

MALTA

ATT Nru. XXIX ta' l-1990

ATT mahruġ b'ligi mill-Parlament ta' Malta.

ATT biex jemenda l-Kodiċi Kriminali (Kap. 9).

ACT No. XXIX of 1990

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Criminal Code (Cap. 9).

Naghti l-kunsens tiegħi.

(L.S.)

ĊENSU TABONE
President

10 ta' Awissu, 1990

ATT Nru. XXIX ta' l-1990*ATT biex 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' jissejjah l-Att ta' l-1990 li jemenda l-Kodiċi Kriminali u għandu jinqara u jftiehem haġa wahda mal-Kodiċi Kriminali, hawnhekk iżjed "il-liġi prinċipali".

Titolu
fil-qosor

2. Is-subartikolu (1) ta' l-artikolu 5 tal-liġi prinċipali għandu jiġi emendat kif ġej:

Emenda ta'
l-artikolu 5
tal-liġi prinċipali.

(a) fil-paragrafu (d) tiegħu, minflok il-kliem "jew tar-reat imsemmi fl-artikolu 133," għandhom jidhlu l-kliem "jew tar-reati msemmija fl-artikoli 133 jew 139A,"; u

(b) fil-paragrafu (e) tiegħu, minflok il-kliem "fl-artikolu 298," għandhom jidhlu l-kliem "fl-artikoli 139A jew 298,".

3. Minnufih wara l-artikolu 28 tal-liġi prinċipali għandhom jiżdiedu dawn l-artikoli godda li ġejjin:

Zieda ta'
artikoli godda
mal-liġi prinċipali.

"Sentenza ta' prigrunerija sospiza.

28A. (1) Bla hsara għas-subartikoli (2) sa (7) ta' dan l-artikolu u l-artikoli 28B sa 28I, qorti li tagħti sentenza ta' prigrunerija għal żmien ta' mhux iżjed minn sentejn għal reat tista' tordna li s-sentenza ma għandhiex tibda ssehh hlief jekk, matul dak il-perijodu li jiġi speċifikat fl-ordni, li ma jkunx ta' inqas minn sena jew ta' iżjed minn erba' snin mid-data ta' l-ordni, il-hati jikkommetti reat iehor li għalih hemm piena ta' prigrunerija u wara dan qorti kompetenti tordna bis-sahha ta' l-artikolu 28B li s-sentenza originali għandha tibda ssehh; u f'dan l-artikolu u kull fejn tinstab fl-artikoli 28B sa 28G u fl-artikolu 28I "il-perijodu operattiv", dwar sentenza sospiza, tisser dak il-perijodu hekk speċifikat.

(2) Qorti ma ghandhiex tittratta ma' hati permezz ta' sentenza sospiza hlief jekk il-qorti jkun jidhrilha li l-każ ikun wiehed li fih sentenza ta' prigunerija kienet tkun xierqa fin-nuqqas ta' xi setgha li tissospendi dik is-sentenza b'ordni bis-saħħa tas-subartikolu (1) ta' dan l-artikolu.

Kap. 152. (3) Qorti li tagħti sentenza sospiza lil xi persuna għal reat ma ghandhiex fil-każ ta' dik il-persuna tagħmel ordni ta' *probation*, kif provdut fl-Att dwar il-*Probation* ta' Ħatjin, dwar xi reat iehor li dik il-persuna tinstab hatja tiegħu minn jew quddiem il-qorti jew li dwaru tkun qeghda tiġi trattata mill-qorti.

(4) Meta l-qorti tagħti sentenza sospiza hija għandha tispjega lill-hati bi kliem ċar ir-responsabbiltà tiegħu taht l-artikolu 28B jekk huwa jikkommetti matul il-perijodu operattiv reat li għalih hemm piena ta' prigunerija.

(5) Sentenza sospiza li tkun għadha ma bdiex isseħh għandha titqies għall-finijiet u effetti kollha tal-liġi, hlief kif provdut fis-subartikolu (1) ta' dan l-artikolu, li hi sentenza li tinfliggi piena u ebda haġa f'dan l-artikolu ma għandha titqies li tolqot —

(a) l-applikabilità ta' xi piena oħra li tista' tinghata, jew xi sospensjoni, taħsir, skwalifika, konfiska, telf jew tnehhija li jistgħu jiġu ordnati, flimkien mal-piena ta' prigunerija hekk sospiza; u

(b) il-hdim ta' l-artikoli 383, 384, 385, 386, 387 u 533.

(6) Id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu ma għandhomx japplikaw għal xi piena ta' prigunerija li tiġi inflitta fin-nuqqas ta' hlas ta' xi multa jew ta' spejjeż.

(7) Ordni bis-saħħa tas-subartikolu (1) ta' dan l-artikolu ma għandux isir f'xi wiehed mill-każijiet li ġejjin —

(a) meta l-ikkundannat ikun diġà qiegħed jiskonta sentenza ta' prigunerija;

(b) meta l-ikkundannat ikun reċidiv fit-termini ta' l-artikolu 50;

(ċ) meta r-reat ikun sar fil-perijodu ta' *probation* jew ta' liberazzjoni taht kondizzjoni skond l-Att dwar il-*Probation* ta' Ħatjin.

(8) Ir-registratur għandu jzomm registru speċjali ta' hatjin li tkun ingħatatilhom sentenza sospiza.

Kommissjoni
ta' reat matul
il-perijodu
operattiv.

28B. (1) Meta persuna tinstab hatja ta' reat li għalih hemm piena ta' prigunerija, li jkun sar matul il-perijodu operattiv ta' sentenza sospiza, u jew tkun hekk instabet hatja minn jew quddiem qorti kompetenti skond l-artikolu 28C li

tittratta magħha għar-rigward tas-sentenza sospiża, jew sussegwentement tidher jew tingieb quddiem dik il-qorti, f'dak il-każ, hliet jekk is-sentenza tkun diġà bdiet issehh, dik il-qorti għandha tordna li s-sentenza sospiża għandha tibda issehh.

(2) Jekk ir-reat l-iehor li jsir matul il-perijodu operattiv ikun wiehed ta' natura involontarja jew jekk, fil-każ ta' xi xorta ohra ta' reat, il-qorti jkun jidhrilha, minhabba fiċ-ċirkostanzi kollha magħdudin il-fatti ta' dak ir-reat iehor, li ma tkunx haġa ġusta li tagħmel ordni bis-saħħa tas-subartikolu (1) ta' dan l-artikolu, hija tista' tittratta mal-hati b'xi wiehed minn dawn il-metodi li ġejjin —

(a) tista' tastjeni milli tagħmel ordni bis-saħħa tas-subartikolu (1) ta' dan l-artikolu u l-perijodu operattiv għandu f'dak il-każ jibqa' fis-sehh; jew

(b) tista' b'ordni tibdel l-ordni oriġinali magħmul bis-saħħa tas-subartikolu (1) ta' l-artikolu 28A billi minflok il-perijodu operattiv hemm speċifikat tagħmel perijodu li jkun jiskadi mhux iktar tard minn erba' snin mid-data tal-bdil:

Iżda jekk il-qorti ma tagħmilx ordni bis-saħħa tas-subartikolu (1) ta' dan l-artikolu hija għandha tiddikjara ir-raġunijiet tagħha għaliex ma tkunx għamlet dan.

(3) Fi proċedimenti li jsiru quddiem il-Qorti Kriminali sabiex hati jiġi trattat dwar sentenza sospiża, kull kwistjoni dwar jekk hu instabx hati ta' reat li għalih hemm piena ta' prigunerija magħmul fil-perijodu operattiv tas-sentenza sospiża, għandha, minkejja d-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 436 u ta' l-artikolu 467, tiġi deċiża mill-qorti u mhux bil-verdett tal-ġurija.

(4) Meta qorti bis-saħħa ta' dan l-artikolu tittratta ma' hati dwar sentenza sospiża mogħtija minn qorti ohra, ir-registratur għandu minnufih javża, permezz ta' kopja, lill-qorti li tkun tat is-sentenza bil-metodu adottat.

(5) Meta qorti tittratta ma' hati bis-saħħa ta' dan l-artikolu, ir-registratur għandu jagħmel dawk in-notamenti meħtieġa fir-registru speċjali msemmi fis-subartikolu (8) ta' l-artikolu 28A.

Il-qorti kompetenti biex tittratta dwar sentenza sospiża.

28C. (1) Hati jista' jiġi trattat dwar sentenza sospiża mill-Qorti Kriminali jew, meta s-sentenza tkun inghatat mill-Qorti tal-Pulizija Ġudizzjarja, minn dik il-qorti.

(2) Meta wiehed jinstab hati mill-Qorti tal-Pulizija Ġudizzjarja ta' reat li għalih hemm piena ta' prigunerija u l-qorti tkun sodisfatta li r-reat sar matul il-perijodu operattiv ta' sentenza sospiża mogħtija mill-Qorti Kriminali, dik il-qorti għandha tibghatu taht arrest jew bi plegg quddiem il-Qorti Kriminali sabiex jiġi trattat dwar dik is-sentenza sospiża:

Izda meta l-Qorti tal-Pulizija Ġudizzjarja jkun jidhrilha li l-piena xierqa ghar-reat l-iehor tkun dik ta' prigunerija, ghandhom japplikaw id-dispożizzjonijiet tas-subartikolu (3) ta' l-artikolu 28E.

(3) Għall-finijiet ta' dan l-artikolu u ta' l-artikoli 28D u 28E, sentenza sospiża li tinghata lil hati fi grad ta' appell ghandha titqies li tkun inghatat mill-qorti ta' l-ewwel grad.

Sentenza sospiża li ma tkunx ġiet kunsidrata meta wiehed jinstab hati ta' reat iehor.

28D. (1) Jekk il-Qorti Kriminali jew il-Qorti tal-Pulizija Ġudizzjarja jkun jidhrilha li wiehed ikun instab hati ta' reat li ghalih hemm piena ta' prigunerija magħmul matul il-perijodu operattiv ta' sentenza sospiża, u li ma ġiex trattat dwar dik is-sentenza sospiża, dik il-qorti ghandha, jew *ex officio* jew wara rikors mill-Avukat Ġenerali jew mill-Pulizija Eżekuttiva, skond il-każ, tohroġ ċitazzjoni li biha tordna lill-hati li jidher quddiemha f'data u f'hin li jkunu speċifikati fiha, jew tohroġ mandat għall-arrest tieghu.

(2) Iċ-ċitazzjoni jew il-mandat mahruġa bis-saħħa ta' dan l-artikolu ghandhom jordnaw lill-hati biex jidher, jew li l-hati jingieb, quddiem il-qorti sabiex jiġi trattat dwar is-sentenza sospiża.

Konkors ta' reati u ta' pieni dwar sentenza sospiża.

28E. (1) Meta hati jiġi kundannat għal iktar minn delitt wiehed skond id-dispożizzjonijiet tal-paragrafu (b) ta' l-artikolu 17, jista' jsir ordni bis-saħħa tas-subartikolu (1) ta' l-artikolu 28A jekk iż-żmien wiehed ta' prigunerija li jitqies xieraq u li jiġi stabbilit mill-qorti fis-sentenza hekk sospiża ma jkunx iżjed minn sentejn u jekk ikunu japplikaw il-kundizzjonijiet l-oħra għall-ghoti ta' sentenza sospiża.

(2) Meta l-qorti li tkun qeghda tittratta mal-hati dwar sentenza sospiża li tkun ghadha ma bdiex issehh, tagħmel ordni bis-saħħa tas-subartikolu (1) ta' l-artikolu 28B, u l-qorti tkun il-Qorti Kriminali jew l-istess qorti li tkun ghamlet l-ordni għal sentenza sospiża, dik il-qorti ghandha tapplika d-dispożizzjonijiet tal-paragrafu (b) ta' l-artikolu 17 u tagħti żmien wiehed ta' prigunerija skond dawk id-dispożizzjonijiet ghar-reat originali u ghar-reat l-iehor.

(3) Meta l-Qorti tal-Pulizija Ġudizzjarja ssib persuna hatja ta' reat, li ghalih hemm piena ta' prigunerija, li jkun sar matul il-perijodu operattiv ta' sentenza sospiża mogħtija mill-Qorti Kriminali, hija ghandha, wara li tiddikjara lill-persuna hatja ta' dak ir-reat u tiddikjara l-konkluzjoni tagħha, meta tkun hekk sodisfatta, li l-piena xierqa għal dak ir-reat tkun wahda ta' prigunerija, tirreferi l-każ għal deċiżjoni dwar il-piena lill-Qorti Kriminali billi tibghat lill-hati quddiem dik il-qorti kif provdut fis-subartikolu (2) ta' l-artikolu 28C minghajr ma tistabbilixxi ż-żmien ta' prigunerija ghar-reat l-iehor.

(4) F'kull każ li jingieb quddiemha bis-sahha tas-subartikolu (3) ta' dan l-artikolu, il-Qorti Kriminali ghandha tipproċedi skond is-subartikolu (2) sabiex tiddetermina x'inhu ż-żmien ta' prigunerija li ghandu jinghata ghar-reat originali u ghar-reat l-iehor:

Iżda jekk il-qorti ma taghmilx ordni bis-sahha tas-subartikolu (1) ta' l-artikolu 28B, hija ghandha tistabbilixxi ż-żmien ta' prigunerija ghar-reat l-iehor biss.

(5) Ebda qorti li tkun qeghda tittratta ma' hati kif provdut fl-artikolu 28C u f'dan l-artikolu ma tista' tibdel iż-żmien ta' prigunerija moghti fis-sentenza sospiża billi tnaqqas dak iż-żmien, hlief safejn dan ikun meħtieġ għall-finijiet ta' konformità mad-dispożizzjonijiet tal-paragrafu (b) ta' l-artikolu 17.

Reċidivi.

28F. Meta l-qorti tkun qeghda tittratta ma' hati dwar reat, li għalih hemm piena ta' prigunerija, li jkun sar fil-perijodu operattiv ta' sentenza sospiża, hija ghandha tqisu bħala reċidiv fit-tifsir ta' l-artikolu 49 sabiex tqis il-piena li jkun jisthoqq għal dak ir-reat l-iehor, iżda l-piena mogħtija fis-sentenza sospiża ma ghandhiex titqies għall-finijiet ta' l-artikolu 50 hlief jekk dik is-sentenza tkun bdiet isseħħ u sakemm dik il-piena ma tkunx giet skontata jew mahfura.

Ordni ta' superviżjoni f'sentenza sospiża.

28G. (1) Meta sentenza ta' iktar minn sitt xhur prigunerija tkun giet sospiża skond id-dispożizzjonijiet tas-subartikolu (1) ta' l-artikolu 28A, il-qorti tista' b'żieda tagħmel ordni ta' superviżjoni f'sentenza sospiża (hawnhekk iżjed 'il quddiem imsejha "ordni ta' superviżjoni") li jqiegħed lill-hati taht is-superviżjoni ta' uffiċjal sorveljanti għal perijodu li jigi speċifikat fl-ordni, li jkun perijodu li ma jkunx iktar mill-perijodu operattiv.

(2) Ordni ta' superviżjoni għandu jispeċifika l-isem, l-indirizz u partikolaritajiet oħra li jidentifikaw lill-hati, u l-uffiċjal sorveljanti għandu jkun uffiċjal tal-*probation* maħtur bis-sahha ta' l-Att dwar il-*Probation* ta' Ħatjin u li ismu jissemma' fl-ordni ta' superviżjoni.

(3) Ħati li dwaru jkun qiegħed isehh ordni ta' superviżjoni għandu jibqa' f'kuntatt ma' l-uffiċjal sorveljanti skond dawk l-istruzzjonijiet li jista' minn żmien għal żmien jinghata minn dak l-uffiċjal u l-hati għandu javżah b'kull tibdil fl-indirizz tiegħu.

(4) Il-qorti li tagħmel ordni ta' superviżjoni ghandha gġiegħel li kopja ta' l-ordni tiġi minnufih notifikata lill-uffiċjal sorveljanti.

(5) Ordni ta' superviżjoni ma jibqax fis-seħh jekk qabel it-tmiem tal-perijodu speċifikat fih —

(a) qorti tordna li s-sentenza sospiża mogħtija fil-proċedimenti li fihom l-ordni ta' superviżjoni jkun sar għandha tibda ssehh; jew

(b) l-ordni jitneħħa jew jiġi sostitwit skond id-dispożizzjonijiet li ġejjin ta' dan l-artikolu.

(6) Ordni ta' superviżjoni jista' jitneħħa mill-qorti li tkun għamlitu wara rikors mill-uffiċjal sorveljanti jew mill-hati. Jekk dak l-ordni jkun sar fi grad ta' appell, il-qorti ta' l-ewwel grad għandha titqies bhala l-qorti li għamlet l-ordni.

(7) Il-qorti li tkun għamlet l-ordni ta' superviżjoni tista' tissostitwih b'ordni li jestendi ż-żmien tiegħu skond kull tibdil tal-perijodu operattiv tas-sentenza sospiża magħmul bis-saħħa tas-subartikolu (2) ta' l-artikolu 28B.

(8) Meta l-qorti tagħmel jew tissostitwixxi ordni ta' superviżjoni, hija għandha tispjega bi kliem ċar lill-hati l-effetti ta' dak l-ordni.

(9) Jekk f'xi żmien meta jkun għadu fis-seħh l-ordni ta' superviżjoni il-qorti li tkun għamlet l-ordni jkun jidhrilha, wara li jsirilha rapport bil-miktub mill-uffiċjal sorveljanti, li l-hati jkun naqas li jikkonforma ruhu ma' xi htieġa li hemm fis-subartikolu (3) ta' dan l-artikolu, il-qorti għandha ġġiegħel li l-hati jingieb quddiemha f'jum stabbilit u f'hin stabbilit, u jekk il-qorti, wara li tkun semgħet lill-hati, tkun sodisfatta li dak in-nuqqas ikun sehh, hija tista', mingħajr ħsara għall-kontinwazzjoni ta' l-ordni, twaħħlu ammenda ta' mhux iżjed minn mitt lira.

Direttiva tal-qorti dwar restituzzjoni jew kumpens.

28H. (1) Meta l-qorti tagħmel ordni ta' sentenza sospiża bis-saħħa tas-subartikolu (1) ta' l-artikolu 28A, hija tista' tinkludi f'dak l-ordni direttiva li tkun tobbliga lill-hati li jirrestitwixxi lill-parti offiża kull haġa minnu misruqa jew li hu jkun xjentement laqa' għandu b'riċetazzjoni jew akkwista bi frodi jew bi qliegh ieħor kontra l-liġi, bi ħsara ta' dik il-parti bi jew permezz tar-reat li dwaru tkun inghatat is-sentenza sospiża, jew li jhallas lil dik il-parti dak l-ammont ta' flus li jista' jiġi stabbilit mill-qorti f'dik id-direttiva bhala kumpens għal dak it-telf kif imsemmi jew għal xi danni jew offiża jew ħsara ohra kaġunati lil dik il-parti bi jew permezz tar-reat; u kull ordni bhal dak jista' jinkludi sew direttiva li ssir restituzzjoni u, fin-nuqqas, li jsir hlas kif imsemmi qabel.

(2) F'kull każ li fih il-qorti tinkludi direttiva bhal dik fl-ordni tagħha bis-saħħa tas-subartikolu (1) ta' l-artikolu 28A, hija għandha, f'dik id-direttiva, tistabbilixxi ż-żmien, li ma jkunx ta' aktar minn sitt xhur mid-data tad-direttiva, li fih ir-restituzzjoni jew il-hlas tal-kumpens speċifikat fid-direttiva għandu jsir mill-hati.

(3) Il-qorti ghandha tistabbilixxi l-ammont ta' kull kumpens li ghandu jithallas skond id-direttiva bis-sahha ta' dan l-artikolu wara li tkun sommarjament semgħet lill-partijiet, jekk ikunu hekk jixtiequ, u kull xieghda ohra, magħduda dik ta' l-esperti, li tista' tqis relevanti, iżda l-ammont ta' kumpens hekk stabbilit għandu jkun mingħajr preġudizzju għad-drittijiet ta' kull waħda mill-partijiet, jew ta' xi persuna ohra li jkollha interess, li johorġu mill-likwidazzjoni finali ta' l-ammont dovut, jekk ikun il-każ, kif jista' jiġi eventwalment miftiehem jew deċiż f'kawża ċivili jew b'kull mod ieħor permess bil-liġi.

(4) Jekk il-ħati jonqos li jikkonforma ruħu ma' direttiva inkluża bis-sahha ta' dan l-artikolu fiż-żmien stabbilit mill-qorti f'dik id-direttiva, il-qorti għandha, wara rikors mahluf mill-parti li lilha jkunu dovuti dik ir-restituzzjoni jew dak il-kumpens, liema rikors għandu jiġi notifikat lill-ħati, tistabbilixxi jum u ħin mhux iktar tard minn sebat ijiem mid-data tan-notifika tar-rikors, sabiex jinstemgħu l-partijiet.

(5) Jekk il-qorti, wara dak is-smiegh, tkun sodisfatta li l-ħati jkun naqas li jikkonforma ruħu mad-direttiva tagħha mogħtija bis-sahha ta' dan l-artikolu, hija għandha tordna li s-sentenza sospiża għandha tibda ssehh. Il-qorti tista', iżda, għal kawża raġonevoli, tikkonċedi lill-ħati żmien ieħor perentorju li ma jkunx ta' iktar minn xahar, sabiex jikkonforma ruħu mad-direttiva.

(6) Il-qorti għandha tastjeni milli tiegħu konjizzjoni ta' rikors kif hemm imsemmi fis-subartikolu (4) ta' dan l-artikolu jekk dak ir-rikors ikun ġie ppreżentat wara l-gheluq ta' tliet xhur mit-tmiem taż-żmien stabbilit mill-qorti biex wiehed jikkonforma ruħu ma' dik id-direttiva.

(7) Meta tiġi nkluzja direttiva bis-sahha ta' dan l-artikolu, il-qorti għandha tispjega lill-ħati bi kliem ċar ir-responsabbiltà tiegħu taht dan l-artikolu jekk hu jonqos li jikkonforma ruħu ma' dik id-direttiva.

Appelli.

28I. (1) Għall-finijiet ta' xi dritt ta' appell, ordni li jsir minn qorti bis-sahha tas-subartikolu (1) ta' l-artikolu 28B jew tas-subartikolu (5) ta' l-artikolu 28H li sentenza sospiża għandha tibda ssehh għandu jitqies bħal sentenza mogħtija lill-ħati minn dik il-qorti għar-reat li dwaru tkun ingħatat is-sentenza sospiża.

(2) Ebda haġa f'dan l-artikolu ma għandha tolqot id-dritt ta' appell ta' xi persuna kontra d-dikjarazzjoni ta' ħtija jew kontra s-sentenza kif provdut f'dan il-Kodiċi iżda ma jithalla jsir ebda appell fuq xi waħda minn dawn il-hwejjeg —

(a) it-tul tal-perijodu operattiv stabbilit bis-sahha tas-subartikolu (1) ta' l-artikolu 28A;

(b) kull tibdil fil-perijodu operattiv magħmul bis-saħħa tal-paragrafu (b) tas-subartikolu (2) ta' l-artikolu 28B;

(ċ) kull direttiva nkluża bis-saħħa ta' l-artikolu 28H sabiex issir restituzzjoni jew jithallas kumpens, it-tul taż-żmien stabbilit sabiex issir dik ir-restituzzjoni jew jithallas dak il-kumpens bis-saħħa tas-subartikolu (2) ta' dak l-artikolu, jew id-deċiżjoni dwar l-ammont ta' kumpens li għandu jithallas bis-saħħa tas-subartikolu (3) ta' dak l-artikolu.”.

Emenda ta' l-artikolu 35 tal-liġi prinċipali.

4. Fis-subartikolu (3) ta' l-artikolu 35 tal-liġi prinċipali, minflok il-kliem “ta' mhux anqas minn żewġ” għandhom jidhlu l-kliem “ta' mhux anqas minn hames”.

Żieda ta' l-artikolu 139A gdid mal-liġi prinċipali.

5. Minnufih wara l-artikolu 139 tal-liġi prinċipali għandu jiżdied dan l-artikolu gdid li ġej:

139A. Kull uffiċjal jew impjegat pubbliku jew kull persuna oħra li tkun qeghda taġixxi f'kapaċità uffiċjali li xjentement tinfliggi fuq persuna uġiegh jew tbatija gravi, sew fiżika sew mentali —

“Tortura u trattament jew piena oħra krudila, inumana jew degradanti.

(a) sabiex tikseb minghand dik il-persuna jew minghand terza persuna xi tagħrif jew sqarrija; jew

(b) sabiex tikkastiga lil dik il-persuna għal xi att li hi jew terza persuna tkun wettqet jew tkun suspettata li wettqet; jew

(ċ) sabiex tbeżża' lil dik il-persuna jew terza persuna jew iġġieghel lil dik il-persuna jew terza persuna li tagħmel, jew li tonqos li tagħmel, xi att; jew

(d) għal kull raġuni li tkun bażata fuq diskriminazzjoni ta' liema xorta tkun,

tehel, meta tinstab hatja, il-piena ta' prigunerija għal żmien minn hames sa disa' snin:

Iżda ma hemmx reat meta l-uġiegh jew it-tbatija tirriżulta biss minn sanzjonijiet jew miżuri legittimi, jew tkun inerenti fihom jew incidentali għalihom:

Iżda wkoll, ebda haġa f'dan l-artikolu ma tolqot l-applikabilità ta' dispożizzjonijiet oħra ta' dan il-Kodiċi jew ta' xi liġi oħra li jipprovdu għal piena oghla.”.

Emenda ta' l-artikolu 204 tal-liġi prinċipali.

6. Fis-subartikolu (1) ta' l-artikolu 204 tal-liġi prinċipali, minflok il-kliem “għal żmien mhux aktar minn sentejn,” għandhom jidhlu l-kliem “minn tmintax-il xahar sa erba' snin, ”.

Żieda ta' l-artikolu 222A gdid mal-liġi prinċipali.

7. Minnufih wara l-artikolu 222 tal-liġi prinċipali għandu jiżdied dan l-artikolu gdid li ġej:

“Zieda fil-piena f’certi każi.

222A. Il-pieni msemmin fid-dispożizzjonijiet ta’ qabel ta’ dan is-sub-titolu għandhom jiżdiedu bi grad jew żewġ gradi meta l-offiża ssir fuq persuna li tkun għalqet l-età ta’ hamsa u sittin sena jew fuq persuna li tkun tbat minn marda tal-ġisem jew tal-mohh fi grad li minhabba fiha ma tkunx tista’ tiddefendi ruhha sew.”.

8. Minnufih wara l-artikolu 226 tal-liġi prinċipali għandu jidhol dan l-artikolu ġdid li ġej:

Zieda ta’ l-artikolu 226A ġdid mal-liġi prinċipali.

“Omicidju involontarju jew offiża involontarja fuq il-persuna filwaqt ta’ serq jew tentattiv ta’ serq.

226A. Meta persuna tkun tat kaġun għal mewt jew offiża fuq il-persuna msemmin fid-dispożizzjonijiet ta’ qabel ta’ dan is-sub-titolu filwaqt li tkun qegħda tikkommetti serq jew filwaqt ta’ tentattiv ta’ serq, jew minnufih wara li tikkommetti dak is-serq jew dak it-tentattiv waqt li tkun qegħda tahrab mill-post fejn is-serq ikun sar jew gie ttentat, hija għandha, bla ħsara għar-responsabbiltà tagħha għas-serq jew tentattiv ta’ serq u salvi d-dispożizzjonijiet ta’ l-artikolu 17, meta tinstab hatja, tehel —

(a) fil-każ ta’ mewt, il-piena ta’ prigunerija minn erba’ sa disa’ snin;

(b) fil-każ ta’ offiża fuq il-persuna, il-pieni msemmin fl-artikolu 226 li għandhom jiżdiedu bi grad jew żewġ gradi.”.

9. Fil-paragrafu (b) ta’ l-artikolu 232 tal-liġi prinċipali, minflok il-kliem “l-artikolu 222, il-piena ta’ prigunerija” għandhom jidhlu l-kliem “l-artikolu 222, jew fuq wahda mill-persuni msemmin fl-artikolu 222A, il-piena ta’ prigunerija”.

Emenda ta’ l-artikolu 232 tal-liġi prinċipali.

10. L-artikolu 236 tal-liġi prinċipali għandu jithassar.

Thassir ta’ l-artikolu 236 tal-liġi prinċipali.

11. Fit-test Malti tas-subartikolu (2) ta’ l-artikolu 264 tal-liġi prinċipali, minflok il-kliem “jew fil-każ ta’ il-fatt li jkun hemm” għandhom jidhlu l-kliem “jew fil-każ tal-eżistenza ta’”.

Emenda ta’ l-artikolu 264 tal-liġi-prinċipali.

12. Minnufih wara l-artikolu 276 tal-liġi prinċipali għandu jiżdied dan l-artikolu ġdid li ġej:

Zieda ta’ l-artikolu 276A ġdid mal-liġi prinċipali.

“Piena għal meta l-“vjolenza” tkun diretta kontra persuni.

276A. Il-pieni msemmin fl-artikoli 273, 274, 275 u 276 għandhom jiżdiedu bi grad jew żewġ gradi meta l-“vjolenza” hemm imsemmin taht l-età ta’ tmax-il sena jew li tkun għalqet l-età ta’ hamsa u sittin sena jew kontra persuna li tkun tbat minn marda tal-ġisem jew tal-mohh fi grad li minhabba fiha ma tkunx tista’ tagħmel rezistenza xierqa.”.

Emenda ta' l-artikolu 277 tal-liġi prinċipali.

13. L-artikolu 277 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kliem “fl-artikoli 274, 275 jew 276,” fil-paragrafu (a) tiegħu għandhom jidhlu l-kliem “fl-artikoli 274, 275, 276 jew 276A,”; u

(b) minflok il-kliem “fl-artikoli 274, 275 jew 276” fil-paragrafu (b) tiegħu għandhom jidhlu l-kliem “fi-artikoli 274, 275, 276 jew 276A”.

Emenda ta' l-artikolu 280 tal-liġi prinċipali.

14. Fl-artikolu 280 tal-liġi prinċipali, minnufih wara s-subartikolu (2) tiegħu, għandu jiżdied dan is-subartikolu ġdid li ġej:

“(3) Għall-finijiet tas-subartikolu ta' qabel dan, meta l-“vjolenza” tkun diretta kontra xi waħda mill-persuni msemmijin fl-artikolu 276A, il-piena applikabbli għal serq meta akkumpanjat bil-kwalifika tal-“vjolenza” għandha tkun il-piena kif miżjuda b'dak l-artikolu.”.

Emenda ta' l-artikolu 285 tal-liġi prinċipali.

15. Fit-test Malti tal-proviso għall-artikolu 285 tal-liġi prinċipali, minflok il-kliem “żmien minn xahar sa sitt xhur.” għandhom jidhlu l-kliem “żmien mhux aktar minn tliet xhur.”.

Emenda ta' l-artikolu 334 tal-liġi prinċipali.

16. L-artikolu 334 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) minflok il-kliem “Kull min” għandhom jidhlu l-kliem “Kull min f'Malta”;

(b) minflok il-kliem “akkwistati b'reat,” għandhom jidhlu l-kliem “akkwistati b'reat, sew jekk dan isir f'Malta jew barra minn Malta,”; u

(ċ) minnufih wara l-proviso li hemm miegħu għandu jiżdied dan il-proviso ġdid li ġej:

“Iżda wkoll għall-fini ta' dan l-artikolu dik il-ħaġa għandha titqies biss li tkun insterqet, ittiehdet b'qerq, jew ġiet akkwistata b'reat li jkun sar barra minn Malta jekk tkun inkisbet b'xi att ta' kommissjoni jew omissjoni li, kieku sar f'Malta, kien jikkostitwixxi wiehed mir-reati msemmijin fil-paragrafi (a), (b) u (ċ).”.

Emenda ta' l-artikolu 370 tal-liġi prinċipali.

17. Minnufih wara l-paragrafu (e) tas-subartikolu (3) tal-artikolu 370 għandu jiżdied dan il-paragrafu ġdid li ġej:

“(f) Qabel ma l-qorti tistaqsi lill-akkużat jekk għandux oġġezzjoni li l-każ tiegħu jiġi ttrattat bi proċedura sommarja, kif provdut fil-paragrafu (b), il-qorti għandha tisma' dik ix-xhieda

ohra li tista' tiġi ndikata mill-Avukat Ġenerali fl-istess nota li biha jibgħat lill-persuna akkużata sabiex tkun iġġudikata mill-qorti fuq imsemmija skond il-paragrafu (a) ta' dan is-subartikolu.”.

18. Fis-subartikolu (2) ta' l-artikolu 383 tal-liġi prinċipali, minflok il-kliem “żewġ liri” għandhom jidhlu l-kliem “hames liri”.

Emenda ta' l-artikolu 383 tal-liġi prinċipali.

19. Minflok is-subartikolu (2) ta' l-artikolu 402 tal-liġi prinċipali għandu jidhol dan is-subartikolu li ġej:

Emenda ta' l-artikolu 402 tal-liġi prinċipali.

“(2) Iż-żminijiet fuq imsemmija jistgħu jitwaqqfu wkoll —

f'każ ta' mard ta' xhieda. (a) meta xhud ikun hekk marid li ma jkunx jista' jagħti x-xiehda tiegħu lanqas f'daru;

f'każ meta imputat ma jinstabx. (b) meta l-imputat ma jkunx jista' jinstab u wiehed għandu għaliex jahseb li hu jkun inheba jew telaq minn Malta.”.

20. Is-subartikolu (2) ta' l-artikolu 432 tal-liġi prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 432 tal-liġi prinċipali.

(a) minflok il-kliem “dispożizzjonijiet ta' dan il-Kodiċi dwar” għandhom jidhlu l-kliem “dispożizzjonijiet ta' dan il-Kodiċi jew ta' kull liġi ohra dwar”; u

(b) minflok il-kliem “u d-disposizzjoni ta' dan il-Kodiċi li tkun tgħodd għall-każ.” għandhom jidhlu l-kliem “u d-dispożizzjonijiet ta' dan il-Kodiċi jew ta' dik il-liġi ohra li jkunu jghoddu għall-każ.”.

21. Minflok il-proviso għall-artikolu 518 tal-liġi prinċipali għandu jidhol dan il-proviso li ġej:

Emenda ta' l-artikolu 518 tal-liġi prinċipali.

“Izda proċessi verbali għandhom jintwerew, u kopji tagħhom jingħataw, biss fid-diskrezzjoni ta' l-Avukat Ġenerali u bil-ħlas ta' dawk id-drittijiet li jistgħu jiġu stabbiliti mill-Ministru responsabbli għall-ġustizzja skond l-artikolu 695.”.

22. L-artikolu 533 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem “għal kull hamsin ċenteżmu jew frazzjoni ta' hamsin ċenteżmu,” għandhom jidhlu l-kliem “għal kull hames liri jew frazzjoni ta' hames liri,”; u

Emenda ta' l-artikolu 533 tal-liġi prinċipali.

(b) fis-subartikolu (3) tiegħu, minflok il-kliem “il-prosekutur” għandhom jidhlu l-kliem “ir-registratur”.

23. Fis-subartikolu (2) ta' l-artikolu 534 tal-liġi prinċipali, minflok il-kliem “tal-prosekutur” għandhom jidhlu l-kliem “tar-registratur”.

Emenda ta' l-artikolu 534 tal-liġi prinċipali.

24. Minnufih wara s-subartikolu (3) ta' l-artikolu 546 tal-liġi prinċipali għandhom jiżdiedu dawn is-subartikoli ġodda li ġejjin:

Emenda ta' l-artikolu 546 tal-liġi prinċipali.

“(4) Ir-rapport, id-denunzja jew il-kwerela msemmijin fis-subartikolu (1) ta’ dan l-artikolu u fis-subartikolu (1) ta’ l-artikolu 551 jistghu jsiru bil-fomm mill-maġistrat iżda f’kull każ l-istess rapport, denunzja jew kwerela għandhom isiru bil-miktub lill-maġistrat fi żmien jumejn tax-xogħol mill-jum li fih ikunu saru bil-fomm:

Iżda l-maġistrat jista’, meta jidhirlu li jkun xieraq li hekk jagħmel, jipproċedi skond id-disposizzjonijiet ta’ dan it-Titolu minkejja li r-rapport, id-denunzja jew il-kwerela ma jsirux bil-miktub fiż-żmien imsemmi.

(5) Kopja tar-rapport, denunzja jew kwerela msemmijin fis-subartikolu (1) ta’ dan l-artikolu u fis-subartikolu (1) ta’ l-artikolu 551 għandhom jintbagħtu mill-maġistrat lill-Avukat Ġenerali fi żmien tlett ijiem tax-xogħol minn meta l-maġistrat ikun irċeva dak ir-rapport, dik id-denunzja jew dik il-kwerela bil-miktub.

(6) Id-deċiżjoni li ma jsirx aċċess skond is-subartikolu (2) ta’ dan l-artikolu għandha bl-istess mod tiġi notifikata lill-Avukat Ġenerali fi żmien tlett ijiem tax-xogħol minn dik id-deċiżjoni.”.

Emenda ta’
l-artikolu 548
tal-liġi prinċipali

25. Minnufih wara t-tieni proviso li jinsab ma’ l-artikolu 548 tal-liġi prinċipali għandu jidhol dan il-proviso ġdid li ġej:

“Iżda wkoll, bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta’ l-artikolu 552, ebda espert ma għandu jinhatar biss sabiex jisma’ x-xhieda bil-ġurament u jiehu x-xiehda tagħhom bil-miktub u jistabbilixxi l-fatti rilevanti.”.

Zieda ta’
l-artikolu 550A
ġdid mal-
liġi prinċipali.

26. Minnufih wara l-artikolu 550 tal-liġi prinċipali għandu jizdedd dan l-artikolu ġdid li ġej:

“Il-maġistrat għandu jinforma lill-Avukat Ġenerali bid-dewmien. 550A. (1) Meta l-proċess verbal ma jsirx fi żmien sittin ġurnata mir-rapport, denunzja jew kwerela msemmija fis-subartikolu (1) ta’ l-artikolu 546 jew fis-subartikolu (1) ta’ l-artikolu 551, jew meta “*reperi*” imsemmi fis-subartikolu (1) ta’ l-artikolu 558 ma jsirx fi żmien sittin ġurnata mill-kxif tad-dokument, il-maġistrat għandu jagħmel rapport bil-miktub li fih jindika r-raġuni tad-dewmien, u dan ir-rapport għandu jintbagħat mill-maġistrat lill-Avukat Ġenerali mhux aktar tard minn tlett ijiem tax-xogħol minn għeluq is-sittin ġurnata.

(2) F’għeluq kull xahar minn meta jkun sar l-ewwel rapport, il-maġistrat għandu jagħmel rapport bil-miktub iehor li fih jerga’ jindika r-raġuni tad-dewmien u kull rapport sussegwenti hekk magħmul għandu jintbagħat mill-maġistrat lill-Avukat Ġenerali mhux aktar tard minn tlett ijiem tax-xogħol minn għeluq ix-xahar.”.

Emenda ta’
l-artikolu 554
tal-liġi prinċipali.

27. L-artikolu 554 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) l-artikolu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1);

(b) minnufih wara s-subartikolu (1) kif enumerat mill-ġdid għandu jiżdied dan is-subartikolu ġdid li ġej:

“(2) Il-maġistrat jista’ wkoll jordna li persuna indizjata tiġi ffotografata, meqjusa jew li jittiehdu l-istampi ta’ subgħajha jew li xi parti ta’ ġisimha jew hwejjigħa jiġu eżaminati minn esperti mahtura minnu għal dan l-iskop:

Iżda meta l-maġistrat ikun tal-fehma li dawk il-fotografiji (negattivi u kopji), stampi tas-subgħajn, notamenti fuq il-qisien u kull haġa oħra mehuda minn fuq il-ġisem jew il-hwejjeġ kif ingħad ma jkunux aktar mehtieġa għall-verifika tal-prova dwar l-“*in genere*”, huwa għandu jordna d-distruzzjoni tagħhom jew jordna li jingħataw lura lill-persuna li dwarhom jirreferu.”.

28. Fis-subartikolu (1) ta’ l-artikolu 565 tal-liġi prinċipali, minflok il-kliem “tal-periti u x-xhieda li jmiss jingiebu,” għandhom jidhlu l-kliem “tal-periti,”.

Emenda ta’
l-artikolu 565
tal-liġi prinċipali.

29. Minflok is-subartikolu (2) ta’ l-artikolu 569 tal-liġi prinċipali għandhom jidhlu dawn is-subartikoli li ġejjin:

Emenda ta’
l-artikolu 569
tal-liġi prinċipali.

“(2) L-Avukat Ġenerali għandu jibgħat lura dawk l-atti lill-maġistrat jew lill-maġistrat tal-kompilazzjoni meta jkun jinhtieġ li l-investigazzjoni tissokta.

(3) Meta dawk l-atti jintbagħtu lura lill-maġistrat, id-dispożizzjonijiet ta’ l-artikolu 550A għandhom, *mutatis mutandis*, japplikaw.

(4) Għall-fini tas-subartikolu (2) ta’ dan l-artikolu, dawk l-atti għandhom jintbagħtu lura permezz ta’ nota li tiġi pprezentata fil-Qorti tal-Pulizija Ġudizzjarja u, minkejja kull haġa li tista’ tinstab f’dan il-Kodiċi, l-Avukat Ġenerali ma għandux jitharrek sabiex jesibixxi dawk l-atti.”.

30. Fil-proviso għall-artikolu 579 tal-liġi prinċipali, minflok il-kelma “msemmija” għandha tidhol il-kelma “imposta”.

Emenda ta’
l-artikolu 579
tal-liġi prinċipali.

31. Fis-subartikolu (1) ta’ l-artikolu 586 tal-liġi prinċipali, minflok il-kliem “ġurnata għal kull tmax-il ċenteżmu u hames milleżmi ta’ dik is-somma, jekk ikun l-imputat jew l-akkużat stess, jew għal żmien ta’ mhux aktar minn ġurnata għal kull hamsin ċenteżmu ta’ dik is-somma, jekk ikun il-pleġġ.” għandhom jidhlu l-kliem “ġurnata għal kull hames liri ta’ dik is-somma, sew jekk dik il-persuna tkun l-imputat jew l-akkużat sew jekk tkun il-pleġġ.”.

Emenda ta’
l-artikolu 586
tal-liġi prinċipali.

32. Fl-artikolu 665 tal-liġi prinċipali, minflok il-kliem “Bla hsara ta’ dispożizzjonijiet speċjali oħra” għandhom jidhlu l-kliem “Bla hsara tad-dispożizzjonijiet ta’ l-artikolu 28A u d-dispożizzjonijiet”.

Emenda ta’
l-artikolu 665
tal-liġi prinċipali.

Emenda ta' l-artikolu 682 tal-liġi prinċipali.

33. L-artikolu 682 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "u minn żewġ xhieda, u, jekk ir-radd ta' l-oġġetti jsir matul il-kompilazzjoni, mill-maġistrat ukoll." għandhom jidhru l-kliem "jew, jekk ir-radd ta' l-oġġetti jsir matul il-kompilazzjoni, mill-maġistrat.";

(b) is-subartikolu (2) tiegħu għandu jithassar; u

(ċ) is-subartikolu (3) għandu jiġi enumerat mill-ġdid subartikolu (2).

Żieda ta' artikolu ġdid 683A tal-liġi prinċipali.

34. Minnufih wara l-artikolu 683 tal-liġi prinċipali, għandu jżied dan li ġej:

"Bejgħ bi rkant ta' proprjetà li ma ssirx talba għaliha minn sidha.

683A. Id-dispożizzjonijiet ta' l-artikoli 674, 675 u 676 għandhom japplikaw *mutatis mutandis* għal oġġetti li jkollhom x'jaqsmu ma' proċeduri kriminali jew li jkunu akkwistati b'kull mod li jkun b'mezz ta' reat jew ikollhom b'xi mod x'jaqsmu ma' reat, u għall-oġġetti deskritti fl-artikolu 673, meta dawk l-oġġetti ma tkunx saret talba għalihom minn sidhom jew minn min ikollu titolu legittimu għalihom wara li jkunu għaddew hames snin, li jibdeu jgħoddu:

(a) meta proċeduri kriminali jkunu nbdeu, mill-jum li fihom dawk il-proċeduri jkunu definittivament ingħalqu;

(b) meta l-awtur tar-reat jkun assenti jew mhux magħruf, mill-jum li fih l-Avukat Ġenerali jiċcertifika bil-miktub li dawk l-oġġetti jistgħu jitnehhew; u

(ċ) meta l-oġġetti jkunu dawk deskritti fl-artikolu 673, mill-jum li fih dawk l-oġġetti jiġu taħt l-awtorità tal-qorti."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 417 tal-25 ta' Lulju, 1990.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

CENSU TABONE
President

10th August, 1990

ACT No. XXIX of 1990*AN ACT 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:—

1. This Act may be cited as the Criminal Code (Amendment) Act, 1990, and shall be read and construed as one with the Criminal Code, hereinafter referred to as “the principal law”. Short title.
2. Subsection (1) of section 5 of the principal law shall be amended as follows: Amendment of section 5 of the principal law.
 - (a) in paragraph (d) thereof, for the words “or of the offence mentioned in section 133,” there shall be substituted the words “or of the offences mentioned in sections 133 or 139 A,”; and
 - (b) in paragraph (e) thereof, for the words “in section 298,” there shall be substituted the words “in sections 139 A or 298,”.
3. Immediately after section 28 of the principal law there shall be added the following new sections: Addition of new sections to the principal law.

^{-Suspended sentence of imprisonment.} 28A. (1) Subject to subsections (2) to (7) of this section and to sections 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 section 28B that the original sentence shall take effect; and in this section and whenever it occurs in sections 28

B to 28 G and in section 28 I “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 subsection (1) of this section.

Cap. 152. (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 of Offenders 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.

(4) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under section 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 subsection (1) of this section, to be a sentence awarding punishment and nothing in this section 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 sections 383, 384, 385, 386, 387 and 533.

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

(7) An order under subsection (1) of this section 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 section 50;

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

(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.

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 section 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 subsection (1) of this section, it may deal with the offender by one of the following methods —

(a) it may abstain from making an order under subsection (1) of this section and the operational period shall then remain in force; or

(b) it may by order vary the original order under subsection (1) of section 28A 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 subsection (1) of this section 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 subsection (2) of section 436 and of section 467, be determined by the court and not by the verdict of a jury.

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

Competent court for dealing with suspended sentence.

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

(2) Where an offender is convicted by the Court of Judicial Police 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 Judicial Police is of the opinion that the appropriate punishment for the further offence is imprisonment, the provisions of subsection (3) of section 28E shall apply.

(3) For the purpose of this section and of sections 28D, and 28E 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.

Suspended sentence not dealt with on conviction of further offence.

28D. (1) If it appears to the Criminal Court or to the Court of Judicial Police 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 section 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.

28E. (1) Where an offender is sentenced for more than one crime in accordance with the provisions of paragraph (b) of section 17, an order under subsection (1) of section 28A 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) Where the court dealing with an offender in respect of a suspended sentence which has not already taken effect makes an order under subsection (1) of section 28B, and the court is the Criminal Court or the same court that made the order for suspended sentence, such court shall apply the provisions of paragraph (b) of section 17 and award

a single term of imprisonment in accordance with those provisions for the original and further offences.

(3) Where the Court of Judicial Police 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 subsection (2) of section 28C without pronouncing the term of imprisonment for the further offence.

(4) In any case referred to it under subsection (3) of this section, the Criminal Court shall proceed in accordance with subsection (2) for determining the term of imprisonment to be awarded for the original and the further offences:

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

(5) No court dealing with an offender as provided in section 28C and in this section 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 paragraph (b) of section 17.

Recidivists. 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 section 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 section 50 unless such sentence has taken effect and until the expiration or remission of such punishment.

Suspended sentence supervision order. 28G. (1) Where a sentence of more than six months imprisonment is suspended in accordance with the provisions of subsection (1) of section 28A, 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.

(2) A supervision order shall specify the name, address and other identification particulars of the offender, and the supervising officer shall be a probation officer appointed under the Probation of Offenders Act and named in the supervision order.

(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 section.

(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 subsection (2) of section 28B.

(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 subsection (3) of this section, 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, without prejudice to the continuation of the order, impose on him a fine (*ammenda*) not exceeding one hundred liri.

Court
direction
for
restitution
or
compensa-
tion.

28H. (1) When making an order for suspended sentence under subsection (1) of section 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 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 subsection (1) of section 28A 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) The court shall determine the amount of any compensation directed to be paid under this section 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.

(4) if the offender fails to comply with a direction entered under this section 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.

(5) If the court, after such hearing, is satisfied that the offender has failed to comply with its direction under this section, 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.

(6) The court shall abstain from taking cognizance of an application as is mentioned in subsection (4) of this section 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.

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

Appeals.

28I. (1) For the purposes of any right of appeal an order made by a court under subsection (1) of section 28B or subsection (5) of section 28H 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 section 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 subsection (1) of section 28A;

(b) any variation of the operational period made under paragraph (b) of subsection (2) of section 28B;

(c) any direction entered under section 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 subsection (2) of that section, or the determination of the amount of compensation payable under subsection (3) of that section.”.

Amendment of section 35 of the principal law.

4. In subsection (3) of section 35 of the principal law, for the words “of not less than two” there shall be substituted the words “of not less than five”.

Addition of new section 139A to the principal law.

5. Immediately after section 139 of the principal law there shall be added the following new section:

“Torture and other cruel, inhuman or degrading treatment or punishment.

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 section shall affect the applicability of other provisions of this Code or of any other law providing for a higher punishment.”.

6. In subsection (1) of section 204 of the principal law, for the words “not exceeding two years,” there shall be substituted the words “from eighteen months to four years,”.

Amendment of section 204 of the principal law.

7. Immediately after section 222 of the principal law there shall be added the following new section:

Addition of new section 222A to the principal law.

“Increase of punishment in certain cases.” 222A. The punishments established in the foregoing provisions of this sub-title shall be increased by one or two degrees when the harm is committed on a person who has attained the age of sixty-five years or on a person suffering from a degree of physical or mental infirmity in consequence of which he is unable to defend himself adequately.”.

8. Immediately after section 226 of the principal law there shall be added the following new section:

Addition of new section 226A to the principal law.

“Involuntary homicide or involuntary bodily harm in the course of theft or attempted theft.” 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 section 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 section 226 which shall be increased by one or two degrees.”.

9. In paragraph (b) of section 232 of the principal law, for the words “section 222, to imprisonment” there shall be substituted the words “section 222, or on any of the persons mentioned in section 222A, to imprisonment”.

Amendment of section 232 of the principal law.

10. Section 236 of the principal law shall be repealed.

Repeal of section 236 of the principal law.

Amendment of section 264 of the principal law.

11. In the Maltese text of subsection (2) of section 264 of the principal law, for the words “jew fil-każ ta’ il-fatt li jkun hemm” there shall be substituted the words “jew fil-każ ta’ l-eżistenza ta’”.

Addition of new section 276A to the principal law.

12. Immediately after section 276 of the principal law there shall be added the following new section:

“Punishment when “violence” is directed against certain persons. 276A. The punishment established in sections 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-five 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.”.

Amendment of section 277 of the principal law

13. Section 277 of the principal law shall be amended as follows:

(a) for the words “in section 274, 275 or 276,” in paragraph (a) thereof there shall be substituted the words “in section 274, 275, 276 or 276A,”; and

(b) for the words “in section 274, 275 or 276” in paragraph (b) thereof there shall be substituted the words “in section 274, 275, 276 or 276A”.

Amendment of section 280 of the principal law.

14. In section 280 of the principal law, immediately after subsection (2) thereof, there shall be added the following new subsection:

“(3) For the purposes of the foregoing subsection, where the “violence” is directed against any of the persons mentioned in section 276A, the punishment applicable to theft when accompanied with the aggravating circumstance of “violence” shall be the punishment as increased by that section.”.

Amendment of section 285 of the principal law.

15. In the Maltese text of the proviso to section 285 of the principal law, for the words “żmien minn xahar sa sitt xhur.” there shall be substituted the words “żmien mhux aktar minn tliet xhur.”.

Amendment of section 334 of the principal law.

16. Section 334 of the principal law shall be amended as follows:

(a) for the words “Whosoever shall” there shall be substituted the words “Whosoever shall in Malta”;

(b) for the words “by means of any offence,” there shall be substituted the words “by means of any offence, whether committed in Malta or abroad,”; and

(c) immediately after the proviso thereof there shall be added the following new proviso:

“Provided further that for the purpose of this section 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).”.

17. Immediately after paragraph (e) of subsection (3) of section 370 there shall be added the following new paragraph:

Amendment of section 370 of the principal law.

“(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) of this subsection.”.

18. In subsection (2) of section 383 of the principal law, for the words “two liri” there shall be substituted the words “five liri”.

Amendment of section 383 of the principal law.

19. For subsection (2) of section 402 of the principal law there shall be substituted the following new subsection:

Amendment of section 402 of the principal law.

“(2) Such terms may also be held in abeyance —

in case of illness of witnesses.

(a) if any witness is so infirm as to be unable to give evidence even in his place of abode;

in case where accused cannot be found.

(b) if the accused cannot be found and there is reason to believe that he has absconded or left Malta.”.

20. Subsection (2) of section 432 of the principal law shall be amended as follows:

Amendment of section 432 of the principal law.

(a) for the words “provisions of this Code relating” there shall be substituted the words “provisions of this Code or of any other law relating”; and

(b) for the words “relative provision of this Code.” there shall be substituted the words “relative provisions of this Code or of such other law.”.

21. For the proviso to section 518 of the principal law there shall be substituted the following proviso:

Amendment of section 518 of the principal law.

“Provided that a *procès-verbal* 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 section 695.”.

22. Section 533 of the principal law shall be amended as follows:

Amendment of section 533 of the principal law.

(a) in subsection (2) thereof, for the words “for every fifty cents” there shall be substituted the words “for every five liri”; and

(b) in subsection (3) thereof, for the word "prosecutor" there shall be substituted the word "registrar".

Amendment of section 534 of the principal law.

23. In subsection (2) of section 534 of the principal law, for the word "prosecutor" there shall be substituted the word "registrar".

Amendment of section 546 of the principal law.

24. Immediately after subsection (3) of section 546 of the principal law there shall be added the following new subsections:

"(4) The report, the information or the complaint referred to in subsection (1) of this section and in subsection (1) of section 551 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.

(5) A copy of the report, information or complaint referred to in subsection (1) of this section and in subsection (1) of section 551 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 subsection (2) of this section shall likewise be notified to the Attorney General within the period of three working days from such decision."

Amendment of section 548 of the principal law.

25. Immediately after the second proviso to section 548 of the principal law, there shall be added the following new proviso:

"Provided further that, without prejudice to the provisions of subsection (2) of section 552, 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."

Addition of new section 550A to the principal law.

26. Immediately after section 550 of the principal law there shall be added the following new section:

"Magistrate to inform Attorney General of delay.

550A. (1) Where the *process-verbal* is not drawn up within sixty days from the report, information or complaint referred to in subsection (1) of section 546 or in subsection (1) of section 551, or where the "*repertus*" referred to in subsection (1) of section 558 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.”.

27. Section 554 of the principal law shall be amended as follows: Amendment of section 554 of the principal law.

(a) the section shall be renumbered as subsection (1);

(b) immediately after subsection (1) as renumbered, there shall be added the following new subsection:

“(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.”.

28. In subsection (1) of section 565 of the principal law, for the words “made by the experts and to the employment of witnesses,” there shall be substituted the words “made by the experts.”. Amendment of section 565 of the principal law.

29. For subsection (2) of section 569 of the principal law there shall be substituted the following subsections: Amendment of section 569 of the principal law.

“(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 section 550A shall, *mutatis mutandis*, apply.

(4) For the purpose of subsection (2) of this section, such record shall be returned by means of a note filed in the Court of Judicial Police, and, notwithstanding anything contained in this Code, the Attorney General shall not be subpoenaed to exhibit such record.”.

30. In the proviso to section 579 of the principal law, for the word “specified” there shall be substituted the word “imposed”. Amendment of section 579 of the principal law.

Amendment
of section 586
of the
principal law.

31. In subsection (1) of section 586 of the principal law, for the words “one day for every twelve cents and five mils of that sum, if such person is the person charged or accused, or for a period not exceeding one day for every fifty cents of that sum, if such person is the surety.” there shall be substituted the words “one day for every five liri of that sum, whether such person is the person charged or accused or the surety.”.

Amendment
of section 665
of the
principal law.

32. In section 665 of the principal law, for the words “Subject to other special” there shall be substituted the words “Subject to the provisions of section 28A and the”.

Amendment
of section 682
of the
principal law.

33. Section 682 of the principal law shall be amended as follows:

(a) in subsection (1) thereof, for the words “and by two witnesses, and, if the property is restored during the inquiry, also by the magistrate.” there shall be substituted the words “or, if the property is restored during the inquiry, by the magistrate.”;

(b) subsection (2) thereof shall be deleted; and

(c) subsection (3) shall be renumbered subsection (2).

Addition of
new section
683A to the
principal law.

34. Immediately after section 683 of the principal law, there shall be added the following new section:

“Sale by
auction
of property
unclaimed
by owner.

683A. The provisions of sections 674, 675 and 676 shall, *mutatis mutandis*, apply to any property connected with criminal proceedings or in any manner obtained by means of an offence or connected therewith, and to the property described in section 673, where such property has not been claimed by the owner thereof or by any person having a lawful title thereto after the lapse of five years, to run:

(a) where criminal proceedings have been instituted, from the day of the final determination of such proceedings;

(b) where the author of the crime is absent or unknown, from the day on which the Attorney General certifies in writing that the property may be disposed of; and

(c) where the property is that described in section 673, from the day such property comes under the authority of the court.”.

Passed by the House of Representatives at Sitting No. 417 of the 25th July, 1990.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives