

Nru. 175

5. 2. 87

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Cassar, M.P., Deputat Prim Ministru Anzjan u Ministru tal-Ġustizzja u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tat-23 ta' Jannar, 1987.

A BILL introduced by the Honourable Joseph Cassar, M.P., Senior Deputy Prime Minister and Minister of Justice and Parliamentary Affairs and read the First time at the Sitting of the 23rd January, 1987.

ATT biex ikompli jemenda l-Kodiċi Kriminali, Kap. 9.

AN ACT further to amend the Criminal Code, Cap. 9.

P. MUSCAT TERRIBILE
Agent Skrivan tal-Kamra tad-Deputati

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Acting Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjaħ

ATT biex ikompli jemenda l-Kodiċi Kriminali, Kap. 9.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1987 li jemenda l-Kodiċi Kriminali, u għandu jinqara u jiftiehem haġa waħda mal-Kodiċi Kriminali, hawnhekk iżjed 'il quddiem imsejjaħ "il-liġi prinċipali". Titolu
fil-qosor.
2. Fil-paragrafu (a) tas-subartikolu (3) ta' l-artikolu 370 tal-liġi prinċipali, minflok il-kliem "mhux iżjed minn erba' snin" għandhom jidhlu l-kliem "mhux iżjed minn għaxar snin". Emenda ta'
l-artikolu 370
tal-liġi
prinċipali.
3. Minnufih wara s-sub-titolu III tat-**Titolu II** tat-**Taqsim**a I fit-Tieni Ktieb tal-liġi prinċipali, għandu jżied dan li ġej: Żieda ta'
sub-titolu
IV ġdid
fil-liġi
prinċipali.

"Sub-titolu IV **FUQ KWISTJONIJIET DWAR**
IL-PROĊESS VERBAL.

Kwistjo-
nijiet
dwar
proċess
verbal.

429A. (1) Jekk f'xi proċeduri quddiem xi Qorti tal-Pulizija Ġudizzjarja tqum xi kwistjoni dwar —

(a) il-validità ta' proċess verbal, inklużi x-xiehda tax-xhieda, rapport ta' perit, jew kull dokument ieħor imdaħħal miegħu, jew kull parti minnhom, jew

(b) jekk xi proċess verbal jew xi xiehda ta' xhieda, rapport ta' perit, jew kull dokument ieħor imdaħħal ma' dak il-proċess verbal ikun ġie magħmul regolarment, jew

(c) l-ammissibilità bhala prova tal-proċess verbal kollu jew ta' xi parti minnu jew ta' xi xiehda ta' xhieda, ta' rapport ta' perit jew ta' kull dokument imdaħħal ma' dak il-proċess verbal,

dik il-Qorti ghandha tibghat il-kwistjoni lill-Qorti ta' l-Appell Kriminali kostitwita minn tliet Imhallfin kif provdut fis-sub-artikolu (2) ta' l-artikolu 498.

(2) Kwistjoni bhal dik imsemmija fis-subartikolu ta' qabel dan tista' titqajjem mill-Pulizija Esekuttiva, mill-persuna imputata jew akkużata, mill-parti offiża msemmija fl-artikolu 410 jew mill-Qorti *ex officio*.

(3) Kwistjoni bhal din tista' titqajjem mhux aktar tard minn ghaxart ijiem tax-xoghol wara l-esibizzjoni fil-Qorti tal-proċess verbal, b'dan illi jekk il-proċess verbal jiġi esibit quddiem Qorti ta' Istruttoria Kriminali u l-atti tal-kumpilazzjoni jkunu ntbagħtu lill-Avukat Ġenerali qabel l-gheluq ta' dawk l-ghaxart ijiem tax-xoghol minghajr ma titqajjem dik il-kwistjoni dak iż-żmien jibda jghodd mill-jum tas-seduta li tmiss quddiem il-Qorti tal-Pulizija Ġudizzjarja.

(4) Meta kwistjoni tintbagħat kif provdut fis-sub-artikolu (1) ta' dan l-artikolu, l-ordni li bih hekk tintbagħat għandu jkun fih b'mod konċiż u ċar dik il-kwistjoni u jsemmi l-punti ta' fatt u ta' dritt li minnhom tinholoq il-kwistjoni.

(5) Meta jiġi magħmul xi ordni bhal dak ikun idmir tar-Registratur li jiżgura li kopja awtentika ta' l-inkar-tament tal-proċeduri tingieb quddiem il-Qorti ta' l-Appell Kriminali fi żmien jumejn tax-xoghol mid-data ta' dak l-ordni.

(6) Il-Qorti ta' l-Appell Kriminali għandha meta tintbagħtilha kwistjoni bhal dik, tqieghed il-kwistjoni għas-smiegh u tara li avvż dwar dik id-data jiġi mogħti lill-partijiet konċernati, u għandha tagħti d-deċiżjoni tagħha fuq dik il-kwistjoni ma' l-ewwel opportunità u f'ebda każ iktar tard minn tliet xhur mid-data ta' dak l-ordni.

(7) Minkejja kull dispożizzjoni li tinsab fit-Titolu V ta' Taqsima I tat-Tieni Ktieb ta' dan il-Kodiċi, u b'żieda mas-setgħat hemm mogħtijin, il-Qorti ta' l-Appell Kriminali tista' fid-deċiżjoni tagħha, meta tintbagħtilha kwistjoni bhal dik, teskludi kull haġa li tista' tkun irrelevanti, estranea jew xort'ohra inammissibbli jew li tkun tmur lil hinn mis-setgħat mogħtijin mill-liġi jew bid-degriet tal-maġistrat, skond il-każ, u tista' wkoll tagħti dawk l-ordnijiet bil-ghan li ssir ġustizzja u għat-tikxif tal-verità; u kull deċiżjoni jew ordnijiet bhal dawn għandhom ikunu jorbtu fil-proċeduri kollha li fihom tkun qamet il-kwistjoni u fil-proċeduri kollha konsegwenzjali quddiem qorti oħra ta' ġustizzja kriminali.

(8) Minkejja kull dispożizzjoni tat-Tieni Ktieb ta' dan il-Kodiċi, meta ebda kwistjoni dwar proċess verbal ma tkun ġiet imqajma fiż-żmien imsemmi fis-subartikolu (3) ta' dan l-artikolu f'xi proċeduri bhal dawk imsemmija fis-sub-artikolu (1) ta' dan l-artikolu, ebda kwistjoni, anqas permezz ta' eċċezzjoni, ma tkun tista' titqajjem dwar dak il-proċess verbal quddiem xi qorti ta' ġustizzja kriminali, mill-Pulizija Esekuttiva, mill-persuna imputata jew akkużata, mill-parti offiża jew mill-qorti *ex officio*.

(9) Meta kwistjoni kif provdut fis-subartikolu (1) ta' dan l-artikolu titqajjem fi proċeduri quddiem il-Qorti tal-Pulizija Ġudizzjarja bhala Qorti ta' Istruttoria Kriminali qabel id-deċiżjoni msemmija fis-subartikolu (2) ta' l-artikolu 401, iż-żmien imsemmi fis-subartikolu (1) ta' dan l-aħħar artikolu ghandu jitwaqqaf.”.

4. Minnufih wara s-subartikolu (5) ta' l-artikolu 436 tal-liġi prinċipali ghandhom jiżdedu dawn is-subartikoli godda li ġejjin:

Emenda ta' l-artikolu 436 tal-liġi prinċipali.

“(6) Minkejja kull dispożizzjoni ohra ta' dan il-Kodiċi u bla hsara ghad-dispożizzjonijiet tas-subartikoli li ġejjin ta' dan l-artikolu, l-akkużat jista', mhux iktar tard minn ghaxart ijiem wara d-data tan-notifika ta' l-avviż imsemmi fis-subartikolu (6) ta' l-artikolu 438 jew ta' l-ordni msemmi fis-subartikolu (4) ta' l-artikolu 620, jipprezenta nota fir-registru tal-Qorti li biha jagħzel li guri ma jigix magħzul għall-kawża jew ghad-deċiżjoni dwar kull kwistjoni kollaterali taħt it-Titolu VII tat-Taqsima II tat-Tieni Ktieb ta' dan il-Kodiċi, u kopja ufficjali ta' dik in-nota ghandha tiġi notifikata lill-Avukat Ġenerali.

(7) Id-dispożizzjonijiet tas-subartikolu (6) ta' dan l-artikolu m'għandhomx japplikaw —

(a) meta akkużi kontra żewġ persuni jew aktar ikunu nġiebu f'att ta' akkuża wiehed, kemm-il darba l-akkużati kollha ma jkunux ipprezentaw in-nota msemmija f'dak is-subartikolu; jew

(b) għall-akkużat li jkun sab oġġezzjoni kif imsemmi fil-paragrafu (d) tas-subartikolu (3) ta' l-artikolu 370.

(8) Meta ssir l-għażla kif provdut fis-subartikolu (6) ta' dan l-artikolu l-qorti ghandha tkun kostitwita minn wiehed mill-imhallfin li joqghod minghajr guri, u d-dispożizzjonijiet ta' dan it-Titolu u tat-Titolu V tat-Taqsima I tat-Tieni Ktieb ghandhom japplikaw *mutatis mutandis*.”.

5. Fis-subartikolu (6) ta' l-artikolu 438 tal-liġi prinċipali, minflok il-kliem “ghaxart ijiem” ghandhom jidhlu l-kliem “ghoxrin jum”.

Emenda ta' l-artikolu 438 tal-liġi prinċipali.

6. (1) Jekk, malli jibda jsehh dan l-Att, ikun diġà ġie pprezentat att ta' akkuża għal reat li l-Qorti tal-Pulizija Ġudizzjarja ghandha kompetenza dwaru skond id-dispożizzjonijiet ta' l-artikolu 370 tal-liġi prinċipali kif emendat b'dan l-Att, u kemm l-Avukat Ġenerali kif ukoll l-akkużat f'xi stadju qabel ma tkun giet mahtura l-ġurija jkunu taw il-kunsens tagħhom b'nota li titqiegħed fl-atti tal-kawża sabiex il-każ jiġi trattat mill-Qorti tal-Pulizija Ġudizzjarja skond l-imsemmi artikolu, allura l-Qorti Kriminali ma tibqax aktar kompetenti u minnufih issir kompetenti li tittratta l-każ dwar ir-reati li jkun hemm fl-att ta' l-akkuża kif mehtieg il-Qorti tal-Pulizija Ġudizzjarja:

Dispożizzjoni transitorja.

Iżda l-Qorti Kriminali jew, meta jkun sar appell, il-Qorti ta' l-Appell Kriminali, tkun tista' tiddeċiedi kull eċċezzjoni li tkun saret skond id-dispożizzjonijiet ta' l-artikoli 438 jew 449 tal-liġi prinċipali.

(2) Meta, malli jibda jsehħ dan l-Att proċess verbal ikun diġà gie esibit quddiem Qorti tal-Pulizija Ġudizzjarja ż-żmien imsemmi fis-subartikolu (3) ta' l-artikolu 429A għandu jibda jghodd mid-data tas-seduta li tmiss ta' dik il-Qorti wara li jibda jsehħ dan l-Att.

(3) Meta qabel il-bidu fis-seħħ ta' dan l-Att l-avviż imsemmi fis-subartikolu (6) ta' l-artikolu 438 jew l-ordni msemmi fis-subartikolu (4) ta' l-artikolu 620 ikun diġà gie notifikat lill-akkużat, iż-żmien għall-preżentata tan-nota msemmi fis-subartikolu (6) ta' l-artikolu 436 tal-liġi prinċipali għandu jibda jghodd mid-data li fiha jibda jsehħ dan l-Att.

Għanijiet u Raġunijiet

L-Għan ta' dan l-Abbozz huwa li jestendi l-kompetenza tal-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja sabiex tiġġudika persuni akkużati b'reati li jaqgħu taħt il-piena tal-prigunerija għal żmien mhux iżjed minn għaxar snin, li jipprovdi għad-deċiżjoni ta' kwistjonijiet li jistgħu jitqajmu dwar xi proċess verbal, u li jagħti lill-persuni akkużati quddiem il-Qorti Kriminali l-għażla li jkunu ġġudikati minghajr ġuri.

**A BILL
entitled**

AN ACT further to amend the Criminal Code, Cap. 9.

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:—

- | | |
|--|---|
| <p>1. This Act may be cited as the Criminal Code (Amendment) Act, 1987, and shall be read and construed as one with the Criminal Code, hereinafter referred to as “the principal law”.</p> | <p>Short title and commencement.</p> |
| <p>2. In paragraph (a) of subsection (3) of section 370 of the principal law, for the words “not exceeding four years” there shall be substituted the words “not exceeding ten years”.</p> | <p>Amendment of section 370 of the principal law.</p> |
| <p>3. Immediately after sub-title III of Title II of Part I of Book Second of the principal law, there shall be added the following:</p> <p style="margin-left: 40px;">“Sub-Title IV
OF QUESTIONS RELATING TO A
PROCÈS-VERBAL.</p> | <p>Addition of new Sub-Title IV to the principal law.</p> |

Questions regarding a *procès-verbal*.

429A.(1) If in any proceedings before any Court of Judicial Police any question arises as to —

(a) the validity of a *procès-verbal*, including any depositions of witnesses, expert's report, or any other document annexed thereto, or any part thereof, or

(b) whether a *procès-verbal* or any depositions of witnesses, expert's report, or any other document annexed to such *procès-verbal* has been regularly drawn up, or

(c) the admissibility as evidence of the whole or any part of a *procès-verbal* or of any depositions of witnesses, expert's report or any document annexed to such *procès-verbal*,

that Court shall refer the question to the Court of Criminal Appeal consisting of three Judges as provided in subsection (2) of section 498.

(2) A question as is referred to in the preceding subsection may be raised by the Executive Police, by the person charged or accused, by the injured party mentioned in section 410 or by the Court *ex officio*.

(3) Such question may be raised not later than ten working days after the production in Court of the *procès-verbal*, provided that if the *procès-verbal* is produced before a Court of Criminal Inquiry and the record of the inquiry has been transmitted to the Attorney General before the expiry of those ten working days without such question being raised, the said term shall commence to run anew from the day of the next sitting before the Court of Judicial Police.

(4) Where a question is referred as provided in subsection (1) of this section, the order of reference shall state concisely and clearly that question and indicate the points of fact and of law out of which the question arises.

(5) Where any such order has been made it shall be the duty of the Registrar to ensure that an authentic copy of the record of the proceedings is brought before the Court of Criminal Appeal within two working days from the date of that order.

(6) The Court of Criminal Appeal shall, upon any such reference, set down the question for hearing and cause notice of such date to be given to the parties concerned, and shall determine the question at the earliest opportunity and in no case later than three months from the date of such order.

(7) Notwithstanding anything contained in Title V of part I of Book Second of this Code, and in addition to the powers therein conferred, the Court of Criminal Appeal may, upon such reference, in its decision exclude any matter which may be irrelevant, extraneous or otherwise inadmissible or beyond the powers conferred by law or by the decree of the magistrate, as the case may be, and may further give such directions for the purpose of doing justice and for the discovery of the truth; and any such decision or directions shall be binding in any proceedings in which the question was raised and in any consequential proceedings before any other court of criminal justice.

(8) Notwithstanding any provision of Book Second of this Code, where in any proceedings as are mentioned

in subsection (1) of this section no question relating to a *procès-verbal* has been raised within the term laid down in subsection (3) of this section it shall not be lawful, before any court of criminal justice, for the Executive Police, the person charged or accused, the injured party or the court *ex officio* to raise any question even by way of a plea relating to that *procès-verbal*.

(9) Where a question as provided in subsection (1) of this section is raised in proceedings before the Court of Judicial Police as a Court of Criminal Inquiry prior to the decision referred to in subsection (2) of section 401, the term laid down in subsection (1) of the latter section shall be held in abeyance.”.

4. Immediately after subsection (5) of section 436 of the principal law there shall be added the following new subsections:

Amendment of section 436 of the principal law.

“(6) Notwithstanding any other provision of this Code and subject to the provisions of the following subsections of this section, the accused may, not later than ten days after the date of service of the notice referred to in subsection (6) of section 438 or of the order referred to in subsection (4) of section 620, 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.

(7) The provisions of subsection (6) of this section shall not apply —

(a) where charges against two or more persons are joined in the same indictment, unless all the accused have filed the note referred to that subsection; or

(b) to the accused who has made the objection mentioned in paragraph (d) of subsection (3) of section 370.

(8) Where the option is exercised as provided in subsection (6) of this section the court shall consist of one of the judges sitting without a jury, and the provisions of this Title and of Title V of Part I of Book Second of this Code shall *mutatis mutandis* apply.”.

5. In subsection (6) of section 438 of the principal law for the words “ten days” there shall be substituted “twenty days”.

Amendment of section 438 of the principal law.

6. (1) Where, on the coming into force of this Act, a bill of indictment has already been filed in respect of an offence which the Court of Judicial Police has jurisdiction to try according to the provisions of section 370 of the principal law as amended by this Act, and both the Attorney General and the accused at any stage prior to the impanelling of the jury signify their consent by means of a note entered in the records that the case may be tried by the Court of Judicial Police in accordance with the said section, then the jurisdiction of the Criminal

Transitory provision.

Court shall cease and the Court of Judicial Police shall thereupon be vested with jurisdiction to try the offences contained in the bill of indictment accordingly:

Provided that the Criminal Court or, where an appeal has been entered, the Court of Criminal Appeal, shall not be precluded from deciding any plea already raised in accordance with the provisions of sections 438 or 449 of the principal law.

(2) Where, on the coming into force of this Act, a *procès-verbal* has already been produced before a Court of Judicial Police, the term mentioned in subsection (3) of section 429A of the principal law shall commence to run from the date of the next sitting of that court after the coming into force of this Act.

(3) Where before the coming into force of this Act, the notice referred to in subsection (6) of section 438 or the order referred to in subsection (4) of section 620 has already been served on the accused, the term for the filing of the note referred to in subsection (6) of section 436 of the principal law shall commence to run from the date of the coming into force of this Act.

Objects and Reasons

The Object of the Bill is to extend the jurisdiction of the Court of Magistrates of Judicial Police to try persons charged with crimes punishable with imprisonment not exceeding ten years, to provide for the determination of questions which may be raised in relation to a *procès-verbal*, and to give persons indicted before the Criminal Court the option of being tried without a jury.