

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,987, 4 ta' Mejju, 2018

Taqsimha C

Nru. 41

4. 05. 2018

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Ligi mressaq mill-Onorevoli Owen Bonnici, M.P., Ministru għall-Ġustizzja, Kultura u Gvern Lokali, u moqri għall-Ewwel darba fis-Seduta tat-2 ta' Mejju, 2018.

A BILL introduced by the Honourable Owen Bonnici, M.P., Minister for Justice, Culture and Local Government, and read the First time at the Sitting of the 2nd May, 2018.

ATT li jemenda il-Kodiċi Kriminali, Kap 9, l-Att dwar Dipendenza fuq id-Droga (Trattament mhux Prigunerija), Kap. 537 u biex jipprovdi għal hwejjeġ oħra relatati jew ancillari għalihom.

AN ACT to amend the Criminal Code, Cap. 9, the Drug Dependence (Treatment not Imprisonment) Act, Cap. 537 and to provide for other matters dealing with them or ancillary thereto.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT li jemenda il-Kodiċi Kriminali, Kap. 9, l-Att dwar Dipendenza fuq id-Droga (Trattament mhux Prigunerija), Kap. 537 u biex jipprova għal hwejjeġ oħra relatati jew anċillari għalihom.

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

- 1.** It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2018 li jemenda l-Kodiċi Kriminali u l-Att dwar id-Dipendenza fuq id-Droga (Trattament mhux Prigunerija). Titolu fil-qosor.
Kap. 9.
Kap. 537

TAQSIMA I
Emenda għall-Kodiċi Kriminali

- 2.** Din it-Taqsima temenda il-Kodiċi Kriminali, u għandha tinqara u tinftiehem haġa waħda mal-Kodiċi Kriminali, hawnhekk iżjed 'il quddiem imsejjaħ "il-Kodiċi". Emenda tal-
Kodiċi
Kriminali.
Kap. 9.

- 3.** Minnufih wara s-Sub-titolu XI tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi għandu jidhöl is-Sub-titolu ġdid li ġej: Żjieda tas-Sub-
titolu XII ġdid
fil-Kodiċi.

"Sub-titolu XII
Fuq il-Preżunzjoni tal-Innoċenza

Il-mizuri f'dan is-Sub-titolu jittrasponu d-dispożizzjonijiet tad-Direttiva (UE) 2016/343 tal-Parlament Ewropew u tal-Kunsill tad-9 ta' Marzu 2016 dwar it-tisħiħ ta' ċerti aspetti tal-preżunzjoni tal-innoċenza u tad-dritt li wieħed ikun preżenti waqt il-proċess fil-proċedimenti kriminali.

Preżunzjoni tal-innoċenza.

366A.(1) Kull persuna suspettata jew akkużata li wettqet reat kriminali, jew reat kriminali allegat, għandha titqies li hija innoċenti sa meta d-deċiżjoni dwar id-determinazzjoni finali jekk dik il-persuna wettqitx ir-reat kriminali kkonċernat tkun saret definittiva:

Iżda d-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju għall-*proviso* tas-sub-artikolu (5) tal-artikolu 39 tal-Kostituzzjoni u għall-infurzar, kif jista' jiġi pprovdut mil-liġi, ta' deċiżjoni tal-Qorti tal-Maġistrati jew tal-Qorti Kriminali pendenti s-smiegħ ta' appell wara li l-akkużat ikun instab ħati li wettaq reat kriminali minn waħda mill-Qrati imsemmija.

Oneru tal-prova.

366B.(1) L-oneru tal-prova għad-determinazzjoni tal-ħtija ta' persuni suspettati jew akkużati jaqa' fuq il-prosekuzzjoni:

Iżda d-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju:

(a) għall-*proviso* tas-subartikolu (5) tal-artikolu 39 tal-Kostituzzjoni;

(b) għal kwalunkwe obbligu ta' mħallef, maġistrat jew kwalunkwe qorti jew tribunal li jfittxu evidenza kemm inkriminanti kif ukoll li tiskaġuna;

(ċ) għad-dritt tad-difiża li tippreżenta evidenza skont il-liġi.

(2) Kwalunkwe dubju dwar il-ħtija għandu jkun għall-benefiċċju tal-persuna suspettata jew akkużata, inkluż fejn il-qorti tivvaluta jekk il-persuna akkużata għandhiex tiġi lliberata.

Referenzi pubbliċi għall-ħtija.

366C.(1) Sakemm ma jkunx ippruvat li persuna suspettata jew akkużata hija ħatja skont il-liġi, id-dikjarazzjonijiet pubbliċi mill-awtoritajiet pubbliċi u d-deċiżjonijiet ġudizzjarji, għajr dawk dwar ħtija, m'għandhomx jirreferu għal dik il-persuna bħala ħatja:

Iżda d-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju:

(i) għall-atti tal-Avukat Ġenerali, tal-Pulizija jew ta' awtoritajiet pubbliċi li jkollhom poteri ta' prosekuzzjoni jkollhom l-għan li jippruvaw il-ħtija tal-persuna suspettata jew akkużata;

(ii) għad-deċiżjonijiet preliminari ta' natura proċedurali, li jittieħdu minn maġistrat, imħallef, jew minn kwalunkwe awtorità kompetenti oħra u li huma bbażati fuq suspett jew evidenza inkriminanti;

(iii) għad-dritt tal-awtoritajiet pubbliċi li jxerrdu l-informazzjoni pubblikament dwar il-proċedimenti kriminali fejn dan ikun strettament meħtieġ għal raġunijiet relatati mal-investigazzjoni kriminali jew mal-interess pubbliku.

(2) Kwalunkwe persuna li tallega l-ksur tad-drittijiet tagħha taħt dan l-artikolu jew dan is-Sub-titolu, għandu jkollha d-dritt li tagħmel rikors lill-Qorti tal-Maġistrati fi żmien għaxart ijiem mid-data tal-fatt li allegatament ta lok għall-ksur, sabiex titlob id-determinazzjoni ta' dak il-ksur u rimedju xieraq.

Prezentazzjoni ta' persuni suspettati u akkużati.

366D.(1) Persuni suspettati u akkużati m' għandhomx jiġu pprezentati bħala haġja fil-qorti jew fil-pubbliku permezz tal-użu ta' trażzin fiżiku:

Iżda xejn f'dan l-artikolu ma għandu jimpedixxi lil pulizija jew kwalunkwe qorti milli tapplika miżuri ta' trażzin fiżiku li jistgħu jkunu meħtieġa fi kwalukwe każ partikolari għal raġunijiet relatati mas-sigurtà jew biex persuni suspettati jew akkużati jkunu impediti milli jaħarbu jew ikollhom kuntatt ma' persuni oħra.

Id-dritt li wiehed jibqa' sieket u d-dritt li wiehed ma jinkriminax ruħu.

366E.(1) Persuni suspettati u akkużati għandu jkollhom id-dritt li jibqgħu siekta fir-rigward tar-reat kriminali li huma suspettati jew akkużati li wettqu u għandu jkollhom id-dritt li ma jinkriminawx ruħhom.

(2) L-eżerċizzju tad-dritt li wiehed ma jinkriminax ruħu m'għandux jimpedixxi lill-awtoritajiet kompetenti mill-ġbir ta' evidenza li tista' tinkiseb bl-użu ta' poteri legittimi ta' kompulsjoni li l-eżistenza tagħhom hija indipendenti mir-rieda tal-persuni suspettati jew akkużati.

(3) L-eżerċizzju minn persuni suspettati jew akkużati tad-dritt li wiehed jibqa' sieket jew tad-dritt li wiehed ma jinkriminax ruħu m'għandux jintuża kontribom u m'għandux jitqies bħala evidenza li huma wettqu r-reat kriminali kkonċernat.

Id-dritt li persuna tkun preżenti waqt il-proċess.

366F. Salvi d-dispożizzjonijiet ta' kwalunkwe liġi oħra li tista' tipprovdi għall-possibilità ta' proċessi fl-assenza tal-persuni imputati jew akkużati, bla ħsara għas-salvagwardji provduti fid-Direttiva (UE) 2016/343 tal-Parlament Ewropew u tal-Kunsill tad-9 ta' Marzu 2016 dwar it-tiżni ta' ċerti aspetti tal-preżunzjoni tal-innoċenza u tad-dritt li wiehed ikun preżenti waqt il-proċess fil-proċedimenti kriminali, persuni imputati jew akkużati għandu jkollhom id-dritt li jkunu preżenti waqt il-proċess."

C 634

Emenda tal-artikolu 500 tal-Kodiċi.

4. L-artikolu 500 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) is-subartikolu (2) tiegħu għandu jiġi enumerat mill-ġdid bħala s-subartikolu (3) u n-nota marginali tiegħu għandha tiġi sostitwita bil-kliem "Appell mill-Avukat Ġenerali.";

(b) is-subartikoli (3) u (4) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (4) u (5) rispettivament;

(ċ) minnufih wara s-subartikolu (1) tiegħu, għandu jidhrol s-subartikolu ġdid li ġej:

"(2) L-Avukat Ġenerali jista' jappella lill-Qorti tal-Appell kontra liberazzjoni jew sejba żbaljata ta' htija fuq l-att ta' akkuża jew parti minnu jew kontra s-sentenza mogħtija, sakemm is-sentenza ma tkunx waħda stabbilita mil-liġi."; u

(d) fis-subartikolu (5) kif enumerat mill-ġdid, il-kliem "is-subartikolu (3)" għandhom jiġu sostitwiti bil-kliem "is-subartikolu (2) jew (4)" u l-kliem "li minnu sar l-appell.", għandhom jiġu sostitwiti bil-kliem "li minnu sar l-appell, jew, jekk tqis li kellha tingħata sentenza aktar gravi, tħassar is-sentenza mogħtija fil-kawża u tagħti dik is-sentenza aktar gravi ġustifikata bil-liġi minflok l-oħra, kif jidhrilha li kellha tingħata, u għandha f'kull każ ieħor tiċhad l-appell.".

Emenda tal-artikolu 501 tal-Kodiċi.

5. Is-subartikolu (4) tal-artikolu 501 għandu jiġi mhassar.

Emenda tal-artikolu 502 tal-Kodiċi.

6. L-artikolu 502 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu:

(i) il-kelma "appellant" għandha tiġi sostitwita bil-kelma "akkużat"; u

(ii) il-kelma "appellant", kull fejn tokkorri, għandha tiġi sostitwita bil-kelma "akkużat"; u

(iii) il-kliem "għalkemm misjub ħati mhux kif imiss", għandhom jiġu sostitwiti bil-kliem "għalkemm illiberat jew misjub ħati mhux kif imiss".

(b) fil-proviso tas-subartikolu (1) tiegħu, il-kliem "Izda kull sentenza oħra" għandhom jiġu sostitwiti bil-kliem "Izda meta l-appell ikun ipprezentat mill-persuna misjuba hatja kull sentenza oħra";

(ċ) fis-subartikolu (2) tiegħu:

(i) il-kliem "l-appellant" għandhom jiġu sostitwiti bil-kliem "l-akkużat"; u

(ii) l-kliem "għal dak ir-reat l-ieħor, li ma tkunx sentenza aktar gravi.", għandhom jiġu sostitwiti bil-kliem "għal dak ir-reat l-ieħor, li f'każ ta' appell ipprezentat mill-persuna misjuba ħatja m'għandhiex tkun sentenza aktar gravi.";

(d) fis-subartikolu (3) tiegħu:

(i) il-kliem "mad-dikjarazzjoni ta' ħtija tal-appellant" għandhom jiġu mħassra; u

(ii) il-kliem "(li ma tkunx sentenza aktar gravi)" għandhom jiġu sostitwiti bil-kliem "(li f'każ ta' appell ipprezentat mill-persuna misjuba ħatja m'għandhiex tkun sentenza aktar gravi)".

7. L-artikolu 508 għandu jiġi emendat kif ġej:

Emenda tal-artikolu 508 tad-Kodiċi.

(a) fis-subartikolu (1) tiegħu:

(i) il-kliem "kontra dikjarazzjoni ta' ħtija" għandhom jiġu mħassra;

(ii) il-kliem "imqajjem skont l-artikolu 501(1)(b)", għandhom jiġu sostitwiti bil-kliem "imqajjem skont l-artikoli 500(4) jew 501(1)(b)"; u

(iii) il-kliem "kif provdut bl-artikolu 501(2)", għandhom jiġu sostitwiti bil-kliem "kif provdut bl-artikoli 500(5), 501(2)".

(b) fis-subartikolu (2) tiegħu:

(i) il-kelma "Appellant" għandha tiġi sostitwita bil-kelma "Akkużat";

(ii) fil-paragrafu (a) tiegħu, il-kliem "ġie misjub ħati" għandhom jiġu sostitwiti bil-kliem "ġie misjub ħati jew illiberat" u l-kliem "l-appell tiegħu" għandhom jiġu sostitwiti bil-kliem "l-appell";

(iii) fil-paragrafu (b) tiegħu, minnufih wara l-kelma "tiegħu" għandhom jidhlu l-kliem "l-akkużat"; u

(iv) fil-paragrafu (ċ) tiegħu, il-kelma "sabu" għandha tiġi sostitwita bil-kliem "sab lil akkużat".

(ċ) fis-subartikolu (3) tiegħu, il-kelma "Appellant" għandha tiġi sostitwita bil-kelma "Akkużat".

(d) fis-subartikolu (4) tiegħu, il-kliem "tal-appellant" għandhom jiġu sostitwiti bil-kliem "tal-akkużat".

(e) fis-subartikolu (7) tiegħu:

(i) il-kliem "terġa' tiġi misjuba ħatja", għandhom jiġu sostitwiti bil-kliem "tiġi misjuba ħatja";

(ii) il-kliem "li ma tkunx sentenza aktar gravi" għandhom jiġu sostitwiti bil-kliem "li f'kawża ordnata mill-ġdid wara appell ipprezentat mill-persuna misjuba ħatja, m'għandhiex tkun sentenza aktar gravi".

TAQSIMA II

Emendi għall-Att dwar Dipendenza fuq id-Droga (Trattament mhux Prigunerija)

Emenda tal-Att
dwar
Dipendenza fuq
id-Droga
(Trattament
mhux
Prigunerija).
Kap. 537.

8. Din it-Taqsima temenda tal-Att dwar Dipendenza fuq id-Droga (Trattament mhux Prigunerija), u għandha tinqara u tinftiehem bħala haġa waħda mal-Att dwar Dipendenza fuq id-Droga (Trattament mhux Prigunerija), hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Jemenda l-
artikolu 8 tal-
Att prinċipali

9. L-artikolu 8 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (a) tas-subartikolu (2) tiegħu, il-kliem "gravi u medika" għandhom jiġu mhassra;

(b) fis-subartikolu (5) tiegħu, il-kliem "jikkunsidra li l-persuna akkużata sostanzjalment rnexxielha teħles" għandhom jiġu sostitwiti bil-kliem "jikkunsidra li l-persuna akkużata minkejja li kienet soffriet minn dipendenza fuq id-droga ħelset mid-dipendenza fuq id-droga, jew sostanzjalment rnexxielha teħles";

(ċ) minnufih wara s-subartikolu (6) tiegħu, għandu jiżdied is-subartikolu ġdid li ġej:

"(6A)Fejn il-qorti li tkun qiegħda tassumi il-funzjoni ta' Qorti dwar id-Droga skont id-dispożizzjonijiet tas-subartikolu (1) hija qorti fi grad ta' appell, kull sejha lura ta' każijiet magħmula skont is-subartikolu (6) għandha

tapplika biss għal każijiet kriminali li jkunu pendenti kontra l akkużat f'dik il-qorti fi grad ta' appell. Madankollu, l-istess qorti fi grad ta' appell għandha tinnotifika lir-Registatur tal-Qrati Kriminali u tat-Tribunali Kriminali bid-deċiżjoni tagħha li tassumi l-funzjonijiet ta' Qorti dwar id-Droga u r-Registatur għandu jinforma lil kull qorti oħra li quddiemha jkunu pendenti każijiet kriminali kontra l-akkużat bid-deċiżjoni tal-qorti fi grad ta' appell biex tassumi l-funzjoni ta' Qorti dwar id-Droga u dik l-ordni għandha torbot lil dawn il-qrati l-oħra kollha, sabiex is-sejha lura tal-każijiet magħmula skont dik l-ordni u wara li l-Qorti fi grad ta' appell tkun irċeviet ir-rapport mill-Bord ta' Riabilitazzjoni ta' Persuni li Nqabdu bid-Droga imsemmi fis-subartikolu (5) tkun tista', fir-rigward ta' każijiet pendenti kontra l-akkużat quddiem il-Qorti tal-Maġistrati jew quddiem il-Qorti Kriminali, issir mill-imħallef jew mill-maġistrat li jkun qed jippresjedi il-kawża li kienet saret l-ewwel quddiem dik il-Qorti wara li tirċievi notifika mir-Registatur li jista' jsir dan.

Fiċ-ċirkostanzi imsemmija f'dan is-subartikolu, każijiet pendenti quddiem qrati fi grad ta' appell u każijiet pendenti quddiem qrati oħra għandhom jiġu deċiżi separatament mill-qrati rispettivi, sew jekk individwalment jew fi gruppi ta' każijiet imsejġhin lura li jkunu pendenti quddiem qorti partikolari, sabiex ma jiġi ppreġudikat l-ebda dritt t' appell tal-akkużat."

TAQSIMA III

Emendi tal-Att tal-2014 li jemenda Diversi Liġijiet li jirrigwardaw materji kriminali (Emenda Nru. 2)

10. Din il-Parti temenda l-Att tal-2014 li jemenda Diversi Liġijiet li jirrigwardaw materji kriminali (Emenda Nru. 2) u għandha tinqara u tinftiehem haġa waħda mal-Att tal-2014 li jemenda Diversi Liġijiet li jirrigwardaw materji kriminali (Emenda Nru. 2), hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali li jemenda".

Emenda tal-Att
XXIV tal-2014.

11. L-artikolu 50 tal-Att prinċipali li jemenda għandu jiġi ssostitwit b'dan li ġej:

"Żjeda ta' artikolu ġdid fil-Kodiċi.

50. Minnufih wara l-artikolu 360A tal-Kodiċi għandu jżied l-artikolu ġdid li ġej:

"Proċedimenti *in absentia*.

360B.(1) Minkejja d-dispożizzjonijiet l-oħra ta' dan il-Kodiċi jew ta' kwalunkwe liġi oħra, id-dispożizzjonijiet ta' dan l-artikolu għandhom japplikaw għal reati li jaqgħu taħt il-ġurisdizzjoni tal-Qorti tal-Maġistrati bħala Qorti ta' Ġudikatura Kriminali taħt l-artikolu 370(1).

(2) Meta persuna, wara li tkun ġiet akkużata b'reat imsemmi fis-subartikolu (1) u wara li tkun ġiet ippreżentata b'taħrika, tonqos milli tidher personalment quddiem il-qorti f'iktar minn okkażzjoni waħda, jew tonqos milli tattendi personalment quddiem il-qorti u tkun rappreżentata minn avukat maħtur b'mandat, hija għandha titqies illi tkun tat il-kunsens tagħha sabiex titmexxa l-kawża fin-nuqqas tagħha u l-qorti għandha tipproċedi bis-smiġħ fin-nuqqas tal-persuna akkużata u għandha minn hemm 'il quddiem tipproċedi biex tagħti s-sentenza:

Izda kull persuna akkużata kif imsemmi qabel tista', minflok tidher quddiem il-Qorti tal-Maġistrati, tippreżenta fir-reġistru ta' dik il-qorti, rappreżentazzjonijiet bil-miktub u, jew dikjarazzjoni tal-fatti tal-kawża konfermati b'ġurament li jikkontestaw l-akkuża kontriha, u l-qorti għandha, qabel ma tiddeċiedi fuq il-kawża, tqis dawn ir-rappreżentazzjonijiet u, jew id-dikjarazzjoni daqs li kieku saru *viva voce* quddiem l-imsemmija qorti.

(3) Sentenza mogħtija skont dan l-artikolu għandha tkun notifikata lill-akkużat personalment u għandha tkun soġġetta għal appell.

(4) Meta ma jiġix ipprezentat appell minn sentenza mogħtija skont dan l-artikolu, l-akkużat għandu, fi żmien sebat ijiem min-notifika tal-imsemmija sentenza, ikollu d-dritt ulterjuri li jappella mis-sentenza u d-dispożizzjonijiet ta' dan il-Kodiċi li jirrigwardaw l-appelli għandhom, bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu japplikaw *mutatis mutandis*.

(5) It-taħrika maħruġa fir-rigward ta' proċedimenti taħt dan l-artikolu għandu wkoll ikun fiha twissija li jekk il-persuna ma tidhirx, il-persuna mharrka tista' titqies illi tat il-kunsens tagħha sabiex titmexxa l-kawża fin-nuqqas tagħha.

(6) (1) Meta sentenza tiġi nnotifikata kif provdut taħt is-subartikolu (3) l-akkużat għandu wkoll jiġi informat bid-dritt ulterjuri tiegħu għall-appell skont id-dispożizzjonijiet tas-subartikolu (4).

(2) Id-dispożizzjonijiet ta' din il-klawsola għandhom jidhlu fis-seħh fid-data appuntata mill-Ministru responsabbli għall-gustizzja b'Ordni fil-Gazzetta."

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abboz huwa sabiex jiġu trasposti fil-liġi id-dispożizzjonijiet tad-Direttiva (UE) 2016/343 tal-Parlament Ewropew u tal-Kunsill tad-9 ta' Marzu 2016 dwar it-tishih ta' ċerti aspetti tal-preżunzjoni tal-innoċenza u tad-dritt li wieħed ikun preżenti waqt il-proċess fil-proċedimenti kriminali u l-emenda tal-Att dwar id-Dipendenza fuq Droga (Trattament mhux Priġunerija) bl-għan li jikkonforma ma' deċiżjoni tal-Qorti Kostituzzjonal fir-rigward tal-possibilità li qorti fi grad ta' appell tassumi funzjonijiet ta' Qorti dwar id-Droga u li tagħmel emendi minuri f'dik il-liġi.

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**A BILL
entitled**

AN ACT to amend the Criminal Code, Cap. 9, the Drug Dependence (Treatment not Imprisonment) Act, Cap. 537 and to provide for other matters dealing with them or ancillary thereto.

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 authority of the same, as follows:-

Short title.
Cap. 9.
Cap. 537.

1. The short title of this Act is the Criminal Code (Amendment) and the Drug Dependence (Treatment not Imprisonment) (Amendment) Act, 2018.

**PART I
Amendments to the Criminal Code**

Amendment to
the Criminal
Code.
Cap. 9.

2. This Part amends the Criminal Code, and it shall be read and construed as one with the Criminal Code, hereinafter referred to as "the Code".

Adds new Sub-
title XII to the
Code.

3. Immediately after Sub-title XI of Part 1 of Book Second of the Code there shall be added the following new Sub-title:

"Sub-Title XII
Of the Presumption of Innocence

The measures provided for in this Sub-Title transpose the provisions of Directive (EU) 2016/343 of the European Parliament and the Council of the 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

Presumption
of innocence.

366A.(1) Every person suspected or accused of having committed a criminal offence or an alleged criminal offence shall be presumed to be innocent until the decision on the final determination of whether that person has committed the criminal offence has become definitive:

Provided that the provisions of this article shall be without prejudice to the proviso to sub-article (5) of article 39 of the Constitution and to the enforcement, as may be provided by law, of a judgement of the Court of Magistrates or of the Criminal Court pending the hearing of an appeal after the accused has been found guilty of having committed a criminal offence by one of the said Courts.

Burden of
proof.

366B.(1) The burden of proof for establishing the guilt of suspects or accused persons shall lie with the prosecution:

Provided that the provisions of this article shall be without prejudice to:

(a) the proviso to sub-article (5) of article 39 of the Constitution;

(b) any obligation of a judge, magistrate or any court or tribunal to seek both inculpatory and exculpatory evidence;

(c) the right of the defence to submit any evidence according to law.

(2) Any doubt as to the question of guilt shall benefit the suspect or accused person including where the court assesses whether an accused person should be acquitted.

Public
references to
guilt.

366C.(1) As long as a suspect or accused person has not been proven guilty according to law, public statements made by public authorities and judicial decisions, other than those on guilt, shall not refer to that person as being guilty:

Provided that the provisions of this article shall be without prejudice to:

(i) acts of the Attorney General, the Police or other public authorities having prosecuting powers which aim to prove the guilt of the suspect or accused person;

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(ii) preliminary decisions of a procedural nature taken by a magistrate, a judge or by any other competent authority and which are based on suspicion or on incriminating evidence;

(iii) the right of public authorities to publicly disseminate information on criminal proceedings where this is strictly necessary for reasons relating to the criminal investigation or to the public interest.

(2) Any person who alleges that his rights under this article or this Sub-title have been breached shall have a right to file an application in the Court of Magistrates within ten days, from the date of the fact which allegedly gave rise to the breach, to demand a finding of such a breach and an appropriate remedy.

Presentation of suspects and accused persons.

366D.(1) Suspects and accused persons shall not be presented in court or in public as being guilty, through the use of measures of physical restraint:

Provided that nothing in this article shall prevent the police or any court from applying measures of physical restraint that may be required in any particular case for reasons relating to security or to the prevention of suspects or accused persons from absconding or from having contact with other persons.

Right to silence and not to incriminate oneself.

366E.(1) Suspects and accused persons shall have the right to remain silent in relation to the criminal offence which they are suspected or accused of having committed and shall have the right not to incriminate themselves.

(2) The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be obtained through the use of legal powers of compulsion which exist independently of the will of the suspects or accused persons.

(3) The exercise by suspects or accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to constitute evidence that they have committed the criminal offence concerned.

Right to be present at the trial.

366F. Saving the provisions of any law which may provide for trials in the absence of the persons charged or accused, subject to the safeguards provided in Directive (EU) 2016/343 of the European Parliament and the Council of the 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, persons charged or accused shall have the right to be present at their trial."

4. Article 500 of the Code shall be amended as follows:

Amendment of article 500 of the Code.

(a) sub-article (2) thereof shall be re-numbered as sub-article (3) and the marginal note thereof shall be substituted by the words "Appeal by the Attorney General.";

(b) sub-articles (3) and (4) thereof shall be re-numbered as sub-articles (4) and (5) respectively;

(c) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article:

"(2) The Attorney General may appeal to the Court of Criminal Appeal against an acquittal or a wrong finding of guilt on the bill of indictment or part thereof or against the sentence passed unless the sentence is one fixed by law."; and

(d) in sub-article (5) as re-numbered, for the words "sub-article (3)" there shall be substituted the words "sub-articles (2) or (4)" and for the words "from which an appeal has been filed.", there shall be substituted the words "from which an appeal has been filed, or, if it considers that a sentence of greater severity should have been passed, quash the sentence passed at the trial and pass such sentence of greater severity warranted in the law in substitution thereof as it considers ought to have been passed, and in any other case shall dismiss the appeal."

5. Sub-article (4) of article 501 shall be deleted.

Amendment of article 501 of the Code.

6. Article 502 of the Code shall be amended as follows:

Amendment of article 502 of the Code.

(a) in sub-article (1) thereof:

(i) for the words "an appellant" there shall be substituted the words "an accused";

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(ii) for the words "the appellant", wherever they occur, there shall be substituted the words "the accused"; and

(iii) for the words "though not properly convicted" there shall be substituted the words "though acquitted or not properly convicted";

(b) in the proviso to sub-article (1) thereof, for the words "Provided that such other sentence", there shall be substituted the words "Provided that where the appeal is filed by the person convicted such other sentence";

(c) in sub-article (2) thereof:

(i) for the words "an appellant" there shall be substituted the words "an accused"; and

(ii) for the words "for that other offence, not being a sentence of greater severity.", there shall be substituted the words "for that other offence which in the case of an appeal filed by the person convicted shall not be a sentence of greater severity.";

(d) in sub-article (3) thereof:

(i) the words "on conviction of the appellant" shall be deleted; and

(ii) for the words "(not being a sentence of greater severity)" there shall be substituted the words "(which, in the case of an appeal filed by the person convicted shall not be a sentence of greater severity)".

Amendment of
article 508 of
the Code.

7. Article 508 shall be amended as follows:

(a) in sub-article (1) thereof:

(i) the words "against conviction" shall be deleted;

(ii) for the words "raised under article 501(1)(b)", there shall be substituted the words "raised under articles 500(4) or 501(1)(b)"; and

(iii) for the words "as provided by article 501(2)" there shall be substituted the words "as provided by articles 500(5), 501(2)";

(b) in sub-article (2) thereof:

(i) for the words "An appellant" there shall be substituted the words "An accused";

(ii) in paragraph (a) thereof, for the words "he was convicted" there shall be substituted the words "he was convicted or acquitted" and for the words "his appeal" there shall be substituted the words "the appeal";

(iii) in paragraph (b) thereof, for the word "he" there shall be substituted the words "the accused"; and

(iv) in paragraph (c) thereof, for the word "him" there shall be substituted the words "the accused";

(c) in sub-article (3) thereof, for the words "An appellant" there shall be substituted the words "An accused"; and

(d) in sub-article (4) thereof, for the words "the appellant" there shall be substituted the words "the accused".

(e) in sub-article (7) thereof:

(i) for the words "is again convicted" there shall be substituted the words "is convicted";

(ii) for the words "not being a sentence of greater severity" there shall be substituted the words "which in the case of a retrial ordered upon an appeal of the person convicted shall not be a sentence of greater severity".

PART II

Amendments to the Drug Dependence (Treatment Not Imprisonment) Act

8. This Part amends the Drug Dependence (Treatment Not Imprisonment) Act and it shall be read and construed as one with the provisions of the Drug Dependence (Treatment Not Imprisonment) Act hereinafter in this Part referred to as "the principal Act".

Amendment of
the Drug
Dependence
(Treatment Not
Imprisonment)
Act.
Cap. 537.

9. Article 8 of the principal Act shall be amended as follows:

Amendment of
article 8 of the
principal Act.

(a) in paragraph (a) of sub-article (2) thereof, the words "grave and medically" shall be deleted;

(b) in sub-article (5) thereof, for the words "considers that the accused has managed" there shall be substituted the

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words "considers that the accused although having previously suffered from drug dependence is free from drug dependence, or has managed".

(c) immediately after sub-article (6) thereof there shall be added the following new sub-article:

"(6A)Where the Court assuming the functions of a Drugs Court in terms of sub-article (1) is a court of appellate jurisdiction, any recall of cases made in terms of sub-article (6) shall only apply to criminal cases which are pending against the accused in that court of appellate jurisdiction. The said court of appellate jurisdiction shall however notify the Registrar of Criminal Courts and Criminal Tribunals of its decision to assume the functions of a Drugs Court and the Registrar shall inform any other court before which criminal cases are pending against the accused of the decision of the Court of appellate jurisdiction to assume the functions of a Drugs Court and that order shall be binding on all such other courts so however that the recall of cases made pursuant to that order and after the Court of appellate jurisdiction has received the report from the Drug Offenders Rehabilitation Board referred to in sub-article (5) may, in respect of cases against the accused pending before the Court of Magistrates or before the Criminal Court, be made by the judge or magistrate presiding over the case which was first instituted before that Court after receiving notification from the Registrar that he may do so.

In the circumstances provided for in this sub-article, cases pending before courts of appellate jurisdiction and cases pending before other courts shall be decided separately by the respective courts, whether individually or in groups of recalled cases pending before a particular court, so as not to prejudice any right of appeal competent to the accused."

PART III
Amendments to the Various Laws
(Criminal Matters) (Amendment No. 2) Act, 2014

10. This Part amends the Various Laws (Criminal Matters) (Amendment No. 2) Act, 2014 and it shall be read and construed as one with the provisions of the Various Laws (Criminal Matters) (Amendment No. 2) Act, 2014 hereinafter in this Part referred to as "the amending principal Act".

Amendment of
Act XXIV of
2014.

11. (a) Article 50 of the amending principal Act shall be substituted by the following:

"Addition of
new
article to the
Code.

50. Immediately after article 360A of the Code there shall be added the following new article:

"Proceedings *in absentia*.

360B.(1) Notwithstanding the other provisions of this Code or of any other law, the provisions of this article shall apply to offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1).

(2) Where a person, having been charged with an offence referred to in sub-article (1) and having been duly served with a summons fails to appear personally before the court on more than one occasion or failing to appear personally before the court is represented by a mandated legal counsel, that person shall be deemed to have given his consent for the trial to proceed in his absence and, the court shall proceed with the hearing in the absence of the person charged and shall thereupon proceed to deliver judgement:

Provided that any person charged as aforesaid may instead of appearing before the Court of Magistrates file in the Registry of that court representations in writing and, or a declaration on the facts of the case confirmed on oath contesting the charge against him, and the Court shall, prior to deciding the case, take into account such representations and, or a declaration as if they had been made *viva voce* before the said court.

(3) A judgment delivered in terms of this article shall be personally served upon the offender and shall be subject to appeal.

(4) Where no appeal is filed from a judgment delivered in terms of this article, the offender shall, within seven working days of service of such judgment, have a further right of appeal against the judgment and the provisions of this code relating to appeals shall, subject to the provisions of this article, *mutatis mutandis*, apply.

(5) A summons issued in respect of proceedings provided for under this article shall also contain an intimation that in default of appearance the person summoned may be deemed to have given his unequivocal consent for the trial to proceed in his absence.

(6) (1) Where a judgment is served as provided under sub-article (3) the offender shall also be informed of his further right of appeal in terms of the sub-article (4).

(2) The provisions of this article shall come into effect on such date as the Minister responsible for justice may by Order in the Gazette appoint."

Objects and Reasons

The objects and reasons of this Bill are the transposition into written law of the provisions of Directive (EU) 2016/343 of the European Parliament and the Council of the 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings and the amendment of the Drug Dependence (Treatment of Imprisonment) Act for the purpose of complying with a judgement of the Constitutional Court in respect of the possibility for a court of appellate jurisdiction to assume the functions of a Drugs Court and to make some other minor amendments to that law.