, or with being in possession of, any indecent material under sub-article (1), it shall be a defence for him to prove that he had a legitimate reason for distributing or showing, or for having in his possession, such indecent material, or that he had not himself seen the indecent material, and neither knew nor had any reason to suspect them to be indecent.

(5) For the purposes of article 635(1)(*a*), the person under age shown in the indecent material shall be deemed to be the person against whom the offence is committed.

(6) In this article references to a photograph includes the negative as well as the positive version.

(7) For the purposes of this article the expression "indecent material" includes photographs, images, audio or video recordings, digitally created or electronic images, drawings, cartoons, text and simulated representations or realistic images of a minor, or any material that visually depicts any person appearing to be a child, even if the minor is non-existent, or of the sexual parts of a child for primarily sexual purposes.

Meeting a child following sexual grooming etc. *Added by: VII.2010.12. Amended by: IV.2014.12. XIII.2018.24; LXIV.2021.15.*

208AA. (1)Whosoever being a person aged eighteen (18) years or over who has met or communicated with a person under the age of sixteen (16) years on one or more occasions intentionally meets or by any means proposes to meet or arranges to meet the said person under the age of sixteen (16) years, who he does not reasonably believe to be over the age of sixteen (16) years, intending to do anything to or in respect of the said person under the age of sixteen (16) years during or after the said meeting which if done would involve the commission of any of the offences in articles 204, 204A to 204D, both included, or 208A, shall be liable on conviction to the punishment of imprisonment not exceeding six (6) years.

(2) The punishment for the offence in sub-article (1) shall be increased by one degree, if any one or more of the following circumstances results:

(*a*) when the offender wilfully or recklessly endangered the life of the person under the age of sixteen (16) years;

(*b*) when the offence involves violence or grievous bodily harm on such person;

(*c*) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);

(*d*) when the offender abuses of a recognised position of trust, authority or influence over the person under the age of sixteen (16) years.

Advertisement of sexual tourism. *Added by: VII.2010.12. Amended by: IV.2014.13; LXIV.2021.16.*

208AB. (1) Whosoever disseminates any materials advertising the opportunity to commit any of the offences under articles 204, 204A to 204C, both inclusive, 208A(1) and 208A(1A), or is involved in the organization of travel arrangements with the purpose of committing any of the said offences, shall, on conviction, be liable to imprisonment for a term from two to five years.

(2) The punishment for the offence in sub-article (1) shall be increased by one degree, with or without solitary confinement, if any one or more of the following circumstances results:

(*a*) when the offender wilfully or recklessly endangered the life of the person;

(*b*) when the offence involves violence or grievous bodily harm on such person;

(*c*) when the offence is committed with the involvement of a criminal organisation within the meaning of article 83A(1);

(*d*) when the offender abuses of a recognised position of trust, authority or influence over the person.

Aggravating circumstances. *Added by: VII.2010.12. Amended by: IV.2014.14; LXIV.2021.17.*

208AC. (1) The punishment for the offences referred to in articles 204, 204A to 204D, both inclusive, 208A(1) to 208AB, both inclusive, shall be increased by one to two degrees where any one or more of the following circumstances results:

(*a*) where the offence involved the use of violence or results in harm to the physical or mental health of the person;

(*b*) where the person under age is a vulnerable person within the meaning of sub-article (2);

(*c*) where the offence is committed by two or more persons acting together;

(*d*) in any of the circumstances described in article 202(*a*), (*b*), (*c*) and (*h*);

(*e*) if the offender lives with or is a member of the victim's family;

(*f*) if the offender has been previously convicted of an offence under this Sub-title;

(*g*) where the offence is committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority;

(*h*) where the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841JHA of 24 October 2008 on the fight against organised crime;

(*i*) where the offender has deliberately or recklessly endangered the life of a child:

Provided that where an aggravation of punishment in respect of the circumstances mentioned in this article is already provided for under this Code or any other law, the higher punishment shall be applied.

(2) For the purposes of this article a vulnerable person means:

(*a*) any person under the age of fifteen years; or

(*b*) any person suffering from a physical or mental infirmity; or

(*c*) any other person considered by the court to be particularly at risk of being induced into cooperating with the offender or into surrendering to the offender's will when taking into account the person's age, maturity, health, pregnancy, disability, social or other conditions including any situation of dependence, as well as the physical or psychological consequence of the offence on that person.

208B. (1) The following provisions shall apply to the offences under articles 198, 203 to 204D, both inclusive, and article 208A(1), (1A), (1B), 208AA and 208AB.

Provisions applicable to articles 198, 203 to 204D and 208A to 208AB of the Code. *Added by: XXXI.2007.13. Amended by: VII.2010.13; IV.2014.15; VIII.2015.10; III.2020.3.*

(2) In addition to the punishment established for the said offences, the Court may order that the offender be temporarily or permanently prevented from exercising at least professional activities involving direct or regular contact with children.

(2A) Where the court makes an order under sub-article (2) such order shall be registered in any criminal record of the offender.

(2B) Where the person convicted of any of the offences mentioned in sub-article (1) is the subject of an order as that provided for by sub-article (2) made by a foreign court the court shall order that effect shall be given to the order made by the foreign court as if it were an order made by the court under sub-article (2).

(3) The provisions of articles 121D, 248E(4) and 248E(6) shall apply *mutatis mutandis*.

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(4) The provisions of articles 13 and 14 of the White Slave Traffic (Suppression) Ordinance, shall apply *mutatis mutandis*.

(5) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences where:

(*a*) only part of the action giving execution to the offence took place in Malta; or

(*b*) the offender is a Maltese national or permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or

(*c*) the offence was committed by means of a computer system accessed from Malta notwithstanding that such computer system may be outside Malta; or

(*d*) the offence was committed against a Maltese national or permanent resident in Malta.

(6) Notwithstanding any other provision of this Code or of any other law, the period of prescription shall run from the day on which the victim attains the age of twenty-three (23) years.

(7) For the purposes of this article, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

Aiding and abetting. *Added by: IV.2014.16.*

208C. Whosoever aids, abets or instigates any offence under articles 204, 204A to 204D, both inclusive, and articles 208A to 208AB, both inclusive, shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Offences relating to extreme pornographic images. *Added by: XXXVII.2016.7.*

208D.(1) Whosoever, for gain, distribution, or for display in a public place or in a place accessible to the public, manufactures, prints, or otherwise makes, or introduces into Malta, or acquires, keeps, puts into circulation or exports, any extreme pornographic image shall, on conviction, be liable to imprisonment for a term from eighteen months to three years or to a fine (*multa*) of not less than three thousand euro (€3,000) and not more than six thousand euro (€6,000), or to both such imprisonment and fine.

(2) Whosoever trades in any image mentioned in sub-article (1), even if such trade is clandestine, or distributes any such image or displays any such image in public or in a place accessible to the public, shall, on conviction, be liable to the punishment prescribed in sub-article (1).

(3) It is a defence for a person charged with an offence under this article to show that:

(*a*) he had a legitimate reason for being in possession of the image concerned;

(*b*) he had not seen the image concerned in any material, article or communication obtained or received by him and did not know, nor had any cause to suspect that such material, article or communication contained an extreme pornographic image;

(*c*) he was sent the image concerned without any prior request having been made by him or on his behalf:

Provided that it shall not be a defence under this paragraph if such person has seen, or is reasonably suspected to have seen the image, and kept the image concerned for an unreasonable amount of time;

(*d*) he directly and consentingly participated in the act depicted in the image:

Provided that it shall not be a defence under this paragraph if such person shows, gives or offers for sale the image to any person who was not a direct participant in the act depicted:

Provided further that it shall neither be a defence under this paragraph if the act depicted in the image involves:

(i) an act of rape or other non-consensual penetrative activity;

(ii) an act of necrophilia or bestiality;

(iii) a sexual act or image involving a minor.

(4) For the purposes of this article an image shall be regarded as an extreme pornographic image if it is so described or defined by regulations made under sub-article (5) or is otherwise to be so regarded in accordance with any regulation made as aforesaid.

(5) The Minister responsible for justice shall make regulations for the purpose of describing or defining or otherwise establishing what is to be regarded as an extreme pornographic image for the purposes of this article and may by such regulations make provision regarding the criteria to be followed for that purpose and may make different provisions for different circumstances and different purposes.

Non-consensual taking or disclosure of private sexual photographs and films. *Added by: XXXVII.2016.7. Amended by: XIII.2018.24; XXIV.2019.4.*

208E. (1) Whosoever, with an intent to cause distress, emotional harm or harm of any nature, takes or discloses a private sexual photograph or film without the consent of the person or persons displayed or depicted in such photograph or film shall on conviction be liable to imprisonment for a term of up to five years or to a fine (*multa*) of not less than four thousand euro (€4,000) and not more than eight thousand euro (€8,000), or to both such imprisonment and fine.

(2) A person shall not be guilty of an offence under this article if:

(*a*) he has disclosed the sexual photograph or film where the sexual photograph or film were taken with the consent of the person or persons displayed or depicted in such photograph or film, solely to the person or persons displayed or depicted in such photograph or film; or

(*b*) the disclosure was necessary for the purpose of preventing, detecting or investigating a crime; or

(*c*) to the extent that it is reasonably required, the disclosure is authorised by a court or tribunal in the course of judicial proceedings:

Provided that where authorisation is so granted by a court or tribunal, the sexual photograph or film shall, without delay, be sealed by the registrar or deputy registrar of that court or tribunal and shall only be accessible by the parties to the suit or to their authorised legal representatives.

(3) When the offence provided for in this article is committed as a means or in the context of blackmail the punishment shall be increased by one degree.

(4) In this article:

"taking" shall refer to the unauthorised taking of sexual private photos and films, by any means;

"disclosure" shall be construed as also including the publication, distribution, trade, circulation or unauthorised use of private sexual photographs and films, by any means;

"private" shall refer to any photograph or film which was never intended for public consumption;

"sexual" shall include the depiction of all or part of a person's exposed genitals or pubic area, or, in the case of females, of the breasts, or of any content that, when taken as a whole, a reasonable person would consider to be sexual because of its nature;

"photograph or film" means a moving or still image or data, stored by any means, which is capable of conversion into a moving or still image.

Offences against decency or morals committed in public.

209. Whosoever, except in the cases referred to in the preceding articles of this Sub-title or in any other provision of law, shall commit an offence against decency or morals, by any act committed in a public place or in a place exposed to the public, shall, on conviction, be liable to imprisonment for a term not exceeding three months and to a fine (*multa*).

Non-applicability of article 21. *Added by: IV.2014.17.*

209A. *Deleted by: Act LXIV.2021.19.*

209B. In the case of offences in accordance with articles 204A, 204B, 208, 208A or 208C, the competent authority may decide not to institute criminal proceedings for any of the mentioned offences against a minor at the time of the commission of the offence where the said authority is satisfied that such minor was a victim of sexual abuse and was compelled to commit the offence. In the case when the said criminal proceedings are instituted, the competent authority may also in the course of the criminal proceedings request that any victim who is a minor as aforesaid shall not be subjected to punishment upon conviction and in such case the court shall uphold the said request of the authority.

Competent authority may decide not to prosecute victims who are minors or exemption from punishment. *Added by: V.2024.3.*

Sub-title III

OF CRIMES TENDING TO PREVENT OR DESTROY THE PROOF OF THE STATUS OF A CHILD

210. Any person found guilty of kidnapping, or concealing, an infant, or of suppressing its birth, or of substituting one infant for another, or of suppositiously representing an infant to have been born of a woman who had not been delivered of a child, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.

Kidnapping or concealing an infant, etc. *Amended by: XLIX.1981.4.*

Title VIII

OF CRIMES AGAINST THE PERSON

Sub-title I

OF WILFUL HOMICIDE

211. (1) Whosoever shall be guilty of wilful homicide shall be punished with imprisonment for life.

Wilful homicide. *Amended by: V.1868.7; XXI.1971.19; XLIX.1981.4.*

(2) A person shall be guilty of wilful homicide if, maliciously, with intent to kill another person or to put the life of such other person in manifest jeopardy, he causes the death of such other person.

Definition of "wilful homicide".

(3) Where the offender gives cause to the death of a person within the limits of the territorial jurisdiction of Malta, the homicide shall be deemed to be wholly completed within the limits of the said jurisdiction, notwithstanding that the death of such person occurs outside such limits.

Death outside the jurisdiction, of a person stricken within the jurisdiction.

Femicide.
Added by:
X.2022.2.

211A. In sentencing a person convicted of the wilful homicide or of the attempted wilful homicide of a person of the female gender the court shall, in establishing the punishment, give due consideration to whether the homicide or attempted homicide:

(*a*) was the result of violence committed by an intimate partner with whom the victim was or is still in a relationship or of whom the victim is the spouse or former spouse; or

(*b*) resulted from violence by a member or members of the family; or

(*c*) was committed for misogynist motives; or

(*d*) was committed for reasons of honour of the perpetrator, or of family reputation, or for reasons related to religious or cult belief or practices; or

(*e*) was committed due to motives based on the gender, or gender identity, or sex or sexual orientation of the victim; or

(*f*) was committed as a result of sexual violence or of acts of a sexual nature; or

(*g*) was committed due to the victim being involved in prostitution, or being subjected to sexual exploitation or being the victim of human trafficking for purposes of sexual exploitation,

and the court shall consider the existence of any of the said circumstances as a factor militating against leniency in punishment.

Where the offender did not intend to cause the death of any person in particular, or where the offender kills a person other than the intended victim.
Amended by:
X.2022.3.

212. The provisions of article 211 shall also apply even though the offender did not intend to cause the death of any particular person, or, by mistake or accident, shall have killed some person other than the person whom he intended to kill.

Inciting or helping others to commit suicide.
Added by:
XI.1900.31.
Amended by:
XLIX.1981.4.

213. Whosoever shall prevail on any person to commit suicide or shall give him any assistance, shall, if the suicide takes place, be liable, on conviction, to imprisonment for a term not exceeding twelve years.

Sub-title II

OF WILFUL OFFENCES AGAINST THE PERSON

Bodily harm.
Amended by:
XI.1900.32.

214. Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental

derangement, shall be guilty of bodily harm.

Grievous or slight bodily harm.

215. A bodily harm may be either grievous or slight.

Grievous bodily harm.
Amended by: V.1868.8; VI.1871.14; XI.1900.32; XLIX.1981.4; XIII.2018.24.

216. (1) A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from one year to seven years -

(*a*) if it can give rise to danger of -

(i) loss of life; or

(ii) any permanent debility of the health or permanent functional debility of any organ of the body; or

(iii) any permanent defect in any part of the physical structure of the body; or

(iv) any permanent mental infirmity;

(*b*) if it causes any deformity or disfigurement in the face, neck, or either of the hands of the person injured;

(*c*) if it is caused by any wound which penetrates into one of the cavities of the body, without producing any of the effects mentioned in article 218;

(*d*) if it causes any mental or physical infirmity lasting for a period of thirty days or more; or if the party injured is incapacitated, for a like period, from attending to his occupation;

(*e*) if, being committed on a woman with child, it hastens delivery.

(2) Where the person injured shall have recovered without ever having been, during the illness, in actual danger of life or of the effects mentioned in sub-article (1)(*a*), it shall be deemed that the harm could have given rise to such danger only where the danger was probable in view of the nature or the natural consequences of the harm.

Grievous bodily harm with arms proper, etc.
Amended by: VIII.1857.2; VI.1871.14; XI.1900.32; XLIX.1981.4; XIV.1983.3; XIII.2018.24.
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217. A grievous bodily harm is punishable with imprisonment for a term from two to ten years if it is committed with arms proper, or with a cutting or pointed instrument, or by means of any explosive, or any burning or corrosive fluid or substance:

Provided that where the offence is committed by means of any explosive fluid or substance the minimum punishment shall be imprisonment for four years and the provisions of the Probation Act shall not be applicable.

Other cases of grievous bodily harm.
Amended by: IX.1859.14; V.1868.9; XI.1900.32; XLIX.1981.4; XIV.1983.4; XIII.2018.24.

218. (1) A grievous bodily harm is punishable with imprisonment for a term from five to ten years -

(*a*) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;

(*b*) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;

(*c*) if, being committed on a woman with child, it causes miscarriage.

(2) Any debility of the health or any functional debility of any organ of the body, and any mental infirmity, serious disfigurement, or defect shall be deemed to be permanent even when it is probably so.

(3) The punishment for the offences referred to in sub-article (1) shall be that established in article 312(2) if the bodily harm is committed by means of any explosive fluid or substance.

Decrease of punishment in case of supervening accidental cause. *Amended by: V.1868.10; XI.1900.32.*

219. The punishments laid down in articles 216 and 218 shall be decreased by one or two degrees if a supervening accidental cause has contributed to produce the effects mentioned in the said articles.

Grievous bodily harm from which death ensues. *Amended by: V.1868.11; XI.1900.32; XLIX.1981.4; XIII.2018.24.*

220. (1) Whosoever shall be guilty of a grievous bodily harm from which death shall ensue solely as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause, shall be liable -

(*a*) to imprisonment for a term from six to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime;

(*b*) to imprisonment for a term from six to twelve years, if death shall ensue after the said forty days, but within one year to be reckoned as above.

(2) If death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the harm, the offender shall, on conviction, be liable to imprisonment for a term from five to ten years.

(3) If the bodily harm is inflicted within the limits of the territorial jurisdiction of Malta, the crime shall be held to have been completed within those limits, even if the death of the person injured shall occur outside those limits.

Slight bodily harm. *Amended by: VIII.1857.3, 5; VI.1871.15; II.1886.8; XI.1900.32; I.1903.7; VIII.1909.19; IX.1911.12; XX.2005.12; XIII.2018.24; XXXII.2018.5.*

221. (1) A bodily harm which does not produce any of the effects referred to in the preceding articles of this Sub-title, shall be deemed to be slight, and shall be punishable with imprisonment for a term not exceeding two years, or with a fine (*multa*).

(2) Where the offence is committed by any of the means referred to in article 217, it shall be punishable with imprisonment for a term from two to seven years.

(3) Where the effect, considered both physically and morally, is of small consequence to the injured party, the offender shall, on conviction, be liable to -

Where effect of bodily harm is of small consequence.

(*a*) imprisonment for a term not exceeding three months or a fine (*multa*), if the offence is committed by any of the means referred to in article 217, or is committed on any of the persons mentioned in article 222(1)(*a*) and (*b*);

(*b*) the punishments established for contraventions, in any other case.

(4) In the cases referred to in sub-articles (1) and (3), proceedings may not be taken except on the complaint of the injured party, unless the offence is committed on any of the persons mentioned in article 222(1)(*a*) and (*b*).

Complaint by injured party.

222. (1) The punishments established in articles 216, 217, 218 and 220, and in sub-articles (1) and (2) of the last preceding article shall be increased by one degree when the harm is committed -

Aggravating circumstances. *Amended by: VIII.1857.4; XXXII.1986.2; III.2002.37; XX.2005.13; XXII.2010.11; XXIII.2017.10.*

(*a*) on the person of any one of the parents or any other legitimate and natural ascendant, or on the person of a legitimate and natural brother or sister, or on the person of any one of the spouses, or on the person of any one of the natural parents, or on any person mentioned in article 202(*h*);

(*b*) on the person of any witness or referee who shall have given evidence or an opinion in any suit, and on account of such evidence or opinion, or on the person of a child under nine years of age;

(*c*) on the person of whosoever was a public officer or was lawfully charged with a public duty or is or was an officer or employee of a body corporate established by law and the offence was committed because of that person having exercised his functions;

(*d*) on the person of whosoever was exercising his lawful duties as a private guard, a specialised private guard or community officer in accordance with the provisions of the Private Guards and Community Officers Act.

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(2) Nevertheless, no increase of punishment shall take place where the offender, without intent to cause harm to any particular person, or with intent to cause harm to some other person, shall, by mistake or accident, cause harm to any of the persons referred to in sub-article (1)(*a*) and (*b*).

No increase of punishment in case of mistake or accident.

Increase of punishment in certain cases.
Added by: XXIX.1990.7.
Amended by: III.2002.38; XI.2009.5; XXXI.2014.2; XXIV.2014.24; VIII.2015.11; XIII.2018.24; LXV.2021.6.

222A. (1) *Deleted by Act LXV.2021.6.*

(2) The punishments established in the foregoing provisions of this Sub-title shall also be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion.

(3) An offence is aggravated or motivated on grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion if:

(*a*) at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim's membership (or presumed membership) of a group, denoting a particular gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion; or

(*b*) the offence is motivated, wholly or partly, by hostility, aversion or contempt towards members of a group as referred to in paragraph (*a*).

(4) In sub-article (3)(*a*):

"membership", in relation to a group, includes association with members of that group;

"presumed" means presumed by the offender.

(5) It is immaterial for the purposes of sub-article (3)(*a*) or (*b*) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that those paragraphs.

(6) In this article:

"racial group" means a group of persons defined by reference to race, descent, colour, nationality (including citizenship) or ethnic or national origins;

"religious group" means a group of persons defined by reference to religious belief or lack of religious belief.

(7) The punishment prescribed for any of the crimes referred to in the preceding articles of this Sub-title shall be increased by one to two degrees in the applicable cases referred to in article 202, provided that where an aggravation of punishment in respect of the circumstances mentioned in this article is already provided for under this Code or any other law, the higher punishment may be applied.

Sub-title III
OF JUSTIFIABLE HOMICIDE OR BODILY HARM

Justifiable homicide or bodily harm.

223. No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person.

Cases of lawful defence.

224. Cases of actual necessity of lawful defence shall include the following:

(*a*) where the homicide or bodily harm is committed in the act of repelling, during the night-time, the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment;

(*b*) where the homicide or bodily harm is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder;

(*c*) where the homicide or bodily harm is imposed by the actual necessity of the defence of one's own chastity or of the chastity of another person.

Sub-title IV

OF INVOLUNTARY HOMICIDE OR BODILY HARM

Involuntary homicide. *Amended by: IX.1859.15; VI.1871.16; XI.1900.33; III.1971.4; XIII.1980.5; XIII.1983.5; III.2002.39; L.N. 407 of 2007; VII.2010.14; XIV.2017.7.*

225. (1) Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87).

(2) Where the offender has caused the death of more than one person or where in addition to causing the death of a person the offender has also caused bodily harm to another person or other persons the punishment shall be that of imprisonment of a term of up to ten years.

Involuntary bodily harm. *Amended by: VI.1871.17; XI.1900.33; VIII.1909.20; III.1971.5; XIII.1980.6; XIII.1983.5; III.2002.40; L.N. 407 of 2007.*

226. (1) Where from any of the causes referred to in the last preceding article a bodily harm shall ensue, the offender shall, on conviction, be liable -

(*a*) if the harm is grievous and produces the effects mentioned in article 218, to imprisonment for a term not exceeding one year or to a fine (*multa*) not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75);

(*b*) if the harm is grievous without the effects mentioned in article 218, to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding

two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37);

(*c*) if the harm is slight, to the punishments established for contraventions.

(2) In the cases referred to in sub-article (1)(*c*), proceedings may only be taken on the complaint of the injured party.

Involuntary homicide or involuntary bodily harm in the course of theft or attempted theft. *Added by: XXIX.1990.8.*

226A. Where a person gives cause to a death or bodily harm mentioned in the foregoing provisions of this Sub-title in the course of the execution by him of a theft or in the course of an attempted theft, or immediately after the commission of such theft or such attempt while he is fleeing from the place where the theft was committed or attempted, he shall, without prejudice to any liability incurred by him in relation to the theft or attempted theft and saving the provisions of article 17, on conviction, be liable -

(*a*) in the case of death, to the punishment of imprisonment from four to nine years;

(*b*) in the case of bodily harm, to the punishments mentioned in article 226 which shall be increased by one or two degrees.

Explosive fluid or substance. *Added by: VIII.2008.17.*

226B. Where any of the offences in articles 225, 226 and 226A has been committed by any explosive fluid or substance, the punishment laid down for the offence shall be increased by two to three degrees.

Involuntary homicide or bodily harm in the course of a rescue attempt. *Added by: XXIX.2020.3.*

226C. Notwithstanding the provisions of articles 225, 226 and 226A, a person will not be criminally liable if, confronted with a present or imminent danger to another person, he performs an act necessary to ensure the safety of that person, whether or not the act actually ensures the safety of the person:

Provided that this article shall not apply where the means used are disproportionate to the seriousness of the threat or where the act is performed with malice or gross negligence.

Sub-title V

OF EXCUSES FOR THE CRIMES REFERRED TO IN THE FOREGOING SUB-TITLES OF THIS TITLE

Cases of excusable wilful homicide. *Amended by: V.1868.12; VIII.1909.21; XLIX.1981.4; III.2002.41. X.2022.4.*

227. Wilful homicide shall be excusable -

(*a*) where it is provoked by a grievous bodily harm, or by any crime whatsoever against the person, punishable with more than one year's imprisonment;

(*b*) where it is committed in repelling, during the day-time, the scaling or breaking of enclosures, walls, or the entrance of any house or inhabited apartment, or the appurtenances thereof having a direct or an indirect

communication with such house or apartment;

(*c*) where it is committed by any person acting under the first transport of a sudden passion or mental excitement in consequence of which he is, in the act of committing the crime, incapable of reflecting;

the offender shall be deemed to be incapable of reflecting whenever the homicide be in fact attributable to heat of blood and not to a deliberate intention to kill or to cause a serious injury to the person, and the cause be such as would, in persons of ordinary temperament, commonly produce the effect of rendering them incapable of reflecting on the consequences of the crime:

Provided that a homicide shall not be excusable under this paragraph if it was committed in any of the circumstances mentioned in article 211A;

(*d*) where it is committed by any person who, acting under the circumstances mentioned in article 223, shall have exceeded the limits imposed by law, by the authority, or by necessity:

Provided, moreover, that any such excess shall not be liable to punishment if it is due to the person being taken unawares, or to fear or fright.

Punishment for excusable wilful homicide. *Amended by: V.1868.13; VIII.1909.22; III.2002.42.*

228. (1) In the case of wilful homicide excusable in terms of paragraph (*a*) or (*b*) of the last preceding article, the offender shall, on conviction, be liable to imprisonment for a term not exceeding two years.

(2) In the case of wilful homicide excusable in terms of paragraph (*c*) of the last preceding article, the offender shall, on conviction, be liable to imprisonment for a term from five to twenty years.

(3) In the case of wilful homicide excusable in terms of paragraph (*d*) of the last preceding article, the offender shall, on conviction, be liable to imprisonment for a term not exceeding twelve years.

Cases of inadmissibility of excuse.

229. The excuse referred to in article 227(*c*), shall not be admissible -

(*a*) where the passion is provoked by the lawful correction of the person accused;

(*b*) where the passion is provoked by the lawful performance of duty by a public officer;

(*c*) where the offender has either sought provocation as a pretext to kill or to cause a serious injury to the person, or endeavoured to kill or to cause such serious injury before any provocation shall have taken place.

Excusable bodily harm. *Amended by: V.1868.14; VIII.1909.23.*

230. The crime of wilful bodily harm shall be excusable -

(*a*) in the cases mentioned as excuses for wilful homicide in article 227(*a*) and (*b*);

(*b*) in the cases mentioned as excuses for wilful homicide in article 227(*c*);

(*c*) if it is provoked by any crime whatsoever against the person;

(*d*) in the cases mentioned as excuses for wilful homicide in article 227(*d*).

Punishment for excusable bodily harm referred to in paragraph *(a)* of s.230, *Amended by: V.1868.15; XI.1900.34; XIII.1980.7.*

231. (1) In the cases referred to in paragraph (*a*) of the last preceding article, the offender shall, on conviction, be liable -

(*a*) if death has ensued -

(i) solely as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause, to imprisonment for a term not exceeding one year;

(ii) as a result of a supervening accidental cause and not solely as a result of the nature or natural consequences of the harm, to imprisonment for a term not exceeding six months;

(*b*) if the harm is grievous and produces the effects mentioned in article 218, to imprisonment for a term not exceeding six months;

(*c*) if the harm is grievous without the effects mentioned in article 218, to imprisonment for a term not exceeding three months;

(*d*) if the harm shall have become grievous owing to a supervening accidental cause -

(i) to imprisonment for a term not exceeding three months, in the case referred to in paragraph (*b*);

(ii) to the punishments established for contraventions, in the case referred to in paragraph (*c*).

(2) In the cases referred to in sub-article (1), if the harm is slight, no proceedings shall be instituted.

in paragraphs *(b)* and *(c)* of s. 230, *Amended by: VIII.1857.6,7; V.1868.15; XI.1900.34; I.1903.8; XIII.1983.5; XXIX.1990.9; L.N. 407 of 2007.*

232. In the cases referred to in article 230(*b*) and (*c*) the offender shall, on conviction, be liable -

(*a*) if the harm is grievous, to imprisonment for a term not exceeding two-thirds of that established for the crime when not excusable;

(*b*) if the harm is slight and is committed by any of the means referred to in article 217, or on any of the persons mentioned in article 222(*a*) and (*b*), or on any of the persons mentioned in article 222A, to imprisonment for a term not exceeding three months;

(*c*) if the harm is slight, without the aggravating circumstances referred to in the last preceding paragraph, to

imprisonment for a term not exceeding one (1) month or to a fine (*multa*) or to the punishments established for contraventions:

Provided that if the punishment established for the crime when not excusable be that established for contraventions, the period of detention shall not exceed twenty days and the amount of the fine (*ammenda*) shall not exceed six euro and ninety-nine cents (€6.99).

in paragraph *(d)* of s. 230. *Added by: VIII.1909.24.*

233. (1) In the cases referred to in article 230(*d*), the offender shall, on conviction, be liable -

(*a*) in the case of grievous bodily harm, to imprisonment for a term not exceeding one-third of that established for the crime when not excusable;

(*b*) in the case of slight bodily harm committed by any of the means referred to in article 217, to imprisonment for a term not exceeding two months.

(2) In the cases referred to in sub-article (1) if the harm is slight and is not committed by any of the means referred to in article 217, no punishment shall be awarded.

Admissibility of excuse in case of homicide or bodily harm caused to person other than the intended victim. *Amended by: XI.1900.34.*

234. Whosoever shall, by mistake or accident, commit a homicide or cause a bodily harm on a person other than that against whom the act was intended, shall have the benefit of any excuse which would decrease the punishment for the crime if it were committed to the prejudice of the person against whom the act was intended.

When provocation may be pleaded. *Amended by: V.1868.14.*

235. The provocations referred to in articles 227 and 230 shall not benefit the offender, unless they shall have taken place at the time of the act in excuse whereof they are pleaded.

Homicide or bodily harm caused by husband on adulterous wife and adulterer.

236. *Repealed by: XXIX.1990.10.*

Homicide or bodily harm in accidental affray. *Amended by: VIII.1857.8; VI.1871.18; III.1885.2; XI.1900.35; XLIX.1981.4.*

237. Where in an accidental affray a homicide or bodily harm is committed and it is not known who is the author thereof, each person who shall have taken an active part against the deceased or the person injured shall, on conviction, be liable -

(*a*) in the case of homicide, to imprisonment for a term not exceeding three years;

(*b*) in the case of a grievous bodily harm producing the effects mentioned in article 218, to imprisonment for a term not exceeding one year;

(*c*) in the case of a grievous bodily harm without the effects mentioned in article 218, to imprisonment for a term not exceeding three months;

(*d*) in the case of a slight bodily harm, to the punishments

established for contraventions:

Provided that, in the case of homicide, the person or persons who shall have inflicted on the party killed a bodily harm from which death might have ensued, shall, on conviction, be liable to imprisonment for a term from five to twelve years.

Provoking tumult or affray for the purpose of committing homicide or causing a bodily harm.
Added by: XI.1900.35.

238. Whosoever shall provoke a tumult or an affray for the purpose of committing a homicide or of causing a bodily harm, shall, on conviction, be liable -

(*a*) if any person is killed, to the punishment established for wilful homicide;

(*b*) if any person suffers a bodily harm, to the punishment established for such bodily harm increased by one degree.

Sub-title VI

OF THE CONCEALMENT OF HOMICIDE OR BODILY HARM, AND OF THE CONCEALMENT OF DEAD BODIES

Concealing body of person killed.
Amended by: XVII.2019.39.

239. Whosoever shall knowingly conceal or unlawfully cremate the body of a person whose death has been caused by a crime, shall, on conviction, be liable to imprisonment for a term from four to six months.

Concealing birth of child.
Amended by: IV.1994.8.

240. Any person who, immediately after the delivery of a child, shall, by secretly burying or otherwise disposing of the dead body of the child, endeavour to conceal the birth thereof, shall, on conviction, be liable to imprisonment for a term from four months to one year.

Sub-title VII

Substituted by: III.2002.43.

OF ABORTION, OF THE ADMINISTRATION OR SUPPLYING OF SUBSTANCES POISONOUS OR INJURIOUS TO HEALTH, AND OF THE SPREADING OF DISEASE

Procuring miscarriage.
Amended by: XLIX.1981.4.

241. (1) Whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, shall cause the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.

(2) The same punishment shall be awarded against any woman who shall procure her own miscarriage, or who shall have consented to the use of the means by which the miscarriage is procured.

Death or grievous bodily harm caused by means used for miscarriage. *Amended by: III.2002.44.*

242. If the means used shall cause the death of the woman, or shall cause a serious injury to her person, whether the miscarriage has taken place or not, the offender shall, on conviction, be liable to the punishment applicable to wilful homicide or wilful bodily harm, diminished by one to three degrees.

Where physician, etc., prescribes or administers means for causing miscarriage. *Amended by: XLIX.1981.4.*

243. Any physician, surgeon, obstetrician, or apothecary, who shall have knowingly prescribed or administered the means whereby the miscarriage is procured, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years, and to perpetual interdiction from the exercise of his profession.

Culpable miscarriage. *Added by: III.2002.45. Amended by: L.N. 407 of 2007.*

243A. Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the miscarriage of a woman with child, shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37).

Exceptions to articles 241(2) and 243. *Added by: XXII.2023.2.*

243B. No offence under sub-article (2) of article 241 or article 243 shall be committed when the cessation of a pregnancy or damage to the foetus results from a medical intervention carried out for the purpose of saving the life and protecting the health of a pregnant woman suffering from a medical complication which may put her life at immediate risk or her health in grave jeopardy which may lead to death:

Provided that the exemption from criminal responsibility by virtue of this article shall apply only when after having considered the medical practices current in Malta circumstances of necessity still subsist which dictate that the medical intervention be carried out and if the following conditions are fulfilled:

(*a*) in the case of a pregnant woman suffering from a medical complication which may put her life at immediate risk the medical intervention is done when in the reasonable opinion of the medical practitioner carrying out the intervention the foetus has not reached the period of viability; or

(*b*) in the case of a medical intervention carried out due to a medical complication which places the health of a pregnant woman in grave jeopardy which may lead to death:

(i) that in the reasonable opinion of the medical team the foetus has not reached the period of viability and cannot be delivered according to the standards of the medical profession; and

(ii) that the medical intervention is carried out only after the medical team has confirmed the necessity of the intervention; and

(iii) that the medical intervention is carried out in a licensed hospital having the facilities required for the necessary medical intervention to be carried out;

(*c*) for the purposes of this article:

"medical team" means three (3) medical practitioners registered as specialists with the Medical Council under the Health Care Professions Act, two (2) of whom being obstetricians or gynaecologists, one (1) of whom being the obstetrician who carries out the intervention, and the third medical practitioner being a specialist in the condition from which the pregnant woman is suffering;

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"period of viability" means the point in a pregnancy at which the foetus is capable of living outside the uterus according to current medical practices.

Administering or causing others to take substances injurious to health. *Amended by: XLIX.1981.4.*

244. Whosoever shall, in any manner, maliciously administer to, or cause to be taken by another person any poisonous or noxious substance capable of causing any harm or injury to health, shall, on conviction, be liable to imprisonment for a term from thirteen months to two years, provided the offence does not in itself constitute the offence of homicide, completed or attempted, or a serious injury to the person.

Transmission, communication. etc., of disease. *Added by: III.2002.46. Amended by: L.N. 407 of 2007.*

244A. (1) Any person who, knowing that he suffers from, or is afflicted by, any disease or condition as may be specified in accordance with sub-article (3), in any manner knowingly transmits, communicates or passes on such disease or condition to any other person not otherwise suffering from it or afflicted by it, shall, on conviction, be liable to imprisonment for a term from four year to nine years:

Provided that where the other person dies as a result of such disease or condition, the offender shall be liable to the punishment established in article 211(1).

(2) Where any such disease or condition as is referred to in sub-article (1) is transmitted, communicated or passed on through imprudence, carelessness or through non-observance of any regulation by the person who knew or should have known that he suffers there from or is afflicted thereby that person shall on conviction be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37):

Provided that where the other person dies as a result of such disease or condition, the offender shall be liable to the punishments established in article 225.

(3) The Minister responsible for justice shall, by notice in the Gazette, specify diseases or conditions to which this article applies.

Sub-title VIII

Amended by: VI.1947.8. Substituted by: III.2002.47.

OF INFANTICIDE AND OF THE ABANDONMENT, EXPOSURE AND ILL-TREATMENT OF CHILDREN

Infanticide. *Added by: VI.1947.9.*

245. Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effects of giving birth to the child or by reason of the effects of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this article the offence would have amounted to wilful homicide, she shall be guilty of infanticide and shall be liable to the punishment of imprisonment for a term not exceeding twenty years.

Abandoning or exposing child under seven years. *Amended by: XLIX.1981.4.*

246. Whosoever shall be guilty of abandoning or exposing any child under the age of seven years shall be liable to imprisonment for a term from seven months to one year.

If child dies or sustains injury. *Amended by: IX.1859.I6; V.1868.16; VI.1947.10; III.2002.48.*

247. (1) Saving the provisions of article 245, where, in consequence of the abandonment or exposure of the child, such child dies or sustains a bodily injury, the offender shall be deemed, in the first case, to be guilty of wilful homicide, and, in the second case, to be guilty of wilful bodily harm, and shall be subject to the provisions relating to homicide and bodily harm respectively; but the punishment shall be diminished by one degree.

Abandoning or exposing child without danger to life or limb.

(2) Where the abandonment or the exposure of a child as provided in this article shall not have taken place under circumstances of manifest danger either to the life or to the person of the child so abandoned or exposed, the punishment shall be diminished by two degrees:

Provided that where the punishment prescribed in sub-articles (1) and (2), be not heavier than the punishment prescribed in the last preceding article, the offender shall, on conviction, be liable to the punishment prescribed in the latter article, increased by one degree.

Ill-treatment or neglect of child under sixteen years *Added by: III.2002.49; Amended by: III.2020.4.*

247A. (1) Whosoever, having the responsibility of any child under sixteen years of age, by means of persistent acts of commission or omission ill-treats the child or causes or allows the ill-treatment by similar means of the child shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term not exceeding two years.

(2) For the purposes of sub-article (1), ill-treatment includes neglecting the child's need for adequate nutrition, clothing, shelter,

and protection from harm, persistently offending the child's dignity and self-esteem in a serious manner and persistently imposing upon the child age-inappropriate tasks or hard physical labour.

(3) The provisions of article 197(4) shall also apply in the case of an offence under this article, when the offence is committed by any ascendant or tutor.

Failure to take care of foundling or to make report thereof.

248. Whosoever, having found a newly born child, shall fail to provide for its immediate safety, or, having assumed the care thereof, shall not, within twenty-four hours, deliver the same, or give information thereof, to the Executive Police, shall, on conviction, be liable, in the first case, to imprisonment for a term from four to six months, and, in the second case, to imprisonment for a term from one to three months:

Provided that in either case, the court may, in its discretion, award a fine (*multa* or *ammenda*) in lieu of imprisonment.

Added by: *VII.2010.15.*

GENERAL PROVISION APPLICABLE TO OFFENCES UNDER SUB-TITLES I TO V, BOTH INCLUSIVE, AND SUB-TITLE VIII

Disability in case of offences against persons under age. *Added by:* *VII.2010.15.*

248 Bis. The provisions of article 208B(2) and (2A) shall apply to any person found guilty of any offence under Sub-titles I to V, both inclusive, and Sub-title VIII when committed against a person under age.

Added by: *III.2002.50.*

Sub-title VIII BIS

OF THE TRAFFIC OF PERSONS

Traffic of a person of age for the purpose of exploitation in the production of goods or provision of services. *Added by:* *III.2002.50.* *Amended by:* *VII.2010.16;* *XVIII.2013.2;* *XIII.2018.24.*

248A. (1) Whosoever, by any means mentioned in sub-article (2), traffics a person of age for the purpose of exploiting that person in:

(*a*) the production of goods or provision of services; or

(*b*) slavery or practices similar to slavery; or

(*c*) servitude or forced labour; or

(*d*) activities associated with begging; or

(*e*) any other unlawful activities not specifically provided for elsewhere under this Sub-title,

shall, on conviction, be liable to the punishment of imprisonment from six to twelve years.

For the purposes of this sub-article exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in sub-article (1) are the following:

(*a*) violence or threats, including abduction;

(*b*) deceit or fraud;

(*c*) misuse of authority, influence or pressure;

(*d*) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person;

(*e*) abuse of power or of a position of vulnerability:

Provided that in this paragraph "position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

(3) The consent of a victim of trafficking to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in sub-article (2) has been used.

Traffic of a person of age for the purpose of exploitation in prostitution, etc. *Added by: III.2002.50. Amended by: XVIII.2013.3.*

248B. Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material or other forms of sexual exploitation shall, on conviction, be liable to the punishment laid down in article 248A(1).

Traffic of a person of age for the purpose of exploitation in the removal of organs. *Added by: III.2002.50. Amended by: XVIII.2013.4; XXVIII.2016.16.*

248C. (1) Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from six to twelve years.

(2) For purposes of this article, the removal of organs, tissues and cells shall include the conduct referred to in article 248CA(1).

Trafficking in human organs. *Added by: XXVIII.2016.16.*

248CA. (1) Whosoever removes a human organ, tissue or cell from living or deceased donors in any of the following circumstances -

(*a*) where the removal is not performed under the Act with the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under the Act;

(*b*) where, in exchange for the removal of organs, tissues or cells the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;

(*c*) where, in exchange for the removal of organs, tissues or cells from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage,

shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment for a term from six to twelve years.

(2) A person who does any of the following acts shall be guilty

of an offence against this article -

(*a*) makes use of illicitly removed organs, tissues or cells as described in sub-article (1), for purposes of implantation or other purposes than implantation;

(*b*) the implantation of human organs, tissues or cells from living or deceased donors where the implantation is not performed under the Act or where the implantation is, in any manner, performed in breach of the Act;

(*c*) solicits or recruits an organ donor or a recipient for financial gain or comparable advantage;

(*d*) prepares, preserves or stores illicitly removed human organs, tissues or cells as described in sub-article (1);

(*e*) transports, transfers, receives, imports or exports illicitly removed human organs, tissues or cells as described in sub-article (1),

and shall be liable on conviction to the punishment laid down in sub-article (1).

(3) The provisions of articles 115 and 121(3) shall, *mutatis mutandis*, apply to an offence under this article.

(4) For purposes of this article -

Cap. 558. "Act" means the Human Organs, Tissues and Cell Donation Act;

"human organ" means a differentiated part of the human body, formed by different tissues, that maintains its structure, vascularisation and capacity to develop physiological functions with a significant level of autonomy:

Provided that a part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularisation;

"financial gain or comparable advantage" shall not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs.

Traffic of a minor for any of the purposes mentioned in articles 248A to 248C. *Added by: III.2002.50. Amended by: XXVIII.2016.16.*

248D. Whosoever trafficks a minor for any of the purposes mentioned in articles 248A to 248CA, both inclusive, shall, on conviction be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in article 248A(2) has been used:

Provided that where any of the means mentioned in article 248A(2) has been used in the commission of the offence under this article the punishment for the offence shall be increased by one degree.

248DA. Whosoever, for any purpose referred to in articles 248A to 248CA, both inclusive, acting as an intermediary for the adoption of a child improperly induces the consent of any person whose consent is required for the adoption shall on conviction be liable to the punishment laid down in article 248D.

Improperly inducing consent to adoption of a minor for purposes of exploitation. *Added by: VII.2010.17. Amended by: XXVIII.2016.16.*

248DB. Whosoever shall practice or engage in child labour for any of the purposes mentioned in article 248A shall, on conviction, be liable to the punishment established under article 248D.

Child labour. *Added by: VII.2010.17.*

For the purposes of this article child labour shall include the coercion of a person under age into forced or compulsory labour for any purpose whatsoever including the forced or compulsory recruitment of minors to take part in armed conflict.

248E. (1) In this Sub-title, the phrase "trafficks a person" or "trafficks a minor" means the recruitment, transportation, sale or transfer of a person, or of a minor, as the case may be, including harbouring and subsequent reception and exchange or transfer of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes mentioned in the preceding articles of this Sub-title, as the case may be.

General provisions applicable to this Sub-title. *Added by: III.2002.50. Amended by: L.N. 407 of 2007; XXXI.2007.14; VII.2010.18; XVIII.2013.5; VIII.2015.12; XXVIII.2016.16.*

(2) Where any of the offences in articles 248A to 248D, both inclusive -

(*a*) is accompanied by violence, or has resulted in harm to the physical or psychological health of the victim; or

(*b*) generates proceeds exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87); or

(*c*) is committed with the involvement of a criminal organisation within the meaning of article 83A(1); or

(*d*) is committed by a public officer or servant in the course of the exercise of his duties; or

(*e*) is committed against a vulnerable person within the meaning of article 208AC(2); or

(*f*) when the offender wilfully or recklessly endangered the life of the person trafficked; or

(*g*) when the offender has been previously convicted of an offence under this article; or

(*h*) is committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority,

the punishment otherwise due shall be increased by one degree.

(3) The provisions of article 121D shall apply *mutatis mutandis* to the offences under this Sub-title, so however that the punishment to which the body corporate shall be liable under this sub-article shall be the payment of a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two million euro (€2,000,000), which fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

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(4) Where the person found guilty of any of the offences under this Sub-title -

(*a*) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and

(*b*) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and

(*c*) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D,

the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than ten thousand euro (€10,000) and not exceeding two million euro (€2,000,000).

(4A) Whenever the offence is committed for the benefit, in part or in whole, of a body corporate by a person who has the power of representation of the body corporate, authority to take decisions on behalf of the body corporate, or authority to exercise control of the body corporate, the legal person may be subject to:

(i) exclusion from entitlement to public benefits or aid;

(ii) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;

(iii) placing under judicial supervision;

(iv) the compulsory winding up of the body corporate; or

(v) the temporary or permanent closure of any establishment which may have been used for the commission of the offence.

(5) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences where:

(*a*) only part of the action giving execution to the offence took place in Malta; or

(*b*) the offender is a Maltese national or permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or

(*c*) the offence was committed against a Maltese national or

permanent resident in Malta.

(6) The offences committed under this Sub-title shall not be liable to punishment if the offender was compelled thereto by another person where the provisions of article 33(*b*) do not apply.

Exemption for acts under compulsion.

(7) The provisions of article 14 of the Immigration Act shall not apply until the lapse of thirty days from the date that the Principal Immigration Officer has reasonable grounds to believe that the person concerned is a victim of any of the offences under this Sub-title.

Inapplicability of Immigration Act. Cap. 217.

(8) The provisions of articles 13 and 14 of the White Slave Traffic (Suppression) Ordinance, shall, *mutatis mutandis,* apply.

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(9) Notwithstanding any other provision of this Code or of any other law, the period of prescription shall run from the day on which the victim attains the age of majority.

(10) For the purposes of this article the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

248F (1). Whosoever aids, abets or instigates any offence under this Sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated.

Aiding and abetting. *Added by: XVIII.2013.6.*

(2) Any person who engages in or makes use of the services or labour as referred to in articles 248A to 248D, both inclusive, in the knowledge that the person providing the service has been trafficked within the meaning of article 248E(1), shall be guilty of an offence and liable, on conviction, to imprisonment for a term of eighteen months to five years.

248G. The provisions of articles 21 and 28A of this Code and the provisions of the Probation Act shall not apply in respect of any person convicted of an offence under this Sub-title.

Non-applicability of provisions. *Added by: XVIII.2013.6.* Cap. 446.

Sub-title IX
OF THREATS, PRIVATE VIOLENCE AND HARASSMENT

Amended by: VIII.1909.25. Substituted by: XX.2005.14.

249. (1) Whosoever by means of any writing, whether anonymous or signed in his own or in a fictitious name, shall threaten the commission of any crime whatsoever, shall, on conviction, be liable to imprisonment for a term from six to twelve months or to a fine (*multa*) not exceeding five thousand euro (€5,000), or to both such imprisonment and fine:

Threats by means of writings. *Amended by: IX.1859.17; XIV.1983.5; III.2002.51; XIII.2018.24.*

Provided that where the threat concerns the use of nuclear material to cause death or serious injury to any person or substantial damage to property or the commission of an offence of theft of nuclear material in order to compel a natural or legal person, international organization or State to do or to refrain from

doing any act the punishment for the offence shall be increased by three degrees; the expression "nuclear material" shall have the same meaning assigned to it by article 314B(4).

(2) Where the threat, be it even verbal, contains an order, or imposes a condition, the offender shall, on conviction, be liable to the punishment prescribed in sub-article (1), provided that such fine (*multa*) shall not exceed ten thousand euro (€10,000).

(3) Moreover the offender shall be required to find a surety, or to enter into a recognizance as provided in articles 383, 384 and 385.

Blackmail. *Amended by: IX.1859.18; VIII.1909.26; XLIX.1981.4; III.2002.52; XXIV.2014.25.*

250. (1) Whosoever, with intent to extort money or any other thing, or to make any gain, or with intent to induce another person to execute, destroy, alter, or change any will, or written obligation, title or security, or to do or omit from doing any thing, shall threaten to accuse or to make a complaint against, or to defame, that or another person, shall, on conviction, be liable to imprisonment for a term from one to four years.

(2) Where by such threat the offender shall have attained his end, he shall be liable to imprisonment for a term from eighteen months to five years.

Private violence. *Amended by: XXIV.2014.26; XIII.2018.24.*

251. (1) Whosoever shall use violence, including moral and, or, psychological violence, and, or coercion, in order to compel another person to do, suffer or omit anything or to diminish such other person's abilities or to isolate that person, or to restrict access to money, education or employment shall, on conviction, be liable to the punishment laid down in sub-article (1) of the last preceding article.

(2) Where the offender shall have attained his end, he shall be liable to the punishment laid down in sub-article (2) of the last preceding article.

(3) Whosoever shall cause another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be liable to the punishments prescribed in sub-article (1) decreased by one to two degrees:

Provided that where the offender shall have attained his end, he shall be liable to the punishment laid down in sub-article (2) decreased by one to two degrees.

Harassment. *Added by: XX.2005.15. Amended by: L.N. 407 of 2007; XXIV.2014.27. Substituted: XIII.2018.24.*

251A. (1) A person who:

(*a*) pursues a course of conduct which amounts to harassment of another person; or

(*b*) pursues a course of conduct which he knows or ought to know amounts to harassment of such other person; or

(*c*) subjects another person to an act of physical intimacy; or

(*d*) requests sexual favours from another person; or

(*e*) subjects another person to any act and, or conduct with sexual connotations, including spoken words, gestures and, or the production, display or circulation of any written words, pictures, and, or any other material, where such act, words, and, or conduct is unwelcome to the victim, and could be reasonably be regarded as offensive, humiliating, degrading, and, or intimidating towards that person,

shall be guilty of an offence under this article.

(2) For the purpose of this article, the person whose course of conduct is in question ought to know that it amounts to harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.

(3) It is a defence for a person charged with an offence under this article to show that:

(*a*) his course of conduct was pursued for the purpose of preventing or detecting crime; or

(*b*) his course of conduct was pursued under any enactment, regulation or rule, or to comply with any condition or requirement imposed by any person under any enactment; or

(*c*) in the particular circumstances the pursuit of the course of conduct was reasonable.

(4) A person guilty of an offence under this article shall be liable to the punishment of imprisonment for a term from six months to two years or to a fine (*multa*) of not less than five thousand euro (€5,000) and not more than ten thousand euro (€10,000), or to both such fine and imprisonment:

Provided that the punishment shall be increased by one degree where the offence is committed against any person mentioned in article 222(1).

Stalking. *Added by: XXIV.2014.28. Amended by: VIII.2015.13; XIII.2018.24.*

251AA. (1) A person who:

(*a*) pursues a course of conduct in breach of article 251A(1), and

(*b*) the course of conduct amounts to stalking,

shall be guilty of an offence under this article.

(2) For the purposes of paragraph (*b*) of sub-article (1) of this article and article 251BA(1)(*a*), a person's course of conduct amounts to stalking of another person if:

(*a*) it amounts to harassment of that person,

(*b*) it constitutes any of the acts mentioned in sub-article (3),

(*c*) the person, whose course of conduct it is, knows or ought to know that the course of conduct amounts to harassment of the other person, and

(*d*) it is repeated conduct that causes the other person to fear for his safety.

(3) The following acts shall be deemed to be acts of stalking:

(*a*) following a person,

(*b*) contacting, or attempting to contact, a person by any means,

(*c*) publishing, by any means, any statement or other material -

(i) relating or purporting to relate to a person, or

(ii) purporting to originate from a person,

(*d*) monitoring the use by a person of the internet, email or any other form of electronic communication,

(*e*) loitering in any place, whether public or private,

(*f*) interfering with any property in the possession of a person,

(*g*) watching or spying on a person.

(4) A person guilty of an offence under this article shall be liable to the punishment of imprisonment for a term from one to two years or to a fine (*multa*) not exceeding ten thousand euro (€10,000), or to both such fine and imprisonment:

Provided that the punishment shall be increased by one degree when the offence is committed against any person mentioned in article 222(1).

Causing others to fear that violence will be used against them.
Added by: XX.2005.15.
Amended by: L.N. 407 of 2007; III.2020.5.

251B. (1) A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions, and shall be liable to the punishment of imprisonment for a term from one to two years or to a fine (*multa*) of not less than six thousand and five hundred euro (€6,500) and not more than fifteen thousand euro (€15,000), or to both such fine and imprisonment.

(2) For the purpose of this article, the person whose course of conduct is in question ought to know that it will cause another person to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this article to show that:

(*a*) his course of conduct was pursued in the

circumstances mentioned in article 251A(3)(*a*) or (*b*); or

(*b*) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

Stalking involving fear of violence, serious alarm or distress. *Added by:* XXIV.2014.29. *Amended by:* XIII.2018.24.

251BA. (1) A person whose course of conduct -

(*a*) amounts to stalking, and

(*b*) either:

(i) causes another to fear on at least two occasions that violence will be used against him, or

(ii) causes him serious alarm or distress which has a substantial adverse effect on his usual day-to-day activities,

shall be guilty of an offence under this article if he knows or ought to know that his course of conduct will cause that person so to fear on each of those occasions or, as the case may be, will cause such alarm or distress.

(2) For the purposes of this article, the person whose course of conduct is in question ought to know that it will cause another person to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) For the purposes of this article, the person whose course of conduct is in question ought to know that it will cause another person serious alarm or distress which has a substantial adverse effect on the said person's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause the other such alarm or distress.

(4) It shall be a defence for a person charged with an offence under this article that his course of conduct was pursued in the circumstances mentioned in article 251B(3)(*a*) or (*b*).

(5) A person guilty of an offence under this article shall be liable to imprisonment for a term for two years to five years or to a fine (*multa*) not exceeding thirty thousand euro (€30,000), or to both such fine and imprisonment:

Provided that the punishment shall be increased by one degree when the offence is committed against any person mentioned in article 222(1).

(6) The acquittal of a person charged with an offence under this article shall not exclude a conviction for an offence under articles 251A or 251AA.

(7) This article shall be without prejudice to the generality of the provisions of article 251B.

Interpretation of articles 251A to 251BA. *Added by: XX.2005.15. Amended by: XXIV.2014.30.*

251C. In articles 251A to 251BA, both inclusive, references to harassing a person include alarming the person or causing the person distress.

General provisions. *Added by: XVI.2006.5. Amended by: VIII.2012.6. Substituted by: XXIV.2014.31. Amended by: LXV.2021.7.*

251D. (1) The punishments established in the foregoing provisions of this Sub-title shall be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A.

(2) The punishments established in articles 251A to 251BA, both inclusive, shall be increased by one degree when the offence is committed by any of the means mentioned in article 337B(1).

(3) Where a person is charged under articles 251 to 251BA, both inclusive, the court may make an order in terms of sub-article (1) and paragraphs (*a*) to (*c*), both inclusive, of sub-article (3) of article 412C.

Female genital mutilation. *Added by: I.2014.2. Amended by: XIII.2018.24.*

251E. (1) Whosoever, for non-medical reasons, performs an operation or carries out any intervention on a woman's genitalia that damages the genitalia or inflicts upon them permanent changes, shall be guilty of enforced female genital mutilation and shall be liable to the punishment of imprisonment for a term from five to ten years.

(2) (*a*) Whosoever shall be guilty of female genital mutilation from which death shall ensue solely as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause, shall be liable -

(i) to imprisonment for a term from six to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the operation or intervention;

(ii) to imprisonment for a term from six to twelve years, if death shall ensue after the said forty days, but within one year to be reckoned as above.

(*b*) If death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the operation or intervention, the offender shall, on conviction, be liable to imprisonment for a term from six to twelve years.

(3) Consent of the person undergoing the operation or intervention shall not justify exemption from punishment.

(4) Whosoever shall wilfully fail to seek to avert, by formal complaint or in another manner, female genital mutilation, shall be liable to a fine (*multa*) of not less than one thousand euro (€1,000)

and not exceeding five thousand euro (€5,000) or to a term of imprisonment for a term of six months to two years, or to both such fine and imprisonment:

Provided that the duty to avert such an act shall apply regardless of any duty of confidentiality.

(5) For purposes of this article the terms "operation" and "intervention" shall include the excision, infibulation or mutilation of the genitalia.

(6) Whosoever aids, abets, counsels, incites, procures or coerces a female to excise, infibulate or otherwise mutilate the whole or any part of her own genitalia, shall be guilty of an offence and shall be liable, on conviction, to the punishment laid down under this article.

Virginity testing. *Added by: XI.2024.2.*

251EA. (1) Whosoever carries out virginity testing upon another person by examining the female genitalia of that person shall be guilty of an offence and shall, on conviction, be liable to the punishment of imprisonment for a term of not less than one (1) year but not exceeding five (5) years.

(2) Whosoever aids, abets, counsels, incites, procures, coerces or advertises virginity testing shall be guilty of an offence and shall, on conviction, be liable to the punishment provided for in sub-article (1).

(3) For the purposes of this article "female genitalia" means vagina or vulva, and "virginity testing" means the examination of female genitalia, with or without consent, for the purpose or purported purpose of determining virginity:

Provided that it does not include any medical examination of the female genitalia which may be carried out by a medical professional during a medical intervention, in accordance with established medical practices.

Enforced sterilization. *Added by: I.2014.2. Substituted by: X.2024.2.*

251F. (1) Whosoever surgically removes or disables a minor person's reproductive organs, or an adult person's reproductive organs without that adult person's free and informed consent, leading to sterilization, shall be guilty of enforced sterilization and shall, unless the fact constitutes a more serious offence under any other law or any other provision of this Code, be liable, on conviction, to imprisonment for a term from five (5) years to nine (9) years, with the possibility of a fine (*multa*) of not less than eight thousand euro (€8,000) and not exceeding twenty thousand euro (€20,000).

(2) For the purposes of this article, "free and informed consent" shall:

(i) mean consent reflecting the will and preferences of an adult person, freely given directly by said adult person, in respect of a surgical procedure the adult person might undergo, which may lead to sterilization; and

(ii) be given after said adult person would have been provided with prior information, in respect of the purpose and nature of the procedure, as well as of its consequences, risks and alternative options thereto, in a manner that is appropriate, accessible and easy to understand for that adult person, including, as necessary, through non-conventional methods of communication and access to independent support from third parties; and

(iii) be able to be withdrawn at any moment prior to the procedure following its initially having been given, with said possibility having been likewise communicated to the adult person alongside the information indicated above:

Provided that if an adult person is unable to give free and informed consent in accordance with this article, whether due to a cause that is either temporary or long-term, no other person shall be able to substitute said adult person's free and informed consent for the purposes of this article:

Provided further that any surgical procedure performed on a minor person, and that leads to sterilization, shall be deemed to be enforced sterilization for the purposes of this article, except when said procedure is covered by the exception in the next proviso, and no other person, including a parent or legal guardian, shall be able to provide consent for such a procedure in the name of the minor person, other than when the exception mentioned would be applicable:

Provided further that no offence under this article shall be committed when sterilization shall result as a consequence of a medical intervention, which:

(i) is not performed with the purpose of achieving enforced sterilization in terms of this article; and

(ii) would have been otherwise deemed medically necessary by one (1) or more medical professionals, in accordance with the applicable standard of care, with such standard following established medical practice, and with such medical intervention consisting of one (1) or more procedures, and which has the aim of saving or preserving the life of an adult person or of a minor person, in the immediate or longer term; and

(iii) follows established medical practice with regard to the granting of informed consent by the patient in terms of other legislation.

(3) Whosoever is an accomplice to the offence referred to in sub-article (1), by aiding, abetting or procuring the enforced sterilization of any minor person or adult person shall, unless the act constitutes a more

serious offence under any other law or any other provision of this Code, be liable, on conviction, to the punishments laid down in sub-articles (1) and (4) of this article.

(4) The punishment prescribed for any of the offences referred to in the preceding sub-articles shall be increased by one (1) degree, when the commission of such crimes involves also the use of force, deceit, fraud, bribery, false pretences, coercion or threats.

(5) In addition to any punishment to which the person convicted of such an offence may be sentenced, the Court may also order such person to pay the injured party such sum of money as may be determined by the said Court as compensation, in terms of article 15A, as compensation for the harm, including moral and, or psychological harm caused to such party by, or by means of the offence. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure. Cap. 12.

Forced marriage. *Added by: I.2014.2.*

251G. Any person who by force, bribery, deceit, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct, forces anyone to enter into a marriage shall be guilty of causing a forced marriage and shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term from three to five years:

Provided that any act so made in contravention of this provision shall be null and without effect at law.

Luring of a person to the territory of another State to marry. *Added By: XIII.2018.24.*

251GA. Any person who by force, bribery, deceit, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct, lures another person to the territory of another State other than the one he or she resides in with the purpose of forcing such person to enter into a marriage shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable upon conviction to imprisonment for a term from four to six years.

Increase in punishment. *Added by: I.2014.2. Amended by: XXXVI.2023.2.*

251H. The punishment for the offences referred to in articles 251 to 251G, both inclusive, shall be increased by one to two degrees in case of one or more of the following circumstances arising:

(*a*) the offence was committed against a former or current spouse or partner, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority:

Provided that, in this paragraph spouse includes a person whose marriage with the accused has been dissolved or declared null.

(*b*) the offence, or related offences, were committed repeatedly;

(*c*) the offence was committed against a vulnerable person within the meaning of article 208AC(2);

(*d*) the offence was committed against or in the presence of a minor;

(*e*) the offence was committed by two or more people acting together;

(*f*) the offence was preceded or accompanied by violence;

(*g*) the offence was committed with the use or threat of a weapon;

(*h*) the offence resulted in severe physical or psychological harm for the victim;

(*i*) the offender has been previously convicted of offences of a similar nature.

Aggravating circumstances. *Added by: XIII.2018.24. Amended by: XXXVI.2023.3.*

251HA. The punishment prescribed for any of the crimes referred to in the preceding articles of this Sub-title shall be increased by one to two degrees in case of one or more of the circumstances referred to in article 202, where and as applicable, provided that where an aggravation of punishment in respect of the circumstances mentioned in this article is already provided for under this Code or any other law, the higher punishment may be applied.

Applicability of provisions. *Amended by: VIII.2015.14; XXIV.2019.5.*

251I. (1) The following provisions shall apply to the offences under articles 198, and 251 to 251G, both inclusive.

(2) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences where:

(*a*) only part of the action giving execution to the offence took place in Malta; or

(*b*) the offender is a Maltese national or permanent or habitual resident in Malta; or

(*c*) the offence was committed against a Maltese national or permanent or habitual resident in Malta.

(3) Notwithstanding any other provision of this Code or of any other law, where the person against whom the offence is committed is a minor, the period of prescription shall run from the day on which the victim attains the age of majority.

(4) For the purposes of this article the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

Substituted by: XI.2018.25.

Sub-title X
OF DISCLOSURE OF INFORMATION RECEIVED IN CONFIDENCE

Defamation. *Amended by: XI.1900.36; IV.1916.2.*

252. *Deleted by XI.2018.25.*

Evidence of truth inadmissible. *Amended by: XI.1900.36; IV.1916.3.*

253. *Deleted by XI.2018.25.*

Exceptions. Extenuating circumstances. Discretionary power of court. *Amended by: XI.1900.36.*

254. *Deleted by XI.2018.25.*

No proceedings without complaint of aggrieved party. Where party aggrieved dies before complaint or where the offence is against the memory of deceased persons. *Amended by: XI.1900.36; XXIII.2017.11.*

255. *Deleted by XI.2018.25.*

Libel. *Amended by: XIV.1889.44; XI.1900.36; XXII.1976.4.*

256. *Deleted by XI.2018.25.*

Disclosing of professional secrets. *Substituted by: XXIV.1994.15. Amended by: II.1998.7; L.N. 407 of 2007.*

257. If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (*multa*) not exceeding forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (€46,587.47) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that, notwithstanding the provisions of any other law, it shall be a defence to show that the disclosure was made to a competent public authority in Malta or outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute -

(*a*) any of the offences referred to in article 22(2)(*a*)(1) of the Dangerous Drugs Ordinance; or — Cap. 101.

(*b*) any of the offences referred to in article 120A(2)(a)(1) of the Medical and Kindred Professions Ordinance; or — Cap. 31.

(*c*) any offence of money laundering within the meaning of the Prevention of Money Laundering Act: — Cap. 373.

Provided further that the provisions of the first proviso of this article shall not apply to a person who is a member of the legal or the medical profession.

Sub-title XI

Added by: XXXI.2014.3.

OF ABUSE ON ELDERLY OR DEPENDANT PERSONS

Causing or permitting an elder or a dependent adult to suffer under circumstances likely to produce bodily harm or death.
Added by: XXXI.2014.3.

257A. (1) A person who knows or ought to know that a person is an elder or a dependent adult and who, under circumstances or conditions likely to produce grievous bodily harm or death, wilfully causes or permits any elder or dependent adult to suffer, or inflicts on such person unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, wilfully causes or permits the person or health of the elder or dependent adult to be injured, or wilfully causes or permits the elder or dependent adult to be placed in a situation in which his person or health is endangered, shall be guilty of an offence and, without prejudice to any other punishment to which he may be liable under any other provision of this Code or of any other law, shall be liable to the punishment of imprisonment for a term from two to five years.

(2) For the purpose of this article, the person whose course of conduct is in question ought to know that a person is an elder or a dependent adult if a reasonable person in possession of the same information would think that the said person is an elder or a dependent adult.

(3) Where as a result of the conduct described in sub-article (1), the victim suffers grievous bodily harm, the punishment provided for under sub-article (1) shall be increased as follows:

(*a*) where the victim is under seventy years of age, by one to two degrees;

(*b*) where the victim is over seventy years of age, by two to three degrees.

Grievous bodily harm followed by death.
Added by: XXXI.2014.3.

257B. (1) Whosoever shall be guilty of a grievous bodily harm from which death shall ensue solely as a result of the nature or the natural consequences of the harm caused by the conduct described in article 257A(1) and not of any supervening accidental cause, shall be liable -

(*a*) to imprisonment for a term from nine to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime;

(*b*) to imprisonment for a term from six to fifteen years, if death shall ensue after the said forty days, but within one year to be reckoned as above.

(2) If death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the harm, the offender shall, on conviction, be liable to imprisonment for a term from five to twelve years.

(3) If the bodily harm is inflicted within the limits of the territorial jurisdiction of Malta, the crime shall be held to have been completed within those limits, even if the death of the person injured shall occur outside those limits.

(4) The punishments provided for under this article shall be increased as follows:

(*a*) where the victim is under seventy years of age by one

to two degrees;

(*b*) where the victim is over seventy years of age by two to three degrees.

Causing or permitting an elder or a dependent adult to suffer under circumstances not likely to produce bodily harm or death. *Added by:* XXXI.2014.3.

257C. (1) A person who knows or ought to know that a person is an elder or a dependent adult and who, under circumstances or conditions other than those likely to produce grievous bodily harm or death, wilfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, wilfully causes or permits the person or health of the elder or dependent adult to be injured or wilfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, shall be guilty of an offence and, without prejudice to any other punishment to which he may be liable under any other provision of this Code or of any other law, shall be liable to the punishment of imprisonment for a term from one to three years.

(2) Where as a result of the conduct described in sub-article (1), the victim suffers bodily harm, the punishment shall be increased as follows:

(*a*) where the victim is under seventy years of age by one degree;

(*b*) where the victim is over seventy years of age by two degrees.

Offences relating to crimes against property and public safety. *Added by:* XXXI.2014.3. *Amended by:* XIII.2018.24.

257D. (1) Any person found guilty of any offence under Title IX of Part II of Book First, when committed against an elder or a dependent adult, shall be liable to the punishment provided for in this article:

(*a*) when the amount of the damage caused by the offender exceeds three thousand euro (€3,000) the punishment shall be that of imprisonment from two to nine years;

(*b*) when the amount of the damage caused by the offender exceeds two hundred and fifty euro (€250) but does not exceed three thousand euro (€3,000), the punishment shall be that of imprisonment from nine months to three years:

Provided that if the punishment laid down for the relevant offence in this Sub-title is higher than the punishment laid down in this paragraph, the former punishment shall apply increased by one degree and, in the case of the offence under article 294, the punishment so increased shall not be awarded in its minimum;

(*c*) when the amount of the damage caused by the offender does not exceed two hundred and fifty euro (€250) the offender shall be liable to imprisonment for a term not exceeding six months.

(2) In addition to any punishment to which the person convicted of an offence under this Sub-title may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, the court may order the offender to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence or to pay to such party such sum of money as may be determined by the court as compensation for any such loss as aforesaid or for any damages or other injury or harm including moral and psychological harm caused to such party by or through the offence; and any such order may include both a direction to make restitution and, in default, to pay as aforesaid. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

Cap. 12.

(3) When issuing an order under sub-article (1), the Court may direct that such costs or damages are paid in instalments, in particular having regard to any other obligations which the offender has towards the victim or any of the victim's dependants.

Unlawful arrest, detention or confinement of an elder or a dependent adult. *Added by: XXXI.2014.3.*

257E. (1) Whosoever, without a lawful order, arrests, detains or confines an elder or a dependent adult against the will of the same, or in any manner restricts or impedes the free movement and unrestrained access to an elder or a dependent adult, shall, on conviction, be liable to imprisonment for a term of eighteen months to four years.

(2) Where the conduct described in sub-article (1) has been committed through the use of violence, force, bribery, deceit, device or pretence, improper pressure or any other unlawful conduct or by threats of such conduct, the punishment shall be increased by two to three degrees.

Applicability of provisions. *Added by: XXXI.2014.3. Amended by: VIII.2015.15.*

257F. (1) The following provisions shall apply to the offences under articles 257A to 257E.

(2) The provisions of articles 121D and 248E(4) shall apply *mutatis mutandis*.

(3) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the said offences where:

(*a*) only part of the action giving execution to the offence took place in Malta; or

(*b*) the offender is a Maltese national or permanent resident in Malta or the offence was committed for the benefit of a body corporate registered in Malta; or

(*c*) the offence was committed against a Maltese national or permanent resident in Malta.

(4) For the purposes of this Sub-title:

"elder" means a person who has attained the age of sixty years;

"dependent adult" means a person of age suffering from a degree of physical or mental infirmity which restricts his ability to carry

out normal activities or to protect his rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age and includes any person who is admitted as an inpatient to a 24-hour health facility, or is a resident in, or has been admitted to, any institution offering any form of medical or psychological care;

"permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*);

"proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

258. *Repealed by Act XVII.1996.19.*

Suppression of epistolary or telegraphic correspondence. *Added by: VI.1899.5. Amended: I.1903.9; XLIX.1981.4; IX.1982.2.*

259. *Repealed by Act XVII.1996.19.*

Unlawful opening of closed letters, etc. Unlawful possession of closed correspondence. *Added by: VI.1899.5. Amended: I.1903.10; VIII.1909.27.*

260. *Repealed by Act XVII.1996.19.*

Complaint by aggrieved party.

Title IX

OF CRIMES AGAINST PROPERTY AND PUBLIC SAFETY

Amended by: XVI.1901.1; I.1903.11.

Sub-title I

OF THEFT

OF AGGRAVATED THEFT

Theft. Aggravating circumstances.

261. The crime of theft may be aggravated -

(*a*) by "violence";

(*b*) by "means";

(*c*) by "amount";

(*d*) by "person";

(*e*) by "place";

(*f*) by "time";

(*g*) by "the nature of the thing stolen".

Theft aggravated by "violence".

262. (1) A theft is aggravated by "violence" -

(*a*) where it is accompanied with homicide, bodily harm, or confinement of the person, or with a written or verbal threat to kill, or to inflict a bodily harm, or to cause damage to property;

(*b*) where the thief presents himself armed, or where the thieves though unarmed present themselves in a number of more than two;

(*c*) where any person scouring the country-side and carrying arms proper, or forming part of an assembly in terms of article 63, shall, by a written or verbal request, made either directly or through another person, cause to be delivered to him the property of another, although the request be not accompanied with any threat.

(2) In order that an act of violence may be deemed to aggravate the theft, it shall be sufficient that such act be committed previously to, at the time of, or immediately after the crime, with the object of facilitating the completion thereof, or of screening the offender from punishment or from arrest or from the hue and cry raised by the injured party or by others, or of preventing the recovery of the stolen property or by way of revenge because of impediment placed or attempted to be placed in the way of the theft, or because of the recovery of the stolen property or of the discovery of the thief.

Theft aggravated by "means".

263. Theft is aggravated by "means" -

(*a*) when it is committed with internal or external breaking, with false keys, or by scaling;

(*b*) when the thief makes use of any painting, mask, or other covering of the face, or any other disguise of garment or appearance, or when, in order to commit the theft, he takes the designation or puts on the dress of any civil or military officer, or alleges a fictitious order purporting to be issued by any public authority, even though such devices shall not have ultimately contributed to facilitate the theft, or to conceal the perpetrator thereof.

Definition of "breaking". *Amended by: IX.1859.19; XVI.1921.3, 4; XXXII.1986.3.*

264. (1) "Breaking" shall include the throwing down, breaking, demolishing, burning, wrenching, twisting, or forcing of any wall, not being a rubble wall enclosing a field, roof, bolt, padlock, door, or other similar contrivances intended to prevent entrance into any dwelling-house or other place or enclosure, or to lock up or secure wares or other articles in boxes, trunks, cupboards, or other receptacles, and the breaking of any box, trunk, or other receptacle even though such breaking may not have taken place on the spot where the theft is committed.

Saving the provisions of article 326, any breaking, twisting, wrenching, or forcing of the pipes of the public water service or of the gas service, or of the wires or cables of the electricity service, or of the meters thereof, or of any seal of any meter, made for the purpose of effecting an unlawful communication with such pipes, wires, or cables, or the existence of artificial means as are mentioned in sub-article (2), shall also be deemed to be "breaking".

Presumptive evidence in the case of breaking of pipes, etc.

(2) In the case of breaking of pipes of the public water service or of the gas service, or of the wires or cables of the electricity service, or of the metres thereof, or of any seal of any meter, or in the case of the existence of artificial means capable of effecting the unlawful use or consumption of water, gas or electric current, or capable of preventing or altering the measurement or registration on the meter of the quantity used or consumed, shall, until the contrary is proved, be taken as evidence of the knowledge on the part of the person occupying or having the control of the tenement in which such breaking or artificial means are found, of the said use or consumption of water, gas or electric current, as the case may be.

Definition of "false key".

265. Any hook, picklock, skeleton-key, or any key imitated, counterfeited, or adapted, and any genuine key when procured by means of theft, fraud or any kind of artifice, and, generally, any other instrument adapted for opening or removing fastenings of any kind whatsoever, whether internal or external, shall be deemed a false key.

Definition of "scaling".

266. (1) The entry into any of the places mentioned in article 264 by any way other than by the doors ordinarily intended for the purpose, whether the entry is effected by means of a ladder or rope or by any other means whatsoever, or by the bodily assistance of any other person or by clambering in any way whatsoever in order to mount or descend, as well as the entry by any subterraneous aperture other than that established as an entrance, shall be deemed "scaling".

(2) For the purposes of punishment, there shall also be deemed to be "scaling" when the offender, although he shall have entered into any of the places aforesaid by any way ordinarily destined for the purpose, shall get out of the same by any of the means aforesaid.

Theft aggravated by "amount". *Amended by: XI.1900.37; III.1971.6; XIII.1980.8; XIII.1983.5; L.N. 407 of 2007.*

267. Theft is aggravated by "amount", when the value of the thing stolen exceeds two hundred and thirty-two euro and ninety-four cents (€232.94).

Theft aggravated by "person".

268. Theft is aggravated by "person" -

(*a*) when it is committed in any place by a servant to the prejudice of his master, or to the prejudice of a third party, if his capacity as servant, whether real or fictitious, shall have afforded him facilities in the commission of the theft;

Definition of "servant".

the term "servant" shall include every person employed at a salary or other remuneration in the service of another, whether such person lives with his master or not;

(*b*) when it is committed by a guest or by any person of his family, in the house where he is receiving hospitality, or, under similar circumstances, by the host or by any person of his family, to the prejudice of the guest or his family;

(*c*) when it is committed by any hotel-keeper, innkeeper, driver of a vehicle, boatman, or by any of their agents, servants or employees, in the hotel, inn, vehicle or boat wherein such hotel-keeper, innkeeper, driver or boatman carries on or causes to be carried on any such trade or calling, or performs or causes to be performed any such service; and also when it is committed in any of the above-mentioned places, by any individual who has taken lodgings or a place, or has entrusted his property therein;

(*d*) when it is committed by any apprentice, fellow workman, journey-man, professor, artist, soldier, seaman, or any other employee, in the house, shop, workshop, quarters, ship, or any other place, to which the offender has access by reason of his trade, profession, or employment.

Theft aggravated by "place".

269. Theft is aggravated by "place", when it is committed -

(*a*) in any public place destined for divine worship;

(*b*) in the hall where the court sits and during the sitting of the court;

(*c*) on any public road in the country-side outside inhabited areas;

(*d*) in any store or arsenal of the Government, or in any other place for the deposit of goods or pledges, destined for the convenience of the public;

(*e*) on any ship or vessel lying at anchor;

(*f*) in any prison, or other place of custody or punishment;

(*g*) in any dwelling-house or appurtenance thereof.

Theft aggravated by "time".

270. Theft is aggravated by "time", when it is committed in the night, that is to say, between sunset and sunrise.

Theft aggravated by "the nature of the thing stolen". *Amended by: XIII.1983.5; XXXII.1986.4; III.2002.53; V.2005.37; L.N. 407 of 2007.*

271. Theft is aggravated by "the nature of the thing stolen"-

(*a*) when it is committed upon things exposed to danger, whether by their being cast away or removed for safety, or by their being abandoned on account of urgent personal danger arising from fire, the falling of a building, or from any shipwreck, flood, invasion by an enemy, or any other grave calamity;

(*b*) when it is committed on beehives;

(*c*) when it is committed on any kind of cattle, large or small, in any pasture-ground, farmhouse or stable, provided the value be not less than two euro and thirty-three cents (€2.33);

(*d*) when it is committed on any cordage, or other things essentially required for the navigation or for the safety of ships or vessels;

(*e*) when it is committed on any net or other tackle cast in the sea, for the purpose of fishing;

(*f*) when it is committed on any article of ornament or clothing which is at the time on the person of any child under nine years of age;

(*g*) when it is committed on any vehicle in a public place or in a place accessible to the public, or on any part or accessory of, or anything inside, such vehicle;

(*h*) when it is committed on nuclear material as defined in article 314B(4);

(*i*) when it is committed on any public record as defined in article 2 of the National Archives Act. Cap. 477.

Punishment for theft accompanied with wilful homicide. *Amended by: XXI.1971.20; XLIX.1981.4.*

272. Whosoever shall be guilty of theft accompanied with wilful homicide shall be liable to the punishment of imprisonment for life.

Punishment for theft accompanied with grievous bodily harm from which death ensues. *Added by: VII.2010.19.*

272A. (1) Whosoever shall be guilty of theft accompanied with grievous bodily harm from which death ensues shall be liable:

(*a*) if the harm is grievous and death ensues as a result of the nature or the natural consequences of the harm and not of any supervening accidental cause:

(i) to imprisonment for a term from eight to thirty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime;

(ii) to imprisonment for a term from six to twenty five years, if death shall ensue after the said

forty days, but within one year to be reckoned as above;

(*b*) if death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the harm, the offender shall, on conviction, be liable to imprisonment for a term from five to ten years.

(2) The provisions of article 220(3) shall apply where the harm is caused within the territorial limits of Malta but death occurs outside those limits.

Punishment for theft accompanied with attempted homicide. *Amended by: IV.1856.13; VI.1871.l9; XI.1900.38; XLIX.1981.4.*

273. Whosoever shall be guilty of theft accompanied with attempted homicide shall be liable to imprisonment for a term from six to twenty years.

Punishment for theft accompanied with bodily harm. *Amended by: XI.1900.38; XLIX.1981.4.*

274. Whosoever shall be guilty of theft accompanied with bodily harm shall be liable -

(*a*) if the harm is grievous and produces the effects mentioned in article 218, to imprisonment for a term from four to twelve years;

(*b*) if the harm is grievous without the effects mentioned in article 218, to imprisonment for a term from three to nine years;

(*c*) if the harm is slight, to imprisonment for a term from two to five years;

(*d*) if the harm is slight and of small consequence, and is not committed by any of the means mentioned in article 217, to imprisonment for a term from eighteen months to three years.

Punishment for theft accompanied with confinement of person. *Amended by: V.1868.17; XLIX.1981.4.*

275. Whosoever shall be guilty of theft accompanied with confinement of the person shall be liable to imprisonment for a term from one to four years.

Punishment for theft aggravated by "violence" not accompanied with wilful or attempted homicide or with bodily harm or confinement of person. *Amended by: V.1868.17; XLIX.1981.4.*

276. Whosoever shall be guilty of theft aggravated by "violence", but not accompanied with any of the circumstances mentioned in articles 272, 273, 274 and 275, shall be liable to imprisonment for a term from nine months to three years.

276A. The punishment established in articles 273, 274, 275 and 276 shall be increased by one or two degrees when the "violence" therein mentioned is directed against a person who is under the age of twelve years or over the age of sixty years or against a person who is suffering from a degree of physical or mental infirmity in consequence of which he is unable to offer adequate resistance.

Punishment when "violence" is directed against certain persons. *Added by: XXIX.1990.12. Amended by: III.2002.54.*

277. When the theft aggravated by "violence" in terms of article 274, 275 or 276, is accompanied with any of the other aggravating circumstances specified in article 261, the offender shall, on conviction, be liable -

Punishment for theft aggravated by "violence" accompanied with other aggravating circumstances. *Amended by: XXIX.1990.13.*

(*a*) where the theft is accompanied with one or more of such other aggravating circumstances, with the exception of that of "means", to the punishment established in article 274, 275, 276 or 276A, which shall not be awarded in its minimum;

(*b*) where the theft is accompanied with the aggravating circumstance of "means", whether with or without other aggravating circumstances, to the punishment established in article 274, 275, 276 or 276A, increased by one or two degrees.

278. (1) Whosoever shall be guilty of theft aggravated by "means" only shall be liable to imprisonment for a term from five months to three years.

Punishment for theft aggravated by "means" only or by "means" and other aggravating circumstances. *Amended by: VI.1871.20; XI.1900.39; I.1903.12; XII.1913.6; III.1971.7; XIII.1980.9; XLIX.1981.4; XIII.1983.5; L.N. 407 of 2007.*

(2) Where the theft, besides being accompanied with the aggravating circumstance of "means", is also accompanied with one of the other aggravating circumstances, with the exception of that of "violence", the said punishment shall not be awarded in its minimum.

(3) Where the theft, besides being accompanied with the aggravating circumstance of "means", is also accompanied with two or more of the other aggravating circumstances, with the exception of that of "violence", the said punishment shall be increased by one degree and shall not be awarded in its minimum.

(4) Where, however, the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (€23.29), the court may, without prejudice to the operation of article 371(2)(*c*), apply in each case the punishment of imprisonment for a term from five to nine months.

Powers of court.

279. Whosoever shall be guilty of theft aggravated by "amount" only shall be liable -

Punishment for theft aggravated by "amount". *Amended by: XI.1900.39; XII.1913.7; III.1971.8; XIII.1980.10; XLIX.1981.4; XIII.1983.5; V.2005.37; L.N. 407 of 2007.*

(*a*) if the value of the thing stolen does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), to imprisonment for a term from five months to three years;

(*b*) if the value of the thing stolen exceeds two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37), to imprisonment for a term from thirteen months to seven years:

Provided that where for any reason mentioned in article 325(2) it is not possible to estimate the value of the thing stolen the said value shall be deemed to exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37).

Punishment for theft aggravated by "amount" accompanied with other aggravating circumstances. *Amended by: XI.1900.39; XII.1913.8; XXIX.1990.14.*

280. (1) Where the theft aggravated by "amount" is accompanied with one or more of the other aggravating circumstances, with the exception of that of "violence" or "means", the offender shall be liable, as the case may be, to the punishments established in the last preceding article, which shall not, however, be awarded in their minimum.

(2) Where the theft, besides being accompanied with the aggravating circumstance of "amount", is also accompanied with the aggravating circumstance of "violence", or with that of "means", or with both, the punishment applicable to theft when accompanied with such aggravating circumstances shall be applied:

Provided that, if such punishment be lower than the punishments laid down in the last preceding article, the latter punishments shall be applied with an increase of one degree.

(3) For the purposes of the foregoing sub-article, where the "violence" is directed against any of the persons mentioned in article 276A, the punishment applicable to theft when accompanied with the aggravating circumstance of "violence" shall be the punishment as increased by that article.

Punishment for theft aggravated by "person", "place", "time" or "nature of thing stolen". *Amended by: XLIX.1981.4.*

281. Whosoever shall be guilty of theft aggravated only by "person", "place", "time", or "the nature of the thing stolen", shall be liable -

(*a*) where the theft is accompanied with one only of these four aggravating circumstances, to imprisonment for a term from seven months to two years;

(*b*) where the theft is accompanied with two of such aggravating circumstances, to the same punishment, which, however, shall in no case be awarded in its minimum;

(*c*) where the theft is accompanied with more than two of such aggravating circumstances, to the said punishment, which may, however, be increased to any term not exceeding three years.

282. Where in cases of theft accompanied with one or more of the aggravating circumstances mentioned in article 261, with the exception of that of "violence" or "means", the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (€23.29), the offender shall, on conviction, be liable to imprisonment for a term not exceeding three months.

Punishment for aggravated theft when the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (€23.29). *Amended by: IV.1856.14; V.1868.18; VI.1871.21; XI.1900.40; I.1903.14; III.1971.9; XLIX.1981.4; XIII.1983.5; L.N. 407 of 2007.*

283. In the cases set forth in the second paragraph of article 264(1), the theft aggravated by "means" shall be deemed to be completed when the communication therein mentioned is effected, and the offender shall be liable to the punishment laid down in article 278(4), unless it is proved that the value of the water, gas or electric current stolen exceeds twenty-three euro and twenty-nine cents (€23.29).

Theft of water, gas or electric current. *Added by: XVI.1921.5. Amended by: XIII.1983.5; L.N. 407 of 2007.* When deemed to be completed. Punishment when value of water, etc., does not exceed twenty-three euro and twenty-nine cents (€23.29).

283A. No proceedings shall be instituted in respect of any offence of theft of electricity except on the complaint of the injured party even if the offence is one which falls within the competence of the Court of Magistrates as provided in article 370(1) and even if the injured party has not expressly waived the right to prosecute within four days from the commission of the offence. The provisions of this article shall apply notwithstanding anything to the contrary provided in article 373.

Complaint of the injured party. *Added by: XXII.2005.3.*

OF SIMPLE THEFT

284. Theft, when not accompanied with any of the aggravating circumstances specified in article 261, is simple theft.

Simple theft.

285. Whosoever shall be guilty of simple theft shall be liable to imprisonment for a term from one to six months:

Provided that if the value of the thing stolen does not exceed twenty-three euro and twenty-nine cents (€23.29), the offender shall, on conviction, be liable to imprisonment for a term not exceeding three months.

Punishment. *Amended by: III.1971.10; XLIX.1981.4; XIII.1983.5; L.N. 407 of 2007.*

Possession of stolen articles by person previously convicted of theft or of receiving stolen articles. *Amended by: XI.1900.41; I.1903.15.*

286. The punishment established for simple theft according to the value of the thing stolen shall be applied against any person who, having been convicted in Malta for theft, or for receiving stolen articles, is found to have in his possession any stolen article the lawful possession of which he does not satisfactorily account for.

Unjustified possession of moneys, articles, etc., by person previously convicted of theft, etc. *Added by: XI.1900.41.*

287. Whosoever, having been convicted in Malta for theft, or for receiving stolen articles, is found to have in his possession fruits, plants, or other field or garden produce or money or other articles, not in keeping with his condition, the lawful possession of which he does not satisfactorily account for, or is found to have in his possession any adapted or counterfeit keys, or any implements capable of opening or forcing open any lock, or to have in his possession any impression of locks, the actual lawful destination of which he does not satisfactorily account for, shall, on conviction, be liable to imprisonment for a term not exceeding three months.

Theft for mere use of thing stolen. *Amended by: IV.1856.15; VI.1871.22; XI.1900.42.*

288. The offender shall be liable to the punishments established for contraventions, when, in any case of simple theft, the gain contemplated by the offender is the mere use of the thing, with intent to restore the same immediately.

GENERAL PROVISION APPLICABLE TO THIS SUB-TITLE

Punishment in case of second or subsequent conviction for theft.

289. (1) In the case of a second or subsequent conviction for any offence referred to in this Sub-title, the punishment may be increased, in the case of a second conviction, by one or two degrees, and, in the case of a third or subsequent conviction, by one to three degrees.

(2) When the increase of punishment cannot otherwise take place than by the application of solitary confinement, such punishment may be awarded to the extent of eighteen periods.

Sub-title II

OF OTHER OFFENCES RELATING TO UNLAWFUL ACQUISITION AND POSSESSION OF PROPERTY

Unlawful possession of property of the Republic of Malta. *Amended by: IV.1856.16; XXVI.1931.3; XXVII.1975.19.*

290. Whosoever shall purchase or otherwise receive from any other person or shall be found to have in his possession any article bearing any mark or sign denoting such article to be the property of the Republic of Malta, or any article which the possessor knows to be the property of the Republic of Malta, for the disposal of which no written permission shall have been given by the competent authority, and shall fail to give a satisfactory account as to how he came by the article or thing found in his possession, shall, on

conviction, be liable to a fine (*multa*) or imprisonment for a term not exceeding one (1) month.

Destroying or obliterating marks denoting property of the Republic of Malta. *Amended by: XXII.1931.3; XXVII.1975.20; XLIX.1981.4.*

291. Whosoever, with intent to conceal any property of the Republic of Malta, shall destroy or obliterate, in any of the articles or things mentioned in the last two preceding articles, for the disposal of which no permission shall have been given, any mark or sign denoting such article or thing to be the property of the Republic of Malta, shall, on conviction, be liable to imprisonment for a term from one to six months.

Unlawful dealings in or possession of marine or ship's stores.

292. Whosoever, without a licence from the Government, shall keep for sale or deal in any articles which are by common repute considered to come under the denomination of marine or ship's stores, and whosoever, without such licence, shall be found in possession of such articles, without being able to give a satisfactory account as to how he came by the articles so found, shall, on conviction, be liable to a fine (*multa*) and to the forfeiture of the said articles.

Sub-title III

OF FRAUD

Mis-appropriation. *Amended by: IV.1874.3; VIII.1909.28; XLIX.1981.4; III.2002.55.*

293. Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:

Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party.

Aggravating circumstances. *Amended by: VIII. I909.29; XLIX.1981.4; III.2002.56.*

294. Nevertheless, where the offence referred to in the last preceding article is committed on things entrusted or delivered to the offender by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, criminal proceedings shall be instituted *ex officio* and the punishment shall be of imprisonment for a term from seven months to two years.

Fraud relating to insurance. *Amended by: VIII.1857.9; IV.1874.4; VIII.1909.30; XLIX.1981.4; III.2002.57.*

295. Whosoever, with intent to obtain for himself or for any other person the payment of any money due under any insurance against risks, or any other undue benefit, destroys, disperses or deteriorates, by any means whatsoever, things belonging to him, shall, on conviction, be liable to imprisonment for a term from seven months to two years, and, where he succeeds in his intent, from nine months to three years.

Barratry. *Amended by: IV.1874.5; XLIX.1981.4; III.2002.58.*

296. (1) Any master, *padrone* or boatman or any person entrusted with the command, use or custody of any lighter, boat, skiff, caique or other vessel, even if intended to navigate once only within the limits of Malta, who, for purposes of gain -

(*a*) abandons or damages the vessel or causes the vessel to

sink;

(*b*) steals or damages any goods or other things which are on the vessel;

(*c*) falsely represents the loss of or damage to the vessel, goods or other things;

(*d*) sells or otherwise disposes of the vessel against the will and to the prejudice of the owner,

shall, on conviction, be liable to imprisonment for a term from five months to two years.

(2) The said punishment shall also be applied where the offender is a part-owner of the vessel, goods or things.

Fraudulent breach of trust in respect of papers signed in blank or otherwise. *Amended by: XLIX.1981.4; III.2002.59.*

297. Whosoever, making an improper use of any paper signed in blank entrusted to him, shall, for the purpose of gain, write thereon anything to the prejudice of another person, or shall, for the like purpose, add upon any paper not in blank, entrusted to him, any writing or clause, shall, on conviction, be liable to imprisonment for a term from nine months to three years.

Commercial or industrial fraud. *Amended by: XI.1899.106; XLIX.1981.4.*

298. (1) Whosoever -

(*a*) forges or alters, without the consent of the owner, the name, mark or any other distinctive device of any intellectual work or any industrial product, or knowingly makes use of any such name, mark or device forged or altered, without the consent of the owner, even though by others;

(*b*) forges or alters, without the consent of the owner, any design or model of manufacture, or knowingly makes use of any such design or model forged or altered, without the consent of the owner, even though by others;

(*c*) knowingly makes use of any mark, device, signboard or emblem bearing an indication calculated to deceive a purchaser as to the nature of the goods, or sells any goods with any such mark, device or emblem;

(*d*) puts on the market any goods in respect of which a distinctive trade mark has been registered, after removing the trade mark without the consent of the owner thereof;

(*e*) applies a false trade description to any goods, that is to say, applies to goods any forged or altered figure, word or mark which according to the custom of the trade is taken to indicate -

(i) the number, quantity, measure, gauge or weight of the goods,

(ii) the place or country in which the goods are made or produced,

(iii) the mode of manufacturing or producing the goods,

(iv) that the goods are the subject of an existing patent, privilege or industrial copyright;

(*f*) knowingly puts into circulation, sells or keeps for sale or imports for any purpose of trade, any goods bearing a fraudulent imitation of any mark, device or emblem;

(*g*) knowingly makes, keeps or transfers to any person, any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade mark,

shall, on conviction, be liable to imprisonment for a term from four months to one year.

(2) For the purposes of sub-article (1)(*e*), any figure, word or mark which, according to the custom of the trade, is commonly taken to indicate any of the matters therein referred to, shall be deemed to be a trade description thereof.

Fraudulent access to tele-communications systems. *Added by: XII.1991.41. Amended by: L.N. 407 of 2007.*

298A. Whoever shall construct, alter, make, be in possession of, sell or purchase any device whereby such person may unlawfully connect with any telecommunication system shall, on conviction, be liable -

(*a*) where the offence is committed for gain or by way of trade, to imprisonment for a term not exceeding one year or to a fine (*multa*) of not more than four thousand and six hundred and fifty-eight euro and seventy-five cents (€4,658.75) or to both such fine and imprisonment; and

(*b*) in all other cases, to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37).

Violation of copyright. *Added by: XII.1991.41. Amended by: XIX.1992.2; L.N. 407 of 2007. Substituted by: XXIV.2014.32.*

298B. (1) Any person who, in the exercise of any trade or in the course of business or with a view to gain for himself or for any other person, or with intent to cause loss to, or to prejudice, another person:

(*a*) prints, manufactures, duplicates or otherwise reproduces, or sells, distributes or otherwise offers for sale or distribution, any article or other thing in violation of the rights of copyright protected by or under Maltese law, or

(*b*) has in his possession, custody or control any such article or other thing with a view to carrying out any of the acts mentioned under paragraph (*a*),

shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine (*multa*) of not less than three thousand euro (€3,000) and not more than twenty-four thousand euro (€24,000) or to both such fine and imprisonment.

(2) Proceedings under this article may not be taken except on the complaint of the injured party.

Usury.
Added by: III.2002.60.
Amended by: L.N. 407 of 2007.

298C. (1) Whosoever receives from another person or obtains from another person a promise to give, to himself or to others, in consideration of a loan, interests or any other gain under any form whatsoever in excess of what is allowed by law shall, on conviction, be liable to imprisonment for a term not exceeding eighteen months and to the payment of a fine (*multa*) from two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) to thirty-four thousand and nine hundred and forty euro and sixty cents (€34,940.60).

(2) The same punishment laid down in sub-article (1) shall apply to whosoever receives from another person or obtains from another person a promise to give, to himself or to others, in consideration of a service consisting in any other benefit of any kind, interests or any other gain under any form whatsoever in excess of what is allowed by law or otherwise grossly disproportionate to the service given.

(3) The same punishment laid down in sub-article (1) shall also apply to whosoever, not being an accomplice in the offence in the same sub-article, intervenes to procure for another person a sum of money or any other benefit by having a person give or promise to give, to himself or to others, in respect of the intervention, a grossly disproportionate compensation.

(4) For the purposes of sub-articles (1), (2) and (3), in the determination of whether the interests are, or any gain or compensation is, grossly disproportionate account shall be had of all the circumstances of the fact and of the average rates usually applicable to operations similar to the one in question.

(5) Where, in the course of criminal proceedings for an offence under this article, it is proved before the court that the accused has received from another person an amount of interest, or a consideration of an amount, in excess of what is allowed by law or otherwise grossly disproportionate to the service given, the court shall order the accused to pay to the said other person such amount as may be determined by the court as being the excess received by the accused as aforesaid. The said order of the court shall be without prejudice to any right of such other person to recover by any other means any greater amount due to him and the order shall constitute an executive title enforceable as if it were a final judgement given in a civil action between the offender and the person to whom payment is ordered.

(6) The punishment for an offence under this article shall be decreased by one degree where the accused, before final judgement, reimburses excess amount received by him to the person from whom such amount was received.

Tampering, removal, etc., of chassis or engine number.
Added by: III.2002.61.
Amended by: L.N. 407 of 2007.

298D. Any person who, without the prior approval in writing of the Commissioner of Police, in any manner whatsoever, tampers, removes, alters or makes a chassis or engine identification number of, or on, any motor vehicle shall, on conviction be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) of not less than six hundred and ninety-eight euro and eighty-one cents

(€698.81)and not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) or to both such imprisonment and fine.

Presumption of malice.
Added by: XI.1899.106.
Amended by: XII.1991.41.

299. In the cases referred to in article 298(1)(*a*), (*b*), (*c*) and (*d*), criminal intent shall be presumed, unless the accused proves that he has acted without such intent.

Burden of proof.
Added by: XI.1899.106.

300. In the cases referred to in the last part of article 298(1)(*a*) and in (*b*) and (*d*), the burden of proof of the consent of the owner shall lie on the accused.

False trade description.
Added by: XI.1899.106.

301. In the cases referred to in article 298(1)(*e*), the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of the said paragraph.

How presumption of malice may be rebutted in certain cases.
Added by: XI.1899.106.

302. In the cases referred to in article 298(1)(*f*), criminal intent shall be presumed, unless the accused proves -

(*a*) that, having taken all necessary precaution against committing the offence referred to in the said paragraph, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or sign; and

(*b*) that, on demand made by any member of the Police, he gave all the information in his power with respect to the persons from whom he obtained the goods in question; and

(*c*) that otherwise he had acted innocently.

Exemption from punishment.
Added by: XI.1899.106.

303. In the cases referred to in article 298(1)(*g*), no punishment shall be awarded if the accused proves -

(*a*) that, in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines or other instruments for making or being used in making trade marks, or, as the case may be, to apply marks, devices or emblems to goods; and

(*b*) that, in the case which is the subject of the charge, he was so employed by some person resident in Malta, and was not in any manner whatsoever interested in the goods by way of profit dependent on the sale of the goods to which any such mark, device or emblem might have been applied.

Cases in which a trade mark, device or description is deemed to have been applied.
Added by: XI.1899.106.

304. For the purposes of the preceding articles, every person is deemed to apply a trade mark or distinctive device or trade description to goods, who -

(*a*) actually applies it to the goods themselves; or

(*b*) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(*c*) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, in, with or to any covering, label, reel or other thing, in respect of which a trade mark has been registered or to which a trade description has been applied; or

(*d*) uses a trade mark, device or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are truly designated by that trade mark, device or trade description.

Definition of "covering" and "label". *Added by: XI.1899.106.*

305. For the purposes of the foregoing articles, the expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case or wrapper; and the expression "label" includes any band or ticket indicative of the thing to which it is applied.

Words or marks on watch cases. *Added by: XI.1899.106.*

306. For the purposes of article 298(1)(*d*), where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting a description of the country in which the watch was made, and the watch bears no such description on any of its parts, those words or marks shall, until the contrary is proved, be deemed to be a description of that country.

Use of false weights or measures. *Added by: XI.1900.43. Amended by: XLIX.1981.4.*

307. Whosoever, by the use of false weights or measures, shall deceive others in respect of the quantity of goods given for valuable consideration, shall, on conviction, be liable to imprisonment for a term not exceeding one year.

Obtaining money or property by false pretences. *Amended by: XLIX.1981.4; III.2002.62; XXIV.2014.33.*

308. Whosoever, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person, shall, on conviction, be liable to imprisonment for a term from one to seven years.

Other cases of fraudulent gain. *Amended by: XLIX.1981.4; III.2002.63; XXIV.2014.34.*

309. Whosoever shall make, to the prejudice of any other person, any other fraudulent gain not specified in the preceding articles of this Sub-title, shall, on conviction, be liable to imprisonment for a term from two months to two years or to a fine (*multa*).

310. (1) In cases referred to in this Sub-title -

Scale of punishment according to the amount of the damage. *Amended by: VI.1871.23; IV.1874.6; XI.1900.44; I.1903.16; III.1971.11; XLIX.1981.4: XIII.1983.5; III.2002.64; L.N. 407 of 2007. Substituted by: XXIV.2014.35.*

(*a*) when the amount of damage caused by the offender exceeds five thousand euro (€5,000), the punishment shall be that of imprisonment from two to nine years;

(*b*) when the amount of damage caused by the offender exceeds five hundred euro (€500) but does not exceed five thousand euro (€5,000), the punishment shall be that of imprisonment from six months to four years:

Provided that if the punishment laid down for the relevant offence in the preceding articles of this Sub-title is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum;

(*c*) when the amount of the damage caused by the offender does not exceed five hundred euro (€500), the offender shall be liable to imprisonment for a term not exceeding six months.

(2) The provisions of sub-article (1)(*c*) shall not apply in the case of any of the crimes referred to in articles 296 and 298.

310A. The provisions of articles 121C, 121D, 248E(4) and 328K shall apply to offences under this Sub-title.

Corporate liability for offences under this Sub-title. *Added by: III.2002.65. Amended by: XXXI.2007.15; XXIV.2014.36.*

310B. The offences under this Sub-title shall be deemed to be offences even when committed outside Malta and, without prejudice to the provisions of article 5, the criminal action therefor may also be prosecuted in Malta according to the laws thereof against any person who commits or participates in the offence as provided in this Code -

Jurisdiction. *Added by: III.2002.65.*

(*a*) when the offence took place, even if only in part, in Malta or on the sea in any place within the territorial jurisdiction of Malta; or

(*b*) when the gain to the prejudice of another person has been received in Malta; or

(*c*) when a person in Malta knowingly assisted or induced another person to commit the offence; or

(*d*) when the offender is a Maltese citizen or a permanent resident in Malta and the fact also constitutes an offence according to the laws of the country where it took place:

Provided that for the purposes of this paragraph "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

Possession, making or supplying etc., of articles for use in fraud. *Added by: XXIV.2014.37.*

310BA. (1) Whosoever is found to be in possession or has under his control any article for use in the course of or in connection with any fraud, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term for a term from six months to three years and to the forfeiture of the said articles.

(2) Whosoever makes, adapts, supplies or offers to supply any article -

(*a*) knowing that it is designed or adapted for use in the course of or in connection with fraud, or

(*b*) intending it to be used to commit, or assist in the commission of, fraud,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term from twelve months to five years and to the forfeiture of the said articles.

(3) For the purposes of this article:

"article" includes any document, program or data held in electronic form; and

"document" shall have the meaning assigned to it by article 558(2).

Added by: VII.2010.20.

GENERAL PROVISION APPLICABLE TO OFFENCES UNDER SUB-TITLES I, II AND III

Disability in case of offences against minors. *Added by: VII.2010.20.*

310C. The provisions of article 208B(2) and (2A) shall apply to any person found guilty of any offence under Subtitles I to III, both inclusive, when committed against a person under age.

Added by: LIII.2021.2.

Sub-title IIIA

OF FRAUD AND COUNTERFEITING OF NON-CASH MEANS OF PAYMENT

Scope. *Added by: LIII.2021.2.*

310D. The measures provided for in this sub-title transpose the provisions of Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA.

Interpretation. *Added by: LIII.2021.2.*

310E. For the purposes of this sub-title, unless the context otherwise requires:

(a) "non-cash payment instrument" means a non-corporeal or corporeal protected device, object or record, or a combination thereof, other than legal tender, and which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value,

including through digital means of exchange;

(b) "protected device, object or record" means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature;

(c) "digital means of exchange" means any electronic money as defined in article 2 of the Financial Institutions Act or virtual currency; Cap. 376

(d) "virtual currency" means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of a currency or money, but is accepted by natural or legal persons as a means of exchange, and which may be transferred, stored and traded electronically;

(e) "information system" shall have the same meaning as is assigned to it in sub-article (1) of article 337B;

(f) "computer data" shall have the same meaning as as is assigned to it in sub-article (1) of article 337B;

(g) "legal person" means an entity having legal personality under the applicable law, excluding States or public bodies in the exercise of state authority and public international organisations.

Fraudulent use of non-cash payment instruments and information systems. *Added by: LIII.2021.2.*

310F. Any person who intentionally commits any of the following acts shall be guilty of an offence against this article:

(a) the fraudulent use of a stolen or otherwise unlawfully appropriated or obtained non-cash payment instrument;

(b) the fraudulent use of a counterfeit or falsified non-cash payment instrument;

(c) the theft or other unlawful appropriation of a corporeal non-cash payment instrument;

(d) the fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument;

(e) the possession of a stolen or otherwise unlawfully appropriated, or of a counterfeit or falsified corporeal non-cash payment instrument for fraudulent use;

(f) the procurement for oneself or another, including the receipt, appropriation, purchase, transfer, import, export,

sale, transport or distribution of a stolen, counterfeit or falsified corporeal non-cash payment instrument for fraudulent use;

(g) the unlawful attainment of a non-corporeal non-cash payment instrument when this attainment has involved the commission of at least one of the offences referred to in sub-article (1) of article 337C, or misappropriation of a non-corporeal non-cash payment instrument;

(h) the fraudulent counterfeiting or falsification of a non-corporeal non-cash payment instrument;

(i) the holding of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use, at least if the unlawful origin is known at the time of the holding of the instrument;

(j) the procurement for oneself or another, including the sale, transfer or distribution, or the making available, of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use;

(k) performing or causing a transfer of money, monetary value or virtual currency and thereby causing an unlawful loss of property for another person, in order to make an unlawful gain for the perpetrator or a third party, when such action is intentionally committed either by:

(i) without right, hindering or interfering with the functioning of an information system; or

(ii) without right, introducing, altering, deleting, transmitting or suppressing computer data;

(l) producing, procuring for oneself or another, including the import, export, sale, transport or distribution, or making available a device or an instrument, computer data or any other means primarily designed or specifically adapted for the purpose of committing any of the offences referred to in paragraphs (c), (d), (g), (h) and (k), with the intention that such means be used.

Offences and penalties. *Added by: LIII.2021.2.*

310G. (1) Whosoever commits any offence referred to in paragraphs (a), (b), (c), (d), (g), (h) and (l) of article 310F shall, on conviction, be liable to imprisonment for a term not exceeding two (2) years.

(2) Whosoever commits any offence referred to in paragraphs (e), (f), (i) and (j) of article 310F shall, on conviction, be liable to imprisonment for a term not exceeding one year.

(3) Whosoever commits the offence referred to in paragraph (k) of article 310F shall, on conviction, be liable to imprisonment for a term not exceeding three (3) years.

(4) Whosoever commits any offence referred to in paragraphs (a) to (k) of article 310F within the framework of a criminal organisation, as defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years.

Aiding and abetting. *Added by: LIII.2021.2.*

310H. (1) Whosoever aids, abets or instigates any offence under this Sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated and articles 42 and 43 shall apply *mutatis mutandis*.

(2) An attempt to commit any offence referred to in this Sub-title shall be punishable as a criminal offence, and article 41 shall apply *mutatis mutandis*.

Responsibility of legal persons. *Added by: LIII.2021.2.*

310I. (1) Notwithstanding any other provision of this Code, where any offence referred to in article 310F or in article 310H is committed for the benefit of a legal person by any person, acting either individually or as part of an organ of the legal person, who holds a leading position within that legal person on the basis of one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person,

said legal person who acts in that manner shall, on conviction, be liable to a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two hundred thousand euro (€200,000).

(2) Sub-article (1) shall apply *mutatis mutandis* where the lack of supervision or control by a natural person referred to therein has made possible the commission of any of the offences referred to in article 310F or in article 310H for the benefit of the legal person by a person under its authority.

(3) Liability of legal persons pursuant to sub-articles (1) and (2) shall not exclude criminal proceedings against natural persons who are perpetrators or inciters of, or accessories to, any of the offences referred to in article 310F or in article 310H.

(4) Without prejudice and in addition to any penalty that may be

imposed pursuant to the preceding sub-articles, any legal person for whose benefit any offence as referred to therein is committed may, on conviction, be liable to any or all of the following sanctions:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary exclusion from access to public funding, including tender procedures, grants and concessions;

(c) temporary or permanent disqualification from the practice of commercial activities;

(d) placing under judicial supervision;

(e) judicial winding-up;

(f) temporary or permanent closure of establishments which have been used for committing the offence.Jurisdiction.

Added by: LIII.2021.2.

310J. (1) Without prejudice to the provisions of article 5, the Courts of Malta shall have jurisdiction over the offences laid down in article 310F or article 310H where one or more of the following apply:

(a) the offence is committed in whole or in part on the territory of Malta;

(b) the offender is a Maltese national or a permanent resident of Malta;

(c) the offender has his habitual residence in the territory of Malta;

(d) the offence is committed for the benefit of a legal person established in the territory of Malta;

(e) the offence is committed against a Maltese national or a person who is a habitual resident in the territory of Malta.

(2) For the purposes of paragraph (a) of sub-article (1), an offence shall be considered to have been committed in whole or in part on the territory of Malta where the offender commits the offence when physically present on that territory and irrespective of whether the offence is committed using an information system on that territory.

Power to make regulations under this Sub-title. *Added by: LIII.2021.2.*

310K. The Minister responsible for justice may make regulations to give better effect to the provisions of this sub-title.

Sub-title IV

OF CRIMES AGAINST PUBLIC SAFETY, AND OF INJURY TO PROPERTY

Amended by: XVI.1901.2.

Causing explosion likely to endanger life or property. *Added by: XVI.1901.3. Amended by: XLIX.1981.4; XIV.1983.6.*

311. Any person who maliciously causes, by an explosive substance, an explosion of a nature likely to endanger the life or to cause serious injury to the property of any other person, shall be liable, on conviction, to imprisonment for a term from three to fourteen years, even though no injury to such person or property has been actually caused.

Where death or grievous bodily harm is caused by the explosion. *Added by: XVI.1901.3. Amended by: XXI.1971.21; XLIX.1981.4; XIV.1983.7.*

312. (1) If as a result of the offence referred to in the last preceding article, any person shall perish, the offender shall be liable to the punishment of imprisonment for life.

(2) If as a result of the offence referred to in the last preceding article, a grievous bodily harm is caused to any person, the offender shall be liable to imprisonment for a term from four to twenty years.

(3) If as a result of the offence referred to in the last preceding article, any serious spoil, damage or injury to or upon any movable or immovable property belonging to any person is caused, the punishment therein mentioned shall not be awarded in its minimum.

Unlawful making or possession of explosives. *Added by: XVI.1901.3. Amended by: XLIX.1981.9. Substituted by: XIV.1983.8. Amended by: III.2002.66.* Cap. 446.

313. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is making it or has it in his possession or under his control for an unlawful object, shall, on conviction, be liable to imprisonment for a term from eighteen months to nine years, and the provisions of the Probation Act and of article 21 of this Code shall not be applicable.

Definition of "explosive substance". *Added by: XVI.1901.3.*

314. For the purposes of the last preceding three articles, the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted, for causing, or aiding in causing, any explosion of or with any explosive substance; also any part of any such apparatus, machine or implement.

Discharge, etc., of lethal device. *Added by: III.2002.67. Amended by: VII.2010.21.*

314A. (1) Whosoever, maliciously, delivers, places, discharges or detonates a lethal device likely to endanger the life or to cause serious injury to the property of any other person, shall be liable, on conviction, to the punishment laid down in article 311, even though no injury to such person or property has been actually caused.

(2) If as a result of the offence referred to in sub-article (1) any person shall perish, or a grievous bodily harm is caused to any person, or any serious spoil, damage or injury to or upon any movable or immovable property belonging to any person is caused, the offender shall be liable to the punishments laid down in article 312 as the case may be.

(3) Where the offence takes place in, or is directed at, a public place, a state or government facility, an infrastructural facility or a public transportation system the punishment for the offence shall be increased by one degree.

(4) In this article:

"lethal device" includes any radioactive dispersal or radiation-emitting device, and any other thing, that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material or owing to its radiological properties;

"state or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

"infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;

"public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Possession, use, etc., of nuclear material. *Added by: III.2002.67.*

314B. (1) Whosoever, maliciously, is in possession or makes use of, transfers, alters, disposes of or disperses nuclear material which is likely to cause death or serious injury to any person or substantial damage to property shall be liable, on conviction, to the same punishment laid down in article 311, even though no injury to such person or property has been caused.

(2) The provision of article 314A(2) shall apply to an offence under this article.

(3) The provisions of article 313 shall apply to whosoever keeps or is in possession of or has under his control any nuclear material under the same circumstances mentioned in that article.

(4) In this article:

"nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium enriched in the isotopes 235 and 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

"uranium enriched in the isotope 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

Possession of lethal devices for unlawful object or for purpose of proliferation. *Added by: XXIV.2007.6.*

314C. (1) Whosoever knowingly has in his possession or under his control any lethal device or nuclear material, under such circumstances as give rise to a reasonable suspicion that he has it in his possession or under his control for an unlawful object or for the purpose of proliferation shall, on conviction, be liable to the punishment laid down in article 313.

(2) For the purpose of this article:

"lethal device" shall have the same meaning assigned to it by article 314A(4) and "lethal device" and "nuclear material" shall include their delivery systems, materials, equipment or technology, of whatever nature or type, that are related to and destined for use in the development, production, utilization or delivery of such lethal devices or nuclear material; and

"proliferation" means the transportation of nuclear, chemical, biological or radiological weapons, their delivery systems and related materials to or from states or entities engaged in efforts to develop, acquire, or traffic in, such weapons, systems or materials.

Use of radioactive material, lethal device or nuclear facility with intent to cause death etc. *Added by: VII.2010.22.*

314CA. Whosoever uses in any way radioactive material or a lethal device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(*a*) with the intent to cause death or serious bodily injury; or

(*b*) with the intent to cause serious damage to property or to the environment; or

(*c*) with the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act,

shall on conviction be liable to imprisonment for a term from eight to thirty years even though no injury to any person, property or the environment has actually been caused and even if no natural or legal person or any international organization or any State has been compelled as aforesaid.

Where death or grievous bodily harm etc. is caused by use of radioactive material or lethal device. *Added by: VII.2010.22.*

314CB. (1) If as a result of the offence referred to in the last preceding article, any person shall perish, the offender shall be liable to the punishment of imprisonment for life.

(2) If as a result of the offence referred to in the last preceding article, a grievous bodily harm is caused to any person, the offender shall be liable to imprisonment for a term from four to twenty years:

Provided that if a grievous bodily harm is caused to two or more persons the punishment laid down in the last preceding article shall apply and shall not be awarded in its minimum.

(3) If as a result of the offence referred to in the last preceding article -

(*a*) any serious spoil, damage or injury to or upon any movable or immovable property belonging to any person or to or upon the environment is caused;

(*b*) a natural or legal person or an international organization or a State is compelled to do or to refrain from doing an act;

the punishment therein mentioned shall not be awarded in its minimum.

(4) Where the offence takes place in, or is directed at, a public place, a state or government facility, an infrastructural facility or a public transportation system the punishment for the offence shall be increased by one degree.

Unlawful possession of radioactive material or making or possession of a lethal device. *Added by: VII.2010.22.*

314CC. (1) Whosoever unlawfully possesses radioactive material or makes or possesses a lethal device -

(*a*) with the intent to cause death or serious bodily injury; or

(*b*) with the intent to cause serious damage to property or to the environment,

shall be liable to the punishment laid down in article 313 increased by one or two degrees.

(2) Whosoever -

(*a*) threatens, under circumstances which indicate the credibility of the threat, to commit the offence under sub-article (1); or

(*b*) by the use of threats, under the same circumstances aforesaid, or by the use of force, unlawfully and knowingly demands radioactive material, a lethal device or a nuclear facility

shall be liable to the punishment laid down in article 313 increased by one or two degrees.

(3) Whosoever -

(*a*) organizes or directs others to commit an offence under sub-articles (1) to (3), both inclusive; or

(*b*) in any other way knowingly contributes to the commission of one or more of the offences under sub-articles (1) to (3), both inclusive, by a group of persons acting with a common purpose when such contribution is made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the offence or offences concerned,

shall be liable to the punishment laid down for the offence under sub-articles (1) to (3), both inclusive, as the case may be, provided that where that offence has only been attempted but not completed the punishment shall be that laid down for the attempted offence.

(4) In this article and in articles 314CA and 314CB:

"lethal device" has the same meaning assigned to it by article 314A(4) of and includes a nuclear explosive device;

"nuclear facility" means:

(*a*) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;

(*b*) any plant or conveyance being used for the production, storage, processing or transport of radioactive material;

"nuclear material" shall have the same meaning assigned to it by article 314B(4);

"radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

"public transportation system" "state or government facility", and "infrastructure facility" shall have the same meaning assigned to them respectively by article 314A(4).

Jurisdiction. *Added by: VII.2010.22. Amended by: VIII.2015.16.*

314CD. (1) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences in articles 314A, 314B, 314C, 314CA and 314CB, where:

(*a*) the offender is a Maltese national or permanent resident in Malta; or

(*b*) the offence is committed against a Maltese national or permanent resident in Malta; or

(*c*) the offence is committed in an attempt to compel Malta to do or to abstain from doing an act; or

(*d*) the offence is committed on board an aircraft which is operated by the Government of Malta; or

(*e*) the offence is committed against Malta or a government facility of Malta abroad, including an embassy or other diplomatic or consular premises of Malta.

(2) For the purposes of this article the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

Co-operation in the suppression of relevant offences at sea. *Added by: XXIV.2007.6. Amended by: VII.2010.23.*

314D. (1) Where the commander of the Armed Forces of Malta receives, or is informed about, a request made by or on behalf of a judicial, prosecuting, law enforcement, administrative or other competent authority of any State or place other than or outside Malta (hereinafter in this article referred to as the "requesting authority") seeking authorisation for the competent authorities of that State or place to take appropriate measures in regard to a relevant vessel reasonably suspected to be engaged in the commission of a relevant offence the commander of the Armed Forces of Malta may, with the concurrence of the Prime Minister, authorise the taking of the said measures by the aforesaid

competent authorities subject to such conditions as may have been agreed by Malta with that State or as may be agreed between the requesting authority and the commander of the Armed Forces of Malta with the concurrence of the Prime Minister.

(2) Where the authorisation has been given by the commander of the Armed Forces of Malta as aforesaid the competent authorities referred to in sub-article (1), subject to the conditions as may have been agreed upon as provided in the same sub-article, shall be authorised to take the appropriate measures and to exercise on board the vessel in regard to which appropriate measures have been authorised under this article all such powers of arrest, entry, search and seizure as are vested in the executive police of Malta.

(3) For the purpose of this article:

"relevant offence" means any offence consisting in any act or omission which if committed in these islands, or in corresponding circumstances, would constitute any of the offences in articles 313, 314B, 314C, 314CA and 314CC;

"relevant vessel" means a vessel used for commercial or private purposes flying or entitled to fly the flag of Malta or registered in Malta and exercising freedom of navigation in accordance with international law.

Setting on fire of arsenals, etc. *Amended by: XXI.1971.22; XLIX.1981.4.*

315. Whosoever shall wilfully set on fire or otherwise destroy any arsenal, vessel of war, whether such vessel be on float or building, powder magazine, public dock or artillery park, shall, on conviction, be liable to the punishment of imprisonment for life.

Arson endangering life. *Amended by: XXI.1971:23; XLIX.1981.4; XXIV.2014.38.*

316. Whosoever shall wilfully set fire to any house, warehouse, shop, dwelling-house, vessel, vehicle, dock or any building, shed or other place whatsoever, any person being therein at the time of the setting on fire, shall, on conviction, be liable to the punishment of imprisonment for life:

Provided that if no person shall perish, the offender shall be liable -

(*a*) if he could have foreseen that any person was actually in the place, to imprisonment for a term from six to twelve years;

(*b*) otherwise, to imprisonment for a term from four to nine years.

Arson to the common danger. *Amended by: XXI.1971.24; XLIX.1981.4; XXIV.2014.39.*

317. Whosoever shall wilfully set fire to any building, vehicle, shed or other place mentioned in the last preceding article, no person being therein at the time of the setting on fire, or whosoever shall wilfully set fire to any combustible substance, and such building, vehicle, shed or other place or such substance is so situated that the fire would communicate to any other building, shed or place, any person being therein at the time, shall, on conviction, be liable -

(*a*) where the fire had actually communicated, to the punishment of imprisonment for life:

Provided that if no person shall perish, the offender

shall be liable -

(i) if he could have foreseen that any person was actually in the building, shed or place to which the fire had communicated, to imprisonment for a term from five to nine years;

(ii) otherwise, to imprisonment for a term from three to six years;

(*b*) where the fire had not communicated to any other building, shed or place, to imprisonment for a term from three to five years.

Arson without danger of life. *Amended by: XLIX.1981.4; XXIV.2014.40.*

318. Whosoever shall wilfully set fire to any building, vehicle, shed or other place mentioned in article 316, no person being therein at the time, and such building, vehicle, shed or other place being so situated that the fire would not communicate to any other building, shed or place in which there is a person at the time, shall, on conviction, be liable to imprisonment for a term from two to four years.

Arson of vineyards, etc. *Amended by: XLIX.1981.4.*

319. Whosoever shall wilfully set fire to any vineyard, plantation of trees, stack or heap of corn, cotton or other useful produce or any other matter whatsoever, whether uprooted or cut down or still growing, and so situated that the fire would not communicate to any building, shed or other place mentioned in article 316, any person being therein at the time, shall, on conviction, be liable to imprisonment for a term from two to four years.

Destruction by the springing of a mine.

320. For the purposes of punishment, the destruction of any such matter or thing as in the last five preceding articles mentioned, by the springing of a mine, shall be deemed to constitute the offence therein mentioned.

Exhibition of false lights, etc., with danger to navigation. *Amended by: IV.1874.7; XI.1900.45; III.1971.12; XXI.1971.25; XLIX.1981.4; XIII.1983.5; L.N. 407 of 2007.*

321. (1) Whosoever shall exhibit any false light or signal or any other thing tending to summon ships, vessels or boats, or to regulate their navigation, with intent to cause the loss or stranding of any ship, vessel or boat, or shall with the like intent extinguish or remove any light, signal or other thing intended by the Government for the guidance of seamen, shall, on conviction, be liable to imprisonment for a term from three to five years, even though no accident has occurred.

(2) Where an accident has occurred, the offender shall, on conviction, be liable -

(*a*) if the damage is to a ship, vessel or boat or to the gear or appurtenances thereof or to the cargo or to any other thing which is on board, to imprisonment for a term from five to nine years, if the amount of the damage exceeds one hundred and sixteen euro and forty-seven cents (€116.47), or, to imprisonment for a term from four to six years, if the amount of the damage does not exceed one hundred and sixteen euro and forty-seven cents (€116.47);

(*b*) if, with or without any damage as aforesaid, any individual suffers a grievous bodily harm with any of

the effects mentioned in article 218, to imprisonment for a term from five to twenty years, or, if the bodily harm is grievous but without the effects mentioned in the said article, to imprisonment for a term from four to twelve years, or, if the bodily harm is slight, to imprisonment for a term from two to six years;

(*c*) if any person shall perish, to the punishment of imprisonment for life.

Cutting away chains, etc. *Amended by: IV.1874.7.*

322. (1) Whosoever shall cut away, unfasten or otherwise remove any chain, cable or other rope by which any public buoy intended for the purpose of navigation is fastened, shall, on conviction, be liable to imprisonment for a term from three to nine months.

(2) Whosoever shall cut away, unfasten or otherwise remove any chain, cable or other rope by which any ship or vessel is moored, anchored or otherwise fastened, or any rope by which the buoy of a ship's anchor is fastened, shall, on conviction, be liable to the punishment laid down in sub-article (1).

Aggravating circumstances. *Amended by: IV.1874.7.*

323. If, in consequence of any of the offences referred to in the last preceding article, any damage is caused to a ship or a bodily harm to a person, the punishment laid down in that article shall be awarded together with the punishment laid down in this Code for wilful damage or for wilful bodily harm, according to the extent of the damage or the nature of the bodily harm; and if at the same time both damage to a ship and a bodily harm to a person are caused, the higher punishment between that laid down for the damage and that laid down for the bodily harm shall be applied, in addition to the punishment laid down in the last preceding article.

Setting on fire of one's own property. *Amended by: IV.1874.7.*

324. In the cases referred to in articles 316, 317 and 318, the offender shall be liable to the punishments therein mentioned, even though he be the owner of the property in respect of which the offence is committed.

Spoil, damage or injury in general. *Amended by: IX.1859.20; V.1868.19; VI.1871.24; XI.1900.47; V.1956.17; III.1971.13; XLIX.1981.4; XIII.1983.5; XIV.1983.9; III.2002.68; L.N. 407 of 2007; XXIV.2014.41.*

325. (1) Whosoever, by any means other than those referred to in the preceding articles of this Sub-title, shall wilfully commit any spoil, damage or injury to or upon any movable or immovable property belonging to any other person, shall, on conviction, be liable -

(*a*) if the amount of the damage exceeds two thousand and five hundred euro (€2,500), to imprisonment for a term from eighteen months to four years;

(*b*) if the amount of the damage does not exceed two thousand and five hundred euro (€2,500) but exceeds two hundred and fifty euro (€250), to imprisonment for a term from eight to fourteen months;

(*c*) if the amount of the damage does not exceed two hundred and fifty euro (€250), to imprisonment for a term not exceeding six months;

(*d*) if the amount of the damage does not exceed twenty-three euro and twenty-nine cents (€23.29), to imprisonment

for a term not exceeding three months or to the punishments established for contraventions:

Provided that if the crime be excusable by reason of an unjust provocation, the offender shall, in the cases referred to in paragraphs (*a*), (*b*) and (*c*), be liable to imprisonment for a term not exceeding two-thirds of the period therein mentioned; and in the case referred to in paragraph (*d*), to the punishments established for contraventions.

In considering the excuse, regard shall be had to the rule laid down in article 235:

Provided further that in the cases referred to in paragraphs (*c*) and (*d*), except where the damage is caused to public property proceedings may be instituted only on the complaint of the injured party:

Provided further that in the case of damage to public property, the punishment shall be increased by one or two degrees, and the offender shall be ordered to pay by way of fine (*multa*) the amount of the damage caused.

(2) Where because of the geological, palaeontological, archaeological, architectonic, artistic or historical nature or importance of the property spoiled, damaged or injured it is not possible to estimate the damage according to the rule laid down, in article 335, the damage shall be deemed to exceed one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69).

Increase of punishment in certain cases. *Added by: XVI.2006.6. Amended by: VIII.2012.7; XXIV.2014.42; LXV.2021.8.*

325A. (1) The punishments established in the foregoing provisions of this Sub-title shall be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, age, disability, citizenship, religion or belief or political or other opinion within the meaning of sub-articles (3) to (6), both inclusive, of article 222A.

(2) For the purposes of this article "relevant offence" means any of the offences under articles 311, 312, 314A, 316, 317 to 320, both inclusive, and 325.

Damage to water pipes, etc. *Amended by: XVI.1901.4; I.1904.51; L.N. 4 of 1963; XXVII.1975.21; XII.1991.41; XXII.2005.4.*

326. (1) Whosoever shall wilfully -

(*a*) break or block the pipes or conduits of any public aqueduct, or in any other manner impede or divert the course of the waters or otherwise damage any part of such aqueduct;

(*b*) break any public cistern, well or aqueduct, or foul the water thereof;

(*c*) damage any electric machinery or cable, or cause the loss of electric current;

(*d*) damage any conduit or part of the public sewer;

(*e*) cut, break, throw down, destroy, damage or remove any battery, machinery, wire, cable, post or other matter, or thing whatsoever, being part of or being

used or employed in or about any electric or magnetic telegraph, with or without wires, or in the working thereof, or do anything which prevents or obstructs in any manner whatsoever the conveyance of any message;

(*f*) damages or breaks any part of any energy meter, or the seals thereof, or any part of any apparatus or cables used for the supply of electricity, or the seals thereof;

(*g*) cut, break, throw down, destroy, damage, remove, tamper or connect with, any part of any apparatus, duct, pole, cabinet, wire, cable or other matter or thing whatsoever, being part of or being used or employed in the cable television network or in the working thereof or for the supply of the cable television service,

shall, saving any higher punishment to which he may be subject under the last preceding article, be liable, on conviction, to imprisonment for a term not exceeding two years:

Provided that no proceedings shall be instituted in respect of any offence under paragraphs (*c*), (e) and (f) except on the complaint of the injured party.

(2) Whosoever shall, even without any malicious intent, -

(*a*) touch any telegraph wire or place or throw anything upon any battery, machinery, wire, cable or other matter or thing mentioned in sub-article (1)(*e*), or do anything in proximity to such telegraph wire in such manner as might damage such wire, or prevent or obstruct the conveyance or delivery of any message; or

(*b*) fish in any place in which the Minister responsible for electricity, with a view to preventing damage to any submarine telegraph cable, shall have declared fishing to be absolutely prohibited, or fish with any net or other implement, the use of which shall have been for the same purpose prohibited by the Minister responsible for electricity; or

(*c*) do anything described in sub-article (1)(*g*),

shall, on conviction, be liable to the punishments established for contraventions.

Unlawful entry into subways used for public service. *Amended by: XVI.1901.4.*

327. Whosoever, without any just cause, the proof whereof shall lie on the person accused, shall enter into any subway wherein there is any electric cable or any main conduit of the public sewer, shall, on conviction, be liable -

(*a*) to imprisonment for a term from one to three months, where the circumstances show that the object of the offender was to damage the cables or conduits above mentioned;

(*b*) to imprisonment for a term not exceeding one (1) month, in any other case.

Involuntary fire or damage. *Amended by: IV.1856.17; XI.1900.48; V.1956.18; XIII.1980.11; XIII.1983.5; L.N. 407 of 2007; VII.2010.24; XXIV.2014.43; VIII.2015.17.*

328. Whosoever, through imprudence, negligence or unskilfulness in his trade or profession, or through non-observance of any regulation, shall cause any fire or any damage, spoil or injury as mentioned in this Sub-title, shall, on conviction, be liable -

(*a*) if the death of any person is caused thereby, to the punishments established in article 225;

(*b*) if any grievous bodily harm with any of the effects mentioned in article 218 is caused thereby, to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37);

(*c*) if any grievous bodily harm without any of the effects aforesaid is caused thereby, to imprisonment for a term not exceeding three months or to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69);

(*d*) in any other case, to imprisonment for a term not exceeding three months or to a fine (*multa*) or to the punishments established for contraventions:

Provided that in the cases referred to in paragraph (*d*), except where damage is caused to public property, other than a motor vehicle, proceedings may be instituted only on the complaint of the injured party:

Provided further that the proceedings referred to in paragraph (*d*) with respect to damage caused on a motor vehicle, which is public property, on the complaint of the head of the Government department in charge of the said vehicle, the provisions of article 374(*d*) shall not apply to those proceedings after the complainant will have confirmed his complaint under oath before the court and the absence of the complainant from attendance in court in any stage of the proceedings shall in no way affect the lawfulness of the procedures nor be considered to constitute the withdrawal of the complaint as long as such absence occurs at a stage which is subsequent to the said confirmation on oath of the complaint by the complainant.

Sub-title IV A[*]

OF ACTS OF TERRORISM, FUNDING OF TERRORISM AND ANCILLARY OFFENCES

Added by: VI.2005.2.

*originally, as enacted by Act VI of 2005, this Sub-title was numbered Sub-title V.

Acts of terrorism and terrorist activities.
Added by: VI.2005.2.
Amended by: III.2015.24; VIII.2015.18; XLII.2018.4; L.2021.3.

328A.(1) For the purposes of this Sub-title, "act of terrorism" means any act listed in sub-article (2), committed wilfully, which may seriously damage a country or an international organization where committed with the aim of:

(*a*) seriously intimidating a population, or

(*b*) unduly compelling a Government or international organization to perform or abstain from performing any act, or

(*c*) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

(2) The acts to which reference is made in sub-article (1) are the following:

(*a*) taking away of the life or liberty of a person;

(*b*) endangering the life of a person by bodily harm;

(*c*) bodily harm;

(*d*) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;

(*e*) seizure of aircraft, ships or other means of public or goods transport;

(*f*) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological, radiological or chemical weapons;

(*g*) research into or development of biological, radiological, nuclear and chemical weapons;

(*h*) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;

(*i*) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;

(*j*) illegal system interference as defined in article 337C(1)(ee) and illegal data interference as defined in article 337C(1)(g);

(*k*) threatening to commit any of the acts in paragraphs (*a*) to (*j*):

Provided that in this sub-article "state or government facility", "infrastructure facility" and "public transportation system" shall have the same meaning assigned to them in article 314A(4).

(3) Whosoever commits an act of terrorism shall be guilty of an

offence and shall be liable on conviction to the punishment of imprisonment from seven years to life.

(4) For the purposes of this Sub-title, "terrorist activities" means any of the following acts, whenever or wherever carried out:

(*a*) an act of terrorism as defined in sub-article (1);

(*b*) the unlawful seizure or the exercise of control of an aircraft in flight, by the use of force or threat thereof, or by any other form of intimidation;

(*c*) the unlawful and intentional commission of any of the following acts:

(i) an act of violence against a person on board an aircraft in flight, which is likely to endanger the safety of that aircraft;

(ii) the destruction of an aircraft in service or the causing of damage to such an aircraft, which renders it incapable of flight or which is likely to endanger its safety in flight;

(iii) the placing or the causing to be placed on an aircraft in service, by any means whatsoever, of a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight or which is likely to endanger its safety in flight;

(iv) the destruction or the damaging of air navigation facilities, or the interference with their operation, where such an act is likely to endanger the safety of an aircraft in flight;

(v) the communication of information which is known to be false, thereby endangering the safety of an aircraft in flight;

(*d*) the intentional commission of any of the following acts:

(i) the taking away of the life or liberty of, or the causing of bodily harm to, an internationally protected person;

(ii) the carrying out of a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(iii) a threat to commit any of the acts mentioned in sub-paragraphs (i) and (ii);

(*e*) the seizure or detention and the threat to take away the life, to cause bodily harm or to continue to detain another person (the "hostage") in order to compel a State, an international intergovernmental organisation, a natural or juridical person or a group of persons, to do or to abstain from doing any act as an explicit or implicit condition for the release of the hostage;

(*f*) the unlawful and intentional commission of any of the following acts, using any device, substance or weapon:

(i) the performance of an act of violence against any person at an airport serving international civil aviation, which causes or is likely to cause serious injury or death, where any such act endangers or is likely to endanger safety at that airport; or

(ii) the destruction or the serious damaging of the facilities of an airport serving international civil aviation or an aircraft not in service located thereon, or the disruption of the services of such an airport, where any such act endangers or is likely to endanger safety at that airport;

(*g*) an attempt to perform any of the acts referred to in paragraphs (*b*) to (*f*) or the participation as an accomplice in the performance or attempt thereof;

(*h*) the intentional commission of any of the following acts:

(i) the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material, without lawful authority, which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(ii) the theft or fraudulent obtaining of nuclear material;

(iii) the demand for nuclear material by threat or use of force, or by any other form of intimidation;

(iv) the threat to use nuclear material to cause death or serious injury to any person or substantial damage to property, or the threat to commit theft of nuclear material in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act;

(v) an attempt to commit any of the acts mentioned in sub-paragraphs (i) and (ii) or the participation as an accomplice in any of the acts mentioned in sub-paragraphs (i) to (iv) or any attempt thereof;

(*i*) the unlawful and intentional commission of any of the following acts:

(i) the unlawful seizure or the exercise of control over a ship or fixed platform by the use of force or threat thereof, or by any other form of intimidation;

(ii) the performance of an act of violence against a person on board a ship or a fixed platform, which is likely to endanger the safe navigation of that ship or the safety of that fixed platform;

(iii) the destruction of a ship or a fixed platform or the causing of damage to a ship or its cargo, or a

fixed platform which is likely to endanger the safe navigation of that ship, or the safety of that fixed platform;

(iv) the placing or the causing to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship or to cause damage to such ship or to its cargo, which endangers or is likely to endanger the safe navigation of that ship;

(v) the placing or the causing to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;

(vi) the destruction or the causing of serious damage to maritime navigational facilities or the serious interference with their operation, where such act is likely to endanger the safe navigation of a ship;

(vii) the communication of information which is known to be false, thereby endangering the safe navigation of a ship;

(viii) the causing of bodily harm or the taking away of the life of a person in connection with the commission or attempted commission of any of the acts mentioned in sub-paragraphs (i) to (vii);

(*j*) an attempt to commit any of the acts referred to in paragraph (*i*), the participation as an accomplice in the commission thereof or the abetting in the commission of such acts perpetrated by another person;

(*k*) the use of threats aimed at compelling a person to do or to refrain from doing any act referred to in sub-paragraphs (ii), (iii) and (vi) of paragraph (*i*), where such a threat is likely to endanger the safe navigation of the ship or the safety of the fixed platform;

(*l*) the unlawful and intentional delivery, placing, discharge or detonation of an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with the intent to cause death or serious bodily harm, or with the intent to cause extensive destruction of such a place, facility or system, where the destruction results in or is likely to result in major economic loss;

(*m*) an attempt to commit any of the acts mentioned in paragraph (*l*) or the participation as an accomplice in the performance or attempt thereof;

(*n*) the organisation or direction of others to commit or to attempt to commit the acts mentioned in paragraph (*l*);

(*o*) the contribution in any way to the commission of any of the acts mentioned in paragraph (*l*) or to the attempt

thereof by a group of persons acting with a common purpose, where such contribution is intentional and is either made with the intent to further the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit any of the acts mentioned in paragraph (*l*);

(*p*) any act intended to cause death or serious bodily harm to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.

Terrorist groups. *Added by: VI.2005.2. Amended by: III.2015.25; XLII.2018.5.*

328B.(1) For the purpose of this Sub-title "terrorist group" means a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist activities.

(2) In sub-article (1) "structured group" means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

(3) Whosoever promotes, constitutes, organises, directs, supplies information or materials to, or by any means, directly or indirectly, collects, receives, provides or invites another person to provide money or other property for, or otherwise finances a terrorist group knowing that such participation, involvement or financing will contribute towards the activities, whether criminal or otherwise, of the terrorist group shall be liable -

(*a*) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment of not less than fifteen (15) years but not exceeding thirty (30) years:

Provided that where the activity of the terrorist group consists only of the acts mentioned in article 328A(2)(k) the punishment shall be that of imprisonment for a period not exceeding eight years;

(*b*) in any other case, to the punishment of imprisonment not exceeding eight years.

Offences linked to terrorist acts. *Added by: VI.2005.2. Amended by: XI.2009.6; III.2015.26; VIII.2015.19; XLII.2018.6; L.2021.4.*

328C. (1) Whosoever, with the intention of committing any of the acts listed in article 328A(2)(*a*) to (*j*) or in article 328B or in article 328C(2)(*d*) -

(*a*) commits an offence of theft aggravated as provided in article 261; or

(*b*) commits the offence in article 113 or 250; or

(*c*) commits an offence of forgery or any of the offences under Sub-titles I and II of Title V,

shall be liable to the same punishment laid down in article 328A(3):

Provided that for the offences referred to in this sub-article, it shall not be necessary to establish a link to another specific offence listed in this Sub-title.

(2) Whosoever, knowingly -

(*a*) publicly provokes the commission of terrorist activities by any means including but not limited to the distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed;

(*b*) recruits or solicits another person to commit terrorist activities or to travel for purposes mentioned in paragraph (*d*);

(*c*) trains or instructs another person ir self-studies in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing terrorist activities;

(*cc*) receives training or instruction, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing or contributing to the commission of terrorist activities;

(*d*) travels or attempts to travel within or outside the European Union, directly or by transiting through one or several Member States of the Union, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist activities or participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group or the providing or receiving of training in terrorist activities;

(*e*) finances, organizes or in any other manner facilitates travel for the purposes mentioned in paragraph (*d*);

(*f*) produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows a publication likely to encourage or induce the commission of terrorist activities or to be useful in the commission of such activities,

shall be liable to the same punishment laid down in article 328A(3).

(3) Whosoever -

(*a*) organizes or directs others to commit an offence under sub-article (2); or

(*b*) in any other way knowingly contributes to the commission of one or more of the offences under sub-article (2), by a group of persons acting with a common purpose when such contribution is made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the offence or offences concerned,

shall be liable to the punishment of imprisonment of four to thirty years.

(4) For the commission of an offence under this article or article 328B, it shall not be necessary that terrorist activities be actually committed.

(5) Where the offence referred to in paragraphs (b) and (c) of sub-article (2) is directed towards a child, the punishment shall be increased by one degree and shall not be awarded in its minimum.

(6) For the purpose of ensuring the prompt removal or blocking of online content constituting public provocation to commit a terrorist activities as defined in sub-article (2)(a), the provisions of Sub-title V of Title I of Book Second, of Sub-title VII of Title I of Book Second, of article 23 and of article 337G of this Code shall, *mutatis mutandis,* apply.

(7) For the purpose of ensuring the removal of online content hosted outside the territory of Malta, which online content constitutes a public provocation to commit terrorist activities as defined in sub-article (2)(a), the Police may request internet service providers hosting such online content to remove such online content. The request communicated to the internet service provider shall contain reasoned grounds for which such a request was made.

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(8) Any decision taken by the Police in accordance with sub-article (7) may be challenged in terms of article 469A of the Code of Organization and Civil Procedure.

Inciting, aiding or abetting. *Added by: VI.2005.2. Substituted by: XLII.2018.7. Amended by: L.2021.5.*

328D. Whosoever incites, aids or abets any offence under this Sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence incited, aided or abetted.

Terrorist property. *Added by: VI.2005.2. Amended by: III.2015.27; XLII.2018.7.*

328E.(1) In this Sub-title, "terrorist property" means -

(*a*) money or other property which is likely to be used for the purposes of terrorist activities, including any resources of a terrorist group,

(*b*) proceeds of the commission of terrorist activities, and

(*c*) proceeds of acts carried out for the purposes of terrorist activities.

(2) In sub-article (1) -

(*a*) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and

(*b*) the reference to a group's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the group.

Funding of terrorism. *Added by: VI.2005.2. Amended by: L.N. 407 of 2007; III.2015.28; LII.2020.3; L.2021.6.*

328F. (1) Whosoever by any means, directly or indirectly, collects, receives, provides or invites another person to provide, money or other property or otherwise provides finance intending it to be used, or which he has reasonable cause to suspect that it may be used, in full or in part, for the purposes of terrorist activities under article 328A and offences linked to terrorist acts under article 328C or knowing that it will contribute towards the activities, whether criminal or otherwise, of any person involved in terrorist activities or of a terrorist group shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term of not less than four years but not exceeding twenty years or to a fine (*multa*) not exceeding two million and five hundred thousand euro (€2,500,000) or to both such fine and imprisonment.

(2) In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not.

Use and possession. *Added by: VI.2005.2. Amended by: III.2015.29; XLII.2018.8; LII.2020.4.*

328G. (1) Whosoever uses money or other property for the purposes of terrorist activities shall, on conviction, be liable to the punishment of imprisonment from seven years to life.

(2) Whosoever is in possession of money or other property intending it to be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorist activities shall, on conviction, be liable to the punishment laid down in article 328F(1):

Provided that for the purposes of this article and of article 328F it shall not be necessary that the funds are in fact used, in full or in part, to commit or to contribute to any of the offences provided for, nor shall it be required that the offender knows for which specific offence the funds are to be used.

Funding arrangements. *Added by: VI.2005.2. Amended by: III.2015.30.*

328H. Whosoever -

(*a*) enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and

(*b*) knows or has reasonable cause to suspect that the money or other property will or may be used for the purposes of terrorist activities,

shall on conviction be liable to the punishment laid down in article 328F(1).

Facilitating retention or control of terrorist property. *Added by: VI.2005.2.*

328I. (1) Whosoever enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -

(*a*) by concealment,

(*b*) by removal from the jurisdiction,

(*c*) by transfer to nominees, or

(*d*) in any other way,

shall, on conviction, be liable to the punishment laid down in article 328F(1).

(2) It is a defence for a person charged with an offence under sub-article (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Corporate criminal liability. *Added by: VI.2005.2. Amended by: L.N. 407 of 2007; XLII.2018.9; LII.2020.5.*

328J. (1) The provisions of article 121D shall apply where a person is found guilty of an offence under this subtitle sohowever that the body corporate shall for such offence be liable to the punishment of a fine (*multa*) not exceeding five million euro (€5,000,000).

(2) The body corporate shall also be held liable for an offence under this Sub-title where the lack of supervision or control by a person referred to in article 121D has made possible the commission of the offence for the benefit of the body corporate, which shall upon conviction be liable to the punishment laid down in sub-article (1):

Provided that notwithstanding the provisions of sub-article (1), nothing shall preclude the institution of criminal proceedings against the natural persons referred to in sub-article (1), who act as perpetrators, inciters or accessories in any of the offences under this Sub-title.

Other penalties. *Added by: VI.2005.2. Amended by: XLII.2018.10.*

328K. Without prejudice to any other punishment to which the offence may be liable under this Code or any other law, where the offender is a body corporate liable to punishment under the provisions of article 328J the Court may, at the request of the prosecution, order -

(*a*) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;

(*b*) the temporary or permanent closure of any establishment which may have been used for the commission of the offence;

(*c*) the compulsory winding up of the body corporate.

(*d*) exclusion from entitlement to public benefits or State aid;

(*e*) placing under judicial supervision:

Provided that for the purposes of sub-article (e), the judicial authorities may make use of the services offered by the Asset Recovery Bureau as established by law.

Forfeiture. *Added by: VI.2005.2. Amended by: III.2015.31.*

328L.(1) The court by or before which a person is convicted of an offence under any of articles 328F to 328I may make a forfeiture order in accordance with the provisions of this article.

(2) Where a person is convicted of an offence under articles 328F or 328G the court may order the forfeiture of any money or other property -

(*a*) which, at the time of the offence, he had in his possession or under his control and,

(*b*) which, at that time, he intended should be used, or which he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorist activities.

(3) Where a person is convicted of an offence under article 328H the court may order the forfeiture of the money or other property -

(*a*) to which the arrangement in question related, and

(*b*) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorist activities.

(4) Where a person is convicted of an offence under article 328I the court may order the forfeiture of the money or other property to which the arrangement in question related.

(5) Where a person is convicted of an offence under any of articles 328F to 328I, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(6) Where a person other than the convicted person claims to be the owner of, or otherwise interested in, anything which can be forfeited by an order under this article, the court shall give him an opportunity to be heard before making an order.

Jurisdiction. *Added by: VI.2005.2. Amended by: VIII.2015.20; XLII.2018.11.*

328M. Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offences laid down in this Sub-title where -

(*a*) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;

(*b*) the offender is a Maltese national or permanent resident within the meaning of article 5(1)(*d*) in Malta;

(*c*) the offender is a person suspected or convicted of an offence laid down in this Sub-title and whose surrender or extradition to another country for such an

offence is refused by Malta even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;

(*d*) the offence is committed for the benefit of a legal person established in Malta;

(*e*) the offence is an offence under article 328B or an offence under article 328D which involves a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta;

(*f*) the offence is committed against the institutions or people of Malta or against an institution of the European Union or a body set up in accordance with the Treaties and based in Malta:

Provided that for the purposes of this paragraph:

"the European Union" shall have the same meaning assigned to it by article 2(1) of the European Union Act;

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"the Treaties" means the Treaty establishing the European Community done at Rome on the 25th March, 1957 and the Treaty on European Union done at Maastricht on the 7th February, 1992, and the Protocols annexed thereto.

(*g*) Where the offence falls within the jurisdiction of Malta and any other Member State of the European Union and where such Member States can validly prosecute on the basis of the same facts, the said Member States shall cooperate in order to decide which one of them shall prosecute the offenders, having regard to the following factors:

(i) the Member State shall be that in the territory of which the offence was committed;

(ii) the Member State shall be that of which the offender is a national or resident;

(iii) the Member State shall be the country of origin of the victims;

(iv) the Member State shall be that in the territory of which the offender was found:

Provided that for the purposes of this paragraph cooperation between Member States of the European Union may be facilitated through recourse to Eurojust;

"Eurojust" shall have the same meaning assigned to it by Council Decision 2002/187/JHA of 28 February 2002 of the European Union.

Mitigation of punishment. *Added by: XLII.2018.11.*

328MA. The punishment awarded under this Sub-title may be reduced by up to two degrees if the offender:

(a) renounces terrorist activity; and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:

(i) prevent or mitigate the effects of the offence;

(ii) identify or bring to justice the other offenders;

(iii) find evidence; or

(iv) prevent further offences referred to in articles 328A to 328D and 328F.

Sub-title IV B

Added by: XI.2009.7.

OF PIRACY

Definition of piracy. *Added by: XI.2009.7.*

328N. (1) For the purposes of this subtitle "piracy" means any of the following acts:

(*a*) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(*b*) any of the acts referred to in paragraph (*a*) committed by the crew or passengers of a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft;

(*c*) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(*d*) any act of inciting or of knowingly facilitating an act described in paragraph (*a*) or (*b*) or (*c*).

(2) For the purposes of this Title, a ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in sub-article (1) or if the ship or aircraft has been used to commit any such act and the ship or aircraft remains under the control of the person guilty of that act.

(3) Any person guilty of piracy under this article shall be liable:

(*a*) where the offence consists in any of the acts referred to in sub-article (1)(*a*) and (*b*) when accompanied with the loss of life of any person, to the punishment of imprisonment for life;

(*b*) where the offence consists in any of the acts referred to in (1)(*a*) and (*b*) when not accompanied with the loss of life of any person, to the punishment of

imprisonment not exceeding thirty years;

(*c*) where the offence consists in any act referred to in sub-article (1)(*c*), to the punishment of imprisonment for a term not exceeding eight years;

(*d*) where the offence consists in any act referred to in sub-article (1)(*d*), to the punishment laid down for the act incited or facilitated.

Jurisdiction. *Added by: XI.2009.7. Amended by: VIII.2015.21.*

328O. (1) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this article where the offence is committed:

(*a*) by any citizen of Malta or permanent resident in Malta;

(*b*) by any person while on board any ship, vessel or aircraft belonging to Malta;

(*c*) by any person against any ship, vessel or aircraft belonging to Malta or against the person or property of any citizen of Malta or permanent resident in Malta.

(2) For the purposes of this article a ship, vessel or aircraft shall be deemed to belong to Malta in the same circumstances mentioned in article 5(2).

(3) For the purposes of this article, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(*d*).

GENERAL PROVISIONS APPLICABLE TO THIS TITLE

Punishment in respect of offences against property accompanied with offences against the person.

329. The punishments established in the respective articles of this Title for any offence against property accompanied with homicide, bodily harm, or confinement of the person, shall always be applied if the act of violence has been completed, even though the offence against the property was merely attempted.

Unlawful entry into houses, etc. *Added by: IX.1859.21. Amended by: VI.1871.25; XLIX.1981.4; III.2002.69.*

330. In the case of any entry into any house or other place or enclosure by any of the means mentioned in articles 264, 265 and 266, although there is no evidence of any act constituting an attempt to commit another offence, the offender shall, for the mere entry as aforesaid, on conviction, be liable -

(*a*) if the circumstances show that the object of the offender was to commit theft or damage to property or any offence against the person as defined in article 5(1)(*d*), or if it is proved that the offender was previously convicted of any such offence or of any of the offences referred to in article 338(*i*) and (*w*), to imprisonment for a term from five to eighteen months;

(*b*) in any other case, to imprisonment for a term not exceeding three months or to a fine (*multa*).

No criminal action for offences against the property of descendants, etc. *Amended by: XI.1900.49; XX.2005.16; XXIII.2017.12.*

331. Except in the cases referred to in articles 316, 317 and 318, no criminal proceedings may be instituted except on the complaint of the injured party for offences committed against the property of any descendant or relative by affinity in the descending line, or of any one of the spouses, unless such offences be accompanied with homicide, bodily harm or confinement of the person or with a threat to kill or to inflict bodily harm.

Criminal action for offences against the property of ascendants, etc., to be instituted on complaint of injured party. *Amended by: XI.1900.49.*

332. Except in the cases referred to in articles 316, 317 and 318, no criminal proceedings may be instituted except on the complaint of the injured party for offences committed against the property of any ascendant or relative by affinity in the ascending line, or of a brother or sister or of any relative by affinity in the same degree, unless such offences be accompanied with homicide, bodily harm, other than a slight bodily harm of small consequence, or with confinement of the person.

Outsiders excepted. *Amended by: XI.1900.49.*

333. The limitations mentioned in the last two preceding articles shall not operate in favour of such other persons as may have taken part in the commission of the offence.

Receiving stolen property. *Amended by: XI.1900.50; XXIX.1990. 16.*

334. Whosoever shall in Malta knowingly receive or purchase any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or shall knowingly take part, in any manner whatsoever, in the sale or disposal of the same, shall, on conviction, be liable -

(*a*) if the property has been obtained by theft, to the punishment established for theft, according to the value of the property;

(*b*) if the property has been obtained by means of any of the various offences relative to unlawful acquisition and possession of property, to the punishment established for such unlawful acquisition or possession;

(*c*) if the property has been obtained by fraud, to the punishment established for the particular fraud by which the property was obtained:

Exemption from punishment.

Provided that the offender shall be exempted from any punishment in respect of any of the offences referred to in this article, if, before any criminal proceedings are instituted against him and within three days after receiving, purchasing, or taking part in the purchase, sale or disposal as aforesaid, he shall deliver to the competent authority the property received, purchased, sold or disposed of, and shall make known the perpetrators of the offence:

Provided further that for the purpose of this article such property shall only be deemed to have been stolen, misapplied or obtained by means of any offence committed abroad if it has been obtained by any act of commission or omission which, if committed in Malta, would have amounted to any of the offences mentioned in paragraphs (*a*), (*b*) and (*c*).

Failure to inform about stolen, etc., property. *Added by: III.2002.70.*

334A. Whosoever, on becoming aware that any property in his possession is stolen property or property misapplied or obtained by means of any offence, fails to give notice thereof to the Executive Police within a week of becoming so aware, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (*multa*).

Rule as to estimation of damage.

335. In any offence the punishment whereof varies according to the amount of the damage caused, such amount shall not be estimated by the gain made by the offender nor shall it include any interest accruing thereon, but it shall only be represented by the actual damage suffered by the injured party at the time of the offence.

Estimation of damage caused both to relative and outsider.

336. Where by the same offence the offender shall injure the property of any of the persons referred to in article 331 and also the property of any other person, and the punishment varies according to the amount of the damage caused, such amount shall be represented solely by the amount of the damage caused to the property of such other person.

Decrease of punishment. *Substituted by: III.2002.71.*

337. (1) In cases of fraud, the prescribed punishment shall be diminished by one or two degrees if, previously to the commencement of any criminal proceedings against the offender, the damage caused by the offence shall have been fully made good.

(2) In cases of theft, whether simple or aggravated, as well as any offence of voluntary damage to property committed in the course of the execution of the offence of theft, the prescribed punishment shall be diminished by two degrees if, prior to his arraignment in court in connection with that theft:

(*a*) the offender discloses to the competent authority any person who may have received or purchased from him, or who may have taken part in the sale or disposal of, the stolen property, and

(*b*) (i) either he delivers to the competent authority all the property stolen by him, making good to the injured party any damage that may have been caused to the property, or

(ii) where the property has not been recovered, he pays to the injured party the full value of the property so stolen; and

(*c*) fully makes good to the injured party any damage, to other moveable or immoveable property, caused by, or in the course of the execution of, the offence of theft.

(3) The prescribed punishment in the case of the offences mentioned in sub-article (2) may be diminished by one degree if the offender complies with the provisions of that sub-article after his arraignment in court as aforesaid.

(4) The provisions of sub-articles (2) and (3) shall not apply -

(*a*) in the case of theft aggravated by violence consisting in wilful homicide, attempted homicide, wilful bodily harm or confinement of the person;

(*b*) in the case of theft aggravated by violence directed against any of the persons mentioned in article 276A;

(*c*) in the case of theft in the course of the execution of which a death or bodily harm ensues as provided in article 226A.

(5) The circumstances mentioned in sub-articles (1) and (2) shall not be considered as special or exceptional reasons for the purpose of article 21.

Traffic in persons to enter or leave Malta illegally. *Added by: III.2002.72. Amended by: VI.2005.3; L.N. 407 of 2007; VIII.2015.22.*

337A. (1) Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person shall, without prejudice to any other punishment under this Code or under any other law, be liable to the punishment of imprisonment from six months to five years or to a fine (*multa*) of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) or to both such fine and imprisonment and the provisions of articles 21 and 28A and those of the Probation Act shall not apply:

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Provided that where the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid number more than three the punishment shall be increased by one to three degrees:

Provided also that where the offence is committed -

(*a*) as an activity of a criminal organization; or

(*b*) while endangering the lives of the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid,

the punishment shall always be increased by two degrees even when the first proviso does not apply.

(2) Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offence in this article where -

(*a*) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;

(*b*) the offender is a Maltese national or permanent resident in Malta within the meaning of article 5(1)(*d*);

(*c*) the offence is committed for the benefit of a legal person established in Malta.

Corporate criminal liability. *Added by: VI.2005.4.*

337AA.* The provisions of articles 328J and 328K shall apply *mutatis mutandis* to any offence under Sub-title IV of this title and to the offence in article 337A.

*originally, as enacted by Act VI of 2005, this article was numbered article 337B.

Sub-title V

OF COMPUTER MISUSE

Added by:
III.2001.27.

Interpretation.
Added by:
III.2001.27.
Amended by:
VII.2010.26;
VII.2010.25;
VIII.2015.23.

337B. (1) For the purposes of this Sub-title the following definitions, unless the context otherwise requires, shall apply:

"computer" means an electronic device that performs logical, arithmetic and memory functions by manipulating electronic or magnetic impulses, and includes all input, output, processing, storage, software and communication facilities that are connected or related to a computer in a computer system or computer network;

"computer data" means any representation of facts, information or concepts in a form suitable for processing in an information system or in a computer system, including a program suitable to cause a computer system to perform a function;

"computer network" means the interconnection of communication lines and circuits with a computer through a remote device or a complex consisting of two or more interconnected computers;

"computer output" or "output" means a statement or a representation of data whether in written, printed, pictorial, screen display, photographic or other film, graphical, acoustic or other form produced by a computer;

"computer software" or "software" means a computer program, procedure or associated documentation used in the operation of a computer system;

"computer supplies" means punched cards, paper tape, magnetic tape, disk packs, diskettes, CD-roms, computer output, including paper and microform and any storage media, electronic or otherwise;

"computer system" means a set of related computer equipment, hardware or software;

"function" includes logic, control, arithmetic, deletion, storage, retrieval and communication of data or telecommunication to, from or within a computer;

"information system" means a device or group of inter-connected or related devices, one or more of which, pursuant to a programme, automatically processes computer data, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purposes of its or their operation, use, protection and maintenance;

"supporting documentation" means any documentation used in the computer system in the construction, clarification, implementation, use or modification of the software or data.

(2) A reference in this Sub-title to software includes a

reference to a part of the software.

(3) A reference in this Sub-title to a computer includes a reference to a computer network.

(4) A reference in this Sub-title to data, software or supporting documentation held in a computer or computer system includes a reference to data, software or supporting documentation being transmitted through a computer network.

(5) For the purposes of this Sub-title, a person uses software if the function he causes the computer to perform:

(*a*) causes the software to be executed; or

(*b*) is itself a function of the software.

(6) A reference in this Sub-title to any software or data held in a computer includes a reference to any software or data held in any removable storage medium which is for the time being in the computer.

Unlawful access to, or use of, information. *Added by: III.2001.27. Amended by: VII.2010.26; VIII.2015.24; XIV.2023.4.*

337C. (1) A person who without authorisation does any of the following acts shall be guilty of an offence against this article -

(*a*) uses a computer or any other device or equipment to access any data, software or supporting documentation held in that computer or on any other computer, or uses, copies or modifies any such data, software or supporting documentation;

(*b*) outputs any data, software or supporting documentation from the computer in which it is held, whether by having it displayed or in any other manner whatsoever;

(*c*) copies any data, software or supporting documentation to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;

(*d*) prevents or hinders access to any data, software or supporting documentation;

(*e*) hinders or impairs the functioning or operation of a computer system, software or the integrity or reliability of any data;

(*ee*) hinders or interrupts the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible;

(*f*) takes possession of or makes use of any data, software or supporting documentation;

(*g*) installs, moves, alters, damages, deletes, deteriorates, suppresses, destroys, varies or adds to any data, software or supporting documentation or renders such data inaccessible;

(*h*) discloses a password or any other means of access,

access code or other access information to any unauthorised person;

(*i*) uses another person's access code, password, user name, electronic mail address or other means of access or identification information in a computer or in any manner infringes any security measure to gain access without authorization to the whole or to any part of an information system;

(*j*) discloses any data, software or supporting documentation unless this is required in the course of his duties or by any other law;

(*k*) intercepts by technical means, non-public transmissions of data, to, from or within an information system or a computer system, including electromagnetic emissions from an information system or a computer system carrying such computer data;

(*l*) produces, sells, procures for use, imports, distributes, possesses or otherwise makes available a device, including a computer program, designed or adapted primarily for the purpose of committing any of the acts in paragraphs (*a*) to (*k*) or a computer password, access code, or similar data by which the whole or any part of an information system is capable of being accessed.

(2) For the purposes of this Sub-title:

(*a*) a person shall be deemed to act without authorisation if he is not duly authorised by an entitled person;

(*b*) a person shall be deemed to be an entitled person if the person himself is entitled to control the activities defined in sub-article (1)(*a*) to (*k*) or in article 4(*a*) and (*b*) of this Sub-title.

(3) For the purposes of sub-article (1):

(*a*) a person shall be deemed to have committed an offence irrespective of whether in the case of any modification, such modification is intended to be permanent or temporary;

(*b*) the form in which any software or data is output and in particular whether or not it represents a form in which, in the case of software, it is capable of being executed or, in the case of data, it is capable of being processed by a computer, is immaterial.

(4) For the purposes of sub-article (1)(*f*), a person who for the fact that he has in his custody or under his control any data, computer software or supporting documentation which he is not authorised to have, shall be deemed to have taken possession of it.

Misuse of hardware. *Added by: III.2001.27.*

337D. Any person who without authorisation does any of the following acts shall be guilty of an offence against this article -

(*a*) modifies computer equipment or supplies that are used or intended to be used in a computer, computer system

or computer network;

(*b*) takes possession of, damages or destroys a computer, computer system, computer network, or computer supplies used or intended to be used in a computer, computer system or computer network or impairs the operation of any of the aforesaid.

Commission of an offence outside Malta. *Added by: III.2001.27. Amended by: XIV.2023.5.*

337E. (1) If any act is committed outside Malta which, had it been committed in Malta, would have constituted an offence against the provisions of this Sub-title, it shall, if the commission affects any computer, software, data or supporting documentation which is situated in Malta or is in any way linked or connected to a computer in Malta, be deemed to have been committed in Malta.

(2) Notwithstanding sub-article (1), if the offence is committed partially outside Malta and which had it been committed in Malta constituted an offence contrary to the provisions of this Sub-title, said offence shall be deemed to have been committed in Malta.

Offences and penalties. *Added by: III.2001.27. Amended by: L.N. 407 of 2007; VIII.2015.25.*

337F. (1) Without prejudice to any other penalty established under this Sub-title, any person who contravenes any of the provisions of this Sub-title shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) or to imprisonment for a term not exceeding four years, or to both such fine and imprisonment.

(2) The penalty shall be increased to a fine (*multa*) of not less than five hundred euro (€500) and not exceeding one hundred and fifty thousand euro (€150,000) or to imprisonment for a term from twelve months to ten years, or to both such fine and imprisonment in each of the following cases where the offence:

(*a*) constitutes an act which is in any way detrimental to any function or activity of Government, or hampers, impairs or interrupts in any manner whatsoever the provision of any public service or utility, whether or not such service or utility is provided or operated by any Government entity;

(*b*) causes serious damage;

(*c*) is committed against a critical infrastructure facility information system;

(*d*) is committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841JHA of 24 October 2008 on the fight against organised crime;

(*e*) is committed through the misuse of personal data of another person, with the aim of gaining the trust of a third party, thereby causing prejudice to the rightful identity owner:

Provided that where a person is found guilty of an offence against this sub-article for a second or subsequent time, the minimum of the penalty for such an offence shall not be less than five thousand euro (€5,000):

Provided further that in this article "infrastructure facility" shall have the same meaning assigned to it by article 314A(4).

(3) The penalties established under sub-article (2) shall also apply in the case of any offence against any of the provisions of this Sub-title -

(*a*) where the offence is committed in any place by an employee to the prejudice of his employer or to the prejudice of a third party, if his capacity, real or fictitious, as employee, shall have afforded him facilities in the commission of the offence; and

(*b*) with the exception of sub-article (2), where the offence committed by a person is the second or subsequent offence against any of the provisions of this Sub-title.

(4) A person who produces any material or does any other act preparatory to or in furtherance of the commission of any offence under this Sub-title shall be guilty of that offence and shall on conviction be liable to the same punishment provided for the offence.

(5) Any person who is an accomplice in the commission of an offence against this Sub-title or who in any way incites, aids or abets such commission shall be liable to the same penalties contemplated for such an offence.

(6) It shall not be necessary for the prosecution to negative by evidence any authorisation required under this Sub-title and the burden of proving any such authorisation shall lie with the person alleging such authorisation:

Provided that this burden shall not be considered to have been discharged with the mere uncorroborated testimony of the person charged.

Search and seizure. *Added by: III.2001.27.*

337G. The Minister may, for the purposes of this Sub-title, by regulations prescribe:

(*a*) the manner in which the Police may search computers, computer systems or computer supplies and seize data or software stored therein;

(*b*) procedures and methods for handling evidence that is in an electronic form.

Applicability of articles 121D, 208B(5), 248E(4) and 328K. *Added by: XI.2009.8. Amended by: VIII.2015.26.*

337H. (1) The provisions of articles 121D, 208B(5), 248E(4) and 248E(4A) shall apply *mutatis mutandis* to any offence under this Sub-title.

(2) The provisions of article 328K shall also apply *mutatis mutandis* to any offence under this Sub-title as if the reference therein to article 328J were a reference to article 121D.

PART III

OF CONTRAVENTIONS AND PUNISHMENTS

Title I
OF CONTRAVENTIONS

Sub-title I

OF CONTRAVENTIONS AFFECTING PUBLIC ORDER

Contraventions affecting public order.

338. Every person is guilty of a contravention against public order, who -

(*a*) without permission, cuts any grass in or about any fortification;

(*b*) throws any building material or rubbish in any ditch or in the vicinity of any fortification;

(*c*) not being one of the persons referred to in article 62, in case of a tumult or other calamity, or in the case of any flagrant offence or of a hue and cry, refuses, without reasonable excuse, to give help, or refuses, when so required, to give information thereof, or gives false information or particulars, to any person entrusted with a public service in the actual exercise of his duties; *Amended by: IV.1856.18; XII.1904.48; XII.1913.9.*

(*d*) allows any insane person under his custody, whether furious or otherwise, to go about at large;

(*e*) not being one of the persons referred to in article 62, is present at any attempt against the life or property of any person and fails to give information thereof to the Executive Police;

(*f*) without permission keeps a public school;

(*g*) refuses to give, or untruthfully gives to any public officer or any other person entrusted with a public service in the actual exercise of his duties, his name, surname, address and other particulars; *Amended by: IV.1856.19; XII.1913.9.*

(*h*) *Repealed by: X.1998.52.* *Amended by: XII.1914.10; XXXII.1986.5.*

(*i*) not possessing property of any kind, and having no other means of subsistence, fails to show that he has habitually endeavoured to engage in or exercise some art, trade or other occupation; *Amended by: VIII.1909.31.*

(*j*) without being duly licensed, opens or keeps any place for public divine worship;

(*k*) refuses to receive at the established value, any money lawfully current;

(*l*) taking advantage of the credulity of others, for the purpose of gain, pretends to be a diviner, fortune-teller or an interpreter of dreams;

(*m*) at night time, disturbs the repose of the inhabitants by rowdiness or bawling, or in any other manner;

(*n*) in any public place, wears any mask, or disguises himself, except at the time and in the manner allowed by law;

Amended by: XV.1937.5.

(*o*) without permission, or against the prohibition of the respective authorities, wears any civil, naval, military or air force uniform, or any ecclesiastical habits or vestments;

(*p*) leaves exposed in any street, open space, field, or other public place, any ladder, iron bar, weapon, or other instrument, of which an improper use might be made by thieves or other wrong-doers, or which might cause any injury;

Amended by: XLI.1933.1.

(*q*) in the harbours, on the seashore or in any other public place, exposes himself naked or is indecently dressed;

(*r*) in any street, or open space, quarrels or fights, although jestingly, to the annoyance or injury of passers-by;

Amended by: IV.1856.20; XI.1905.15.

(*s*) drives animals (whether of burden or riding animals) over a drawbridge, with or without a vehicle, otherwise than at an amble;

(*t*) engages in any conspiracy with persons of the same profession or business with the object of raising or lowering the price of any article, or the wages of labour, or of imposing conditions to the prejudice of the public, in matters relating to such profession or business;

Amended by: XXVI.1927.1.

(*u*) unlawfully tears or pulls down any public notice affixed by the authorities, or any poster or placard affixed in any public place or on any private property with the previous consent, express or implied, of the owner, during election time, by any political party or person, containing the names of the candidates and appealing to citizens to vote for such candidates, or covers up, wholly or in part, such poster or placard with any other poster or placard, or in any other manner covers up the print of such poster or placard:

Provided that in any such public place no party or independent candidate may make use of a larger space than that made use of by any other party or independent candidate, having regard to the space available in such public place and to the number of such parties or independent candidates, and for such purpose the Police shall, by regulations to be published in the Gazette, fix the space to be thus made use of by any party or independent candidate and shall

remove any poster or placard which may have been affixed in contravention of the said regulations by encroaching upon the space assigned to others;

(*v*) causes any physician, surgeon, obstetrician, or clergyman, to attend on or visit any person whom he falsely represents to be sick;

(*w*) leads an idle and vagrant life; *Amended by: XIII.1899.1; XIII.1918.11.*

(*x*) in any public place importunes any person to beg alms; *Added by: XLIII.1966.2.*

(*y*) being a parent or a spouse, leaves his children or spouse in want, whether in consequence of his or her disorderly living or indolence; *Substituted by: XXI.1993.86.*

(*z*) when so ordered by a court or so bound by contract fails to give to a person the sum fixed by that court or laid down in the contract as maintenance for that person, within fifteen days from the day on which, according to such order or contract, such sum should be paid: *Added by: XIV.1983.10. Substituted by: XXXII.1986.5; III.2002.73. Amended by: XVI.2006.7; XI.2009.9.*

Provided that, notwithstanding any other provision of this Code, the criminal action for an offence under this paragraph is barred by the lapse of six months:

Provided further that where the offender is a recidivist in a contravention under this paragraph the offender shall be liable to the punishment of detention not exceeding three months or a fine (*multa*) not exceeding two hundred euro (€200) or imprisonment for a term not exceeding two (2) months;

(*aa*) leaves his parents in want in consequence of his disorderly living or his indolence; *Added by: IX.1859.22.*

(*bb*) even though in a state of intoxication, publicly utters any obscene or indecent words, or makes obscene acts or gestures, or in any other manner not otherwise provided for in this Code, offends against public morality, propriety or decency; *Amended by: IX.1911.13. Substituted by: XXVII.1975.22.*

(*cc*) runs violently in any street or open space, with the risk of running into and injuring other persons;

(*dd*) in any manner not otherwise provided for in this Code, wilfully disturbs the public good order or the public peace;

(*ee*) disobeys the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, unless such disobedience or interference falls under any other provision of this Code or of any other law; *Added by: IV.1856.21. Amended by: XII.1913.9.*

Added by: III.1885.5. Amended by: IV.1888.1; XI.1905.15; VIII.1909.31.

(*ff*) in any public place or place open to the public, is found drunk and incapable of taking care of himself; or in any public place or place open to the public, being in charge of a child under the age of seven years, or of any horse, mule or ox, or steam engine, or of any vehicle, is manifestly in a state of intoxication, or, being in such a state, causes any annoyance or disturbance, or is in possession of firearms, or refuses to quit any wine and spirit shop, inn, tavern or lodging-house, or attempts to enter any passenger boat or vessel or other vehicle, or refuses to quit such boat, vessel or other vehicle notwithstanding the warning of the person in charge thereof not to enter into or to quit such boat, vessel or other vehicle;

Added by: I.1903.17. Amended by: VIII.1909.31; L.N. 4 of 1963.

(*gg*) except in the cases specially provided for in this Code or in any other law, performs any act without a licence from the competent authority, when such licence is required by any law or by any regulation made by the competent authority thereunder;

Added by: XII.1913.9.

(*hh*) in any case not otherwise provided for in this Code or in any other law, with intent to mislead the authorities, lays before such authorities any genuine act, affidavit or certificate, falsely representing the same as referring to himself, or to any other person;

Added by: XII.1913.9.

(*ii*) except as is allowed by law, and unless any other law provides for a higher punishment for the offence, makes or attempts to make or is in any way concerned in the making of any bet or wager including a bet or wager connected with any game, sport or event occurring in Malta or elsewhere; or who is present in any place while such betting or wagering is taking place;

Added by: XXXII.1986.5.

(*jj*) in any place, importunes any person to advertise, or to make such person acquire, any service, product, property or property rights whatsoever;

Added by: II.1967.2.

(*kk*) being a person over fifteen years of age, uses at any children's playground open to the public any playing equipment or similar facilities therein;

Added by: XXI.1993.86. Amended by: III.2002.73.

(*ll*) when ordered by a court or bound by contract to allow access to a child in his or her custody, refuses without just cause to give such access;

Added by: VII 2010.27.

(*mm*) uses gas canons or any other equipment that works manually or automatically, to produce noises, mainly intended to keep away animals from fields or other open spaces:

Provided that in such a case, besides awarding punishment, the Court shall also order the removal of the equipment.

Sub-title II

OF CONTRAVENTIONS AGAINST THE PERSON

Contraventions against the person.
Amended by: XXIX.2023.3.

339. (1) Every person is guilty of a contravention against the person who -

(*a*) challenges another to fight with stones;

(*b*) without inflicting any wound or blow, threatens others with stones or other hard substances, or throws the same, or takes up any other weapon against any person;

(*c*) throws stones or other hard substances at the terraces, roofs, windows, doors, courtyards, lamps or walls of houses of other persons, or of any other building; or knocks at the door, or rings the bell of any other person's house or building;

(*d*) attempts to use force against any person with intent to insult, annoy or hurt such person or others, unless the fact constitutes some other offence under any other provision of this Code;

(*e*) utters insults or threats not otherwise provided for in this Code, or being provoked, carries his insult beyond the limit warranted by the provocation;

(*f*) through carelessness or want of caution throws water, or other liquid, or filth upon any person;

(*g*) sets his dog at another person, or does not endeavour to restrain the same, when molesting any person;

(*h*) being authorized to correct any other person, exceeds the bounds of moderation:

Amended by: III.2014.6.

Provided that, for the avoidance of any doubt, corporal punishment of any kind shall always be deemed to exceed the bounds of moderation.

(*i*) frightens or terrifies any other person, in a manner that might cause harm to such person although it be done in jest;

(*j*) being in duty bound to take care of children, or of other persons incapable of taking care of themselves, neglects to take the necessary care of such children or persons;

(*k*) meeting in the street any abandoned or stray child, does not convey such child or immediately report the fact to the Executive Police, or does not otherwise provide for the safety of the child;

(*l*) pushes against any person in the street with the object of hurting or insulting such person;

(*m*) throws any dirt or filth at the door or against the wall of the house of any other person;

(*n*) annoys, vexes or scoffs at any imbecile, aged,

crippled, feeble or deformed person;

Added by: IV.1856.22.

(*o*) even though without the intent of committing another offence, enters into the dwelling-house of another person, against the express warning of such person, or without his knowledge, or under false pretences or by any other deceit.

Added by: XI.1900.51. Amended by: I.1903.18; VIII.1909.32,33.

(2) In the cases referred to in sub-article (1)(*d*), (*e*), (*l*) and (*o*), no proceedings shall be instituted except on the complaint of the injured party.

(3) Paragraph (1)(e) insofar as it refers to the uttering of insults or threats shall be interpreted to allow for the freedom of artistic expression and in particular the said paragraph shall not hinder artistic, satirical, comic or cultural expression, of any kind, which does not lead to credible and realistic threats to the personal liberty or security of the complainant or to his property.

Sub-title III

OF CONTRAVENTIONS AGAINST PROPERTY

Contraventions against property.

340. Every person is guilty of a contravention against property who -

(*a*) shoots doves or pigeons, other than wild doves or pigeons, belonging to any other person;

(*b*) in any field belonging to any other person, plucks or eats the fruit or other produce of such field;

(*c*) on finding any property mislaid or lost by any other person, fails, within three days, to give information thereof to the Executive Police;

(*d*) commits any other violation of another person's property, to the prejudice of the owner or holder thereof, not specified in the preceding paragraphs of this article, nor otherwise provided for in this Code.

Title II

OF THE PUNISHMENTS FOR CONTRAVENTIONS

Amended by: XI.1900.52.

Discretion of court in the application of the punishments for contraventions. *Amended by: XI.1900.58; IX.1911.14.*

341. In any case in which the punishments established for contraventions are to be applied, the court may, according to circumstances, apply such punishments, either severally or cumulatively.

342. In respect of the contravention under article 338(*bb*), where the act consists in uttering blasphemous words or expressions, the minimum punishment to be awarded shall in no case be less than a fine (*ammenda*) of eleven euro and sixty-five cents (€11.65) and the maximum punishment may be imprisonment for a term of three months - saving always the provisions of Title IV of Part II of Book First.

Minimum punishment for blasphemous words. *Added by: X.1949.2. Amended by: XIII.1983.5; L.N. 407 of 2007.*

343. On conviction for a contravention under article 340(*a*), the court shall, besides awarding punishment, order the offender to be disqualified from holding or obtaining a licence to carry a firearm of the class or description used in the commission of the contravention (including any airgun) for a period of twelve months.

Disqualification on conviction under article 340 *(a)*. *Added by: XVI.1963.2.*

344. It shall be lawful to seize and confiscate -

(*a*) *Repealed by: X.1998.52.*

(*b*) the ladders, iron bars, weapons and instruments mentioned in article 338 (*p*);

(*c*) any money found on any person committing an offence under article 338(*ii*).

Forfeiture of articles in certain contraventions. *Amended by: VIII.1857.10; III.1885.6; IV.1888.3; XXI.1944.2; IX.1982.2; XXXII.1986.6; X.1998.52.*

GENERAL PROVISION

345. In any matter not provided for in this Code, and which forms the subject of any particular law or regulation, such particular law or regulation shall apply.

Particular laws and regulations.

BOOK SECOND

LAWS OF CRIMINAL PROCEDURE

PART I

OF THE AUTHORITIES TO WHICH THE ADMINISTRATION OF CRIMINAL JUSTICE IS ENTRUSTED

Title I

Amended by: XXVIII.2021.3.

OF THE POWERS AND DUTIES OF THE ATTORNY GENERAL AND THE EXECUTIVE POLICE IN RESPECT OF CRIMINAL PROSECUTIONS

GENERAL

Duties of the Police. *Amended by: IV.1856.23; VIII.1990.3. Substituted by: III.2002.74. Amended by: XIII.2018.24.*

346. (1) It is the duty of the Police to preserve public order and peace, to prevent and to detect and investigate offences, to collect evidence, whether against or in favour of the person suspected of having committed that offence, and to bring the offenders, whether principals or accomplices, before the judicial authorities.

(2) Notwithstanding the generality of sub-article (1), where authorised by law and in the manner so provided, the Police may delay its immediate intervention for the prevention of the commission of an offence.

(3) In the carrying out of their duties, the Police shall take all measures necessary for the immediate protection of victims following an assessment as the case may be.

Statements by vulnerable witnesses. *Added by: V.2024.4.*

(4) Any minor, or victim of a sexual offence, or vulnerable victim or witness shall have the said interview and any statement made by him recorded by audio-visual means when interviewed by the police in the course of an investigation:

Provided that for the purposes of this sub-article, any audio-visually recorded interview or statement shall be admissible as evidence in any trial before a court of criminal judicature concerning the offence to which it relates.

Powers of the Attorney General. *Added by: XXVIII.2021.4. Amended by: V.2024.5.*

347A. Without prejudice to the provisions of sub-articles (1), (2) and (3) of article 346, the Attorney General shall have the following functions and powers:

(*a*) to delegate to the Commissioner of Police prosecutorial functions vested in the Attorney General; and

(*b*) notwithstanding anything provided in any other law, and in his discretion, to prosecute any offence, alone or together with the Executive Police or together with any other authority having prosecution powers.".

Complaint by the injured party. *Amended by: XIV.1889.45; XXX.1934.2; XXI.1971.26; XXII.1976.4; XLIX.1981.4. Substituted by: III.2002.74.*

347. The Police shall not institute criminal proceedings, except on the complaint of the injured party, in cases where the law does not allow criminal proceedings to be instituted without such complaint.

Tendering of assistance when required by head of household. *Amended by: XXII.1976.4. Substituted by: III.2002.74.*

348. Where the head of any household requires an officer of the Police to proceed to such house in order to ascertain any offence which has been committed or to secure the evidence relating thereto, the officer shall proceed thither with all convenient speed taking with him witnesses where practicable.

Powers according to law. *Substituted by: III.2002.74.*

349. (1) A police officer shall only have such powers as are vested in him by law and to the extent authorised by law and in this provision the word law has the same meaning assigned to it in article 124 of the Constitution.

Omission of precaution, formality or requirement not a bar to admissibility of evidence.

(2) The omission of any precaution, formality or requirement prescribed under this Title shall be no bar to proving, at the trial, in any manner allowed by law, the facts to which such precaution, formality or requirement relates.

Definitions. *Amended by: XI.1900.54. Substituted by: III.2002.74. Amended by: L.N. 274 of 2007; L.N. 246 of 2013; Amended by: IV.2014.18; XXVIII.2021.5.*

350. (1) In this Title, and subject to the provisions of sub-article (2):

"appropriate consent" means -

(*a*) in relation to a person who has attained the age of eighteen years, the consent of that person;

(*b*) in relation to a person who has not attained the age of eighteen years but has attained the age of fourteen years, the consent of that person and the consent of his parent or guardian;

(*c*) in relation to a person who has not attained the age of fourteen years, the consent of his parent or guardian;

"Attorney General" shall have the same meaning as assigned to it in article 2 of the Attorney General Ordinance and includes the Deputy Attorney General and other officers of the Attorney General.

Cap. 90.

"designated police station" means a police station designated by the Minister responsible for the Police by a notice published in the Gazette;

"excluded material" means:

(*a*) personal records acquired or created by a person in the course of any trade, business, profession or other occupation, or for purposes of any paid or unpaid office and which he holds in confidence;

(*b*) human tissue or tissue fluid which has been taken for the purpose of diagnosis or medical treatment and which a person holds in confidence;

(*c*) journalistic material which a person holds in confidence;

"intimate sample" means a sample of blood, semen or any other tissue fluid, or pubic hair, and includes a swab taken from a person's body orifice other than the mouth;

"intimate search" means a search which consists of the physical

examination of a person's body orifices other than the mouth;

"items subject to legal privilege" means any communication between a professional legal adviser and his client or any person representing his client and any document or record enclosed with or referred to in such communication and made in connection with the giving of legal advice or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, but the expression does not include items held with the intention of furthering a criminal purpose;

"journalistic material" means material in the possession of a person who acquired or created it for the purposes of journalism and a person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes;

"non-intimate sample" includes -

(*a*) a sample of hair other than pubic hair;

(*b*) a sample taken from a nail or from under a nail;

(*c*) a swab taken from any part of a person's body including the mouth but not any other body orifice;

(*d*) urine or saliva;

(*e*) a footprint or a similar impression of any part of a person's body other than a part of his hand;

(*f*) a voice sample;

"personal records" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating -

(*a*) to his physical or mental health; or

(*b*) to spiritual counselling or assistance given or to be given to him; or

(*c*) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who by reason of his office or occupation has responsibilities for his personal welfare or by reason of an order of a court has responsibilities for his supervision;

"Schengen Information System" shall have the same meaning assigned to it by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System and Regulation (EC) No. 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System.

(2) For the purpose of this article:

(*a*) a person holds journalistic material in confidence if -

(i) he holds it subject to such an undertaking, restriction or obligation; and

(ii) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism;

(*b*) a person holds material other than journalistic material in confidence if he holds it subject -

(i) to an express or implied undertaking to hold it in confidence; or

(ii) to a restriction on disclosure or an obligation of secrecy contained in this Code or in any other law.

Sub-title I

POWER TO STOP AND SEARCH

Power to stop and search. *Amended by: III.1937.2; XX.1959.4; XXVII.1975.23. Substituted by: III.2002.74. Amended by: L.N. 274 of 2007.*

351. (1) A police officer may, in a public place, or in any place to which the public is admitted, even against payment of an entrance fee, search any person or vehicle, if he has a reasonable suspicion that the search will discover the possession of things, which are prohibited, stolen or acquired as the result of any offence whatsoever, or which may be used or may have been used in the commission of an offence or which may serve in the investigation of an offence.

(2) For the purposes of sub-article (1), the Police may stop a person or a vehicle until the search is performed and shall seize any thing discovered during the search and the possession of which is prohibited or which may be connected with an offence.

(3) Pursuant to and for the purposes of the Convention of the 19th June, 1990 implementing the Schengen Agreement of the 14th June, 1985 an offence under this article shall be deemed to be an offence even when committed outside Malta.

Warrant. *Substituted by: IV.1994.9; III.2002.74.*

352. Where the search to be performed is required in an unattended vehicle and it is not possible to obtain the attendance of its registered owner, then a police officer may only carry out the search if he has a warrant from a superior officer not below the rank of an inspector.

Limitation as to search, etc. *Amended by: XI.1900.55; L.N. 46 of 1965; VIII.1990.3. Substituted by: III.2002.74.*

353. Except in urgent cases and when a person is apprehended *in flagrante delicto* nothing in this Title authorises the search of a person by a police officer of the opposite sex, or that a search be conducted by a police officer not in uniform unless clearly identified by the production of a police identity card.

Report on search. *Substituted by: III.2002.74.*

354. Anything seized as a result of a search under the preceding articles of this title shall be preserved and the Police carrying out the search shall draw up a report stating all the particulars of the

search and including a detailed list of the things so seized.

Sub-title II

ROAD CHECKS

Conditions for road checks. *Amended by: VIII.1857.11; V.1868.20. Substituted by: III.2002.74. Amended by: L.N. 247 of 2007; XI.2018.25.*

355. The Police may organise a road check where there are reasonable grounds for believing that a check on vehicles in or passing through a locality may lead to -

(*a*) the arrest of a person who has committed or is reasonably suspected of having committed or of being about to commit a serious crime or

(*b*) the discovery of anything the possession of which is prohibited or restricted by law or which is connected in any way whatsoever with the commission of a serious crime or which is evidence of any such crime; or

(*c*) the arrest of any person whose arrest has been ordered by a court or any other lawful authority or who is otherwise unlawfully at large; or

(*d*) the ascertainment that a person is not abiding by a condition lawfully imposed on him by a court; or

(*e*) the ascertainment of violations of any law regarding motor vehicles or traffic regulation; or

(*f*) the arrest, or ascertainment of whereabouts, of a person in respect of whom an alert has been entered in the Schengen Information System; or

(*g*) the discovery of any property in respect of which an alert has been entered in the Schengen Information System:

Provided that for the purposes of this article "serious crime" means any crime liable to the punishment of imprisonment.

Exercise of road check. *Added by: III.2002.74.*

355A. (1) For the duration of the road check the Police may stop all or any vehicles passing through or in the locality where the road check is being organised.

(2) Where a vehicle has been stopped in pursuance of the provisions of this Sub-title that vehicle may be searched by the Police.

Authorisation. *Added by: III.2002.74.*

355B. A road check under this Sub-title may only be organised upon an authorisation in writing by a police officer not below the rank of Inspector unless the matter admits of no delay in which case such authorisation may be given orally by a police officer not below the rank of sergeant and reduced to writing as soon as practicable.

355C. Notwithstanding anything contained in the preceding articles of this Sub-title, where in the course of a road check, evidence is found of the commission of an offence other than that in respect of which the road check was organised, the Police shall also be entitled to investigate such offence and where appropriate to institute proceedings for that offence.

Evidence of other offences. *Added by: III.2002.74.*

355D. The provisions of this Sub-title shall be without prejudice to any power vested in the Police by any other law to stop vehicles for purposes other than those mentioned in this Sub-title.

Saving of other laws. *Added by: III.2002.74.*

Sub-title III

POWERS OF ENTRY, SEARCH AND SEIZURE UNDER WARRANT

355E. (1) Saving the cases where the law provides otherwise, no police officer shall, without a warrant from a Magistrate, enter any premises, house, building or enclosure for the purpose of effecting any search therein or arresting any person who has committed or is reasonably suspected of having committed or of being about to commit any offence unless -

Conditions for search of premises, etc. *Added by: III.2002.74. Amended by: L.N. 247 of 2007; XI.2018.25; XIII.2018.24*

(*a*) the offence is a crime and there is imminent danger that the said person may escape or that the *corpus delicti* or the means of proving the offence will be suppressed; or

(*b*) the person is detected in the very act of committing a crime; or

(*c*) the intervention of the Police is necessary in order to prevent the commission of a crime; or

(*d*) the entry is necessary for the execution of any warrant or order issued by any other competent authority in the cases prescribed by law; or

(*e*) the arrest is for the purpose of apprehending a person who is unlawfully at large after escaping from lawful arrest or detention; or

(*f*) the entry is necessary for purposes of:

(i) executing the arrest, or ascertaining the whereabouts, of a person in respect of whom an alert has been entered in the Schengen Information System and there is an imminent danger that the said person may escape; or

(ii) discovering any property in respect of which an alert has been entered in the Schengen Information System and there is an imminent danger that the property may be concealed, lost, damaged, altered or destroyed; or

(*g*) the entry is necessary for the protection of any person.

(2) The expression "enclosure" does not include any plot of land enclosed by rubble walls.

(3) A warrant may also be issued by a Magistrate as mentioned in sub-article (1) for the purpose of:

(*a*) effecting the arrest or ascertaining the whereabouts of a person in respect of whom an alert has been entered in the Schengen Information System; or

(*b*) discovering and seizing any property in respect of which an alert has been entered in the Schengen Information System.

Subsidiary powers of Police in execution of warrants. *Added by: III.2002.74.*

355F. In cases where a police officer is empowered to enter into any of the places mentioned in the last preceding article, it shall be lawful for such officer to open or break any door or window, if, after giving notice of his office and object, he cannot otherwise obtain entry.

Scope of search and of search warrant. *Added by: III.2002.74.*

355G. (1) Any entry and search warrant issued under this Sub-title and any search or seizure made under the provisions of this Sub-title shall not extend to legal privilege or to any excluded material.

(2) An entry and search warrant issued under this Sub-title shall be deemed to have been granted to the police officer or officers executing it.

(3) Without prejudice to the right of obtaining a new warrant for the same purpose, an entry and search warrant may not be executed after the lapse of one (1) month from the date of issue.

Times for execution of warrant. *Added by: III.2002.74.*

355H. No warrant of entry and search may be executed after sunset unless the Magistrate has otherwise authorised in the warrant, or unless the executing Police officer has reasonable cause to believe that the purpose of the entry and search will be frustrated if the execution of the warrant is delayed.

Copy of warrant to person. *Added by: III.2002.74.*

355I. The executing officer shall hand over a copy of the warrant to the person occupying and present at the place searched or to any other person who appears to the said officer to be in charge of the same place and who happens to be present during the search. If there is no person present who appears to the executing officer to be in charge of the premises the copy of the warrant shall be left in an easily visible place on the premises.

Limitation. *Added by: III.2002.74.*

355J. A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued:

Provided that if, in the course of the search, offences other than the offence or offences mentioned in the warrant are discovered, the search may extend to the extent required for the purposes of such other offences.

Sub-title IV

POWERS OF ENTRY AND SEARCH WITHOUT WARRANT

Cases admitting of no delay. *Added by: III.2002.74.*

355K. Any police officer may enter and search without a warrant any premises, house, building or enclosure in the circumstances laid down in article 355E(1)(*a*) to (*e*).

Entry and search after arrest. *Added by: III.2002.74.*

355L. (1) The Police have the power to enter and search any premises, house, building or enclosure used, occupied or controlled, even temporarily, by a person who is under arrest, if they have reasonable grounds for suspecting that there is evidence, other than items subject to legal privilege, that relates to the offence or a connected offence, and such search shall be limited to the extent that is reasonably necessary for discovering such evidence:

Provided that if offences other than the offence or offences for which the person was arrested are discovered in the course of the search then the search may extend to the extent required for the purposes of such other offences.

(2) Without prejudice to the provisions of Sub-title V, the Police may in the course of a search carried out in pursuance of the provisions of sub-article (1) seize and retain anything not subject to legal privilege and which constitutes relevant evidence for the purpose of any offence mentioned in the same sub-article.

Limitation. *Added by: III.2002.74.*

355M. (1) The powers mentioned in article 355L may be exercised by a police officer not below the rank of inspector or by officers of a lower rank if so authorised in writing by an officer not below the rank of inspector.

(2) Where the police officers on the scene are all below the rank of inspector and the matter admits of no delay and the person occupying or in control of the premises is present and his presence is necessary for the effective investigation of the offence, the said police officers may proceed to enter and search the premises without the authorisation in writing referred to in sub-article (1).

Report by officer. *Added by: III.2002.74.*

355N. A police officer who has exercised any of the powers mentioned in articles 355K and 355L shall, as soon as practicable, draw up a report of the entry and search without warrant, stating the grounds for which it was exercised, and describing the results of the search.

Connection of offences. *Added by: III.2002.74.*

355O. For the purposes of this Sub-title there is connection between offences when -

(*a*) the facts of the offences are substantially the same; or

(*b*) an offence has served as a means for the commission of another offence; or

(*c*) the proof of an offence or of a circumstance thereof has a bearing on the proof of another offence or of a circumstance thereof.

Sub-title V

SEIZURE AND RETENTION

General rules of seizure. *Added by: III.2002.74. Amended by: L.N. 274 of 2007.*

355P. The Police, when lawfully on any premises, may seize anything which is on the premises if they have reasonable grounds for believing that it has been obtained in consequence of the commission of an offence or that it is evidence in relation to an offence or it is the subject of an alert in the Schengen Information System and that it is necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed.

Computer data. *Added by: III.2002.74.*

355Q. The Police may, in addition to the power of seizing a computer machine, require any information which is contained in a computer to be delivered in a form in which it can be taken away and in which it is visible and legible.

Receipt for thing seized. *Added by: III.2002.74.*

355R. The Police shall always issue to the person on the premises or in control of the thing seized a receipt for anything seized and on request by any such person, the Police shall, against payment and within a reasonable time, supply to him photographs, or a film, video recording or electronic image or copies of the thing seized, unless the investigating officer has reasonable grounds for believing that this would be prejudicial to the investigation or to any criminal proceedings that may be instituted as a result thereof.

Retention. *Added by: III.2002.74.*

355S. (1) Anything which has been lawfully seized by the Police may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of the aforesaid, anything lawfully seized by the Police under this Code may be retained for use as evidence at the trial or for forensic examination or any other aspect of the investigation, or in order to establish the thing's lawful owner.

(3) The Commissioner shall provide for the proper custody of anything seized.

Restitution to owner. *Added by: III.2002.74.*

355T. A person who is the rightful owner of a thing seized and retained may, unless criminal proceedings in the course of which the thing seized has been exhibited or is to be exhibited are pending before any court, make an application to a Magistrate for its restitution, and the Magistrate may, after hearing the Police, by a decree order its release either unconditionally, or under such conditions as may be necessary to preserve the evidential aspects of the thing.

Photographs. *Added by: III.2002.74.*

355U. Unless a thing is liable to forfeiture, nothing shall be retained if a photograph, film, video recording or electronic image or a copy of the thing would be sufficient:

Provided that before releasing the thing the Police may, where they deem so necessary, apply to a Magistrate for a repertus to be drawn up and the provisions of Title II of Part II of Book Second of this Code shall apply.

Sub-title VI

POWERS OF ARREST AND DETENTION

Arrest under warrant. *Added by: III.2002.74.*

355V. Where there are lawful grounds for the arrest of a person, the Police may request a warrant of arrest from a Magistrate, unless in accordance with any provision of law the arrest in question may be made without a warrant.

Arrest by private persons. *Added by: III.2002.74. Amended by: XIII.2018.24.*

355W. (1) Any person not being a police officer may arrest without warrant anyone who is in the act of committing or has just committed any crime concerning sexual offences, any crime of wilful homicide or bodily harm, or any crime of theft or of wilful unlawful entry or damage to property.

(2) The person making any arrest under sub-article (1) shall without delay inform the Police of the fact of the arrest and shall exercise such power only until it is strictly necessary for the Police to take over the person arrested.

Arrest by police without warrant. *Added by: III.2002.74. Amended by: L.N. 274 of 2007; XI.2018.25.*

355X.(1) Any police officer may arrest without warrant anyone who is in the act of committing or has just committed a crime punishable with imprisonment, or whom he reasonably suspects to be about to commit or of having just committed such a crime.

(2) Any police officer may also proceed to the arrest of any person in respect of whom an alert for his arrest has been entered in the Schengen Information System.

(3) Any police officer may also proceed to the arrest of any person who knowingly, or after due warning, obstructs or disturbs him in the execution of his duties, or disobeys his lawful orders.

(4) The powers mentioned in sub-articles (1), (2) and (3) shall only be exercised until it is strictly necessary for the police officer to convey the person arrested to a police station and deliver him to a superior officer not below the rank of sergeant.

Detention without warrant under Schengen Information System. *Added by: L.N. 274 of 2007.*

355XX. Any police officer may detain without warrant any person who is indicated in an alert in the Schengen Information System as a missing person or a person who, for his own protection or in order to prevent threats, needs temporarily to be placed under police protection.

Arrest for minor offences. *Added by: III.2002.74. Amended by: XI.2018.25.*

355Y. (1) In the case of contraventions, or of crimes not subject to the punishment of imprisonment, it shall be lawful for the Police to proceed to the arrest of any person without a warrant, provided that -

(*a*) the person be detected in the very act of committing the offence; or

(*b*) the arrest be necessary to prevent the commission of an offence in respect of which the Police may institute criminal proceedings without the complaint of the injured party; and

(*c*) in either of the cases mentioned in paragraphs (*a*) or

(*b*) one of the conditions mentioned in article 355Z is satisfied.

(2) A person shall be deemed to be detected in the very act of committing an offence, if he is caught, either in the act of committing the offence, or while being pursued by the injured party or by the public hue and cry.

General arrest conditions. *Added by: III.2002.74.*

355Z. The general arrest conditions are -

(*a*) that the identity of the person is unknown or cannot be readily ascertained by the police officer; or

(*b*) there is a doubt whether the particulars furnished by the person are true; or

(*c*) that the person has not furnished a satisfactory address for service, or there are doubts about whether the address provided is satisfactory for service, or that at least some other person may according to law receive service on his behalf at the address given; or

(*d*) that the arrest is necessary to prevent the person -

(i) causing physical harm to himself or to any other person; or

(ii) suffering physical injury; or

(iii) causing loss or damage to property; or

(iv) committing an offence against public decency; or

(v) causing an unlawful obstruction on any public road; or

(*e*) that the police officer has reasonable grounds for believing that the arrest is necessary to protect a child or any other vulnerable person.

Conduct towards person arrested. *Added by: III.2002.74.*

355AB. The officer or any other person authorised by law making an arrest shall not use any harshness, bond or other means of restraint unless indispensably required to secure, or rendered necessary by the insubordination of the person arrested.

Information to be given on arrest. *Added by: III.2002.74.*

355AC. (1) When a person is arrested, the arrest is not lawful unless the person arrested is informed that he is under arrest, even though the arrest may be obvious.

(2) The arrest is not lawful unless the person arrested is informed at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention:

Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this sub-article at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable:

Provided further that, in any case, where the arrest is made by a private person under the provisions of article 355V the giving of the information may be delayed until the person arrested is taken

over by the Police.

Attendance at a police station or office. *Added by: III.2002.74.*

355AD. (1) Where, in the course of an investigation, a person attends voluntarily at, or accompanies a police officer to, a police station or office, that person shall be free to leave at any time, unless and until he is informed that he is under arrest.

(2) Where an inspector of Police has a reasonable suspicion that the person who attended voluntarily at the police station or office may have committed an offence subject to imprisonment, he may arrest such person forthwith without warrant and inform him accordingly. The time of the arrest shall be immediately recorded and immediate notice thereof shall be given to a Magistrate.

(3) The Police may, orally or by a notice in writing, require any person to attend at the police station or other place indicated by them to give such information and to produce such documents as the Police may require and if that person so attends at the police station or place indicated to him he shall be deemed to have attended that police station or other place voluntarily. The written notice referred to in this sub-article shall contain a warning of the consequences of failure to comply, as are mentioned in sub-article (5).

(4) Any person who is considered by the police to be in possession of any information or document relevant to any investigation has a legal obligation to comply with a request from the police to attend at a police station to give as required any such information or document:

Provided that no person is bound to supply any information or document which tends to incriminate him.

(5) A person who fails to comply with a notice in writing as is referred to in sub-article (3) or who fails, upon being so requested, even if only orally, to accompany voluntarily a police officer to a police station or other place indicated by the police officer for any purpose mentioned in the said sub-article (3) shall be guilty of a contravention punishable with detention and shall be liable to be arrested immediately under warrant.

(6) The notice mentioned in sub-article (3) may be served with urgency in cases where the interests of justice so require.

(7) A person who attends voluntarily as mentioned in sub-article (3) may be kept apart from any other person, but shall not be kept in any place normally used for the detention of arrested persons.

Arrest outside police stations or offices. *Added by: III.2002.74.*

355AE. (1) When a police officer arrests a person at a place other than a police station the arrested person shall be taken to the nearest police station and where the arresting officer is an officer below the rank of inspector he shall forthwith report the arrest to an officer not below the rank of inspector. In any case the inspector or officer in charge of that police station shall also be informed.

(2) Where there are grounds for the continuation of the arrest the person arrested shall be taken to a designated police station as

soon as practicable and in no case later than six hours from the time of the arrest.

(3) The taking of an arrested person to a police station in accordance with the foregoing provisions of this article may be delayed if that person's presence is required elsewhere for the purpose of any investigation which may be necessary.

(4) Where a person is released following arrest the police officer ordering release shall record in writing the fact stating reasons.

Search on arrested person. *Added by: III.2002.74.*

355AF. (1) A police officer may immediately search the person arrested:

(*a*) if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or others; or

(*b*) for anything which the arrested person might use to assist him to escape from custody; or

(*c*) for anything which might be evidence related to an offence.

(2) The provisions of article 353 of this Code shall apply to searches under this article.

Sub-title VII

WARRANTS

Police to execute warrants of arrest or search. *Added by: III.2002.74.*

355AG. (1) Saving the provisions of article 666, it is the duty of the Police to execute any warrant or order of arrest or search that may, in the cases prescribed by law, be issued or given by any other competent authority.

(2) Any such warrant or order shall set forth the nature of the offence, the name of the person, if known, by whom the offence is alleged to have been committed and, in the case of a search warrant, it shall indicate the place where the search is to be carried out.

(3) Once a warrant or order of arrest or search has been issued any police officer may execute the warrant or order.

Procedure for warrants. *Added by: III.2002.74.*

355AH. (1) Whenever according to law the carrying out of an act by the police requires the issue of a warrant by a Magistrate a police officer may apply in person to a Magistrate requesting the issue of the appropriate warrant stating the grounds for the request and giving the Magistrate all such information that will enable the Magistrate to decide on the request. Before deciding whether to issue the warrant the Magistrate may require the police officer to confirm on oath the information supplied by him and the warrant shall only be issued upon the Magistrate being satisfied that

sufficient grounds for the issue of the warrant exist.

(2) In cases of urgency, the request for the issue of the warrant and the warrant may be communicated even by facsimile:

Provided that, as soon as practicable, the original warrant shall be delivered for record purposes.

(3) Any warrant issued by a Magistrate shall be issued in favour of the Commissioner of Police and may be executed by any police officer.

(4) Whenever a police officer requests the issue of a warrant of arrest or search from a Magistrate in accordance with the provisions of this Code and the Magistrate refuses to issue the warrant the Police may request the issue of the same warrant from a Judge who ordinarily sits in the Criminal Court.

Copies of warrants. *Added by: III.2002.74.*

355AI. Except in the case of a warrant transmitted by facsimile, any warrant shall be drawn upon in three signed copies one of which shall be retained by the Magistrate while the others shall be delivered to the police officer who shall retain one copy for his records and shall cause the other one to be served on the person entitled to be served with it:

Provided that where a police officer comes upon a person against whom a warrant of arrest has been issued and, although not in possession of a copy of the warrant, the police officer knows that the warrant has been so issued, the officer shall arrest that person and shall serve him with the copy of the warrant at the first opportunity.

Report of arrest. *Added by: III.2002.74. Amended by: III.2024.5.*

355AJ. (1) Where any person is arrested, whether with or without a warrant, the arresting police officer or his superior shall, as soon as practicable and unless the person arrested has been released within six hours from arrest, inform a Magistrate, giving all details as to time and place where the person is being held.

(2) The Magistrate may order that the person arrested be transferred to another place with immediate effect.

(3) Any person arrested in pursuance of any provision of this Code and who has not been brought before a court within forty-eight hours of his arrest shall be released.

(4) Notwithstanding the provisions of sub-article (3) where the arresting police officer has sufficient reasons for believing that the person arrested has committed a crime liable to a maximum punishment exceeding twelve (12) years imprisonment and that the continuation of the arrest of the person beyond forty-eight (48) hours is necessary to obtain relevant evidence or to preserve relevant evidence, the arresting officer may by means of an application confirmed on oath and supported by information request a Magistrate to issue a warrant authorising the keeping of the person arrested under further detention:

Provided that for the purposes of this sub-article:

"arresting police officer" and "arresting officer" mean a police officer in the grade of Inspector or higher who is in charge of the investigation of the person arrested;

"a crime liable to a maximum punishment exceeding twelve (12) years imprisonment" means a crime liable to a maximum punishment exceeding twelve (12) years imprisonment without considering any increase in punishment due to concurrent crimes and punishments, aggravating circumstances, aggravation of the punishment, any previous conviction or the continuous nature of the crime;

"information" means information about:

(*a*) the time of arrest and the nature of the crime for which the person under arrest has been arrested;

(*b*) the evidence on which that person was arrested; and

(*c*) the special reasons for believing the continued detention of that person to be necessary.

(5) A Magistrate shall not accede to a request filed in accordance with sub-article (4) unless:

(*a*) the person arrested has been furnished with the information and has been brought before the Magistrate for a hearing; and

(*b*) the Magistrate is satisfied that the investigation is being conducted diligently and expeditiously.

(6) An application for a warrant in accordance with sub-article (4) may be made at any time before the expiry of the first thirty-six (36) hours from the time of arrest if the person is still under arrest.

(7) Where upon an application in accordance with sub-article (4) the Magistrate is not satisfied that there are sufficient reasons to believe that the further detention of the person arrested beyond forty-eight (48) hours is justified he may refuse the application or adjourn the hearing until a time not later than forty-eight (48) hours from the time of the arrest.

(8) Where the Magistrate is satisfied that there are sufficient reasons to believe that the further detention of the person arrested is justified he shall issue a warrant of further detention for such period not exceeding a further forty-eight (48) hours as the Magistrate deems fit.

(9) A person released after a warrant for further detention is issued or has expired in his respect, shall not be re-arrested without a warrant to be issued by a Magistrate for the offence for which he was previously arrested unless, since the person's release, fresh evidence has been discovered or an examination or analysis of existing evidence has been made which could not reasonably have been made before his release.

(10) (a) At the hearing held for the purposes of sub-article (4), the person under arrest shall have the right to be assisted by an advocate or

by a legal procurator and that hearing shall:

(i) be held with closed doors;

(ii) be subject to such orders as the Magistrate may give to all persons present at the said hearing for the purpose of protecting the confidentiality of information on the investigation;

(iii) be held summarily in such manner that, in all, the period of the first forty-eight (48) hours provided in sub-article (3) is not exceeded;

(iv) end with the decree of the Magistrate which shall be delivered at the end of the hearing.

(*b*) The decision of the Magistrate given in accordance with this sub-article shall not be subject to appeal and shall be executable forthwith.

Immediate orders. *Added by: III.2002.74.*

355AK. Any order of a competent authority touching on the rights of the individual arising from the provisions of this Sub-title shall be carried out without delay, and for such purpose may be communicated even by facsimile or telephone, under such conditions as to guarantee its authenticity.

Sub-title VIII

DETENTION

Right to release. *Added by: III.2002.74.*

355AL. (1) It shall be duty of the custody officer to order the immediate release from custody of any person in police detention in the circumstances mentioned in article 355AJ(3) or where the custody officer becomes aware that the grounds for the detention of that person have ceased to apply and there are no other lawful grounds on which the continued detention of that person could be justified.

(2) Before ordering the release from custody of a person under sub-article (1) the custody officer shall inform the investigating officer and a Magistrate and the final decision shall be taken by the Magistrate.

(3) A person whose release is ordered under the provisions of sub-article (1) shall be released unconditionally unless it appears to the custody officer -

(*a*) that there is need for further investigation of any matter in connection with which he was detained at any time during the period of his detention; or

(*b*) that proceedings may be taken against him in respect of such matter,

and if it so appears, he shall be released subject to the conditions, reduced to writing and signed by the person to be released, that he will not attempt or do anything to leave Malta without the authority of the investigating officer under whose authority he was arrested

and that he will attend at such police station at such time as the custody officer may appoint and, or that he will attend before the Court of Magistrates at such time and such place as the court may appoint.

(4) Where a custody officer has granted bail to a person subject to a duty not to attempt or do anything to leave Malta without authority or to appear at a police station, the custody officer may give notice in writing to that person that the condition not to attempt or do anything to leave Malta without authority no longer applied or that his attendance at the police station is not required.

(5) Any person who fails to comply with any condition imposed upon him upon his release as provided in sub-article (3) shall be guilty of a contravention.

(6) A police officer may arrest without a warrant any person who, having been conditionally released under sub-article (3) subject to a duty not to attempt or do anything to leave Malta without authority or to attend a police station or subject to a duty to appear before the Court of Magistrates, attempts or does anything to leave Malta without authority or fails to attend at that police station or before the Court of Magistrates at the time appointed for him to do so.

(7) For the purposes of this Sub-title a person who returns to a police station to answer to bail or is arrested under sub-article (6) shall be treated as arrested for the offence under sub-article (5) and for the offence in connection with which he was granted bail and the provisions of this article shall apply to such person.

(8) The conditions made under sub-article (3) shall not remain in force for more than three months from the date on which they were imposed unless they are renewed by a Magistrate for further periods of three months each period upon an application by the Police which shall be served for his reply upon the person on whom the conditions were imposed.

(9) At any time during which the conditions made under sub-article (3) are in force the person on whom those conditions were imposed may by an application to be served on the Police for a reply request a Magistrate that those conditions be removed or modified.

(10) The Minister may issue guidelines to be followed by custody officers in the exercise of their discretion to impose conditions under sub-article (3).

Requirement of custody officer. *Added by: III.2002.74.*

355AM. (1) At every designated place of detention the Commissioner shall appoint one or more custody officers not below the rank of sergeant who, in matters of detention, shall comply with any orders of a Magistrate.

(2) Any officer of any rank may perform the functions of a custody officer at a designated place of detention if a custody officer is not readily available to perform them.

(3) Where the custody officer who is called upon to carry out any of his functions with respect to a person in police detention is,

at the time when the function falls to be performed, involved in the investigation of an offence for which the person is in police detention such function shall be carried out by another custody officer or, if no such other custody officer is available, by the next most senior police officer who happens to be available at the time.

(4) In this article and elsewhere in this Sub-title "designated place of detention" means such place designated by the Minister where a person may be detained for more than six hours.

Functions of custody officer. *Added by: III.2002.74.*

355AN. The custody officer shall perform such functions as may be assigned to him by this Code or by any other law.

Functions of custody officer at a place other than a designated place of detention. *Added by: III.2002.74.*

355AO. Where an arrested person is taken to a police station which is not a designated place of detention the functions in relation to him which would otherwise fall to be performed by a custody officer shall be performed:

(*a*) by an officer not below the rank of sergeant who is not involved in the investigation of an offence for which the arrested person is in detention, if such an officer is readily available; and

(*b*) if no such officer is readily available, by the officer who took the arrested person to the police station or by the most senior police officer at the police station at the time.

Intimate searches of the person detained. *Added by: III.2002.74.*

355AP. Where the arresting officer or the custody officer has a reasonable suspicion that the person arrested may have concealed on his person any drug the unlawful possession of which would constitute a criminal offence or any other item which a custody officer is authorised by this Code or by any other law to seize from the possession of an arrested person, the said officer may request a Magistrate to order an intimate search of the person arrested.

Experts to be appointed. *Added by: III.2002.74.*

355AQ. (1) Upon a request for an order under article 355AP the Magistrate shall appoint an expert to carry out the search under such safeguards as he may consider necessary for the purpose of decency and to report to him on his findings. A copy of the report shall be communicated without delay to the arresting or custody officer as the case may be.

(2) A person shall not be appointed an expert for the purpose of carrying out an intimate search on a person of the opposite sex unless the expert is a medical practitioner and the person to be searched consents thereto in writing.

Seizure. *Added by: III.2002.74.*

355AR. Anything found as a result of an intimate search under the foregoing articles may be temporarily retained by the expert and may subsequently be seized by order of the Magistrate, and a receipt therefore shall be given to the detained person. The Magistrate may authorise the delivery against receipt of anything so seized to the police officer investigating the person intimately searched.

Sub-title IX

Substituted by: LI.2016.2.

RIGHT TO LEGAL ASSISTANCE AND OTHER RIGHTS DURING DETENTION

Right to consult a medical practitioner. *Added by: III.2002.74. Substituted by: LI.2016.3.*

355AS. (1) The suspect or accused person shall, at his request, be allowed to consult a medical practitioner of his choice and, if such medical practitioner is not readily available, any other medical practitioner.

(2) Immediately upon arrest and without undue delay, the Executive Police or any other law enforcement or judicial authority shall inform the suspect or an arrested person of such a right.

(3) A record shall be kept that the suspect or accused person has been duly informed of such right by the Executive Police or by any other law enforcement or judicial authority.

(4) The words "the suspect" and "the accused person" in this article have the same meaning assigned to them by article 355AT(2).

Subject matter of this Sub-title. *Added by: III.2002.74. Substituted by: LI.2016.4. Amended by: XVIII.2020.3.*

355AT. (1) This Sub-title transposes the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union on 6 November 2013 (L 294/1) and the provisions of Directive 2016/1919/EU of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

(2) This Sub-title lays down minimum rules concerning the rights of:

(*a*) the suspect (hereinafter in this Sub-title referred to as "the suspect"), that is, a person who is detained or arrested by the Executive Police or any other law enforcement or judicial authority where such person has not been charged before a court of justice of criminal jurisdiction and who is being questioned by the Executive Police or any other authority as aforesaid in relation to any criminal offence;

(*b*) a person charged or accused of having committed a criminal offence (hereinafter referred to in this Sub-title as "the accused person");

(*c*) a person subject to proceedings pursuant to Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) published in the Official Journal on 18 July 2002 (L 190/1), hereinafter

referred to as "the European arrest warrant proceedings".

(3) The persons mentioned in sub-article (2) shall enjoy the following rights:

(*a*) to have access to a lawyer;

(*b*) to have a third party informed of the deprivation of their liberty; and

(*c*) to communicate with third persons and with consular authorities whilst deprived of their liberty.

(4) For the purpose of this Sub-title, the expression "lawyer" means an advocate or a legal procurator who is authorised by law to exercise that respective profession in terms of law.

(5) For the purpose of this Sub-title, the expression "legal aid" means funding by the Minister, of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer.

Scope of this Sub-title. *Added by: III.2002.74. Substituted by: LI.2016.4. Amended by: XVIII.2020.4.*

355AU. (1) This Sub-title applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the Executive Police or by any other law enforcement or judicial authority, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.

(2) This Sub-title applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or the accused person has committed an offence, including, where applicable, sentencing and the resolution of any appeal.

(3) This Sub-title applies also to persons subject to European arrest warrant proceedings in terms of Framework Decision 2002/584/JHA referred to in article 355AT(2)(*c*) (hereinafter referred to as "the requested persons") from the time of their arrest in accordance with article 355AUJ.

(4) The provisions relating to legal aid under this Sub-title shall apply:

(*a*) to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to this Sub-title and who are:

(i) deprived of liberty;

(ii) required to be assisted by a lawyer by law; or

(iii) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:

(A) identity parades;

(B) confrontations;

(C) reconstructions of the scene of a crime; and

(*b*) to a requested person upon an arrest under article

355AUT(2)(c) persons who have a right of access to a lawyer under this Sub-title;

(*c*) under the same conditions as provided for in paragraph (a), to persons who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.

(5) This Sub-title also applies, under the same conditions as provided for in sub-article (1), to persons other than the suspect or the accused person who, in the course of questioning by the Executive Police or by another law enforcement or judicial authority, become suspects or accused persons.

(6) Without prejudice to the right to a fair trial, in respect of minor offences -

(*a*) where the law provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(*b*) where deprivation of liberty cannot be imposed as a sanction,

this Sub-title shall only apply to the proceedings before a court having jurisdiction in criminal matters:

Provided that, in any event, this Sub-title shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

The right of access to a lawyer in criminal proceedings. *Added by: LI.2016.4.*

355AUA. (1) The suspect or the accused person shall have the right of access to a lawyer in such time and in such a manner so as to allow him to exercise his rights of defence practically and effectively.

(2) The suspect or the accused person shall have access to a lawyer without undue delay. In any event, the suspect or the accused person shall have access to a lawyer from whichever of the following points in time is the earliest:

(*a*) before they are questioned by the Executive Police or by another law enforcement or judicial authority in respect of the commission of a criminal offence;

(*b*) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with sub-article (8)(*e*);

(*c*) without undue delay after deprivation of liberty;

(*d*) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

(3) A request for legal assistance shall be recorded in the custody record together with the time when it was made unless the

request is made at a time when the person who makes it is at court after being charged with an offence in which case the request need not be so recorded.

(4) Once a request for legal assistance is made, the suspect or the accused person shall be provided with a list of lawyers drawn up by the Chamber of Advocates and the Chamber of Legal Procurators and submitted on a yearly basis to the Executive Police and to any other law enforcement and judicial authority, from which the suspect or the accused person may select a lawyer of his own choice. Alternatively, the suspect or the accused person may elect to be assisted by the Advocate for Legal Aid in which case the Advocate for Legal Aid shall assign a lawyer for this purpose.

(5) Without prejudice to the provisions of article 355AUI(3), any police officer who indicates or attempts to indicate to a person detained the advocate or legal procurator who should be engaged during the detention of such person, shall be guilty of an offence and shall be punishable with a fine (*ammenda*) and this without prejudice to any disciplinary proceedings that may be taken against him as a consequence of a finding of guilt in respect of such an offence or in lieu of prosecution for such an offence in accordance with any disciplinary regulations in force from time to time.

(6) Where the person detained chooses not to seek legal assistance the Executive Police, investigating officer or any other law enforcement or judicial investigating authority shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately. It shall not be admissible for the prosecution to comment during any proceedings before a court of justice of criminal jurisdiction on the fact that the suspect or the accused person did not avail himself of the right to legal assistance in the course of his detention under arrest.

(7) Where in any proceedings before a court of justice of criminal jurisdiction against a person for an offence, evidence is given that the suspect or the accused person -

(*a*) at any time before he was charged with the offence, on being questioned by the Executive Police or by any other law enforcement or judicial authority trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(*b*) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the suspect or the accused person could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, no inference may be drawn from the suspect's or the accused person's failure to mention facts which may be considered as evidence of guilt or as amounting to corroboration of any evidence of guilt of the suspect or the person accused.

(8) The right of access to a lawyer shall entail the following:

(*a*) the suspect or the accused person, if he has elected to exercise his right to legal assistance, and his lawyer, shall be informed of the alleged offence about which the suspect or the accused person is to be questioned. Such information shall be provided to the suspect or the accused person prior to the commencement of questioning, which time shall not be less than one hour before questioning starts;

(*b*) the suspect or the accused person shall have the right to meet in private and communicate with the lawyer representing him, including prior to questioning by the police or by another law enforcement or judicial authority;

(*c*) the suspect or the accused person shall have the right for his lawyer to be present and participate effectively when questioned. Such participation may be regulated in accordance with procedures which the Minister responsible for Justice may by regulations establish, provided that such procedures shall not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using where possible in the opinion of the interviewer audiovisual means in terms of paragraph (*d*):

Provided that the right of the lawyer to participate effectively shall not be interpreted as including a right of the lawyer to hinder the questioning or to suggest replies or other reactions to the questioning and any questions or other remarks by the lawyer shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall have declared that it has no further questions;

(*d*) questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, shall where possible in the opinion of the interviewer be recorded by audio-visual means and in such case a copy of the recording shall be handed over to the suspect or the accused person following the conclusion of the questioning. Any such recording shall be admissible in evidence, unless the suspect or the accused person alleges and proves that the recording is not the original recording and that it has been tampered with. No transcription need be made of the recording when used in proceedings before any court of justice of criminal jurisdiction, nor need the suspect or the accused person sign any written statement made following the conclusion of the questioning once all the questions and answers, if any, are recorded on audiovisual means;

(*e*) the suspect or the accused person shall have the right

for his lawyer to attend the following investigative or evidence-gathering acts if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of an offence.

(9) General information to facilitate the briefing of a lawyer by suspects or accused persons shall be made available in terms of sub-article (4) or such other procedure as the Minister responsible for Justice may by regulations establish.

(10) Notwithstanding the provisions of this Sub-title concerning the mandatory presence of a lawyer, the Executive Police or any other law enforcement or judicial authority shall ensure that suspects or accused persons who are deprived of liberty shall be in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with article 355AUG.

(11) In exceptional circumstances and only at the pre-trial stage, a temporary derogation may be made from the application of the right provided for in sub-article (2)(*c*) where the geographical remoteness of the suspect or the accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

(12) In exceptional circumstances and only at the pre-trial stage, a temporary derogation from the application of the rights provided for in sub-article (8) may be made to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(*a*) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(*b*) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

(13) For the purposes of this Sub-title, the expression "pre-trial stage" means the stage immediately prior to the filing of the bill of indictment in the Criminal Court or, as the case may be, before the Attorney General sends the record of proceedings to the Court of Magistrates as a Court of Criminal Judicature, in terms of article 370(3), for the person accused to be tried by that court.

Confidentiality. *Added by: LI.2016.4.*

355AUB. (1) The confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Sub-title shall be respected.

(2) Such communication shall include meetings, correspondence, telephone conversations and any other form of communication permitted by law.

The right to have a third person informed of the deprivation of liberty. *Added by: LI.2016.4.*

355AUC. (1) Suspects or accused persons who are deprived of liberty shall be informed, without undue delay, by the Executive Police or by any other enforcement or judicial authority, that they have the right to have at least one person, such as a relative or an employer or any other person of their choice, nominated by them, informed of their deprivation of liberty without undue delay if they so wish, unless such other person is reasonably suspected of being involved in the offence being investigated. A record shall be kept of the manner in which the Executive Police or other law enforcement or judicial authority concerned has discharged its duty under this article.

(2) If the suspect or accused person is a child, at least one person having parental authority, tutorship, curatorship or guardianship in respect of the child shall be informed as soon as possible of the deprivation of liberty and of the reasons therefor, unless it would be contrary to the best interests of the child to do so, in which case another appropriate adult shall be informed. For the purposes of this article, a person below the age of eighteen years shall be considered to be a child.

(3) In all cases, the details of the person mentioned in sub-article (1) or of the holder of parental authority, tutorship, curatorship or guardianship over the child mentioned in sub-article (2) as well as the day and time at which the information was given to such person or holder of parental or other authority as aforesaid, shall be entered in the detention record of the suspect or in the record of the proceedings of the person accused, as the case may be.

(4) It shall be permissible to temporarily derogate from the application of the rights set out in sub-articles (1) and (2) where justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(*a*) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(*b*) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised:

Provided that in any such case, the delay shall not be later than six hours from the time when the arrest was effected.

(5) Where a derogation from the application of the right set out in sub-article (2) is made, the Executive Police or other law enforcement or judicial authority concerned shall ensure that an authority responsible for the protection or welfare of children, as designated from time to time by the Minister responsible for Justice by order in the Gazette, is informed without undue delay of the deprivation of liberty of the child.

The right to communicate, with third persons, while deprived of liberty. *Added by: LI.2016.4.*

355AUD. (1) The suspect or the accused person who is deprived of liberty shall have the right to communicate without undue delay with at least one third person, such as a relative, friend or other person nominated by him.

(2) A Magistrate may, following a written request from the Executive Police or any other law enforcement authority or from another authority other than a court exercising judicial functions, limit or defer the exercise of the right referred to in sub-article (1) in view of imperative requirements or proportionate operational requirements.

The right to communicate with consular authorities. *Added by: LI.2016.4.*

355AUE. (1) The suspect or the accused person who is a non-national and who is deprived of liberty shall have the right to have the consular authorities of his State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if he so wishes. However, where the suspect or accused person has two or more nationalities, he may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with which he wishes to communicate.

(2) Suspects or accused persons shall also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned.

(3) The exercise of the rights laid down in this article may be regulated by such regulations to be made by the Minister responsible for Justice or by such procedures as may be in force from time to time, provided that such regulations or procedures enable full effect to be given to the purposes for which these rights are intended.

General conditions for applying temporary derogations. *Added by: LI.2016.4.*

355AUF. (1) Any temporary derogation under article 355AUA(11) or (12) or under article 355AUC(4) shall:

(*a*) be proportionate and not go beyond what is necessary;

(*b*) be strictly limited in time;

(*c*) not be based exclusively on the type or the seriousness of the alleged offence; and

(*d*) not prejudice the overall fairness of the proceedings.

(2) Temporary derogations under article 355AUA(11) or (12) may be authorised only by a duly reasoned decision taken on a case-by-case basis by a Magistrate, which decision may be subject to appeal to the Court of Criminal Appeal as constituted under article 418 by application to be filed within two working days from when the decision is given. The Court of Criminal Appeal shall regulate its own procedure with regard to the determination of such an appeal. The filing of an appeal shall not prevent the execution of the decision of the Magistrate unless the Court of Criminal Appeal otherwise orders. The duly reasoned decision shall be recorded in the relative acts of the proceedings.

(3) Temporary derogations under article 355AUC(4) may be authorised, only on a case-by-case basis, by a Magistrate.

Waiver. *Added by: LI.2016.4.*

355AUG. (1) Without prejudice to the provisions of this Sub-title requiring the mandatory presence or assistance of a lawyer, in relation to any waiver of a right as referred to in articles 355AUA and 355AUH:

(*a*) the suspect or accused person shall be provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it;

(*b*) the waiver shall be given voluntarily and unequivocally.

(2) The waiver, which can be made in writing or orally, shall be noted as well as the circumstances under which the waiver was given, using any recording procedure permitted by law.

(3) The suspect or accused person may revoke a waiver subsequently at any point during the criminal proceedings, and shall be informed about this possibility. Such a revocation shall have effect only from the moment it is made.

The right of access to a lawyer in European arrest warrant proceedings. *Added by: LI.2016.4. Amended by: XVIII.2020.5.*

355AUH. (1) A requested person shall have the right of access to a lawyer upon arrest in Malta pursuant to a European arrest warrant.The requested person may elect to be assisted by the Advocate for Legal Aid in which case the Advocate for Legal Aid shall assign a lawyer for this purpose.

(2) With regard to the content of the right of access to a lawyer in Malta as the executing Member State, a requested person shall have the following rights in Malta:

(*a*) the right of access to a lawyer in such time and in such a manner as to allow the requested person to exercise his rights effectively and in any event without undue delay from deprivation of liberty;

(*b*) the right to meet and communicate with the lawyer representing him;

(*c*) the right for his lawyer to be present and, in accordance with procedures established by law, to participate during a hearing of the requested person by the competent executing judicial authority in Malta. Where a lawyer participates during the hearing, this shall be noted in the records of the proceedings of the competent judicial authority in Malta.

(3) The rights provided for in articles 355AUB, 355AUC, 355AUD, 355AUE, 355AUG, and, where a temporary derogation under article 355AUC(4) is applied, in article 355AUF, shall apply, *mutatis mutandis*, to European arrest warrant proceedings in Malta as the executing Member State.

(4) The competent authority in Malta as the executing Member

State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State, that is, a Member State of the European Union which has issued a European arrest warrant with a view to the arrest and surrender by Malta of a requested person. The role of that lawyer in the issuing Member State shall be to assist the lawyer in Malta, as the executing Member State, by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

(5) Where a requested person wishes to exercise the right to appoint a lawyer in the issuing Member State and does not already have such a lawyer, the competent authority in Malta as the executing Member State shall promptly inform the competent authority in the issuing Member State.

(6) The competent authority in Malta as the issuing Member State in European arrest warrant proceedings shall, without undue delay, upon a request from a competent authority in the executing Member State, provide the requested persons with information to facilitate their appointing a lawyer in Malta.

(7) The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority in Malta to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

Remedies. *Added by: LI.2016.4.*

355AUI. (1) The suspect or accused person in criminal proceedings, and the requested persons in European arrest warrant proceedings, shall be entitled to seek redress in the event of a breach of their rights under this Sub-title before the courts of criminal jurisdiction which may be seized of their case, or before a Magistrate. Such a claim for redress shall be filed promptly and the court seized with the claim shall have authority to grant such redress as it deems appropriate, which redress shall be granted without undue delay. There shall be a right of appeal from a decision to grant or to deny such redress to the Court of Criminal Appeal as constituted under article 418. The said appeal shall be made by application to be filed within eight working days from the decision and the Court of Criminal Appeal shall regulate its own procedure with regard to the hearing of such an appeal.

(2) Without prejudice to the provisions of this Code related to the admissibility of evidence, the rights of the defence and the fairness of the proceedings shall be respected in all criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with article 355AUA(12).

Vulnerable persons. *Added by: LI.2016.4. Amended by: XVIII.2020.6.*

355AUJ. (1) The Executive Police and any other law enforcement or judicial authority shall ensure that the particular needs of vulnerable suspects, vulnerable requested persons and vulnerable accused persons are taken into account in the application of the provisions of this Sub-title.

(2) The Minister responsible for Justice may make regulations to give better effect to the provisions of this article.

(3) For the purposes of this Sub-title, the expression "vulnerable person" shall have the same meaning assigned to it by article 208AC(2).

Non-regression clause. *Added by: LI.2016.4.*

355AUK. Nothing in this Sub-title shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, or other relevant provisions of international or national law which are enforceable in the courts of Malta and which provide a higher level of protection.

Sub-title X

TAKING OF SAMPLES, FINGERPRINTING AND OTHER INVESTIGATIVE PROCEDURES

Samples under authorisation. *Added by: III.2002.74. Amended by: XXIV.2014.45.*

355AV. The investigating officer may in person, by application or by facsimile, request a Magistrate to authorise the necessary procedure -

(*a*) where he has reasonable grounds to require the taking of intimate samples from the person arrested; or

(*b*) to take photographs, a film, video recording or electronic image of intimate parts of the body of the person arrested; or

(*c*) where the person arrested withholds his consent for any procedure which the investigating officer may carry out according to law with the consent of the person arrested and the provisions of the proviso to article 355BB shall, *mutatis mutandis*, apply:

Provided that where the request falls under paragraph (*a*), the provisions of article 355AW shall apply and, if the request falls under paragraph (*b*), the provisions of article 355AP shall *mutatis mutandis* apply.

Intimate samples by consent. *Added by: III.2002.74.*

355AW. Subject to the provisions of articles 355AV and 355AX, an intimate sample may be taken from a person arrested only if his appropriate consent is given.

When consent for intimate sample is refused. *Added by: III.2002.74.*

355AX. (1) Upon a request under article 355AV(*a*), the Magistrate shall obtain all such information from the investigating officer to enable him to decide on whether the request is justified or not.

(2) Where the Magistrate decides that the request is justified he shall visit the person arrested to request his consent and before asking for his consent he shall explain to him:

(*a*) the nature of the request and the reasons thereof;

(*b*) the consequences of giving his consent and of refusing consent as provided in article 355AZ; and

(*c*) that he is entitled to consult a lawyer or legal procurator before deciding whether or not to give his consent.

(3) Where the person arrested requests to consult a lawyer or legal procurator under sub-article (2) the magistrate shall make a record of the fact, date and time of the request and, subject to the provisions of sub-article (4) shall allow the person arrested to consult with a lawyer or legal procurator for such time as the magistrate may deem appropriate in the circumstances of the case.

(4) The magistrate may, on a justified objection by the Police, delay any communication with an advocate or legal procurator if the interests of justice so require or when any of the events mentioned in article 355AT(5) is likely to occur if such communication is allowed immediately:

Provided that where the person arrested has requested to consult a lawyer or legal procurator his consent can only be requested after such consultation has taken place.

Applicable procedure for samples. *Added by: III.2002.74.*

355AY. Where an intimate sample is to be taken under these articles the provisions of article 355AP shall apply.

Inferences from refusal. *Added by: III.2002.74.*

355AZ. Where the appropriate consent to the taking of an intimate sample from a person was refused without a good cause, in any proceedings against the person for an offence, those who have to judge of the facts may draw such inferences from the refusal as appear proper and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to corroboration of any evidence against the person in relation to which the refusal is material.

Samples with the consent or at the request of the person arrested. *Added by: III.2002.74. Amended by: XXIV.2014.46.*

355BA. (1) The investigating officer may, with the appropriate consent in writing of the person arrested, cause to be taken:

(*a*) fingerprints, palm-prints, other prints or hand-writing samples from the person arrested;

(*b*) photographs of the person arrested or of non-intimate parts of his body;

(*c*) non-intimate samples from the person arrested.

(2) The person arrested may request in writing that:

(*a*) his fingerprints, palm-prints, other prints or hand-writing samples,

(*b*) photographs of his person or of non-intimate parts of his body,

(*c*) non-intimate samples from his person,

be taken and any such request shall be complied with by the investigating officer with the assistance of any competent person as may be necessary.

(3) The person arrested may also request in writing the investigating officer to carry out any of the procedures mentioned in article 355AV(*a*) and (*b*), and any such request shall be referred without delay to a Magistrate. The Magistrate shall authorise the procedure requested after verifying the request made by the person arrested and the provisions of article 355AP shall apply where appropriate.

Samples from persons other than arrested persons. *Added by: III.2002.74. Amended by: XXIV.2014.47.*

355BB. Samples from a person other than a person arrested may only be taken with that person's prior consent in writing:

Provided that in the event that the person, other than the person arrested, withholds his consent to the taking of a sample, whether intimate or non-intimate, a Magistrate's authorisation may also be obtained upon an application and, saving the provisions of article 355AZ, such authorization shall also cover the taking of any proportionate and necessary measures, including the use of force, by the Executive Police to give effect to such authorization.

Samples at the request of persons other than arrested persons. *Added by: III.2002.74.*

355BC. The provisions of article 355BA shall *mutatis mutandis* apply to any person, not being an arrested person, who makes a request for the carrying out in his respect of any procedure referred to in that article provided the request is made in writing and contains a declaration that the person making the request has reason to believe that there is the likelihood that the failure to carry out the requested procedure is likely to result in his being arrested or detained.

Use of specimens. *Added by: XXIV.2014.48.*

355BD. The Commissioner of Police may make use of specimens, which would have been taken in criminal proceedings, for the purposes of subsequent criminal proceedings.

Added by: III.2002.75.

Sub-title XI

POWERS AND DUTIES OF THE POLICE IN RESPECT OF COURT PROCEEDINGS

Production of evidence before court. *Amended by: L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; III.2002.76.*

356. (1) It is the duty of the Executive Police to bring as soon as possible before the court, and, where practicable, together with the offender, all the evidence that may have been collected in respect of the offence.

(2) It is the duty of police prosecuting officers to disclose to the

defence such evidence which may appear to favour the person charged and which the police, for any reason, might not have the intention to produce before the court as evidence for the prosecution.

Collection of further evidence and its production before court.

(3) The Executive Police shall, even after the accused has been brought before the court, continue to collect and furnish to the Court of Magistrates or, after his committal for trial, to the Attorney General, any further information that can be obtained in respect of the offence.

Preservation of articles connected with the offence. *Amended by: VIII.1990.3.*

357. Where an officer of the Executive Police discovers any weapon, document, trace or vestige or any other thing relating to an offence, he shall take steps to establish and ensure the existence and the preservation thereof in the state in which it was found until he shall have reported the matter to the Court of Magistrates, and, if unable to establish and ensure such existence or preservation, he shall observe the same procedure provided for the drawing up of a "*repertus*".

Duties of the Police in respect of criminal proceedings. *Substituted by: III.2002.77.*

358. (1) It is the duty of the Police to issue and to serve citations summoning persons to appear before the Court of Magistrates, in matters within the jurisdiction of such court.

(2) In summary proceedings for offences within the jurisdiction of the Court of Criminal Judicature, it shall not be the duty of the Police to serve on the person charged notice of the date of hearing apart from the first sitting of the proceedings.

Executive Police to execute warrants of arrest or search. *Amended by: IV.1994.10.*

359. (1) Saving the provisions of article 666, it is the duty of the Executive Police to execute any warrant or order of arrest or search that may, in the cases prescribed by law, be issued or given by any other competent authority.

Contents of warrant.

(2) Any such warrant or order shall set forth the nature of the offence and the name of the person, if known, by whom the offence is alleged to have been committed.

Summoning of person accused when not arrested. *Amended by: IX.1911.15; VIII.1990.3.*

360. (1) Where there are not sufficient grounds according to law for the arrest of any person charged with an offence, the Executive Police shall, by an order in writing, summon such person to appear before the Court of Magistrates.

Contents of summons.

(2) The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give. It shall also contain an intimation that, in default of appearance, the person summoned shall be arrested by warrant of the court and arraigned on such day as may be stated in the warrant.

Service of affidavits together with summons. *Added by: III.2002.78. Amended by: XXIV.2014.49.*

360A. (1) In summary proceedings for offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1) the police may, together with the summons or at any time thereafter, serve upon the accused copies of any affidavits made by a public officer or by an employee or officer of a body corporate established by law or by a representative of an undertaking as defined in terms of article 2 the Electronic Communications (Regulation) Act and who is to be produced as a witness for the prosecution in those proceedings as well as any document to be produced in evidence in the same proceedings and if the accused desires to cross-examine any person whose affidavit has been served upon him as aforesaid he shall, not later than fifteen days before the first sitting following the service of the affidavit, give notice thereof to the Commissioner of Police by registered letter whereupon the person to be cross-examined shall be summoned to give evidence in the proceedings:

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Provided that for the purposes of this sub-article the word "document" shall have the same meaning assigned to it by article 558(2):

Provided further that where it results that it was not possible for the accused to give notice to the Commissioner of Police within the time provided aforesaid such notice of the desire to cross-examine may be given during the first sitting immediately after the service of the affidavit in which case the person to be cross-examined shall be summoned to give evidence in the following sitting.

(2) The person whose affidavit was served on the accused as provided in sub-article (1) shall not be summoned to testify in the proceedings if the accused fails to give notice of the intention to cross-examine that person as provided in that sub-article and the said affidavit shall be admissible in evidence as proof of its contents in those proceedings in the same way as if it had been testimony given *viva voce* in the presence of the accused.

Judgements *in absentia*. *Added by: XXIV.2014.50.*

*__360B.__ (1) Notwithstanding the other provisions of this Code or of any other law, the provisions of this article shall apply to offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1).

(2) Where a person, having been charged with an offence referred to in sub-article (1) and having been duly served with a summons, fails to appear personally before the court, he shall be deemed to have given his consent for the trial to proceed in his absence and, the court shall proceed with the hearing in the absence of the person charged and shall thereupon proceed to deliver judgement:

Provided that any person charged as aforesaid may instead of appearing before the Court of Magistrates file in the Registry of that court representations in writing and, or a declaration on the facts of the case confirmed on oath contesting the charge against

*this article is not yet in force.

him, and the Court shall, prior to deciding the case, take into account such representations and, or a declaration as if they had been made *viva voce* before the said court.

(3) A judgement delivered in terms of this article shall be subject to appeal.

(4) Where no appeal is filed, a judgement delivered in terms of this article shall be served on the offender personally who, within seven working days of service, shall have a further right of appeal against judgement and the provisions of this code relating to appeals shall, subject to the provisions of this article, *mutatis mutandis* apply:

Provided that there shall be no right of appeal if it is shown that any of the following circumstances exist:

(*a*) the offender was in due time:

(i) summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the judgement, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he was aware of the scheduled trial; and

(ii) informed that a judgement may be handed down if he does not appear for the trial; or

(*b*) the offender, being aware of the scheduled trial, had given a mandate to legal counsel appointed by him to defend him at his trial, and was indeed defended by the said legal counsel at the trial.

(5) A summons issued under this article shall also contain an intimation that in default of appearance the person summoned shall be deemed to have given his consent for the trial to proceed in his absence.

(6) Where a judgement is served as provided under sub-article (4) the offender shall also be informed of his further right of appeal in terms of the said sub-article.

Term for service of summons. *Amended by: VI.1871.26; II.1886.9; IX.1911.16.*

361. Except in urgent cases, the summons shall be served on the person summoned at least two working days previous to the day fixed for his appearance.

Mode of effecting service. *Amended by: III.2002.79; VII.2010.28.*

362. (1) The summons shall be delivered to the person whose appearance is required, and if such person cannot conveniently be met with, the summons shall be delivered at his usual place of abode. In either case, the officer serving the same shall make a report thereof to the court.

(2) The Minister responsible for justice after consulting with the Minister responsible for the police may make regulations providing, in summary proceedings as those mentioned in article 360A(1), for the service of the summons and of any accompanying documents, and of any other act of the proceedings, by post or in

any other manner as may be provided in the regulations.

(3) Where the person to whom a summons or other act of the proceedings is addressed in accordance with any regulations made under sub-article (2) refuses to receive it the court may by means of a decree upon an application by the Police and after examining the certificate of service declare that person to have been duly served with the summons or with that other act and make an order for his arrest.

(4) Where any person, other than the person to whom a summons or other act of the proceedings is addressed, refuses to receive the summons or that other act personally the court may, upon an application by the Police and after examining the certificate of service and satisfying itself that that person is a person in whose hands the summons or that other act may be lawfully served, sentence that person to a fine (*ammenda*):

Provided that the Court may, at any time, on just cause being shown, remit the fine (*ammenda*).

(5) The provisions of sub-articles (3) and (4) shall *mutatis mutandis* apply to the service of the summons and of any accompanying documents whenever a person is to be served with any summons and with any accompanying documents in accordance with any other provision of this Code or of any other law.

Time and place for service of summons. *Amended by: XXX.1934.3; XIX.1965.18. Substituted by: IV.2014.19.*

363. The summons shall be executed between seven o'clock in the morning and seven o'clock in the evening in any residential home excluding Sundays or Public Holidays or in the case where the summons is being executed in a commercial property or office at any day or any time that that commercial property or that office is open to the public or where the case merits expediency at those times duly authorised by the Court.

Urgent cases.

364. Where the urgency of the case does not admit of any delay, the person may be summoned to appear forthwith or at a given time during the same day. If the person fails to appear, he may, upon a warrant of the court, be arrested and brought before it.

Subpoenaing of witnesses. *Amended by: IV.1874.8; XI.1900.56; XII.1913.10; XXXII.1986.7; VIII.1990.3.*

365. (1) The Executive Police shall summon, in writing, the witnesses whose attendance is required before the Court of Magistrates, whether for the prosecution or for the accused.

(2) The provisions contained in the last preceding three articles shall apply to the subpoenas of witnesses.

(3) The subpoenas referred to in this article and the summons referred to in article 360 shall be signed by an officer of the Executive Police not below the rank of sub-inspector or be stamped with a *facsimile* of such a signature.

366. It is the duty of the Executive Police to carry out, besides the warrants or orders referred to in article 359, every judgment or order of the Court of Magistrates:

Judgment, etc., to be carried out by Executive Police. Fines to be levied by registrar. *Amended by: VIII.1990.3.*

Provided that fines (*multa* and *ammenda*) shall be levied by the registrar of that court.

Sub-title XII

Added by: XXXII.2018.6.

OF THE PRESUMPTION OF INNOCENCE

The measures provided for in this Sub-title transpose the provisions of Directive (EU) 2016/343 of the European Parliament and the Council of the 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

366A. (1) Every person suspected or accused of having committed a criminal offence or an alleged criminal offence shall be presumed to be innocent until the decision on the final determination of whether that person has committed the criminal offence has become definitive:

Presumption of innocence. *Added by: XXXII.2018.6.*

Provided that the provisions of this article shall be without prejudice to the proviso to sub-article (5) of article 39 of the Constitution and to the enforcement, as may be provided by law, of a judgement of the Court of Magistrates or of the Criminal Court pending the hearing of an appeal after the accused has been found guilty of having committed a criminal offence by one of the said Courts.

366B. (1) The burden of proof for establishing the guilt of suspects or accused persons shall lie with the prosecution:

Burden of proof. *Added by: XXXII.2018.6.*

Provided that the provisions of this article shall be without prejudice to:

(*a*) the proviso to sub-article (5) of article 39 of the Constitution;

(*b*) any obligation of a judge, magistrate or any court or tribunal to seek both inculpatory and exculpatory evidence;

(*c*) the right of the defence to submit any evidence according to law.

(2) Any reasonable doubt as to the question of guilt shall benefit the suspect or accused person including where the court assesses whether an accused person should be acquitted.

366C. (1) As long as a suspect or accused person has not been proven guilty according to law, public statements made by public authorities and judicial decisions, other than those on guilt, shall not refer to that person as being guilty:

Public references to guilt. *Added by: XXXII.2018.6.*

Provided that the provisions of this article shall be without prejudice to:

(i) acts of the Attorney General, the Police or other public authorities having prosecuting powers which aim to prove the guilt of the suspect or accused person;

(ii) preliminary decisions of a procedural nature taken by a magistrate, a judge or by any other competent authority and which are based on suspicion or on incriminating evidence;

(iii) the right of public authorities to publicly disseminate information on criminal proceedings where this is strictly necessary for reasons relating to the criminal investigation or to the public interest.

(2) Any person who alleges that his rights under this article or this Sub-title have been breached shall have a right to file an application in the Court of Magistrates within ten days, from the date of the fact which allegedly gave rise to the breach, to demand a finding of such a breach and an appropriate remedy:

Provided that when a person stands accused before a court the application referred to in this sub-article shall be filed before the court where that person stands accused.

Presentation of suspects and accused persons. *Added by: XXXII.2018.6.*

366D. Suspects and accused persons shall not be presented in court or in public as being guilty, through the use of measures of physical restraint:

Provided that nothing in this article or in article 443 shall prevent the police or any court from applying measures of physical restraint that may be required in any particular case for reasons relating to security or to the prevention of suspects or accused persons from absconding or from having contact with other persons.

Right to silence and not to incriminate oneself. *Added by: XXXII.2018.6.*

366E. (1) Suspects and accused persons shall have the right to remain silent in relation to the criminal offence which they are suspected or accused of having committed and shall have the right not to incriminate themselves.

(2) The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be obtained through the use of legal powers of compulsion which exist independently of the will of the suspects or accused persons.

(3) The exercise by suspects or accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to constitute evidence that they have committed the criminal offence concerned.

Right to be present at the trial. *Added by: XXXII.2018.6.*

366F. Saving the provisions of any law which may provide for trials in the absence of the persons charged or accused, subject to the safeguards provided in Directive (EU) 2016/343 of the European Parliament and the Council of the 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to

be present at the trial in criminal proceedings, persons charged or accused shall have the right to be present at their trial.

Title II
OF THE COURT OF MAGISTRATES

Amended by: VIII.1990.3.

Constitution of Court of Magistrates. Jurisdiction. *Amended by: XI.1900.57; VIII.1990.3; III.2002.80.*

367. (1) Every Court of Magistrates shall consist of a magistrate and shall have a twofold jurisdiction, namely, as a court of criminal judicature for the trial of offences which fall within its jurisdiction, and as a court of inquiry in respect of offences which fall within the jurisdiction of a higher tribunal.

Number of Courts of Magistrates.

(2) There shall be two Courts of Magistrates, one for the Island of Malta and one for the Islands of Gozo and Comino to be styled Court of Magistrates (Malta) and Court of Magistrates (Gozo) respectively.

When abstention or challenge of magistrate may take place. *Amended by: VI.1871.27; I.1903.19; I.1924.2; XXX.1934.4; L.N. 46 of 1965; XLVI.1973.108; LVIII.1974.68.* Cap. 12.

368. (1) No magistrate may be challenged or may abstain from taking cognizance of any cause, except immediately after the report or complaint and for any of the reasons set out in paragraphs (*a*), (*b*), (*c*) and (*e*) and, so far as applicable, article 734(d) of the Code of Organization and Civil Procedure or on the ground that he has given or is to give evidence as a witness in the cause, or on the ground that the cause is in respect of an offence committed to his prejudice or to the prejudice of his spouse or of any other person related to him by consanguinity or affinity in any of the degrees mentioned in paragraphs (*a*) and (*b*) of the said article.

(2) Nor may any magistrate be challenged or abstain from taking cognizance of any cause in the cases mentioned in article 403 and article 433(5) notwithstanding that during the inquiry the magistrate may have conferred with the Police or with any member thereof or with the Attorney General in connection with the collection of evidence.

(3) If upon hearing the report or complaint, the magistrate is of opinion that there exists in his respect any of the reasons aforesaid, he shall make a statement thereof before proceeding further with the cause.

(4) None of the above reasons shall debar any magistrate from issuing any warrant or performing any act in connection with any inquiry relating to the "*in genere*", or any inquest or "*repertus*" held in accordance with the provisions of this Code.

Duties of registrar. *Added by: VI.1871.28. Amended by: XI.1900.58; VIII.1990.3. Substituted by: XXIV.1995.360; XXXI.2002.199.* Cap. 12.

369. In the Court of Magistrates, the functions of registrar may be performed by any of the court executive officers referred to in article 57(3) of the Code of Organization and Civil Procedure.

Sub-title I

OF THE COURT OF MAGISTRATES AS COURT OF CRIMINAL JUDICATURE

Amended by: VIII.1990.3.

Offences cognizable by the Court of Magistrates as court of criminal judicature. *Amended by: IV.1856.24; VI.1871.29; XIV.1889.46; XI.1900.59; XXIX.1940.2; XXIII.1963.2; L.N. 46 of 1965; LVIII.1974.68; XLIX.1981.4; XIII.1987.2; VIII.1990.3; XXIX.1990.17; III.2002.81; IX.2003.128; IV.2014.20; VIII.2015.27; I.2018.22; IV.2023.3.*

370. (1) The Court of Magistrates shall be competent to try-

(*a*) all contraventions referred to in this Code;

(*b*) all crimes referred to in this Code which are liable to the punishments established for contraventions, to a fine (*multa*) or to imprisonment for a term not exceeding two years with or without the addition of a fine (*multa*) or interdiction;

(*c*) all offences referred to in any other law which are liable to the punishments established in the preceding paragraph, unless the law provides otherwise.

(2) The offences referred to in sub-article (1) shall still be cognizable by the said court notwithstanding that, in view of concurrent offences and punishments, of any previous conviction or of the application of the provisions of article 18, a punishment higher than any of the punishments mentioned in the said sub-article shall be applicable.

(3) (*a*) Notwithstanding the provisions of sub-article (1)(*b*), the Attorney General may send for trial by the said court any person charged with a crime punishable with imprisonment for a term exceeding two years but not exceeding twelve years if there is no objection on the part of such person.

(*b*) On the demand of the Attorney General to the court to try such crime, the court shall ask the accused whether he objects to his case being dealt with summarily; the court shall, in its discretion, give a reasonable time to the accused to reply to this question.

(*c*) If, within the said time, the accused replies that there is no objection on his part to the case being tried summarily, the court shall note the reply in the records of the proceedings and thereupon the court shall become competent to try the accused and shall proceed to give judgment forthwith, as provided in article 377.

(*d*) If the accused objects to the case being dealt with summarily, the court shall order that the record of the case be transmitted to the Attorney General, by electronic means, within the term determined in article 401(3), for the case to be dealt with according to law. In such case the term referred to in article 432 for the filing of the indictment shall run from the day on which the Attorney General shall be granted access by electronic means to the record of the case.

(*e*) Where the number of the accused sent for trial by the Court of Magistrates under the provisions of paragraph (*a*) is two or more, the provisions of the last foregoing paragraph shall apply only in respect of any one or more of the accused who makes objection to the case being dealt with summarily, and in such case the term fixed in article 432 for the filing of the indictment shall run from the day on which the Attorney General shall have received the record of the case after the decision in each of the cases dealt with summarily shall have become *res judicata*.

(*f*) Before asking the accused whether he objects to his case being dealt with summarily, as provided in paragraph (*b*), the court shall hear such further evidence as may be indicated by the Attorney General in the same note by which he sends the person charged for trial by the said court in accordance with paragraph (*a*).

(4) (*a*) Notwithstanding the provisions of sub-article (1)(*b*), if the crime with which the accused is charged is punishable with imprisonment for a term exceeding two years but not exceeding six years, the court shall, during the examination of the accused under article 392 but before he is examined under sub-article (1)(*b*) of that article, ask the accused whether he objects to his case being dealt with summarily; and shall give him a reasonable time to reply to this question.

(*b*) If, within the said time, the accused replies that there is no objection on his part to the case being dealt with summarily, the court shall ask the prosecuting officer whether the Attorney General has given his consent in writing to the case being dealt with summarily, and if no objection is raised, the court shall note this fact in the records of the proceedings and thereupon the court shall become competent to try the accused and shall proceed accordingly:

Provided that nothing in this sub-article shall be construed as precluding the court from proceeding with the necessary inquiry if from the evidence it appears that a graver crime which it has no jurisdiction to try has been committed.

(4A) Notwithstanding the transitory provision made in article 1(2) of the Criminal Code (Amendment) Act, 2015 (Act VIII of 2015), and without prejudice to the other provisions of this article, the Court of Magistrates shall be competent to hear and decide all cases concerning crimes punishable with imprisonment not exceeding twelve years which were pending before the said Court prior to the 17th March 2015.

(5) The provisions of sub-article (2) shall apply, *mutatis mutandis*, to the crimes referred to in sub-articles (3) and (4).

(6) The provisions of article 392A shall also apply, mutatis mutandis, to offences which fall within the competence of the Court of Magistrates as a court of criminal judicature in accordance with the provisions of this article.

How jurisdiction is determined. *Amended by: IV.1856.25; XI.1900.60; XII.1913.11; XXIII.1963.3; L.N. 46 of 1965; III.1971.14; LVIII.1974.68; XLIX.1981.4; XIII.1983.5; VIII.1990.3; L.N. 407 of 2007.*

371. (1) In determining the jurisdiction, regard shall be had to the alleged offence and not to any extenuating circumstances, even though, by reason of any such extenuating circumstances, the accused shall not be liable to punishment or there may be a descent from a higher to a lesser punishment. In such case the provisions contained in article 389 and following articles shall apply.

(2) Nevertheless, the Court of Magistrates shall be competent to try -

(*a*) any crime committed by any person under eighteen years of age or by any deaf-mute where the punishment awardable according to law does not exceed the jurisdiction of such court;

(*b*) any crime excusable according to law where, in the opinion of the Attorney General, the grounds for the excuse appear from the record of the inquiry and the punishment awardable according to law does not exceed the jurisdiction of such court:

Provided, in either case, that no other person is simultaneously charged with the crime, whether as principal or accomplice, or that the crime is not otherwise connected with any other crime outside the jurisdiction of such court;

(*c*) any theft aggravated by "means", but not also by "violence", or by "person" or by "the nature of the thing stolen", when the value of the thing stolen does not exceed eleven euro and sixty-five cents (€11.65) and, in the opinion of the Attorney General, the crime would be adequately punished with imprisonment for a term not exceeding six months with or without a fine (*multa*).

How jurisdiction between the Courts of Magistrates is determined. *Added by: XI.1900.61. Amended by: XII.1913.12; VIII.1990.3.*

372. (1) The jurisdiction as between the Courts of Magistrates shall be determined -

(*a*) by the place where the offence has been committed; or

(*b*) if there is only one accused person or if, there being two or more accused persons, they all reside in Malta, or all reside in Gozo or Comino, by the place of his or their residence.

(2) If a person is charged with two or more offences committed in different Islands, such person shall be tried by the court within the territorial jurisdiction of which the graver offence or, if the offences are of equal gravity, the greater number of offences has been committed.

(3) If the place where the offence was committed is unknown and the accused is one, or the accused are two or more, residing, however, within the limits of the jurisdiction of the same court, the jurisdiction shall be solely determined by the place of his or their residence; or if the persons accused reside in different Islands, the jurisdiction as between the courts shall be determined by the place of residence of the majority of the persons accused; or if the number of the accused residing in Malta and the number of the

accused residing in Gozo or Comino be the same, either court shall be competent to try all the accused.

Waiver of plea to the jurisdiction.

(4) The plea to the jurisdiction by reason of the place where the offence has been committed or of the place of residence of the offender may be waived, and, if not raised immediately after the statement of the facts constituting the offence, it shall be deemed to be abandoned.

Proceedings on complaint of injured party. *Amended by: XI.1900.62; I.1903.20, 21; VIII.1909.35; VIII.1990.3; III.2002.82.*

373. As regards offences referred to in article 370(1), the prosecution shall lie with the injured party or with the persons mentioned in article 542 on behalf of such party, where proceedings cannot be instituted except on the complaint of the injured party:

Exceptions.

Provided that if the offence in respect of which no prosecution may be instituted except on the complaint of the injured party, is aggravated by public violence or is accompanied with any other offence affecting public order, or if, in the absence of any such circumstances, the injured party shall fail to institute proceedings and shall not have expressly waived the right to prosecute within four days from the commission of the offence, it shall be lawful for the Executive Police *ex officio* to institute proceedings in respect of the offence.

Trial. *Amended by: IV.1856.26; XI.1900.62; VII.2010.29; XXIII.2017.13.*

374. In proceedings instituted on the complaint of the injured party, the following provisions shall apply:

Parties to appear personally.

(*a*) the complainant and the defendant shall appear personally on the day appointed for the hearing of the complaint. They may, however, be assisted by advocates or legal procurators;

Exemptions.

(*b*) in the case of contraventions, it shall be lawful for the court, upon good cause being shown, to exempt either of the parties from appearing personally and to permit the spouse or a near relative, by blood or affinity, of such party, or any other person having the charge of such party or authorized in writing by such party, to appear instead;

Non-appearance of parties.

(*c*) if neither of the parties shall appear, the cause shall be struck off the list;

Non-appearance of complainant.

(*d*) if for the first sitting the complainant does not appear and the defendant alone appears, the latter may demand his discharge;

Court may appoint another day for hearing of cause.

(*e*) nevertheless, upon an application by the complainant within four days from the day on which the cause was struck off the list or the defendant was discharged, accompanied by a declaration of the complainant himself sworn before the registrar, to the effect that he was, on account of illness or for any other reason independent of his will, to be expressly stated in the

application, prevented from appearing, the court shall appoint another day for the hearing of the cause on the same acts;

Notice of day of hearing to be given to parties and witnesses.

(*f*) a written notice of the day appointed for the hearing of the cause shall be given to the parties and to the witnesses within the time prescribed in article 361 and in article 441(1);

Lapse of action.

(*g*) in the absence of an application as aforesaid, the right of action shall lapse;

Non-appearance of defendant.

(*h*) if the defendant does not appear, the second part of article 364 shall apply;

Hearing of cause.

(*i*) if both parties appear, the proceedings shall be conducted summarily and *viva voce* in the following order:

(i) the complainant or his advocate or legal procurator shall state the facts constituting the offence and shall produce his evidence;

(ii) the defendant or his advocate or legal procurator shall submit his defence and shall produce his evidence;

(iii) the complainant or his advocate or legal procurator may reply, and the defendant or his advocate or legal procurator is entitled to a rejoinder:

Provided that it shall be lawful for the court, on good grounds, to vary the order of the proceedings;

Confirmation of complaint on oath.

(*j*) it shall be lawful for the court to require that the complaint be made or confirmed on oath.

Proceedings by the Attorney General or the Executive Police *ex officio*. *Amended by: VI.1871.30; III.1880.2; XI.1900.62. Substituted by: XXVIII.2021.6.*

375. In proceedings instituted by the Attorney General or the Executive Police, the following provisions shall apply:

(*a*) the accused shall appear personally. He may, however, be assisted by advocates or legal procurators;

(*b*) in the case of contraventions, the provisions of paragraph (b) of the last preceding article shall apply as regards the accused;

(*c*) the Attorney General or the officer of the Executive Police in charge of the prosecution and the accused or his advocate or legal procurator shall be heard in the order set out in paragraph (i) of the last preceding article;

(*d*) it shall be lawful for the court to require that the charges be read out by the Attorney General or the officer of the Executive Police and the report is confirmed on oath by the officer of the Executive Police;

(*e*) the accused may cross-examine the said officer.

Noting down of pleas raised by accused, and of substance of evidence of witnesses. *Added by: XI.1900.62. Amended by: XII.1913.13.*

376. (1) The magistrate shall take down or cause the registrar to take down -

(*a*) any plea to the jurisdiction of the court, or of inadmissibility or extinguishment of action, or of inadmissibility of any evidence as well as any order rejecting such evidence; and

(*b*) where the court shall deem it expedient so to do, or where a request is made by any of the parties and the court shall see fit to accede to such request, the substance of the evidence given by the witnesses, recording any expression having a direct bearing on the merits of the case.

Reading over of deposition to witnesses.

(2) The notes of the depositions taken down as aforesaid, if any, shall in the presence of the parties be read over to the witnesses and a mention of such fact shall be entered in the record.

Non-observance of provisions of sub-articles (1) and (2) not to affect validity of proceedings. Production of other evidence. Recalling witnesses.

(3) The non-observance of any of the provisions of sub-articles (1) and (2) shall not affect the validity of the proceedings; nor shall such non-observance be a bar to the production, where necessary, at any part or stage of the proceedings, of evidence to prove, in the manner prescribed by law, the facts to which the said provisions refer, or to the recalling of the said witnesses.

Judgment. *Amended by: XI.1900.62; I.1903.22; VIII.1909.36; XII.1913.14; XXXIII.1972.5; XIII.1983.5; III.2002.83;* L.N. *407 of 2007.*

377. (1) When the hearing is concluded, the court shall, on the same day, if conveniently practicable, deliver judgment either discharging or sentencing the accused.

Applicability of s.403(2).

(2) Where the offence established by the evidence is one in respect of which the prosecution lies with the injured party, the provision contained in article 403(2) shall apply.

Court may order offender to abate nuisance.

(3) The court may, notwithstanding any punishment to which it may sentence the offender, order him to remove any nuisance or inconvenience to which the offence relates, or, according to circumstances, to conform with the law, within a time, sufficient for the purpose but in any case not exceeding three months from the date of the judgment, to be fixed by the court; and, if the offender fails to comply with any such order within the time so fixed, he shall be guilty of an offence and shall, on conviction, be liable to a fine (*ammenda*) of not less than four euro and sixty-six cents (€4.66) and not more than twenty-three euro and twenty-nine cents (€23.29) for every day during which the default continues after the expiration of the said time.

Extension of time-limit.

(4) The court shall not grant any application for the extension of the time fixed under the last preceding sub-article if such time

and the time of the extension exceed in the aggregate three months and the Police oppose such extension.

Abatement of nuisance by Police at the expense of offender.

(5) The court shall, upon an application to that effect by the Police at any time after that a person has been found guilty of an offence, in the event of a supervening cause or, in any other case, after the expiry of the time-limit granted by the court under sub-article (3) or (4) hereof, authorise the Police to remove any nuisance or inconvenience to which the offence relates at the expense of the offender, in which case the offender may be made to refund the expense under a warrant issued by the said court.

Court may allow offender to retract his words or apologize.

378. In the case of contraventions, where the offence is in respect of any insult, defamation or threat, the court may, in passing sentence, allow the offender, in order that he may be exempted from the whole or part of the punishment, to retract his words or to apologize to the complainant in open court according to the nature of the offence.

Presumptive evidence of gaming.
Added by: XII.1913.15.
Amended by: XII.1914.11; XI.1977.2.

379. Repealed by Act *XVI.2018. Fourth Schedule*.

Award of costs in proceedings instituted on complaint of injured party.
Amended by: XI.1900.63; VIII.1909.37, 38;
L.N. 407 of 2007.

380. (1) In the case of proceedings instituted on the complaint of the injured or aggrieved party, including the cases referred to in article 374(*c*) and (*d*), the court shall also decide as to the costs and, where the persons sentenced are two or more, the court shall direct whether such costs are to be borne by them jointly or severally.

Fees of advocates or legal procurators.

(2) The fees of the advocate or legal procurator for either party shall be taxed by the court in the judgment itself at a rate ranging from fifty-eight cents (€0.58) to one euro and forty cents (€1.40) for every sitting.

(3) The provision of sub-article (2) shall apply also in the cases referred to in article 374(*c*) and (*d*), as well as in the case where the complainant waives the action, if the advocates or legal procurators of the parties have appeared at the trial.

Successful party may only recover fees of one advocate or legal procurator.

(4) If more than one advocate or legal procurator appear on behalf of any of the parties, such party may only recover from the unsuccessful party the fee of one advocate or legal procurator.

Frivolous or vexatious complaint.

(5) Where the complaint is evidently frivolous or vexatious, it shall be lawful for the court, at the request of the defendant, to sentence the complainant to a fine (*ammenda*), and in default of payment of such fine (*ammenda*), the provisions contained in article 13(2) shall apply.

Taxation and recovery of registry fees.

(6) The registry fees shall be taxed and levied in accordance with the scale in Schedules A and B annexed to this Code.

381. The payment of costs, including the fees due to the advocates or legal procurators, taxed in accordance with the last preceding article, may be enforced by the same court at the suit of the creditor in the same manner and by the same means as a judgment of an inferior court in a civil action may be enforced.

How payment of costs may be enforced. *Amended by: XI.1900.63; VIII.1909.39.*

382. The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence.

Requisites of judgment.

382A. (1) Without prejudice to its powers under the provisions of the following articles of this Sub-title, where the court considers it expedient to do so for any of the purposes mentioned in article 412C(1), it may, in passing judgment against the accused, together with any punishment to which it may sentence the offender, make an order (hereinafter referred to as a "restraining order") which may give effect to any thing provided in sub-article (3) of the said article 412C and the provisions of sub-articles (8) to (11) of the said article 412C, both inclusive, shall *mutatis mutandis* apply.

Restraining Orders. *Added by: XX.2005.17. Amended by: L.N. 407 of 2007; XIII.2018.24; XXIV.2019.6.*

(2) A restraining order shall remain in force for such period, not exceeding three years, as specified by the court which may order that such period shall commence to run from the date of expiration or remission of the punishment. The provisions of article 412C(6) shall *mutatis mutandis* also apply to a restraining order.

(3) If without reasonable excuse the offender contravenes any prohibition or restriction imposed upon him by an order under this article, he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of seven thousand euro (€7,000) or to imprisonment not exceeding two (2) years or to both such fine and imprisonment.

383. (1) The court may, where it deems it expedient, in order to provide for the safety of individuals or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by the court.

Power of court to bind over parties. *Amended by: Xl.1900.64; XII.1913.16; XXII.1976.4; XIII.1983.5; XXIX.1990.18; XX.2005.18; L.N. 407 of 2007.*

(2) Such sum shall not be less than one hundred and sixteen euro and forty-seven cents (€116.47) nor more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) according to the means of the party entering into a recognizance, and the term of the recognizance shall not exceed twelve months.

Amount and term of recognizance.

(3) Where the offender entering into a recognizance is, in respect of the same offence, sentenced to a punishment restrictive of personal liberty, the term of the recognizance shall commence to run from the day on which the said punishment is served or condoned.

Commencement of term of recognizance.

Recognizance with surety. *Amended by: IV.1856.27; V.1868.21.*

384. Where, however, there are reasonable grounds to believe that, for providing for the safety of individuals or for the keeping of the public peace, the recognizance referred to in the last preceding article is not sufficient, the court may moreover require the offender to find a sufficient surety, and the court may further require that such recognizance, with or without surety, be entered into for an indefinite period, that is to say, until such time as the court shall be of opinion that there is good cause for the termination of the said recognizance.

Detention in default of recognizance. *Amended by: VIII.1857.12; V.1868.21; IV.1874.9; XII.1913.17; XII.1957.17; III.2002.84.*

385. (1) If, in the cases referred to in articles 35, 36 and 383, any person refuses to enter into his own recognizance, or if, in the case referred to in the last preceding article, any person refuses or is unable to comply with the requirements of the said article, the court may order such person to be detained until he carries out what is required of him or, where the court ordered him to find a surety, until such time as the court, on the application of the person detained, shall declare that the reasons for which he was ordered to find a surety have ceased.

Term of detention.

(2) The term of detention shall not exceed twelve months.

Maintenance of person under detention.

(3) The provisions of article 12(1) shall, *mutatis mutandis*, apply to a person detained under this article.

Discharge of person bound over.

(4) On satisfying what is required of him, the person detained may at any time obtain his discharge.

Form of recognizance. Security may consist in deposit of sum of money or pledge. *Amended by: VIII.1857.13; III.1899.11; XII.1913.18; XII.1957.17.*

386. The party bound over under articles 35, 36 and 383, and the sureties, if any, shall bind themselves in writing, either jointly and severally or otherwise, as the court shall direct. The security may, where the court shall so think fit, be effected by the deposit of the amount or of an equivalent pledge.

Default of observance of conditions of recognizance. *Amended by: VIII.1857.13; XI.1900.65; XXVII.1975.24.*

387. (1) Where the person bound over as in the preceding articles mentioned is found guilty by a competent court of having failed to observe any of the conditions of his recognizance, the sum for which he has been bound over shall be forfeited to the Government of Malta.

(2) Payment may be enforced against the said person and his sureties in accordance with the provisions of article 585.

(3) The provisions of article 586 shall also apply.

(4) The recovery or payment of the said sum or the detention under article 586(1) shall not exempt the person who has made default in observing the conditions of his recognizance from punishment for the offence committed by such default.

Access to person under detention.

388. Access to any person under detention shall always be allowed during the proper hours.

Sub-title II

OF THE COURT OF MAGISTRATES AS COURT OF CRIMINAL INQUIRY

Amended by: VIII.1990.3.

389. In respect of offences liable to a punishment exceeding the jurisdiction of the Court of Magistrates as court of criminal judicature, the Court of Magistrates shall proceed to the necessary inquiry.

The Court of Magistrates as court of criminal inquiry. *Amended by: VIII.1990.3.*

390. (1) The court shall hear the charges read by the Attorney General or the officer of the Executive Police and the report of the Police officer on oath, shall examine, without oath the party accused and shall hear the evidence in support of the charges read. Everything shall be reduced to writing.

Mode of procedure in preliminary inquiries. *Amended by: VI.1871.31; XIII.1980.13; XXVIII.2021.7.*

(2) The court shall examine and reduce to writing the evidence adduced on behalf of the accused.

Taking down of evidence on behalf of accused.

(3) In cases where no proceedings can be instituted except on the complaint of the injured party, the accused may, even before he is examined, demand the production of the complaint, if the complaint was made in writing, or of other evidence of the complaint, if it was made orally.

Accused may request the production of the complaint.

(4) The attendance of the complainant shall not be necessary to prove the complaint, if from other evidence it appears to the satisfaction of the court that the complaint was made.

(5) If, in the course of the inquiry, the accused shall not have demanded nor the court *ex officio* shall have ordered the production of evidence of the complaint, the complaint shall be presumed to have been made according to law.

Presumptive evidence of complaint.

(6) The court may, having regard to the circumstances of the case, *ex officio*, order that the answers given by the witness, or the substance thereof, be taken down in shorthand by means of stenographers appointed for the purpose or be recorded by electromagnetic means. Shorthand notes shall be taken down in indelible ink and signed on each page by the stenographers and shall, together with the transcript, be inserted in original in the record. The electromagnetic recording shall be transcribed under the direction of the registrar and the transcript shall be inserted in the record. In either case, the transcript may be handwritten or

typewritten and shall be read over to the witness, during or after the sitting, by the registrar who shall make a note of such reading at the foot of the transcript.

Examination of witnesses.
Amended by: V.1868.22; I.1903.23; XXX.1934.5; VIII.1944.2; XXXII.1965.8; IV.1994.11; XVI.2006.8; L.N. 426 of 2012; XXIII.2017.14. V.2024.6.
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391. (1) The witnesses shall be examined by the court. The name and surname of the witness, the name and surname of the parents and, if the witness is a person to whom articles 4, 9 and 13 of the Identity Card and other Identity Documents Act, applies, the number, if known to the witness, of his legally valid identification document issued under the said Act, as well as the place of birth and abode of the witness and the language in which he shall have deposed, shall be noted down at the head of every deposition:

Provided that the court may, in exceptional circumstances and to provide for the safety of the witness, omit the above particulars, other than the name and surname of the witness and the language in which he shall have deposed, making a note to that effect in the record of the proceedings.

Employment of interpreter.

(2) If the magistrate is conversant with the language spoken by the witness, he may himself translate the deposition into the language in which the written proceedings are conducted; otherwise, or at the request of the accused, a sworn interpreter shall be employed.

(3) Where the witness is a minor under the age of eighteen (18) years the witness shall be examined and cross-examined in one sitting and his testimony shall be recorded by audio-visual means. The audio-visual recording shall form part of the record of the proceedings:

Provided that for special and exceptional reasons which arise after the witness has given his testimony the Court may authorize the hearing of the witness in a subsequent sitting.

Examination of accused.
Amended by: IV.1856.28; IV.1874.10; XIII.1980.14; IV.1994.12; XXIII.2017.15.

392. (1) The examination of the accused referred to in article 390(1), shall, without threat or promise, and without oath, be made in the following manner:

(*a*) the court shall ask him his name and surname, his age, his place of birth and abode, his trade, profession or calling, the name and surname of his parents and whether his parents are alive or dead;

(*b*) the court shall ask the accused if and what he wishes to reply to the charge.

Caution to accused.

(2) Before asking any of the above questions, the court shall explain to the accused the nature of the charge preferred against him and shall inform him that he is not obliged to answer any question nor to incriminate himself; that he may, if he so desires, be assisted by advocates or legal procurators and that whatever he says may be received in evidence against him.

(3) The court shall note down at the head of the examination that the requirements of the last preceding sub-article have been complied with.

(4) The answers shall be taken down by the magistrate in the manner provided in article 391, stating the language in which they are given.

Taking down of answers.

(5) If the accused stands mute, the court shall note down the circumstance and shall proceed with the case as if the accused had pleaded not guilty.

Accused standing mute.

392A. (1) If the accused, in answer to the question in article 392(1)(*b*) or in any stage of the proceedings, states that he is guilty of the offence charged and the said offence is liable to a punishment not exceeding twelve years imprisonment, the court shall warn him in the most solemn manner about the legal consequences of that reply, and shall allow him a period of time for him to reply.

Admission of guilt by the accused during the examination. *Added by: III.2002.85. Amended by: IX.2003.128; IV.2014.21; VIII.2015.28; V.2022.2.*

(2) Saving the provisions of sub-article (3) and notwithstanding any other provision of this Code or of any other law, if the accused persists in his statement that he is guilty of the offence charged, such reply shall be registered, and the Court as a court of criminal judicature shall proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence and shall order that within six (6) working days, the Attorney General shall be given access to a scanned copy of the records, together with access to a scanned copy of the judgment.

(3) Nevertheless, if there is good reason to doubt whether the offence has really taken place at all, or whether the accused is guilty of the offence, the court shall, notwithstanding the confession of the accused, order that the proceedings be continued as if the accused had not pleaded guilty.

(4) The provisions of article 370(2) and of article 371 shall *mutatis mutandis* apply to proceedings under this article in respect of an offence to which sub-article (1) applies.

(5) At any stage of the proceedings, the accused and the Attorney General may agree and may request the court by means of an application, so that in the case where the accused pleads guilty, the Court of Magistrates as a court of criminal judicature, shall apply such sanction or measure or, where it is so provided by law, a combination of sanctions and measures, of the type and quantity agreed upon between them, and in respect of which the accused may be sentenced when he is found guilty for the offence or the offences with which he has been charged.

(6) In pronouncing judgement the court shall not take into consideration any agreement on the sentence to be awarded which is not made in accordance with sub-article (5).

(7) If the court is satisfied that the sanction or the measure, or the combination of sanctions or measures requested, as provided for in the preceding sub-article, are such that it shall be lawful for it to impose upon finding the accused guilty of the offence for which the accused has pleaded guilty, and the court feels that it should not order that the case continues in accordance with the provisions of sub-article (3) or for any other reason that it should dismiss the request, and after having clearly explained to the accused the

consequences of his request, the court shall, where an admission of guilt is made by the accused, proceed to award the sentence indicated to it by the parties wherein it shall be declared in its decision that the sentence which is being awarded is being so awarded on the request of the parties.

(8) The provisions of article 453A(3) to (5), both sub-articles inclusive, shall, *mutatis mutandis*, apply to the proceedings under this article.

Admission of guilt. *Added by: IV.2014.22. Substituted by: XXIV.2014.51. Amended by: VIII.2015.29; V.2022.3.*

392B. (1) In the case where the accused, in answer to the question in article 392(1)(*b*) and in any stage of the proceedings, states, that he is guilty of the offence charged and the said offence is liable to a punishment exceeding twelve years imprisonment, the court shall warn him in the most solemn manner about the legal consequences of that reply, and shall allow him a period of time for him to reply. Without prejudice to the provisions of sub-article (3) of article 392A and notwithstanding any other provision of this Code or any other law, if the accused persists in his statement that he is guilty of the offence charged, the court shall, after recording the admission of guilt:

(*a*) order that the Attorney General, within three (3) working days, be granted access by electronic means to a scanned copy of the record of inquiry, together with the objects relating to the case; and

(*b*) notify the Registrar of the Criminal Court that an admission of guilt has been made.

(2) The Attorney General shall be allowed the term of one (1) month to present a note in the Criminal Court by which note he shall declare that the charge presented before the Court of Magistrates as a court of inquiry and to which the accused person has admitted guilt, shall be considered as a bill of indictment; such declaration shall not in any way give rise to any nullity or other defect in the proceedings notwithstanding the other provisions of this Code and of any other law.

(3) Where the Criminal Court is notified by the Court of Magistrates as a court of inquiry, about the admission of guilt in accordance with paragraph (*b*) of sub-article (1), the Criminal Court shall, within two months from the date of notification, appoint the date of hearing.

(4) The Criminal Court shall, either *ex officio*, upon a request by the Attorney General or by the accused, examine that evidence that it deems relevant for the purposes of punishment, and after examining the submissions by the Attorney General and the accused relating to the punishment, proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

(5) (*a*) The accused and the Attorney General may request the Criminal Court to apply a sanction or measure or, where provided for by law, a combination of sanctions or measures, of the kind and quantity agreed between

them, and to which the accused can be sentenced.

(*b*) If the court is satisfied that the sanction or the measure, or the combination of sanctions and measures requested, as provided for in paragraph (*a*), is one which it would been lawful for it to impose upon conviction of the offence for which the accused has pleaded guilty, the court shall proceed to pass the sentence indicated to it by the parties declaring in its judgement that the sentence being awarded is being so awarded at the request of the parties.

(*c*) The provisions of sub-articles (3), (4) and (5) of article 453A shall, *mutatis mutandis*, apply to this sub-article.

(6) Notwithstanding any other provisions of this Code or any other law, an admission made and recorded according to the provisions of sub-article (1) may not be revoked or withdrawn.

(7) When the Criminal Court deems that a formality was not observed according to this article or there is any other defect in the proceedings, the Criminal Court shall send all proceedings back to the Court of Magistrates as a court of inquiry to commence the inquiry anew.

Payment of costs upon admission of guilt. *Added by: XXIV.2014.52.*

392C. (1) Upon an admission of guilt by the accused, whether during the examination or at any stage of the proceedings, the court shall, before proceeding to pronounce judgement, ascertain whether an inquiry relating to the *in genere* or a *repertus* has been held and if in the affirmative, the court shall, in pronouncing judgement or in any subsequent order, sentence the person convicted or the persons convicted, jointly or severally, to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry, within such period and in such amount as shall be determined in the judgement or order:

Provided that where the said costs are not yet determined at time of pronouncing the judgement or in the event that any expert or referee has not presented his report or the process verbal has not been concluded, the Registrar is empowered to determine the costs, and to proceed to their recovery from the person or persons convicted, wholly or in part, as directed by the court in its judgement:

Provided further that the Court shall, before proceeding to pronounce judgement as aforesaid and in making an order in terms of article 23B, ascertain whether an order as is referred to in articles 23A and 23D has been made, and if in the affirmative, the provisions of this sub-article shall, *mutatis mutandis*, apply to any such order.

(2) The provisions of article 533 shall *mutatis mutandis* apply to any order made under this article.

Cross-examination by the accused. *Amended by: III.1880.3.*

393. The accused may cross-examine the witnesses, and his questions, together with the answers, shall be taken down at the end of the examination-in-chief.

Noting down of points of fact submitted by accused.

394. Any point of fact which, upon the examination of any witness or in the course of the inquiry, is submitted by the accused, shall be noted down by the court in the corresponding part of the record.

Depositions of witnesses and examination of accused to be signed by magistrate. *Amended by: Order-in-Council of 1899, s.1.*

395. The depositions of the witnesses and the examination of the accused shall be signed by the magistrate.

Counter-signing of exhibits.

396. Every document produced in the course of the inquiry shall be counter-signed by the magistrate, and a record of such production shall be entered on the document itself by the registrar or the officer acting in his behalf.

Powers of magistrate during inquiry. *Amended by: IX.1859.23; V.1868.23; XIII.1931.2; L.N. 4 of 1963; XXXI.1966.2; XXIV.2014.53; XXVIII.2021.8.*

397. (1) The court may order the attendance of any witness and the production of any evidence which it may deem necessary, as well as the issue of any summons or warrant of arrest against any other principal or accomplice whom the court may discover. The court may likewise order any inquest, search, experiment, the taking of any sample and any other measure or thing necessary for the fullest investigation of the case.

Examination of body.

(2) The court may also, under such safeguards as it may consider necessary for the purpose of decency, examine or order to be examined by experts any part of the body of the accused or of the party on whom or with whom the offence is alleged to have been committed, if the court is of opinion that from such examination a proof might result either against or in favour of the accused.

Photographs, measurements and finger-print impressions.

(3) The court may, moreover, at the request of the Attorney General or the Police, order that any accused person be photographed or measured or that his finger-prints be taken:

Provided that when an accused person, who has not been previously convicted of crime, is acquitted, all photographs (both negatives and prints), finger-print impressions, and records of measurements so taken, shall be destroyed or handed over to the person acquitted.

(4) The photographs, finger-print impressions and measurements referred to in the last preceding sub-article shall be taken in accordance with such regulations as may from time to time be made by the Minister responsible for justice.

Arrest of accused not in custody.

(5) The court may also order the arrest of the accused not already in custody.

How and where alterations, corrections, or additions may be made.

398. (1) Where, previously to the signing of any act, it is necessary to make thereon any alteration, correction or addition, the same shall be made by means of a note at the foot of the act itself and before the act is signed. Any alteration, correction or addition required to be made after the act is signed shall be made by means of a note in the margin.

No erasures may be made.

(2) No erasure may be made in any act, nor may any blank space be left therein unless it be lined, and if it is necessary to make any cancellation, the same shall be made in such a manner as to leave the word cancelled distinctly legible.

Magistrate to sign notes, etc.

(3) The magistrate shall sign any such notes or cancellation.

Evidence by commission. *Added by: XI.1900.66. Amended by: XXXI.2007.16. Substituted by: XXIV.2014.54.*

399. (1) When the court decides that the examination of any witness or any other process of the inquiry by a foreign authority is indispensably necessary, the request for legal assistance and the court's decision shall be served, within three working days, on the Attorney General who may, within five working days, make any submissions in writing as he may deem appropriate.

(2) The accused may, not later than four working days from any such decision, submit an additional request for the examination of any witness or any other process of the inquiry, and appoint some person to represent him at the examination or process. Such term may, upon good cause being shown, be extended:

Provided that such term as extended shall not exceed thirty days from the date of the decision.

(3) The court shall order the transmission of the request for legal assistance to the foreign authority within three working days upon the expiry of the period referred to in sub-article (2).

(4) The Criminal Court shall have competence to order the transmission of the request for legal assistance to the foreign authority upon an application being made by the Attorney General or the accused upon the expiry of the time period referred to in sub-article (3).

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(5) The provisions of article 622B of the Code of Organization and Civil Procedure providing for the audio-recording or video-recording of evidence or by any other means shall apply to a request for the examination of any witness under this article.

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(6) The provisions of articles 618 and 619 of the Code of Organization and Civil Procedure shall apply for the purposes of this article:

Provided that where there exists any treaty, convention, agreement or understanding between Malta and another country or which applies to both such countries or to which both such countries are a party, the request shall be made and transmitted in terms of the said treaty, convention, agreement or understanding.

(7) For purposes of this article a letter of request shall contain the following:

(*a*) the object of and the reason for the request;

(*b*) details of the person or persons named in the request including, where available, address, date of birth and nationality;

(*c*) a description of the offences with which a person has been charged and the punishment to which the offences are liable;

(*d*) a summary of the facts giving rise to the request; and

(*e*) a copy of the relevant legislation that criminalises the conduct attributed to the offender and gives information on the offence, penalty and rights a person may be afforded.

Accused may be assisted by advocate or legal procurator.

400. The accused may, in the course of the inquiry, be assisted by advocates or legal procurators.

Term for conclusion of inquiry. *Amended by: VIII.1857.14; XI.1900.67; L.N. 46 of 1965; III.1973.2; LVIII.1974.68; XXVII.1975.40; XIII.1980.15; III.2002.86; XVI.2006.9; V.2022.4; IV.2023.4,16.*

401. (1) The inquiry shall be concluded within the term of one (1) month which may, upon good cause being shown, be extended by the President of Malta for further periods each of one (1) month, each such extension being made upon a demand in writing by the court:

Provided that the said term shall not in the aggregate be so extended to more than three months:

Provided further that unless bail has been granted, the accused shall be brought before the court at least once every fifteen days in order that the court may decide whether he should again be remanded in custody.

Committal or discharge of accused.

(2) On the conclusion of the inquiry, the court shall decide whether there are or not sufficient grounds for committing the accused for trial on indictment. In the first case, the court shall commit the accused for trial by the Criminal Court, and, in the second case, it shall order his discharge.

Record to be transmitted to Attorney General.

(3) In either case, the court shall order that the Attorney General be granted access by electronic means to a scanned copy of the record of the inquiry, together with all the exhibits related to the case, within three (3) working days.

Electronic transmission of documents of the proceedings to the Attorney General.

(3A) Where the court has committed the accused for trial by the Criminal Court, the court shall, besides giving the order mentioned in sub-article (3), adjourn the case to another date, being a date not earlier than one (1) month but not later than six (6) weeks from the date of the adjournment. The court shall also adjourn the case as aforesaid to a date falling after the court shall have received the note of referral according to sub-article (2) of article 405 from the Attorney General and falling before the date when it shall grant access again by electronic means to the record of the inquiry together with all the exhibits and documents in the case to the Attorney General in terms of any provision of this Code.

(4) In deciding whether there are or not sufficient grounds for committing the accused for trial on indictment the court shall not consider any question of prescription or any plea as is mentioned in article 449(1)(*d*).

(5) During the term stipulated in sub-article (3A), the Criminal Court shall be competent to decide on demands that are filed during the said term.

Suspension of term for inquiry, *Added by: IV.1856.29. Amended by: XI.1900.67; L.N. 46 of 1965; XXV.1967.2; LVIII.1974.68; XXVII.1975.40; XXIX.1990.19; XXIV.2014.55; V.2022.5.*

402. (1) The terms referred to in the last preceding article, in article 407 and in article 432(3) shall be held in abeyance -

(*a*) if it is alleged or if there is reason to believe that the accused was insane at the time of the offence or that he is insane at the time of the inquiry; — in case of insanity of accused,

(*b*) if the accused owing to illness or for any other cause, is unable to appear; — in case of illness of accused,

(*c*) if there has been any order for the examination of any witness or for any other process of the inquiry under article 399; — in case of the taking of evidence by commission,

(*d*) when the court accedes to a request made in terms of article 46(3) of the Constitution.

(2) Such terms may also be held in abeyance -

(*a*) if any witness is so infirm as to be unable to give evidence even in his place of abode; — in case of illness of witnesses,

(*b*) if the accused cannot be found and there is reason to believe that he has absconded or left Malta. — in case where accused cannot be found.

(3) In the case referred to in sub-article (1)(*a*), the court shall appoint one or more experts to examine the accused and the facts relating to the alleged insanity. — Appointment of experts.

(4) If from the report of the experts, it appears that the accused was insane at the time of the commission of the offence, the court shall order that the Attorney General shall be given access by electronic means to a scanned copy of the record of the inquiry within three (3) working days and shall make an order as provided in article 623. — Insanity at the time of the offence.

(5) If, upon receipt of the scanned record by electronic means, the Attorney General decides to contest the finding of the experts that the accused was insane, he may, within the term prescribed in article 432(1), request that the inquiry into the merits of the case be proceeded with, or file an application before the Criminal Court submitting the issue to that court, so that action may be taken as provided in articles 620, 627 and 628: — Contestation of insanity by Attorney General.

Provided that the Attorney General shall file such application if the accused by application to the court of criminal inquiry makes a request to that effect before access to the scanned record by electronic means is granted to the Attorney General in terms of the last preceding sub-article.

Insanity at the time of the inquiry.

(6) If from the report of the experts, it appears that the accused was insane at the time of the inquiry, the court shall proceed with the inquiry into the merits of the charge.

Inquiry may be continued in the absence of the accused.

(7) In the cases referred to in sub-articles (5) and (6), the inquiry may be continued in the absence of the accused, and if he is not assisted by an advocate or legal procurator, the provisions of article 519 shall apply.

Terms under article 402(1) to run anew.
Added by: XXXI.2007.17.

402A. Where in respect of a person charged before the Courts of Magistrates as a court of criminal inquiry a court has made an order for his temporary surrender to a foreign State requesting his extradition or to any other foreign competent authority requesting his surrender, the terms referred to in article 402(1) shall, from the date of his return to Malta, recommence to run anew.

When court is of opinion that offence is triable by the Court of Magistrates as court of criminal judicature.
Added by: XI.1900.76.
Amended by: I.1903.24; VIII.1909.40; L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.40; VIII.1990.3.

403. (1) If, on the conclusion of the inquiry, it appears to the court that the offence is not one within the jurisdiction of the Criminal Court but is one within the jurisdiction of the Court of Magistrates as court of criminal judicature and for the prosecution of which the complaint of the injured party is not required, the court conducting the inquiry shall give judgment as provided in article 377 and shall order that the record, together with a copy of the judgment, be transmitted to the Attorney General, as provided in article 401(3).

(2) The provisions of sub-article (1) shall apply also in the case where the offence is one triable on the complaint of the injured party and such party does not appear to waive the complaint.

Duty of Executive Police to continue investigation after discharge of accused for want of evidence.
Amended by: VIII.1990.3.

404. In every case where the Court of Magistrates discharges an accused for want of evidence, it shall be the duty of the Executive Police to continue to make further and fuller investigation into the case.

Re-examination of witnesses or examination of new witnesses upon demand of Attorney General.
Amended by: IV.1856.30; III.1880.4; VIII.1909.41; L.N. 46 of 1965; LVIII.1974.68; XXIV.2014.56; XXVIII.2021.9; V.2022.6; IV.2023.6,17.

405. (1) The court shall, after ordering that the Attorney General be granted access by electronic means to the record of the inquiry and to all the exhibits in the case, after ordering the committal of the accused for trial, and before the filing of the bill of indictment, upon the demand in writing of the Attorney General, further examine any witness previously heard or examine any new witness.

Attorney General to forward the demand.

(2) The Attorney General shall, for such purpose, transmit to the court the demand, stating therein the subject on which the examination or re-examination is to take place.

(3) The witnesses shall be examined or re-examined in the presence of the accused in order that he may have the opportunity of cross-examining them, and, for such purpose, the court shall order the accused, if in custody, to be brought up, and, if not in custody, to be summoned to appear before it.

Examination of witnesses in presence of accused.

(4) If the accused fails to appear to the summons, the witness shall be examined and his deposition shall be considered as if it had been taken in the presence of the accused.

Failure of accused to appear to the summons.

(5) The provisions of the preceding sub-articles shall apply in the case of witnesses whom the accused may wish to examine or re-examine. In such case, the demand shall be communicated to the Attorney General. The court shall then cause the Attorney General or the Commissioner of Police to be notified of the day appointed for the hearing of the witnesses in order that they or any other officer under their charge may if they so desire, appear and cross-examine the witnesses.

Re-examination of witnesses or examination of new witnesses upon the demand of accused. Transmission of record to court by Attorney General. Commissioner of Police to be notified.

(6) Access by electronic means to the depositions of witnesses taken under this article shall, without delay, be transmitted to the Attorney General.

Access to scanned record by electronic means to be transmitted to Attorney General.

(7) When the demand for the examination of witnesses is made by the person charged, the term for the filing of the indictment shall commence to run from the day on which access by electronic means to the scanned record of the inquiry, together with access by electronic means to the depositions of the witnesses so examined, shall be re-transmitted to the Attorney General.

(8) The court shall proceed to take any other action or measure relating to the inquiry as may be demanded in writing by the Attorney General.

Time-frame for the indictment when a demand is made by the charged for the re-examination of witnesses or the examination of new witnesses.

406. (1) Where the indictment has already been filed, the demand of the Attorney General or of the accused, referred to in the last preceding article, shall be made by an application to the Criminal Court. Such application shall contain a list of the proposed witnesses and a clear indication of the subject on which they are to be examined. The court, if it allows the application, shall order the hearing of the witnesses, and shall, for this purpose, direct that the application be transmitted to the Court of Magistrates as a court of criminal inquiry, and the latter court shall proceed in accordance with the provisions of the said article.

Application for the re-examination of witnesses or the examination of new witnesses made after the filing of the indictment. *Amended by: III.1880.5; L.N. 46 of 1965; LVIII.1974.68: XXVII.1975.40; IX.1982.2; VIII.1990.3; V.2022.7.*

(2) The record of the proceedings shall be forwarded by the registrar to the Court of Magistrates together with the said application.

(3) The Court of Magistrates shall send back the record, together with the depositions taken, to the Criminal Court, and shall order that the Attorney General be granted, within three (3) days, access by electronic means to the scanned evidence of the witnesses if heard.

Application to be allowed only in certain cases. Depositions taken after expiration of period prescribed for list of witnesses, admissible at trial only with leave of court.

(4) The demand for the hearing of witnesses in the cases referred to in this article shall not be granted, unless the court is satisfied that the witnesses are about to leave Malta or are in danger of life or are in such a condition as to be probably unable to attend in court on the day appointed for the trial; and if the hearing of the witnesses takes place after the lapse of the term fixed in article 438 for the filing of the list of the witnesses to be produced at the trial, their depositions shall not be admissible except with the leave of the Criminal Court to be granted only if the said court, having regard to the circumstances of the case, is of opinion that the evidence resulting therefrom is relevant.

Term within which to conclude inquiry, in case of contestation by Attorney General of insanity of accused and in case of fresh evidence. *Amended by: XI.1900.68.*

407. In the cases referred to in the first part of article 402(5) and in the last preceding two articles, the inquiry shall be concluded within the term mentioned in article 401(1) to be reckoned from the day on which the record is received by the court.

Access to accused during inquiry. *Amended by: XI.1900.68; L.N. 46 of 1965; LVIII.1974.68; V.2022.8.*

408. (1) During the inquiry and until access by electronic means of the scanned record is given to the Attorney General, no access to the party accused, when in custody, shall be allowed except with the permission of the inquiring magistrate..

(2) Such permission shall not be granted if the magistrate deems it prejudicial to the ends of justice.

When inquiry may be held with closed doors. *Added by: XI.1900.69.*

409. (1) It shall be lawful for the court to order the proceedings to be conducted with closed doors, if it appears to it that the ends of justice would be prejudiced if the inquiry were conducted in open court.

(2) In any such case, the officials attached to the court and taking part in the inquiry shall be bound not to disclose the proceedings thereof under the penalty provided in article 257.

Application by person in custody alleging unlawful detention. *Added by: III.2002.87. Amended by: V.2022.9.*

409A. (1) Any person who alleges he is being unlawfully detained under the authority of the Police or of any other public authority not in connection with any offence with which he is charged or accused before a court may at any time apply to the Court of Magistrates, which shall have the same powers which that court has as a court of criminal inquiry, demanding his release from custody. Any such application shall be appointed for hearing with urgency and the application together with the date of the hearing shall be served on the same day of the application on the applicant and on the Commissioner of Police or on the public authority under whose authority the applicant is allegedly being unlawfully detained. The Commissioner of Police or public authority, as the case may be, may file a reply by not later than the day of the hearing.

(2) On the day appointed for the hearing of the application the court shall summarily hear the applicant and the respondents and

any relevant evidence produced by them in support of their submissions and on the reasons and circumstances militating in favour or against the lawfulness of the continued detention of the applicant.

(3) If, having heard the evidence produced and the submissions made by the applicant and respondents, the court finds that the continued detention of the applicant is not founded on any provision of this Code or of any other law which authorises the arrest and detention of the applicant it shall allow the application. Otherwise the court shall refuse the application.

(4) Where the court decides to allow the application, access by electronic means to the scanned record of the proceedings, including a scanned copy of the court's decision, shall be transmitted to the Attorney General by not later than the next working day and the Attorney General may, within two (2) working days from receipt of the access by electronic means of the scanned record and if he is of the opinion that the arrest and continued detention of the person released from custody was founded on any provision of this Code or of any other law, apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released from custody.

GENERAL PROVISIONS APPLICABLE TO THE COURT OF MAGISTRATES WHETHER AS COURT OF CRIMINAL JUDICATURE OR AS COURT OF CRIMINAL INQUIRY

Amended by: VIII.1990.3.

Right of complainant or his advocate or legal procurator to be present at the proceedings. *Added by: VIII.1909.42. Amended by: VI.1930.2; III.2002.88; XXVIII.2021.10.*

410. (1) In any proceedings instituted by the Attorney General or by the Executive Police on the complaint of the injured party, it shall be lawful for the complainant to be present at the proceedings, to engage an advocate or a legal procurator to assist him, to examine or cross-examine witnesses and to produce, in support of the charge, such other evidence as the court may consider admissible.

Examination on oath of complainant.

(2) Where the complainant is to be heard on oath, his evidence shall be taken before that of any other witness of the prosecution, saving the case where, in the opinion of the court, his evidence becomes necessary even at a later stage of the proceedings, or where the accused applies for such evidence at any stage of the proceedings, or where the court sees fit to vary the course of the taking of the evidence.

Police and party injured may be assisted by advocate or legal procurator.

(3) In any proceedings instituted by the Executive Police *ex officio*, it shall be lawful for the Police and for the party injured to engage an advocate or a legal procurator to assist them; such advocate or legal procurator may examine or cross-examine witnesses, produce evidence or make, in support of the charge, any other submission which the court may consider admissible.

Injured party may be present in court during sittings.

(4) Without prejudice to the provisions of sub-article (3) and subject to the provisions of sub-article (6), any party injured having an interest in being present during any proceedings instituted by the Executive Police shall have the right to communicate that interest to the police giving his or her particulars and residential address whereupon that injured party shall be served with a notice of the date, place and time of the first hearing in those proceedings and shall have the right to be present in court during that and all subsequent hearings even if he is a witness.

(5) Without prejudice to the provisions of sub-article (3) and subject to the provisions of sub-article (6), any person not served with the notice referred to in sub-article (4) and claiming to be an injured party may apply to the court to be admitted into the proceedings as an injured party and if his claim that he is an injured party is allowed by the court that person shall thereupon have the right to be present at all subsequent hearings even if he is a witness.

(6) The failure to serve the injured party with the notice of the date of the first hearing after an attempt has been made to that effect or the absence for any reason of the injured party at any sitting shall not preclude the court from proceeding with the trial or inquiry until its conclusion.

Taxation of fees of advocate or legal procurator in proceedings instituted by the Police.
Added by: XVI.1921.6.
Cap. 12.

411. (1) In the case of proceedings instituted by the Executive Police, the fees of the advocate or legal procurator shall be taxed in accordance with the scale in Schedule C annexed to this Code. The taxed bill of such fees may be impugned and shall be enforceable in the same manner as the taxed bills of judicial costs referred to in article 253(c) of the Code of Organization and Civil Procedure.

(2) The registrar may, in connection with the taxation of any fee, consult the magistrate by whom the offence was tried, with regard to the importance of the charge, the duration of the proceedings and other circumstances. The advocate or legal procurator may also apply to the said magistrate for the re-taxing of any fee within the scale in Schedule C annexed to this Code.

Days on which the Court of Magistrates may hold sittings.
Amended by: XII.1922.2; XXX.1934.6; L.N. 4 of 1963; XXXI.1966.2; XXVII.1975.25; VIII.1990.3; III.2002.89.
Cap. 252.

412. (1) The Court of Magistrates shall hold its ordinary sittings every day, except Saturdays, public holidays as provided in the National Day and other Public Holidays Act, and Wednesday and Thursday of Holy Week.

Exceptions.

(2) Nevertheless, where the matter relates to the binding over of the offender under articles 383 and 384, or to the performance of any act in connection with any inquest or other inquiry referred to in this Code or to any bail or to the issue of any urgent summons or to the examination of any witness who is about to leave Malta or is in danger of life, it shall be lawful for the magistrate to sit for the despatch of business on the days mentioned in sub-article (1) and in any place where it may be necessary.

(3) The Court of Magistrates (Malta) shall hold its sittings in Valletta and the Court of Magistrates (Gozo) shall hold its sittings in Victoria: Place of sittings.

Provided that it shall be lawful for the Minister responsible for justice, by notice, to fix any other place where the said courts, as courts of criminal judicature, may hold their sittings:

Provided further that the Court of Magistrates, even as a court of criminal judicature, may hold its sittings at the Lazaretto or in any other place that it may deem proper, if the accused or any witness is performing quarantine, and the court itself shall not deem it expedient to adjourn the cause until the expiration of the period of quarantine. Sec. 3 of Ordinance II of 1867 incorporated.

412A. (1) When the person charged or accused brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, is not in custody the Attorney General or the Police may thereupon or at any stage of the proceedings thereafter request the court to impose conditions upon the person charged or accused in order to ensure the appearance of that person at the proceedings on the appointed time and place or to otherwise ensure that that person will not in any way unlawfully interfere in the correct administration of justice in those proceedings. Conditions on person charged or accused not in custody. *Added by: III.2002.90. Amended by: XXVIII.2021.11; XLIII.2021.2.*

(2) The court may require the giving of sufficient security by the person charged or accused by the mere recognizance of the same person charged or accused in order to ensure that he abides by the conditions imposed upon him by the court and the provisions of articles 576 and 584, shall apply to the security given under this sub-article.

(3) The sum given by way of security shall be forfeited to the Government of Malta and a warrant of arrest shall be issued against the person charged or accused where that person fails to observe any of the conditions imposed by the court in pursuance of the provisions of this article and in any of the other circumstances mentioned in article 579 provided that the Court may decide not to apply the provisions of this sub-article or not to apply them to their full extent where the court considers that the infringement of the condition imposed by the court is not of serious consequence.

412B. (1) Any person in custody for an offence for which he is charged or accused before the Court of Magistrates and who, at any stage other than that to which article 574A applies, alleges that his continued detention is not in accordance with the law may at any time apply to the court demanding his release from custody. Any such application shall be appointed for hearing with urgency and together with the date of the hearing shall be served on the same day of the application on the Commissioner of Police or, as the case may be, on the Commissioner of Police and the Attorney General, who may file a reply thereto by not later than the day of the hearing. Application by person in custody pending criminal proceedings alleging unlawful detention. *Added by: III.2002.90. Amended by: V.2022.10.*

(2) The provisions of article 574A(2) and (3) shall *mutatis mutandis* apply to an application under this article.

(3) Where the application is filed in connection with proceedings pending before the Court of Magistrates as a court of criminal inquiry before a bill of indictment has been filed or if the term referred in sub-article (3A) of article 401 is still running, the application shall be filed in the Criminal Court and the foregoing provisions of this article shall *mutatis mutandis* apply thereto.

(4) The provisions of article 409A(4) shall apply to a decision of the Court of Magistrates under this article.

Protection Orders. *Added by: XX.2005.19. Amended by: L.N. 407 of 2007. Substituted: XIII.2018.24.*

412C. (1)Where a person (hereinafter in this article and in article 412D referred to as "the accused") has been charged or accused with an offence before the Court of Magistrates whether as a Court of inquiry or as a Court of criminal judicature, the Court may, either *ex officio* or at the request of any party to the proceedings, on reasonable grounds, for the purpose of providing for the safety of the injured person or of other individuals or for the keeping of the public peace or for the purpose of protecting the injured person or other individuals from harassment or other conduct which will cause a fear of violence, issue a protection order against the accused.

(2) Where a protection order is requested by any party to the proceedings, such request shall be appointed for hearing to determine whether there is sufficient *prima facie* evidence for it to be issued by the Court within seven days from when such request is made.

(3) Before issuing a protection order, the Court shall take into account:

(*a*) the need to ensure that the injured person or other individual specified in the order is protected from injury or molestation; and

(*b*) the welfare of any children or any dependants who may be affected by the order; and

(*c*) the accommodation needs of all persons who may be affected by the order, in particular of the injured person, his children and his other dependants; and

(*d*) any hardship that may be caused to the accused or to any other person as a result of making the order; and

(*e*) the accused's willingness or otherwise to submit to such treatment as the Court may deem appropriate; and

(*f*) any other matter that, in the circumstances of the case, the Court considers relevant:

Provided that particular attention shall be given to the matters in paragraphs (*a*), (*b*) and (*e*).

(4) The Court shall always issue a protection order in those instances where, following a risk assessment of the injured party or any other relevant person, it becomes apparent that such person is at a very high risk.

(5) When issuing a protection order, the Court shall outline the formal requirements of such order, and, if applicable, delineate any

prohibited areas and other prohibited conduct.

(6) When issuing a protection order under this article, the Court shall immediately communicate such order to the Commissioner of Police, who shall take all actions necessary to ensure monitoring of the conditions of such order, including, if appropriate, by electronic means.

(7) A protection order may impose any restrictions or prohibitions on the accused that appear to the Court necessary or desirable in the circumstances in order to give effect to any of the purposes mentioned in sub-article (1).

(8) Without limiting the nature of the orders which may be made under sub-article (1), a protection order may do all or any of the following:

(*a*) prohibit or restrict the accused from approaching or following the movements of the injured person or any other individual specified in the order; or

(*b*) prohibit or restrict access by the accused, to premises in which the injured person, or any other individual specified in the order, lives, works or frequents even if the accused has a legal interest in those premises; or

(*c*) prohibit the accused from contacting or molesting the injured person or any other individual specified in the order.

(9) A protection order shall remain in force for a period, not exceeding five years, specified by the Court, but can be revoked or extended for further periods.

(10) A party to the proceedings in which an order has been made under this article or any other individual mentioned in the order, may apply to the Court at any time for the extension, variation or revocation of the order and after all the parties have had an opportunity to be heard the Court shall, in determining whether to extend, vary or revoke an order, have regard to the matters specified in sub-article (3).

(11) If without reasonable excuse the accused contravenes any prohibition or restriction imposed upon him by an order under this article, he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of seven thousand euro (€7,000) or to imprisonment not exceeding two years or to both such fine and imprisonment.

(12) The Court may also order that any arm proper or arm improper, as defined in article 64, be deposited with the Court's registrar.

Treatment Orders. *Added by: XX.2005.19. Amended by: L.N. 407 of 2007.*.

412D. (1) Together with or separately from a protection order under article 412C, and provided the court is satisfied that proper arrangements have been made or can be made for treatment, the court may make an order (hereinafter in this article referred to as a "treatment order") requiring a person to submit to treatment subject to the conditions which the court may deem appropriate to lay down in the order:

Provided that where any person is convicted with an offence, a treatment order by the court may be made with or without the consent of the convicted person and in the case of a person accused with an offence, a treatment order may only be made with the consent of the accused.

(2) The treatment may be of any of the kinds specified in article 7(5) of the Probation Act. Cap. 446.

(3) The provisions of article 412C(9) and (10) shall apply to an order under this article.

(4) If at any time during the period that the order is in force it is proved to the satisfaction of the court that the person has failed to comply with any of the requirements or conditions of the order, the court may impose on such person a fine (*ammenda*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (€1164.69).

Sub-title III

Added by: XI.1900.70. Amended by: VIII.1990.3.

OF APPEALS FROM JUDGMENTS OF THE COURT OF MAGISTRATES AS COURT OF CRIMINAL JUDICATURE

Appeals from judgments of the Court of Magistrates as court of criminal judicature. *Added by: XI.1900.70. Amended by: I.1903.25; VIII.1909.43; IV.1916.4; XVI.1921.7; L.N. 46 of 1965; LVIII.1974.68; XXXII.1986.8; VIII.1990.3; III.2002.91; IX.2003.127; XXII.2005.5; XXIV.2014.57.*

413. (1) Any judgment of the Court of Magistrates may be appealed against -

(*a*) by the party convicted;

(*b*) in cases relating to summary proceedings for offences within the jurisdiction of the Court of Magistrates as a Court of Criminal Judicature under article 370(1), by the Attorney General, and, in the cases mentioned in article 373, by the complainant where:

(i) the inferior court rules that it has no jurisdiction to take cognizance of the offence;

(ii) the fact of which the party accused has been convicted is liable to a punishment exceeding the jurisdiction of that court as a court of criminal judicature;

(iii) the punishment awarded by the inferior court, is, by reason of its quality or quantity, different from that prescribed by law for the offence for which the party convicted has been sentenced;

(iv) the accused or defendant is acquitted on the ground -

(*i*) that the fact does not contain the ingredients of an offence,

(*ii*) of extinguishment of action,

(*iii*) of a previous conviction or acquittal;

(v) the defendant, in a case in which he has been

allowed to prove the truth of the fact attributed to the complainant in accordance with the provisions of article 253, is declared to be exempt from punishment;

(vi) the Police, or, as the case may be, the complainant has not been allowed at the trial to produce, in support of the charge, some indispensable evidence which was admissible according to law;

(vii) the party accused was released from any of the obligations referred to in article 321 of the Code of Police Laws or in article 377 of this Code, or from the observance of any of the prohibitions made, or from the observance or execution of any of the prohibitions or orders made or given, by the Police or by any other public officer, under the Code of Police Laws or any other law; Cap. 10.

(viii) the judgement of the inferior court is null by reason of lack of formality or procedural requirements;

(*c*) in all other cases by the Attorney General.

(2) Where a judgement is given in respect of several offences and a right of appeal under paragraph (*c*) of the preceding sub-article, or under any other law, is competent in respect of one of those offences, an appeal shall lie in respect of any other of those offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1) connected with that offence.

There is connection between offences when -

(i) the facts of the offences are substantially the same; or

(ii) an offence has served as a means for the commission of another offence; or

(iii) the proof of an offence or of a circumstance thereof has a bearing on the proof of another offence or of a circumstance thereof.

(3) Where the accused or defendant is acquitted on any of the grounds laid down in sub-article (1)(*b*) (iv), (v) and (vi), the court shall clearly state such ground in the judgment, in default whereof the decision shall be null, and such nullity shall constitute a ground for appeal by the Attorney General, and, in the cases referred to in article 373, by the complainant.

Demand of Police for transmission of record of proceedings to Attorney General. *Added by: XI.1900.70. Amended by: VIII.1909.44; XII.1913.19; VI.1947.11; L.N. 46 of 1965; LVIII.1974.68; III.2002.92. Substituted by: V.2022.11.*

414. (1) Where the proceedings have been instituted by the Police, the court by which the judgment has been delivered shall, on a demand in writing by the Police or by the injured party served with the notice of first hearing or admitted into the proceedings as provided in sub-articles (4) and (5) of article 410, to be made to it not later than four (4) working days from the delivery of such judgment, grant access by electronic means through the registrar, within three (3) working days from such demand, to a scanned copy of the judgment, together with a scanned copy of the record of the proceedings and the notes of the depositions, if any would have been noted in writing, to the Attorney General.

(2) In the case of judgments by the Court of Magistrates (Gozo), the scanned copy of the judgment, together with the scanned copy of the record of the proceedings and the notes of the depositions, if any would have been noted in writing, shall be sent by electronic means.

Appeal from interlocutory decrees. *Added by: XI.1900.70.*

415. (1) An appeal from an interlocutory decree which does not bar the continuation of the cause, may be entered only after the definitive judgment and together with an appeal from such judgment.

(2) If no appeal lies from the definitive judgment, no appeal from any interlocutory decree shall be allowed.

(3) The voluntary execution of an interlocutory decree shall not operate as to bar an appeal therefrom.

(4) An appeal from the merits shall include an appeal from the interlocutory decrees, even though such decrees may not have been specifically indicated.

Stay of execution of judgment on appeal by party convicted when not in custody. *Added by: XI.1900.70. Amended by: XII.1914.12; XXX.1934.7; L.N. 46 of 1965; LVIII.1974.68; III.2002.93; XVI.2006.10.*

416. (1) The party convicted who is not in custody for the offence of which he has been convicted may, on making, even orally, a declaration that he desires to enter an appeal against the judgment, obtain from the inferior court a stay of execution of the judgment, provided he gives sufficient security in terms of article 577(1) to appear at the proceedings before the superior court when called upon by such court; and in such case the provisions contained in articles 579, 581, 583, 585, 586 and 587 shall apply.

(1A) Where the party convicted who is not in custody for the offence of which that party has been convicted is sentenced to imprisonment or detention and immediately prior to conviction that party was on bail as provided in Title IV of Part II of Book Second of this Code the conditions attaching to that bail, including the mode of security and the sum or equivalent pledge, if any, specified in the bail bond, shall continue to apply in addition to the security required under sub-article (1) upon obtaining a stay of execution of the judgement as provided in that sub-article either until the lapse of the time for the filing of the appeal if no appeal is filed or if otherwise until the determination of the appeal.

Security.

(2) The amount of the security shall be fixed by the inferior court, in accordance with the rules set out in articles 576 and 584:

Provided that where only a pecuniary penalty has been awarded, the amount of the security shall be equal to the amount of

the penalty, and in such case the court may require that the security shall be either in the form of a deposit of a sum equal to the said amount or in the form of a bank guarantee, made out to its satisfaction, for the said amount; but the security shall not be required except on the demand of the prosecution and on good cause being shown to the satisfaction of the court. In any such case, the security shall be ordered by the inferior court, during the time allowed for entering the appeal, or by the superior court after the entering thereof.

Appeal by party convicted when in custody.

(3) A declaration of appeal shall stay the execution of the judgment in regard to the party convicted who is in custody, and such party may obtain, during the time allowed for entering the appeal and during the hearing of the appeal, his temporary release in cases where bail may be granted under the provisions contained in Title IV of Part II of Book Second of this Code.

(3A) The failure to make a declaration of appeal as provided in sub-article (3) shall not preclude the party convicted from appealing the judgement provided that such appeal is filed within the time allowed for entering such appeal.

Appeal by Attorney General or complainant not to stay execution of judgment.

(4) In no case shall the appeal entered by the Attorney General or by the complainant operate as a stay of execution of the judgment.

Default of party appealing to give security.

(5) If the party convicted, after making the declaration that he desires to enter an appeal, fails to give security as provided in the preceding sub-articles of this article, he shall be kept in custody until he gives security, or, otherwise, until the determination of the appeal.

Form of and time for entering appeal.
Added by: XI.1900.70. Amended by: I.1903.26; VIII.1909.45; VI.1947.12; XII.1957.17; L.N. 46 of 1965; XXV.1967.3; LVIII.1974.68; XXVII.1975.40; VIII.1990.3; VI.2001.2; I.2018.22; V.2022.12.

417. (1) The appeal shall be brought before the Court of Criminal Appeal by an application to be filed within twelve working days, and, to run, for the person convicted and for the complainant, from the day on which the definitive judgment is delivered, and, for the Attorney General, from the day on which he is given access by electronic means of the scanned record:

Provided that in the case of an appeal from a judgment of the Court of Magistrates (Gozo) the application of appeal may be filed in the registry of that Court and transmitted through the registrar to the registry of the Court of Criminal Appeal together with a copy of the judgment, the record of the proceedings and the notes of the depositions, if any, unless these have already been so transmitted in pursuance of the provisions of sub-article (2) of article 414; and provided also that in any case of an appeal from such a judgment as aforesaid, all acts subsequent to the application of appeal, whether such application was filed as aforesaid or in the registry of the Court of Criminal Appeal, may also be filed in the Court of Magistrates (Gozo) and transmitted to the registry of the Court of Criminal Appeal as aforesaid.

(2) A person who has been discharged either absolutely or conditionally or in whose case a probation order has been made by the Court of Magistrates may appeal from his conviction, within the

time prescribed in sub-article (1), to run from the day on which the order for discharge or the probation order is made. On any such appeal, the Court of Criminal Appeal shall have, in addition to the powers under this Sub-title, the power of amending, altering or cancelling any of the conditions or requirements of the order for discharge or the probation order.

Constitution of Court of Criminal Appeal for appeals from judgments of the Court of Magistrates. *Added by: XI.1900.70. Substituted by: XXV.1967.4. Amended by: XXVII.1975.40; VIII.1990.3 XXXII.1997.3.*

418. (1) One of the judges ordinarily sitting in the Court of Criminal Appeal or ordinarily sitting in the Criminal Court shall sit without a jury in the Court of Criminal Appeal for the hearing and determination of appeals from judgments of the Court of Magistrates.

(2) For the hearing of appeals from decisions of the Court of Magistrates (Gozo) as court of criminal judicature the Court of Criminal Appeal shall hold its sittings in Gozo.

Contents of application for appeal. *Added by: XI.1900.70. Amended by: XII.1913.20; L.N. 46 of 1965; LVIII.1974.68; I.1984.2; XXIV.1995.362; III.2002.94; I.2018.22; III.2022.2; IV.2023.7.*

419. (1) Besides the indications common to judicial acts, the application shall, contain -

(*a*) a brief statement of the facts;

(*b*) the grounds of the appeal;

(*c*) a demand that the judgment of the inferior court be reversed or varied.

(2) If the appeal is made by the Attorney General, the application shall, under pain of nullity, be signed by him and shall be filed in the the superior court.

(3) Where the appellant is not the Attorney General, the application shall be signed, under pain of nullity, by an advocate, and shall be filed in the registry of the court which shall have pronounced the judgment appealed from. The registrar shall, within two working days from the receipt of the application, transmit the same to the superior court, together with a copy of the judgment, the notes of the depositions, if any, and the record of the proceedings.

(3A) When the appellant is not the Attorney General, the application shall contain the address where the appellant usually resides at the time of its filing in the registry of the court:

Provided that where, in the course of the appeal, the appellant, who is not the Attorney General, changes the address above, he shall inform immediately the court by means of a note filed in the registry of the same court.

(4) In case of appeals from the Court of Magistrates (Gozo), the application, the copy of the judgment, the notes of the depositions, if any, and the record of the proceedings, may be sent by post.

Free legal aid. *Added by: XI.1900.70. Amended by: XXI.1971.27; XXIV.1995.362. Substituted by: III.2002.95.*

420. The appellant as well as the respondent may be assisted by the Advocate for Legal Aid and the provisions of article 570 shall apply.

Notice of day appointed for hearing of appeal. *Added by: XI.1900.70. Amended by: L.N. 46 of 1965; LVIII.1974.68; XXIV.1995.362; III.2002.96; III.2022.3.*

421. (1) Notice of the day appointed by the superior court for the hearing of the appeal shall be given to the parties and to the injured party served with the notice of first hearing or admitted into the proceedings as provided in article 410(4) and (5) by means of a written order signed by the Registrar of Courts:

Provided that the failure to serve the injured party with the notice of the date of the first hearing after an attempt has been made to that effect or the absence of the injured party for any reason at any sitting shall not preclude the court from proceeding with the appeal until final judgment:

Provided further that if the service of the notice of the date of the first hearing of the appeal is not delivered to the appellant in person, the notice shall be effected at the address of the residence mentioned in the application of appeal, or, if a note is filed in the court registry by the appellant, who is not the Attorney General, in accordance with sub-article (3A) of article 419, in the new indicated address in that note. If the party at the time of service is not to be found at that residence, the court marshal shall notify the party outside legal hours. If, even in this case, the notice is not delivered, then the court marshal shall immediately affix the notice on the outside door of that residence.

(2) Where the appellant is not the Attorney General, and the proceedings before the inferior court have been instituted by the Police, the said notice shall be given to the Attorney General for the respondent.

(3) The injured party served with the notice of first hearing or admitted into the proceedings as provided in article 410(4) and (5) may be present at any appeal hearing and may engage an advocate to assist him although he might not have been served with the notice referred to in sub-article (1) and although he may be a witness in the proceedings; any advocate engaged by the injured party may examine or cross-examine witnesses and make any other submission which the court may consider admissible.

(4) Notice in writing, as provided in sub-article (1), shall also be given to the party in whose absence the appeal shall have been put off.

Non-appearance of appellant. *Added by: XI.1900.70. Amended by: III.2002.97; XIII.2002.9; III.2022. III.2022.4.*

422. (1) If, on any day appointed for the hearing of the appeal, the appellant fails to appear, his appeal shall be taken to have been abandoned and the judgment appealed from shall be carried into effect; but on an application by the appellant, filed within eight days from the day above-mentioned, together with a declaration sworn before the registrar by the appellant to the effect that he was, on account of illness or for any other reason independent of his will, to be expressly stated in the application, unable to attend on the day appointed as aforesaid, the court shall appoint another day

for the hearing of the appeal, in which case the provisions of sub-articles (1) and (2) of the last preceding article shall apply:

Provided that the court may, in exceptional circumstances, appoint another day for the hearing of the appeal even where the application is filed after the term mentioned in sub-article (1) has lapsed.

Non-appearance of respondent.

(2) If the respondent fails to appear, the court shall hear the appellant, and shall deliver judgment according to law.

(3) Where the appellant was on bail as provided in article 416(1A) and (3) prior to the abandonment of the appeal, his request for temporary release from custody may be made in the same application mentioned in sub-article (1).

Appearance of appellant when in custody. *Added by: XI.1900.70.*

423. If, on the day appointed for the hearing of the appeal, the appellant is in custody, the provision contained in article 443(1) shall apply.

When new witnesses are admissible. *Added by: XI.1900.70.*

424. No new witnesses may be produced before the superior court, except -

(*a*) when it is proved by oath or other evidence that the party requesting the production of the new witnesses had no knowledge of them, or could not, with the means provided by law, have produced them before the inferior court;

(*b*) when the evidence shall have been tendered before the inferior court, and such court shall have wrongly rejected it.

Adjournment of cause on account of non-appearance of witnesses. *Added by: XI.1900.70. Amended by: VIII.1909.46; III.2002.98.*

425. If any witness duly summoned fails to appear, and the court deems it necessary to hear such witness, the court may adjourn the hearing of the appeal to another day, and the provisions of article 441, in so far as applicable, shall apply. Unless the court orders otherwise, witnesses shall be summoned by the Police in the manner provided for in article 365.

Expenses for summoning witnesses on behalf of party having free legal aid. *Added by: XI.1900.70. Amended by: XXI.1971.27.*

426. Where, in the cases referred to in article 420, the party is assisted by the Advocate for Legal Aid, or by another advocate assigned by the court in his stead, the expenses for the summoning of witnesses shall provisionally be defrayed by the Police.

Order of hearing of cause. *Added by: XI.1900.70.*

427. Saving the provision of article 422(2), the court shall hear the appellant and the respondent, in the order which it shall deem most convenient, regard being had to the circumstances of the case.

Powers of appellate court. *Added by: XI.1900.70. Amended by: XII.1913.21; I.1938.2; VIII.1990.3; XXIV.1995.362; III.2002.99.*

428. (1) If the superior court finds that the fact attributed to the offender constitutes an offence liable to a punishment exceeding the jurisdiction of the Court of Magistrates as court of criminal judicature, it shall quash the judgment, and shall transmit the record to the Court of Magistrates to proceed according to law.

(2) If the court finds that the offence attributed to the offender was not within the jurisdiction of the inferior court by which it was tried, but that it was within the jurisdiction of another inferior court, the superior court shall quash the judgment and refer the case to the competent court. But in this case the plea to the jurisdiction of the court shall not be allowed -

(*a*) if it was not raised before the inferior court;

(*b*) if, having been raised, it was expressly or tacitly waived.

(3) If the superior court finds that the inferior court, being competent to deal with the case, declared that it was not so competent, it shall quash the judgment, and shall proceed to determine the merits of the case. The same procedure shall be followed where the superior court finds that a breach or an omission of any of the formalities prescribed by the law under pain of nullity, or otherwise substantial, has taken place.

(4) If the superior court finds that an appeal entered solely on the ground of want of jurisdiction or of any breach or omission of formalities, is groundless, it shall make a pronouncement to that effect, and shall refer the case to the inferior court.

(5) If the appeal is entered on the ground of want of jurisdiction or of any breach or omission of formalities, and also on the ground of a wrong judgment on the merits, the superior court, if it finds that the appeal, in so far as it is entered on the ground of want of jurisdiction or of any breach or omission of formalities, is without foundation, shall make a pronouncement to that effect and shall decide on the merits in accordance with the following sub-article.

(6) If the appeal refers only to the merits, the superior court shall pronounce judgment either affirming or varying or reversing the judgment appealed from.

(7) If the appeal is made only by the party convicted, the punishment may not be increased.

Registrar to transmit to inferior court copy of judgment of appellate court.

(8) The Registrar of Courts shall, within twelve working days, transmit to the inferior court, a copy of the judgment affirming, varying or reversing the judgment appealed from.

(9) Where the inferior court is the Court of Magistrates (Gozo), the copy of the judgment may be sent by post.

Decision as to costs by appellate court. *Added by: XI.1900.70. Amended by: VIII.1909.47; XXIV.1995.362; III.2002.100; L.N. 407 of 2007.*

429. (1) Where, under the provisions of article 380, an order as to costs is to be made, the superior court shall also state the party by whom the costs, both of the first court and of appeal, are to be borne, and shall fix the fees due to the advocate for either party in the appeal in the manner provided in sub-article (2) of the said article in a sum varying from fifty-eight cents (€0.58) to one euro and forty cents (€1.40) for every sitting. The payment of the said costs may be enforced before the inferior court in the same manner as provided in article 381.

Frivolous appeals.

(2) In all cases it shall be lawful for the superior court, if it considers the appeal to be frivolous, to sentence the appellant besides to the payment of costs, where applicable, to the payment of aa fine (*ammenda*) not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94).

(3) In default of payment of the fine (*ammenda*) referred to in sub-article (2), the provision contained in article 13(2) shall apply.

(4) The fees payable in respect of appeals in cases of proceedings where the prosecution lies with the injured party or with the persons mentioned in article 542, as provided in article 373, shall be taxed in accordance with the scales in Schedules A and B annexed to this Code, and shall in all cases be levied by the Registrar of Courts.

Title III

OF THE ATTORNEY GENERAL

Duties of Attorney General. *Amended by: L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.26, 40; Amended by: XXVIII.2021.12.*

430. (1) The Attorney General may, along with the Executive Police, prosecute before the Court of Magistrates, and shall be the prosecutor before the Criminal Court.

(2) The Attorney General shall indict in the name of the Republic of Malta, and shall proceed *ex officio* independently of any complaint of the injured party, except in cases where, according to law, no prosecution may be instituted without the complaint of the injured party.

Commencement of functions of Attorney General. *Amended by: XII.1913.22; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; III.2002.101; IV.2023.8.*

431. (1) Unless otherwise provided in this Code or in any other law, the functions of the Attorney General commence from the day on which the record of the inquiry made by the Court of Magistrates is transmitted by the court to the Attorney General by electronic means.

Access to accused.

(2) From the day referred to in sub-article (1) and until the indictment is filed, access to the person accused, if in custody, may only take place with the permission of the Attorney General. The provisions of article 408(2) shall apply to such permission.

Term for filing indictment. *Amended by: IV.1856.31; XI.1900.71; L.N. 46 of 1965; LVIII.1974.68; XIII.1980.16; XXIX.1990.20; IV.2023.9.*

432. (1) The Attorney General shall be allowed the term of one month for the filing of the indictment, to run from the day the Attorney General is granted access by electronic means to the record referred to in the last preceding article. The said term shall, on the demand of the Attorney General, be extended by the court to an additional period of fifteen days, and, on the expiration of this other period, by the President of Malta to a further additional period of fifteen days, and, where the matter is such that the determination of the true nature of the offence necessarily depends upon the lapse of a longer period of time, to such longer period:

Enlargement of term.

Provided, however, that where such longer period extends beyond forty days, the accused shall have the right to be released on bail.

Power of Attorney General to send back record of inquiry.

(2) If the record of inquiry is found to be defective through the non-observance of any of the provisions of this Code or of any other law relating to such inquiry, the Attorney General may file a demand in writing that the court proceed afresh with the inquiry or that the record be rectified, according to circumstances, pointing out the defect and the relative provisions of this Code or of such other law.

Term for completing fresh inquiry or for rectifying record of inquiry.

(3) The court shall, within the term of five (5) working days which shall run from the day on which the demand is filed by the Attorney General, which term may, upon a demand in writing by the court and on a just cause being shown, may be extended by the President of Malta to a further period of five (5) working days, conclude the fresh inquiry or rectify the record, and shall grant the Attorney General access by electronic means to the said record; and in such case the term for filing the indictment shall commence to run from the day on which the Attorney General shall have been given access to the record of the fresh inquiry or the record as rectified.

Power of Attorney General to discharge person accused, *Amended by: IV.1856.32; L.N. 46 of 1965; XXV.1967.5; LVIII.1974.68; XXVII.1975.40; XIII.1980.17; VIII.1990.3; VI.2007.4; IV.2023.10.*

433.[*] (1) If the Attorney General is of opinion that there are not sufficient grounds for the filing of an indictment against the accused, he may, within the terms prescribed in the last preceding article, by warrant under his signature, order the discharge of the accused, filing a declaration to that effect in the Criminal Court.

to withdraw indictment,

(2) The Attorney General may also withdraw an indictment already filed, by making in court a declaration to that effect.

to arrest person discharged by the Court of Magistrates.

(3) Finally, the Attorney General may, within one month from the day on which he is granted access by electronic means to the record of the inquiry, apply to the Criminal Court for the issue of a warrant for the arrest of any person discharged by the Court of Magistrates. The provisions of sub-articles (3A) and (3B) shall

*See transitory provision in article 5 of Act VI of 2007 as regards the amendments to this article.

apply to an application made under this sub-article.

(3A) The application shall be appointed for hearing and shall be served on the person discharged together with a notice of the date of the hearing.

(3B) Where the Criminal Court is of the opinion that there are sufficient grounds for an indictment to be filed against the person discharged it shall forthwith issue a warrant for the arrest of that person; and in such case the term for filing the indictment shall commence to run from the day of the arrest.

(3C) Where the person discharged fails to make an appearance at the hearing without good cause the Court shall order his arrest in order to appear for the hearing of the application.

(4) In all cases referred to in the preceding sub-articles of this article, the Attorney General shall make a report to the President of Malta stating the reasons for his action.

Power of Attorney General, in cases where he is of opinion that the offence is triable by the Court of Magistrates.

(5) Nevertheless, if, on account of the absence of circumstances constituting an offence within the jurisdiction of the Criminal Court, the Attorney General decides not to file an indictment against the accused, but is of opinion that from the inquiry there might result an offence within the jurisdiction of the Court of Magistrates, he shall not discharge the accused, but shall file a demand to the Court of Magistrates, and that court shall decide upon the charge of such offence, independently of all other circumstances.

Power of court to hear further evidence.

(6) Before convicting or acquitting the accused or before giving any other direction within its jurisdiction as court of criminal judicature, the court shall have power, on the charge of such offence, to hear further evidence whether against or on behalf of the accused.

Liability to further proceedings on fresh evidence. *Amended by: L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3.*

434. Every accused person, whose arrest has not been ordered by the Attorney General under the provision of sub-article (3) of the last preceding article, or who has been discharged for want of presentation of an indictment, shall always remain liable to fresh proceedings, to be regularly commenced before the Court of Magistrates, whenever fresh evidence becomes available.

Definition of "fresh evidence".

The expression "fresh evidence" means evidence which at the time of the discharge of the accused, did not exist, or was not known to those who were entitled to prosecute.

Power of Attorney General on collection of further evidence. *Amended by: IV.1856.33; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; IV.2023.11.*

435. (1) It shall be lawful for the Attorney General to collect and produce further evidence besides that resulting from the inquiry:

Provided that he may not include in the indictment any charge for any offence, not founded on the said inquiry.

(2) Where as a result of such further evidence collected as aforesaid, the Attorney General becomes aware of some other offence not included in the inquiry, the Attorney General shall file a demand to the Court of Magistrates, and such court shall continue the inquiry and shall proceed in respect of such other offence. In any

such case the terms for the conclusion of the inquiry, the transmission of the record and the filing of the indictment shall commence to run anew, the first term commencing from the day on which the record is sent back to the Court of Magistrates.

(3) Where such other offence not included in the inquiry as aforesaid shall be altogether separate and distinct from the offence or offences included in the inquiry, a new and separate inquiry shall, on the demand of the Attorney General, be held in regard to such other offence.

(4) Any demand of the Attorney General under the provisions of this article shall be made in writing.

Special powers of investigation. *Added by: III.2002.102. Amended by: VI.2024.6.*

435A. (1) The provisions of article 4 of the Act shall apply *mutatis mutandis* where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence and the provisions of the said article 4 shall apply to any investigation order or attachment order applied for or issued by virtue of this sub-article as if it were an investigation order or attachment order applied for or issued under the same article 4 of the Act and in particular, the provisions of sub-articles (12) and (13) of the said article 4 shall also apply to any investigation for a relevant offence by virtue of this sub-article.

(2) The provisions of article 5 of the Act shall apply mutatis mutandis where any person is charged with a relevant offence and the provisions of article 6 of the Act shall apply to any order issued by virtue of this sub-article as if it were an order issued under the said article 5.

(3) For the purposes of this article:

"the Act" means the Prevention of Money Laundering Act; and Cap. 373.

"relevant offence" shall have the same meaning as assigned to it in the Proceeds of Crime Act. Cap. 621.

Issuing of monitoring order of banking operations. *Added by: XXXI.2007.19. Amended by: VII.2010.30; XXIV.2014.58; VIII.2015.30.*

435AA. (1) Where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence (hereinafter referred to as "the suspect") he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of the suspect, or through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring.

(2) Where a monitoring order has been made or applied for, whosoever, knowing or suspecting that the monitoring is taking place or has been applied for, discloses that such monitoring is taking place or has been applied for or makes any other disclosures

likely to prejudice the monitoring operation shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding twelve thousand euro (€12,000) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment:

Provided that in proceedings for an offence under this sub-article, it shall be a defence for the accused to prove that he did not know or suspect that the disclosure was likely to prejudice the monitoring operation.

(3) For the purposes of this article, "relevant offence" means an offence, not being one of an involuntary nature, consisting of any act or omission which if committed in these islands, or in corresponding circumstances, would constitute an offence liable to the punishment of imprisonment or of detention for a term of more than one year.

Temporary surrender of person in custody to foreign country. *Added by: XXXI.2007.19.*

435AB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of a judicial, prosecuting or administering authority in Malta.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.

Powers of investigation in connection with offences cognizable by courts outside Malta. *Added by: III.2002.102. Amended by: XXXI.2007.20.* Cap. 101.

435B. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for investigations to take place in Malta in respect of a person (hereinafter in this article and in article 435BA referred to as "the suspect") suspected by that authority or court of a relevant offence, the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of article 24A of the Dangerous Drugs Ordinance, hereinafter in this title referred to as "the Ordinance", shall *mutatis mutandis* apply to that application and to the suspect and to any investigation order or attachment order made by the court as a result of that application.

(2) The phrase "investigation order" in sub-articles (2) and (5) of the same article 24A of the Ordinance shall be read and construed as including an investigation order made under the provisions of this article.

(3) The phrase "attachment order" in article 24A(6A) of the Ordinance shall be read and construed as including an attachment order under the provisions of this article.

Issuing of monitoring order of banking operations. *Added by: XXXI.2007.21. Amended by: VII.2010.31; XXIV.2014.59; VIII.2015.31.*

435BA. (1) Where the request referred to in the preceding article is made for the purpose of monitoring the transactions or banking operations being carried out through one or more accounts of a person suspected of a relevant offence within the meaning of article 435AA(3), or through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 435AA shall apply *mutatis mutandis*.

(2) Where a person or authority has been indicated by the Attorney General as provided under article 435AA, that person or authority shall transmit the information resulting from the monitoring operation to the Attorney General.

Temporary surrender of person in custody to Malta. *Added by: XXXI.2007.21.*

435BB. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in a foreign State for the purpose of investigations to be carried out or being carried out in Malta at the request of a judicial, prosecuting or administrative authority of that State.

(2) The provisions of article 30C of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to a person temporarily surrendered to Malta under sub-article (1). Cap. 101.

Temporary surrender to foreign country of person in custody in Malta at request of foreign authority. *Added by: VII.2010.32.*

435BC. (1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in Malta for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of the said authority.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.

Freezing of property of person accused with offences cognizable by courts outside Malta. *Added by: III.2002.102. Amended by: XXXI.2007.22.*

435C. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the temporary seizure of all or any or the moneys or property, movable or immovable, of a person (hereinafter in this article referred to as "the accused") charged or accused in proceedings before the courts of that place or before the international court of a relevant offence, the Attorney General may apply to the Criminal Court for an order (hereinafter in this title referred to as a "freezing order") having the same effect

as an order as is referred to in article 22A(1) of the Ordinance, and the provision of the said article 22A shall, subject to the provisions of sub-article (2), apply *mutatis mutandis* to that order.

(2) The provisions of article 24C(2) to (5) of the Ordinance shall apply to an order made under this article as if it were an order made under the said article 24C.

(3) Article 22B of the Ordinance shall also apply to any person who acts in contravention of a freezing order under this article.

Enforcement of confiscation orders made by courts outside Malta following conviction for offences cognizable by those courts. *Added by: III.2002.102. Amended by: III.2004.76; VIII.2015.32; VI.2024.7.*

435D. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person described in the order shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the Ordinance.

(2) For the purposes of this article "confiscation order" includes any judgement, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in sub-article (1).

(3) For the purposes of this article and of articles 435B and 435C:

Cap. 373.

"the Act" means the Prevention of Money Laundering Act;

Cap. 31.
Cap. 101.

"the Ordinances" means the Medical and Kindred Professions Ordinance and the Dangerous Drugs Ordinance; and

"relevant offence" means an offence consisting of any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence, other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year.

Controlled deliveries and joint investigations with the competent authorities of other countries. *Added by: IX.2003.128. Amended by: III.2004.77; XXXI.2007.23.*

435E. (1) Notwithstanding anything contained in any other law it shall be lawful for the Attorney General to authorise the Executive Police and, where appropriate, the Customs authorities to allow a controlled delivery to take place with a view to identifying persons involved in the commission of any criminal offence under the laws of Malta or under the laws of another country.

Cap. 101.

For the purposes of this sub-article a "controlled delivery" shall *mutatis mutandis* have the same meaning assigned to it by article 30B(2) of the Dangerous Drugs Ordinance sohowever that the illicit or suspect consignment referred to in that sub-article may for the purposes of this sub-article consist of anything whatsoever and that the consignment may be intercepted and allowed to continue with the original contents intact or removed or replaced in whole or in part.

(2) With the same objective of identifying persons involved in the commissions of a criminal offence under the laws of Malta or under the laws of another country, it shall also be lawful for the

Attorney General to authorise the Executive Police or a person under the supervision or direction of the Executive Police, to acquire or procure an illicit or suspect consignment of anything from any person or place.

(3) Pursuant to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may authorise the competent authorities of another country to conduct in Malta, jointly with or under the supervision or direction of the Executive Police, investigations into criminal offences by officers acting under covert or false identity, provided that the Attorney General is satisfied of the true identity and official capacity of the officers in question and is fully informed of the nature of any documents which purport to guarantee, certify or authenticate the false identity assumed by any such officers. Notwithstanding the provisions of any other law the making or use of such documents by the said competent authorities or by such officers for the purpose or in the course of such investigations authorised as aforesaid shall be deemed to be lawful and shall not entail any liability, civil, criminal or otherwise, on the part of such authorities or officers.

(4) Any official from another country taking part in any of the operations referred to in sub-articles (1) to (3), both inclusive, shall, for the purpose of any criminal liability incurred under this Code or any other law by that official or by others for conduct against that official, be deemed to be a public officer.

(5) The provisions of sub-article (4) shall apply *mutatis mutandis* to any official from another country taking part in any operation in Malta of the kind referred to in sub-article (3) even if none of the officers taking part in the operation is acting under covert or false identity.

(6) For purposes of this article "competent authorities of another country" and "official from another country" shall be construed as including officials of bodies set up pursuant to the Treaty on European Union as defined in article 2 of the European Union Act. Cap. 460.

(7) Where the Attorney General has authorised the setting up of a joint investigation team as provided in sub-article (3), the foreign officials participating in the said investigation shall be entitled to be present when investigative measures are being taken and, if so authorised by the competent officer of the Executive Police, to take investigative measures.

Title IV

Amended by: XXVII.1975.40.

OF THE CRIMINAL COURT

Constitution of Criminal Court. *Amended by: IX.1857.1; V.1868.24; Order-in-Council of 1899, s.3; XI.1900.72,73; I.1903.27; II.1914.3; XVI.1929.3; XVI.1932.2; XV.1937.6; XXV.1967.6; XXVII.1975.40; XIII.1987.4.*

436. (1) The Criminal Court shall consist of one of the judges sitting with a jury for the trial of every offence which may be prosecuted according to law in Malta saving the provisions of article 370.

Attributions of jury and of court.

(2) The jury shall decide on any matter touching the issue as to whether the accused is guilty or not guilty and on any collateral issue referred to in Title VII of Part II of Book Second of this Code; and the court shall decide on the application of the law to the fact as declared by the jury, as well as on all other points of law or of fact relative to the proceedings.

Further powers of court.

(3) It shall also appertain to the court -

(*a*) to maintain good order during the sitting;

(*b*) to conduct the hearing;

(*c*) to do, in matters which are not prohibited or prescribed by law under pain of nullity, whatever it may, in its discretion, deem necessary for the discovery of the truth.

(4) The court shall also be competent to try and determine offences which, although of an inferior jurisdiction, are brought before the court either because they are connected with a graver offence preferred in the indictment or because they are committed by the same person indicted for such graver offence.

(5) The court shall also be competent generally to try and determine any offence of an inferior jurisdiction and to apply the measures referred to in articles 377, 378, 383, 384 and 385 if, upon trial, the accused is convicted of any minor offence whether preferred or comprised or involved in the indictment, or if such measures become necessary.

(6) Notwithstanding any other provision of this Code and subject to the provisions of the following sub-articles of this article, the accused may, not later than ten days after the date of service of the notice referred to in article 438(6) or of the order referred to in article 620(4), file a note in the registry of the court opting that a jury be not impanelled for the trial or for the decision of any collateral issue under Title VII of Part II of Book Second of this Code, and an official copy of such note shall be served on the Attorney General:

Provided that this sub-article shall not apply for the trial of the offence where the punishment demanded in the indictment is of imprisonment for life.

(7) The provisions of sub-article (6) shall not apply to the accused who has made the objection mentioned in article 370(3)(*d*).

(8) Where charges against two or more persons are joined in the same indictment and not all the accused have filed the note referred to in sub-article (6), the trial of the accused who has opted that a jury be not impanelled for his trial shall take place after that the trial of the cause of the other accused who has not filed such note has become *res judicata*.

(9) Where the option is exercised as provided in sub-article (6) the court shall consist of one of the judges sitting without a jury, and the provisions of this Title and of Sub-title I of Title II and of Title V of Part I of Book Second of this Code shall *mutatis mutandis* apply.

Access to accused. *Amended by: V.1868.25; L.N. 46 of 1965; LVIII.1974.68; IX.1982.2.*

437. (1) After the filing of the indictment, access to the accused shall not be allowed, except with the permission of the court, or with the consent of the Attorney General.

(2) The court, before granting the permission applied for, shall hear the Attorney General in the absence of the accused and with closed doors. The court shall not grant permission unless it is satisfied that such access will not be prejudicial to the ends of justice.

Service of indictment on accused. *Amended by: L.N. 46 of 1965; LVIII.1974.68; III.1976.2. Substituted by: LIII.1981.2. Amended by: IX.1982.2; XIII.1987.5; III.2002.103.*

438. (1) An official copy of the indictment and of the list referred to in article 590(2) shall be served on the accused.

(2) The accused shall, by means of a note to be filed in the registry of the court not later than fifteen working days from the date of such service -

(i) give notice of any pleas referred to in article 449 and any plea regarding the admissibility of evidence which he intends to raise, and

(ii) indicate the witnesses and produce the documents and other exhibits which he intends to use at the trial,

and an official copy of such note shall be served on the Attorney General.

(3) The Attorney General shall, by means of a note filed in the registry of the court not later than five days from the date of service of the note filed by the accused, give notice of any plea regarding the admissibility of evidence which he intends to raise.

(4) On the expiration of the time referred to in the preceding sub-article, the court shall appoint a day for the hearing of all the pleas and shall on that day direct the registrar to read out the indictment, and shall then proceed to determine such pleas before the accused pleads to the general issue of guilty or not guilty:

Provided that the court may *ex officio* or on the application of the Attorney General or the accused request that the proof intended to be established by the witnesses, documents or exhibits

be stated.

(5) If no pleas have been raised as provided in sub-articles (2) and (3), or after the determination of such pleas, the court shall appoint a day for the hearing of the trial.

(6) The accused shall be served with a notice of such date allowing a term of at least twenty days to prepare his defence. The court may, on good cause being shown, and after hearing the Attorney General, extend such term to any further period as it may deem fit.

(7) If, on the day appointed for the hearing of the trial according to sub-article (5), or on any other day thereafter appointed for the same purpose, the trial is adjourned to another day on account of the fact that the accused, without just cause, and notwithstanding that he had been given notice according to law of the day appointed, fails to appear, or on account of the fact that although he appears, the trial cannot be heard for some cause attributable to the accused and which the Court determines not to be a just cause, all the expenses incurred shall be charged to the accused, and it shall be lawful for the court, at the request of the Attorney General, to compel the accused to pay the same.

(8) The accused may waive his right to such term.

Order of hearing of causes.

439. Causes shall be tried in rotation, according to the date of the filing of the indictment:

Provided that it shall be lawful for the court, if it sees good reason for so doing, to postpone the trial of a cause which is next in rotation, and proceed to try another cause.

Accessibility of record of inquiry, etc. *Amended by: IX.1857.2; III.1880.6; XI.1900.74; L.N. 46 of 1965; LVIII.1974.68; LIII.1981.3.*

440. (1) The record of the inquiry, documents and exhibits filed in the registry of the court by the Attorney General or the accused shall be accessible to the Attorney General and to the accused or his advocate or legal procurator.

Preservation of documents, etc., by registrar.

(2) The registrar shall take the necessary precautions for the preservation of all the documents, exhibits, and record in the state in which they are at the moment in which they are filed.

Inadmissibility of witnesses, etc., without leave of court.

(3) No witness, document or exhibit, which is not indicated in the lists or filed as provided in article 438, may be produced at the trial, without special leave of the court.

When leave is granted.

(4) Leave shall only be granted if the evidence is considered to be relevant, and the Attorney General or the party accused shall not have been prejudiced by the omission from the said list or by the default of filing within the term specified in article 438.

Powers of court.

(5) Nevertheless, if in the course of the trial, the necessity or utility shall arise of examining any witness or of having for actual inspection any document or exhibit not indicated in the list of any of the parties, the court may *ex officio* cause such witness to be called and examined, or cause the document or exhibit which was

not indicated in the list, to be produced.

Summoning of witnesses. *Amended by: IX.1859.24; V.1868.26; XI.1900.75; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; XXIV.1995.362; III.2002.104.*

441. (1) Witnesses shall be summoned by means of a subpoena which shall be served on each witness not later than the day preceding the trial:

Provided that in the case referred to in sub-article (5) of the last preceding article, a witness may be summoned to appear forthwith or at a given time during the same day.

Service of subpoena.

(2) A subpoena is served by the delivery of a copy thereof to the witness, or if he cannot conveniently be met with, then by leaving such copy at his usual place of abode.

(3) If the place of abode of the witness is in the Island of Gozo or of Comino, the Registrar of Courts may send, even by post, the copy of the subpoena to the officer in charge of the Court of Magistrates (Gozo), for service on the witness; and the officer effecting service, shall deliver a certificate of such service, duly sworn, to the officer in charge of the Court of Magistrates (Gozo), who shall transmit it, even by post, to the Registrar of Courts.

Non-appearance, etc., of witnesses.

(4) Whosoever being duly subpoenaed to give evidence or to give his opinion as an expert shall fail to appear in court at the time fixed in the subpoena, or, having appeared, shall leave before he is dismissed, shall be liable to be sentenced by the court to a fine (*ammenda*) and shall be liable to be compelled to appear to give evidence by means of a warrant of escort or of arrest.

(5) If, on account of the non-appearance of a witness, the trial is adjourned to another day, all the expenses incurred shall be charged to the witness, and it shall be lawful for the court, at the request of the Attorney General or the accused, to compel such witness to pay the same:

Provided that it shall be in the power of the court, at any time, on just cause being shown, to remit the fine (*ammenda*) and also the expenses.

Power of court to discharge jury.

(6) It shall be in the power of the court, if it is of opinion that the evidence of the witness, who left before he had been dismissed, is important for the ends of justice, to discharge the jury and adjourn the trial to another day.

Allowances to witnesses on behalf of accused admitted to free legal aid. *Amended by: XXI.1971.27.*

442. Where the defence of the accused has been conducted by the Advocate for Legal Aid, the allowances due to the witnesses actually produced on behalf of the accused shall be paid by the Government at the same rates fixed for witnesses for the prosecution, provided the Advocate for Legal Aid shall affirm on oath that, in his opinion, the evidence of the said witnesses was relevant for the defence, and provided also that, in view of his poverty, the accused has not the means of paying such allowances.

Trial. Place of the accused in Court. *Amended by: IV.1856.34; IV.1894.1, 2; XXX.1934.8; XV.1937.7.*

443. (1) On the day and at the time appointed for the hearing of the cause or of any question incidental thereto, the accused shall be put, without any restraint, in the place appointed for the purpose.

Summons to accused when not in custody.

(2) If the accused is not in custody, he shall be required to appear by means of a summons, and, in case of his non-appearance, an order shall be made for his arrest; if he is in custody, he shall be brought to the said place in such manner as may be necessary in order to prevent his escape.

Misbehaviour of accused.

(3) If the accused attempts acts of violence, all necessary measures shall be taken to prevent such acts.

Place of witnesses during the trial. *Amended by: V.1868.27; L.N. 46 of 1965; LVIII.1974.68; III.2002.105.*

444. During the trial, the witnesses shall be kept in a separate place where the discussion cannot be heard. Witnesses shall not be allowed to return to that place after their examination; but when it will probably be necessary to re-examine them on some particular circumstance, they shall be kept apart from the other witnesses not yet examined:

Powers of court.

Provided that the court may, with the consent of the Attorney General and the accused, permit any witness to remain in court during the trial:

Provided further that the court may, notwithstanding the objection of either party, grant such permission to witnesses giving professional or expert evidence, if the court itself deems it expedient for the ends of justice that such witnesses should hear the depositions of other witnesses.

If accused appears without counsel.

445. If the accused appears without counsel, the court shall inform him that he has the right to be assisted by counsel.

Challenge of judge. Plea to be raised and determined before the reading out of indictment. *Amended by: IV.1856.35; IX.1857.3; Order-in-Council of 1899, sec. 4; XVI.1929.4; XVI.1932.3; L.N. 46 of 1965; XXV.1967.7; LVIII.1974.68; LIII.1981.4; IX.1982.2; III.2002.106*

446. (1) Any objection to the judge shall be raised, and the decision of the court shall be given thereon, before the reading out of the indictment, when the accused has been placed at the bar, on the day appointed for the hearing of the preliminary pleas, or, if no such pleas have been raised, on the day appointed for the trial.

Grounds of objection to or of abstention by judge. Cap. 12.

(2) The judge may not be objected to by the Attorney General or by the accused, nor may he abstain from sitting in any case, except for any of the causes referred to in article 734 of the Code of Organization and Civil Procedure, or on the ground that the offence was committed against himself, his spouse, or any person related to

him by consanguinity or affinity in any of the degrees referred to in paragraphs (*a*) and (*b*) of the said article.

Form of declaration of abstention.

(3) The judge who, previously to the reading out of the indictment, is aware of the existence in his respect of any of the causes for which he might be objected to or might abstain from sitting, shall make a declaration of his abstention stating the cause.

Declaration may be made in writing before day of hearing,

(4) The said declaration may be made in writing previously to the day appointed for the hearing of the cause, in which case notice thereof shall be given to the Attorney General and to the accused, and the abstention shall be deemed to be by them accepted, if, within two days from the said notice, neither of them shall make a declaration, by means of a note, to the effect that he intends to oppose the same.

or orally on day of hearing.

(5) The said declaration may also be made orally on the day of the hearing, in which case any objection thereto shall be raised immediately after such declaration.

Issue to be decided before the reading out of indictment.

(6) Upon any challenge, or objection to abstention, as aforesaid the court shall decide the issue previously to the reading out of the indictment.

No challenge or abstention may be allowed after the reading out of indictment.

(7) After the reading out of the indictment, the judge may not be challenged, nor may he abstain from sitting, except where the cause for objection or abstention becomes known after the reading of the said indictment.

Power of judge notwithstanding challenge or abstention.

(8) The judge, notwithstanding the existence in his respect of any cause for objection, or notwithstanding his abstention, shall nevertheless be competent, like the judge surrogated in his stead, to issue and sign any summons or writ, and to give any decree or order which may be required, previously to the reading out of the indictment, or after judgment is delivered.

Surrogation in the person of a judge.
Amended by: IV.1856.36; XIII.1964.26; L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.40.

447. (1) Where the judge has been objected to, or has abstained from sitting, another judge shall be surrogated by the President of Malta in his stead.

(2) If every one of the judges is, for any of the causes referred to in the last preceding article, precluded from sitting, it shall be lawful for the President of Malta to surrogate acting judges.

Oath of office by judge surrogate. Cap. 12.

(3) An acting judge shall, on being surrogated, take the oaths prescribed in article 10 of the Code of Organization and Civil Procedure.

Grounds of challenge to apply to judge surrogate.

(4) A judge surrogate may also be objected to for any of the said causes.

Reading out of indictment to accused.
Substituted by: LIII.1981.5.

448. Where no pleas have been raised as provided in article 438, the court shall direct the registrar to read out the indictment.

Pleas to be raised and determined after the reading out of indictment.
Amended by: IV.1856.37; IX.1857.4; V.1868.28; VI.1871.32,33; XI.1900.76; L.N. 46 of 1965; XXV.1967.8; XXVII.1975.40; III.1976.3; XIV.1976.2; LIII.1981.6; III.2002.107.

449. (1) The following pleas, that is to say:

(*a*) plea to the jurisdiction of the court;

(*b*) plea of nullity of or defect in the indictment;

(*c*) plea of extinguishment of action;

(*d*) plea of "*autrefois convict*" or "*autrefois acquit*";

(*e*) plea of insanity of the accused at the time of the trial;

(*f*) plea of insanity at the time of the offence or any plea relating to any other point of fact which excludes the imputability of the accused or in consequence of which the trial should not take place at the time, or at any future time; and

(*g*) saving the provisions of article 446(1), any other preliminary plea,

may only be raised if notice thereof has been given as provided in article 438(2):

Provided that the court may authorise such pleas to be raised for a reason which arises after the time within which the note referred to in article 438(2) is to be filed in the registry of the court.

(2) *Deleted by III.2002.107.*

(3) Nevertheless, the pleas mentioned in sub-article (1), with the exception of the plea of challenge of the judge or the plea of defect in the indictment, may be raised after the verdict of the jury and before judgment, if the necessity arises from any fact or circumstance of fact expressly found by the jury.

(4) Any point of fact which, without excluding the imputability of the accused or without excluding his capacity to plead, is a bar to his undergoing punishment, may be raised even after the verdict of the jury.

Want of jurisdiction and nullity of indictment may be raised by court *ex officio*.

(5) The want of jurisdiction of the court and the nullity of the indictment may also be raised by the court *ex officio*, either before the accused answers to the charge, or after the verdict of the jury:

Provided, however, that, after the verdict of the jury, the indictment may only be annulled in either of the following cases:

(*a*) if the indictment does not contain, in substance, a statement or description of the offence as stated or described in the law;

(*b*) if the fact stated in the indictment does not constitute, in substance, the offence stated or described in such indictment.

(6) Where it is decided that the court has no jurisdiction or that the indictment is null, the accused shall be placed again in the condition in which he stood previously to the filing of the indictment. But where the plea of extinguishment of action or the plea of "*autrefois convict*" or "*autrefois acquit*" is allowed, the accused shall be acquitted.

Question to accused on general issue.

450. When the preliminary pleas have been determined, or if no such pleas have been raised, the accused shall be asked whether he is guilty of the offence charged in the indictment.

Rules respecting deaf-mutes, etc. *Amended by: VIII.1857.15; XXX.1934.9.*

451. (1) If the accused is a deaf-mute and is able to write, the contents of the indictment shall be explained, and the question prescribed under the last preceding article shall be made to the accused in writing, and he shall answer in writing; and in this case, the explanation, the question and the answer thereto, shall be publicly read out by the registrar and laid before the court and the jury, and then preserved in the records of the court.

(2) If the accused is a deaf-mute and is unable to write, the court shall *ex officio* appoint as interpreter some person familiar with him, or some other person able to understand him.

(3) If the accused is dumb, but not deaf, the explanation and question shall be made to him in the same manner as to any other accused. If he is able to write, he shall answer in writing; but if he is unable to write, an interpreter shall be assigned to him.

(4) It shall be lawful for the court, whenever it shall deem it expedient, to apply the said provisions, respecting deaf-mutes, to an accused who is deaf only.

Appointment of interpreter. *Amended by: V.1868.29; XVI.1932.5; L.N. 46 of 1965; LVIII.1974.68; XXIII.2017.16.*

452. (1) Save as otherwise expressly provided, an interpreter shall not be chosen from among the jurors, counsel for the accused, witnesses, referees, or other persons employed in the service of the court or of the Attorney General, with the exception of the official interpreter. It shall, however, be lawful for any of the parties to take objection against the official interpreter or any other person appointed to act as interpreter, before the same enters upon his duties, and any such objection shall be determined by the court.

(2) Nevertheless, it shall be lawful for the court to appoint any person employed in the service of the court to act as interpreter, if it appears to its satisfaction that sufficient inquiries have been made and that no other person suitable to act as interpreter could be found.

(3) The person appointed to act as interpreter, if he is not in the building in which the court is sitting, shall be summoned by means of a subpoena.

(4) Any person residing in Malta, who, being appointed to act as interpreter, shall, without a just cause, fail to appear at the time and place appointed by the court, or shall refuse to act as interpreter, or shall leave the court before he is dismissed, may be dealt with as a witness who fails to appear to give evidence, or who, having appeared, refuses to give evidence, or leaves the court before he is discharged.

(5) The provision contained in article 633(2) shall apply if the interpreter is the spouse of the accused, or is related to the accused by consanguinity in any of the degrees mentioned in that article, or if other particular circumstances occur.

(6) The interpreter appointed by the court, if he is not a person employed in the service of the Government, shall be entitled to a

remuneration to be fixed by the court according to circumstances.

Admission of guilt by accused. *Amended by: VIII.1909.48.*

453. (1) If the accused, in answer to the question prescribed under article 450, states that he is guilty of the offence, the court shall in the most solemn manner warn him of the legal consequences of such statement, and shall allow him a short time to retract it; but if the accused persists in his statement, such statement shall be recorded and the court shall proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

Duties of the court.

(2) Nevertheless, if there is good reason to doubt whether the offence has really taken place at all, or whether the accused is guilty of the offence, the court shall, notwithstanding the confession of the accused, order the trial of the cause to be proceeded with as if the accused had not pleaded guilty.

Sentence at the request of the parties. *Added by: III.2002.108. Amended by: XIII.2002.9.*

453A. (1) Before the accused pleads to the general issue as provided in article 453, the accused and the Attorney General may request the court, in the eventuality of a plea of guilty, to apply a sanction or measure or, where provided for by law, a combination of sanctions or measures, of the kind and quantity agreed between them and to which the accused can be sentenced upon conviction for the offence or offences with which he is accused.

(2) If the court is satisfied that the sanction or measure, or combination of sanctions and measures, requested as provided in sub-article (1) is one which it would have been lawful for it to impose upon conviction for the offence to which the accused has pleaded guilty and does not have cause to order the trial of the cause to be proceeded with for a reason referred to in article 453(2) or for any other reason to reject the request, and after explaining to the accused in clear terms the consequences of his request, the court shall, upon a plea of guilty by the accused, proceed to pass the sentence indicated to it by the parties declaring in its judgement that the sentence being awarded is being so awarded at the request of the parties.

(3) Where the Attorney General and the accused agree that the sentence to be imposed shall consist of a period of imprisonment which is to be suspended in accordance with the provisions of article 28A and the agreement is not rejected by the court as provided in sub-article (2) such agreement shall not in any way affect the court's power to make an order under article 28G or 28H or both.

Cap. 446.

(4) Where the Attorney General and the accused agree that a measure provided for under the Probation Act is to be applied and the agreement is not rejected by the court as provided in sub-article (2) such agreement shall not in any way affect the court's power to make an order under article 11 of the said Act.

Cap. 446.

(5) A sentence imposed at the request of the parties as provided in this article shall not affect any matter referred to in article 25(3)(a) to (*h*) of the Probation Act.

454. (1) If the accused pleads not guilty, such plea shall be recorded.

Recording of plea of "not guilty". *Amended by: IX.1857.5; III.1880.7; Order-in-Council of 1899, sec. 7; XVI.1932.6; XXX.1934.10; XX.1936.2; XXXII.1965.8; L.N. 46 of 1965; XXV.1967.9; LVIII.1974.68; LIII.1981.7; IX.1982.2.*

(2) Where, under the provisions of the Judicial Proceedings (Use of English Language) Act, the proceedings are to be conducted in the English language, the court shall, if no pleas have been raised as provided in article 438, or after the determination of such pleas, appoint the day on which the cause shall be tried before a special jury impanelled from the persons included in the list of special jurors for the trial of English-speaking persons as provided in article 605.

Where proceedings are to be conducted in the English language. Cap. 189.

(3) On the day fixed for the trial the court shall impanel the jury and shall then proceed with the trial.

Impanelling of jury.

(4) Where the accused does not simply answer that he is guilty, any other answer, or his silence, shall be taken as a plea of not guilty.

Accused making answer other than "guilty" or standing mute.

(5) It shall not be lawful for the court, the Attorney General or the jury, during the trial, to put any other question to the accused with regard to the facts with which he is charged.

Accused not to be questioned on facts with which he is charged.

455. (1) As soon as the jury have been sworn, the registrar shall read out the indictment, of which a copy shall be given to the jury; and he shall also read out to the jury whatever shall have been recorded with reference to the question prescribed under article 450.

Reading out of indictment to jury. *Amended by: V.1868.30.*

(2) Where the court deems it expedient that two or more causes be successively tried on the same day by the same jury, the jury shall be sworn in the presence of all the accused whose trial is to take place as aforesaid, previously to the commencement of the trial which is to take place first.

Trial of two or more causes on the same day.

456. The Attorney General shall then address the jury on the facts constituting the offence preferred in the indictment; he shall state the evidence which he proposes to produce in support of those facts; and after making such submissions as he may think necessary in order to make the case clear, he shall conclude by demanding a declaration of guilt against the accused.

Address by the prosecution. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

457. After making the address referred to in the last preceding article, the Attorney General shall call his witnesses examining them *viva voce,* and shall produce any other evidence he may have to offer.

Production of evidence for the prosecution. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

Defence of accused. *Amended by: IX.1859.25.*

458. (1) When the case for the prosecution is concluded, the accused shall be asked what he has to state in his defence. He shall have the right to make his defence, either personally or by an advocate, and to call and examine his witnesses in the manner provided in the last preceding article, and to produce any other evidence he may have to offer.

Where accused is assisted by more than one advocate.

(2) If the accused is assisted by more than one advocate, such advocates may divide the duties between them in such a manner that one will make the defence and the other will make the rejoinder, when this is allowed, or, that one will make the defence and rejoinder and the other will examine the witnesses; but neither of them may address the court or the jury after the defence or rejoinder has been made by the other; and the provisions of this sub-article shall apply to every other stage of the proceedings in which the accused is assisted by more than one advocate.

Accused may make his own defence.

(3) It shall also be lawful for the accused either to make his own defence and leave to his advocate the rejoinder, when this is allowed, or to make the rejoinder notwithstanding that his defence was made by his advocate.

Applicability of article 458.

458A. The provisions of article 458(2) shall apply *mutatis mutandis* where the conduct of the prosecution is delegated by the Attorney General to more than one counsel.

Order of examination of witnesses.

459. The order to be followed in the examination of witnesses shall be as hereunder:

The party calling the witness proceeds to examine him; then the opposite party may, if he so desires, cross-examine him; any juror may then put any question which he may deem necessary; and the court, besides the questions which it may deem proper to put in the course of the examination or cross-examination, may finally put any other question which it shall deem necessary.

Where accused takes stand to testify. *Added by: III.2002.110. Amended by: XIII.2002.10.*

459A. (1) The accused who takes the stand to testify shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than the one with which he is accused, or is of bad character, unless -

(*a*) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of an offence with which he is accused; or

(*b*) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or the deceased victim of the alleged crime; or

(*c*) he has given evidence which involves in the commission of the offence with which he is being accused, any other person accused in the same

proceedings.

(2) In any of the circumstances mentioned in paragraphs (*a*) to (*c*) above any record showing any previous convictions of the person charged or accused may be produced in evidence.

Further questions after cross-examination only to be made through court.

460. After the cross-examination of the witness, it shall not be lawful for the parties to put any question directly to the witness. They may, however, submit to the court any further question they may desire to put to the witness, and any such question, if considered by the court to be material to the case, shall be put to the witness by the court itself.

Rules as to the admissibility of evidence. *Amended by: IX.1857.6; L.N. 46 of 1965; LVIII.1974.68.*

461. (1) If the Attorney General or the accused desires to prove facts upon the existence or non-existence of which depends the admissibility of evidence for the production of which the permission of the court has been obtained under the provisions of article 440, he may adduce evidence of such facts at the stage of the trial at which such permission has been obtained.

(2) The same shall apply with regard to evidence as to the existence of the circumstances required under article 646 for the admissibility of any of the depositions therein referred to, when the request for the production of any such deposition is made during the trial.

Brief notes of depositions to be taken by court. *Amended by: IX.1857.7.*

462. Notes of the evidence of the witnesses shall be taken down in brief by the court.

Shorthand notes of proceedings at trial. *Added by: VI.1947.13. Amended by: L.N. 46 of 1965; XXV.1967.10; LVIII.1974.68; XXVII.1975.40.*

*__463.__ (1) Shorthand notes shall be taken of the proceedings at the trial on indictment of any person before the Criminal Court. A transcript of the notes or any part thereof shall be made whenever the Criminal Court or the Court of Criminal Appeal so directs:

Provided that subject to the provisions of article 518, a transcript shall be furnished to any party having an interest in the proceedings upon the payment of such charges as may be fixed by tariff.

(2) The Attorney General may also, if he thinks fit, in any case, direct a transcript of the shorthand notes to be made and furnished to him for his use.

(3) The cost of taking any such shorthand notes, and of any transcript, where a transcript is directed to be made by the court or by the Attorney General, shall be defrayed, in accordance with scales of payment to be fixed from time to time, out of money provided by the Government. Rules may be made by the Board appointed under article 516(3), for securing the accuracy of the notes to be taken and for the verification of the transcript.

*Article 463 has not yet come into force. Vide article 13(2) of Ordinance No.VI of 1947.

Reply and rejoinder. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

464. After the close of the defence, the Attorney General shall be allowed to reply, if he so desires; but, in such case, the accused shall have the right to a rejoinder:

Provided that no fresh evidence may be produced, without the special permission of the court, either in the reply or in the rejoinder.

Summing-up by judge. *Amended by: IX.1857.8; IX.1859.26; V.1868.31; XXV.1967.11.*

465. After the conclusion of the case for the prosecution and for the defence, the judge shall address the jury, explaining to them the nature and the ingredients of the offence preferred in the indictment, as well as any other point of law which in the particular case may be connected with the functions of the jury, summing up, in such manner as he may think necessary, the evidence of the witnesses and other concurrent evidence, acquainting them with the powers which the jury may exercise in the particular case, and making all such other remarks as may tend to direct and instruct the jury for the proper discharge of their duties.

Deliberation by the jury.

466. On the conclusion of the address by the court, the jury shall consider their verdict.

Functions of the jury and rules connected therewith. *Amended by: IV.1856.38; III.2002.111.*

467. (1) The jury shall in their deliberations consider, in the first place, whether the accused is guilty of the offence charged against him in the indictment, with all the aggravating circumstances, if any, therein specified; and, if the jury shall be of opinion that such guilt is proved, they shall, in the manner provided in articles 468 and 469, find the accused "*guilty*".

(2) Where there is no proof that the accused, or any one of the accused, was the principal or one of the principals in the offence charged in the indictment, but there is proof that he was an accomplice or of being guilty of conspiracy to commit that offence, it shall be lawful for the jury to find him guilty of complicity in, or of conspiracy to commit, such offence; conversely, where a person is accused, in the indictment, of being an accomplice in an offence it shall be lawful for the jury to find him guilty of conspiracy to commit that offence or of being the principal, or one of the principals, in that offence and if he is accused of conspiracy to commit an offence he may be found guilty of being an accomplice in that offence or of being a principal, or one of the principals, in that offence, completed or attempted, if there is proof to that effect:

Provided that where a person accused in the indictment of conspiracy to commit an offence is found guilty as aforesaid of being a principal, or one of the principals, in the offence, completed or attempted, the punishment shall not be more severe than the punishment demanded in the bill of indictment.

(3) Where two or more individuals are indicted as principals in an offence and there is proof that such offence was committed by one or more of them, but there is no proof as to which one of them or which of them committed the offence, it shall be lawful for the jury to find all the accused guilty as accomplices in the offence, if it is proved that all of them took in the offence a part sufficient to render them accomplices.

(4) Where the offence is not proved in the terms in which it was

specified in the indictment, but it shall appear at the trial that either the same offence but of a less aggravated character, or a lesser offence, or an attempted offence only has been committed, provided the same be included or involved in any part of the indictment, the jury may either exclude the aggravating circumstances or add those circumstances which make the offence of a less aggravated character, or find the accused guilty of such lesser offence or of an attempted offence, or of the facts constituting such lesser offence or attempted offence, as the case may be. The jury may enter their verdict by saying "*guilty, but without the circumstance or circumstances of* . . . . . ," specifying the circumstance or circumstances which they want to exclude; or, "*guilty, but with the circumstance or circumstances of* . . . . . ," specifying the circumstance or circumstances which make the offence of a less aggravated character; or, "*guilty, but only of* . . . . . ," specifying the offence or the attempted offence (or the facts constituting such offence or attempted offence) of which the jury may find the accused guilty as aforesaid.

(5) If the jury are of opinion that the accused is not guilty in any form as aforesaid, they shall find the accused "*not guilty*".

Number of votes required for a legal verdict.

468. For every verdict of the jury, whether in favour of, or against the accused, there shall be necessary the concurrence of at least six votes.

Duties of foreman of jury.

469. The foreman of the jury shall collect the votes of the other jurors in respect of each verdict, noting down against the name of each juror respectively the vote given by such juror, and shall finally add his own vote; and after counting the votes, and ascertaining the concurrence of at least six votes, he shall write down the verdict to be returned, which he shall lay before the other jurors.

Explanations required by jury from court.

470. (1) The jury may apply to the court for any elucidation or explanation they may require for the discharge of their duties. And every such elucidation or explanation shall be given in open court.

Place for deliberating.

(2) The jury may, for the purpose of considering their verdict, withdraw to the place appointed for that purpose.

Means of communication between jury and court.

(3) When the jury shall have retired to deliberate, the registrar shall be the means of communication between the jury and the court.

Jurors not to absent themselves or communicate with unauthorized persons.
Amended by: XXVII.1975.27.

471. (1) A juror once impanelled must not, until the recording of the verdict of the jury, absent himself or communicate with any one except with the court, the other jurors, or the officer authorized to communicate with the jurors, save, in some special case, with leave of the court.

(2) When a trial does not come to an end on the same day in which the names of the persons to serve as jurors have been drawn, the court may, unless it deems it prejudicial in the interests of justice, allow the jurors to return to their respective home on condition that they present themselves in court on the day and time to which the trial has been adjourned, and on such other conditions that the judge may deem fit to impose in the interests of justice.

No food or drink to be given to jurors after they retire for deliberation and until their verdict is recorded, without leave of court.

472. After the jury shall have retired for their deliberation and until their verdict is recorded, they shall not be allowed to have food or drink without leave of the court.

Jury to inform court as soon as they are ready to return verdict.

473. As soon as the jury are ready to return their verdict, they shall cause the court to be informed, in order that it may hear the delivery thereof in open court.

Reading out of verdict by the jury.

474. The court shall, through the registrar, ask the jury, "*whether the accused is guilty of what is adduced against him in the indictment*", and the foreman, in the presence of all the other jurors, shall read out in open court the verdict returned by the jury, and such verdict shall be given to the registrar to be by him recorded.

Additional declaration by jury relative to facts amounting to an excuse.

475. If, after the accused has been in any form found guilty, the court is of opinion that, upon the submissions made by the defence or as a result of the facts proved at the trial, there should be a further declaration on the part of the jury as to whether some fact, which the law expressly specifies as an excuse and of which no mention was made in the indictment, has or has not been proved in the case, the court shall refer the question for the determination of the jury who shall answer affirmatively or negatively, as they shall adjudge:

Provided that nothing in this article shall prevent the jury, when finding the accused guilty in any form as provided in article 467, if so satisfied from the evidence, from declaring on their own initiative and without waiting for any question by the court to that effect, that some particular fact, which the law expressly specifies as an excuse, has been proved; in which case, the jury shall find the accused guilty, and also that the facts constituting the excuse specified in the law have been proved.

Verdict by jury in case of infanticide. *Amended by: VI.1947.14; III.2002.112.*

476. (1) If a woman tried for the murder of her child or for infanticide is acquitted thereof, it shall be lawful for the jury, by whose verdict such woman is acquitted, to find, in case it shall so satisfactorily appear in evidence, that such woman had given birth to a child and that, by secretly burying or otherwise disposing of the dead body of such child, she endeavoured to conceal the birth thereof.

Verdict in the case of theft, misappropriation or receiving stolen property.

(2) If a person tried for the theft, whether simple or aggravated, of any object is found not guilty of that charge, it shall be lawful for the jury to find him guilty of misappropriation of that object or of the offence contemplated in article 334 with regard to that object, if there is proof to that effect; and, conversely, a person tried for misappropriation or for the offence contemplated in article 334 may be found guilty of theft, whether simple or aggravated, of the object concerned if there is proof to that effect:

Provided that in no case shall the punishment be more severe than that demanded in the indictment.

Powers of court in case of incomplete or ambiguous verdict.

477. It shall be in the power of the court to require the jury to consider any question upon which they are empowered to enter a verdict according to the provisions of article 467, and also to consider whether any material circumstance which will serve to complete or explain the first verdict, has or has not been proved.

Riders on supplementary questions.

478. Any other question which the court may deem necessary to put to the jury in consequence of their first verdict, shall be made, and the relative answer received, in the manner provided in article 474.

Verdict not to be recorded before it is complete.

479. In all cases where a further deliberation by the jury is required in order to render their verdict complete, the court shall order that the verdict be not recorded until it is complete.

Questions to jury.
Amended by: IV.1856.39; IX.1857.9; L.N. 46 of 1965; XXV.1967.12; LVIII.1974.68.

480. (1) It shall be lawful for the court, in order to assist the jury in the discharge of their functions, to give to the jury, through the registrar, one or more written questions, which shall be by the registrar signed and read out in open court, respecting the matters upon which, in the various cases referred to in articles 467, 475, 477 and 488, the jury are empowered or bound to enter a verdict.

(2) It shall be lawful for the court to make, where necessary, the said questions, either orally or in writing, even after the jury, in answer to the question whether the accused is guilty of the offence as stated in the indictment, have found the accused not guilty of such offence or have found him guilty but not in terms of the indictment.

Power of jury to refer to court the decision on points of law.

(3) If any doubt arises on any question of law upon the determination of which might depend the finding of the jury as to whether the accused is guilty of the offence stated in the indictment, or of any other offence as provided in article 467, or whether the facts adduced in the defence constitute an excuse according to law, it shall be in the power of the jury, if they so desire, instead of finding the accused guilty or not guilty, or that an excuse has or has not been proved, to find only, upon written questions given to them by the court for the purpose, that the facts or some of the facts adduced either against or in favour of the accused have or have not been proved, and to leave to the court to determine whether the facts found by the jury constitute the offence stated in the indictment or any other offence under the provisions of the said article 467 or an excuse according to law.

(4) The court shall pronounce judgment on any question so referred to it by the jury on the same day or on any other day after hearing the Attorney General and the accused or his advocate in the manner provided in article 490.

Separate verdict in respect of each offence and of each accused.

481. If more offences are charged in the same indictment or if the accused on trial are more than one, the jury shall give a separate verdict in respect of each offence and of each accused.

Number of votes to be stated in every verdict.

482. Every verdict of the jury shall state the number of votes which concurred in such verdict.

Further deliberation in default of legal number of votes.

483. Where, on the reading out in court of any verdict, the absence of the concurrence of at least six votes in support of such verdict is made to appear to the court by a number of jurors sufficient to show such defect, the court shall require the jury to retire for further deliberation under the direction of the foreman of the jury or of any other juror whom the court shall appoint for that purpose in order that a true verdict may be returned; and no verdict shall be recorded so long as there is not the number of votes required by law for a true verdict.

Recommendation of accused to mercy of court. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

484. Any juror may recommend to the mercy of the court the accused person found guilty, stating the reason for so doing; and the court may take into consideration any such recommendation, either in applying the law, or by communicating the same to the President of Malta in a report made for the purpose, or in any of the reports referred to in articles 493 and 494.

Trial to go on without interruption. *Amended by: XXX.1934.11; III.1976.4.*

485. Once the jury has been impanelled, the trial of the cause shall be continued without interruption up to the recording of the verdict of the jury inclusively; and it shall not be adjourned, except for such intervals as the court may think necessary for the rest of the court itself, of the jurors, witnesses, or parties accused, or if a Saturday, a Sunday or other public holiday intervenes:

Provided that the court may, if it deems it expedient so to do, continue the trial of the cause on any Saturday, Sunday or other public holiday.

Death or other impediment of juror. *Amended by: X.1896.1.*

486. If, before the verdict of the jury is returned, a juror dies, or becomes unable to discharge his duties, the court, where no supplementary jurors as provided in article 610(2) have been appointed, shall proceed to the appointment of a new juror, if this can conveniently be done on the same day; otherwise it shall adjourn the cause to another day to be tried by a new jury; and in either case all proceedings which may have taken place before the jury up to that time shall take place anew.

Acquittal and discharge of accused if declared not guilty. *Amended by: XI.1900.77.*

487. If the jury find the accused not guilty in terms of article 467(5), the court shall acquit him, and shall order that he be set at liberty, unless he is in custody for some other reason.

Insanity and want of discretion as grounds for acquittal to be stated in verdict. *Amended by: XI.1900.78; I.1903.28,29.*

488. (1) If the accused is found not guilty on the ground of his insanity at the time of the offence, or if the accused, being under fourteen years of age or a deaf-mute, is found not guilty on the ground of want of discretion, such ground shall be stated in the verdict of the jury.

(2) If such ground is not stated in the verdict, the court shall put to the jurors a specific question on that point, and the jurors shall answer affirmatively or negatively as they shall have adjudged.

(3) If the majority of the jurors shall answer affirmatively, the provisions of article 35(3) and (4), or of article 39(2), or of article 623(1), as the case may be, shall apply.

Previous conviction not to be disclosed to jury. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

489. Where the law by reason of any previous conviction prescribes an increase of punishment for a subsequent offence, the trial shall proceed as if the previous conviction and sentence of the accused had not been alleged in the indictment; and the allegation of any such previous conviction and sentence shall not be submitted to the jury until after and if the jury shall have declared the accused guilty of such subsequent offence:

Exception.

Provided, however, that, if upon the trial in respect of such subsequent offence or relapse, evidence is adduced as to the good character of the accused, it shall be lawful for the Attorney General, in answer thereto, to read out the indictment and to prove the conviction of, and sentence passed on, the accused for the previous offence, even before the jury shall have found the accused guilty.

Question by court to accused as to applicability of punishment. *Amended by: IX.1857.11; L.N. 46 of 1965; XXV.1967.14; LVIII.1974.68; III.2002.113.*

490. (1) The fact of the guilt of the accused having been established, the court shall ask him if he has to say anything in regard to the applicability of the punishment demanded by the Attorney General. If no opposition is made, the court, if it is satisfied that the punishment demanded is that prescribed by law, shall pronounce sentence; but, in case of opposition, or of a doubt expressed by the court itself, the court shall hear the Attorney General, and, in answer, the accused or his advocate. After the answer, the Attorney General may reply, and after the reply, the accused or his advocate may put in a rejoinder.

Issue to be determined by court.

(2) After the submissions of the Attorney General and of the accused or his advocate, the court shall decide whether the punishment demanded is that which ought to be applied according to law and, if it decides that it is not, it shall determine the punishment applicable to the case, stating the reasons for its decision.

Submissions by injured party on sentence.

(3) An injured party may, by application, request the Criminal Court to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused and if the court allows the application the injured party or his legal counsel shall be given the opportunity to make such submissions at the stage referred to in sub-article (1) and before the court asks the accused if he has to say anything in regard to the applicability of the punishment demanded by the Attorney General:

Provided that the failure, for any reason, of the injured party to make submissions on sentence as aforesaid shall not preclude the court from proceeding with any hearing or from pronouncing judgment as provided in article 491.

Judgment. *Amended by: IX.1857.12. Substituted by: XXV.1967.15.*

491. The court shall pronounce judgment as soon as possible.

Court may award a lesser punishment when jury are not unanimous. *Substituted by: XXI.1971.28. Amended by: XLIX.1981.4; III.2002.114; LII.2020.6.*

492. (1) Where at any time before the constitution of the jury the accused declares himself guilty and for the fact admitted by the accused there is established the punishment of imprisonment for life, the court may, instead of the said punishment, impose the punishment of imprisonment for a term from twelve to forty years.

(2) It shall be lawful for the court to award a sentence of imprisonment for a term of not less than twelve years in lieu of the punishment of imprisonment for life if, in establishing a fact involving the latter punishment, the jury shall not have been unanimous.

Court's recommendation on passing sentence of imprisonment for life. *Added by: XXI.1971.29. Amended by: XLIX.1981.4.*

493. After sentencing any person to imprisonment for life, the court may recommend in writing to the Prime Minister within twenty-four hours the minimum period which in its view should elapse before the prisoner is released from prison. Such recommendation shall be made available to the person sentenced, and a copy thereof shall be kept by the registrar.

Recommendation by judge for pardon or mitigation of punishment. *Amended by: IX.1857.I4; L.N. 46 of 1965; LVIII.1974.68.*

494. It shall be lawful for any judge, who sat in a trial, to recommend to the President of Malta, for pardon or mitigation of punishment any person sentenced by making for this purpose a report in writing stating the reason for such recommendation.

Death or illness of judge, Attorney General or accused or his advocate. *Amended by: IV.1856.40; IX.1857.15, 16; L.N. 46 of 1965; XXV.1967.17; LVIII.1974.68; III.2002.115.*

495. (1) If, during the trial, or after the jury have returned a verdict of guilty, the sitting judge dies or becomes ill, another judge shall be surrogated as provided by law, and all proceedings which shall have taken place subsequently to the recording of the answer given by the accused, shall take place anew, if the court shall so deem fit.

(2) Whatever shall be the verdict of the jury after the proceedings shall have taken place anew, it shall not be lawful to award a punishment higher than that to which the offence previously found by the jury was liable.

(3) The proceedings which shall have already taken place shall not take place anew if the accused had been found not guilty.

(4) The proceedings shall take place anew, if the Attorney General or prosecuting counsel dies, or becomes ill, before he has discharged the duties set out in articles 456, 457 and 464, or if the advocate for the accused dies or becomes ill, or if the accused himself becomes ill, before the defence as provided in article 458 is terminated.

496. The functions of the registrar in the Criminal Court may be performed by any of the court executive officers referred to in article 57(3) of the Code of Organization and Civil Procedure.

Functions of registrar in the Criminal Court. *Second part of sec.30 of Ord. VI of 1980 incorporated. Amended by: XXVII.1975.40. Substituted by: XXIV.1995.360; XXXI.2002.200.* Cap.12.

Title V

THE COURT OF CRIMINAL APPEAL

Added by: XXV.1967.18. Amended by: XXVII.1975.40.

497. In this Title, unless the context otherwise requires, -

Interpretation. *Added by: XXV.1967.18.*

the expression "appellant" includes a person who has been convicted and desires to appeal under this Title; and

the expression "sentence" includes any order of the court made on conviction with reference to the person convicted and the power of the Court of Criminal Appeal to pass a sentence includes a power to make any such order.

498. (1) There shall be a Court of Criminal Appeal which shall have jurisdiction to hear and determine appeals under this Title and appeals from judgments of the Court of Magistrates as well as to deal with other proceedings under this Title.

The Court of Criminal Appeal. *Added by: XXV.1967.18. Amended by: XXI.1971.30; LVIII.1974.68; XXVII.1975.28, 40; VIII.1990.3.*

(2) Saving the provision of article 418 in regard to the constitution of the said court for the hearing of appeals from judgments of the Court of Magistrates, the Court of Criminal Appeal shall consist of the Chief Justice, who shall be the President of the Court and two other of the judges appointed by the President of Malta:

Provided that, in the case of absence or lawful impediment of any of the members of the court, the President of Malta shall appoint another or others of the judges to sit instead.

(3) The determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the court hearing the case and one judgment shall be delivered as the judgment of the whole court.

(4) The Court of Criminal Appeal shall for the purposes of and subject to the provisions of this Title have full power to determine, in accordance with this Title, any questions necessary to be determined for the purpose of doing justice in the case before the court.

(5) The provisions contained in this Title shall not apply to appeals from judgments of the Court of Magistrates.

Appeal at the instance of Attorney General or of accused.
Added by: XXV.1967.18. Amended by: LVIII.1974.68; LIII.1981.8; XXII.2005.6; I.2018.22.

499. (1) An appeal shall lie to the Court of Criminal Appeal at the instance of the Attorney General or of the accused from any decision given, after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty, on any of the pleas referred to in article 449(1)(*a*), (*b*), (*c*), (*d*) and (*g*) and from any decision regarding the admissibility of evidence.

(2) An appeal shall also lie at the instance of the accused from any decision given, on an application of the Attorney General, under article 402(5) or from any decision given, after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty, on any of the pleas referred to in article 449(1)(*e*) and (*f*).

(3) Where the Attorney General or, as the case may be, the accused desires to enter an appeal under sub-article (1) or (2) he must give notice of appeal by means of a note immediately after the decision of the court is pronounced and thereupon the court, if the case so requires, shall stay further proceedings until the expiration of the time allowed as hereinafter provided for the appeal or, if an appeal is entered, until the determination thereof by the Court of Criminal Appeal.

(4) An appeal under sub-article (1) or (2) shall be made by application filed in the Court of Criminal Appeal within five working days from the date of the decision appealed from.

(5) Any appeal made under this article by the Attorney General shall not stay the execution of the decision appealed from.

(6) On any appeal under this article, the Court of Criminal Appeal shall, if it allows the appeal, set aside the decision appealed from and make such order for the discharge of the accused or the further prosecution of the proceedings or make such other orders including orders for the re-arrest or custody of the person accused or give such other directions as the case may require.

(7) The default of the accused to make an appeal under this article shall not preclude him from raising the question which he could have raised by any such appeal in any appeal which he may make under the next following article.

Appeals against conviction or sentence.
Added by: XXV.1967.18. Amended by: III.2002.116; IV.2014.23; VIII.2015.33; XXXII.2018.7.

500. (1) A person convicted on indictment may appeal to the Court of Criminal Appeal against his conviction in all cases or against the sentence passed on his conviction unless the sentence is one fixed by law.

(2) The Attorney General may appeal to the Court of Criminal Appeal against an acquittal or a wrong finding of guilt on the bill of indictment or part thereof or against the sentence passed unless the sentence is one fixed by law.

Appeal by the Attorney General.
Cap. 446.

(3) Notwithstanding the provisions of article 28I(2) and of the Probation Act, if it appears to him that the sentence was unduly lenient the Attorney General may also appeal from any judgment convicting a person for an offence liable to imprisonment for a term exceeding two years if the sentence has applied the provisions of article 21 or of articles 28A to 28H or the provisions of the

Probation Act.

(4) The Court of Criminal Appeal shall allow an appeal by the Attorney General if it considers that there has been a grave irregularity during the proceedings, or that the judgement is clearly the result of a manifest misinterpretation or of a manifestly wrong application of the law, which could have had a bearing on the verdict:

Provided that the Court may, notwithstanding that it is of opinion that the point raised in the appeal under this sub-article might be decided in favour of the Attorney General, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(5) The Court of Criminal Appeal shall, upon an appeal made in terms of sub-articles (2) or (4) affirm, vary or reverse the verdict from which an appeal has been filed, or, if it considers that a sentence of greater severity should have been passed, quash the sentence passed at the trial and pass such sentence of greater severity warranted in the law in substitution thereof as it considers ought to have been passed, and in any other case shall dismiss the appeal:

Provided that if the court considers that it would be more just in the circumstances to do so, the court shall quash the sentence and send the case for retrial before the Criminal Court.

Submissions by injured party to Court of Criminal Appeal on sentence. *Added by: III.2002.117.*

500A. On any appeal against sentence an injured party may, by application, request the Court of Criminal Appeal to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused and if the court allows the application the injured party or his legal counsel shall be given the opportunity to make such submissions after the court has heard the appellant's submissions in support of the appeal; the person convicted and the Attorney General shall be given the opportunity to respond to the submissions by the injured party or his legal counsel:

Provided that the failure, for any reason, of the injured party or his legal counsel to make submissions on sentence as aforesaid on the appointed day shall not preclude the court from proceeding with any hearing or from pronouncing judgement.

References by the Attorney General. *Added by: III.2002.117.*

500B. (1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part of the indictment) the Attorney General may, if he desires the opinion of the Court of Criminal Appeal on a point of law which has arisen in the case and within the time laid down in article 504, refer that point to the court, and the court shall, in accordance with this article, consider the point and give their opinion on it.

(2) For the purpose of their consideration of a point referred to them under this article the Court of Criminal Appeal shall hear argument -

(*a*) by the Attorney General; and

(*b*) either by counsel for the defence, if the acquitted person desires to present any argument to the court or, in default, by the Advocate for Legal Aid.

(3) A reference under this article shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

(4) The Board referred to under article 516(3) may make rules to regulate the form and contents of the reference by the Attorney General under this article and to provide for all other matters connected therewith or ancillary thereto.

Determination of appeals in ordinary cases. *Added by: XXV.1967.18. Amended by: XXVII.1975.29; III.2002.118; XXXII.2018.8.*

501. (1) On any appeal against conviction by the person convicted, the Court of Criminal Appeal shall allow the appeal -

(*a*) if it thinks that the appellant has been wrongly convicted on the facts of the case; or

(*b*) if it thinks that there has been an irregularity during the proceedings, or a wrong interpretation or application of the law, which could have had a bearing on the verdict:

Provided that the court may, notwithstanding that it is of opinion that the point raised in the appeal under paragraph (*b*) might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(2) Subject to the provisions of the next following article and of article 508(1), the Court of Criminal Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence by the person convicted, the Court of Criminal Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (not being a sentence of greater severity) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

Powers of Court of Criminal Appeal in special cases. *Added by: XXV.1967.18. Amended by: XXVII.1975.30. XXXII.2018.9.*

502. (1) If it appears to the Court of Criminal Appeal that an accused, though acquitted or not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the court may either affirm the sentence passed on the accused at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the indictment on which the court considers that the accused has been properly convicted:

Provided that where the appeal is filed by the person convicted such other sentence shall not be of greater severity than the sentence passed at the trial taken as a whole, whether or not the last mentioned sentence was expressed to be passed on that part of the indictment.

(2) Where an accused has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of

Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence which in the case of an appeal filed by the person convicted shall not be a sentence of greater severity.

(3) Where the jury have found a verdict falling within the provisions of article 480(3), and the Court of Criminal Appeal considers that a wrong conclusion has been arrived at by the Criminal Court on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the court to be in law required by the verdict, and pass such sentence (which, in the case of an appeal filed by the person convicted shall not be a sentence of greater severity) in substitution for the sentence passed at the trial as may be warranted in law.

(4) Where on an appeal against conviction the Court of Criminal Appeal is of opinion that although the appellant committed the act or made the omission charged against him he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the court may quash the sentence passed at the trial and order the appellant to be kept in custody in Mount Carmel Hospital in which case the provisions of article 623(1), (2) and (3) shall apply.

Appeal against verdict of not guilty on the ground of insanity. *Added by: XXV.1967.18.*

503. (1) A person in whose case a verdict of not guilty on the ground of his insanity at the time of the act or omission charged is returned, may appeal against the verdict and on any such appeal the same provision as contained in article 501(1) shall *mutatis mutandis,* subject as hereinafter provided, apply.

(2) Where apart from this article -

(*a*) an appeal against a verdict such as is mentioned in sub-article (1) would fall to be allowed, and

(*b*) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Criminal Appeal may dismiss the appeal if of opinion that, but for the insanity of the accused, the proper verdict would have been that he was guilty of an offence other than the offence charged.

(3) In the case of an appeal under sub-article (1) the appeal may be heard and determined in the absence of the appellant and, if he is not assisted by an advocate, the provisions of article 519 shall apply.

(4) Where in accordance with sub-article (1) an appeal is allowed -

(*a*) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of

Criminal Appeal is of opinion that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the court shall substitute for the verdict of not guilty on the ground of insanity a verdict of guilty of that offence, and shall have the like powers of punishing or otherwise dealing with the accused as the court before which he was tried would have had if the jury had come to the substituted verdict;

(*b*) in any other case, the Court of Criminal Appeal shall substitute for the verdict of the jury a verdict of acquittal:

Provided that where the offence mentioned in paragraph (*a*) is one for which the sentence is fixed by law, the sentence shall (whatever the circumstances) be one of imprisonment for life or for a term not less than twelve years.

(5) The term of any sentence passed by the Court of Criminal Appeal in the exercise of the powers conferred by sub-article (4)(*a*) shall, unless the court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in the Criminal Court.

Form and time for entering appeal. *Added by: XXV.1967.18.*

504. Any appeal under this Title shall be brought before the Court of Criminal Appeal by an application to be filed in that court, except where otherwise provided, within fifteen working days from the date of the decision appealed from.

Contents of application of appeal. *Added by: XXV.1967.18. Amended by: LVIII.1974.68; XXIV.1995.362.*

505. (1) Besides the indications common to judicial acts, the application shall contain a brief but clear statement of the facts of the case, the grounds of the appeal and the relief sought by the appellant.

(2) The application shall, on pain of nullity, be signed by an advocate or by the appellant himself.

(3) The record of the proceedings of the Criminal Court shall be lodged by the Registrar of Courts before the Court of Criminal Appeal within two working days from the day when the application is filed.

(4) A copy of the application shall be served on the Attorney General or on the accused, as the case may require, at least eight working days before the day appointed for the hearing of the appeal, unless the court shall in any case of urgency direct service with a shorter notice.

Supplemental powers of the Court of Criminal Appeal. *Added by: XXV.1967.18. Amended by: XXIII.2017.10.*

506. The Court of Criminal Appeal may, if it thinks it necessary or expedient in the interests of justice -

(*a*) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case; and

(*b*) if it thinks fit order any witnesses who would have been compellable witnesses at the trial to attend for

examination and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in any manner provided by law; and

(*c*) if it thinks fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of spouse of the appellant, in cases where the evidence of the spouse could not have been given at the trial except on such application, subject to the provisions of article 635.

Duty to admit evidence. *Added by: XXV.1967.18.*

507. Without prejudice to the generality of the last preceding article, where evidence is tendered to the court under that article, the court shall, unless it is satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise its power under that article of receiving it if -

(*a*) it appears to it that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and

(*b*) it is satisfied that it was not adduced at the trial, but that there is a reasonable explanation for the failure so to adduce it.

Power of Court of Criminal Appeal to order new trial. *Added by: XXV.1967.18. Amended by: XXVII.1975.30, 31. XXXII.2018.10.*

508. (1) Where an appeal is allowed by reason only of evidence received or available to be received by the Court of Criminal Appeal under articles 506 and 507 or by reason of a point raised under articles 500(4) or 501(1)(*b*) and in each case it appears to the court that the interests of justice so require, the court may, instead of directing the entry of a judgment and verdict of acquittal as provided by articles 500(5), 501(2) or by article 503(4)(*b*), order the appellant to be retried.

(2) An accused shall not be retried by virtue of this article for any offence other than -

(*a*) the offence of which he was convicted or acquitted at the original trial and in respect of which the appeal is allowed as aforesaid;

(*b*) any offence of which the accused could have been convicted at the original trial on an indictment for the first-mentioned offence; or

(*c*) any offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of convicting the accused of the first-mentioned offence.

(3) An accused who is to be retried for an offence in pursuance of an order under sub-article (1) shall be tried upon a fresh indictment.

(4) The Court of Criminal Appeal may, upon ordering a retrial under sub-article (1), make such orders as appear to the court to be necessary or expedient for the custody or admission to bail of the

accused pending the retrial.

(5) Where a new trial is ordered under sub-article (1) in the case of a person who, immediately before the determination of his appeal, was liable to be detained in Mount Carmel Hospital in pursuance of an order of the Criminal Court, the order shall continue in force pending the retrial as if the appeal had not been allowed and any order made by the Court of Criminal Appeal under the last preceding sub-article of this article for his custody or admission to bail shall have effect subject to the said order.

(6) On a retrial ordered under sub-article (1) a transcript of the notes, in shorthand or otherwise, of the evidence given by any witness at the original trial may, with the leave of the judge, be read as evidence -

(*a*) by agreement between the prosecution and the defence; or

(*b*) if the judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success.

(7) Where a person ordered to be retried under sub-article (1) is convicted on the retrial, the Criminal Court may pass in respect of the offence any sentence authorized by law, which in the case of a retrial ordered upon an appeal of the person convicted shall not be a sentence of greater severity than that passed on the original conviction.

(8) Where the person convicted on retrial is sentenced to imprisonment or detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run, but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded any time during which he was at large after being admitted to bail under sub-article (4).

Stay of execution of judgment. *Added by: XXV.1967.18. Amended by: XXIX.1989.4; III.2002.119.*

509. (1) The Court of Criminal Appeal may, if it deems fit, on the application of the appellant admit the appellant to bail pending the determination of his appeal made under article 499 or 500.

(2) The power of the Court of Criminal Appeal under sub-article (1) to admit an appellant to bail, may be exercised by any judge of the court in the same manner as it may be exercised by the court and subject to the same provisions; but, if the judge refuses an application on the part of the appellant, the appellant shall be entitled to have the application determined by the Court of Criminal Appeal.

(3) The provisions of Title IV of Part II of Book Second of this Code shall *mutatis mutandis* apply.

(4) The time during which an appellant, pending the determination of his appeal, is admitted to bail shall not count as part of any term of imprisonment or detention under his sentence.

Challenge or abstention of judge. *Added by: XXV.1967.18. Amended by: III.2002.120.*

510. (1) Any objection to any judge sitting in the Court of Criminal Appeal shall be raised, and the decision of the court thereon shall be given, before the appellant begins to make his submissions to the court on the merits of the appeal.

(2) The provisions of article 446(2), (3), (4), (5), (6), (7) and (8) and the provisions of article 447 shall apply in any proceedings before the Court of Criminal Appeal, so, however, that, for the purpose of such proceedings, any reference in those provisions to the reading out of the indictment shall be construed as a reference to the commencement of the submissions by the appellant on the merits of the appeal, the reference in the said sub-articles (2) and (4) to the accused shall be construed as including the person convicted on indictment who has appealed and any person appealing in terms of article 503(1), and the reference in the said sub-article (4) to the hearing of the cause shall be construed as a reference to the hearing of the appeal.

Death or illness of judge, Attorney General, or accused or his advocate. *Added by: XXV.1967.18. Amended by: LVIII.1974.68; III.2002.121.*

511. (1) If, during the hearing of the appeal, any of the sitting judges dies or becomes ill, another judge shall be surrogated as provided under article 498 and all proceedings shall take place anew if the court, in the interests of justice, shall so deem fit or if the accused makes a demand to that effect:

Provided that the proceedings shall in any case take place anew where the surrogated judges are two or more:

Provided further that it shall not be lawful to raise again any objection to a judge sitting in the court which has been already decided or any question on which the court has already given judgment before the surrogation of the judge or judges has taken place.

(2) If the Attorney General or counsel delegated by him dies or becomes ill or if the advocate for the appellant dies or becomes ill or if the appellant himself becomes ill, during the hearing of the appeal, it shall be within the discretion of the court as the interests of justice may require to order that all proceeding shall take place anew:

Provided that in the case of the death of the advocate for the appellant or in the case of illness of such advocate and substitution by another advocate, all proceedings shall always take place anew if the appellant makes a demand to that effect.

Provisions as to proceedings before Court of Criminal Appeal. *Added by: XXV.1967.18. Amended by: XXI.1971.27; XXVII.1975.32; XIII.1983.5; III.2002.122; L.N. 407 of 2007.*

512. (1) The provisions of article 420, article 421(1), articles 422, 423, 425, 427, 441, 442, 444 and 452 shall apply in any proceedings before the Court of Criminal Appeal:

Provided that, for the purpose of such proceedings, any reference in those provisions to the superior court and to the inferior court shall be construed as being a reference respectively to the Court of Criminal Appeal and to the Criminal Court.

(2) Notwithstanding the provisions of article 420, where the appellant who has made the declaration on oath referred to in that article, cannot be assisted by the Advocate for Legal Aid for the reason stated in paragraph (*a*) of the same article and where he was

assisted before the Criminal Court by an advocate appointed in terms of article 571, the Court of Criminal Appeal shall, in so far as possible, appoint the same advocate to assist the appellant in the proceedings of appeal, and the provisions of articles 571, 572 and 573 shall apply in respect of such appointment.

(3) The Court of Criminal Appeal may, if it considers an appeal to be frivolous, sentence the appellant to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94).

Recommendation by judge sitting in the Court of Criminal Appeal. *Added by: XXV.1967.18.*

513. Any judge may exercise, in relation to any matter which has been dealt with by the Court of Criminal Appeal while he was sitting therein, the power of recommendation mentioned in article 494 in like manner as such power may be exercised by a judge sitting in the Criminal Court.

Functions of registrar in the Court of Criminal Appeal. *Added by: XXV.1967.18. Substituted by: XXIV.1995.360; XXXI.2002.201.* Cap. 12.

514. The functions of the registrar in the Court of Criminal Appeal may be performed by any of the court executive officers referred to in article 57(3) of the Code of Organization and Civil Procedure.

Prerogative of mercy. *Added by: XXV.1967.18.*

515. (1) Nothing in this Title shall affect the prerogative of mercy, but the Prime Minister on an application made to him by a person convicted on indictment or without any such application may, if he thinks fit, at any time either -

(*a*) refer the whole case to the Court of Criminal Appeal and the case shall then be treated for all purposes as an appeal to that court by the person convicted; or

(*b*) if he desires the assistance of the Court of Criminal Appeal on any point arising in the case, refer that point to that court for its opinion thereon, and the court shall consider the point so referred and furnish the Prime Minister with its opinion thereon accordingly.

(2) The power of the Court of Criminal Appeal to exercise its functions under this article may be exercised notwithstanding that the person concerned is for any reason not present.

PROVISIONS APPLICABLE TO THE COURTS OF CRIMINAL JUSTICE

Substituted by: XXV.1967.19.

Language of the courts. *Added by: XVI.1932.7. Amended by: XXX.1934.12; XX.1936.3; XIII.1964.26. Substituted by: XXXII.1965.8. Amended by: LVIII.1974.68; XXVII.1975.33, 40; IV.1994.13.*

516. (1) The Maltese language shall be the language of the courts and, subject to the provisions of the Judicial Proceedings (Use of English Language) Act, all the proceedings shall be conducted in that language.

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(2) Where any person charged does not understand the language in which the proceedings are conducted or any evidence is adduced, such proceedings or evidence shall be interpreted to him either by the court or by a sworn interpreter.

(3) There shall be a Board composed of the Chief Justice, a judge appointed by the President of Malta from among the judges ordinarily sitting in the Criminal Court, the Attorney General, a magistrate appointed by the Minister of Justice, and the president of the Chamber of Advocates with power to make rules to be called Rules of Court for any of the purposes referred to in article 29 of the Code of Organization and Civil Procedure, in so far as applicable, the reference to that Code in that article being construed as a reference to this Code:

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Provided that nothing contained in such rules shall be inconsistent with, or repugnant to, the provisions of this Code or any other law.

(4) The Board may act notwithstanding any vacancy in its membership but shall not act unless at least the Chief Justice and two other members are present.

(5) Any rules made by the Board shall be subject to the approval of the President of Malta and shall be published in the Gazette.

Prohibition of publication of proceedings. *Amended by: IX.1859.27; III.1880.8, 9; L.N. 46 of 1965; XXV.1967.20; LVIII.1974.68; XXVII.1975.40; VIII.1990.3; III.2002.123; XXVIII.2021.13.*

517. (1) Every court of criminal justice may, by an order to be signed by the registrar and posted up at the door of the building in which the court sits, prohibit the publication, before the termination of the proceedings, of any writing, whether printed or not, in respect of the offence to which the proceedings refer, or of the party charged or accused; and any person who fails to comply with the order, shall, for the mere default, be guilty of contempt of the authority of the court, and be liable to punishment as provided in article 686, saving always any other punishment to which the offender may be liable according to law, in respect of any other offence arising from the said writing or from its publication:

Punishment.

Provided that in respect of such other offence separate proceedings must be instituted, according to law.

Duration of prohibition.

(2) If any such order is made by the Court of Magistrates as court of criminal inquiry, and is not repealed by such court before the termination of the inquiry, it shall remain in force until it is repealed by the Criminal Court, after the expiration of the term allowed for the filing of the indictment by the Attorney General, by another order signed by the registrar and affixed in the same place where the first order was posted up.

Duties of Police.

(3) If the Attorney General or the Police become aware of the

publication of any writing in contravention of this article, they shall inform the court by which the order of prohibition was made and shall carry out such directions as the court shall give, orally or in writing, for proceedings to be taken before the court against the offender, either by summons or by arrest.

Court by which breach of order is cognizable.

(4) The Criminal Court or Court of Criminal Appeal may delegate to the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as court of criminal judicature, the cognizance of the offence, in which case the latter court shall proceed as if the order to which the offence relates had been made by itself.

Inadmissibility of objection to judge or magistrate making the order.

(5) No objection may be taken against any judge or magistrate on the ground that he was the sitting judge or magistrate when the order, to which the offence relates, was made.

Publication of certain particulars permissible.

(6) Nevertheless, the publisher of any writing containing only a true copy of the charge or of the indictment, or a mere indication of the day appointed for the hearing of the cause, shall not be liable to punishment, provided that nothing be thereto added, implying an expression of opinion on the said cause, whether in regard to the offence in general or in regard to the individual who committed the offence.

Accessibility of acts and documents of courts of criminal justice. *Amended by: VIII.1909.49; XIII.1980.18; XXIX.1990.21; IV.1994.14; III.2002.124. XXIX.2021.3; VII.2024.2.*

518. The acts and documents of the courts of criminal justice shall not be open to inspection, nor shall copies thereof be given, without the special permission of the court, except by or to the Attorney General, by or to the parties concerned or by or to any advocate or legal procurator authorized by such parties; but any act, which is pronounced in open court, shall be open to inspection by any person, and copies thereof may be given on payment of the usual fee:

Provided that a *procès-verbal* and any depositions and documents filed therewith shall be open to inspection, and copies thereof shall be given, only at the discretion of the Attorney General and on payment of such fees as may be prescribed by the Minister responsible for justice as provided in article 695:

Provided further that any designated competent national authority designated in terms of any Directive or Regulation of the European Union which has access to the acts and documents of the courts of criminal justice may, if the requirements established in the Directive or Regulation of the European Union are fulfilled, transmit copies of such acts and documents of the court of criminal justice to the requesting authority:

Provided further that the European Delegated Prosecutors appointed in accordance with the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO") shall have access to the acts and documents of the courts of criminal justice and to any *procès-verbal* and to any depositions and documents filed therewith, when these relate to matters which fall within the competence of the European Public

Prosecutor's Office in accordance with the said Regulation.

Duty of court to provide for adequate defence of accused.

519. It shall be the duty of the courts of criminal justice to see to the adequate defence of the parties charged or accused; and it shall not be necessary to appoint a curator in cases where the party charged or accused has not attained his majority.

Applicability of certain provisions of Code of Organization and Civil Procedure to courts of criminal justice. *Amended by: IV.1856.41; VIII.1857.16; IX.1859.28; XIII.1964.26; L.N. 46 of 1965; LVIII.1974.68; III.1976.5; VIII.1990.3; XXIV.1995.360; XXXI.2002.203; XXII.2005.7; VIII.2015.34; I.2018.22.* Cap. 12.

520. (1) Saving any other provisions of this Code, the following provisions of the Code of Organization and Civil Procedure shall, except in so far as it is otherwise provided in this Code, apply *mutatis mutandis* to the courts of criminal justice:

(*a*) articles 8, 10 to 12, 16 and 17, 23 to 30, 57 to 61, and 65 to 76 regarding the organisation of the courts;

(*b*) articles 97 to 106, 108 to 110, 113 and 114, 119A and 123 regarding judicial times;

(*c*) sub-articles (4), (5) and (6) of article 143, and articles 175 and 205;

(*d*) articles 558 to 662 relating to evidence in general; and

(*e*) articles 627 to 633, and articles 635 to 637 relating to documentary evidence and the production of documents which are in the possession of other persons.

Power of court in respect of superfluous evidence.

(2) It shall be in the power of the said courts to exclude from the evidence or pleadings, or from the defence, all matter which, in the opinion of the court, may cause unnecessary delay, or which may be irrelevant or extraneous to the nature of the case.

Registry and registrar. *First part of sec. 30 of Ord. VI of 1880, incorporated. Substituted by: XXXI.2002.204.* Cap.12.

521. (1) The registry and the registrar mentioned in this Code shall be designated by regulations made by the Minister responsible for justice under this article.

(2) Saving the provisions of sub-article (1), and until regulations are made under the said sub-article (1), the registry and the registrar mentioned in this Code shall be the same as those established or appointed by or under the Code of Organization and Civil Procedure in respect of the courts of civil jurisdiction.

Power of court in case of prevaricating witnesses. *Amended by: III.2002.125; L.N. 407 of 2007; XXIV.2014.60.*

522. (1) The court may in its discretion guide back to the truth any witness, who shall prevaricate in his evidence, by warning him, or by keeping him apart, or even by ordering his arrest.

(2) Any witness who refuses to be sworn or to depose when so required by the court shall, on conviction, be liable to a fine (*multa*) of not less than two thousand and three hundred euro (€2,300) and not more than four thousand and six hundred euro (€4,600) or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

(3) The court before whom a witness refuses to be sworn or to depose shall order the arrest of the witness and shall order the Police to bring the witness before the competent court within forty-eight hours from arrest charged with an offence under sub-article (2).

(4) Where the witness charged as mentioned in sub-article (3), at any time before final judgement is given in his regard, gives his deposition under oath before the court before whom it is required and at a stage when it may still be received by the court, that witness shall not be liable to the punishment of imprisonment but shall be liable, on conviction, to the punishment of a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69).

(5) Any criminal proceedings in pursuance of an order of the court under sub-article (3) shall be conducted with urgency.

Where false evidence is suspected. *Amended by: XXV.1967.21; XXVII.1975. 40; VIII.1990.3.*

523. When there is a reasonable suspicion of any falsity of evidence, the court may order the arrest of the person suspected to be guilty thereof; if this takes place before the Criminal Court or Court of Criminal Appeal, the court shall order such person to be brought before the Court of Magistrates for the necessary inquiry; and if it takes place before the Court of Magistrates, such court shall proceed thereon *ex officio*.

Misbehaviour of person charged or accused. *Added by: XV.1937.8. Amended by: XXVII.1975.34.*

524. If before any of the courts of criminal jurisdiction, the party charged or accused shall so behave himself as to disturb the good order of the sitting, and, after being admonished by the court, shall persist in or repeat such behaviour, the court may order him to be removed from the place of trial or, if he be in custody, to be taken back to his place of custody, and may commence or continue the trial with the assistance only of his advocate or legal procurator, or, if he has no advocate or legal procurator, with the assistance of the Advocate for Legal Aid or of any other advocate or legal procurator appointed by the court.

Applicability of certain provisions to other courts of criminal justice. *Amended by: IV.1856.42; V.1868.32; XI.1900.79; VIII.1909.50; XXX.1934.14; XV.1937.9; VIII.1944.3,4; XXXII.1965.8; XXV.1967.22; XXVII.1975.40; VIII.1990.3; III.2002.126; VII.2010.33; XXIV.2014.61.*

525. (1) The following provisions shall also apply to the Court of Magistrates:

(*a*) article 441:

Provided that it shall be lawful for the court to proceed *ex officio* without the instance of any party;

(*b*) articles 443, 444 and 445;

(*c*) article 451, in so far as it relates to the mode of communicating with deaf-mutes, or dumb but not deaf persons, or persons deaf only; and article 452.

(2) The provisions of articles 362, 363, 364, 383 to 387, inclusively, of article 397(5) and of article 399 shall also apply to the Criminal Court and to the Court of Criminal Appeal; and the provisions of article 452 shall also apply to the Court of Criminal Appeal in the hearing of appeals from judgments of the Court of Magistrates.

(2A) The provisions of article 412B(1) and (2) shall also apply mutatis mutandis to the Criminal Court with respect to a person in custody for an offence for which a bill of indictment has been filed as well as to the Court of Criminal Appeal with respect to a person in custody who is a party to appeal proceedings before that court:

Provided that with respect to the Criminal Court the relevant decision shall in all cases be taken by the Court sitting

without a jury.

(3) The provisions of article 397, of sub-articles (2) to (4), both inclusive, of articles 467 and 623 shall, *mutatis mutandis*, also be applied by the Court of Magistrates in cases falling within its jurisdiction as court of criminal judicature under any other provision of this Code or of any other law.

Service of subpoena on witnesses. *Added by: III.1971.15.*

526. The subpoena on witnesses summoned to appear before any court of criminal jurisdiction may be served by an officer of the Executive Police and the provisions of articles 441 and 442 shall apply to any person so summoned.

Procedural documents. *Added by: IV.2014.24.*

526A. Pursuant to and in accordance with any treaty, convention, agreement or understanding between Malta and another country or which applies to both such countries or to which both such countries are a party, procedural documents or any act of the proceeding may be sent directly by post to a person who is in the territory of the foreign country in a language which that person understands:

Provided that procedural documents shall be accompanied by a report indicating to the said person the remedies available and that information about his rights and obligations concerning the document may be obtained from the issuing authority or from another competent authority in Malta.

Person cannot be tried more than once for the same fact.

527. Where in a trial, judgment is given acquitting the person charged or accused, it shall not be lawful to subject such person to another trial for the same fact.

Power of court to order proceedings against calumniators, etc., where absolute innocence of accused is established.

528. Where the absolute innocence of a person accused is established, it shall be lawful for the court, if there are grounds for so doing, to order proceedings for calumnious accusation or false evidence to be instituted against any informer, complainant, witness, or other person responsible, observing the provisions contained in article 523.

Language in which register is to be kept. Its value as evidence of proceedings. *Amended by: XV.1937.10.*

529. The registrar shall keep a register recording therein the proceedings of the court in the language in which such proceedings are conducted, and such register shall constitute authentic evidence of such proceedings.

Places in hall for accused and witnesses. *Amended by: IV.1994.15.*

530. (1) The accused shall be placed at the bar provided for the purpose in the hall where the court sits.

(2) The witnesses, during their examination, shall be placed in the witness-box:

Provided that this shall not apply in the case -

(*a*) of a witness of tender age who, if placed in the witness box, might, from shyness or otherwise, become confused or frightened in giving evidence and thereby prejudice the ends of justice;

(*b*) of a witness who, by reason of old age, infirmity or physical condition, would suffer great inconvenience if he were to be placed in the witness-box.

Sittings to be held in open court. Exceptions. *Amended by: XXV.1967.23; XXVII.1975.40; III.2002.127; XVIII.2020.7.*

531. (1) The court shall hold its sittings with open doors. Nevertheless, the court may hold its sittings with closed doors in all cases involving children below the age of eighteen (18) or in cases where it is of opinion that the proceedings, if conducted in public, might be offensive to modesty, or might cause scandal; in any such case, the court shall previously make an order to that effect stating the reasons for so doing.

(2) Where the sittings are held with closed doors, it shall not be lawful to publish any report of the proceedings under the penalties established for contempt of the authority of the court.

Subsequent notice. *Added by: XXIV.2014.62.*

*__531A.__ In proceedings before a court of criminal justice, where the party charged or accused, having been notified with the date of the first hearing in accordance with the provisions of this Code, has appeared for the said hearing, no subsequent notice need be given of any date to which a case which has been set down for hearing as aforesaid or has started to be heard is put off and it shall be the responsibility of the person charged or accused to verify such date:

Provided that this provision shall also apply where the person charged or accused, notwithstanding not having been notified in accordance with the provisions of this Code, still appears for the hearing.

Power of court to regulate conduct and despatch of business, etc. *Substituted by: IV.1994.16.*

532. Subject to the provisions of article 516(3), (4) and (5), the court shall have power to give directions for the conduct and despatch of business and for the enforcement and maintenance of good order during its sittings, provided that nothing contained in such directions shall be contrary to law.

Orders for payment of damages upon sentence. *Added by: XVI.2006.11.* Cap. 446.

532A. The provisions of article 24 of the Probation Act concerning the power of the court to order the offender to pay damages shall *mutatis mutandis* also apply whenever a person is sentenced upon conviction for any crime.

Payment of costs. *Added by: XVI.2006.11.*

532B. Where a person is convicted of a crime punishable with imprisonment he shall be liable to pay such amounts in respect of costs as the Minister may by regulations prescribe. Such regulations may specify the crimes and, or the proceedings in respect of which the regulations shall apply as well as which part of the costs may be converted into imprisonment and which part may be recovered as a civil debt, or that the whole amount may be so converted or so recovered, and the procedure applicable in every case.

*this article is not yet in force.

Power of court to sentence accused to the payment of costs incurred in the employment of experts. *Added by: XXX.1934.15. Amended by: XXIX.1990.22; XIII.2005.4; L.N. 407 of 2007; XXVIII.2021.14.*

533. (1) In the case of proceedings instituted by the Attorney General or by the Police *ex officio*, the court shall, in pronouncing judgment or in any subsequent order, sentence the person convicted or the persons convicted, jointly or severally, to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry, within such period and in such amount as shall be determined in the judgment or order.

Procedure in default of payment.

(2) In default of payment of the costs as determined by the court, the court shall, on the application of the registrar, issue a warrant of arrest against the person sentenced ordering the appearance of such person, and the court, upon ascertaining the identity of such person, shall convert the amount so determined into imprisonment at the rate of one day for every eleven euro and sixty-five cents (€11.65) or fraction thereof and shall commit the person convicted to imprisonment accordingly:

Provided that a person committed to imprisonment for non-payment of such costs may acquit himself of the substituted punishment by paying the costs determined by the court with the deduction of such amount thereof as corresponds to the part of the punishment undergone at the rate laid down in this article.

Power of prosecutor to recover costs as a civil debt.

(3) Nevertheless, it shall be lawful for the registrar to recover the costs aforesaid as a civil debt by making a declaration to that effect in the record of the case at any time until the costs have been converted into imprisonment; and, on such declaration being made, the provisions of sub-article (2) shall cease to apply.

Mode of recovery.

Cap. 12.

(4) The recovery of the costs as a civil debt shall be obtained by an application to the same court for the enforcement of the sentence or order, in the manner laid down in the Code of Organization and Civil Procedure.

Payment of costs in cases instituted upon the complaint of the injured or aggrieved party, where the complainant waives the action. *Added by: XXXI.2019.4.*

533A. (1) Without prejudice to the provisions of article 380, in the case of proceedings instituted on the complaint of the injured or aggrieved party, where the complainant waives the action, the court shall in declaring the proceedings as extinguished or in any subsequent order, sentence the complainant or complainants, jointly or severally, to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the *procès -verbal* of the inquiry, within such period and in such amount as shall be determined in the judgment or order.

(2) In default of payment of the costs as determined by the court, it shall be lawful for the registrar to recover the costs aforesaid as a civil debt, by making a declaration to that effect in the record of the case at any time after the declaration of extinction of proceedings is made.

Cap. 12.

(3) The recovery of the costs as a civil debt shall be obtained by an application to the same court for the enforcement of the judgment or order, in the manner laid down in the Code of Organization and Civil Procedure.

Recovery of costs from owner of vehicle although he is not the person convicted. *Added by: XXX.1934.15. Amended by: XXIX.1990.23.*

534. (1) In the case of an offence against the regulations relating to motorcars or against any law or regulation relating to the traffic of vehicles, the costs may, in the event of the declaration referred to in sub-article (3) of the last preceding article, be recovered as a civil debt from the owner of the vehicle although he is not the person convicted:

Provided that where the person convicted is not the owner of the vehicle, the liability of the latter for the costs shall not exceed the value of the vehicle.

Procedure.

(2) Where the owner of the vehicle was not a party to the proceedings, the court shall, on the application of the registrar, order the owner to appear and to show cause why he should not be condemned to pay the said costs; and the court shall order that the costs be paid by the owner unless the latter shall prove, to the satisfaction of the court, that the vehicle was, at the time of the offence, driven by or in the custody of the person guilty of the offence, without his knowledge or consent, whether express or implied.

Exemption of owner from liability.

Definition of "vehicle" and "owner". Cap. 10.

(3) For the purposes of this article -

the expression "vehicle" has the same meaning as in article 2 of the Code of Police Laws;

the expression "owner" means the person in whose name the licence in respect of the vehicle has been issued.

Added by: IV.2014.25.

Title VI

OF THE RIGHTS OF SUSPECTS AND ACCUSED

Rights of suspect and accused. *Added by: IV.2014.25. Amended by: VIII.2015.35.*

534A. The provisions of this Title shall apply to a person from the time that he is made aware by the Executive Police that he is suspected of having committed an offence (hereinafter in this title referred to as the "suspect") and to a person charged or accused of having committed an offence (hereinafter in this title referred to as the "accused") until the conclusion of the criminal proceedings, including, where applicable, the passing of sentence and the determination of an appeal:

Provided that "criminal proceedings" shall include investigations by the Executive Police and extradition proceedings:

Provided further that the provisions of this Title shall also apply to a person other than a suspect or an accused person who, in the course of questioning by the police or by another law enforcement authority, becomes a suspect or an accused person.

Right to information and Letter of Rights. *Added by: IV.2014.25. Amended by: L!. 2016.5*

534AB. (1) Saving the provisions of articles 355AC, 355AS, 392 and 445, it shall be the duty of the Police or of the Court, as the case may be, to inform the suspect or the accused without undue delay of the following procedural rights:

(*a*) the right of access to a lawyer;

(*b*) any entitlement to free legal advice and the conditions for obtaining such advice;

(*c*) the right to be informed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of his rights of defence, of the offence he is suspected or accused of having committed:

Provided that the suspect or accused shall be promptly informed of any changes in the information given in accordance with this article where this is necessary to safeguard the fairness of the proceedings;

(*d*) the right to interpretation and translation;

(*e*) the right to remain silent;

(*f*) the right to have a third party informed of the suspect's or the accused person's deprivation of liberty;

(*g*) the right to communicate with third persons and with consular authorities when the suspect or an arrested person is deprived of his liberty;

(*h*) the right to be allowed to consult a medical practitioner;

(*i*) should the suspect or arrested person be illiterate, the right to have the Letter of Rights read out and explained to him.

(2) The information provided for under sub-article (1) shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspected or accused persons within the meaning of 208AC(2).

(3) It shall be the duty of the Police to provide a person arrested or detained promptly with the Letter of Rights set out in Schedule E and the Police shall give the said person an opportunity to read it and to retain same in his possession throughout the time that he is detained. The Letter of Rights shall be written in a language that the person understands:

Provided that where the Letter of Rights is not available in the appropriate language, the suspect or the accused shall be informed of his rights orally in a language that he understands and the Letter of Rights shall subsequently, and without undue delay, be provided to him in a language that he understands.

(4) Information provided in accordance with this article shall be recorded by the Police or by the Court, as the case may be.

Right to interpretation. *Added by: IV.2014.25.*

534AC. (1) Saving the provisions of articles 355AC, 451 and 516(2) where the suspect does not speak or understand the language of the criminal proceedings, as the case may be, he shall be

provided, without unreasonable delay, with interpretation in the course of the said proceedings, including during police questioning.

(2) Interpretation shall be made available for communications between the suspect or the accused and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

(3) The right to interpretation under sub-articles (1) and (2) shall apply to persons suffering from hearing or speech impediments.

(4) It shall be the duty of the Executive Police and of the Court, as the case may be, to ascertain whether the suspect or the accused speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.

(5) Nothing in this article shall be construed as precluding the suspect or the accused to demand that any decision finding, at any stage of the criminal proceedings, that there is no need for interpretation be reviewed and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

(6) Interpretation provided under this article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that the suspect or the accused has knowledge of the case against him and is able to exercise his right of defence.

Right to translation of essential documents. *Added by: IV.2014.25.*

534AD. (1) Where the suspect or the accused does not understand the language of the criminal proceedings concerned, he shall, within a reasonable period of time, be provided with a written translation of all documents which are essential to ensure that he is able to exercise their right of defence and to safeguard the fairness of the proceedings.

(2) The decision determining what constitutes an essential document shall be taken by the Executive Police or by the Court, as the case may be, and the suspect or the accused or his legal counsel may submit a reasoned request to that effect:

Provided that essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment:

Provided further that it shall not be required to translate passages of essential documents which are not relevant for the purposes of enabling the suspect or the accused to have knowledge of the case against him.

(3) Nothing in this article shall be construed as precluding the suspect or the accused to demand that any decision finding, at any stage of the criminal proceedings, that there is no need for the translation of documents or passages thereof be reviewed and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

(4) Notwithstanding the preceding provisions of this article, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

(5) Where the suspect or the accused waives the right to translation of documents referred to in this article such waiver shall be recorded in writing and only after the Executive Police or the Court, as the case may be, is satisfied that the suspect or accused has received prior legal advice or has otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

(6) Translation provided under this article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

Costs and quality of interpretation and translation. *Added by: IV.2014.25.*

534AE. (1) Notwithstanding the provisions of article 533, the services of interpretation and translation resulting from the application of articles 534AB to 534AD, both inclusive, shall be free of charge.

(2) The registrar shall keep a register of translators and interpreters who are appropriately qualified. Once established, such register shall, where appropriate, be made available to legal counsel and other relevant authorities.

Rights of access to the materials of the case. *Added by: IV.2014.25.*

534AF. (1) Where a person is arrested and detained at any stage of the criminal proceedings, any documents in the possession of the Police which are related to the specific case and which are essential to challenge effectively the lawfulness of the arrest or detention, shall be made available to the arrested person or to his lawyer.

(2) The person suspected or accused shall have access, which shall be free of charge, to all material evidence in the possession of the Police, whether for or against the said suspect or the accused, or to his lawyers in order to safeguard the fairness of the proceedings and to prepare his defence.

(3) Without prejudice to sub-article (1), access to the material evidence referred to in sub-article (2) shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission on the merits of the accusation. Where further material evidence comes into the possession of the Police, access shall be granted to it in due time to allow for it to be considered by the suspect or the accused or by his lawyer.

(4) Notwithstanding the provisions of sub-article (2) and (3) and provided that this does not prejudice the right to a fair trial, after hearing the prosecution, a court or magistrate may refuse access to certain materials if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest or where it could prejudice an ongoing investigation or national security.

Records.
Added by: IV.2014.25.

534AG. When a suspect or an accused in any criminal proceedings has been assisted by an interpreter or when an oral translation or an oral summary of essential documents has been provided in accordance with law, or when the said suspect or accused has waived the right to translation of essential documents as provided for in article 534AD(5), a record of this fact shall be made in the acts of the relevant criminal proceedings.

Added by: XVIII.2020.8.

Title VII

OF THE RIGHTS OF CHILDREN WHO ARE SUSPECTS OR ACCUSED PERSONS

The measures in this Title provided for the transposition of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

Rules concerning certain rights of children.

534AGA. This Title lays down rules concerning certain rights of children who are:

(*a*) suspects or accused persons in criminal proceedings; or

(*b*) subject to European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (hereinafter referred to as "requested persons").

Scope.

534AGB. For the purpose of this Title, the expression:

"child" means a person below the age of eighteen (18):

Provided that where it is uncertain whether a person has reached the age of eighteen (18), that person shall be presumed to be a child;

"holder of parental responsibility" means any person having parental responsibility over a child;

"Minister" means the Minister responsible for justice;

"parental responsibility" means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effects, including rights of custody and rights of access.

Interpretation.

534AGC. (1) This Title applies to children who are suspects or accused persons in criminal proceedings, until the final determination

of the question on whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal.

(2) This Title applies to children who are requested persons from the time of their arrest in the executing Member State, in accordance with article 534AGP.

(3) With the exception of article 534AGE, article 534AGH(3)(b), and article 534AGN, insofar as those provisions refer to a holder of parental responsibility, the provisions of this Title shall apply to persons as referred to in sub-articles (1) and (2), where such persons were children when they became subject to the proceedings but have subsequently reached the age of eighteen (18), and the application of this Title, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned:

Provided that this Title shall not apply to persons who have reached the age of twenty-one (21) at any stage of the proceedings.

(4) Nothing in this Title shall:

(*a*) affect the application of the provisions in Title II, Part I, Book First which determine the age of criminal responsibility;

(*b*) prejudice the right of access to a lawyer in accordance with Sub-title IX of Title I of Part I, Book Second.

(5) Sub-articles (4) and (5) of article 355AU shall apply *mutatis mutandis* to this Title.

Right to information.

534AGD. (1) When children are made aware that they are suspects or accused persons in criminal proceedings, they shall be informed promptly of their rights in accordance with Title VI, Part I of Book Second and in accordance with this Title, and about the general aspects of the conduct of the proceedings.

(2) The information referred to in sub-article (1) shall be provided:

(*a*) promptly when children are made aware that they are suspects or accused persons, in respect of:

(i) the right to have the holder of parental responsibility informed, as provided for in article 534AGE;

(ii) the right to be assisted by a lawyer, as provided for in article 534AGF;

(iii) the right to protection of privacy, as provided for in article 531;

(iv) the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings, as provided for in article 534AGN(4);

(*b*) at the earliest appropriate stage in the proceedings, in respect of:

(i) the right to an individual assessment, as provided for in article 534AGG;

(ii) the right to a medical examination, including the right to medical assistance, as provided for in article 534AGH;

(iii) the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention, as provided for in articles 534AGJ and 534AGK;

(iv) the right to be accompanied by the holder of parental responsibility during court hearings, as provided for in article 534AGN(1);

(v) the right to appear in person at trial, as provided for in article 534AGO;

(vi) the right to effective remedies;

(*c*) upon deprivation of liberty, in respect of the right to specific treatment during deprivation of liberty, as provided for in article 534AGL.

(3) The information referred to in sub-articles (1) and (2) shall be given in writing, orally or both, in simple and accessible language, and such information shall be noted, using the recording procedure permitted by law.

(4) Where children are provided with a Letter of Rights pursuant to Title VI, Part I, Book Second, such a Letter shall include a reference to their rights under this Title.

Right of the child to have the holder of parental responsibility informed.

534AGE. (1) The Executive Police or any other law enforcement or judicial authority, as the case may be, shall provide the holder of parental responsibility, as soon as possible, with the information that the child has a right to receive, in accordance with article 534AGD.

(2) The information referred to in sub-article (1) shall be provided to another appropriate adult who is nominated by the child and accepted as such by the Police or by any other law enforcement or judicial authority, as the case may be, where providing that information to the holder of parental responsibility:

(*a*) would be contrary to the child's best interests;

(*b*) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or

(*c*) could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings:

Provided that where the child has not nominated another appropriate adult, or where the adult who has been nominated by the child is not acceptable to the Police or other law enforcement or judicial authority, as the case may be, the latter shall, taking into account the child's best interests, designate, and provide the information to, another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

(3) Where the circumstances which led to the application of sub-article (2)(a), (b) or (c) cease to exist, any information that the child receives in accordance with article 534AGD, and which remains relevant in the course of the proceedings, shall be provided to the holder of parental responsibility.

Assistance by a lawyer.

534AGF. (1) Children who are suspects or accused persons in criminal proceedings shall have the right of access to a lawyer, in accordance with the provisions of Sub-title IX of Title I of Part I of Book Second. Nothing in this Title, in particular in this article, shall affect that right.

(2) Without prejudice to the generality of sub-article (1), the rights referred to in articles 355AUA (1), (2), (8)(b), (c) and (e) and 355AUB shall *mutatis mutandis* apply to children who are suspects or accused persons under this Title:

Provided that where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, the right to assistance by a lawyer may be derogated from insofar as this complies with the right to a fair trial, it being understood that the child’s best interests shall always be a primary consideration:

Provided further that the derogation in the preceding

proviso shall not apply and children shall always be assisted by a lawyer in the following cases:

(*a*) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Title; and

(*b*) during detention:

Provided further that deprivation of liberty shall not be imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the right of defence effectively and, in any event, during the trial hearings before a court.

(3) Where the child is to be assisted by a lawyer in accordance with this Title but no lawyer is present, the Executive Police or any other law enforcement or judicial authority, as the case may be, shall postpone the questioning of the child, or other investigative or evidence-gathering acts as provided for in article 355AUA(8)(e), for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

(4) In exceptional circumstances, and only at the pre-trial stage, a temporary derogation from the application of the rights provided for in article 355AUA(2), to the extent justified in the light of the particular circumstances of the case, may be applied on the basis of one of the following compelling reasons:

(*a*) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(*b*) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence:

Provided that for the purposes of this sub-article the expression "pre-trial stage" shall have the same meaning as is assigned to it in article 355AUA(13).

(5) In the application of sub-article (4) the child's best interests shall be taken into account, and a decision to proceed with questioning in the absence of a lawyer under sub-article (4) shall be taken on a strictly case-by-case basis either by the Police or by any other law enforcement or judicial authority as the case may be:

Provided that such decision may be appealed by the holder of parental responsibility or another appropriate adult as referred to in article 534AGE before the Court of Appeal (Inferior Jurisdiction)

within twelve (12) days from such a decision.

Right to individual assessment.

534AGG. (1) In the application of the provisions of this Title, the specific needs of children concerning protection, education, training and social integration shall be taken into account.

(2) For the purposes of sub-article (1), children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have:

Provided that the extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.

(3) The individual assessment shall serve to establish and to note, in accordance with the recording procedure permitted by law, such information about the individual characteristics and circumstances of the child as might be of use to the Court when:

(*a*) determining whether any specific measure to the benefit of the child is to be taken;

(*b*) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;

(*c*) taking any decision or course of action in the criminal proceedings, including when sentencing.

(4) The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to sub-article (5), before the child is charged with a criminal offence.

(5) In the absence of an individual assessment, a child may nevertheless be charged with a criminal offence provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.

(6) Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in articles 534AGE and 534AGN, and, or a specialised professional.

(7) If the elements that form the basis of the individual assessment change significantly in the course of the criminal

proceedings, the Court shall order that the individual assessment is updated throughout the criminal proceedings.

(8) The Executive Police or other law enforcement or judicial authority, as the case may be, following consultation with the Director of the Department for Social Welfare Standards, may derogate from the obligation to carry out an individual assessment on a case by case basis where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Right to a medical examination.

534AGH. (1) Children who are deprived of liberty shall have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified healthcare professional.

(2) The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.

(3) The medical examination shall be carried out either on the initiative of the Court, in particular where specific health indications call for such an examination, or on a request by any of the following:

(*a*) the child;

(*b*) the holder of parental responsibility or another appropriate adult as referred to in articles 534AGE and 534AGN;

(*c*) the child's lawyer.

(4) The conclusion of the medical examination shall be recorded in writing and, where required, medical assistance shall be provided:

Provided that another medical examination shall be carried out where the circumstances so require.

Audiovisual recording of interrogation.

534AGI. (1) Questioning of children by the Executive Police or other law enforcement or judicial authorities during criminal proceedings shall be audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, *inter alia*, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.

(2) In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes

which are duly verified.

(3) Any audiovisual recording or records of questioning of children in any other manner shall be kept confidential and shall not be publicly disseminated.

(4) This article shall be without prejudice to the possibility to ask questions for the sole purpose of the identification of the child without audiovisual recording.

Deprivation of liberty.

534AGJ. (1) The deprivation of liberty of a child, in particular detention, at any stage of the proceedings shall be imposed only as a measure of last resort and shall be limited to the shortest appropriate period of time, taking due account of the age and individual situation of the child, and of the particular circumstances of the case.

(2) Any detention of a child shall be based on a reasoned decision, which shall be subject to appeal.

(3) The decision referred to in sub-article (2) shall be subject to periodic review by the Court acting *ex officio*, commencing no later than six (6) months after the decision imposing deprivation of liberty was adopted and every six (6) months thereafter, for as long as the decision remains in force:

Provided that, without prejudice to judicial independence, any decisions to be taken pursuant to this sub-article shall be taken without undue delay.

Alternative measures.

534AGK. The Executive Police and any other law enforcement or judicial authority, as the case may be, shall, where possible, have recourse to measures alternative to detention.

Specific treatment in the case of deprivation of liberty.

534AGL. (1) Children who are detained shall be held separately from adults, unless it is considered to be in the child's best interests not to do so.

(2) Children who are kept in police custody shall be held separately from adults, unless:

(*a*) it is considered to be in the child's best interests not to do so; or

(*b*) in exceptional circumstances, it is not possible in practice to do so, provided that children are held together with adults in a manner that is compatible with the child's best interests.

(3) Without prejudice to sub-article (1), when a detained child reaches the age of eighteen (18), that person may continue to be held separately from other detained adults where warranted, taking into account the circumstances of the person concerned, provided that this

is compatible with the best interests of children who are detained with that person.

(4) Without prejudice to sub-article (1), and taking into account sub-article (3), children may be detained with young adults, unless this is contrary to the child's best interests.

(5) When children are detained, the detention authorities shall take appropriate measures to:

(*a*) ensure and preserve their health and their physical and mental development;

(*b*) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;

(*c*) ensure the effective and regular exercise of their right to family life;

(*d*) ensure access to programmes that foster their development and their reintegration into society; and

(*e*) ensure respect for their freedom of religion or belief:

Provided that the measures taken pursuant to this sub-article shall be proportionate and appropriate to the duration of the detention.

(6) Paragraphs (a) and (e) of sub-article (5) shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty.

(7) Paragraphs (b), (c), and (d) of sub-article (5) shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

(8) Children who are deprived of liberty shall be allowed to meet with the holder of parental responsibility as soon as possible, where such a meeting is compatible with investigative and operational requirements, without prejudice to the nomination or designation of another appropriate adult pursuant to article 534AGE or article 534AGN.

Timely and diligent treatment of cases.

534AGM. (1) The Police and other law enforcement and judicial authorities shall ensure that criminal proceedings involving children are treated as a matter of urgency and with due diligence.

(2) The Police and other law enforcement and judicial

authorities shall ensure that children are always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have.

Right of the child to be accompanied by holder of parental responsibility during the proceedings.

534AGN. (1) Children shall have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.

(2) A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the Court where the presence of the holder of parental responsibility accompanying the child during court hearings:

(*a*) would be contrary to the child's best interests;

(*b*) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or

(*c*) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings:

Provided that where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the Court, the Court shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.

(3) Where the circumstances which led to an application of paragraphs (a), (b) or (c) of sub-article (2) cease to exist, the child shall have the right to be accompanied by the holder of parental responsibility during any remaining court hearings.

(4) In addition to the right provided for under sub-article (1), children shall have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult as referred to in sub-article (2), during stages of the proceedings other than court hearings at which the child is present where the competent law enforcement or judicial authority considers that:

(*a*) it is in the child's best interests to be accompanied by that person; and

(*b*) the presence of that person will not prejudice the criminal proceedings.

Right of children to appear in person at, and participate in, their trial.

534AGO. (1) Children shall have the right to be present at their trial and to participate effectively in the trial, including the opportunity to be heard and to express their views.

(2) Children who were not present at their trial shall have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in Sub-title XII of Part I of Book Second.

European arrest warrant proceedings.

534AGP. The rights referred to in articles 534AGD, 534AGE, 534AGF and 534AGH, articles 534AGJ to 534AGN and article 570 shall apply *mutatis mutandis*, in respect of children who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in the executing Member State.

Training.

534AGQ.(1) The Minister responsible for home affairs shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.

(2) Without prejudice to the independence of the judiciary, the Minister responsible for justice shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.

(3) The Minister responsible for justice shall take appropriate measures to promote the provision of specific training as referred to in sub-article (2) to lawyers who deal with criminal proceedings involving children.

PART II

OF MATTERS RELATING TO CERTAIN MODES OF PROCEDURE AND TO CERTAIN TRIALS

Title I

OF REPORTS, INFORMATIONS AND COMPLAINTS

Information. Report. *Amended by: IX.1911.17.*

535. (1) Any person may give information to any officer of the Executive Police of any offence liable to prosecution by the Police *ex officio*, of which such person may have in any manner become aware.

Duty of Police.

(2) Nevertheless, no action shall be taken by the Police upon any anonymous report or information, except in the case of a flagrant offence or where the report or information refers to some fact of a permanent nature. In any such case, it shall be lawful for the Police to proceed on such report or information, after

ascertaining the flagrancy of the offence or the permanent fact.

Contents of information. *Amended by: IX.1911.17.*

536. The informer shall clearly state the fact with all its circumstances and shall, as far as possible, furnish all such particulars as may be requisite to ascertain the offence, to establish the nature thereof as well as to make known the principals and the accomplices.

Form of information. *Added by: IX.I911.17.*

537. An information may be laid either verbally or in writing:

Provided that where an information is laid verbally, it shall, except in cases which admit of no delay, be reduced to writing forthwith and shall be signed by the informer, or, if he is unable to write, by the Police officer by whom it is reduced to writing.

Complaint. *Amended by: VI.1871.34; III.1880.10; IX.1911.18.*

538. Every person who feels himself aggrieved by any offence and desires to lodge a complaint for the punishment of the offender, if known, or, if not known, in case he should be discovered, may make such complaint to any Police officer, even by letter.

Articles 536 and 537 to apply to complaints. *Added by: IX.1911.19.*

539. Articles 536 and 537 shall apply also to complaints.

Duty of Police on receipt of report, information or complaint. *Amended by: VIII.1990.3; III.2002.128.*

540. Upon the receipt of any report, information or complaint requiring proceedings to be taken, the Executive Police shall as soon as possible inform the Court of Magistrates (Malta), or the Court of Magistrates (Gozo), or a magistrate, as the case may be, in order to receive the necessary directions for such proceedings:

Provided that if upon the report, information or complaint the party concerned has been summoned or, in any case where the Executive Police is authorized to proceed forthwith to the arrest of the party concerned, such party has been actually arrested, it shall be lawful for the Police to inform the court of such report, information or complaint at the moment that the party summoned or arrested is brought before it.

Temporary protection orders. *Added by: XIII.2018.24. Amended by: XXXII.2018.11; III.2020.6.* Cap. 539. Cap. 581.

540A. (1) Upon the receipt of any report, information or complaint by the Executive Police requiring proceedings to be taken against a person from a person or persons indicated in article 12(a) of the Victims of Crime Act, a professional, trained by the designated agency in accordance with the Gender-Based Violence and Domestic Violence Act, shall immediately conduct an assessment of the risk of the injured person or of any other individual, as the case may be:

Provided that a Police officer shall also initiate an investigation, during which investigation there shall be heard, amongst others, the alleged offender, as the case may be:

Provided also that if an assessment has been conducted by a professional trained in accordance with the Gender-Based Violence and Domestic Violence Act within the twenty-four hour period immediately preceding the receipt of the report, information, or complaint by the Executive Police, there shall be no need to conduct that assessment after such receipt:

Provided also that if in the cases mentioned under sub-article (1) the alleged offender is to be taken before the court by arrest, and if he remains arrested until his arraignment in court, the dispositions of this article shall not apply.

(2) Where, following such investigation, and after the due consideration of the results of the assessment, it becomes apparent that any person is at a serious risk of harm, the Executive Police shall immediately apply to a Magistrate requesting the issue of a temporary protection order stating the grounds for the request and giving the Magistrate all such information that will enable the Magistrate to decide upon the request:

Provided that said application shall be made by not later than twelve hours from when the Executive Police receive such report, information, or complaint.

(3) Before deciding whether to issue the temporary protection order, the Magistrate may require the police officer, the professional, or the person making the report or complaint giving the information, to confirm on oath the information supplied by him and the temporary protection order shall be issued once the Magistrate is satisfied that sufficient grounds for the issuing of the order exist:

Provided that such a decision shall be taken within eight hours of receipt of the application:

Provided also that said agency shall, immediately after the assessment is carried out according to sub-article (1), provide sheltered accommodation to the alleged victim, according to article 19(3)(d) of the Gender-Based Violence and Domestic Violence Act, as needed.

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(4) In cases of utmost urgency, the request for the issue of the temporary protection order and the order may be communicated even by electronic means:

Provided that, as soon as practicable, the original temporary protection order shall be delivered for record purposes.

(5) Sub-articles (3), (7), (8), (11) and (12) of article 412C shall apply *mutatis mutandis* to a temporary protection order issued under this article, and for the purposes of this article, "temporary protection order" shall have the same meaning assigned to "protection order" under article 412C.

(6) A temporary protection order issued under this article shall remain in force:

(*a*) up to a maximum of thirty days from the issue of the temporary protection order; or

(*b*) until the first sitting against the alleged offender,

whichever is the earlier:

Provided that the Police shall institute criminal proceedings against the alleged offender by not later than thirty days from the issue of the temporary

protection order.

(7) A temporary protection order issued under this article can be revoked or extended for a further period by the Magistrate who issued the order, on just cause being shown:

Provided that it can also be extended by the Court during its first sitting, if a request is made to issue a protection order under article 412C.

(8) A temporary protection order issued under this article shall lapse upon:

(*a*) the determination that no criminal proceedings shall be instituted against the alleged offender; or

(*b*) the lapse of thirty days from the issue of the temporary protection order; or

(*c*) the hearing of the first sitting against the alleged offender; or

(*d*) the issue of a protection order under article 412C:

Provided that in the case of paragraph (a), the Executive Police shall immediately inform the Magistrate of this decision, and request the revocation of the temporary protection order.

Procedure in cases where Executive Police refuses to take proceedings on report, information or complaint. *Added by: VIII.1909.51. Amended by: VIII.1990.3; III.2002.129; VII.2010.34; XLI.2020.5.*

541. (1) If, in cases where the exercise of the criminal action is vested in the Executive Police, the Executive Police shall, upon any information, report or complaint in regard to the commission of a crime, refuse to institute proceedings, it shall be lawful for the person who laid the information, or made the report or complaint, to make an application to the Court of Magistrates for an order to the Police to institute proceedings; and if, after hearing, where necessary, the evidence tendered by the applicant, and the Commissioner of Police, the court is satisfied that the information, report or complaint is *prima facie* justified, it shall allow the application and shall, through the registrar, notify the Commissioner of Police of the order given thereon:

Provided that, before any action is taken on any such application, the applicant shall confirm on oath the information, report or complaint, and shall enter into a recognizance in a sum to be fixed by the court, to give his evidence at the trial, if so required, or to furnish any such evidence at his disposal as may lead to the conviction of the party accused:

Provided further that where the Attorney General by a note declares that agreement has been reached with the competent authorities of another country that the courts of that country shall exercise jurisdiction over the crime the Court of Magistrates shall consider such declaration conclusive and shall forthwith dismiss the application.

(2) The provisions of article 383(2), articles 386 and 387 shall, in so far as applicable, apply to any recognizance under sub-article (1).

(3) Any decision of the Court of Magistrates allowing, in whole or in part, an application under sub-article (1) shall be served on the

Attorney General, together with the record of the proceedings, within two working days from the date of the decision and the Attorney General may within seven working days from the date of service make an application to the Criminal Court for the reversal or variation of the decision. The applicant may also make a similar application to the Criminal Court within seven working days from the date of the decision of the Court of Magistrates disallowing, in whole or in part, the application. An application to the Criminal Court under this sub-article shall operate as a stay of execution of the decision of the Court of Magistrates.

(4) (*a*) In cases where for the exercise of the criminal action the decision to prosecute is vested in the Attorney General, any injured party may within a period of one month from when he knows or could have known, whichever is the earlier, of the decision of the Attorney General not to prosecute, request the Attorney General in writing, and giving reasons, to reconsider the decision.

(*b*) If within one month from the request for re-consideration referred to in paragraph (a) the Attorney General either informs the injured party that he has reconsidered the case and decided to confirm his decision against the institution of criminal proceedings or fails to reply to the injured party then the injured party shall be entitled to seek judicial review of the decision of the Attorney General not to prosecute in accordance with the provisions of article 469B of the Code of Organization and Civil Procedure:

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Provided that for the purposes of this sub-article, the Auditor General, the Commissioner for Standards in Public Life, the Permanent Commission Against Corruption and the Ombudsman shall be entitled to make any claim and to exercise any action which according to this sub-article pertains to the injured party when they shall have reported any corrupt practice as defined in the Permanent Commission Against Corruption Act to the Attorney General.

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Persons by whom complaint may be made. *Amended by: XI.1900.81; XLVI.1973.108; XXIV.2014.63.*

542. The complaint may be made by a spouse on behalf of the other spouse, by an ascendant on behalf of a descendant, by a descendant on behalf of an ascendant, by one of the siblings on behalf of the other, by any person on behalf of another person under his tutorship or care, by any administrator or representative of any pious institution or other body corporate recognized by law, for any offence committed to the prejudice of such institution or body corporate, and by the immediate heirs for any offence committed against the person under whom they claim.

Cases in which Police may proceed *ex officio*. *Amended by: IV.1856.43; V.1868.33; XX.2005.20; XIII.2018.24.*

543. It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases:

(*a*) in the case of crimes for which the law does not expressly provide that the complaint of the private party is requisite;

(*b*) in the case of any offence consisting in the carrying of

prohibited weapons, or in the case of any offence against any law relating to fishing, vehicles, or boats, or to any art or trade;

(*c*) in the case of any offence committed against a person who, by reason of physical or mental infirmity, is incapable of instituting criminal proceedings, even though such offence be one in respect of which, if committed against any other person, the complaint of the private party would be requisite;

(*d*) in the case of any offence affecting public order or the community in general;

(*e*) in the case of any offence involving domestic violence:

Provided that for the purposes of this paragraph "domestic violence" shall have the same meaning assigned to it by article 2 of the Gender-Based Violence and Domestic Violence Act: Cap. 581.

Provided further that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim of an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of the complainant, any minors involved, and any other relevant third parties, and shall cause such request and decision to be registered in the records of the case.

(*f*) in the case of rape as defined in article 198:

Provided that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim to request the court to stay proceedings against the alleged perpetrator, however, if such request is made, the court may decide to continue the proceedings against the perpetrator, giving particular consideration to the best interests of the complainant, any minors involved, and any other relevant third parties.

Cases in which complaint of private party is requisite.
Amended by: II.1886.10; VIII.1909.52; II.1973.7; XX.2005.21; XXII.2005.8
Substituted by: XIII.2018.24

544. Criminal proceedings shall not be instituted except on the complaint of the private party in the case of theft of electricity and offences arising from article 326(1)(*c*), (*e*) and (*f*).

Waiver of complaint. *Amended by: II.1886.11; XIV.1889.47; XI.1900.82; VIII.1909.53.*

545. (1) When proceedings cannot be instituted except on the complaint of the private party, the complainant may, at any time before final judgment is delivered, waive his complaint.

Non-acceptance of waiver.

(2) The party charged or accused may object to any such waiver, in which case the trial shall be proceeded with as if the complaint had not been waived.

Frivolous or vexatious complaint.

(3) If the complaint is waived after the opening of the trial and it appears that the complaint is frivolous or vexatious, or made with the object of extorting money or other effects, or of making any other gain, the court may, notwithstanding the waiver, proceed to deliver judgment, acquitting the person charged or accused and directing that proceedings be instituted against the complainant, in accordance with the provisions of article 528:

Provided that if the complaint does not amount to any of the offences specified in the said article, it shall be lawful for the court to sentence the complainant to detention or to a fine (*multa* or *ammenda*), according to the gravity of the case.

TITLE II

OF INQUIRIES RELATING TO THE "*IN GENERE*", INQUESTS AND "*REPERTI*"

Investigation relating to the "*in genere*". *Substituted by: III.1971.16. Amended by: XIII.1980.19; XIII.1983.5; XXIX.1990.24; III.2002.130; XXII.2005.9; XVI.2006.12; L.N. 407 of 2007; XXXIV.2014.17; XIX.2023.2; XXXIII.2024. First Schedule.*

546. (1) Saving the provisions of the next following sub-articles, upon the receipt of any report, information or complaint in regard to any offence liable to the punishment of imprisonment exceeding three years, and if the subject-matter of the offence still exists, the state thereof, with each and every particular, shall be described, and the instrument, as well as the manner in which such instrument may have produced the effect, shall be indicated. For the purpose of any such investigation, an inquest on the spot shall be held:

Provided that where it results that the fact in respect of which an investigation was not held under this sub-article constituted an offence liable to the punishment mentioned in this sub-article the failure to hold an investigation under this sub-article shall not, for that reason alone, prejudice in any way whatsoever the institution or continuation of criminal proceedings for that offence or the admissibility of any evidence of that offence in those proceedings:

Provided further that notwithstanding any other provision when an offence under investigation consists in theft of electricity or an offence under article 326(1)(*c*), (*e*) and (*f*) there shall be no inquest unless expressly requested by Enemalta plc.

(2) The holding of an inquest may be dispensed with by the magistrate to whom the report, information or complaint referred to in the last preceding sub-article is made, if the fact to be

investigated is breaking for the purpose of article 263(*a*) as defined in the first paragraph of article 264(1) and if the theft to which the breaking relates or may relate, is in respect of things whose value does not exceed twenty-three euro and twenty-nine cents (€23.29), although it may be aggravated as mentioned in article 261(*a*), (*b*), (*d*), (*e*), (*f*) and (*g*), or any amongst them, even if the fact is likely to constitute an offence liable to the punishment of imprisonment exceeding three years:

Provided that the decision of a magistrate not to hold an inquest under this sub-article shall not preclude, in respect of the fact or facts in relation to which such decision was taken, the institution or continuation of criminal proceedings for an offence which is more serious, either owing to its nature or to the amount involved or for any reason whatsoever, than the offences referred to in this sub-article.

(3) Where the offence to be investigated is theft, other than theft with violence against the person, the magistrate may, instead of holding in person an inquest on the spot, direct a Police officer not below the rank of inspector to establish the relevant facts, and the officer so appointed and any photographer or other expert assisting him shall give evidence at the inquiry on the facts investigated and established by them and shall produce all photographs taken and all other articles or documents relevant to their investigation.

(3A) (*a*) Where the principal factual elements matters relating to health and safety at work such as in the case of involuntary homicide or involuntary bodily harm arising out of a fact which happened at work and which are such that entitle the Occupational Health and Safety Authority to carry out an investigation in accordance with paragraph (d) of sub-article (3) of article 9 of the Health and Safety at Work Act, the Magistrate shall as soon as practicable notify the Authority of the inquest and shall allow the said Authority to participate by delegating not more than two (2) of its officers so as to be present during the inquest on the spot and during the hearing of witnesses if and as may be decided by the Magistrate, and, or following he inquest on the spot by the Magistrate to accede on site as may be necessary after informing the Magistrate. If so requested by the Magistrate, the officers shall file a report for the consideration of the Magistrate which shall form part of the procès-verbal of the inquest.

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(*b*) Any officer of the Occupational Health and Safety Authority who participates in the inquest in accordance with paragraph (a) shall abide only with the directions of the Magistrate with regard to the execution of his functions in the inquest and shall be bound by the duty of confidentiality in the same manner as the persons who assist the Magistrate in the inquest are so bound.

(*c*) In this sub-article:

"Occupational Health and Safety Authority" or "Authority" means the Occupational Health and Safety Authority established by article 4 of the Health and Safety at Work Act;

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"work place" and "officer" shall have the same meaning assigned to them in the Health and Safety at Work Act.

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(4) The report, the information or the complaint referred to in sub-article (1) and in article 551(1) may be laid verbally before the magistrate but in every case the same report, information or complaint shall be laid in writing before the magistrate within the period of two working days from the day on which they were laid verbally:

Provided that the magistrate may, when he deems it proper so to do, proceed in accordance with the provisions of this Title notwithstanding that the report, the information, or the complaint are not laid in writing within the said period.

(4A) Where a report, information or complaint is made to a Magistrate under this article by a person other than the Attorney General or a police officer the report, information or complaint shall contain a clear designation of the person suspected to have committed the offence (hereinafter in this article referred to as "the suspect"). The Magistrate shall order the report, information or complaint, as the case may be, to be served upon the suspect allowing him time to reply and upon the lapse of such time shall decide whether to hold the inquest. The Magistrate shall decide to hold the inquest only after having established that the necessary pre-requisites for the holding of such an inquest exist.

(4B) The decision of the Magistrate under sub-article (4A) shall be served on the person who made the report, information or complaint and upon the suspect. Any one of them may, within two working days from the date of service of the decision, apply to the Criminal Court for a reversal of the decision of the Magistrate and the Criminal Court shall give its decision on the application with urgency.

(4C) In every case where an inquest is to be held under the provisions of sub-articles (4A) and (4B) the Magistrate who conducts the inquest shall be chosen by lot from among all the Magistrates.

(5) A copy of the report, information or complaint referred to in sub-article (1) and article 551(1) shall be transmitted by the magistrate to the Attorney General within the period of three working days from when the magistrate shall have received such report, information or complaint in writing.

(6) The decision not to hold an inquest in terms of sub-article (2) shall likewise be notified to the Attorney General within the period of three working days from such decision.

Inquest to be held by magistrate, *Amended by: IX.1859.29; VII.1880.6; VI.1939.2; L.N. 4 of 1963; L.N. 46 of 1965; XXXI.1966.2; LVIII.1974.68; VIII.1990.3; III.2002.131.*

547. (1) The inquest shall be held by a magistrate.

or, in certain cases before the Court of Magistrates (Gozo), by registrar of that court.

(2) Whenever the magistrate assigned to the Court of Magistrates (Gozo) is temporarily absent from Gozo with the permission of the Minister responsible for justice, or is, through a lawful impediment, precluded from performing his duties, the inquest and all proceedings connected therewith may, with the consent of the Attorney General, be held by the registrar who shall for such purpose have all the powers and duties conferred by this Title upon a magistrate.

Procès-verbal of inquest. *Amended by: XIII.1980.20; XXXII.1986.9; XXIX.1990.25; XXIV.2014.64.*

548. (1) The necessary experts shall be employed for the purposes of the inquest, and a *procès-verbal* thereof shall be drawn up:

Provided that the magistrate may, where he deems it to be so expedient, empower the experts to receive documents and to examine witnesses on oath and to take down their depositions in writing and the provisions of article 650(5) and of article 653(3) shall, *mutatis mutandis*, apply:

Provided further, however, that the "*in genere*" shall be examined only by persons of the competent profession, whenever it appears to be so expedient for reasons of decency:

Provided further that, without prejudice to the provisions of article 552(2), no expert shall be appointed solely for the purpose of examining witnesses on oath and taking down their depositions in writing and establishing the relevant facts, where the offence to be investigated is one which carries a maximum term of imprisonment of seven years or more.

(2) Experts employed in the inquest for the purpose of collecting and examining any dactyloscopic data and samples for analyzing human DNA shall transmit to the Executive Police copies of the dactyloscopic data and DNA profiles together with any other information related to the dactyloscopic data and DNA profile.

For the purpose of this article:

"dactyloscopic data" means fingerprint images, images of fingerprint latents, palm prints, palm print latents, writers palm prints and writers palm print latents; and

"DNA profile" means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, that is the particular molecular structure at the various DNA locations (loci).

Signatures to *procès-verbal*. *Amended by: X.1858.1; XIII.1980.21.*

549. (1) The *procès-verbal* shall be signed by the magistrate or officer holding the inquest.

Report of experts and depositions of witnesses to be annexed to *procès-verbal.*

(2) If the experts employed shall express their opinion in a written report duly confirmed on oath, such report shall be annexed to the *procès-verbal* and shall be deemed to form part thereof.

(3) The depositions of witnesses examined at the inquest shall also be annexed to the *procès-verbal*.

Mode of taking deposition of witnesses.

(4) Such depositions shall be taken in the manner provided for the examination of witnesses by the court of criminal inquiry, and shall have the like effect.

Probatory force of *procès-verbal*. *Amended by: X.1858.2; L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.40; XIII.1980.22; XVI.2006.13; XXIV.2014.65; XXVIII.2021.15.*

550. (1) The *procès-verbal*, if regularly drawn up, shall be received as evidence in the trial of the cause, and the witnesses, experts or other persons who took part or gave evidence during the Magisterial inquest shall not be produced to give evidence in the inquiry before the Court of Magistrates as court of criminal inquiry during the compilation stage.

(2) Nevertheless during the period for the conclusion of compilation of evidence referred to in article 401(1) up to the time when the court decides whether there exist enough reasons for the accused to be indicted for an offence as referred to in article 401(2) or not, it shall be lawful for the Attorney General or the Police, with the special permission of the Court of Magistrates as a court of criminal inquiry to call upon any person referred to in sub-article (1) to give evidence during the compilation proceedings before the same court on matters which are duly specified and mentioned by the court in its special permission; so however that after the conclusion of the compilation stage in accordance with article 402(1) and after the court will have decided whether there are enough reasons for the accused to be indicted for an offence as referred to in article 401(2) or not, the Attorney General may require the presence of any of those persons in accordance with the provisions of article 405 in order for them to give replies on specific matters indicated by the Attorney General in his written request. The person summoned may also request the presence of any one of those persons for the purpose of the cross-examination.

Duty of Attorney General to include in his list of witnesses, the experts and witnesses examined at the inquest.

(3) The court shall also, for the like effect, have power to order the production of any expert or other witness who shall appear from the *procès-verbal* to have been examined at the inquest; and for such purpose any such expert or witness shall, in all cases within the jurisdiction of the Criminal Court, be included in the list of the witnesses of the Attorney General, to be, if necessary, examined.

Production at trial of documents and articles exhibited at inquest.

(4) All documents, however, and any other material object, in respect of which a *procès-verbal* has been drawn up, and which can be preserved and conveniently exhibited, shall always be produced at the trial, together with the *procès-verbal*.

(5) The *procès-verbal* shall be deemed to have been regularly drawn up if it contains a short summary of the report, information

or complaint, a list of the witnesses heard and evidence collected, and a final paragraph containing the findings of the inquiring magistrate.

Magistrate to inform Attorney General of delay.
Added by: XXIX.1990.26.
Amended by: XVI.2006.14; VII.2010.35; XLIII.2021.4.

550A. (1) Where the *procès-verbal* is not drawn up within sixty days from the report, information or complaint referred to in article 546(1) or in article 551(1), or where the "*repertus*" referred to in article 558(1) is not drawn up within sixty days from the discovery of the document, the magistrate shall draw up a report stating the reason for the delay, and this report shall be transmitted by the magistrate to the Attorney General not later than three working days from the lapse of the sixty days.

(2) At the end of every month after the first report shall have been drawn up, the magistrate shall draw up another report stating again the reason for the delay, and every such subsequent report shall be transmitted by the magistrate to the Attorney General not later than three working days from the lapse of the month.

(3) After the lapse of the period of sixty days referred to in sub-article (1) every interested person may by application request the magistrate to be heard as a witness, or to hear as witnesses the persons indicated in the application. The application shall be served on the Attorney General who may reply within four days.

(4) The Magistrate shall communicate to the Attorney General such information about the inquest as may be requested by the Attorney General who moreover shall, at all times, have access to the record of the proceedings of the inquest and to all documents and material objects exhibited in the course of the inquest including the reports of experts and depositions of witnesses.

(5) The Magistrate may, upon a request made by the Financial Intelligence Analysis Unit, on a case by case basis and where the information is necessary for the prevention, detection and combating of money laundering, associate predicate offences and terrorist financing, give access to the record of the proceedings of the inquest and to all documents and material objects exhibited in the course of the inquest including the reports of the experts and deposition of witnesses:

Provided that this information shall only be used by the Financial Intelligence Analysis Unit for the purpose for which it was provided.

Inquest on body in cases of sudden death, etc.
Amended by: XXX.1934.16; VI.1939.3; X.1960.2; L.N. 4 of 1963; L.N. 46 of 1965; XXXI.1966.2; III.1971.17; LVIII.1974.68; XXII.1976.4; XIII.1980.23; VIII.1990.3; III.2002.132.
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551. (1) In cases of sudden or violent or suspicious death or of death whereof the cause is unknown, a report thereof shall be made by the Executive Police to a magistrate; the magistrate shall hold an inquest on the body for the purpose of ascertaining the cause of death and shall, for that object, take all such evidence as may be possible for him to procure; after taking all the evidence, the magistrate shall draw up and sign a *procès-verbal* stating his finding as to the cause of death.

(2) Whenever a person dies while he is imprisoned or detained in any place of confinement contemplated in the Prisons Act, or while he is in Police custody, an inquest shall be held and a *procès-verbal* shall be drawn up for the purposes of and in accordance with the provisions of sub-article (1).

(3) The provision of the last preceding sub-article shall also apply whenever a person dies in Mount Carmel Hospital while he is kept there under an order of a court made pursuant to sub-article (3) of article 525 or to article 623(1) or for the purpose of his being examined by experts appointed by the court to report on the plea of insanity.

(4) Notwithstanding the provisions of sub-article (1), in cases of sudden death or of death the cause whereof is unknown, the magistrate may, instead of holding in person an inquest on the body, and without prejudice to his powers under article 552, act as provided in article 546(3), and where he so acts the provisions of that sub-article shall, *mutatis mutandis*, apply.

(5) The provisions of article 547(2) shall apply to inquests held for the purpose of this article.

Autopsy.
Substituted by: XIII.1980.24.

552. (1) The magistrate may, where necessary, order the dissection and the internal examination of the body.

(2) For the purposes of this article and of article 551(1), the magistrate may appoint a medical expert or experts and he may also empower such expert or experts to hear evidence on oath for establishing the identity of the body and to ascertain the cause of death.

Exhumation of body.

553. If the body has been buried, it shall be lawful for the magistrate to order the disinterment thereof with all due precautions, if such disinterment can be effected without prejudice to the public health.

Powers of magistrate holding inquest.
Amended by: XXIX.1990.27; III.2002.133.

554. (1) It shall be lawful for the magistrate to order the arrest of any person whom, at any inquest, he discovers to be guilty, or against whom there is sufficient circumstantial evidence, as well as to order the seizure of any papers, effects, and other objects generally, which he may think necessary for the discovery of the truth. It shall also be lawful for the magistrate to order any search into any house, building or enclosure, although belonging to any other person, if he shall have collected evidence leading him to believe that any of the above objects may be found therein.

(2) It shall also be lawful for the magistrate to order that any suspect be photographed or measured or that his fingerprints be

taken or that any part of his body or clothing be examined by experts appointed by him for the purpose:

Provided that where the magistrate is of the opinion that such photographs (negatives and prints), fingerprint impressions, records of measurements and any other thing obtained from the body or clothing as aforesaid are no longer required for the purpose of the inquiry relating to the "*in genere*", he shall order their destruction or shall order that they be handed over to the person to whom they refer.

(3) In any proceedings under this Title the magistrate shall have the same powers and privileges of a magistrate presiding the Court of Magistrates as court of criminal inquiry.

Procedure to be followed in cases where material object no longer exists, etc.

555. If the subject-matter of the offence no longer exists, or for some cause cannot be viewed, or if the nature of the offence is such that it could not leave any permanent traces, or if the traces shall have been in any manner destroyed, then there shall be ascertained in the inquiry, the actual state of the object, and, as far as possible, the state in which it was before it became the subject-matter of the offence; and any evidence on these points shall be taken down in writing and shall form part of the inquiry:

Provided that where the traces shall have been destroyed, there shall also be ascertained, as far as practicable, the mode and the cause of their disappearance, and all evidence, tending to prove that the offence was actually committed, shall also be collected.

Formalities to be observed at inquiry into forgery of writings. *Amended by: III.1971.18.*

556. (1) In every inquiry into cases of forgery of writings, the document averred to be false, shall, as soon as it is produced, be numbered on every page, and there shall be drawn up a *procès-verbal* of the material state of such document and of its production.

(2) The *procès-verbal* shall describe every cancellation, addition or interlineation contained in any such document, and any other circumstance which may point to the alteration of the document.

(3) The document averred to be false as well as the *procès-verbal* when it has been drawn up, shall be signed, and on every page countersigned by the inquiring magistrate, by the registrar, and also, where practicable, by the witnesses and experts employed at the inquiry.

(4) The inquiring magistrate may, instead of drawing up the *procès-verbal* referred to in this article, order that a photostatic copy of the document averred to be false be made by a person appointed by him for such purpose which copy shall be kept in the custody of the registrar. The registrar shall produce such copy whenever requested by any court of criminal justice.

Procedure to be followed in connection with the production of the document averred to be false.

557. (1) When the document averred to be false is deposited in any public office or with any private person, the inquiring magistrate shall order such document to be produced in court without delay.

(2) The person with whom the document is deposited is bound,

under pain of arrest, to produce it, and in default of production, it shall be lawful to effect a search for the document and to detain such person until he produces the document, or until such document is seized, or until such time as the court may think proper, regard being had to his disobedience and to the importance of the case.

(3) Nevertheless, any private person, who is in possession of any private writing averred to be false, may not be compelled to produce such writing, unless he shall have been previously summoned to produce it before the court or to state the reason for his refusal to do so.

(4) If the reason for the refusal is not accepted, the court shall order that the said person be compelled to produce the private writing, even by arrest or search, and by detaining such person until he produces the private writing, or until the private writing is seized, or until such time as the court may think proper, regard being had to his disobedience and to the importance of the case.

"*Repertus*".

558. (1) On the discovery of any document relating to any offence, steps shall be taken to secure the existence and preservation thereof, and a *procès-verbal,* to be known as "*repertus*", shall be drawn up.

Definition of "document".

(2) The expression "document" includes any paper and any material object which may furnish information, explanation, or other evidence about the offence, or about the guilt or innocence of the accused.

Procedure in investigations relating to the "*in genere*" or in the drawing up of a "*repertus*".

559. For the purpose of any inquiry relating to the "*in genere*" or in the case of any "*repertus*", there shall be brought or summoned to attend on the spot qualified persons in any art or trade who may be competent to ascertain the traces left by the offence, the condition and particulars of the permanent fact, the material means by which probably the offence was committed, the effects produced by the offence, the further effects which the offence might produce, and their probable duration.

Employment of experts.

560. For the purpose of any "*repertus*" relating to any weapon or other thing which appears to have served for the commission of the offence or to have been intended for use in the commission of the offence or to be the result of the offence, or relating to any paper or other document which may be useful for the discovery of the truth, there shall be brought or summoned to attend on the spot persons qualified in the particular art or trade, in order to establish the nature, the condition or use of the thing forming the subject-matter of the "*repertus*".

Opinion of experts.

561. The experts shall, in connection with any thing forming the subject-matter of the "*repertus*", make all such observations and experiments as their art or trade may suggest. They shall state the facts on which their observations are based and shall give their opinion as provided in the last two preceding articles.

Time allowed to experts to prepare opinion. *Amended by: I.1903.31.*

562. If the expert is unable to give his opinion on the spot, or if the matter requires some chemical experiment or other scientific process, he shall be allowed a short time for preparing his statement or report, care being always taken to secure the proof of the identity of the things.

Ascertainment of circumstances relating to permanent fact. *Amended by: VI.1871.35.*

563. In the case of any permanent fact, every circumstance constituting the "*in genere*" shall be ascertained by one or more experts. Any such circumstance may, however, be ascertained by other witnesses, if their examination be sufficient to discover and establish the permanent fact the proof whereof it is necessary to secure.

Opinion of experts to be confirmed on oath. *Amended by: VIII.1857.17; XXX.1934.17.*

564. (1) Every statement of the experts shall be made or confirmed on oath to be taken before the inquiring magistrate.

Appointment of experts.

(2) Subject to the provisions of article 650, the experts shall in all cases be appointed by the inquiring magistrate.

Rules regarding the "*repertus*". *Amended by: XXIX.1990.28.*

565. (1) Saving the provisions relating to the statements made by the experts, the following rules shall be observed in connection with any "*repertus*":

(*a*) if the thing is by its nature liable to alteration or decay, the requisite surveys and the most accurate descriptions thereof shall be made in terms of the preceding articles of this Title; such part of the thing as may be preserved, shall be kept;

(*b*) if the thing or part of the thing kept, is such that it can be written upon, it shall be marked with the name of the officer and all other persons taking part in the proceedings, and it shall be then wrapped up in a paper or cloth;

(*c*) if the thing is not such as can be written upon, it shall be placed into a proper receptacle, or into a room, and then made secure in the presence of all the persons taking part in the proceedings;

(*d*) the wrapper, receptacle, or door of the room, shall be made secure with strips of paper or cloth, which shall be sealed and then signed by the officer and all other persons taking part in the proceedings;

(*e*) if it becomes necessary, for the ends of justice, to reopen the wrapper, receptacle, or room, it shall be reopened, where possible, in the presence of the persons who had previously taken part in the proceedings, and be again made secure in the presence of the same, or, where this cannot be conveniently done, in the presence of other persons, steps being taken to secure it as far as practicable in its former condition.

(2) In all cases, a *procès-verbal* shall be drawn up.

Powers of magistrate during the collection of evidence relating to the "*in genere*" or "*repertus*".

566. In collecting evidence in connection with any inquiry relating to the "*in genere*" or with any "*repertus*", it shall be lawful for the magistrate to order, if he deems it expedient so to do, that no person shall leave the place where the investigation is being held.

Court may order closed doors to be forced open.

567. If the door of the place where any inquiry relating to the "*in genere*" or any "*repertus*" is to take place, is found closed, and no one shall appear to open it, it shall be lawful for the magistrate to order the said door to be forced open.

Discretion of investigating officer in certain cases.

568. (1) When any of the precautions and formalities prescribed under this Title for ascertaining or establishing any fact, cannot be conveniently taken or observed, it shall be left to the discretion of the officer charged therewith to take any other measures which he considers best in the circumstances.

(2) Nevertheless, the omission of any such precaution or formality shall be no bar to proving, at the trial, in any manner allowed by law, the facts to which such precaution or formality relates.

Transmission of record of investigation to Attorney General.
Amended by: VII.1880.6; III.1896.5; XI.1900.83; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; XXIX.1990.29; III.2002.134; XLI.2020.6.

569. (1) The record of any proceedings under this Title shall, where no criminal inquiry has taken place thereon, be transmitted by the magistrate to the Attorney General within the period of three working days.

(2) The Attorney General shall return any such record to the magistrate or to the inquiring magistrate when any further investigation is to be held.

(3) Where such record is returned to the magistrate, the provisions of article 550A shall, *mutatis mutandis*, apply.

(4) For the purpose of sub-article (2), such record shall be returned by means of a note filed in the Court of Magistrates, and, notwithstanding anything contained in this Code, the Attorney General shall not be subpoenaed to exhibit such record.

(5) Where in the *procès-verbal* the magistrate shall have ordered that a person be arraigned in court on any one or more charges, the magistrate shall order that a copy of the same *procès-verbal* shall be transmitted by the registrar to the Commissioner of Police who, saving the provisions of sub-article (6), shall proceed accordingly.

(6) Notwithstanding the provisions of sub-article (5), in case of doubt the Commissioner of Police may consult with the Attorney General who may direct that no proceedings are to be taken or that the proceedings to be taken are to be for a charge or for charges different from those specified by the magistrate in the *procès-verbal*, without prejudice to the right of the Attorney General to direct otherwise whenever fresh evidence becomes available:

Provided that where the Attorney General shall have directed that no proceedings are to be taken, the provisions of sub-article (4) of article 541 shall apply.

Title III

OF COUNSEL FOR THE ACCUSED

Duties of Advocate for Legal Aid. *Amended by: XXI.1971.27. Substituted by: III.2002.135.*

570. (1) The Advocate for Legal Aid shall gratuitously undertake the defence of any accused who has briefed no other advocate or who has been admitted to sue or defend with the benefit of legal aid in any court mentioned in this Code.

(2) The request for the assistance of the Advocate for Legal Aid or for the benefit of legal aid shall be made either by application or orally to the Advocate for Legal Aid.

(3) Article 911(4), (5) and (6) of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the Advocate for Legal Aid. Cap. 12.

(4) Where any court is informed by the accused that he has been unable to brief any advocate or that he wishes to avail himself of the benefit of legal aid that court shall cause the declaration made by the accused to be registered in the records of the case and shall order that such declaration, together with the details of the accused, be served on the Advocate for Legal Aid who within two working days shall file a reply indicating if the request of the accused has been accepted and if so the name of the Advocate for Legal Aid who will be representing the accused:

Provided that in the case of summary proceedings before the Court of Magistrates acting as a Court of Criminal Judicature the Court shall appoint the advocate whose turn it is from the panel of advocates mentioned in article 91 of the Code of Organization and Civil Procedure to assist the accused in those proceedings as well as in any appeal from any decision given in those proceedings provided that before filing any such appeal he shall consult the Advocate for Legal Aid who may, at any time, decide to take over the appeal.

(5) The Advocate for Legal Aid may only decline his aid on any ground which, in the opinion of the court, *prima face* justifies the refusal of his aid. In such event the Court shall order that the accused be represented by another advocate, who is not himself excusable, to be appointed by the Court on the recommendation of the Advocate for Legal Aid from the panel of advocates mentioned in article 91 of the Code of Organization and Civil Procedure provided that the court may in exceptional circumstances to be stated in its decree order any other advocate to take up the defence of the accused. Cap. 12.

(6) The advocate appointed by the court in the exceptional circumstances referred to in sub-article (5) shall render his services gratuitously.

Incompatibility of defence of more than one accused. *Amended by: XXI.1971.27; III.2002.136.*

571. (1) If an advocate who has undertaken the defence of more than one accused finds that the defence of one or more of the accused is incompatible with the interests of one or more of the other accused, he shall be bound to give up forthwith the defence of that or those accused which may be incompatible with the defence of that or those of the other accused which he intends to retain.

(2) The provisions of sub-article (1) shall apply in the case where the Advocate for Legal Aid, by reason of any lawful impediment, is unable to undertake, or to undertake alone, the necessary defence.

Communication of appointment to advocate concerned. *Amended by: III.2002.137.*

572. Any appointment made in terms of article 570(4), shall be communicated to the advocate concerned by the registrar. The appointment must be accepted or declined in writing; in the latter case, the reasons for the refusal must be stated.

Advocate assigned to be replaced. *Added by: XVIII.2020.9.*

572A. The court may upon the request of a suspect, accused persons or of a requested persons referred to in article 355AT(2)(c), where the circumstances so justify, order that the advocate assigned to them be replaced.

Vulnerable suspects, vulnerable accused persons and vulnerable persons.

572B. (1) The Executive Police and any other law enforcement or judicial authority shall ensure that the particular needs of vulnerable suspects, vulnerable accused persons and vulnerable persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA are taken into account in the application of the provisions of this Sub-title.

(2) For the purposes of this Sub-title, the expression "vulnerable person" shall have the same meaning as is assigned to it by article 208AC(2).

Where advocate declines appointment.

573. (1) If the advocate appointed by the court declines to accept the appointment, the court shall examine the reasons of the refusal and, if found sufficient, shall proceed to the appointment of another advocate; otherwise, it shall declare that there are no grounds for the refusal.

Penalties.

(2) If the advocate persists in his refusal, the court shall, according to circumstances, by way of a disciplinary measure, either admonish him with closed doors, or reprimand him in open court, or suspend him from the exercise of his profession for a period not exceeding one month. It shall also be in the power of the court to inflict the said disciplinary penalties cumulatively.

Title IV

OF BAIL

Bail.
Amended by: IV.1897.1; XVI.1921.8; L.N. 46 of 1965; LVIII.1974.68; III.2002.138.

574. (1) Any person charged or accused who is in custody for any crime or contravention may, on application or as provided in article 574A, be granted temporary release from custody, upon giving sufficient security to appear at the proceedings at the appointed time and place under such conditions as the court may consider proper to impose in the decree granting bail which decree shall in each case be served on the person charged or accused.

Power of President of Malta in special cases.

(2) It shall also be lawful for the President of Malta, in special cases, to grant temporary release to any accused person who is in custody for any crime or contravention, subject to such conditions as the President of Malta may think fit to impose. In default of observance by the accused of any of such conditions he shall be liable to be re-arrested forthwith.

Proceedings where a person is first brought before the Court of Magistrates.
Added by: III.2002.139.
Amended by: XIII.2018.24.

574A. (1) When the person charged or accused who is in custody is first brought before the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, the Court shall have the charges read out to the person charged or accused and, after examining the person charged as provided in article 392 as the proceedings may require, shall summarily hear the prosecuting or arraigning officer and any evidence produced by that officer on the reasons supporting the charges and on the reasons and circumstances, if any, militating against the release of the person charged or accused.

(2) After hearing the prosecuting or arraigning police officer and any evidence produced as provided in sub-article (1) the court shall inform the person charged or accused that he may be temporarily released from custody on bail by the court under conditions to be determined by it and shall ask him what he has to say with respect to his arrest and his continued detention and with respect to the reasons and the circumstances militating in favour of his release.

(3) Where any of the offences charged consists in any of the offences mentioned in article 575(2) the court shall, after hearing the person charged or accused as provided in sub-article (2) of this article, ask the prosecuting or arraigning officer whether he has any submissions to make on the question of temporary release from custody on bail of the person charged or accused and the latter shall be allowed to respond.

(4) Where none of the offences charged consists in any of the offences mentioned in article 575(2) the court shall, after hearing the person charged or accused as provided in sub-article (2) of this article, ask the prosecuting or arraigning officer whether he and the Attorney General and if applicable, the injured party have any submissions, in writing or otherwise, to make on the question of the temporary release from custody of the person charged or accused and the latter shall be allowed to respond.

(5) At the end of submissions as provided in the preceding sub-articles of this article the court shall review the circumstances militating for or against detention.

(6) If the court finds that the continued detention of the person

charged or accused is not founded on any provision of this Code or of any other law which authorises the arrest and detention of the person in custody it shall unconditionally release that person from custody.

(7) If the court does not find cause to release unconditionally the person charged or accused under the provisions of sub-article (6) it may nevertheless, saving the provisions of article 575(1) and unless release is prohibited by any provision of law, release that person from custody on bail subject to such conditions as it may deem appropriate.

(8) If the court does not find cause to release unconditionally the person charged or accused and refuses to grant that person bail the court shall remand that person into custody and the provisions of article 575(11) shall apply.

(9) Where the court orders the release from custody of the person charged or accused, whether unconditionally or on bail subject to conditions, under any of the provisions of this article the decision of the court to that effect shall be served on the Attorney General by not later than the next working day and the Attorney General may apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released or to amend the conditions, including the amount of bail, that may have been determined by the Court of Magistrates.

Crimes in respect of which bail is not granted.
Amended by: IV.1897.1; I.1903.32; XVI.1921.9; VI.1947.15; L.N. 46 of 1965; XXI.1971.32; LVIII.1974.68; XLIX.1981.4; XXIX.1989.2; VIII.1990.3; III.2002.140; XII.2022.2.

575. (1) Saving the provisions of article 574(2), in the case of -

(i) a person accused of any crime against the safety of the Government, or

(ii) a person accused of any crime liable to the punishment of imprisonment for life,

the court may grant bail, only if, after taking into consideration all the circumstances of the case, the nature and seriousness of the offence, the character, antecedents, associations and community ties of the accused, as well as any other matter which appears to be relevant, it is satisfied that there is no danger that the accused if released on bail -

(*a*) will not appear when ordered by the authority specified in the bail bond; or

(*b*) will abscond or leave Malta; or

(*c*) will not observe any of the conditions which the court would consider proper to impose in its decree granting bail; or

(*d*) will interfere or attempt to interfere with witnesses or otherwise obstruct or attempt to obstruct the course of justice in relation to himself or to any other person; or

(*e*) will commit any other offence.

Application for bail.

(2) At any stage other than that referred to in article 574A, the demand for bail or any demand for the variation of the conditions of bail after bail has been granted, shall be made by an application,

a copy whereof shall be communicated to the Attorney General on the same day, whenever it is made by -

(*a*) persons accused of fraudulent bankruptcy;

(*b*) persons accused of any crime under Sub-title III of Title III of Part II of Book First of this Code, if such crime is punishable with more than one year's imprisonment;

(*c*) persons accused of any crime punishable with more than three years' imprisonment.

Objection by Attorney General.

(3) The Attorney General may, within the next working day, by a note, oppose the application, stating the reasons for his opposition.

When bail may not be refused.

(4) Bail shall always be granted in the case referred to in the proviso to article 432(1).

(4A) Where the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, grants bail to the person in custody or subsequently amends the bail conditions, the decision of the court to that effect shall be served on the Attorney General by not later than the next working day and the Attorney General may apply to the Criminal Court to obtain the re-arrest and continued detention of the person so released or to amend the conditions, including the amount of bail, that may have been determined by the Court of Magistrates.

(5) Where in the case of a person accused of a crime in respect of which the Court of Magistrates has proceeded to the necessary inquiry, the Attorney General has not either -

(*a*) filed the indictment, or

(*b*) sent the accused to be tried by the Court of Magistrates as provided in paragraph of article 370(3)(*a*) or in article 433(5) or in similar provisions in any other law

within the terms specified in sub-article (6), to run from the day on which the person accused is brought before the said court, or from the day on which he is arrested as provided in article 397(5), that person shall be granted bail.

(6) (*a*) The terms referred to in the preceding sub-article are:

(i) twelve months in the case of a crime liable to the punishment of imprisonment of less than four years;

(ii) sixteen months in the case of a crime liable to the punishment of imprisonment of four years or more but less than nine years; and

(iii) twenty months in the case of a crime liable to the punishment of imprisonment of nine years or more.

(*b*) The terms mentioned in paragraph (*a*) shall be held in abeyance for the corresponding period during which the terms referred to in articles 401, 407 and in article 432(3) are held in abeyance for any of the reasons

mentioned in article 402(1) and (2), as well as for such period during which the court is unable to proceed with the inquiry except after the determination of any issue before any other court.

(*c*) The terms mentioned in paragraph (*a*) shall also be held in abeyance for the corresponding period during which the record of the inquiry is with the Court of Magistrates for the examination of witnesses as provided in article 405(5).

(7) Bail shall also always be granted to a person accused of an offence unless, within the terms specified in sub-article (9), to run as provided in sub-article (8), there has been a final judgment acquitting, convicting or sentencing the person so accused.

(8) The terms specified in sub-article (9) shall run:

(*a*) where no inquiry has taken place, from the day when the person accused has been brought before the Court of Magistrates or from the day on which he has been arrested as provided in article 397(5);

(*b*) where there has been an inquiry, from the day that the Attorney General sends the accused to be tried by the Court of Magistrates as provided in article 370(3)(*a*) or in article 433(5) or in similar provisions in any other law, or from the day of the filing of the indictment:

Provided that where the accused makes objection to the case being dealt with summarily as provided in article 370(3)(*d*), the term shall commence to run from the date of the filing of the indictment.

(9) (*a*) The terms referred to in sub-articles (7) and (8) are:

(i) four months in the case of a contravention or of a crime liable to the punishments established for contraventions or to imprisonment for a term not exceeding six months;

(ii) eight months in the case of a crime liable to the punishment of imprisonment for a term exceeding six months but not exceeding four years;

(iii) twelve months in the case of a crime liable to the punishment of imprisonment for a term exceeding four years but not exceeding ten years;

(iv) twenty-four months in the case of a crime liable to the punishment of imprisonment for a term exceeding ten years but not exceeding fifteen years;

(v) thirty months in the case of a crime liable to the punishment of imprisonment for a term exceeding fifteen years.

(*b*) The terms mentioned in paragraph (*a*) shall be held in

abeyance -

(i) for such period during which the court is unable to proceed with the hearing of the cause except after the determination of any issue before any other court of for any of the reasons mentioned in article 402(1) and (2);

(ii) for the corresponding period during which the record of the inquiry is with the Court of Magistrates for the examination of witnesses demanded by the accused as provided in article 406;

(iii) for such period as the case is before the Court of Criminal Appeal on an appeal entered by the accused from an interlocutory decree or on an appeal entered by the accused or by the Attorney General as provided in article 499;

(iv) where the cause has been adjourned at the request of the accused or his counsel, for the period from the date of the request to the date of the next hearing.

(v) for such period during which the court cannot hear the case due to circumstances regarding the health of the accused resulting from self-harm by the accused:

Provided that a period of suspension under this sub-paragraph shall in any case last for two months or be equivalent to the time during which the effects of the self-harm inflicted by the accused persist, whichever is the longer;

(vi) without prejudice and subordinately to the application of the preceding sub-paragraphs, when the court, after having appointed the case for hearing shall have cancelled that appointment for a reason exclusively attributable to the accused or to one or more of the accused, for such period until the case is heard:

Provided that a period of suspension under this sub-paragraph shall not exceed two months every time and in any case it shall not exceed a maximum of six months in respect of all instances when this sub-paragraph is applied in the same case.

(10) The provisions of sub-articles (5) and (7) shall not apply if at the time the request for bail is made or within a week thereafter the indictment shall have been filed, or when a warrant of arrest against the person accused has been issued as provided in article 579, whether in the same or in any other cause still pending against him before any court of criminal justice.

Court to state reasons.

(11) In refusing to grant bail the court shall state the reasons for such refusal in its decree refusing bail which decree shall be served on the person accused.

Bail in respect of scheduled offences. *Added by: XVI.2006.15.*

575A. (1) Saving the provisions of article 574A(6) but notwithstanding any other provision of this Code or of any other law, where the Court of Magistrates at any time orders the temporary release from custody of a person who -

(*a*) is charged with a scheduled offence and with being a recidivist in terms of articles 50 and 51; and

(*b*) has been previously found guilty of a scheduled offence by means of a judgment which has become *res judicata*,

the order of the Court shall be given in open court on a date previously notified to the prosecution and the person charged and shall be served on the Attorney General by not later than the next working day.

(2) The Attorney General may, not later than the next working day following the date of service of the order of the Court of Magistrates, apply to the Criminal Court for the revocation or amendment of the order and the Criminal Court shall appoint the application for hearing not later than two working days from the filing of the application. The Criminal Court shall give its decision on the application with urgency.

(3) The execution of the order of the Court of Magistrates ordering the temporary release of the person charged shall be suspended during the period allowed to the Attorney General to apply to the Criminal Court under this article and, following such application, until the Criminal Court gives its decision thereon.

(4) The provisions of article 575(1) shall apply also in the case of a person charged with a scheduled offence.

(5) For the purposes of this article "scheduled offence" means any offence listed in the Schedule D.

Amount of security. *Amended by: IV.1897.2.*

576. The amount of the security shall be fixed within the limits established by law, regard being had to the condition of the accused person, the nature and quality of the offence, and the term of the punishment to which it is liable.

Different modes of security. *Amended by: IV.1897.3; L.N. 46 of 1965; LVIII.1974.68; VIII.1990.3; III.2002.141.*

577. (1) Security for bail is given by the production of a sufficient surety who shall enter into a written recognizance in the sum fixed.

(2) It may also be given, whenever the court shall deem it proper, by the mere deposit of the sum or of an equivalent pledge, or by the mere recognizance of the person accused.

(3) Nevertheless, in cases of contraventions or of crimes within the jurisdiction of the Court of Magistrates as court of criminal judicature in terms of article 370(1) and article 371(2), it shall be lawful for the court, if it deems it expedient so to do, to exempt the accused, while the case is pending, from any of the modes of security mentioned in this article.

(4) Persons accused of any crime outside the jurisdiction of the Court of Magistrates as court of criminal judicature may, in the absence of opposition on the part of the Attorney General, be

exempted from any of the modes of security mentioned in this article, where it appears from a certificate under the hand of the Commissioner of Police that they are poor and of good moral character.

Effect of security. *Amended by: XII.1914.13; L.N. 46 of 1965; LVIII.1974.68.*

578. The effect of the security for bail shall be the temporary release from custody of the person charged or accused:

Provided that it shall be lawful for the court, at any subsequent stage of the proceedings, on the demand of the Police or the Attorney General, as the case may be, on good cause being shown, and after hearing the person charged or accused, to deprive him of the benefit of such temporary release, and to order his re-arrest.

Consequences of default of appearance of person admitted to bail, etc. *Amended by: XXII.1976.4. Substituted by: XXIX.1989.3. Amended by: XXIX.1990.30; III.2002.142; XVI.2006.16; XI.2009.10; VIII.2015.36; XXIX.2021.3.*

579. (1) If the person charged or accused fails to appear when ordered by the authority specified in the bail bond, or fails to observe any of the conditions imposed by the court in its decree granting bail, or absconds or leaves Malta, or while on bail commits any crime not being one of an involuntary nature, or interferes or attempts to interfere with witnesses or otherwise obstructs or attempts to obstruct the course of justice whether in relation to himself or any other person, the sum stated in the bail bond shall be forfeited to the Government of Malta, and, moreover, a warrant of arrest shall be issued against him:

Provided that the Court may decide not to apply the provisions of this sub-article or not to apply them to their full extent where the court considers that the infringement of the condition imposed in the decree granting bail is not of serious consequence.

(2) Any person who fails to observe any of the conditions imposed by the court in its decree granting bail shall be guilty of an offence and shall, on conviction, be liable to the punishment of a fine (*multa*) or to a term of imprisonment from four months to two years, or to both such fine and imprisonment and the Court shall order that the sum stated in the bail bond shall be forfeited in full or in part to the Government of Malta according to the Court's assessment of the gravity of the offence.

(3) Notwithstanding the provisions of any law, any person charged with any offence as mentioned in sub-article (2) shall be arraigned in Court under arrest, and it shall be lawful for the Police to request in the same proceedings the revocation of bail and the re-arrest of such person. The proceedings for an offence under sub-article (2) shall be taken by the Police and shall be decided by the Court with urgency.

(4) It shall be lawful for the Police to enter into any premises in order to ensure that the conditions imposed by the court as mentioned in sub-article (1) are being observed. It shall also be lawful for the Police to arrest without warrant any person suspected of an offence under sub-article (2).

Court by which bail is granted. *Amended by: VI.1871.36; L.N. 46 of 1965; XXV.1967.24; LVIII.1974.68; XXVII.1975.40; VIII.1990.3; III.2002.143.*

580. (1) The person charged or accused shall be admitted to bail by the Court of Magistrates or by the Criminal Court, under the authority of which, as the case may be, he is or is to be detained.

When bail may be applied for.

(2) The demand for bail may be made at any stage of the proceedings subsequent to the taking down in writing of the complaint or report and the examination referred to in article 390, and any such demand may be made not only during the inquiry, but also to the judge sitting in the Criminal Court after the accused has been committed for trial or after the filing of the indictment, even though bail had not been granted to him by the Court of Magistrates.

Mode of applying for bail before the Criminal Court,

(3) The demand for bail before the Criminal Court shall be made by an application whereupon the court shall, if the application, is opposed by the Attorney General, appoint a day for hearing the applicant and the Attorney General, causing them to be served with a copy of the decree.

before Court of Magistrates.

(4) Except as provided in article 575(2), the demand for bail before the Court of Magistrates shall be made orally.

Party bailed arrested for default, not to be re-admitted to bail.

581. In the case referred to in article 579, the party arrested shall not be admitted to bail a second time in the same cause.

Bail not to be granted by the court *ex officio.*

582. (1) The court may not *ex officio* grant bail, unless it is applied for by the person charged or accused.

Court may require previous notice of proposed surety.

(2) The court may require a previous notice of twenty-four hours of the proposed surety.

Power of court to extend time for appearance of accused.

(3) It shall be lawful for the court, on just cause being shown, to extend the time originally appointed for the appearance of the person charged or accused.

Right of surety to be released from his recognizance in certain cases.

583. If a surety has reason to suspect that the person charged or accused is about to escape, he may, on showing to the Executive Police sufficient grounds for his suspicion, cause the person charged or accused to be again arrested, and thereby release himself from his bond:

Provided that the person charged or accused may again be bailed, if he gives new security.

584. The amount of the security shall be regulated as follows:

Mode of regulating the amount of bail. *Amended by: IV.1897.4; II.1973.8; XXXVIII.1973.4; XLIX.1981.4; XIII.1983.5; L.N. 407 of 2007.*

In the case of contraventions, other than the contravention referred to in article 338(*t*), the amount of the security shall be from four euro and sixty-six cents (€4.66) to nine euro and thirty-two cents (€9.32); in the case of the contravention referred to in article 338(*t*) or of any crime punishable with detention, or with less than one year's imprisonment, the amount of the security shall be from forty-six euro and fifty-nine cents (€46.59) to twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73); and in any other case the amount of the security shall be such sum, being not less than one hundred and sixteen euro and forty-seven cents (€116.47), as the court shall deem, in the circumstances, sufficient to ensure as far as possible that the person charged or accused will appear as provided by law.

585. (1) For the recovery of the sum fixed in the bail bond in the case referred to in article 579, the court before which the person charged or accused was bound to appear, shall, as the case may be, either issue and enforce a warrant of seizure or of arrest against the surety until payment is effected, or declare the deposit to be forfeited in favour of the Government of Malta, or, in case of pledge, order the sale thereof.

Recovery of bail. *Amended by: VIII.1857.18.*

(2) The provisions of sub-article (1) shall also apply to the party charged or accused if such party was bound together with his surety, whether jointly and severally or otherwise, or if the recognizance was entered into by the party charged or accused alone, notwithstanding that such party was arrested, sentenced, or acquitted in respect of the offence for which he had been bailed.

586. (1) Any person who is arrested for non-payment of the sum in which he bound himself, shall be detained for a period not exceeding one day for every eleven euro and sixty-five cents (€11.65) of that sum, whether such person is the person charged or accused or the surety:

Detention for non-payment of sum of recognizance. *Amended by: IV.1874.11; XXIX.1990.31; L.N. 407 of 2007; XXI.2011.46.*

Provided that in no case shall detention for non-payment of the sum in which a person has bound himself exceed six months if the amount is not higher than seven thousand euro (€7,000), one year if the amount is not higher than thirty thousand euro (€30,000), eighteen months if the amount is not higher than eighty thousand euro (€80,000) and two years if it is higher than eighty thousand euro (€80,000).

(2) If the person so detained has no means of his own with which to maintain himself, he shall be maintained by the Government, in which case he may be compelled to work like other prisoners subjected to work, and may be kept in any prison.

587. If the surety dies or leaves Malta, even temporarily, or becomes bankrupt, the person charged or accused must find a new and sufficient surety. In default, he shall be arrested.

Substitution of surety in certain cases. *Amended by: III.2002.144.*

Title V

OF THE INDICTMENT

Form of indictment. *Amended by: Order-in-Council of 1899, s.7; XVI.1932.9; L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.40.*

588. In the case of offences within the jurisdiction of the Criminal Court, the indictment shall be drawn up in writing and signed by the Attorney General.

Contents of indictment. *Amended by: XIV.1889.48; XI.1900.84,85; XXX.1934.18; L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.35; XXII.1976.4. XI.2018.25.*

589. The indictment shall be made in the name of the Republic of Malta and shall -

(*a*) specify the court before which it is preferred;

(*b*) contain a clear indication of the person accused;

(*c*) state the facts constituting the offence with such particulars as can be given relating to the time and place in which the facts took place and to the person against whom the offence was committed, together with all such circumstances as, according to law and in the opinion of the Attorney General, may increase or diminish the punishment for the offence; and

(*d*) end with a summary in which the accused shall be charged with the offence as specified or described by the law, and with the demand that the accused be proceeded against according to law, and that he be sentenced to the punishment prescribed by law (quoting the article of the law creating the offence) or to any other punishment applicable according to law to the declaration of guilty of the accused.

Filing of indictment. *Amended by: LIII.1981.9; IV.2023.12.*

590. (1) The indictment shall be filed in the registry of the court, and the registrar shall note down at the foot thereof the day on which it is filed.

(2) With the indictment the Attorney General shall also file a list of the witnesses, documents and other exhibits which he intends to produce at the trial.

Joinder of charges in the same indictment.

591. Charges against two or more persons as principals or accomplices in the same offence or as guilty of divers offences connected with each other, may be joined in the same indictment and tried at the same trial, even though some one of such offences is of an inferior jurisdiction.

When offences are said to be connected.

592. Offences are said to be connected -

(*a*) if they are committed at the same time by several persons together;

(*b*) if they are committed at different times, in different places, and by divers persons, in pursuance of a pre-concerted plan;

(*c*) if an offence is committed with the object of procuring the means for the commission of another offence;

(*d*) if an offence is committed with the object of facilitating the commission or completion of another offence, or of ensuring impunity for another offence.

One indictment against the same person for more offences although not connected. *Amended by: XI.1900.86; L.N. 46 of 1965; LVIII.1974.68.*

593. (1) Several offences committed by the same person, although not connected with each other, may be joined in the same indictment and tried at the same trial, even if some one of such offences is of an inferior jurisdiction; in any such case, the indictment shall be divided in different counts, in respect of each of which the provisions contained in article 589 shall be observed.

Court may order separate trial.

(2) Nevertheless the court may, upon the demand of the Attorney General, order that such offences be tried separately.

Other cases where court may order separate trial. *Amended by: XI.1900.86; L.N. 46 of 1965; LVIII.1974.68; III.1976.6.*

594. The court may also, upon the demand of the Attorney General, order a separate trial for each accused, when two or more are joined in the same indictment.

Court may order joinder of indictments. *Amended by: XI.1900.86; L.N. 46 of 1965; LVIII.1974.68.*

595. In the cases referred to in articles 591 and 593, if two or more indictments have been filed at the same time or at different times, the court may, upon the demand of the Attorney General, direct that they be joined with a view to their being taken together.

Attorney General may include excuse in the indictment. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

596. Where, by reason of any excuse, the decrease of punishment is to be made within a latitude including two or more degrees, it shall be lawful for the Attorney General in the indictment to demand any of the lesser punishments within such latitude, which, according to the evidence before him, he may deem applicable to the offence; and in any such case, the Attorney General shall also specify in the indictment the excuse, and no higher punishment than that demanded in the indictment may be awarded by the court.

Amendment of indictment by court *ex officio* or upon plea of accused, *Amended by: V.1868.34; VI.1871.37; III.1896.6; XII.1913.23; L.N. 46 of 1965; LVIII.1974.68; III.2002.145; XXVIII.2021.16.*

597. (1) It shall be in the power of the court, either *ex officio*, or upon the plea of the accused, to make an order for the amendment of the indictment, provided this is done before the accused pleads to the general issue of guilty or not guilty: but nothing shall be added which might render the offence of a graver character.

or upon demand of Attorney General.

(2) Any such order may also be made upon the demand of the Attorney General in the case of any error or defect in the indictment, even though, on the ground of such error or defect, the accused has set up the plea, or the court *ex officio* has raised the question, of the nullity of the indictment.

Accused may demand adjournment of trial.

(3) Where an amendment of the indictment has been ordered by the court either *ex officio* or upon the demand of the Attorney General, it shall be lawful for the accused to demand the adjournment of the trial in order that he may prepare his defence.

Defects in inquiry constituting grounds for impugning indictment.

(4) The indictment cannot be impugned on the ground of any defect in the record of inquiry, nor can the accused demand that, on the ground of any such defect, the trial on the said indictment be not proceeded with, unless such defect consists in the total absence of the charges being read or of the examination of the accused or of the order committing the accused for trial, or in the refusal of the court of criminal inquiry, without just cause, to hear the evidence produced by the accused; saving always the right of the accused and the Attorney General to oppose the production, at the trial, of any act tendered in evidence which is not according to law.

Want of jurisdiction of court of inquiry *ratione loci* not to constitute ground for impugning indictment.

(5) Nor can an indictment be impugned for want of jurisdiction of the court which held the inquiry, on the ground that the inquiry should have been held by the Court of Magistrates (Malta) and not by the Court of Magistrates (Gozo) or by the Court of Magistrates (Gozo) and not by the Court of Magistrates (Malta).

Correction of error in name of accused.

598. (1) It shall be lawful, by leave of the court, to correct any error in the name of or other particulars relating to the person accused.

(2) If the accused shall not take exception to any such error before pleading to the general issue of guilty or not guilty, the trial shall be proceeded with as if the name and particulars stated in the indictment were truly those of the accused:

Provided that the court shall have power to make, at any subsequent stage, the addition of the real name or the true particulars, should these become known; in which case, the fact shall be noted down in the proceedings.

Correction of errors in indictment resulting from evidence produced at trial. *Amended by: IV.1856.44; IX.1857.17; V.1868.35; L.N. 46 of 1965; LVIII.1974.68.*

599. (1) Any error which from the evidence produced at the trial appears to have been made in the indictment as to the circumstances of time, place and person, when, where, and against whom the offence was committed, or as to the indication or description of the things on which the offence was committed, may be ordered by the court to be corrected at any stage of the proceedings up to the time of the verdict of the jury:

Aggravation of offence resulting from correction of errors not to be taken into account. Powers of Court.

Provided that, in such case, no account shall be taken of any aggravation of the offence which might result from such correction unless such aggravation was expressly stated in the indictment; and the court, if it is satisfied that such correction might have prejudiced the accused in his defence, may, upon his demand, discharge the jury, and adjourn the cause to another day, for the purpose of giving him time to prepare his defence on the indictment as amended, provided the accused makes his demand at any stage previous to the summing-up referred to in article 465 or, if the amendment of the indictment is made after the said summing-up,

before the verdict of the jury.

(2) Any error in the reference to the article of this Code or of any other law prescribing the punishment the application of which is demanded in the indictment, may be corrected at any stage up to the delivery of the judgment.

Error in the quotation of the law.

(3) Any defect or error referred to in this article may be pointed out by the Attorney General or by the accused or his advocate or by the court *ex officio*.

By whom defect or error may be pointed out.

600. (1) It shall be lawful for the Attorney General to withdraw any indictment which he may have filed, provided this is done before the accused pleads to the general issue of guilty or not guilty, and in any such case all further proceedings shall be stayed, and the accused shall be discharged; but when the accused shall have pleaded to the general issue of guilty or not guilty, the indictment may not be withdrawn without the consent of the accused.

Withdrawal of indictment, *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

(2) In either case, the withdrawal of the indictment shall not operate so as to bar the taking of entirely new proceedings against the accused, on the discovery of fresh evidence.

not to operate so as to bar new proceedings on fresh evidence.

601. No person accused may be found guilty of an offence which is not expressly stated in the indictment, or which is not comprised or involved in the indictment in terms of article 467.

Accused may not be found guilty of offence not charged in the indictment.

602. Where the indictment is not filed within the prescribed time, the court may, at the request of the accused, and after hearing the Attorney General, order the discharge of the accused, and the provisions of article 434 shall, *mutatis mutandis*, apply:

Default of filing indictment within prescribed time. *Amended by: V.1868.36; L.N. 46 of 1965; LVIII.1974.68; III.2002.146.*

Provided that this provision shall not apply if at the time the request is made the indictment shall have been filed.

Title VI

OF JURORS

603. (1) Every person of the age of twenty-one years or upwards, residing in Malta and being a citizen of Malta, shall be qualified to serve as a juror provided such person has an adequate knowledge of the Maltese language, is of good character and is competent to serve as a juror.

Qualifications to serve as juror. *Amended by: X.1858.3; X.1896.2; XXX.1934.19; L.N. 46 of 1965; XXXIII.1972.6; XLIX.1981.4; XIII.2018.24.*

(2) Nevertheless no person who has been found guilty by any competent court in Malta of any crime liable to imprisonment for a term exceeding one year, or of any of the crimes referred to in Sub-title II of Title VII of Part II of Book First of this Code shall be qualified to serve as a juror:

Disqualifications.

Provided that this provision shall not apply to any such

person who has obtained a free pardon or to any person convicted of involuntary homicide or of any other crime against the person, excusable on any of the grounds referred to in article 227, and in article 230(*a*) and (*b*).

(3) The provisions of sub-article (2) shall apply to any person who has been found guilty by a competent court of any other country of any of the crimes mentioned in the said sub-article or of any crime which, however described in the law of that country, falls within the description of any of the said crimes.

Disabilities.

(4) The following persons shall not be competent to serve as jurors:

(*a*) persons who are interdicted or incapacitated;

(*b*) undischarged bankrupts;

(*c*) persons who, owing to any notorious physical or mental defect, are reputed to be unfit to serve as jurors;

(*d*) persons who are under trial for any crime, until the trial has terminated.

Exemptions.
Amended by: X.1858.4; X.1896.3; VIII.1909.54; X.1960.3; XXV.1962.5; L.N. 46 of 1965; XXVII.1970.186 XXVII.1975.36, 40; IV.1994.17; XXIV.1995.360, 362; III.2002.147; I.2005.24; XVI.2006.17; IV.2024.2

604. (1) The following persons are exempt from serving as jurors:

Members of the House of Representatives, Mayors and Executive Secretaries of Local Councils, judges, honorary consuls, clergymen, members of the Armed Forces of Malta, persons holding the office of Head of a Government Department and their deputies, the magistrates, the Registrar of Courts, officers of the Executive Police, professors and full-time teachers of the University, headmasters and teachers of the secondary, primary and technical schools, District Medical Officers, health inspectors, the Principal Probation Officer and Probation Officers and any other persons of such a description as the Minister responsible for justice may, from time to time, prescribe by Order in the Gazette.

(2) Moreover the court may, on an application to that effect, exempt from serving as a juror, any apothecary of a village and any physician, surgeon or obstetrician actually practising his profession, and, in general, any person who has completed the sixtieth year of his age, unless, in some particular case, the court deems otherwise for the ends of justice.

(3) A person who has the care of a family or of a person who suffers from any physical or mental infirmity shall also be exempt from serving as a juror.

Compilation of lists of jurors. *Amended by: X.1858.5; X.1896.4,5,6,7; Order-in-Council of 1899, s. 8 (a), (b), (c); VIII.1909.55; XVI.1932.10; XXX.1934.20; XX.1936.5; XXXIII.1972.7; XLVI.1973.108; XXVII.1975.40; IV.1994.18; XXIV.1995.362; XVI.2006.18; XXIV.2014.66.*

605. (1) The Commissioner of Police or his representative, the Senior Magistrate, the Attorney General or his representative, the President of the Chamber of Advocates and the President of the Chamber of Legal Procurators shall, twice a year, attend a meeting called by the Director, Criminal Courts and Tribunals, to draw up to the best of their knowledge -

(*a*) a list of persons duly qualified and sufficiently competent to serve as jurors for the trial of Maltese-speaking persons;

(*b*) a list of persons who, being duly qualified to serve as jurors in all respects other than a competent knowledge of the Maltese language, are competently versed in the English language so as to be able to understand and follow the proceedings conducted in that language.

(2) The lists shall be called the "List of Jurors for the trial of Maltese-speaking persons" and the "List of Special Jurors for the trial of English-speaking persons" respectively. The lists shall be drawn up in alphabetical order of surnames and shall contain the name, surname, profession and residence of each juror.

(3) From the entire number of persons shown on the said lists a further list shall be drawn up containing the names of persons competent to serve as foremen. The number of foremen shall not exceed one-sixth of the entire number in each list.

(4) The foremen shall possess the further qualification of having actually served on a jury in the Criminal Court.

(5) The lists shall be published in the Gazette in the month of August of each year.

(6) Within fifteen days from the publication of the lists, any person who, possessing the qualifications required by law to serve as a juror or special juror, may desire to be registered, or who, not possessing the qualifications required by law to serve as a juror or special juror, may desire to be struck off the list, shall make an application to that effect to the Criminal Court.

(7) The court shall proceed summarily on the application.

(8) The registrar shall note on the lists any corrections which the court may order.

(9) Within the first fifteen days in the month of November of each year, the amended lists of jurors and of special jurors liable to serve in the following year, shall be published in the Gazette:

Provided, however, that it shall be lawful for the officials referred to in sub-article (1) at any time to add to the said lists the name of any other qualified juror or special juror, and, in any such case, any name so added shall be published in the Gazette and the provisions of sub-articles (6), (7) and (8) shall apply.

(10) Supplementary amended lists of jurors and of special jurors with such corrections as may be ordered by the court shall be published in the Gazette.

(11) Upon the publication of the lists referred to in sub-articles (9) and (10), the names of the persons entered on the lists shall be written on separate ballots of parchment or paper as nearly as may be equal in shape and size. The names of the jurors and of the foremen of jurors shall be put in two separate boxes and the names of the special jurors and of the special foremen of jurors shall be put in two other separate boxes.

(12) The boxes shall be kept by the registrar under lock and key and shall be opened in the presence of the judge or judges in open court.

(13) It shall be lawful for the judges of the Criminal Court or for any two of such judges to cause the names of the persons whom the said judges shall deem to be incompetent to serve as jurors to be struck off the lists.

Monthly drawing of ballots. *Amended by: IV.1856.45; X.1896.8; III.1976.7; XIV.1976.3; XVI.2006.19.*

606. (1) Every month, the registrar shall open the boxes and draw ten ballots from the box containing the names of the foremen and forty ballots from the box containing the names of the common jurors:

Provided that the Minister responsible for justice may, by means of an Order in the Gazette, establish different methods of selection based on a computerised mechanism.

(2) The ballots drawn shall be kept by the registrar and the boxes shall be again closed and sealed.

(3) If, before the end of the year, in each of the boxes there shall not remain a number of ballots corresponding to one-sixth part of the registered jurors, the registrar shall replace in the boxes the ballots drawn during the year, bearing the names of the jurors who did not serve during that year.

(4) In the drawing of the ballots, the names of those who have died or are under any of the disqualifications or disabilities referred to in article 603(2), (3) and (4) or are exempt under article 604, shall not be taken into account and shall be considered as if they had not been drawn. The ballots referring to such persons shall be taken away from the boxes.

Publication of names in Gazette.

(5) The registrar shall cause the list of names so drawn to be published in the Gazette.

(6) Whenever two or more judges are appointed to sit separately in the court, or whenever the registrar is for any other reason so authorised by the court, the registrar may draw and publish two or more separate lists of names of persons who are to serve as jurors, each list being drawn and published in accordance with the foregoing provisions of this article, and all the provisions of the law shall apply to each and every one of such lists separately.

(7) Whenever in the opinion of the court the number of foremen or of common jurors, or of both, to be drawn in any month or for the purpose of any particular trial (including a trial that has been adjourned for any of the reasons referred to in article 613) should be greater than the number prescribed in sub-article (1) or in article 618, the court may order such number of ballots to be drawn

from the boxes containing the names of the foremen or of the common jurors, or of both, as it may deem appropriate.

Application for exemption from serving as juror. *Amended by: IV.1856.46; IV.1994.19.*

607. (1) Any person who is not qualified or liable to serve as a juror, or who may have special reasons for asking to be exempted from serving as a juror, may bring the matter before the court, by means of an application to be filed within four days after the service of the writ mentioned in the next following article.

Court to examine application.

(2) The court shall examine the application and, if it deems the reason alleged to be good, shall order the registrar to cancel the name of such person, and to substitute therefor the name of another person.

Substitution of jurors.

(3) Any other person who, on account of absence or for any other reason, cannot be summoned shall be substituted by another.

Posting up of list of substituted jurors.

(4) A list containing the names of the substituted persons shall be posted up at the door of the hall in which the court sits at least twenty-four hours before the trial for which such persons shall have been summoned, either as foremen or as common jurors.

Application for exemption by substituted jurors.

(5) Any application by any such substituted person who is not qualified or liable to serve as juror or has a good reason to be exempted from serving as a juror shall be determined by the court on the day of the hearing of the cause before the reading out of the indictment.

(6) In the case of a person referred to in article 604, a request not to serve as a juror may be made by means of a letter addressed to the registrar, and such letter shall be deemed to be an application for all purposes of this article.

(7) Before exempting a person from serving as a juror as provided in sub-articles (2) and (5) and in article 611(5), the court may require to hear on oath the person requesting such exemption.

Summoning of jurors. *Amended by: IV.1856.47; V.1868.37; XII.1913.24; III.2002.148.*

608. (1) Every person whose name is drawn in the manner provided in article 606, shall be summoned by means of a writ, to be delivered to the person himself, or, if he cannot conveniently be met with, left at his usual place of abode at least four days before the day of the trial.

(2) Any person substituted in accordance with the provisions of the last preceding article shall be summoned in the same manner as provided in sub-article (1) at least two days before the day of the trial.

(3) The provisions contained in article 441(3) shall apply to the summoning of jurors.

(4) Regulations made under article 362(2) for service by post shall also apply to the service of the writ referred to in sub-article (1) of this article and the provisions of sub-articles (3) and (4) of the said article 362 shall *mutatis mutandis* apply to the service of a writ under this article. A person served with the said writ as provided in the said regulations or as provided in this sub-article shall be deemed to have been summoned in the manner provided in this article.

Non-appearance of jurors. *Substituted by: XIV.1976.4.* Penalty.

609. Any person summoned in the manner provided in the last preceding article who, without good cause to the satisfaction of the court, fails to appear at the time stated in the writ, or who, having appeared, withdraws before he is dismissed by the court, shall be forthwith sentenced by the court to a fine (*multa*), and shall be liable to be compelled to appear to serve as juror by means of a warrant of escort or of arrest:

Power of court to remit penalty.

Provided that the court may, on an application to that effect, remit the fine, if it is satisfied that there was good cause for the non-appearance or withdrawal.

Constitution of jury. *Amended by: X.1896.9; XIV.1976.5.*

610. (1) The jury shall be composed of a foreman and eight common jurors.

Supplementary jurors.

(2) Nevertheless, if the cause should appear to be of such nature as to require a long hearing, the court may, before the ballot of the jurors, order the drawing of not more than six other names, and the jurors whose names shall be drawn after the names of the first eight common jurors have been drawn, shall be supplementary jurors, and shall attend at the trial of the cause.

(3) All the provisions of the law relating to the jury and to the jurors forming the jury, shall apply to such supplementary jurors, but such supplementary jurors shall not be present at nor take part in any deliberation, save in the case of death or any impediment of any of the other jurors.

(4) The court shall decide as to the lawfulness of the impediment, and any substitution shall be made in the same order in which the names of the supplementary jurors shall have been drawn.

Death or impediment of foreman of jury.

(5) In the case of death or impediment of the foreman, his duties shall be discharged by one of the other jurors to be appointed by the court.

Formation of jury. *Amended by: IV.1856.48; IX.1859.30; V.1868.38; X.1896.9,10; VIII.1909.56; L.N. 46 of 1965; LVIII.1974.68; XIV.1976.6; XVI.2006.20.*

611. (1) The jury shall be formed in the following manner:

The names of the persons summoned to serve as jurors shall be written on separate ballots of parchment or paper as nearly as may be equal in shape and size. The registrar shall read aloud in court first the ballots bearing the names of the foremen and shall put them into a box, then those bearing the names of the common jurors, which he shall put into another box. Afterwards, having shaken the box containing the ballots with the names of the foremen, he shall draw one ballot and shall read aloud the name written thereon. The person whose name is so drawn, shall come forward, and the registrar shall ask first the Attorney General and then the party accused whether they intend to challenge such person.

Challenge of jurors. Peremptory or for cause.

(2) Challenges may be either peremptory or for cause. Challenges are peremptory when made without reason assigned, and their effect shall be that the person challenged shall be excluded from serving as a juror at the trial. Challenges are for

cause when made by assigning a reason, and their effect shall be that, if such reason is approved by the court, the challenge shall be allowed and the person shall be excluded; but if the reason assigned is not so approved, the challenge shall be disallowed and the person admitted:

Provided that for the purpose of challenging a juror for cause the Attorney General or the accused may request that the juror be called to reply on oath to questions to be put to the juror to establish the reason for the challenge.

Number of peremptory challenges allowed.

(3) The number of peremptory challenges allowed to the Attorney General and to each of the accused is three; but, where the accused in one cause are more than three, each of them has a right to two peremptory challenges only.

Challenge made by one accused to have effect in respect of other accused.

(4) A challenge made by one accused shall have effect also in respect of the other accused that are to be either contemporaneously or successively tried by the same jury, notwithstanding that such other accused may not wish to make such challenge.

Power of court to exempt juror from serving.

(5) Any person may, on good cause being shown, either before or after his name is drawn, be exempted by the court from serving as a juror.

Drawing of other names where persons drawn fail to appear, etc.

(6) If any person whose name is drawn does not appear or, having appeared, is challenged or exempted from serving, other names shall be drawn in the same order, until a foreman is approved.

Drawing of common jurors.

(7) The drawing of the ballots from the box containing the names of the common jurors shall then take place in the same manner provided for the drawing of the foreman until eight common jurors and, if the court shall have so ordered, the number of supplementary jurors ordered by the court are approved.

Constitution of jury.

(8) The nine jurors whose names shall have been thus drawn and approved shall constitute the jury.

Form of oath of jurors.
Amended by: XXVII.1975.37.

612. In the swearing in of the jury the following form shall be observed:

The registrar, addressing himself to the jury, shall say:

You do swear and promise before God and man that you will examine with the most scrupulous attention the charges which shall be brought against A. B.; that you will not betray either the interests of the accused or those of the Republic of Malta in whose name he stands accused; that you will not hold communication, without leave of the Court, with any person until your verdict shall be given; that you will not give way either to hatred or malice, or to fear or affection; that you will decide, upon the charges and the defence, according to your conscience and intimate conviction, with the impartiality and firmness that become honest and free men. So help you God.

Whereupon each of the jurors shall take the oath.

Where panel of foremen of jurors or panel of common jurors is exhausted. *Amended by: VIII.1909.57; XIV.1976.7.*

613. (1) Where, owing to default of attendance, or by reason of challenges or exemptions, the whole panel of foremen of jurors is exhausted, it shall be lawful for the court either to adjourn the trial or to order that a ballot be drawn from the box containing the names of common jurors, in addition to the number prescribed in article 610(1) and (2), and to depute one of the jurors whose names are drawn to perform the duties of foreman of the jury.

(2) Where, for any of the reasons stated in sub-article (1), the panel of common jurors is exhausted, it shall be lawful for the court either to adjourn the trial or to appoint to act as juror any other person who may be present in the hall and whom the court considers qualified to act as juror; and such person may only be challenged for cause. The duties of foreman of the jury may also, if necessary, be delegated to any person so appointed.

Power of court to allow withdrawal of peremptory challenges.

(3) Nevertheless in any of the cases referred to in sub-articles (1) and (2), it shall be lawful for the court, for the purpose of completing the jury and with a view to avoiding the adjournment of the trial, to permit the parties to withdraw one or more of the peremptory challenges made by them.

Objection to juror for want of qualifications. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

614. The absence in any person of the necessary qualifications to serve as a juror, must be raised by the Attorney General or by the accused. It may also be submitted by the person himself or, if it is notorious, declared by the court. If, however, the absence of such qualifications is not so raised, submitted or declared, and the person is approved as fit to be sworn, no opposition can afterwards be made on account of his want of qualifications.

Benefit of exemption may not be claimed if not alleged before approval of juror.

615. Any person exempt by law from serving as a juror who, being summoned, fails to declare that he desires to avail himself of such exemption before he is approved as a fit person to be sworn, may not, after such approval, claim the benefit of such exemption.

Maintenance of jury. *Amended by: X.1896.11; XXVII.1975.38.*

616. (1) The expense for the maintenance of the jurors while performing their duties and during the time in which they are permitted to have food and drink, shall be defrayed by the Government.

Payment of travelling expenses.

(2) Jurors are entitled to all travelling expenses, in the same cases and in the same manner as witnesses.

(3) The Minister responsible for justice may by regulations provide for the payment of fees to jurors for their service.

Exemption of juror from arrest for debt. *Amended by: IX.1859.31; III.2002.149.*

617. (1) It shall not be lawful to arrest for debt any person summoned to serve as a juror, while he is proceeding directly to court from his own abode, or returning directly from court to his own abode.

Communication with jurors.

(2) Whosoever shall, in any manner whatsoever, knowingly communicate or attempt to communicate with any person whose name has been drawn to serve as a juror and published as provided in article 606(5) and in article 607(4), with intent to influence such person, whether in favour of or against the accused, shall be guilty of an offence and shall, on conviction, be liable to imprisonment

for a term from three to nine months:

Provided that when such crime is committed by a public officer whose duty is to prevent such communication, the applicable punishment shall be increased by one degree.

(3) The foregoing provisions of this article shall, *mutatis mutandis*, apply in relation to the members of the empanelled jury as they apply in relation to the persons summoned to serve as jurors or whose name has been published as mentioned in sub-article (2).

Drawing of special jurors. *Added by: Order-in-Council of 1899, s. 9. Amended by: XXX.1934.21; XX.1936.6.*

618. Where, in accordance with the provisions of article 516, the proceedings in any cause are to be conducted in the English language, the registrar shall without delay open the boxes containing the names of the special jurors and draw ten ballots from the box containing the names of the foremen and forty ballots from the box containing the names of common jurors, to serve at the trial of such case.

Applicability to special jury of provisions relating to jury. *Added by: Order-in-Council of 1899, s. 9.*

619. All the provisions of the law relating to the jury shall be applicable to the special jury.

Title VII

ALLEGATION OF INSANITY AND OTHER COLLATERAL ISSUES BEFORE THE CRIMINAL COURT

Allegation of insanity or other points of fact. *Amended by: IV.1856.49; L.N. 46 of 1965; LVIII.1974.68; XXVII.1975.40.*

620. (1) Any allegation of insanity, or of any point of fact, by reason of which, if true, the person accused would not, at the time or at any future time, be called upon to plead to the indictment, or be put on trial, or made to undergo punishment, shall first be determined by a jury.

Violation of condition of pardon.

(2) Where any person after having obtained a conditional commutation of his sentence is, by the Executive Police, on account of the violation of the condition for the commutation of such sentence, again taken to prison or placed in the same state in which he was prior to such commutation, in order to undergo or continue to undergo his sentence, any allegation of fact made by such person by reason of which, if true, the said condition as literally expressed in the act of pardon would not be deemed to be broken, shall also be determined by a jury.

Procedure.

(3) Any allegation referred to in this article shall be brought before the Criminal Court by an application.

(4) On any such application, the court shall make an order, appointing a day for hearing the applicant and the Attorney General, causing them to be served with a copy of such order.

Contestation by Attorney General to be made in writing. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

621. Where the Attorney General intends to contest any allegation made under the last preceding article, he shall do so in writing.

Power of court to refer determination of allegation to the trial jury.

622. The court may refer the determination of any such allegation to the jury already impanelled for the trial of the offence.

Place of custody of insane person. *Amended by: VIII.1909.58; XII.1914.14; XXVII.1975.30; XVIII.1976.52; VIII.1990.3.* Cap. 525.

623. (1) Where, upon the allegation referred to in sub-article (1) of article 620, the accused is found to be insane, the court shall order the accused to be kept in custody in Mount Carmel Hospital there to remain in custody and detained according to the provisions of the Mental Health Act, or any other provision of law or enactment applicable to the case, and those provisions shall apply to the accused accordingly.

Expense for maintenance.

(2) The expense for the maintenance and care of such insane person shall be defrayed by the Government, saving the right of the Government to recover such expense from the property belonging to such person, or, in default, from any person liable for the maintenance of such insane person.

How charged.

(3) The said expense shall be charged at the rates laid down in the regulations for Mount Carmel Hospital, for the time being in force.

Applicability of sub-articles (2) and (3) to the Court of Magistrates.

(4) The provisions of sub-articles (2) and (3) shall likewise apply in the case of accused persons remitted to Mount Carmel Hospital on an order of the Court of Magistrates, under the provisions of articles 402 and 525.

Powers of court with regard to conditions of pardon. *Added by: IV.1856.50.*

624. If any fact is found by the jury whereby the condition attached to a pardon should not be deemed to have been broken, the court shall give the necessary directions in order to prevent the violation of the said condition after such finding; and it shall be lawful for the court for such purpose to order that the individual who had been granted the pardon be kept in custody in any of the public prisons where he can conveniently be detained.

Non-contestation of allegation by Attorney General. *Amended by: L.N. 46 of 1965; LVIII.1974.68.*

625. Where the Attorney General does not contest any allegation under this Title, the court shall proceed as if the truth of the allegation had been proved.

Resumption of trial on cessation of impediment.

626. In all cases where, upon any allegation under this Title being proved, the trial cannot take place or is interrupted or the execution of the sentence is stayed, the trial shall be resumed or the sentence carried into effect, as soon as the impediment shall cease.

Jury to be impanelled according to general rules.

627. In all cases where it shall be necessary to impanel a new jury for the determination of any allegation referred to in the preceding articles of this Title, such jury shall be impanelled and shall proceed according to the rules established in this Code relating to juries.

628. In all cases referred to in the preceding articles of this Title, any allegation shall be determined by the jury by a majority of votes.

Jury to decide by majority of votes. *S.3(3) of Ord. XXXVII of 1934 so far as it provides that the decision of the jury shall be taken by a majority of votes, incorporated.*

Title VIII

OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Added by: IX.2003.128.

628A. (1) The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which makes provision for mutual assistance in criminal matters.

Regulations. *Added by: IX.2003.128.*

(2) Regulations made under this article may make provision as the Minister may deem appropriate in the circumstances, including the application, with any appropriate modifications, of any of the provisions of this Code or of any other law.

628B. (1) Without prejudice to the generality of the power conferred on the Minister by article 628A the Minister may, in particular, make regulations designating the competent person, body corporate or unincorporated, authority or agency for the purpose of providing the assistance that may be requested under any arrangement referred to in article 628A(1) and prescribing the conditions and procedures for the execution of any request for such assistance for all or any of the following purposes –

Conditions and procedures for the execution of request for assistance. *Added by: IX.2003.128.*

(*a*) the questioning of persons being investigated or prosecuted for a criminal offence;

(*b*) the taking or production of evidence;

(*c*) the service of any document or act;

(*d*) the interception of communications;

(*e*) the temporary transfer of a prisoner for the purposes of identification or for obtaining testimony or other assistance;

(*f*) the entry into and search of any premises and the seizure of any item;

(*g*) the taking of fingerprints or of intimate or non-intimate samples;

(*h*) the exhumation of any body;

(*i*) the provision of records and documents;

(*j*) the investigation of proceeds of criminal offences;

(*k*) the monitoring, freezing or seizing of assets of any kind including bank accounts;

(*l*) the verification of any evidence or other material.

(2) Any regulations made under this article and article 628A

shall contain a reference to the arrangement which those regulations are meant to implement.

Added by: X.2021.3.

Title IX

OF COOPERATION BETWEEN THE NATIONAL AUTHORITIES AND THE OFFICE OF THE EUROPEAN PUBLIC PROSECUTOR

Scope and applicability.

628C. (1) The measures in this Title implement the provisions of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO").

(2) This Title establishes rules concerning the cooperation between the national authorities and the European Public Prosecutor's Office in the performance of the functions of the European Public Prosecutor's Office on the territory of Malta in relation to the crimes within the jurisdiction of the European Public Prosecutor's Office.

Exercise of prosecutorial functions by European Delegated Prosecutors.

628D. (1) The European Delegated Prosecutors shall, whenever exercising the powers to investigate offences in accordance with Council Regulation (EU) 2017/1939, instruct the Police or any other law enforcement agency to conduct an investigation relative to offences falling within the competence of the European Public Prosecutor's Office.

(2) The European Delegated Prosecutors shall, when prosecuting offences, have the same powers as the Attorney General and the Executive Police.

(3) The European Delegated Prosecutors shall prosecute in the name of the Republic of Malta.

Investigation measures of the European Delegated Prosecutors.

628E. The European Delegated Prosecutors may order the following investigative measures:

(*a*) request the assistance of the Police to search any premises, land, means of transport, private home, clothes and any other personal property or computer system and to take measures necessary to preserve the integrity or to avoid the loss or contamination of evidence;

(*b*) request the assistance of the Police to obtain the production of any relevant object or document either in its original form or in some other specified form;

(*c*) request the assistance of the Police to obtain the production of stored computer data, encrypted or decrypted, either in their original form or in some other specified form, including banking account data and traffic data in compliance with the Data Protection Act; Cap. 586.

(*d*) request the courts to issue monitoring orders, investigation orders, attachment orders and freezing orders where there is reason to believe that the owner, possessor or controller of the proceeds will seek to frustrate the judgment ordering confiscation;

(*e*) request the competent authority to intercept electronic communications to and from the suspect or accused person, over any electronic communication means that the suspect or accused person is using relative to the offences established in articles 190C, 190E and 190G; and

(*f*) request the Police to track and trace an object by technical means including the conduct of a controlled delivery relative to offences established in articles 190C, 190E and 190G.

Pre-trial arrest or detention of suspect.

628F. The European Delegated Prosecutor may request the Police to arrest or retain in pre-trial detention the suspect or accused person.

Powers of the European Prosecutor.

628G. The powers referred to in articles 628D, 628E and 628F may be exercised by the European Prosecutor in exceptional cases as referred to in Article 28(4) of Council Regulation (EU) 2017/1939.

Competent national authority.

628H. The Police shall act as competent national authority to:

(*a*) receive the information in accordance with Article 24(8) of Council Regulation (EU) 2017/1939;

(*b*) be consulted in accordance with Article 25(2) and (3) of Council Regulation (EU) 2017/1939; and

(*c*) give consent in accordance with Article 25(4) of Council Regulation (EU) 2017/1939.

Magistrate to inform European Delegated Prosecutors of relevant inquests. *Added by: VII.2024.3.*

628I. (1) In every case where an inquest is to be held in accordance with the provisions of Title II of Part II of Book Second on a matter which the European Public Prosecutor's Office is competent to investigate in accordance with Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), the Magistrate conducting the inquest shall, unless the inquest is not going to be held following a report, information or complaint by the European Delegated Prosecutors, transmit the report, information or complaint on the basis of which the inquest is going to

be held to the European Delegated Prosecutors within three (3) working days from the decision to hold the inquest.

(2) In the case of inquests commenced before the coming into force of this article to which sub-article (1) would have applied had it been in force at the time when the decision to hold the inquest was taken, the Magistrate conducting the said inquest shall inform the European Delegated Prosecutors of the inquest as provided in sub-article (1) as soon as practicable but by not later than sixty (60) days after the coming into force of this article.

Disagreement upon which authority is to investigate. *Added by: VII.2024.3.*

628J. For the purposes of Article 25(6) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), the Criminal Court shall be competent to decide upon any disagreement between the European Public Prosecutor's Office and the Commissioner of Police on any question as to whether the criminal conduct falls within the scope of Article 22(2) or (3) or of Article 25(2) or (3) of the said Council Regulation (EU) 2017/1939, and on any question as to the determination of the authority by which the case is to be investigated.

PART III

OF MATTERS APPLICABLE TO ALL CRIMINAL TRIALS

Title I

Amended by: XI.1900.87.

OF WITNESSES AND EXPERTS

Sub-title I

OF WITNESSES

Competency of witnesses. *Amended by: IX.1859.32; III.1880.11.*

629. (1) Every person of sound mind is admissible as witness, unless there are objections to his competency.

Explanation to witness on obligation of oath.

(2) The court shall explain to the witness the obligation of the oath if, on account of his age or for other reasons, it appears doubtful whether he understands such obligation; and if, notwithstanding such explanation, the court shall deem it necessary that the witness, before giving evidence, be further instructed as to the consequences of false testimony, the court may, if it considers the deposition of such witness to be important for the ends of justice, adjourn the trial to another day, and, should the case be before the Criminal Court, discharge the jury.

No particular age required for competency of witness.

630. No person shall be excluded from giving testimony for want of any particular age; it shall be sufficient that the court be satisfied that the witness, though not of age, understands that it is wrong to give false testimony.

Swearing in of witness. *Amended by: V.1868.39.*

631. (1) A witness professing the Roman Catholic faith shall be sworn according to the custom of those who belong to that faith; and a witness not professing that faith shall be sworn in the manner which he considers most binding on his conscience.

(2) The provisions of this article shall apply in all cases in which an oath is administered.

Form of oath.

632. The form of oath to be administered to witnesses shall be the following:

You A. B. *do swear* (*or do solemnly affirm*) *that the evidence which you shall give, shall be the truth, the whole truth, and nothing but the truth. So help you God.*

Interest of witness. *Amended by: VIII.1909.59.; XV.2017.49.*

633. (1) No objection to the competency of any witness shall be admitted on the ground that he was the party who laid the information or made the complaint, or that he was the party who made the report or the application in consequence of which proceedings were instituted, or that he is, by consanguinity or affinity, or by reason of any contract, employment or otherwise, in any manner related to or connected with the party above referred to, or with the person charged or accused; but in every such case, the witness shall be heard, and those who have to judge of the facts, being fully persuaded and convinced of the veracity of the testimony, shall act upon such testimony in the same full and ample manner, as if such facts had been proved by an extraneous person not related or connected as aforesaid.

Reluctance to give evidence on grounds of consanguinity, etc.

(2) Nevertheless, it shall lie in the discretion of the court, regard being had to the degree of consanguinity, the reluctance to give evidence against the husband or wife, his civil union partner or against his cohabitant, against an ascendant or a descendant, or against a brother, sister, uncle, or nephew, and to other particular circumstances of the case, not to compel a witness to give evidence if he be unwilling to depose against a person related to him in any of the said degrees.

Party accused may give evidence. *Added by: VIII.1909.60. Amended by: IX.1911.20.*

634. (1) The party charged or accused shall, at his own request, be admitted to give evidence on oath immediately after the close of the prosecution, saving the case where the necessity of his evidence shall arise also at a subsequent stage, or the court sees fit to vary the order of the evidence; and such party may be cross-examined by the prosecution, notwithstanding that such cross-examination would tend to incriminate him as to the offence charged:

No adverse comment by prosecutor on failure of accused to give evidence.

Provided that the failure of the party charged or accused to give evidence shall not be made the subject of adverse comment by the prosecution.

Provisions relating to witnesses applicable to accused.

(2) The provisions of the law relating to witnesses shall apply to the accused who gives evidence on oath.

Exception.

(3) The provisions of sub-article (1) shall not apply to cases on appeal.

When husband or wife of accused may give evidence. *Amended by: II.1886.12; VIII.1909.61; XXXVIII.1973.5; XV.2017.50.*

635. (1) Notwithstanding the provisions of article 633, spouse, civil union partner or cohabitant of the party charged or accused cannot be admitted to give evidence either in favour of or against such party, except -

(*a*) in the case of offences committed against the witness, or against his or her ascendants or descendants;

Cap. 63.

(*b*) in the case of offences against the provisions of the White Slave Traffic (Suppression) Ordinance, where the spouse the civil union partner or the cohabitant of the party charged or accused is a person on whom or in respect of whom the offence is committed or is a person on the earnings of whose prostitution the party charged or accused has lived;

(*c*) at the request of the party charged or accused for the evidence of his spouse, civil union partner or cohabitant, if such party is himself or herself admitted to give evidence on oath according to the provisions of the last preceding article.

(2) The provisions of this article shall also apply where spouse, civil union partner or cohabitant of the party charged or accused is a witness for or against any other person who is tried jointly with such party.

No objection to competency of witness on ground of previous conviction, etc. *Amended by: IV.2014.26.*

636. No objection to the competence of any witness shall be admitted on the ground -

(*a*) that from his own confession or otherwise it appears that he has been guilty of an offence or that he has been in any manner convicted, sentenced, censured or punished by any court or other authority; or

(*b*) that he was charged with the same offence in respect of which his deposition is required, when impunity was promised or granted to him by the Government for the purpose of such deposition; or

(*c*) that he is interested either in the issue in regard to which his deposition is required or in the event of the suit; or

(*d*) that, in the case of a witness who has been admitted to benefit under a witness protection programme set up in terms of Title IV of Part III of the Police Act, the witness was either charged with the same offence in respect of which his deposition is required or that he is liable to be prosecuted in the future in respect of the said offence or of a related offence.

Cap. 164.

Objections affecting the credibility of witness. *Amended by: XIII.2018.24.*

637. Any objection from any of the causes referred to in articles 630, 633 and 636, shall affect only the credibility of the witness, as to which the decision shall lie in the discretion of those who have to judge of the facts, regard being had to the demeanour, conduct, and character of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may be forthcoming from other testimony, and to all the circumstances of the case:

Provided that particular care must be taken to ensure that evidence relating to the sexual history and conduct of the victim shall not be permitted unless it is relevant and necessary.

Production of fullest evidence available.

638. (1) In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness.

Single witness sufficient.

(2) Nevertheless, in all cases, the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses.

When a single witness is not sufficient. *Amended by: XXIV.1946.2; IX.1950.2; XXII.1988.20; XVI.2006.21.*

639. (1) Notwithstanding the provisions of the last preceding article, a person may not be convicted of calumnious accusation, perjury or false swearing, solely upon the evidence of one witness contradicting the fact previously stated on oath by the person charged or accused; but such person charged or accused may be convicted on the evidence of a single witness, when such evidence is corroborated in some circumstance which is material to establish the alleged crime by any other proof duly adduced.

(2) Nor may a person be convicted of a crime against the safety of the Government, other than a crime under article 55, solely upon the evidence of one witness; but in such case it shall be sufficient if one witness proves one fact and another witness proves another fact, both such facts being material to establish the crime.

Evidence by accomplice.

(3) Where the only witness against the accused for any offence in any trial by jury is an accomplice, the Court shall give a direction to the jury to approach the evidence of the witness with caution before relying on it in order to convict the accused.

Examination of deaf and dumb, deaf or dumb witness.

640. In the examination of a witness who is deaf and dumb, or deaf only, or dumb only, the rules established in article 451 as to the manner of communicating with an accused person who is deaf and dumb, or dumb only, or deaf only, shall be observed.

Person present in court not to be produced as witness.

641. In general, no person who has been present in court during the hearing of a cause may be produced as a witness in such cause:

Discretionary power of court.

Provided the court may in its discretion dispense with this rule in particular cases, if it sees sufficient reason for so doing.

Professional secret.

642. (1) Advocates and legal procurators may not be compelled to depose with regard to circumstances knowledge whereof is derived from the professional confidence which the parties themselves shall have placed in their assistance or advice.

(2) The same rule shall apply in regard to those persons who are by law bound to secrecy respecting circumstances on which evidence is required.

Incriminating questions. *Amended by: XII.1913.25.*

643. No witness may be compelled to answer any question which tends to expose him to any criminal prosecution.

Degrading questions.

644. It is left to the discretion of the court to determine, in each particular case, whether a witness is bound or not to answer some particular question, on the ground that the answer to such question might tend to expose his own degradation.

Applicability of certain provisions of Code of Organization and Civil Procedure. *Amended by: IV.1856.51; III.2002.150.* Cap. 12.

645. The provisions of articles 570, 574, 578, 579, 580, 583, 584, 585, 586, 590, 592, 598, 599, article 602(1) and article 605 of the Code of Organization and Civil Procedure shall also apply to the courts of criminal justice and the said articles 570, 574, 583, 590, and 592 shall moreover apply to any proceedings under Title II of Part II of Book Second of this Code.

Examination of witnesses to take place in court and *viva voce*. *Amended by: IV.1856.52; V.1868.40; VI.1871.38; XI.1900.88; XII.1913.26; L.N. 46 of 1965; LVIII.1974.68; XXXII.1997.3; XVI.2006.22; XIII.2018.24; XXIV.2019.8; V.2024.7.*

646. (1) Subject to the ensuing provisions of this article, witnesses shall always be examined in court and *viva voce*.

Exceptions.

(2) The deposition of witnesses, whether against or in favour of the person charged or accused, if taken on oath in the course of the inquiry according to law, shall be admissible as evidence:

Provided that the witness is also produced in Court to be examined *viva voce* as provided in sub-article (1) unless, when assessing the circumstances of the case, it is apparent to the Court that appearing for *viva voce* examination may cause the witness to suffer psychological harm, or when the witness is dead, absent from Malta or cannot be found and saving the provisions of sub-article (8):

Provided further that where the witness is a minor under eighteen (18) years of age and an audio and video-recording of the testimony of the minor is produced in evidence the minor shall not be produced to be examined *viva voce*.

(3) Any declaration shall be admissible as evidence whenever the same is made by any person who is about to die and who is conscious of the nearness of death, except where the declarant dies under a sentence of the law.

(3A) An audio-visually recorded interview or statement of a

minor, of any victim of a sexual offence, or of any vulnerable victim or witness made in accordance with sub-article (4) of article 346 shall be admissible as evidence:

Provided that where the person so interviewed or who makes the statement gives evidence *viva voce* as a witness before a court during a trial, the said evidence shall be given by video conference from a place other than the courtroom where the trial is being held and shall be recorded by audio-visual means.

(4) Any *procès-verbal* may be produced as evidence in terms of article 550.

(5) The deposition of any parish priest or of any other clergyman acting in his stead, or of any other witness examined in the course of the inquiry, as to the authenticity of parochial acts or registers made or kept by such parish priest or clergyman, and relating to births, marriages, or deaths, or as to the authenticity of copies of such acts or registers, or of extracts therefrom, or as to the fact that the accused is the person mentioned in such acts, registers, copies or extracts, may also be produced as evidence.

(6) The deposition of any notary in Malta or of any other witness examined in the course of the inquiry, as to the authenticity of the acts or registers made or kept by such notary, or as to the authenticity of copies of such acts or registers or extracts therefrom, or as to the fact that the accused is the person mentioned in such acts, registers, copies or extracts, is also admissible as evidence.

(7) Notwithstanding the provisions of this Code or of any other law, a certificate purporting to be issued by a registered medical practitioner or registered dental surgeon concerning his examination of any person, whether alive or dead, or concerning any bodily harm suffered by, or any physical or mental infirmity afflicting, any person, shall be admissible as evidence and shall, until the contrary is proved, be evidence of its contents, provided the certificate bears the clearly legible stamp of the medical practitioner or registered dental surgeon issuing it showing his name, professional qualifications, expertise and address and provided that such certificate is confirmed by the affidavit of the medical practitioner or the dental surgeon, as the case may be: provided further that it shall be lawful for either of the parties to produce the said medical practitioner or the said dental surgeon, as the case may be, for the purpose of examining him in court and *viva voce*, as well as for the court *ex officio* to require such examination.

(8) The deposition of any registered medical practitioner or registered dental surgeon annexed to a *procès-verbal*, or of any such medical practitioner or dental surgeon examined in the course of the inquiry, in relation to his examination of any person, whether alive or dead, or in relation to any bodily harm suffered by, or any physical or mental infirmity afflicting, any person, shall be admissible as evidence without the need of producing the said medical practitioner or dental surgeon in court as provided in the proviso to sub-article (2): provided that, unless the witness is dead,

absent from Malta or cannot be found, it shall be lawful for either of the parties to demand, or for the court *ex officio* to require, that such witness be again examined in court and *viva voce*.

(9) The validity of the said acts and their admissibility may not be impugned on the ground that it does not appear from the acts themselves that they have been made or received on oath or with any other formality prescribed by law, if the taking of any such oath or the observance of any such formality be proved in some other manner.

(10) It shall be lawful for the Attorney General, as well as for the accused, to demand that a ruling be given by the court, before the hearing of the case commences, as to whether the deposition of any witness is to be admitted, in terms of the provisions of sub-article (2).

(11) Where it is alleged that a witness is dead, absent or cannot be found, it shall be lawful for the court to consider the allegation proved by the sworn report of the marshal or other executive officer to the effect that he has ascertained that such witness is dead or absent, or that he has made the necessary inquiries and has been unable to find him.

Examination of infirm or aged witness in his place of abode. *Added by: XI.1900.89. Amended by: VI.1939.4; L.N. 4 of 1963; XIII.1964.26; L.N. 46 of 1965; XXXI.1966.2; XXV.1967.26; LVIII.1974.68; XXVII.1975.40; III.1976.8; VIII.1990.3; III.2002.151; XXXI.2002.205.*

647. (1) If it shall be necessary to examine any person who either through infirmity or old age is unable to appear in court, such person shall be examined by the court, or, if the court so orders, by a member of the court, in the place of his or her abode:

Provided that the court may delegate the taking of the evidence of any such witness to one of the magistrates for the Island in which the witness resides, or to a judicial assistant.

(2) When the evidence required is that of a person who does not reside in the Island in which the proceedings are taking place and it is represented to the court that such person is about to leave Malta, the court may delegate the taking of the evidence to one of the persons to whom the taking of evidence may be delegated under sub-article (1); and in the case of a witness who is to be examined in Gozo or Comino, the court may also, if the circumstances so warrant and the Attorney General does not object, authorise the registrar to take such evidence and administer the necessary oath.

Right of accused to be present.

(3) The party charged or accused is entitled to be present at the examination.

Reading out of evidence in court.

(4) The evidence taken in accordance with the provisions of this article shall be read out in court, and a note to that effect shall be entered in the record.

Audio-recording or video-recording of evidence. *Added by: XXXI.2002.206. Amended by: VIII.2015.37; VIII.2017.6.*

647A. (1) Without prejudice to the provisions of articles 646 and 647, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid or a witness residing outside Malta, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe.

(2) The Court may also allow for the testimony of any witness

even if present in Malta to be given by video conference or by teleconference from such place as the Court may order and subject to such conditions and directions as the Court may deem necessary:

Provided that the Minister responsible for justice may, by regulations, provide for any procedures, formalities, modalities or restrictions which are to apply to the taking of evidence in Malta in respect of proceedings in Malta by video conference or by teleconference and where the Minister makes such regulations the said regulations shall apply and any conditions or directions given by the Court under this sub-article shall not conflict with such regulations.

Sending of documents or any act to person in a foreign country. *Added by: XXXI.2007.24.*

647B. Pursuant to and in accordance with any treaty, convention, agreement or understanding between Malta and another country or which applies to both such countries or to which both such countries are a party, procedural documents or any act of the proceeding may be sent directly by post to a person who is in the territory of the foreign country in a language which that person understands:

Provided that procedural documents shall be accompanied by a report indicating to the said person the remedies available and that information about his rights and obligations concerning the document may be obtained from the issuing authority or from another competent authority in Malta.

Cross-border cooperation, particularly in combating terrorism and cross-border crime. *Added by: XXIV.2014.67.*

647C. (1) Where the Attorney General receives a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for -

(*a*) the taking of and supply of dactyloscopic data; or

(*b*) the taking and examination of a non-intimate sample; or

(*c*) the DNA profile of a person suspected in that place of a relevant offence or of a person accused, in proceedings before the courts of that place or international tribunal, of a relevant offence,

the Attorney General shall communicate the request to a Magistrate, who shall, upon receiving the request, order the arrest of the requested person and the provisions of article 355AV(c) shall, *mutatis mutandis*, apply in the execution of a request communicated under this article.

(2) The Magistrate shall transmit the said data, sample or profile, together with any report or result of the examination, to the Attorney General.

(3) For the purposes of this article the terms "DNA profile" and "dactyloscopic data" shall have the meaning respectively assigned to them in article 548; "relevant offence" shall have the meaning assigned to it in article 435D.

(4) The provisions of article 649(2) and (5) shall *mutatis mutandis* apply to a request made under this article.

Identification of person or object.

648. In order to identify any person whose identity is required to be proved, or in order to identify any object to be produced in evidence, it shall not, as a rule, be necessary that the witness should recognize such person from among other persons, or pick out such object from among other similar objects, unless the court, in some particular case, shall deem it expedient to adopt such course for the ends of justice.

Examination of witnesses in connection with offences cognizable by courts of justice outside Malta. *Articles 1 and 2 of Ord. IV of 1872 incorporated. Amended by: L.N. 4 of 1963; VIII.1990.3. Substituted by: III.2002.152. Amended by: XIII.2002.9; IX.2003.127; XXXI.2007.25; XI.2009.11; VII.2010.36 IV.2014.27.*

649. (1) Where the Attorney General communicates to a magistrate a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or court or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

(2) The provisions of sub-article (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority or by the international court is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country, or between Malta and the court, from which the request emanates or which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of sub-article (3) shall be applicable.

(3) Where the Minister responsible for justice communicates to a magistrate a request made by the judicial authority of any place outside Malta for the examination of any witness present in Malta, touching an offence cognizable by the courts of that place, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, notwithstanding that the accused be not present, and shall take down such testimony in writing.

(4) The magistrate shall transmit the deposition so taken, or the result of the investigation conducted, or the documents or things found or seized in execution of any order for search or/and seizure, to the Attorney General.

(5) For the purposes of sub-articles (1) and (3) the magistrate shall, as nearly as may be, conduct the proceedings as if they were

an inquiry relating to the *in genere* but shall comply with the formalities and procedures indicated by the requesting foreign authority unless they are contrary to the fundamental principles of Maltese law and shall have the same powers, or as nearly as may be, as are by law vested in the Court of Magistrates as court of criminal inquiry, as well as the powers, or as nearly as may be, as are by law conferred upon him in connection with an inquiry relating to the "*in genere*": provided that a magistrate may not arrest any person, for the purpose of giving effect to an order made or given under article 554(2), or upon reasonable suspicion that such person has committed an offence, unless the facts amounting to the offence which such person is accused or suspected to have committed amount also to an offence which may be prosecuted in Malta.

(5A) If the request cannot, or cannot fully, be executed in accordance with the formalities, procedures or deadlines indicated by the requesting foreign authority, the requesting authority shall be informed indicating the estimated time within which or the conditions under which execution of the request may be possible.

(5B) The proceedings referred to in this article shall, as nearly as may be, be conducted as if they were an inquiry relating to the "*in genere*".

(6) Where the request of the foreign authority is for the hearing of a witness or expert by video-conference, the provisions of sub-articles (7) to (12), both inclusive, shall apply.

(7) The magistrate shall summon the person to be heard to appear at the time and place equipped with video-conference facilities appointed for the purpose by the magistrate. The magistrate shall give effect to any measures for the protection of the person to be heard which the Attorney General may declare to have been agreed upon with the requesting foreign authority.

(8) The magistrate shall conduct the hearing and where necessary the magistrate shall appoint an interpreter to assist during the hearing. The magistrate present shall ensure that the person to be heard is identified and that the proceedings take place and continue at all times in conformity with the fundamental principles of the law of Malta.

(9) The person to be heard may claim the right not to testify which would accrue to him or her under the law of Malta or under the law of the country of the requesting foreign authority.

(10) Subject to any measures for the protection of the person to be heard referred to in sub-article (7), the magistrate shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document containing the record of the minutes shall be transmitted to the Attorney General to be forwarded to the requesting foreign authority.

(11) The following shall *mutatis mutandis* apply to the person to

be heard under the provisions of sub-article (6):

(*a*) the provisions of article 522, where the person to be heard refuses to testify when required to do so by the magistrate;

(*b*) the provisions of articles 104, 105, 107, 108 and 109, as the case may be, where the person to be heard does not testify to the truth, for this purpose the proceedings before the foreign authority shall be deemed to be proceedings taking place in Malta and the person to be heard shall be deemed to be a person testifying in those proceedings. For the purpose of determining the applicable punishment as may be necessary in proceedings for perjury under this sub-article the criminal fact being inquired into or adjudicated by the requesting foreign authority shall be deemed to be liable to the punishment to which it would have been liable had the same fact taken place in Malta or within the jurisdiction of the same Maltese criminal courts.

(12) The provisions of sub-articles (6) to (11), both inclusive, shall apply where the person to be heard is a person accused in the country of the requesting foreign authority provided that the hearing shall only take place with the consent of the person to be heard and that all the rules of evidence and procedure which would apply to the testimony of a person accused in criminal proceedings in Malta would also apply to the testimony of the person accused to be heard under this article.

(13) The provisions of this article shall also apply *mutatis mutandis* where the request of the foreign authority is for the hearing of a witness or expert by telephone conference: provided that the witness or expert consents to the hearing.

(14) Where the Attorney General has made a declaration as provided in sub-article (2), foreign officials designated by the foreign authority or international court which made the request shall be entitled to be present for the examination of witnesses or when investigative measures are being taken.

Added by: XI.1900.90.

Sub-title II

OF EXPERTS

Reference to experts. *Added by: XI.1900.90. Amended by: XXX.1934.22; L.N. 4 of 1963; XXXI.1966.2; III.1971.19; VIII.1990.3; XXXII.1997.3; XIII.2005.5.*

650. (1) In all cases where for the examination of any person or thing special knowledge or skill is required, a reference to experts shall be ordered.

(2) The experts shall be chosen by the court: Choice of experts.

Provided that the Minister responsible for Justice may, after consultation with the Chief Justice, appoint one or more persons as official experts for the purpose of reporting on matters required by other provisions of this Code requiring special technical skill or knowledge, and when such persons are appointed, the court shall choose such experts from among those persons who may be on a roster system. Appointment of official experts.

(3) For the purposes of article 533, the fees of the official experts for services rendered in any particular case shall be taxed by the registrar in the same manner provided for the taxation of the fees due to other experts. Taxation of fees of official experts.

(4) As a rule the experts shall be appointed in an uneven number. Number of experts.

(5) The court shall, whenever it is expedient, give to the experts the necessary directions, and allow them a time within which to make their report. Directions to experts.

The Court of Magistrates, whether sitting as a court of criminal judicature or as a court of inquiry, may moreover empower the expert or the experts, if more than one expert have been appointed, to receive documents and to examine witnesses on oath in the presence of the accused and, in any such case, the court shall not require further evidence in respect of the documents so produced or further examine the witnesses so examined, unless the court deems it necessary or unless the accused makes a request to that effect. Where more than one expert have been appointed, the court shall designate the expert who is empowered to administer the oath.

(6) The Court's decision to appoint experts shall be reduced to writing and shall be served on the experts so appointed.

651. (1) The experts may be challenged only on the same grounds on which a judge may be challenged. Challenge of experts. *Added by: XI.1900.90.*

(2) The challenge shall be made in the manner and within the terms laid down in the Code of Organization and Civil Procedure for the challenge of experts in civil causes. Cap. 12.

652. The experts shall be summoned in the manner provided for the summoning of witnesses. They shall swear to perform faithfully and honestly the duties assigned to them. Summoning and oath of experts. *Added by: XI.1900.90.*

653. (1) On terminating the work and the experiments which their profession or art may suggest, the experts shall make their report, either orally or in writing, according to the directions of the court. Report. *Added by: XI. l900.90. Amended by: III.1971.20; VIII.1990.3.*

(2) The report shall in every case state the facts and the circumstances on which the conclusions of the experts are based. Contents.

(3) If in the course of their work, the experts shall obtain from any person information on circumstances of fact, such person shall be mentioned in the report, and shall be examined in court in the same manner as any other witness: Examination in court of witnesses heard by experts.

Provided that the above provision of this sub-article shall not apply in regard to any person whom the experts will have examined on oath under article 650(5), saving, however, the re-examination of any such person by the court as provided for in the said sub-article.

(4) In matters within the jurisdiction of the Court of Magistrates, any such person may be examined on oath by the court, even in the course of the work of the experts.

Report, if verbal, to be reduced into writing.

(5) If the report is made orally, it shall be reduced into writing by the registrar or by the person acting in his stead.

Official expert may advise the court during the sitting.
Added by: XXX.1934.23.
Substituted by: III.1971.21.
Amended by: VIII.1990.3.

654. In cases within the jurisdiction of the Court of Magistrates as court of criminal judicature, the expert may be called upon by the court to be present at the hearing of the cause in order to advise the court, provided that the advice is given in the presence of the accused.

Further elucidations by experts.
Added by: XI.1900.90.
Amended by: XXVII.1975.40.

655. The parties, the court, and, in cases within the jurisdiction of the Criminal Court, the jurors, may require the experts to give further elucidations on their report as well as on any other point which they may consider useful in order to make the opinion of the experts clearer.

Those who are to judge not bound by conclusions of experts.
Added by: XI.1900.90.

656. Those who are to judge are not bound to abide by the conclusions of the experts against their own conviction.

Applicability of certain provisions to experts.
Added by: XI.1900.90.

657. The provisions of article 452(4) and (5) shall apply to experts.

Title II

OF CONFESSIONS

Confession by accused.
Amended by: LI.2016.6.

658. Any confession made by the person charged or accused, whether in writing, orally, by audiovisual means or by other means, may be received in evidence against or in favour of the person, as the case may be, who made it, provided it appears that such confession was made voluntarily, and not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour.

Production of written confession.
Amended by: LI.2016.7.

659. (1) Where it is not possible to record a confession by audiovisual means in terms of article 355AUA(8)(*e*), if a confession is reduced to writing at the time it is made, the writing shall be produced; and only if it is proved that the writing has been destroyed or lost, may oral evidence, in lieu of such writing, be admitted for the purpose of proving the substance of such

confession.

(2) Nothing in this article shall operate as a bar to the admissibility in evidence of any other confession verbally made before or after.

Confession to be produced in full. *Substituted by: LI.2016.8.*

660. It shall not be permissible to give in evidence only a part of an audiovisual recording or of a written or oral statement against the accused except in extraordinary circumstances which the court may allow.

Confession not to prejudice third parties.

661. A confession shall not be evidence except against the person making the same, and shall not operate to the prejudice of any other person.

Title III

OF DECISIONS AND THEIR EXECUTION

Definition of "decision". *Amended by: IX.1857.18; XXX.1934.24; XXV.1967.27; III.2002.153.*

662. (1) The general expression "decision" includes every verdict of the jury on the facts, every judgment of a court acquitting, convicting or sentencing the person charged or accused, every *procès-verbal* drawn up in connection with any inquest or other inquiry held under the provisions of this Code (other than an inquest for the purpose of an inquiry relating to the "*in genere*"), and, in general, every decree or other definitive order of a court.

Reasons.

(2) Any decision of the Court of Criminal Appeal and of the Criminal Court by which any question of law is determined shall be preceded by the reasons which led the court to the decision:

Provided that as regards the Court of Criminal Appeal, the court may, if the appellant is in custody and it is of opinion that the appeal should be allowed and the appellant discharged, pronounce forthwith its decision discharging the appellant and reserve to give its reasons at a later date even in the absence of the person concerned.

Delivery of decision in open court. *Amended by: IX.1857.19; XII.1913.27; XXX.1934.25; VIII.1990.3; III.2002.154.*

663. (1) Every decision of the court shall be delivered by the judge or magistrate in open court: provided that a decision granting or refusing bail may be given *in camera*.

Applicability of articles 474 and 478 to verdict of jury on facts.

(2) With regard to any verdict of the jury on the facts, the provisions of articles 474 and 478 shall apply.

Recording of decisions of Criminal Court.

(3) Every decision of the Criminal Court shall be recorded by the registrar, and such record shall constitute the authentic proof of such decision.

Registration of reasons.

(4) The reasons referred to in sub-article (2) of the last preceding article shall be recorded together with the decision.

Decisions of the Court of Magistrates. Summary in special register. Probatory force of same. Contents of summary.

(5) The decisions of the Court of Magistrates, if reduced to writing by the sitting magistrate, shall be kept in their original, and the provisions of article 518 shall be applicable thereto. In every case, a summary of the decision shall be recorded in a special register, and such summary shall constitute authentic proof of such decision in the same manner as a certified copy thereof. Such summary shall indicate the court by which the decision was delivered, the names of the parties, the date of the decision, and the particulars referred to in article 382, or, in the case of any decree, the substance of the order contained therein.

Delivery of decision with closed doors.

Exceptions.

*664. Decisions may be delivered with closed doors only in the cases referred to in articles 409 and 531:

Provided that the order referred to in article 531, the decisions referred to in article 620, the verdict on the facts, the judgment acquitting, convicting or sentencing the person charged or accused, and the decision as to whether there are or not sufficient grounds to commit the accused for trial, shall be delivered in open court.

Execution of decisions. *Amended by: XII.1914.15; XXX.1934.26; IV.195I.2; XXV.1967.28; XXI.1971.34; XXIX.1990.32.*

665. Subject to the provisions of article 28A and the provisions of this Code relating to the payment of pecuniary penalties, every decision shall be enforceable as soon as delivered.

Decisions of Criminal Court to be enforced by marshal. *Amended by: I.1939.3; L.N. 4 of 1963; XXXI.1966.2; XXV.1967.29; VIII.1990.3.*

666. (1) The decisions of the Criminal Court and of the Court of Criminal Appeal shall be carried into effect by the marshal or by any other person authorized by the Minister responsible for justice in that behalf.

(2) For the purposes of this article, a decision of the Court of Magistrates or of the Criminal Court shall be deemed to be a decision of the Court of Criminal Appeal, if an appeal is entered against such decision and such appeal is subsequently waived or declared null and void or taken to be abandoned under article 422.

Title IV

OF PROPERTY BELONGING TO THE PERSON CHARGED OR ACCUSED OR TO OTHER PERSONS AND CONNECTED WITH CRIMINAL PROCEEDINGS

Property to be held by registrar. *Amended by: XXV.1967.30. Substituted by: III.2002.155.*

667. Any property connected with criminal proceedings shall, subject to the following provisions of this Title, be held by the registrar until the conclusion of such proceedings including any proceedings of appeal.

**See* also s.24 of the Official Secrets Act (Cap.50).

Record of property. *Substituted by: III.2002.155.*

668. (1) All property connected with criminal proceedings shall be delivered by the court to the registrar and shall, subject to the following provisions of this Title, remain in the custody of the registrar except when required by the court for the hearing of such proceedings.

(2) The Minister responsible for justice may make regulations providing for the registration and preservation of any property connected with criminal proceedings and for the manner in which a record is to be kept of the movements of any such property.

Preservation of property. *Substituted by: III.2002.155.*

669. (1) The registrar shall ensure that all property delivered to him is properly catalogued, stored and preserved and kept in a secure place to be determined by the registrar.

(2) For the purposes of this article, the registrar may, with the approval of the Minister responsible for justice, appoint other persons to hold property or classes of property on his behalf under such terms and conditions as the Minister may think fit provided that the names of such persons shall be published in the Gazette.

Procès verbal to be drawn up when property is released. *Substituted by: III.2002.155.*

670. (1) Any property which is to be released by the registrar to any person or which is to be destroyed or otherwise disposed of in accordance with the provisions of this Title shall only be released, destroyed or otherwise disposed of following the drawing up of a *procès verbal* containing an accurate description of the property released, the quantity and quality thereof and any photographs, video recordings and computer images of such property as the magistrate or the registrar may deem fit should be taken.

(2) The *procès-verbal* shall be signed by the registrar and if the property is to be released, destroyed or disposed of during *in genere* proceedings or during the inquiry it shall also be signed by the magistrate. In every case where the property is to be released in favour of any person in the course of criminal proceedings which have not been finally determined that property shall only be so released after the person to whom the property is to be released gives an undertaking in writing to produce again such property on the order of a court.

(3) Notwithstanding any other provision of this Code or of any other law, any process-verbal drawn up in accordance with the provisions of this article including any photographs, video recordings and computer images shall be admissible in evidence in any criminal proceedings as if it were the property itself described in the *procès-verbal*.

(4) The provisions of this Title shall also *mutatis mutandis* apply to any property exhibited in the course of any proceedings under the provisions of Title II of Part II of Book Second of this Code even during such period that the relative *procès-verbal* is with the Attorney General.

(5) The provisions of this article shall *mutatis mutandis* apply to property disposed of in accordance with the provisions of articles 671, 672 and 673.

Prohibited property. *Substituted by: III.2002.155.*

671. (1) Saving the provisions of sub-article (2), where the Comptroller of Customs certifies that any property in the custody of the registrar is property which may not be imported into Malta the registrar shall apply to the competent criminal court and request it to order the disposal of the said property. The court shall allow the application where it is satisfied that the property in question is in Malta in contravention of the law.

(2) Where the property certified by the Comptroller of Customs as provided in sub-article (1) is property which has been exhibited as evidence in the course of criminal proceedings which have not been finally determined, the application by the registrar shall be served on the party charged or accused and on the Attorney General or the Commissioner of Police as the case may be for their submissions and the court shall not allow the application unless it is satisfied that the property itself is not or is no longer necessary as evidence in the proceedings.

(3) Where the court has ordered the disposal of the property in accordance with the provisions of this article the registrar shall dispose of such property by destroying it provided that the Minister responsible for justice may order that the property is to be disposed of in any other manner whatsoever for special reasons to be expressly stated in the order.

Property exhibited in certain proceedings. *Substituted by: III.2002.155. Amended by: VII.2022.68.* Cap. 37. Cap. 382. Cap. 233.

672. Notwithstanding any other provision of this Code or of any other law, where the property has been exhibited in court in the course of proceedings for an offence against the Customs Ordinance, the Excise Duty Act or against the External Transactions Act and the property has been forfeited in favour of the Government by virtue of the operation of any provision of this Code or of any other law such property shall be released in favour of the Comptroller of Customs. In any other case the property exhibited as aforesaid shall not be released, except in execution of a final judgment of the competent civil court, if the Comptroller of Customs objects to such release.

Disposal of property connected with criminal proceedings. *Substituted by: III.2002.155. Amended by: XXIV.2014.68; XXXI.2019.5.*

673. (1) Notwithstanding the foregoing provisions of this Title and subject to the provisions of article 671 the court shall, on the application of the Attorney General made at any time of the proceedings or, where the author of the crime is absent or unknown, before any proceedings are commenced, order the registrar to dispose of any property connected with criminal proceedings or with a crime, whether such property is liable to forfeiture or not, in any of the following cases:

(*a*) where, owing to the nature, quantity or dimensions of such property, considerable space is necessary to keep it;

(*b*) where such property is subject to deterioration or depreciation or the cost of its upkeep is out of proportion to its value;

(*c*) where it is not practicable or convenient for any other reason to keep such property in custody;

(*d*) where, owing to the absence of the party accused, the

trial is not concluded within two years from the day on which such property was first brought before the court;

(*e*) in any other case where the court deems it so proper.

(2) The application for an order as is referred to in sub-article (1) and in the same circumstances mentioned in that sub-article may also be made by the registrar in which case the application shall be served on the Attorney General for his reply within such time, being not less than two working days, as may be determined by the court and the application shall not be allowed where the Attorney General objects to the application:

Provided that, where the Attorney General objects to the application, the court may impose on the accused that the costs for the deposit and upkeep of the property, held by the Director of the Asset Recovery Bureau, connected with criminal proceedings or with the crime, be borne by the accused.

(2A) Notwithstanding the provisions of sub-article (2), where property connected with criminal proceedings or with the crime is held by the Registrar, the owner of that property may request the court that he be allowed to effect such maintenance works as may be required on the property; if the owner of the property does not make the request mentioned in this sub-article or, having made the request, and the request having been granted by the court, does not effect such maintenance works, the responsibility for any loss or damages suffered by the said property shall be borne by the said owner.

(3) The provisions of sub-articles (1) and (2) shall apply notwithstanding that the property is attached by a garnishee order.

(4) Where the court allows an application made under this article the order of the court shall be served on all the persons identified by the registrar to have an interest in the property, if their whereabouts are known, sohowever that the order of the court shall not be subject to revocation or modification except on the demand of the Attorney General.

(5) If the property is sold the proceeds shall be deposited in court and shall be disposed of on the conclusion of the proceedings in the same manner as if they were the property of which they are the proceeds.

(6) If the property is not sold the property may be disposed of as the registrar may deem fit subject to the payment of such indemnity as may be due to the owner of the property disposed of.

Release of property in the course of proceedings. *Substituted by: III.2002.155. Amended by: XVI.2006.23.*

674. (1) Notwithstanding any other provision of this Code or of any other law but subject to the provisions of article 671, where any property which is exhibited in court during the proceedings belongs to a person who is not involved as a principal, an accomplice or a conspirator in the criminal offence which is the subject of such proceedings, that person shall, upon proving in a satisfactory manner his title to the property and satisfying the court that there was no longer any need that the property remains materially exhibited in the record of the proceedings, be entitled to

have such property released in his favour by order of the Court under such terms and conditions as the Court may deem fit, saving, following such release, any right of the person charged or accused or of any other person according to law.

(2) The order referred to in sub-article (1) may be given either on the Court's own motion or following an application by the person claiming the property. Where the Court acts upon its own motion it shall announce its intention to make such an order by means of a decree. Any such decree or any application made by the person claiming the property in terms of this sub-article shall be served on the Attorney General or on the Commissioner of Police as the case may be, and on the person charged, or accused, each of whom shall be allowed five working days for a reply.

(3) Subject to the provisions of sub-article (4), if the property belongs to the party charged or accused and is in no manner connected with the offence or in any way required for the purpose of any criminal proceedings the court shall, after hearing the Attorney General or the Commissioner of Police, as the case may be, restore the property to the person charged or accused to whom the property belongs or deliver it to the person appointed by him in that behalf or to his lawful representative.

(4) Notwithstanding the provisions of sub-article (3), the court may abstain from ordering the restoration of the property to the person charged or accused -

(*a*) when the value of the thing is considerable and the person charged or accused is poor or of dubious means; or

(*b*) when the person charged or accused is tried for forgery with intent to misappropriate the property of another person, or for theft, or for any other offence against property:

Provided that the provisions of this sub-article shall not apply where the accused shall give sufficient security.

Disposal of property on conclusion of proceedings. *Substituted by: III.2002.155. Amended by: VIII.2015.38.*

675. (1) Saving the provisions of article 671 and of the following sub-articles of this article, where the court on the conclusion of any criminal proceedings has not provided how property exhibited during the proceedings is to be disposed of according to law, any property so exhibited shall be preserved by the registrar.

(2) Where the Court of Magistrates as court of criminal inquiry discharges the person charged as provided in article 401(2) and the Court decides how the property exhibited before it is to be disposed of such decision shall not be given effect to before the lapse of the period of one month referred to in article 433(3) and if the Attorney General, within that period, issues a warrant for the arrest of the person discharged the said decision shall remain without effect.

(3) Where the Court of Magistrates as court of criminal inquiry discharges the person charged but does not decide how the property exhibited in the proceedings is to be disposed of, and the Attorney

General does not issue a warrant for the arrest of the person discharged, such property shall be preserved by the registrar and if within one year from the date of discharge no fresh proceedings are instituted as provided in article 434 and the property has not been released in accordance with the provisions of this title the registrar may apply to the court for an order authorising the return of the property to the person to whom it belongs, if known, or declaring the property forfeited in favour of the Government of Malta where the person to whom the property belongs is not known.

(4) Where in any final judgment of any court of criminal jurisdiction no provision is made for the disposal of any property exhibited in the proceedings and no claim is made for the release of such property within one month from the date of such judgment such property, unless forfeited by virtue of the provisions of article 23 or any other provision of this Code or of any other law, shall be forfeited and the court shall, on the application of the registrar and subject to the provisions of sub-article (5), order the release of such property in favour of the Government of Malta.

(5) Any person who immediately before the forfeiture had a legal title to the property forfeited as aforesaid, or the lawful heirs thereof, shall be entitled to compensation for the property forfeited provided that where the property has been sold such compensation shall not exceed the amount realised by the Government from the sale of the property and provided also that compensation is demanded by an application to the competent court within six months from the date of the order mentioned in sub-article (2).

Forfeited property. *Substituted by: III.2002.155. Amended by: XXIV.2014.69; XXXI.2019.6.*

676. Any property forfeited in favour of the Government in terms of the provisions of this Code or of any other law may be disposed of immediately by the Director of the Asset Recovery Bureau unless the property has been exhibited in the course of a criminal prosecution in which case that property shall not be disposed of before final judgment and not without the prior consent of the Commissioner of Police or of the Attorney General as the case may be.

When property is to be returned by order of the court in its final judgment. *Substituted by: III.2002.155.*

677. (1) Any property which is to be returned to any person in pursuance of an order made by the court in its final judgment shall be retained by the registrar for a period of six months within which period it shall be incumbent on that person, or his lawful heirs, to claim from the registrar the said property. Within the same period the registrar shall be under an obligation to make all efforts to trace and notify with the court's order the person to whom the property is to be returned.

(2) Where the person to whom the property is to be returned, or his lawful heirs, either spontaneously or after being notified with the court's order, fails to claim the property within the period laid down in sub-article (1) or where the registrar within the same period fails to trace that person, or his lawful heirs, and no claim as aforesaid is spontaneously made for the property, that property shall be forfeited in favour of the Government.

(3) In the event that the property is owned by co-owners the registrar shall be deemed to have complied with his obligations

according to law if he delivers the property to any one of the owners.

(4) The registrar shall by application refer to the court which delivered judgment any dispute regarding the title to the property. The application shall be served on all the parties who shall be allowed a period of five working days within which to reply and after the lapse of the said period the court shall appoint the application for hearing and after hearing the parties shall decide on the disposal of the property. No appeal shall lie from the decision of the court.

(5) If the person to whom the property is to be returned, or his lawful heirs, claim the property within the period mentioned in sub-article (1) such property shall, in the absence of a lawful obstacle, be returned by the registrar free of charge.

(6) If the property has been forfeited in terms of this article and was subsequently sold by auction following the publication of advertisements, the person to whom the property was to be returned in accordance with the order of the court, or his lawful heirs, may claim the amount realised from the sale after subtracting any costs and fees incurred by the registrar provided that such claim is made within two years of the property having been disposed of.

When owner is unknown. When property is to be returned by order of the court in its final judgment. *Substituted by: III.2002.155.*

678. (1) Where the court in its final judgment has ordered that any property is to be returned but does not name the person to whom the property is to be so returned and the identity of that person is unknown that property shall be retained by the registrar for a period of six months within which period any person claiming to have a legal title to the property may come forward and claim the property.

(2) Where the person having a legal title to the property fails to claim the property within the period specified in sub-article (1), or where the claims made in that period have been rejected by the court, the property shall be forfeited in favour of the Government.

(3) Any claim under sub-article (1) shall be made by application to the court before which the property was exhibited and shall be served on the registrar and on the Commissioner of Police or on the Attorney General, as the case may be, who shall have ten working days within which to file a reply. On the lapse of the time for the filing of a reply the court shall give its decision on the application and no appeal shall lie from that decision.

(4) If the court allows the application the property shall be delivered to the claimant free of charge.

Rules to be observed in the disposal of forfeited property. When property is to be returned by order of the court in its final judgment. *Amended by: XXV.1967.31. Substituted by: III.2002.155. Amended by: XXIV.2014.70. Substituted by: XXXI.2019.7.*

679. In disposing of property forfeited in favour of the Government in terms of this Code or of any other law the Director of the Asset Recovery Bureau shall observe the following rules:

(*a*) property which is of no or of little value may be disposed of at the discretion of the Asset Recovery Bureau provided that proper record of such disposal is kept;

(*b*) firearms, ammunition, explosives or other chemical or dangerous substances, excluding collectibles, shall be consigned to the proper authorities designated by the Minister responsible for justice for destruction by them;

(*c*) other property which is of value shall be sold by auction by the Director of the Asset Recovery Bureau following the publication of at least three advertisements in a daily newspaper and any moneys deriving therefrom shall accrue to the Government unless the Director of the Asset Recovery Bureau deems it more beneficial to Government to dispose of such property otherwise.

Restoration of property to accused on termination of trial. *Amended by: XXV.1967.32.*

680. *Deleted by: III.2002.155.*

Restoration of property to owner when accused is absent or offender unknown. *Amended by: IV.1856.53.*

681. *Deleted by: III.2002.155.*

Procedure on restoration of property to owner. *Amended by: XXIX.1990.33.*

682. *Deleted by: III.2002.155.*

Sale by auction of property connected with criminal proceedings. *Added by: XXI.1971.35. Amended by: LVIII.1974.68.*

683. *Deleted by: III.2002.155.*

Sale by auction of property unclaimed by owner. *Added by: XXIX.1990.34.*

683A. *Deleted by: III.2002.155.*

Sale, publication and restoration to be effected upon order of court.

684. *Deleted by: III.2002.155.*

When proceeds of sale are adjudged in favour of Government. *Amended by: XXVII.1975.39.*

685. *Deleted by: III.2002.155.*

Definition of property. *Added by: XXIV.2014.71.*

685A. For purposes of this Title "property" shall have the same meaning assigned to it by article 23B.

Title V

OF THE RESPECT DUE TO THE COURT

Applicability of provisions of Code of Organization and Civil Procedure relating to the respect due to the court. *Amended by: XI.1900.91.* Cap. 12.

686. The provisions of the Code of Organization and Civil Procedure relating to the respect due to the court, are applicable to the courts of criminal jurisdiction.

Title VI

OF PRESCRIPTION

Sentences not barred by prescription. *Amended by: XI.1900.92; III.2002.156.*

687. (1) Sentences awarding punishment shall not be barred by prescription notwithstanding the lapse of any time.

(2) The period of prescription in respect of all criminal offences shall be suspended from the moment a charge and, or bill of indictment is served on the person charged or accused until such time as a final and definitive judgment is delivered in the proceedings which commenced as a result of such charge or bill of indictment.

Prescription barring criminal actions. *Amended by: XI.1900.92; VIII.1909.62; XXI.1971.36; XLIX.1981.4.*

688. Save as otherwise provided by law, criminal action is barred-

(*a*) by the lapse of twenty years in respect of crimes liable to the punishment of imprisonment for a term of not less than twenty years;

(*b*) by the lapse of fifteen years in respect of crimes liable to imprisonment for a term of less than twenty but not less than nine years;

(*c*) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;

(*d*) by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year;

(*e*) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (*multa*) or to the punishments established for contraventions;

(*f*) by the lapse of three months in respect of contraventions, or of verbal insults liable to the punishments established for contraventions.

Extenuating circumstances and previous conviction not to be taken into account in reckoning period for prescription. *Amended by: XI.1900.92.*

689. For the purposes of prescription, regard shall be had to the punishment to which the offence is ordinarily liable, independently of any excuse or other particular circumstance by reason of which the offence is, according to law, liable to a lesser punishment; nor shall any regard be had to any increase of punishment by reason of any previous conviction.

Reckoning of time according to calendar. *Amended by: XI.1900.92.*

690. In computing the period established for prescription, the months and years shall be reckoned according to the ordinary calendar.

Commencement of prescription. *Amended by: XI.1900.92.*

691. (1) With regard to a completed offence, the period of prescription shall run from the day on which the offence was completed; with regard to an attempted offence, from the day on which the last act of execution was committed; with regard to a continuous offence, from the day on which the last violation took place; and with regard to a continuing offence from the day on which the continuance ceased.

Suspension of prescription.

(2) Where the criminal action cannot be instituted or proceeded with except on a special authorization, or after the determination of any issue upon separate proceedings, the period of prescription shall be suspended, and shall continue from the day on which the authorization is granted or the issue is determined.

Prescription not to run when offender is unknown. *Amended by: XI.1900.92.*

692. The period of prescription in respect of crimes shall not commence to run when the offender is unknown.

Interruption of prescription. *Amended by: XI.1900.92.*

693. (1) The period of prescription is interrupted by any act of the proceedings served on the party charged or accused in respect of the fact with which he is charged.

(2) The period of prescription is also interrupted by the warrant of arrest or, where there are no grounds for the arrest, by the summons, although the warrant of arrest or the summons shall have had no effect on account of the fact that the party charged or accused had absconded or left Malta.

(3) Where the period of prescription has been interrupted, it shall recommence to run from the day of the interruption.

(4) The interruption of prescription shall operate in regard to all persons who took part in the offence, even though the act of interruption takes place against one person only.

Application of prescription *ex officio*. *Amended by: XI.1900.92.*

694. Prescription shall be applied *ex officio*, and it shall not be lawful for the party charged or accused to waive prescription.

Added by: XXX.1934.27.

Title VII

OF FEES

Power of Minister responsible for justice to fix fees. *Added by: XXX.1934.27. Amended by: L.N. 4 of 1963; XXXI.1966.2.*

695. (1) The Minister responsible for justice shall have power to amend or add to the scales of fees in the Schedules annexed to this Code and to fix other fees in substitution for those in the said Schedules.

(2) Any such amendment, addition or substitution shall come into force on the day of its publication in the Gazette.

Added by: VIII.1974.2. Amended by: XXXI.2002.207.

Title VIII

GENERAL PROVISIONS

Interpretation. *Added by: VIII.1974.2.*

696. In this Code the phrase "working days" does not include Saturdays.

Regulations. *Added by: XXXI.2002.208.*

697. The Minister responsible for justice may make regulations for the implementation of the provisions of this Code and, in general, to bring the provisions of this Code into effect.

Compensation of victims of crime. *Added by: XVI.2006.24.*

698. (1) The Minister may make regulations to establish a scheme for the compensation of victims of crime under such conditions and restrictions and subject to such considerations and qualifications as the Minister may provide and to establish a fund to finance such a scheme.

(2) Without prejudice to the generality of sub-article (1), any scheme established under this article:

(*a*) may be of general application extending to all crimes or may be limited to such crimes as may be specified in the regulations;

(*b*) may provide that compensation by Government to the victim shall only be payable when the victim has exhausted all remedies available to him against the offender for the payment of damages suffered by the victim;

(*c*) may provide for a ceiling on the amount payable to any individual victim or group of victims by way of compensation under the scheme.

(3) The Government shall be subrogated in the rights of the victim against the offender for the payment of any sums received by the victim from the Government in accordance with any scheme established by regulations under this article.

Power to make regulations. *Added by: XXIV.2014.72. Substituted by: V.2022.13.*

699. Notwithstanding other provisions of this Code and of any other law, the Minister responsible for Justice may make regulations to regulate:

(*a*) the methods of service of judicial acts under this Code; and

(*b*) the right of access by electronic means, by the Prosecution and by any advocate or legal procurator representing the charged or accused, the victim, or any other interested party, to the record of proceedings and other documents of courts of criminal jurisdiction; and

(*c*) in respect of any other matter which in the opinion of the Minister responsible for Justice is incidental and, or consequential to any matter provided for in paragraphs (a) and (b).

Transfer and receipt of record by electronic means not to give rise to a procedural defect. *Added by: IV.2023.13. Amended by: XIX.2023.3.*

699A.[*] Any reference in this Code to the receipt of the record of a case by a court or by the Attorney General or to the transfer of the record of a case from a court to another court or to the Attorney General shall be deemed to include a reference to the granting of access to the said record by electronic means and to the transfer or receipt of a scanned copy of the record by electronic means and no nullity or other defect in the procedure followed shall arise when the transfer or the receipt of the record is made by one (1) of the electronic means referred to in this article instead of by physical transfer or when it is made by physical transfer instead of by electronic means.

Asset Recovery Bureau. *Added by: VIII.2015.39.*

700. (1) The Minister may, by regulations, provide for the setting up of an Office to be known as the Asset Recovery Bureau, to provide for its structure, powers, distribution of duties, liability for damages, administrative and operational procedures including internal proceedings, the legal and judicial representation of the Office, its funding and anything ancillary or incidental thereto.

(2) The Office, shall be a body corporate having a distinct legal personality and may also be established as a Government Agency. The Office shall be capable of entering into contracts, of concluding memoranda of understanding or other agreements with any foreign body, authority or agency, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act including the borrowing of money.

(3) The Minister may by regulations further provide for the functions and powers of the Office which shall be responsible for the tracing, identification, freezing, confiscation and management of assets and property related, directly and indirectly, to criminal activity with a view to combating crime and for this purpose may authorise the Office to exercise any such powers as may be exercised by the Commissioner of Police, by the Commissioner for

**Vide* Act XIX of 2023.

Revenue or any other public authority established by law.

(4) The Minister may by virtue of the said regulations direct that this Code or any other law shall have effect in relation to the functions, powers and operations of the Office and its officers and staff subject to such conditions, exceptions, adaptations or modifications as may be specified in the said regulations.

(5) Without prejudice to the generality of the foregoing the Minister may make regulations for anything incidental, consequential or ancillary to the matters provided in this article.

(6) For purposes of this article:

"Commissioner of Police" shall have the meaning assigned to it under the Police Act;

Cap. 164.

"Commissioner for Revenue" shall have the meaning assigned to it under the Commissioner for Revenue Act.

Cap. 517.

Filing of judicial documents by electronic means. *Added by: III.2021.2.*

701. The Minister responsible for justice may make regulations providing for or permitting the:

(*a*) filing of judicial acts by electronic means,

(*b*) transmission and notification by electronic means of judicial acts, court proceedings, documentation and notifications, and without prejudice to the generality of the foregoing, those regulations may provide for:

(i) the form of judicial acts performed by electronic means;

(ii) the transmission, filing and service of documents by electronic equipment;

(iii) keeping court records by electronic means and the way that such records are to be authenticated and how copies are to be issued and authenticated;

(iv) the fees that may be charged in respect of the use of those electronic means in connection with the making, transmission, filing or service of judicial acts, and for the making of copies of records of the court; and

(v) anything consequential or incidental thereto including such transitional provisions as the Minister may deem necessary or expedient and relating thereto.

Power of the Minister to make regulations. *Added by: XLIII.2021.5.*

702. The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which make provision for sharing of information between competent authorities.

Added by:
L.N. 37 of 2015.

TARIFF*

FEES PAYABLE TO THE REGISTRY OF THE COURTS OF CRIMINAL JURISDICTION, MALTA AND GOZO

For the filing of an application of an appeal from judgements of the Courts of Magistrates	€25
For the filing of an application of an appeal from judgements of the Criminal Courts	€50
For the opening of the registry outside working hours but no fee is payable if request is according to sections 409(A) or 412(B) of the Criminal Code (Cap. 9).	€75
For every notification of witnesses in the Criminal Court	€7
For photocopies from any criminal proceeding:	
i. For every page not authenticated	€0.10
ii. For every page authenticated	€0.35

Added by:
XVI.2006.25.

SCHEDULE D

(Article 575A)

(*a*) any crime punishable with a maximum term of imprisonment of nine years or more;

(*b*) the crimes envisaged in articles 198 to 207, 216(1)(*a*), (*b*), (*c*) and (*e*), 217, 262(1)(*a*) and (*b*), and 263 of this Code (other than unlawful use or consumption of a service);

(*c*) any theft committed against any person under the age of twelve years or over the age of sixty years other than the theft of vehicles.

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*This Tariff substituted Schedules A, B and C as from 1 January, 2015 - see Legal Notice 37 of 2015.

Schedule E

Added by: IV.2014.28. Amended by: LI.2016.9.

[Article 534AB]

PART I

Letter of Rights

You have the following rights when you are arrested or detained:

A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID

You have the right to access a lawyer whilst in detention. Such right begins from the moment of your detention and before you are questioned.

You have the right to be provided with a list of advocates and a list of legal procurators from which you can choose one to assist you or to elect to be assisted by the Advocate for Legal Aid. In the latter case, legal assistance is free of charge. The police may not indicate to you the name of the lawyer you may engage during your arrest or detention.

Not less than one hour before the commencement of questioning, you and your lawyer have the right to be informed of the alleged offence about which you will be questioned. Such information shall be provided to you prior to the commencement of questioning, which time shall not be less than one hour before questioning starts.

Upon detention, you have the right to meet in private and communicate with the lawyer representing you, including prior to questioning by the police.

You have the right for your lawyer to be present and participate effectively when questioned.

All questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person are, where possible in the opinion of the interviewer to be recorded by audiovisual means; you have the right to be given a copy of the recording following the conclusion of the questioning.

You have the right for your lawyer to attend the following investigative or evidence-gathering acts:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of an offence.

The confidentiality of your communication with your lawyer in the exercise of your right to access a lawyer shall be respected.

Upon arrest you are to be informed of your right to have at least one person, such as a relative, an employer or any other person of your choice informed of your deprivation of liberty.

If you are a child, that is, a person below the age of eighteen years, a person entitled to exercise parental authority, tutorship, curatorship or guardianship over you is informed of your arrest or detention and the reasons for such arrest or detention.

B. INFORMATION ABOUT THE ACCUSATION

If you are arrested, the police shall have the duty to inform you that you are in fact under arrest, even if the arrest appears evident.

You have the right to be informed, at the time of your arrest or your detention, in a language you understand, the reasons for your arrest or detention.

If you have been arrested by a warrant issued by a Magistrate, you shall have the right to a copy of that warrant which shall be signed by the Magistrate who issued the said warrant.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of the essential documents, including any order by a Judge or Magistrate allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary.

D. RIGHT TO REMAIN SILENT

While questioned by the police or by other competent authorities, you have the right to remain silent. Your lawyer can help you in your decision.

E. ACCESS TO DOCUMENTS

When you are arrested and detained, you, or your lawyer, have the right to access essential documents you need to challenge the arrest or detention.

If your case goes to court, you or your lawyer have the right to access the material evidence for or against you.

F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY

When you are arrested or detained you may, if you want to, ask the police to inform a relative or a friend of yours of your detention.

In certain cases according to law, the right to inform another person of your detention may be temporarily restricted.

In such cases the police will inform you of this.

If you are a foreigner, inform the police if you want your consular authority or embassy to be informed of your detention.

You may choose to also inform the police if you want to contact an official of your consular authority or embassy.

G. URGENT MEDICAL ASSISTANCE

When you are arrested or detained, you shall have the right, on

your request, to a doctor of your choice, as long as such doctor may be easily contacted.

Please inform the police if you are in need of urgent medical assistance.

H. PERIOD OF DEPRIVATION OF LIBERTY

After your arrest you may be deprived of liberty or detained for a maximum period of 48 hours.

Ask your lawyer or the judge for information about the possibility to challenge your arrest, to review the detention or to ask for provisional release.

PART II

Letter of Rights for persons arrested on the basis of a European Arrest Warrant

You have been arrested on the basis of an European Arrest Warrant. You have the following rights:

A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

B. ASSISTANCE OF A LAWYER

You have the right to access a lawyer whilst in detention. Such right begins from the moment of your detention and before you are questioned.

You have the right to be provided with a list of advocates and a list of legal procurators from which you can choose one to assist you or to elect to be assisted by the Advocate for Legal Aid. In the latter case, legal assistance is free of charge. The police may not indicate to you the name of the lawyer you may engage during your arrest or detention.

Not less than one hour before the commencement of questioning, you and your lawyer have the right to be informed of the alleged offence about which you will be questioned. Such information shall be provided to you prior to the commencement of questioning, which time shall not be less than one hour before questioning starts.

Upon detention, you have the right to meet in private and communicate with the lawyer representing you, including prior to questioning by the police.

You have the right for your lawyer to be present and participate effectively when questioned.

All questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person are, where possible in the opinion of the interviewer to be recorded by audiovisual means; you have the right to be given a copy of the recording following the conclusion of the questioning.

You have the right for your lawyer to attend the following investigative or evidence-gathering acts:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

The confidentiality of your communication with your lawyer in the exercise of your right to access a lawyer shall be respected.

Upon arrest you are to be informed of your right to have at least one person, such as a relative, an employer or any other person of your choice informed of your deprivation of liberty.

If you are a child, that is, a person below the age of eighteen years, a person exercising parental authority, tutorship, curatorship or guardianship over you is informed of your arrest or detention and the reasons for such arrest or detention.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

D. POSSIBILITY TO CONSENT

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. This decision is irrevocable. Ask the authorities or your lawyer for more information.

E. HEARING

If you do not consent to your surrender, you have the right to be heard by a judicial authority.