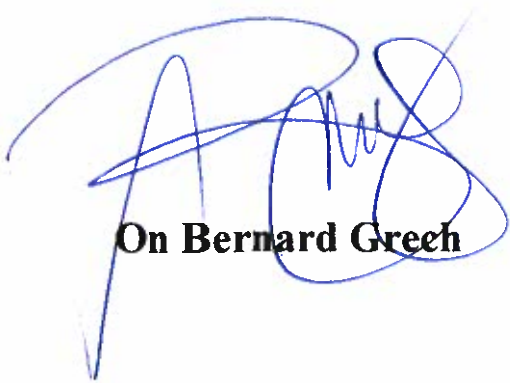


L-On. Kap tal-Oppozizzjoni, l-On David Agius, l-On Robert Cutajar f'isem l-Oppozizzjoni (PN) jipproponu l-Ewwel Qari ta':

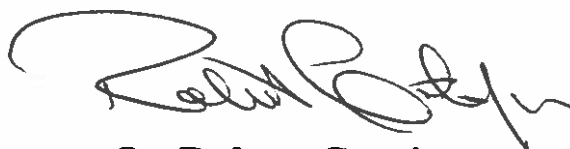
Abbozz ta' Ligi li jemenda l-Kodici Kriminali sabiex jitwaqqaf l-Ufficju tal-Magistrat Inkwirenti Specjali kontra l-Korruzzjoni.



On Bernard Grech



On David Agius



On Robert Cutajar

Abbozz ta' Ligi

imsejjah

Att biex jipprovdi ghat-twaqqif ta' Ufficju ta' Magistrat Inkwirenti Speċjali kontra l-Korruzzjoni

JIGI APPROVAT mill-President, fuq u bil-parir u kunsens tal-Kamra tar-Rappreżentanti, f'dan il-Parlament imlaqqa', u bl-awtorita' tal-istess, kif gejj:-

Titolu fil-qosor

It-titolu qasir ta' dan l-Att hu l-Att tal-2022 li jemenda l-Kodici Kriminali minn hawn imsejjah l-"Att Principali".

1. Minnufih wara l-artiklu 569 tal-Kodici Kriminali, ikun hemm iz-zieda ta' dawn l-Artikli godda li gejjin:

L-interpretazzjoni

569A(1) sakemm il-kuntest ma jitlobx mod ieħor:

“prattiki korrotti” għandha t-tifsira mogħtija lilha fis-subartiklu (2) ta' dan l-artiklu;

“uffiċjal pubbliku” tfisser id-detentur ta' kwalunkwe kariga pubblika jew persuna maħtura biex taġixxi fi kwalunkwe tali kariga, u tinkludi mhux biss l-awtoritajiet kostitwiti, civili u militari, iżda wkoll il-persuni kollha li huma maħtura legalment biex jamministraw kwalunkwe parti tas-setgħa eżekuttiva tal-Gvern, jew biex iwettqu kwalunkwe servizz pubbliku ieħor impost bil-liġi, kemm jekk ġudizzjarju, amministrattiv jew imħallat, u jinkludi *persons of trust* u *positions of trust*; Membri tal-Kamra tar-Rappreżentanti; kwalunkwe persuna li hija fdata bi jew li għandha funzjonijiet relatati mal-amministrazzjoni ta' korp statutorju li għandu personalità ġuridika distinta, kwalunkwe kunsill, Bord, panel, kumitat jew korp simili ieħor stabbilit minn kwalunkwe liġi, jew li huwa impjegat ma' korp bħal dan; u jinkludi, fir-

rigward ta' kwalunkwe att jew ommissjoni matul il-mandat ta' tali kariga, kwalunkwe persuna li, fi żmien perijodu ta' hames snin qabel jew fi kwalunkwe żmien wara d-dhul fis-seħh ta' dan l-Att, kienet ufficjal pubbliku;

“korp statutorju” tfisser kwalunkwe korporazzjoni jew korp ieħor stabbilit bil-ligi u jinkludi wkoll kwalunkwe sħubija jew korp ieħor li fih il-Gvern ta' Malta, jew kwalunkwe korp bħal dak imsemmi qabel, għandu interess ta' kontroll jew li fuqhom għandu kontroll effettiv.

Prattici korrotti

569A (2) Dawn li ġejjin għandhom ikunu prattiki korrotti skont dan l-Att:

- a) l-ommissjonijiet u ghemil li jikkostitwixxu r-reati skont l-Artikoli 112 sa 118, 120 sa 121D, 124 sa 127A, u 138 tal-Kodiċi Kriminali;
- b) ir-reat ta' allegazzjoni ta' influwenza illegali skont l-artiklu 13 ta' dan l-Att;
- c) l-atti jew l-ommissjonijiet li jikkostitwixxu tentattiv biex jitwettaq kwalunkwe wieħed mir-reati msemmija hawn fuq jew li jikkostitwixxu kompliċità fi kwalunkwe wieħed minn dawk ir-reati skont l-Artikoli 41 u 42 tal-Kodiċi Kriminali.

Maġistrat Inkwirenti Speċjali

2. 569B(1) Il-President ta' Malta għandu jassenja lil wieħed mill-Maġistrati tal-Qrati Inferjuri, dmirijiet bħala Maġistrat Inkwirenti Speċjali.

(2) Il-Maġistrat Inkwirenti Speċjali għandu jkollu s-setgħat u għandu jeżerċita l-funzjonijiet stabbiliti f'dan l-Att, u waqt li jkun assenjat tali dmirijiet ma għandu jwettaq l-ebda dmir ieħor bħala Maġistrat tal-Qrati Inferjuri.

(3) Assenjazzjoni ta' dmirijiet bħala Maġistrat Inkwirenti Speċjali għandha tkun għal perijodu ta' sitt snin. Malli jintemm l-imsemmi perijodu ta' sitt snin, Maġistrat jista' jerga' jigi jassenjat dawn id-dmirijiet għal perjodi oħra ta' tliet snin kull wieħed.

(4) Il-Maġistrat Inkwirenti Speċjali ma jistax matul il-perijodu tal-inkarigu tiegħu bħala tali jitneħħa minn dawn id-dmirijiet jew jigi assenjat dmirijiet oħra. Madankollu,

huwa għandu jieqaf milli jaġixxi bhala Maġistrat Inkwirenti Speċjali jekk għal kwalunkwe kawża ma jibqax Maġistrat.

(5) Fl-eżerċizzju tal-funzjonijiet tiegħu taht dan l-Att il-Maġistrat Inkwirenti Speċjali għandu jaġixxi b'mod indipendenti u m'għandux ikun soġġett għad-direzzjoni jew il-kontroll ta' kwalunkwe persuna jew awtorità oħra, hliet skont il-liġi prevista.

Funzjonijiet u dmirijiet ta' Maġistrat Inkwirenti Speċjali

3. 569C(1) Għandha tkun il-funzjoni tal-Maġistrat Inkwirenti Speċjali li jwettaq l-inkjesti, iwettaq l-investigazzjonijiet u jagħmel rapport dwarhom lill-Ispeaker kif previst f'dan l-Att.

(2) Azzjoni kriminali fir-rigward ta' prattiki korrotti għandha tispetta lill-Maġistrat Inkwirenti Speċjali.

(3) Jekk, f'kazijiet fejn l-eżerċizzju ta' azzjoni kriminali tispetta lill-Maġistrat Inkwirenti Speċjali, jekk huwa, fuq kwalunkwe rapport fir-rigward tat-twertiq ta' prattika korrotta, jirrifjuta li jibda proċedimenti, għandu jkun legittimu li l-persuna li tkun għamlet ir-rapport tagħmel rikors lill-Qorti Kriminali għal ordni lill-Maġistrat Inkwirenti Speċjali biex jibda proċedimenti; u jekk, wara li jinstemgħu, fejn meħtieġ, il-provi pprezentati mill-applikant u l-Maġistrat Inkwirenti Speċjali, il-Qorti tkun sodisfatta li r-rapport huwa *prima facie* ġustifikat, hija għandha tilqa' r-rikors u għandha, permezz tar-Registratur, tinnotifika lill-Maġistrat Inkwirenti Speċjali dwar l-ordni mogħtija fuqha:

Qabel ma tittiehed kwalunkwe azzjoni dwar kwalunkwe tali applikazzjoni, l-applikant għandu jikkonferma r-rapport bil-ġurament, u għandu jirrikonoxxi b'somma li għandha tiġi stabbilita mill-qorti, biex jagħti evidenza waqt il-proċess, jekk ikun meħtieġ, jew biex jipprovdi kwalunkwe evidenza bħal din għad-dispożizzjoni tiegħu li tista' twassal għall-kundanna tal-parti akkużata.

(4) Id-dispożizzjonijiet tas-subartiklu 2 tal-Artiklu 383, l-artikli 386 u 387 tal-Kodici Kriminali għandhom, sa fejn ikun applikabbli, japplikaw għal kwalunkwe rikonoxxenza skont is-subartiklu (3) ta' dan l-artiklu.

Uffiċċju u persunal tal-Maġistrat Inkwirenti Speċjali

4. 569D(1) Il-Ministru responsabbli għall-Ġustizzja għandu jipprovdi lill-Maġistrat Inkwirenti Speċjali b'bini xieraq għall-uffiċċju tiegħu; u għandu

b'konsultazzjoni mal-Maġistrat Inkwirenti Speċjali jiddetermina l-htigiet ta' impjegati tal-uffiċċju tiegħu u għandu jassenja uffiċjali pubbliċi għall-uffiċċju tal-Maġistrat Inkwirenti Speċjali kif xieraq:

Ebda persuna ma tista' tigi assenjata dmirijiet fl-uffiċċju tal-Maġistrat Inkwirenti Speċjali hlief bl-approvazzjoni tal-Maġistrat Inkwirenti Speċjali.

(2) Il-Maġistrat Inkwirenti Speċjali għandu jkollu s-setgħa li jitlob l-assistenza tal-Pulizija fit-twettiq ta' kwalunkwe investigazzjoni dwar prattiki korrotti allegati jew suspettati skont dan l-Att u l-Kummissarju tal-Pulizija għandu jipprovdi uffiċjali tal-pulizija biex jagħtu l-assistenza mitluba:

Id-dispożizzjonijiet tal-proviso għas-subartiklu (1) ta' dan l-artiklu għandhom *mutatis mutandis* japplikaw għal tali uffiċjal tal-pulizija; u dment ukoll li fl-għoti ta' dik l-assistenza l-Pulizija għandu jkollha u teżercita biss dawk is-setgħat li huma awtorizzati jeżerċitaw taht il-Kodiċi Kriminali jew kwalunkwe liġi oħra.

(3) Minkejja d-dispożizzjonijiet ta' kwalunkwe liġi, uffiċjali pubbliċi assenjati dmirijiet fl-Uffiċċju tal-Maġistrat Inkwirenti Speċjali kif previst fis-subartiklu (1) u l-uffiċjali tal-Pulizija dettaljati biex jagħtu assistenza lill-Maġistrat Inkwirenti Speċjali kif previst fis-subartiklu (2) ma għandhomx matul tali inkarigu jew waqt li jkunu dettaljati b'dan il-mod, mingħajr il-kunsens tagħhom jew dak tal-Maġistrat Inkwirenti Speċjali, jiġu trasferiti jew dettaljati għal dmirijiet oħra.

Rapporti lill-Maġistrat Inkwirenti Speċjali

5. 569E(1) Kwalunkwe persuna tista' bil-gurament tagħmel rapport lil Maġistrat Inkwirenti Speċjali fir-rigward ta' kwalunkwe prattika korrotta li allegatament twettqet minn uffiċjal pubbliku:

B'dan pero li Maġistrat Inkwirenti Speċjali jista' jibda investigazzjonijiet fuq inizjattiva tiegħu stess.

(2) Ir-rapport imsemmi fis-subartiklu (1) ta' dan l-artiklu għandu jkun fih indikazzjoni tal-fatti kollha li fl-opinjoni tal-persuna li tagħmel ir-rapport jistgħu jkunu rilevanti għall-investigazzjoni li għandha titwettaq mill-Maġistrat Inkwirenti Speċjali.

(3) Mal-wasla ta' kwalunkwe rapport kif imsemmi fis-subtaqsimiet preċedenti ta' din it-taqsimi l-Maġistrat Inkwirenti Speċjali għandu jwettaq investigazzjoni dwar l-allegata prattika korrotta u għal dan il-għan għandu jkollu s-setgħat kollha mogħtija lil Maġistrat tal-Qrati Inferjuri fl-artikli 546 sa 569 tal-Kodiċi Kriminali, biex isejjaħ lix-xhieda u biex jamministra l-gurament u biex jitlob l-assistenza tal-Pulizija fit-twettiq tal-investigazzjonijiet dwar prattika korrotta allegata jew suspettata skont dan l-Att u

l-Pulizija għandha tagħti l-assistenza mitluba skond kif ipprovdut fl-artiklu 5(2) ta' dan l-Att:

B'dan pero li Maġistrat Inkwirenti Speċjali għandu jisma' lix-xhieda kollha personalment u ma għandux jiddelega s-smiġh tax-xhieda lil kwalunkwe espert jew uffiċjal tal-pulizija:

B'dan ukoll li l-inkjesti relatati ma' *in genere* u *reperti* ma jitwettqux mill-Maġistrat Inkwirenti Speċjali.

(4) Kwalunkwe persuna mharrka mill-Maġistrat Speċjali Inkwirenti kif imsemmi qabel li tirrifjuta, jew mingħajr raġuni suffiċjenti tonqos milli tattendi fil-hin u l-post imsemmija fit-tahrifa, jew tirrifjuta, mingħajr raġuni suffiċjenti, li twieġeb jew li twieġeb bis-sħiħ u b'mod sodisfaċenti, sa fejn taf u temmen, il-mistoqsijiet kollha li jsirulha mill-Maġistrat Speċjali tal-Inkwirenti, tehel, wara kundanna, għal multa (multa) li ma taqbiżx l-elfejn euro (€2,000) jew sa tliet xhur prigunerija, jew dik il-multu u prigunerija flimkien:

Bla pregudizzju għall-ġeneralità tad-dispożizzjoni tas-subartiklu (3) ta' dan l-artiklu, l-ebda persuna li tixhed quddiem il-Maġistrat Inkwirenti Speċjali ma tista' tigi mġieghla twieġeb kwalunkwe mistoqsija li jkollha t-tendenza li tesponiha għal kwalunkwe prosekuzzjoni kriminali, u kull persuna bħal din għandha, fir-rigward ta' kwalunkwe evidenza mogħtija quddiem il-Maġistrat Inkwirenti Speċjali, tkun intitolata għall-istess privileġġi li xhud li jixhed quddiem qorti huwa intitolat għalihom.

(5) Meta l-Maġistrat Inkwirenti Speċjali jkun tal-fehma li l-eżami ta' kwalunkwe xhud jew kwalunkwe proċess ieħor tal-investigazzjoni minn awtorità barra minn Malta jkun meħtieġ, il-Maġistrat Inkwirenti Speċjali jista' jfassal ittra ta' talba u permezz tar-registratur jgħaddiha lill-awtorità msemmija barra minn Malta flimkien mal-interrogatorji jew deskrizzjoni tal-azzjoni li għandha titwettaq mill-awtorità barra minn Malta.

(6) Il-proċedimenti fir-rigward ta' kwalunkwe reat kontra dan l-artiklu għandhom jitmexxew fuq istanza tal-Maġistrat Inkwirenti Speċjali mill-Pulizija quddiem il-Qorti tal-Maġistrati Malta jew Ghawdex skont il-każ.

Procés-verbal

6. 569F(1) Il-Maġistrat Inkwirenti Speċjali għandu jfassal proċess verbali tal-investigazzjoni li għandu jinkludi l-konklużjonijiet tiegħu dwarha inkluz, fejn ikun hemm, ir-reati li jistgħu jsiru kontra kwalunkwe persuna u rapport tal-prova b'appoġġ għaliha.

(2) Il-*procés-verbal* għandu jkun akkumpanjat minn traskrizzjoni tal-provi kollha miġbura mill-Maġistrat Inkwirenti Speċjali kif ukoll minn kwalunkwe dokument relatat mal-investigazzjoni mwettqa minnu.

(3) Hekk kif jiġi konkluz il-*procés-verbal*, dan għandu jiġi ffirmat mill-Maġistrat Inkwirenti Speċjali u kopja tiegħu għandha tintbagħat flimkien ma 'kopja tad-dokumenti msemmija fis-subartiklu (2) ta 'dan l-artiklu lill-Ispeaker tal-Kamra tar-Rappreżentanti.

(4) Fejn il-Maġistrat Inkwirenti Speċjali jikkonkludi fil-*procés-verbal* li hemm biżżejjed evidenza biex ikun hemm prosekuzzjoni għal Prattiki Korrotti, l-Ispeaker tal-Kamra tar-Rappreżentanti għandu jgħiegħel li l-kopja tal-imsemmi *procés verbal* titpoġġa fuq il-mejda tal-Kamra. Fejn il-Maġistrat Inkwirenti Speċjali jikkonkludi fil-*procés-verbal* li ma hemmx biżżejjed evidenza biex ikun hemm prosekuzzjoni għal Prattiki Korrotti, l-kopja msemmija għandha tibqa` sigrieta.

Prosekuzzjoni

7. 569G(1) Meta l-Maġistrat Inkwirenti Speċjali jikkonkludi fil-*procés-verbal* li hemm biżżejjed evidenza biex ikun hemm prosekuzzjoni għal Prattika Korrotta, huwa għandu immedjatement jfassal l-akkużi u jittrażmetti l-istess lill-Kummissarju tal-Pulizija u ordnalu biex isejjah lill-persuna akkużata quddiem il-qorti kompetenti biex twieġeb għall-akkużi msemmija jew biex tarresta l-imsemmija persuna u tippreżentaha quddiem l-imsemmija qorti taħt arrest biex twieġeb għal tali akkużi.

(2) Prosekuzzjoni għal Prattiki Korrotti titmexxa mill-Maġistrat Inkwirenti Speċjali kemm fir-rigward ta 'każijiet quddiem il-Qorti tal-Maġistrat sew bhala Qorti ta' Istruttoria jew bhala Qorti ta' Ġurisdiżzjoni Kriminali kif ukoll quddiem il-Qorti Kriminali u fejn ikun hemm appell fi kwalunkwe każ bħal dan quddiem il-Qorti tal-Appell Kriminali wkoll quddiem l-imsemmija Qorti tal-Appell Kriminali.

(3) Soġġett għad-dispożizzjonijiet tas-subartiklu (4) ta' dan l-artiklu, id-dispożizzjonijiet tat-Tieni Ktieb tal-Kodiċi Kriminali għandhom japplikaw għal proċedimenti li qed jitmexxew mill-Maġistrat Inkwirenti Speċjali daqslikieku r-referenza fihom għall-Pulizija jew l-Avukat Ġenerali kienet referenza għall-Maġistrat Inkwirenti Speċjali skont kif ikun meħtieġ mill-każ.

(4) L-artiklu 541 tal-Kodiċi Kriminali ma għandux japplika għall-Maġistrat Inkwirenti Speċjali, u l-artiklu 433 għandu japplika għall-Maġistrat Inkwirenti Speċjali daqslikieku r-referenza fis-subartikli (1) u (2) tiegħu għall-Avukat Ġenerali kienet referenza għall-Maġistrat Inkwirenti Speċjali li jaġixxi bil-qbil tal-Avukat Ġenerali.

(5) Fejn jiġi pprezentat kwalunkwe rapport lill-Pulizija dwar kwalunkwe Prattika Korrotta, huma għandhom jitrażmettu b'mod immedjat l-istess lill-Maġistrat Inkwirenti Speċjali.

(6) Fejn fi kwalunkwe Inkjesta li tkun qed titwettaq mill-Pulizija tiġi skoperta evidenza ta' kwalunkwe Prattika Korrotta, huma għandhom jagħmlu rapport minnufih dwar dan lill-Maġistrat Inkwirenti Speċjali u l-investigazzjoni titkompla minnu.

(7) Fejn fi kwalunkwe Inkjesta msemmija fit-Titolu II tal-Parti II tat-Tieni Ktieb tal-Kodiċi Kriminali jkun hemm evidenza ta' kwalunkwe Prattika Korrotta, l-kopja tal-proċess verbali relatat ma' tali inkjesta inklużi d-dokumenti kollha meħmuża jew inklużi magħha għandha f'kull każ tiġi trażmessa wkoll lill-Maġistrat Inkwirenti Speċjali:

Rapport dwar il-konklużjoni tal-prosekuzzjoni

8. 569H(1) Fi tmiem kwalunkwe prosekuzzjoni mwettqa mill-Maġistrat Inkwirenti Speċjali, il-Maġistrat imsemmi għandu jibgħat rapport dwar il-każ, lill-Ispeaker tal-Kamra tar-Rappreżentanti, flimkien ma' kopja tal-akkużi u ta' kwalunkwe sentenza jew digriet fejn ikun hemm.

(2) L-Ispeaker għandu jqiegħed tali rapport u dokumenti ta' akkumpanjament fuq il-Mejda tal-Kamra.

Segretezza

9. 569I. Il-proċedimenti minn jew quddiem Maġistrat Inkwirenti Speċjali għandhom ikunu sigrieti u m'għandhomx, sakemm kopja tal-*procès-verbal* fuqhom titqiegħed fuq il-Mejda tal-Kamra tar-Rappreżentanti kif previst fl-artiklu 6 ta' dan l-Att, jiġu żvelati hliet għall-fini tal-investigazzjoni li tkun qed titwettaq mill-Maġistrat Inkwirenti Speċjali.

Komunikazzjonijiet privileġġjati

10. 569J. Ma għandha tittiehed l-ebda azzjoni fil-ligi b'rabta mal-ġhoti *in bona fede* ta' kwalunkwe informazzjoni lil Maġistrat Inkwirenti Speċjali għall-finijiet ta' dan l-Att.

Il-President ta' Malta jista' jagħti eżenzjoni mill-proċedimenti kriminali

11. 569K (1) Mingħajr preġudizzju għas-setgħat mogħtija mill-artiklu 93 tal-Kostituzzjoni, soġġett għad-dispożizzjonijiet ta' din it-taqsim, il-President ta' Malta jista', jekk jaġixxi skont il-gudizzju tiegħu stess ikun sodisfatt bir-rakkoman dabbiltà li jagħmel hekk, joħroġ ċertifikat bil-miktub li jeżenta lil kwalunkwe persuna msemmija fih minn kwalunkwe proċediment kriminali bil-kondizzjoni li tali persuna tagħti evidenza skont il-liġi tal-fatti kollha li taf bihom relatata ma' kwalunkwe Prattika korrotta jew kwalunkwe reat konness magħha quddiem il-Maġistrat Inkwirenti Speċjali jew quddiem kwalsiasi qorti ta' ġurisdizzjoni kriminali. Ma' l-ghoti ta' tali ċertifikat u max-xieħda li tkun mogħtija mill-persuna li lili jkun inhareg tali ċertifikat, ma jistgħu jittieħdu ebda passi kontra tali persuna quddiem ebda qorti b'rabta ma' tali xieħda.

(2) Il-President ta' Malta jista' joħroġ iċ-ċertifikat imsemmi fis-subartiklu (1) ta' dan l-artiklu biss wara talba f'dan is-sens mill-Maġistrat Inkwiringanti Speċjali.

(3) It-talba mill-Maġistrat Inkwiringanti Speċjali għandha ssir bil-miktub u għandu jkun fiha d-dettalji pertinenti kollha li jistgħu jintalbu mill-President ta' Malta, u tali talba għandha tintbagħat lill-President ta' Malta b'mod kunfidenzjali u tali talba mill-Maġistrat Inkwiringanti Speċjali ma għandhiex titqies bħala ksur tad-dispożizzjonijiet tal-artiklu 10 ta' dan l-Att.

(4) Iċ-ċertifikat maħruġ mill-President ta' Malta skont id-dispożizzjonijiet ta' din it-taqsim għandu –

a) meta l-evidenza għandha l-ewwel tingħata quddiem il-Maġistrat Inkwiringanti Speċjali, jinżamm fl-inkjesta, u jiġi meħmuż mal-*procès-verbal* relattiv;

b) meta l-evidenza tingħata l-ewwel quddiem qorti ta' ġurisdizzjoni kriminali, tiġi esibita fil-Qorti minn rappreżentant tal-President ta' Malta.

(5) Kopja ta' kwalunkwe ċertifikat maħruġ mill-President ta' Malta skont id-dispożizzjonijiet ta' dan l-artiklu u miżmuma fir-rekords ta' inkjesta għandha tiġi ppreżentata fuq talba tax-xhud fi kwalunkwe proċediment kontrih quddiem qorti ta' ġurisdizzjoni kriminali.

(6) Il-President ta' Malta jista' joħroġ ċertifikat skont id-dispożizzjonijiet ta' dan l-artiklu minkejja kwalunkwe oppożizzjoni mix-xhud.

(7) Għall-fini ta' din it-taqsim “qorti ta' ġurisdizzjoni kriminali” tinkludi kwalunkwe qorti marzjali skont l-Att dwar il-Forzi Armati ta' Malta (Kap.220)

Allegazzjoni ta' influwenza illegali

12. 569L. Kwalunkwe persuna li bi profitt jew bi premju toffri s-servizzi tagħha lil kwalunkwe persuna oħra sabiex takkwista, jew inkella tipprezumi li tista' takkwista, l-favuri ta' kwalunkwe uffiċjal pubbliku b'mod li jikkostitwixxi prattika korrotta għandha, għas-sempliċi offerta jew pretensjoni, mingħajr preġudizzju għal kwalunkwe piena oħra li għaliha tista' tkun responsabbli taħt kwalunkwe ligi oħra, tkun hatja ta' reat kontra dan l-Att u għandha, meta tigi kkundannata għal piena ta' prigunerija ta' mhux inqas minn tliet xhur u mhux iktar minn sena.

Ghanijiet u Ragiunijiet

Dan l-Abbozz jemenda l-Kodici Kriminali bil-ghan li jitwaqqaf l-Uffiċju tal-Magistrat Inkwirenti Speċjali li kollu s-setgha wahdu jinvestiga u jressaq 'l Qorti l-kazijiet ta' prattici korrotti sabiex l-glieda kontra l-pjaga tal-korruzzjoni istituzzjonalizzata tkun miggielha b'mod effettiv.

A Bill

entitled

An Act to set up the Office of Special Inquiring Magistrate against Corruption

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title

The short title of this Act is the Criminal Code (hereinafter referred to as "the principal Act) (Amendment) Act 2022

Immediately after article 569 in the Criminal Code, the following new articles shall be added

Interpretation

1. 569A(1) In this Act unless the context otherwise requires:

"corrupt practice" has the meaning assigned to it in subsection (2) of this section;

"public officer" means the holder of any public office or a person appointed to act in any such office, and 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, and includes persons of trust and those occupying positions of trust; members of the House of Representatives; any person who is entrusted with or has functions relating to the administration of a statutory body having a distinct legal personality, any council, Board, panel, committee or other similar body established by any law, or who is employed with such a body; and includes, in relation to any act or omission during the tenure of such post, any person who, within a period of five years before or at any time after the coming into force of this Act, was a public officer;

"statutory body" means any corporation or other body corporate established by law and includes also any partnership or other body in which the Government of Malta, or any such body as aforesaid, have a controlling interest or over which they have effective control.

Corrupt practices

(2) The following shall be corrupt practices under this Act:

(a) the acts and omissions which constitute the offences under sections 112 to 118, 120 to 121D, 124 to 127A, and 138 of the Criminal Code;

(b) the offence of allegation of unlawful influence under article 13 of this Act;

(c) the acts or omissions which constitute an attempt to commit any of the aforesaid offences or which constitute complicity in any of those offences under sections 41 and 42 of the Criminal Code.

Special Inquiring Magistrate

2. 569B(1) The President of Malta shall assign to one of the Magistrates of the Inferior Courts, duties as Special Inquiring Magistrate.

(2) The Special Inquiring Magistrate shall have the powers and shall exercise the functions set out in this Act, and shall not while assigned such duties perform any other duty as Magistrate of the Inferior Courts.

(3) An assignment of duties as Special Inquiring Magistrate shall be for a period of six years. On the termination of the said period of six years a Magistrate may again be assigned such duties for a further period of periods of six years each.

(4) The Special Inquiring Magistrate may not during the period of his assignment as such be removed from such duties or be assigned to other duties. He shall, however, cease to act as Special Inquiring Magistrate if he shall for any cause cease to be a Magistrate.

(5) In the exercise of his functions under this Act the Special Inquiring Magistrate shall act independently and shall not be subject to the direction or control of any other person or authority, save as by law provided.

Functions and Duties of Special Inquiring Magistrate.

3. 569C(1) It shall be the function of the Special Inquiring Magistrate to carry out the inquiries, carry out the investigations and to make a report thereon to the Speaker as provided for in this Act.

(2) Criminal action in respect of corrupt practices shall vest in the Special Inquiring Magistrate.

(3) If, in cases where the exercise of criminal action is vested in the Special Inquiring Magistrate, he shall upon any report in regard to the commission of a corrupt practice, refuse to institute proceedings. It shall be lawful for the person who made the report to make an application to the Criminal Court for an order to the Special Inquiring Magistrate to institute proceedings; and if, after hearing, where necessary, the evidence tendered by the applicant, and the Special Inquiring Magistrate, the Court is satisfied that report is *prima facie* justified, it shall allow the application and shall, through the Registrar, notify the Special Inquiring Magistrate of the order given thereon:

Provided that, before any action is taken on any such application, the applicant shall confirm the report on oath, and shall enter into a recognisance in a sum to be fixed by the court, to give 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.

(4) The provisions of subsection 2 of Section 383, Sections 386 and 387 of the Criminal Code shall, in so far as applicable, apply to any recognisance under subsection (3) of this article.

Office and staff of the Special Inquiring Magistrate

4. 569D(1) The Minister responsible for Justice shall provide the Special Inquiring Magistrate with suitable premises for his office; and shall in consultation with the Special Inquiring Magistrate determine the staffing requirements of his office and shall assign public officers to the office of the Special Inquiring Magistrate accordingly:

Provided that no person may be assigned duties at the office of the Special Inquiring Magistrate except with the approval of the Special Inquiring Magistrate.

(2) The Special Inquiring Magistrate shall have power to request the assistance of the Police in the conduct of any investigations into alleged or suspected corrupt practices under this Act and the Commissioner of Police shall detail officers of the police to give the assistance requested:

Provided that the provisions of the proviso to subsection (1) of this section shall *mutatis mutandis* apply to such officer of the police; and provided further that in giving that

assistance the Police shall only have and exercise such powers as they are authorised to exercise under the Criminal Code or any other law.

(3) Notwithstanding the provisions of any law, public officers assigned duties at the Office of the Special Inquiring Magistrate as provided in subsection (1) and officers of the Police detailed to give assistance to the Special Inquiring Magistrate as provided in subsection (2) shall not during such assignment or while so detailed, without their consent or that of the Special Inquiring Magistrate be transferred or detailed for other duties.

Reports to Special Inquiring Magistrate

5. 569E(1) Any person may on oath make a report to a Special Inquiring Magistrate in regard to any corrupt practice alleged to have been committed by a public officer:

Provided that a Special Inquiring Magistrate may initiate investigations on his own initiative.

(2) The report referred to in subsection (1) of this section shall contain an indication of all facts which in the opinion of the person making the report may be relevant to the investigation to be carried out by the Special Inquiring Magistrate.

(3) Upon the receipt of any report as is mentioned in the preceding subsections of this section the Special Inquiring Magistrate shall hold an investigation into the alleged corrupt practice and for such purpose he shall have all powers as are conferred upon a Magistrate of the Inferior Courts in sections 546 to 569 of the Criminal Code, to summon witnesses and to administer the oath and to request the assistance of the Police in the conduct of investigations into alleged or suspected corrupt practice under this Act and the Police shall give the assistance requested as provided in subsection (2) of Section 5:

Provided that a Special Inquiring Magistrate shall hear all witnesses in person and shall not delegate the hearing of witnesses to any expert or police officer:

Provided further that inquiries relating to the *in genere* and *reperti* shall not be conducted by the Special Inquiring Magistrate.

(4) Any person summoned by the Special Inquiring Magistrate as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause, to answer or to answer fully and satisfactorily, to the best of his knowledge and belief, all questions put to him by the Special Inquiring Magistrate, shall be liable, on conviction, to a fine (*multa*) not exceeding two thousand euro (€2,000) or to imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that without prejudice to the generality of the provisions of subsection (3) of this section no person giving evidence before the Special Inquiring Magistrate may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given before the Special Inquiring Magistrate, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled, including the assistance of a lawyer of his trust.

(5) Where the Special Inquiring Magistrate is of the opinion that the examination of any witness or any other process of the investigation by an authority outside Malta is necessary, the Special Inquiring Magistrate may draw up a letter of request and through the registrar transmit it to the said authority outside Malta together with the interrogatories or a description of the action to be carried out by the authority outside Malta.

(6) Proceedings in respect of any offence against this section shall be conducted at the instance of the Special Investigating Magistrate by the Police before the Court of Magistrates Malta or Gozo as the case may be.

Procès-verbal

6. 569F(1) The Special Inquiring Magistrate shall draw up a *procès-verbal* of the investigation which shall include his conclusions thereon including, where any, the offences that may be laid against any person and a report of the proof in support thereof.

(2) The *procès-verbal* shall be accompanied by a transcript of all evidence collected by the Special Inquiring Magistrate as well as any document relating to the investigation carried out by him.

(3) As soon as the *procès-verbal* is concluded it shall be signed by the Special Inquiring Magistrate and a copy thereof shall be transmitted together with a copy of the documents referred to in subsection (2) of this section to the Speaker of the House of Representatives.

(4) Where the Special Inquiring Magistrate concludes in the *procès-verbal* that there is enough evidence to support a prosecution for corrupt practices, the Speaker of the House of Representatives shall cause the copy of the said *procès-verbal* to be laid on the table of the House, otherwise the said copy shall not be so laid and shall remain secret.

Prosecutions

7. 569G(1) Where the Special Inquiring Magistrate concludes in the *procès-verbal* that there is enough evidence to support a prosecution for a corrupt practice he shall as soon as may be draw up the charges and transmit the same to the Commissioner of Police ordering him to summon the person charged before the competent court to answer the said charges or to arrest the said person and produce him before the said court under arrest to answer to such charges.

(2) Prosecutions for corrupt practices shall be conducted by the Special Inquiring Magistrate both in respect of cases before the Court of Magistrate either as a Court of Criminal Inquiry or as a Court of Criminal Jurisdiction as well as before the Criminal Court and where an appeal lies in any such case before the Court of Criminal Appeal also before the said Court of Criminal Appeal.

(3) Subject to the provisions of subsection (4), the provisions of Book Second of the Criminal Code shall apply to proceedings being conducted by the Special Inquiring Magistrate as if reference therein to the Police or the Attorney General were a reference to the Special Inquiring Magistrate as the case may require.

(4) Section 541 of the Criminal Code shall not apply to the Special Inquiring Magistrate, and section 433 shall apply to the Special Inquiring Magistrate as if reference in subsections (1) and (2) thereof to the Attorney General were a reference to the Special Inquiring Magistrate acting with the concurrence of the Attorney General.

(5) Where any report is lodged with the Police concerning any corrupt practice they shall transmit the same to the Special Inquiring Magistrate.

(6) Where in any Inquiry being conducted by the Police evidence of any corrupt practice is discovered they shall make a report thereof to the Special Inquiring Magistrate and the Investigations therein shall be continued by him.

(7) Where in any Inquiry referred to in Title II of Part II of Book Second of the Code there is evidence of any corrupt practice, the copy of the *procès-verbal* relating to such inquiry including all documents attached or included therewith shall in each case also be transmitted to the Special Inquiring Magistrate:

Provided that where the *procès-verbal* is drawn up after an inquiry commenced after a report by the Special Inquiring Magistrate the original *procès-verbal* shall be transmitted to the Special Inquiring Magistrate.

Report on conclusion of prosecutions

8. 569H(1) At the end of any prosecution conducted by the Special Inquiring Magistrate, the said Magistrate shall send a report on the case, to the Speaker of the

House of Representatives, accompanied by a copy of the charges and of any judgements or decrees where any.

(2) The Speaker shall cause such report and accompanying documents to be laid on the Table of the House.

Secrecy

9. 569I. Proceedings by or before a Special Inquiring Magistrate shall be secret and shall not, until a copy of *procès-verbal* thereon is laid on the table of the House of Representatives as provided in section 6 of this Act, be disclosed except for the purpose of the investigation being carried out by the Special Inquiring Magistrate.

Privileged communications

10. 569J. No action shall lie at law in connection with the giving in good faith of any information to a Special Inquiring Magistrate for the purpose of this Act.

The President of Malta may grant exemption from criminal proceedings

11. 569K(1) Without prejudice to the powers conferred by section 93 of the Constitution, subject to the provisions of this section, the President of Malta may, if acting in accordance with his own deliberate judgement he is satisfied of the advisability so to do, issue a certificate in writing exempting any person mentioned therein from any criminal proceedings on condition that such person gives evidence according to law of all the facts known to him relating to any corrupt practice or any offence connected therewith before the Special Inquiring Magistrate and, or any court of criminal jurisdiction, and on the issue of such certificate and the giving evidence in accordance therewith by the person to whom it refers, no proceedings before a court of criminal jurisdiction may be taken or continued against him in connection with such corrupt practice or any offence connected therewith.

(2) The President of Malta may grant the certificate mentioned in subsection (1) of this section only after a request to that effect by the Special Inquiring Magistrate.

(3) The request by the Special Inquiring Magistrate shall be made in writing and shall contain all the pertinent details as may be requested by the President of Malta, and such a request shall be sent to the President of Malta in confidence and such request by the Special Inquiring Magistrate shall not be deemed to be a breach of the provisions of section 10 of this Act.

(4) The certificate issued by the President of Malta under the provisions of this section shall –

(a) when the evidence is first to be given before the Special Inquiring Magistrate be kept in the records of the inquiry, and be attached to the relative *procès-verbal*;

(b) when the evidence is first to be given before a court of criminal jurisdiction, be exhibited in court by a representative of the President of Malta.

(5) A copy of any certificate issued by the President of Malta under the provisions of this section and kept in the records of an inquiry shall be produced at the request of the witness in any proceedings against him before a court of criminal jurisdiction.

(6) The President of Malta may issue a certificate under the provisions of this section notwithstanding any opposition by the witness.

(7) For the purpose of this section "court of criminal jurisdiction" includes any court-martial under the Malta Armed Forces Act.

Unlawful influence

12. 569L. Any person who for profit or reward offers his services to any other person in order to procure, or otherwise pretends that he can procure, the favours of any public officer in a manner that would constitute a corrupt practice shall for the mere offer or pretence, without prejudice to any other punishment to which he may be liable under any other law, be guilty of an offence against this Act and shall on conviction be liable to imprisonment for a term between three months to a year.

Objects and Reasons

This Bill amends the Criminal Code in order to set up the Office of Special Inquiring Magistrate who will be tasked with exclusive authority to investigate and prosecute corrupt practices in order to fight more effectively the scourge of institutionalised corruption

