Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 21,385, 31 ta' Jannar, 2025
Taqsima C

Nru 125

31. 01. 2025

MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Jonathan Attard, M.P., Ministru għall-Ġustizzja u r-Riforma tas-Settur tal-Kostruzzjoni, u moqri għall-Ewwel darba fis-Seduta tad-29 ta' Jannar 2025.

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

ELEANOR SCERRI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Jonathan Attard, M.P., Minister for Justice and Reform of the Construction Sector, and read the First time at the Sitting of the 29th January 2025.

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

ELEANOR SCERRI
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

ABBOZZ TA' LIĠI
msejjaħ

ATT sabiex jkompli 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 tal-istess, ħarġet b'liġi dan li ġej:-

Titolu fil-qosor u bidu fis-seħħ.

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2025 li jemenda l-Kodiċi Kriminali (Emenda Nru 2) u dan l-Att għandu jinqara u jinftiehem ħaġa waħda mal-Kodiċi Kriminali hawn iżjed 'il quddiem f'dan l-Att imsejjaħ "il-Kodiċi".

(2) Dan l-Att għandu jidħol fis-seħħ f'dik id-data jew dati li l-Ministru responsabbli għall-ġustizzja jista' b'avviż fil-Gazzetta jistabbilixxi, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet u, jew għanijiet differenti ta' dan l-Att.

Emenda tal-artikolu 367 tal-Kodiċi.

2. Minnufih wara s-subartikolu (2) tal-artikolu 367 tal-Kodiċi għandu jiġi miżjud is-subartikolu ġdid li ġej:

"(3) Għandu jkun hemm numru ta' Maġistrati li lilhom għandhom ikunu assenjati biss id-dmirijiet tal-Maġistrat kif provdut fit-Titolu II tat-Taqsima II tat-Tieni Ktieb.".

Emenda tal-artikolu 518 tal-Kodiċi.

3. Minnufih wara l-ewwel proviso tal-artikolu 518 tal-Kodiċi għandu jiġi miżjud il-proviso ġdid li ġej:

"Iżda wkoll fejn l-Avukat Ġenerali jagħti l-kunsens tiegħu sabiex il-proċess verbal ikun jista' jintwera u jkunu jistgħu jingħataw kopji tiegħu, persuna li tipprova għas-sodisfazzjon tal-Avukat Ġenerali li hija personalment il-vittma jew l-eredi tal-vittma tar-reat li jkun jikkostitwixxi l-mertu tal-proċess verbal ma għandha tintalab l-ebda ħlas sabiex tingħata kopja elettronika

tal-istess proċess verbal:".

Emenda tal-artikolu 546 tal-Kodiċi.

4. L-artikolu 546 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu:

(i) il-kliem "għandu jiġi deskritt" għandhom jiġu sostitwiti bil-kliem "għandu, fuq talba li tista' ssir lill-Maġistrat biss mill-Avukat Ġenerali jew mill-Pulizija Eżekuttiva, jiġi deskritt";

(ii) fl-ewwel proviso l-kliem "f'dawk il-proċedimenti:" għandhom jiġu sostitwit bil-kliem "f'dawk il-proċedimenti." u t-tieni proviso tiegħu għandu jiġi mħassar;

(b) minnufih wara s-subartikolu (3A) tiegħu għandu jiġi miżjud is-subartikolu ġdid li ġej:

"(3B) (a) Fejn:

(i) il-funzjonijiet ta' awtorità pubblika taħt xi liġi jkunu jinħtieġu illi dik l-awtorità għandha jew tista' tinvestiga l-lok ta' incident illi dwaru jsir ukoll aċċess taħt dan l-artikolu; u

(ii) dik l-awtorità pubblika tkun imsemmija mill-Ministru responsabbli għall-ġustizzja b'ordni fil-Gazzetta bħala l-awtorità pubblika li għaliha japplika dan is-subartikolu,

dik l-awtorità pubblika hekk msemmija għandha tinforma lill-Maġistrat bil-ħtieġa li twettaq il-funzjonijiet tagħha fil-lok tal-inċident u għandha titlob illi tingħata aċċess għal dak il-lok u għal kwalunkwe esebiti, dokumenti jew xhieda li jkunu involuti fl-aċċess, hekk kif ikun meħtieġ għat-twettiq xieraq tal-funzjonijiet tagħha skont il-liġi.

(b) Il-Maġistrat għandu jagħti dak l-aċċess kif jista' jkun mitlub skont il-paragrafu (a), kif jista' jkun suġġett għal dawk il-kundizzjonijiet jew limitazzjonijiet kif il-Maġistrat jista' jiddetermina li jkunu meħtieġa fiċ-ċirkostanzi, wara li jqis kif jixraq il-ħtieġa tal-awtorità pubblika li tagħmel it-talba twettaq il-funzjonijiet legali tagħha, b'qies għaż-żamma tal-integrità u l-effiċjenza tat-tmexxija tal-aċċess u għal kull investigazzjoni magħmula mill-imsemmija awtorità pubblika.";

(ċ) is-subartikolu (4A) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(4A) (a) (i) Kull persuna li tagħmel rapport, denunzja jew kwerela lill-Pulizija Eżekuttiva dwar reat li huwa soġġett għall-piena ta' priġunerija għal izjed minn tliet snin, u jekk is-suġġett materjali tar-reat ikun għadu jeżisti, tista' fl-istess ħin titlob illi jinfetaħ aċċess fuq talba tal-privat dwar persuna suspettata skont id-dispożizzjonijiet ta' dan is-subartikolu;

(ii) Aċċess fuq talba tal-privat dwar persuna suspettata għandu jsir biss fuq il-persuna suspettata iżda għandu jkun regolat mid-dispożizzjonijiet li jirregolaw l-aċċessi mibdija skont is-subartikolu (1), ħlief kif provdut xort' oħra f'dan l-artikolu;

(iii) Kull persuna li taghmel talba skont dan is-subartikolu għall-ftuħ ta' aċċess kif imsemmi għandha tikkonferma bil-ġurament fir-rapport, denunzja jew kwerela min hi l-persuna suspettata li wettqet ir-reat (hawn iżjed 'il quddiem f'dan l-artikolu msejħa "il-persuna suspettata"), l-għemil allegatament imwettaq mill-persuna suspettata, liema reat jew reati allegatament twettqu minn dik il-persuna, u n-ness bejn l-għemil allegatament imwettaq mill-persuna suspettata u r-reat li allegatament twettaq u għandha flimkien mar-rapport, denunzja jew kwerela tippreżenta kwalunkwe provi li abbażi taghhom dik il-persuna tkun qed tressaq it-talba tagħha.

(b) Meta tirċievi rapport, denunzja jew kwerela akkumpanjata b'talba sabiex jinfetaħ aċċess skont il-paragrafu (a), il-Pulizija Eżekuttiva għandha tinvestiga u għandha tiddeċiedi jekk:

(i) hemmx lok li ssir prosekuzzjoni;

(ii) ma hemmx lok li ssir prosekuzzjoni;

(iii) il-każ jimmeritax aktar investigazzjoni mill-Pulizija Eżekuttiva; jew

(iv) għandux jinfetaħ aċċess fuq talba tal-privat dwar persuna suspettata skont id-dispożizzjonijiet ta' dan is-subartikolu.

(ċ) Jekk wara investigazzjoni l-Pulizija Eżekuttiva tiddeċiedi li hemm lok li ssir prosekuzzjoni jew li ma hemmx lok li ssir prosekuzzjoni, hija għandha tirreferi l-każ u l-atti tal-investigazzjoni tagħha lill-Avukat Ġenerali għal deċiżjoni dwar jekk għandhiex tinbeda l-prosekuzzjoni.

(d) Fil-każ fejn l-Avukat Ġenerali jiddeċiedi illi ma hemmx lok li tinbeda prosekuzzjoni, l-Avukat Ġenerali jista':

(i) jordna lill-Pulizija Eżekuttiva sabiex tkompli bl-investigazzjoni; jew

(ii) jordna illi l-persuna li tkun għamlet ir-rapport, id-denunzja jew il-kwerela u l-persuna li tkun ġiet hemmhekk indikata bħala l-persuna suspettata jiġu notifikati bid-deċiżjoni li ma ssirx prosekuzzjoni, u f'dak il-każ għandhom japplikaw id-dispożizzjonijiet tas-subartikolu 541(4).

(e) Il-persuna li tkun għamlet ir-rapport, id-denunzja jew il-kwerela flimkien mat-talba għall-ftuħ ta' aċċess skont il-paragrafu (a) tista' f'kull żmien wara li jgħaddu sitt xhur minn meta tkun għamlet dak ir-rapport, denunzja jew kwerela u sakemm:

(i) ma tkunx inbdiet il-prosekuzzjoni kontra l-persuna suspettata, jew

(ii) ma tkunx ittieħdet deċiżjoni li ma ssirx prosekuzzjoni kontra l-persuna suspettata, jew

(iii) ma jkunx inbeda aċċess fuq talba tal-privat dwar il-persuna suspettata skont dan is-subartikolu,

tippreżenta rikors fil-Qorti Kriminali li bih titlob li dik il-Qorti tordna lill-Pulizija Eżekuttiva sabiex tgħaddi r-rapport, id-denunzja jew il-kwerela lill-Maġistrat biex jinfetaħ aċċess skont il-paragrafu (a), li għandu jsir biss dwar l-aġir tal-persuna suspettata.

(f) Meta tirċievi rikors skont il-paragrafu (e), il-Qorti Kriminali għandha tikkunsidra l-provi ammissibbli bħala evidenza quddiem qorti ta' ġurisdizzjoni kriminali u għandha għal dan il-għan:

(i) tisma' lill-Pulizija Eżekuttiva b'xhieda fil-Qorti fil-magħluq dwar il-proċeduri tal-investigazzjoni; u

(ii) tisma' fil-magħluq lill-persuna li tkun għamlet ir-rapport, id-denunzja jew il-kwerela, kif ukoll kull persuna suspettata, u lil kwalunkwe xhieda oħra produċibbli minnhom:

Iżda wara li tikkunsidra l-provi ammissibbli bħala evidenza li jkunu tressqu u l-kontro-eżamijiet u s-sottomissjonijiet tal-partijiet interessati, bil-jedd ta' assistenza legali u bis-salvagwardji kollha li joħorġu mil-liġi applikabbli għal investigazzjonijiet ta' natura kriminali, u filwaqt li ssegwi l-kriterji stipulati fil-paragrafu (g), il-Qortu Kriminali għandha tgħaddi sabiex tiddeċiedi li:

(i) tikkonċedi żmien ulterjuri għall-konklużjoni tal-investigazzjoni tal-Pulizija Eżekuttiva; jew

(ii) ittemm il-proċeduri billi tiddikjara l-investigazzjoni magħluqa; jew

(iii) tilqa' t-talba tal-persuna li tkun għamlet ir-rapport, id-denunzja jew il-kwerela għall-ftuħ ta' aċċess fuq talba tal-privat dwar il-persuna suspettata:

Iżda wkoll jekk il-Qorti tagħti żmien ulterjuri għall-konklużjoni tal-investigazzjoni tal-Pulizija Eżekuttiva, hija għandha tiffissa data għat-tkomplija tas-smigħ u tkun tista' f'dik id-data, tipproċedi skont is-subparagrafi (i), (ii) jew (iii) tal-ewwel proviso.

(g) Il-Qorti Kriminali għandha tiddeċiedi li tordna l-ftuħ tal-aċċess skont il-paragrafu (a) ta' dan is-subartikolu (4A), biss jekk jirriżultalha fuq bilanċ ta' probabbiltà abbażi ta' provi ammissibbli bħala evidenza quddiem qorti ta' ġurisdizzjoni kriminali, illi l-allegati reati setgħu twettqu mill-persuna suspettata.

(h) Jekk il-Qorti Kriminali tordna illi jinbeda aċċess fuq talba tal-privat dwar persuna suspettata, il-Pulizija Eżekuttiva għandha fi żmien tlett ijiem ta' xogħol minn meta tingħata dik l-ordni titlob lir-Reġistratur tal-Qrati u Tribunali Kriminali biex jipproċedi sabiex dak l-aċċess jinfetaħ, bl-assenjazzjoni ta' Maġistrat skont is-subartikolu (4Ċ).

(i) Aċċess taħt dan is-subartikolu li jiġi dikjarat minn xi qorti li nżamm, bla ma jkunu ġew imħarsa kif jixraq l-prerekwiżiti legali u fattwali li jkunu applikabbli għalih fiż-żmien meta jkun infetaħ, għandu jkun null u bla ebda effett.

(j) Fi tmiem l-aċċess u fuq talba mill-persuna suspettata magħmula fi żmien sena minn meta jkun ingħalaq l-aċċess u kopja tal-proċess verbal tkun ingħatat lill-partijiet konċernati, jekk il-Maġistrat iqis illi persuna suspettata tkun tqegħdet taħt eżami inġustament abbażi ta' rapport, denunzja jew kwerela preżentati skont dan is-subartikolu billi dawn kienu infondati, frivoli, vessatorji jew abbużivi tal-proċess ġudizzjarju, il-Maġistrat jista' jiddeċiedi li jikkundanna lil min ikun ippreżenta r-rapport, id-denunzja jew il-kwerela għall-ħlas tal-ispejjeż tal-aċċess, bla ħsara għal kwalunkwe direzzjoni oħra li l-Maġistrat jidhirlu li jkun opportun li jagħti u għal kwalunkwe azzjoni oħra spettanti lis-suspettat taħt kwalunkwe liġi oħra applikabbli. Id-deċiżjoni tal-Maġistrat meħuda skont dan il-paragrafu għandha tkun soġġetta għal appell permezz ta' rikors quddiem il-Qorti Kriminali skont il-paragrafu (k).

(k) Kull persuna li tħossha aggravata bid-deċiżjoni tal-Maġistrat meħuda skont il-paragrafu (j) tista', fi żmien tnax-il jum ta' xogħol minn meta tkun ġiet notifikata lilha tali deċiżjoni, tippreżenta rikors lill-Qorti Kriminali fejn titlob li d-deċiżjoni tal-Maġistrat tiġi imħassra jew riformata. Sabiex teżerċita l-funzjonijiet tagħha taħt dan il-paragrafu, il-Qorti Kriminali għandha tipproċedi *mutatis mutandis* skont id-dispożizzjonijiet ta' dan il-Kodiċi applikabbli għall-appelli minn sentenzi tal-Qorti tal-Maġistrati.";

(d) is-subartikolu (4B) tiegħu għandu jiġi sostitwit bis-

subartikolu ġdid li ġej:

"(4B) Il-proċeduri meħuda skont is-subartikolu (4A) u l-proċeduri tal-aċċessi b'mod ġenerali għandhom jitmexxew taħt is-superviżjoni tal-Avukat Ġenerali. Id-digrieti tal-Qorti Kriminali u tal-Maġistrat mogħtija skont is-subartikolu (4A) għandhom jiġu notifikati lill-Avukat Ġenerali.";

(e) fis-subartikolu (4Ċ) tiegħu l-kliem "tas-subartikolu (4A) u (4B)" għandhom jiġu sostitwiti bil-kliem "tas-subartikolu (4A)" u l-kliem "minn fost il-Maġistrati kollha." għandhom jiġu sostitwiti bil-kliem "minn fost il-Maġistrati msemmija fl-artikolu 367(3).";

(f) fis-subartikolu (5) tiegħu l-kliem "fis-subartikolu (1) u fl-artikolu 551(1)" għandhom jiġu sostitwiti bil-kliem "fis-subartikolu (1) jew fl-artikolu 551(1)".

Emenda tal-artikolu 547 tal-Kodiċi.

5. Is-subartikolu (2) tal-artikolu 547 tal-Kodiċi għandu jiġi sostitwit b'dan is-subartikolu ġdid li ġej:

"(2) Il-funzjonijiet tal-Maġistrat fl-aċċess huma s-segwenti:

(a) il-ġbir u l-preservazzjoni ta' kull prova ammissibbli bħala evidenza quddiem qorti ta' ġurisdizzjoni kriminali illi l-Maġistrat jidentifika personalment jew permezz ta' esperti bħala rilevanti għar-reat li dwaru jsir l-aċċess;

(b) li jasal għall-konklużjoni dwar jekk mill-provi ammissibbli bħala evidenza miġbura, jirriżultax sal-grad tal-probabbiltà li jkun twettaq reat;

(ċ) li mingħajr ma jikkontraponi xhieda jew jesprimi ġudizzju dwar liema xhieda għandha titwemmen, fil-każ li jqis illi xi stqarrija magħmula fl-aċċess ma tistax tkun veritiera, jindika dak il-fatt;

(d) li mingħajr ma jassumi l-funzjonijiet ta' qorti istruttorja jew ta' qorti ta' ġudikatura kriminali, jiddikjara jekk ikunx hemm jew le biżżejjed provi ammissibbli li jindikaw sal-grad ta' probabbiltà, li xi persuni, li fil-każ ta' aċċess miftuħ skont is-subartikolu (4A) tal-artikolu 546 ikunu persuni minn dawk indikati bħala suspettati fir-rapport, fid-denunzja jew fil-kwerela, jistgħu jiġu

investigati ulterjorment mill-Pulizija Eżekuttiva jew minn xi awtorità kompetenti oħra skont xi liġi, jew li dwarhom għandha tittieħed deċiżjoni mill-Avukat Ġenerali dwar jekk għandhiex tiġi istitwita l-azzjoni kriminali.".

Emenda tal-artikolu 548 tal-Kodiċi.

6. L-artikolu 548 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) minnufih wara s-subartikolu (1) tiegħu għandu jiġi miżjud dan is-subartikolu ġdid li ġej:

"(1a) (a) Espert maħtur f'aċċess għandu jkun persuna fiżika u mhux persuna ġuridika. Qabel ma jaħtar espert, il-Maġistrat għandu jaċċerta illi l-espert għandu konoxxenza tal-liġijiet kriminali ta' Malta sal-grad meħtieġ sabiex jespleta l-inkarigu tiegħu u, fil-każ li l-espert ma jkunx persuna uffiċċjalment akkreditata biex taġixxi ta' espert fil-Qrati Maltin skont il-proviso għas-subartikolu 650(2), huwa għandu jgħaddi minn proċess ta' due diligence li għandu jiġi esegwit mid-Dipartiment tal-Ġustizzja flimkien mal-Aġenzija dwar is-Servizzi tal-Qrati u li għandu jittratta dwar il-kwalifiki u l-idonjetà tal-persuna sabiex twettaq dik il-funzjoni.

(b) Id-digriet tal-ħatra tal-espert għandu jispjega l-kompitu li jkun ġie assenjat lill-espert u għandu wkoll jagħmilha ċara li l-irwol tal-espert huwa limitat għad-determinazzjoni ta' kwistjonijiet ta' fatt rilevanti għall-elementi kostituttivi tar-reat biss, mingħajr ma jesprimi opinjoni dwar il-kommissjoni jew le tar-reat. L-istess digriet jista' jinkludi kondizzjonijiet oħra tal-ħatra kif il-Maġistrat jidhirlu xierqa.";

(b) minnufih wara s-subartikolu (2) tiegħu għandu jiġi miżjud is-subartikolu li ġej:

"(3) (a) L-esperti għandhom jitħallsu tali drittijiet bażati fuq ir-rati ta' ħlas normalment applikabbli għall-ħlas li jsir lill-professjonisti għal xogħol paragonabbli f'Malta.

(b) Id-drittijiet msemmija fil-paragrafu (a) għandhom ikunu intaxxati mir-Reġistratur tal-Qrati u Tribunali Kriminali.

(ċ) Minkejja d-dispożizzjonijiet l-oħra ta' dan il-Kodiċi jew ta' xi liġi oħra, fil-każ illi qabel ma jitqabbad espert jew fi kwalunkwe stadju tat-twettiq tal-inkarigu tiegħu ikun hemm aspettativa li l-ħlas li jkun se jsir lil dak l-espert se jeċċedi l-ammont ta' ħamsin elf euro (€50,000),

jew dik is-somma ogħla li l-Ministru responsabbli għall-ġustizzja jista', minn żmien għal żmien, b'ordni fil-Gazzetta jistabbilixxi, għandha tinkseb mill-Maġistrat l-awtorizzazzjoni minn qabel tal-Prim Imħallef, li qabel ma' jagħti jew jiċħad dik l-awtorizzazzjoni għandu jikkonsulta lill-Avukat Ġenerali. Fil-konsiderazzjonijiet dwar jekk jirrakkomandax dik l-awtorizzazzjoni, l-Avukat Ġenerali għandu jqis il-gravità tar-reat investigat, il-valur fi flus illi r-reat jista' jinvolvi u l-proporzjonalità tal-ispiża.".

Emenda tal-artikolu 549 tal-Kodiċi.

7. Is-subartikolu (1) tal-artikolu 549 tal-Kodiċi għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(1) Il-Maġistrat għandu jiffirma fi tmiem il-proċess verbal u għandu jsir notament bil-miktub jew stampat fuq kull dokument miġjub matul l-aċċess mir-Reġistratur jew mill-uffiċjal tal-qrati li jkun qiegħed jaġixxi minfloku, kif jista' jkun ordnat mill-Maġistrat.".

Żieda ta' artikolu ġdid fil-Kodiċi.

8. Minnufih wara l-artikolu 549 tal-Kodiċi għandu jiġi miżjud l-artikolu ġdid li ġej:

"Garanziji lis-suspettat u lill-vittma.

549A.(1) Meta persuna li tkun persuna suspettata jew li xort'oħra tkun is-suġġett ta' aċċess tissejjaħ bħala xhud fl-aċċess, hija għandha tiġi mgħarrfa qabel ma' tibda tixhed li hija s-suspettata jew is-suġġett tal-aċċess u bir-reat li jkun qed jiġi kunsidrat li hija setgħet wettqet u bir-raġunijiet għal dan. Dik il-persuna għandha tingħata d-dritt li tkun assistita minn avukat u jkollha s-salvagwardji kollha li joħorġu mil-liġi applikabbli għal investigazzjonijiet kriminali inkluż ukoll id-dritt għal aċċess għall-materjal tal-każ fit-termini tal-artikolu 534AF.

(2) Id-drittijiet kollha msemmija fis-subartikolu preċedenti għandhom japplikaw ukoll għall-vittma tar-reat li tissejjaħ bħala xhud fl-aċċess.

(3) Persuna li tkun persuna suspettata jew persuna li tqis li hija s-suġġett ta' aċċess tista' permezz ta' rikors lill-Maġistrat titlob li tagħti x-xiehda tagħha fl-aċċess u tindika xhieda u provi oħra lill-Maġistrat, u jekk jirriżulta lill-Maġistrat illi dik il-persuna tkun is-suspettata jew is-suġġett tal-aċċess, il-Maġistrat għandu jilqa' t-talba u għandu fi żmien raġjonevoli qabel id-data appuntata sabiex tingħata dik ix-xhieda, iqiegħed għad-dispożizzjoni ta' dik il-persuna dawk il-provi rilevanti, kif il-Maġistrat jidhirlu xieraq, li fuqhom dik il-persuna tkun ikkunsidrata bħala s-suspettata jew is-suġġett tal-aċċess:

Iżda l-istadju tal-aċċess meta persuna li tippreżenta rikors skont dan is-subartikolu għandha tissejjaħ sabiex tagħti x-xhieda u liema xhieda u provi oħra indikati minnha għandhom jinġiebu fl-aċċess għandu jkun determinat mill-Maġistrat.".

Emenda tal-artikolu 550A tal-Kodiċi.

9. L-artikolu 550A tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu l-kliem "kull xahar" għandhom jiġu sostitwiti bil-kliem "kull xahrejn" u l-kliem "għeluq ix-xahar"' għandhom jiġu sostitwiti bil-kliem "għeluq ix-xahrejn." u minnufih wara għandhom jiżdiedu l-kliem "L-Avukat Ġenerali għandu jkollu d-dritt li jagħti direzzjoni indikattiva għall-konsiderazzjoni tal-Maġistrat dwar dawk il-passi li huwa jidhirlu li għandhom jittieħdu sabiex l-aċċess ikun jista' jiġi konkluż mingħajr dewmien.";

(b) minnufih wara s-subartikolu (5) tiegħu għandhom jiġu miżjuda s-subartikoli ġodda li ġejjin:

"(6) L-aċċess għandu jintemm fi żmien sitt xhur minn meta jkun infetaħ. F'kull każ fejn l-aċċess ma jitlestix fi żmien sentejn minn meta jkun infetaħ, il-Maġistrat għandu minkejja kull dispożizzjoni oħra ta' dan il-Kodiċi jew ta' xi liġi oħra jikkonkludi r-rapport tal-aċċess fuq l-atti disponibbli, u l-atti tal-aċċess għandhom jintbagħtu lill-Avukat Ġenerali fi żmien tletin jum minn meta jiskadi l-imsemmi perjodu ta' sentejn. L-għeluq tal-aċċess skont dan is-subartikolu għandu jkun mingħajr ħsara għall-eżerċizzju tas-setgħa tal-Avukat Ġenerali skont is-subartikolu (2) tal-artikolu 569 u għad-dritt tal-Pulizija Eżekuttiva li tkompli bl-investigazzjonijiet, skont il-każ:

Iżda fil-każ li l-Avukat Ġenerali jeżerċita s-setgħa tiegħu skont is-subartikolu (2) tal-artikolu 569, it-termini provduti f'dan is-subartikolu għandhom jibdew jiddekorru mill-ġdid.

(7) L-Avukat Ġenerali għandu fuq talba tal-vittma tar-reat, fi żmien sitt xhur minn meta jkun infetaħ l-aċċess u sakemm l-aċċess ma jkunx ingħalaq, u fi żmien l-għeluq ta' kull sitt xhur sussegwenti, jinforma lill-vittma bl-istadju li fih ikunu waslu l-proċeduri tal-aċċess. Għall-għan li jiġu sodisfatti r-rekwiżiti ta' dan is-subartikolu, l-Avukat Ġenerali jista' jew joqgħod fuq l-informazzjoni mogħtija lilu mill-Maġistrat skont id-dispożizzjonijiet l-oħra ta' dan l-artikolu jew jitlob mingħand il-Maġistrat dik l-informazzjoni ulterjuri illi huwa jqis li hija rilevanti fil-każ partikolari għall-iskop tal-informazzjoni tal-vittma. Fuq talba tal-vittma, l-Avukat Ġenerali għandu jinfurmaha meta jkun ġie konkluż l-aċċess u meta tkun ser tiġi mgħoddija lilha kopja tal-proċess verbal, jew jekk jeżistux ċirkostanzi eċċezzjonali li minħabba fihom il-proċess verbal ma għandux jiġi pubblikat.

(8) Il-vittma jkollha d-dritt illi titlob lill-Avukat Ġenerali sabiex jinformaha fil-każ illi tittieħed deċiżjoni li ma għandhiex tinbeda l-prosekuzzjoni wara l-konklużjoni tal-aċċess.".

Emenda tal-artikolu 569 tal-Kodiċi.

10. L-artikolu 569 tal-Kodiċi għandu jiġi emendat kif ġej:

(a) fis-subartikolu (5) tiegħu l-kliem "ikun ordna li persuna tiġi mressqa quddiem il-qorti" għandhom jiġu sostitwiti bil-kliem "ikun indika persuna li dwarha għandha tittieħed deċiżjoni dwar jekk għandhiex tiġi istitwita azzjoni kriminali";

(b) fis-subartikolu (6) tiegħu l-kliem "f'każ ta' dubju l-Kummissarju tal-Pulizija jista' jikkonsulta ruħu mal-Avukat Ġenerali, li jista' jordna li ma għandhom jittieħdu ebda proċeduri jew li l-proċeduri li għandhom jittieħdu għandhom ikunu għal akkuża jew għal akkużi differenti minn dawk speċifikati mill-Maġistrat fil-proċess verbal" għandhom jiġu sostitwiti bil-kliem "il-Kummissarju tal-Pulizija jista' jikkonsulta mal-Avukat Ġenerali illi jista' jiddetermina l-akkuża jew l-akkużi li fuqhom għandha tkun istitwita l-azzjoni kriminali jew jordna li ma għandhom jittieħdu l-ebda proċeduri".

Dispożizzjonijiet tranżitorji.

11. Id-dispożizzjonijiet ta' dan l-Att għandhom japplikaw mid-data tad-dħul fis-seħħ ta' dan l-Att ħlief kif provdut fid-

dispożizzjonijiet tranżitorji li ġejjin:

(1) L-emendi għas-subartikolu (4A) tal-artikolu 546 magħmula b' dan l-Att:

(a) għandhom japplikaw ukoll dwar kull rapport, denunzja jew kwerela magħmula quddiem il-Maġistrat minn persuna li ma tkunx l-Avukat Generali jew uffiċċjal tal-Pulizija Eżekuttiva skont l-artikolu 546(4A) qabel l-ta' Jannar 2025, iżda biss fejn sal-1 ta' Jannar 2025 ma kienx hemm deċiżjoni finali dwar jekk l-aċċess għandux jinbeda jew le. F'dawk il-proċeduri l-Maġistrat jew il-Qorti Kriminali għandhom jastjenu milli jkomplu jittrattaw it-talba biex isir aċċess;

(b) jekk wara rapport, denunzja jew kwerela magħmula quddiem il-Maġistrat minn persuna li ma tkunx l-Avukat Ġenerali jew uffiċċjal tal-Pulizija Eżekuttiva skont l-artikolu 546(4A) qabel l-1 ta' Jannar 2025, fejn l-aċċess ma jkunx inbeda sal-1 ta' Jannar 2025, iżda jkun inbeda wara dik id-data, il-Maġistrat għandu jieqaf minnufih milli jieħu konjizzjoni ulterjuri tal-aċċess u għandu jirreferi r-rapport, id-denunzja jew il-kwerela lill-Kummissarju tal-Pulizija;

(ċ) ir-rapport, id-denunzja jew il-kwerela hekk riferuti skont il-paragrafu (b) għandhom jitqiesu daqslikieku kienu rapport, denunzja jew kwerela magħmulin flimkien ma' talba biex jinbeda aċċess fuq talba tal-privat dwar persuna suspettata skont is-subartikolu (4A) tal-artikolu 546 tal-Kodiċi, kif emendat b'dan l-Att;

(d) fil-każ imsemmi fil-paragrafu (ċ), il-Kummissarju tal-Pulizija għandu jikkonċedi żmien xahar lil persuna li tkun preżentat ir-rapport, id-denunzja jew il-kwerela, dekorribbli minn meta l-persuna li tkun ippreżentat ir-rapport, id-denunzja, jew il-kwerela tiġi notifikata, sabiex tikkonforma mar-rekwiżiti tal-artikolu 546(4A), kif emendat b'dan l-Att. Fil-każ li fl-imsemmi terminu l-persuna li tkun għamlet ir-rapport, id-denunzja jew il-kwerela ma tkunx ottemperat ruħha mal-ħtieġa li tikkonforma mad-dispożizzjonijiet tal-artikolu 546(4A), kif emendati b'dan l-Att, it-talba għall-ftuħ ta' aċċess għandha tiġi meqjusa bħala irtirata u fil-każ li dik l-ottemperanza sseħħ il-proċeduri għandhom jitmexxew skont id-dispożizzjonijiet tal-artikolu 546(4A), kif emendat b'dan l-Att;

(e) fil-każ ta' rapport, denunzja jew kwerela magħmula quddiem il-Maġistrat, minn persuna li ma tkunx l-Avukat Ġenerali jew uffiċjal tal-Pulizija Eżekuttiva skont l-artikolu

546(4A) qabel l-1 ta' Jannar 2025, fejn sal-1 ta' Jannar 2025 il-Maġistrat jew il-Qorti Kriminali ma jkunux għadhom iddeċidew li jibdew jew li ma jibdewx l-aċċess, iżda fejn sad-dħul fis-seħħ tal-emendi magħmula b'dan l-Att tkun ittieħdet deċiżjoni definittiva mill-Maġistrat jew mill-Qorti Kriminali li ma għandux jinbeda aċċess, tali digriet għandu jitqies definittiv u ma jkunx milqut bl-emendi magħmula b'dan l-Att.

(2) L-emendi għas-subartikolu (2) tal-artikolu 547 tal-Kodiċi għandhom japplikaw għall-proċeduri kollha ta' aċċess li jkunu pendenti fid-data tad-dħul fis-seħħ ta' dan l-Att jew li jinbdew wara.

(3) L-emendi li qed jiġu introdotti fil-Kodiċi permezz ta' dan l-Att fis-subartikoli (1a) u (3) tal-artikolu 548 għandhom japplikaw fir-rigward ta' proċeduri ta' aċċess li jinbdew wara d-dħul fis-seħħ ta' dan l-Att, b'dan iżda illi fejn ikun inħatar espert fi proċeduri bħal dawk li jkunu nbdew qabel id-data tad-dħul fis-seħħ ta' dan l-Att u l-proċeduri jkunu għadhom pendenti f'dik id-data, għandhom japplikaw is-segwenti:

(i) jekk l-espert ma jkunx għadu ippreżenta r-rapport tiegħu lill-Maġistrat fid-data tad-dħul fis-seħħ ta' dan l-Att, l-espert għandu fir-rapport tiegħu jillimita ruħu għad-determinazzjoni ta' kwistjonijiet ta' fatt kif provdut fil-paragrafu (b) tas-subartikolu (1a) tal-artikolu 548, kif miżjud b'dan l-Att;

(ii) fil-każ li l-espert ikun diġà ippreżenta r-rapport tiegħu lill-Maġistrat fid-data tad-dħul fis-seħħ ta' dan l-Att u l-proċeduri ta' aċċess ikunu għadhom pendenti, il-Maġistrat għandu jiżgura illi l-proċess verbal u l-konklużjonijiet tiegħu jkunu bbażati fuq ir-rapport tal-espert unikament inkwantu għal dak provdut fis-subartikolu (1a) tal-artikolu 548;

(iii) il-proċedura provduta fil-paragrafu (ċ) tas-subartikolu (3) tal-artikolu 548, kif miżjud b'dan l-Att, għandha tapplika wkoll dwar nomini ġodda ta' esperti li jsiru wara d-dħul fis-seħħ ta' dan l-Att fi proċeduri ta' aċċess li jkunu pendenti fiż-żmien tad-dħul fis-seħħ ta' dan l-Att, u għandhom japplikaw ukoll meta fi proċeduri bħal dawk ikun ser jingħata inkarigu ieħor jew ikun ser jiġġedded inkarigu eżistenti ta' espert diġà nominat u jkun hemm aspettativa ta' ħlas addizzjonali li jeċċedi l-ammont provdut f'dak il-paragrafu.

(4) L-emendi fl-artikoli 549, 549A, u 550A (2) u (8) għandhom japplikaw mad-dħul fis-seħħ ta' dan l-Att fir-rigward ta' aċċessi li nfetħu mill-1 ta' Jannar 2025 'il quddiem.

(5) L-emendi fis-subartikoli (6) u (7) tal-artikolu 550A għandhom japplikaw għal proċeduri ta' aċċess li jinbdew wara d-dħul fis-seħħ ta' dan l-Att u għal dawk il-proċeduri li jkunu pendenti fid-data tal-imsemmi dħul fis-seħħ soġġett għal dan li ġej:

(i) fejn il-perjodu ta' sentejn stipulat fis-subartikolu (6) ma jkunx għadu skada meta jidħol fis-seħħ dan l-Att, tali perjodu għandu jiġġedded b'sitt xhur wara għeluq is-sentejn;

(ii) jekk il-proċeduri ta' aċċess fid-data tad-dħul fis-seħħ ta' dan Att ikunu ilhom pendenti għal aktar minn sentejn, dawk il-proċeduri għandhom jingħalqu sa mhux aktar tard minn sitt xhur mid-dħul fis-seħħ ta' dan l-Att;

(iii) il-perjodu ta' sena stipulat fis-subartikolu (7) għandu jkun applikabbli u għandu jibda jiddekorri biss mid-data tad-dħul fis-seħħ ta' dan l-Att.

(6) F'dawn id-dispożizzjonijiet tranżitorji kull referenza għad-data tad-dħul fis-seħħ ta' dan l-Att għandha tinkludi referenza għad-data tad-dħul fis-seħħ ta' parti minn dan l-Att li tkun rilevanti għad-dispożizzjoni tranżitorja relattiva.

Għanijiet u Raġunijiet

L-għanijiet u r-raġunijiet ta' dan l-Abbozz ta' Liġi jiffukaw fuq l-'*in genere'* (aċċessi). L-Abbozz isegwi fuq il-linji tar-rakkomandazzjoni magħmula mill-Kummissjoni ta' Venezja fl-Opinjoni tagħha tat-18 ta' Dicembru 2018. Madankollu l-Abbozz ma jittrasferixxix it-tmexxija tal-aċċessi lill-Avukat Ġenerali kif suġġerit fl-imsemmija Opinjoni iżda ghall-fini ta' checks and balances, jagħti lill-Avukat Ġenerali rwol aktar ċentrali u definit fl-aċċessi mingħajr ma jimpinġi fuq l-indipendenza tal-Maġistrati u tal-Imħallfin.

B'mod partikolari l-Abbozz:

(i) jipproponi miżuri sabiex il-proċeduri tal-aċċess jitħaffu u jitmexxew f'termini definiti u b'iżjed ġustizzja mal-persuni konċernati;

(ii) jiddistingwi bejn aċċess miftuħ fuq talba tal-Pulizija Eżekuttiva jew tal-Avukat Ġenerali skont is-subartikolu (1) tal-artikolu 546 tal-Kodiċi Kriminali u aċċess miftuħ fuq talba tal-privat dwar persuna suspettata skont is-subartikolu (4A) tal-istess artikolu u jobbliga lill-ilmentatur li jagħmel ir-rapport, id-denunzja jew il-kwerela flimkien ma' talba sabiex jinfetaħ

aċċess skont is-subartikolu 546(4A) li jirrikorri fl-ewwel lok għand il-Pulizija. L-abbozz jistipula li dik il-persuna tista' imbagħad wara li jgħaddu sitt xhur tippreżenta rikors quddiem il-Qorti Kriminali sabiex titlob il-ftuħ ta' aċċess, jekk l-investigazzjonijiet ma jkunux intemmu u fil-każ li la tkun ittieħdet deċiżjoni li tinbeda prosekuzzjoni u lanqas deċiżjoni li ma ssirx prosekuzzjoni. Fuq dak ir-rikors il-Qorti Kriminali għandha tisma' lill-Pulizija Eżekuttiva, lill-ilmentatur, lill-persuna suspettata u xhieda oħra fil-magħluq dwar il-proċeduri tal-investigazzjoni u għandha tiddeċiedi jekk tippermettix aktar żmien sabiex tkompli l-investigazzjoni, tagħlaqx l-investigazzjoni jew tordnax illi jinfetaħ aċċess;

(iii) jistabbilixxi illi wara l-konklużjoni tal-aċċess il-Maġistrat jista' wkoll, fuq talba ta' persuna li tkun tqegħdet taħt eżami inġustament, jordna l-ħlas mill-ilmentatur abbużiv tal-ispejjeż tal-aċċess, mingħajr ħsara għal kwalunkwe rimedji oħra disponibbli fil-liġi;

(iv) jipproponi emendi sabiex ikun definit aħjar l-iskop tal-proċeduri tal-aċċess u l-funzjoni tal-Maġistrat f'dawk il-proċeduri fid-dawl ta' dak li rritjenew il-Qrati, minn żmien għal żmien, dwar l-irwol tal-Maġistrat u l-ligijiet viġenti f'Malta;

(v) jiddisponi illi fi tmiem l-aċċess il-Maġistrat ma jibqax jordna li persuna titressaq il-Qorti iżda jindika li għandha tittieħed deċiżjoni mill-awtorità ta' prosekuzzjoni kompetenti dwar jekk għandhomx jinħarġu akkużi kriminali kontra dik il-persuna;

(vi) jipproponi miżuri konkreti għall-aħjar salvagwardja tad-drittijiet tal-persuni li jkunu suġġetti ta' proċeduri ta' aċċess u tal-vittmi tar-reati;

(vii) jinkludi dispożizzjonijiet bil-għan li jiżguraw il-valur għall-flus fl-ispejjeż peritali li xi drabi jidhru sproporzjonati u li jkunu involuti fil-proċeduri inkwistjoni;

(viii) mingħajr ma jiffissa limitu fuq il-ħlasijiet tal-esperti, jirregola t-termini tal-ħatriet tal-esperti b'mod partikolari f'każijiet fejn ikun mistenni illi d-drittijiet tal-espert se jeċċedu l-ħamsin elf euro (€50,000), u jinħtieġ illi l-esperti jkunu persuni fiżiċi u li jkunu għaddew minn proċess ta' due diligence qabel ma jinħatru;

(ix) jafferma illi l-kriterju sabiex jinbeda aċċess fuq talba ta' persuna privata huwa dak li jrid ikun hemm prova jew provi

ammissibbli bħala evidenza quddiem qorti ta' ġurisdizzjoni kriminali li juru illi sal-grad tal-probabbiltà, ir-reat seta' twettaq minn persuna suspettata;

(x) jirregola r-relazzjoni bejn l-*in genere* u proċeduri oħra li awtoritajiet pubbliċi oħra jkunu meħtieġa li jmexxu dwar inċidenti ta' ċerti tipi. Dan għandu jservi ta' bażi għall-eliminazzjoni tad-diffikultajiet li preżentement jżommu entitajiet bħall-Bureau għall-Investigazzjoni tas-Sikurezza fit-Toroq milli jibdew joperaw.

A BILL
entitled

An ACT to further 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:-

Short title and commencement.

1. (1) The short title of this Act is the Criminal Code (Amendment No. 2) Act, 2025 and this Act shall be read and construed as one with the Criminal Code, hereinafter in this Act referred to as "the Code".

(2) This Act shall come into force on such date or dates as the Minister responsible for justice may by notice in the Gazette establish, and different dates may be so established for different provisions and, or purposes of this Act.

Amendment of article 367 of the Code.

2. Immediately after sub-article (2) of article 367 of the Code there shall be added the following new sub-article:

"(3) There shall be a number of Magistrates to whom there shall only be assigned the duties of the Magistrate as provided in Title II of Part II of Book Second.".

Amendment of article 518 of the Code.

3. Immediately after the first proviso to article 518 of the Code there shall be added the following new proviso:

"Provided further that where the Attorney General grants his consent that a *procès-verbal* be open to inspection and that copies thereof may be given, a person who proves to the satisfaction of the Attorney General that he is personally a victim or the heir of the victim of the offence forming the merits of the *procès-verbal,* shall not be requested any payment to be given an electronic copy of the same *procès-verbal*:".

Amendment of article 546 of the Code.

4. Article 546 of the Code shall be amended as follows:

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

(i) the words "shall be described" shall be substituted by the words "shall, upon a request which may only be made to the Magistrate by the Attorney General or the Executive Police, be described";

(ii) in the first proviso the words "in those proceedings:" shall be substituted by the words "in those proceedings." and the second proviso thereof shall be deleted;

(b) immediately after sub-article (3A) thereof there shall be added the following new sub-article:

"(3B) (a) Where:

(i) the functions of a public authority under any law require that such authority shall or may be able to investigate the site of an incident about which an inquest is also held under this article; and

(ii) such public authority is designated by the Minister responsible for justice by order in the Gazette as a public authority to which this sub-article applies,

such designated public authority shall inform the Magistrate of its need to execute its functions at the place of the incident and it shall request to be granted access to such place and to any exhibits, documents or witnesses involved in the inquest, as may be necessary for the proper execution of its functions according to law.

(b) The Magistrate shall grant such access as may be requested in accordance with paragraph (a), which may be made subject to such conditions or limitations as the Magistrate may determine to be necessary in the circumstances, after giving due consideration to the need to enable the requesting public authority to perform its legal functions, with due regard to maintaining the integrity and efficiency of the conduct of the inquest and of any investigations carried out by the said public authority.";

(c) sub-article (4A) thereof shall be substituted by the

following new sub-article:

"(4A) (a) (i) Any person who makes a report, information or a complaint to the Executive Police in regard to an offence liable to the punishment of imprisonment exceeding three years, and if the subject matter of the offence still exists, may at the same time request the opening of an inquest on the request of a private party on a suspected person in accordance with the provisions of this sub-article;

(ii) An inquest upon the request of a private party on a suspected person shall only be carried out upon the suspected person but it shall be regulated by the provisions which regulate inquests commenced in accordance with sub-article (1), except as otherwise provided in this article;

(iii) Any person making a request in accordance with this sub-article for the opening of an inquest as aforesaid shall confirm on oath in the report, information or complaint who the person suspected to have committed the offence (hereinafter in this article referred to as "the suspect") is, the act allegedly committed by the suspect, which offences were allegedly committed by the said person, and the connection between the acts allegedly committed by the suspect and the offence allegedly committed, and shall together with the report, information or complaint present any evidence on the basis of which that person is putting forward his request.

(b) Upon receiving a report, information or a complaint accompanied by a request for the opening of an inquest in accordance with paragraph (a), the Executive Police shall investigate and shall decide if:

(i) there are grounds to initiate a prosecution;

(ii) there are no grounds for prosecution;

(iii) the case merits further investigation by the Executive Police;

(iv) an inquest upon the request of a private party on a suspected person should be opened in accordance with the provisions of this sub-article.

(c) If following an investigation, the Executive Police decide that there are grounds for initiating a prosecution or that there are no grounds to initiate a prosecution, it shall refer the case and the acts of its investigation to the Attorney General for a decision whether a prosecution should be commenced.

(d) Where the Attorney General decides that there are no grounds to initiate a prosecution, the Attorney General may:

(i) order the Executive Police to pursue the investigation; or

(ii) order that the person making the report, information or the complaint and the person therein indicated as the suspected person be notified of the decision not to prosecute, and in that case the provisions of article 541(4) shall apply.

(e) The person who made the report, information or complaint together with a request for the opening of an inquest in accordance with paragraph (a), may at any time after the lapse of six months from when he shall have made the report, information or complaint provided that:

(i) a prosecution shall not have been initiated against the suspected person; or

(ii) a decision not to prosecute the suspected person shall not have been taken; or

(iii) an inquest upon the request of a private party on a suspected person under this sub-article shall not have been opened,

file an application in the Criminal Court requesting that the Court shall order the Executive Police to transmit the report, information or complaint to the Magistrate for the commencement of an inquest in terms of paragraph (a), which shall only be carried out on the actions of the suspected person.

(f) When it receives an application in terms of paragraph (e), the Criminal Court shall consider the proof admissible as evidence before a court of criminal jurisdiction, and it shall for this purpose:

(i) hear the evidence of the Executive Police in court behind closed doors about the investigation procedures; and

(ii) hear behind closed doors the person who made the report, information or complaint, as well as every suspected person and, any other witness that may be put forward by them:

Provided that after considering the proof admissible as evidence that was produced and the cross-examinations and submissions of the interested parties, with the right to legal assistance and all the safeguards resulting from the law applicable to investigations of a criminal nature, and whilst following the criteria stipulated in paragraph (g), the Criminal Court shall proceed to decide to:

(i) allow a further time for the conclusion of the investigation of the Executive Police; or

(ii) terminate the proceedings by declaring the investigation closed; or

(iii) accede to the request of the person who made the report, information or complaint for the opening of an inquest upon the request of a private party on a suspected person:

Provided further that if the Court allows a further time period for the conclusion of the investigation of the Executive Police it shall set a date for the continuation of the hearing and it may on that date proceed in accordance with paragraph (i), (ii) or (iii) of the first proviso.

(g) The Criminal Court shall decide to order the opening of an inquest in accordance with paragraph (a) of this sub-article (4A), only if it results to it on a balance of probabilities on the basis of proof admissible as evidence before a court of criminal jurisdiction, that the alleged offences could have been committed by the suspected person.

(h) If the Criminal Court orders that an inquest upon a request of a private party on a suspected person be commenced, the Executive Police shall within three working days from when such order is given request the Registrar of Criminal Courts and Tribunals to proceed for the opening of an inquest, by the assignment of a Magistrate according to sub-article (4C).

(i) An inquest held under this sub-article which is declared by a court to have been held, without the appropriate applicable legal and factual pre-requisites applicable to it at the time when it was opened having been adhered to, shall be null and without effect.

(j) On the termination of the inquest and upon the request of the suspected person made within one year from the closure of the inquest and of a copy of the *procès-verbal* having been given to the parties concerned, if the Magistrate considers that a suspected person was placed under examination unjustly on the basis of a report, information or complaint presented according to this sub-article by reason of it having been either unfounded, frivolous, vexatious or abusive of the judicial process the Magistrate may decide to condemn the person who filed the report, information or complaint to pay the costs of the inquest, without prejudice to any other direction which the Magistrate may consider appropriate to give and to any other action pertaining to the suspected person under any other applicable law. The decision taken by the Magistrate in accordance with this paragraph shall be subject to an appeal by application to the Criminal Court in accordance with paragraph (k).

(k) Any person who feels aggrieved by the decision of the Magistrate taken in terms of paragraph (j) may, within twelve working days from the day on which such decision is notified to him, file an application to the Criminal Court requesting that the decision of the Magistrate be revoked or varied. For the purpose of exercising its functions under this paragraph, the Criminal Court shall proceed *mutandis mutandis* in accordance with the provisions of this Code applicable to appeals from decisions of the Court of Magistrates.";

(d) sub-article (4B) thereof shall be substituted by the

following new sub-article:

"(4B) Proceedings pursued in terms of sub-article (4A) and inquest proceedings in general shall be carried out under the supervision of the Attorney General. Decrees delivered by the Court and by the Magistrate in terms of sub-article (4A) shall be notified to the Attorney General.";.

(e) in sub-article (4C) thereof the words "sub-articles (4A) and (4B)" shall be substituted by the words "sub-article (4A)" and the words "from among all the Magistrates." shall be substituted by the words "from among the Magistrates mentioned in article 367(3).";

(f) in sub-article (5) thereof the words "in sub-article (1) and article 551(1)" shall be substituted by the words "in sub-articles (1) or article 551(1)".

Amendment of article 547 of the Code.

5. Sub-article (2) of article 547 of the Code shall be substituted by the following new sub-article:

"(2) The functions of the Magistrate in the inquest are the following:

(a) to collect and preserve any proof admissible as evidence before a court of criminal jurisdiction which the Magistrate identifies personally or by means of experts as relevant to the offence about which the inquest is held;

(b) to reach a conclusion on whether from the admissible proof gathered as evidence, it results that an offence has been committed on a balance of probabilities;

(c) without confronting witnesses or expressing judgment about which evidence should be believed, in the case where he considers that a statement made during the inquest cannot be truthful, to indicate that fact;

(d) without assuming the functions of a court of criminal inquiry or of a court of criminal judicature, declare whether or not there is sufficient admissible evidence indicating that on a balance of probabilities, any persons which in the case of an inquest opened in terms of sub-article (4A) of article 546 shall be persons from amongst those indicated as suspects in the report, information or complaint, may be further investigated by

the Executive Police or by any other competent authority in accordance to law, or in regard to whom a decision shall be taken by the Attorney General as to whether the criminal action should be instituted.".

Amendment of article 548 of the Code.

6. Article 548 of the Code shall be amended as follows:

(a) immediately after sub-article (1) thereof there shall be added the following new sub-article:

"(1a) (a) An expert appointed by the court shall be a natural person and not a juridical person. Before appointing an expert, the Magistrate shall ensure that the expert has knowledge of the criminal law of Malta up to the level required for him to fulfil his assignment and, in the case where the expert is not a person officially accredited to act as an expert in the Courts of Malta in accordance with the proviso to article 650(2), he shall undertake a due diligence process that shall be carried out by the Department of Justice together with the Court Services Agency and which shall concern the qualifications and suitability of the person to perform that function.

(b) The decree appointing the expert shall explain the assignment given to the expert and shall also make it clear that the role of the expert is limited to the determination of matters of fact relevant to the constitutive elements of the offence only, without expressing an opinion with regard to the commission or otherwise of the offence. The same decree may include other conditions of appointment as the Magistrate considers appropriate.";

(b) immediately after sub-article (2) thereof there shall be added the following new sub-article:

"(3) (a) Experts shall be paid such fees which are as much as possible normally applicable to payments made to professionals for comparable work in Malta.

(b) The fees referred to in paragraph (a) shall be taxed by the Registrar of Criminal Courts and Tribunals.

(c) Notwithstanding the other provisions of this Code or of any other law, in cases where before an expert is engaged or at any stage during the execution of his assignment there is an expectation that the payment to be made to the expert is going to exceed fifty thousand euro

(€50,000), or such higher amount as the Minister responsible for justice may from time to time, by order in the Gazette establish, the Magistrate shall obtain the prior authorisation of the Chief Justice, who before granting or refusing such authorisation shall consult the Attorney General. In considering whether to recommend such authorisation, the Attorney General shall take into account the gravity of the offence investigated, the monetary value which the said offence may involve and the proportionality of the expense.".

Amendment of article 549 of the Code.

7. Sub-article (1) of article 549 of the Code shall be substituted by the following new sub-article:

"(1) The Magistrate shall sign at the end of the *procès-verbal* and a written or printed note shall be made on every document produced during the inquest by the Registrar or by an officer of the courts acting in his stead, as may be ordered by the Magistrate.".

Addition of new article to the Code.

8. Immediately after article 549 of the Code there shall be added the following new article:

"Guarantees for the suspect and the victim.

549A. (1) When a person who is the suspect or is otherwise the subject of an inquest is called as a witness at the inquest, he shall be informed before commencing to give evidence that he is a suspect or is the subject of the inquest and of the offence which it is considered that he may have committed and the reasons therefor. Such person shall be granted the right to be assisted by an advocate and shall have all the safeguards that result from the law applicable to criminal investigations including the right to access the materials of the case in terms of article 534AF.

(2) All the rights mentioned in the preceding sub-article shall also apply to the victim of the offence who is called as a witness in the inquest.

(3) A person who is a suspect or a person who considers that he is the subject of an inquest may by means of an application to the Magistrate request to give his evidence in the inquest and indicate witnesses and other proof to the Magistrate, and if it results to the Magistrate that such a person is the suspect or the subject of the inquest, the Magistrate shall accede to the request and shall within a reasonable time before the date appointed for the giving of such evidence, place at the disposal of such person such relevant evidence as the Magistrate considers appropriate on the basis of which such person is considered as the suspect or the subject of the inquest:

Provided that the stage of the inquest when a person who files an application in accordance with this sub-article shall be called to give evidence and which witnesses and other proof indicated by him shall be brought in the inquest shall be determined by the Magistrate.".

Amendment of article 550A of the Code.

9. Article 550A of the Code shall be amended as follows:

(a) in sub-article (2) thereof the words "every month" shall be substituted by the words "every two months" and the words "the lapse of the month" shall be substituted by the words "the lapse of the two months" and immediately thereafter there shall be added the words "The Attorney General shall have the right to give indicative directions for the consideration of the Magistrate on those steps which he considers should be taken so as to enable the conclusion of the inquest without delay.";

(b) immediately after sub-article (5) thereof there shall be added the following new sub-articles:

(6) The inquest shall be concluded within six months from when it is opened. In any case where the inquest is not concluded within two years from when it was opened the Magistrate shall, notwithstanding any other provision of this Code or of any other law, conclude the report of the inquest upon the acts available, and the acts of the inquest shall be transmitted to the Attorney General within thirty days from the lapse of the said period of two years. The closure of the inquest in accordance with this sub-article shall be without prejudice to the exercise of the power of the Attorney General in accordance with sub-article (2) of article 569 and to the right of the Police to

continue the investigation, as the case may be:

Provided that if the Attorney General exercises his power in accordance with sub-article 2 of article 569, the time periods provided in this sub-article shall commence to run again.

(7) The Attorney General shall upon the request of the victim of the offence within six months from when an inquest is opened and unless the inquest has been terminated, and upon the lapse of every subsequent six months, shall inform the victim of the stage of the proceedings of the inquest. For the purpose of fulfilling the requirements of this sub-article, the Attorney General may either rely on the information provided to him by the Magistrate under the other provisions of this article or request from the Magistrate such further information which he considers to be relevant in the particular case for informing the victim. The Attorney General shall, upon the victim's request, inform the victim when the inquest is concluded and when a copy of the *procès-verbal* will be given to him, or if exceptional circumstances exist for which the *procès-verbal* should not be published.

(8) The victim shall have the right to request the Attorney General to inform him in the case that a decision not to prosecute is taken following the conclusion of an inquest.".

10. Article 569 of the Code shall be amended as follows:

Amendment of article 569 of the Code.

(a) in sub-article (5) thereof the words "shall have ordered that a person be arraigned in court" shall be substituted by the words "shall have indicated a person about whom a decision whether the criminal action shall be instituted should be taken";

(b) in sub-article (6) thereof the words "in case of doubt the Commissioner of Police may consult with the Attorney General who may direct that no proceedings are to be taken or that the proceedings to be taken are to be for a charge or for charges different from those specified by the Magistrate in the *procès-verbal*" shall be substituted by the words "the Commissioner of Police may consult with the Attorney General who shall either determine the charge or charges on the basis of which the criminal action is to be instituted or direct that no proceedings are to be taken".

C 2804

Transitory provisions.

11. The provisions of this Act shall apply as from the date of the coming into force of this Act except as provided in the following transitory provisions:

(1) The amendments to sub-article (4A) of article 546 made by this Act:

(a) shall also apply in respect of any report, information or complaint made in front of the Magistrate by a person who is not the Attorney General or an officer of the Executive Police in accordance with article 546(4A) before 1st January 2025, however only if until 1st January 2025 there was not a final decision on whether the inquest should have commenced or not. In those proceedings the Magistrate or the Criminal Court shall abstain from continuing to take cognizance of the request for the holding of an inquest;

(b) if after a report, information or complaint made before the Magistrate by a person who is not the Attorney General or an officer of the Executive Police in accordance with article 546(4A) before 1st January 2025, where the inquest had not commenced until 1st January 2025, however it has commenced after that date, the Magistrate shall immediately cease from taking further cognizance of the inquest and shall refer the report, information or complaint to the Commissioner of Police;

(c) the report, information or complaint so referred in accordance with paragraph (b) shall be considered in the same manner as if they were a report, information or a complaint made together with a request to commence an inquest on the request of a private party on a suspected person in accordance with sub-article (4A) of article 546, as amended by this Act;

(d) in the case mentioned in paragraph (c), the Commissioner of Police shall concede a period of one month to the person who had filed the report, information or complaint, which shall commence to run from the day when the person who filed the report, information or complaint is notified, to conform with the requirements of article 546(4A), as amended by this Act. In the case that within the said time limit the person who made the report, information or complaint shall not have satisfied the requirement of conforming his report, information or complaint with the provisions of article 546(4A), as amended by this Act, the request for the opening of an inquest shall be deemed to have been withdrawn, and in the case that such conformity materialises, proceedings shall be pursued in

accordance with the provisions of article 546(4A), as amended by this Act;

(e) in the case of a report, information or complaint made before the Magistrate, by a person who is not the Attorney General or an officer of the Executive Police in accordance with article 546(4A) before 1st January 2025, where until 1st January 2025 the Magistrate or the Criminal Court have not yet decided whether to commence or not to commence the inquest, but where until the coming into force of the amendments made by this Act a definite decision has been taken by the Magistrate or the Criminal Court that the inquest shall not be commenced, such decree shall be deemed definite and it shall not be affected by the amendments made by this Act.

(2) The amendments to sub-article (2) of article 547 of the Code shall apply to all procedures relating to inquests which are pending on the date of the coming into force of this Act or which are commenced thereafter.

(3) The amendments introduced to the Code by this Act in sub-articles (1a) and (3) of article 548 shall apply to procedures relating to inquests which commence after the coming into force of this Act, provided that where an expert was appointed in such procedures commenced before the date of coming into force of this Act and the proceedings are still pending on that date the following shall apply:

(i) if the expert has not filed his report to the Magistrate on the date of the coming into force of this Act, the expert shall limit his report to the determination of matters of fact as provided in paragraph (b) of sub-article (1a) of article 548, as added by this Act;

(ii) in the case that the expert has already filed his report to the Magistrate on the date of the coming into force of this Act and the procedures relating to the inquest are still pending, the Magistrate shall ensure that the *procès-verbal* and his conclusions shall be based on the report of the expert only insofar as is provided in sub-article (1a) of article 548;

(iii) the procedure provided in paragraph (c) of sub-article (3) of article 548, as added by this Act, shall also apply to new appointments of experts which are made after the coming into force of this Act in procedures relating to inquests which are pending at the time of the coming into force of this Act, and shall also apply when in such procedures another assignment or an extension of an existing assignment is given to an expert already

nominated and there is an expectation that the additional payment would exceed the amount provided in the said paragraph.

(4) the amendments to articles 549, 549A and 550A(2) and (8) shall apply upon the coming into force of this Act with regard to inquests which were opened from 1st January 2025 onwards.

(5) the amendments to sub-articles (6) and (7) of article 550A shall apply to procedures relating to inquests which have commenced after the coming into force of this Act and to such procedures which are pending on the date of the said coming into force subject to the following:

(i) where the period of two years stipulated in sub-article (6) shall not have expired upon the coming into force of this Act, that period shall be extended by six months following the lapse of the two years;

(ii) if the procedures of the inquest shall have been pending for more than two years upon the coming into force of this Act, those procedures shall be concluded by not later than six months from the coming into force of this Act;

(iii) the period of six months stipulated in sub-article (7) shall be applicable and shall commence to run only from the date of the coming into force of this Act.

(6) In these transitory provisions any reference to the date of the coming into force of this Act includes a reference to the date of the coming into force of part of this Act which is relevant to the relative transitory provision.

Objects and Reasons

The objects and reasons of this Bill focus upon '*in genere'* (inquests). The Bill follows on the lines of the recommendation made by the Venice Commission in its Opinion of the 18th December 2018. The Bill however does not transfer the conduct of inquests to the Attorney General as suggested in the said Opinion but for the purpose of checks and balances, it grants to the Attorney General a more central and better defined role in inquests without impinging upon the independence of Magistrates and Judges.

In particular the Bill:

(i) proposes measures for inquest proceedings to be expedited and conducted within stated time limits and with more fairness with the persons concerned;

(ii) distinguishes between an inquest opened on the request of the Police or the Attorney General in accordance with sub-article (1) of article 546 of the Criminal Code and an inquest opened on the request of a private party on a suspected person in accordance with sub-article (4A) of the said article and obliges the complainant to file his report, information or complaint together with a request to open an inquest in accordance with article 546(4A) initially with the Police. The Bill stipulates that such person may subsequently after the lapse of six months file an application before the Criminal Court to request the opening of an inquest, if the investigations have not been concluded and in the case that no decision to prosecute or not to prosecute has been taken. On such application the Criminal Court shall hear the Executive Police, the complainant, the suspected person and other witnesses *in camera* about the investigation procedures and shall decide whether to allow further time for the investigation to proceed, or to close the investigation or order the opening of an inquest;

(iii) establishes that after the conclusion of the inquest the Magistrate may also, at the request of a person unjustly subjected to an examination, order the payment by an abusive complainant of the expenses of the inquest, without prejudice to any other remedies available at law;

(iv) proposes amendments to better define the purpose of the inquest proceedings and the function of the Magistrate in those proceedings in the light of what has been held by the Courts from time to time, about the Magistrates' role and the laws in force in Malta;

(v) provides that at the end of the inquest the Magistrate shall no longer order that a person be arraigned in court but he shall indicate that a decision has to be taken by the competent prosecution authority as to whether to file criminal charges against that person;

(vi) proposes concrete measures for the better safeguard of the rights of persons who are the subject of inquest proceedings and of the victims of crime;

(vii) includes provisions intended to ensure value for money in expert expenses in the sometimes apparently

disproportionate expenses involved in the proceedings in question;

(viii) without imposing a cap on expert's fees regulates the terms of appointment of experts particularly in cases where it is expected that the expert's fees would exceed fifty thousand euros (€50,000), and requires that experts are natural persons and that they have undergone a due diligence process before appointment;

(ix) affirms that the criterion for commencing an inquest on the request of a private party is that of having admissible proof as evidence before a court of criminal jurisdiction that shows on a balance of probabilities that the crime may have been committed by a suspected person;

(x) regulates the relationship between the *in genere* and other procedures which are required to be conducted by other public authorities with regard to certain types of incidents. This should lay the basis for the removal of difficulties currently hindering such entities such as the Bureau for Road Safety Investigation from starting operations.

VERŻJONI ELETTRONIKA

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