CHAPTER 446

PROBATION ACT

To provide for the Probation of Offenders, Community Service Orders and Combination Orders.

10th March, 2003
1st June, 2003

ACT VII of 2002, as amended by Act XXIII of 2002, Legal Notice 426 of 2007 and Acts VI of 2010, XXIII of 2012, IV and XXXVIII of 2014, and XLVII of 2016 and XIII of 2018.

1. The short title of this Act is the Probation Act. Short title.

2. In this Act, unless the context otherwise requires - Interpretation. *Amended by: VI. 2001.2; XXIII. 2012.2.*

"combination order" has the meaning assigned to it by article 18;

"certificate" means the form, as contained in Annex I to the Framework Decision, purporting to reproduce details setting out the information required by the same form;

"community sanction" means a probation order, a community service order or a combination order as specified in this Act;

"community service officer" is a probation officer who supervises community service orders;

"community service order" has the meaning assigned to it by article 11;

"convicted of an offence" includes convictions by the Court of Criminal Appeal and the affirmation by the said court of a conviction by the court of first instance or of a finding of guilt by a jury;

"Department" means the Department of Probation Services;

"Director" means the Director of Probation Services;

"executing State" means the Member State to which a community sanction has been transmitted for the purpose of execution;

"Framework Decision" means Council Framework Decision 2008/947/JHA of 27 November 2008, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, on the application of the principal of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;

"institution" means an institution approved by the Minister;

"issuing State" means the Member State in which the judgment is delivered;

"Minister" means the Minister responsible for the probation services;

"pre-sentencing report" means a written report prepared by the Department at the request of the court prior to the imposition of sentence;

"probation officer" means a person appointed to be a probation officer under this Act;

"probation order" has the meaning assigned to it by article 7;

"probation period" means the period for which a probationer is placed, under supervision by a probation order, under a community service order or a combination order;

"probationer" means a person for the time being sentenced by virtue of a probation order, a community service order or a combination order;

"scheduled conduct" is a conduct in the list of conduct set out in the Schedule.

Duties of Director of Probation Services. *Amended by: VI. 2001.3.*

3. (1) There shall be a Department of Probation Services which shall be a department of Government headed by a public officer to be styled Director of Probation Services.

(2) It shall be the duty of the Director of Probation Services -

(*a*) to manage and direct the Department and to organise and supervise the probation services;

(*b*) to direct probation officers on their work;

(*c*) to give direction on record keeping and time management;

(*d*) to supervise probation officers and periodically receive verbal or written reports on probationers from the probation officers;

(*e*) to keep a register of each person sentenced to a community sanction;

(*f*) to keep a register of pre-sentencing reports requested by courts;

(*g*) to decide whether a probationer is to be arraigned in Court following a breach of any condition of a community sanction; and

(*h*) to assign probation officers to probationers, to supervise provisional orders of supervision and to prepare pre-sentencing reports in accordance with this Act.

(3) The Director may delegate any of the above duties to a senior member of staff.

Laboratory analysis regarding tests for drugs or alcohol. *Added by: XLVII. 2016.2.*

3A. (1) The Director or his representative may order a probationer or a parolee to provide a sample for the purpose of ascertaining by means of laboratory analysis or by a device approved by the Minister whether he has any drugs or alcohol in his body.

(2) In this article "drugs" means any dangerous drug as defined in article 12 of the Dangerous Drugs Ordinance, or any specified or restricted drug under the Medical and Kindred Professions Ordinance.

Cap. 101.
Cap. 31.

(3) When requiring a probationer or parolee to provide a

sample, the Director or his representative shall, as far as is reasonably practicable, inform the probationer or parolee:

(*a*) that he is being required to provide a sample for the purpose of this Act; and

(*b*) that a refusal to provide a sample may lead to a breach of parole licence or a breach of any community based sanction.

(4) The sample shall be a fresh sample, free from adulteration.

(5) When requiring a sample from a probationer or a parolee, the Director or his representative shall make such arrangements and give the probationer or parolee such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(6) For the purpose of this article "parolee" has the same meaning assigned to it by article 2 of the Restorative Justice Act. Cap. 516.

Appointment of probation officers.

4. The Minister shall appoint a sufficient number of qualified persons to be probation officers, who shall, under the general direction of the Director, perform the duties provided by this Act or such other duties as may be prescribed by regulations made under this Act, or by or under any other law.

Supervisory Board.

5. (1) There shall be a Supervisory Board consisting of a Chairman and two other members to be appointed by the Minister.

(2) The duties of the Board shall be to review the performance of the probation services under this Act and suggest improvements, and to monitor the administration of discipline in community sanctions.

(3) The Board shall submit a yearly report to the Ministry responsible for the probation services on the functioning of the probation services by the Department. The Minister shall send a copy of the report to the Standing Committee for Social Affairs of the House of Representatives.

(4) The members of the Board shall hold office for such period as the Minister may establish in their appointment, and shall be re-eligible for appointment after the end of their term of office.

(5) The Board shall have access to all records of the Department and subject to any direction by the Minister, shall regulate its own procedures.

Pre-sentencing reports.

6. (1) A court may commission the Department to prepare a pre-sentencing report before forming an opinion as to the suitability of applying to an offender a sentence of imprisonment, a suspended sentence or any other measure allowed by law on one or more of the following orders:

(*a*) a probation order; or

(*b*) a suspended sentence supervision order:

Provided that, except in the case of summary proceedings for offences under the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1) of the Criminal Cap. 9.

Code, the Court shall always commission a pre-sentencing report before dealing with an offender under eighteen years of age who has committed an offence punishable by imprisonment, or before ordering a community service order or a combination order.

(2) It shall be the duty of a probation officer assigned to prepare the pre-sentencing report to inquire, in accordance with any direction of the court, into the personal and social circumstances of the offender with a view to assisting the court in determining the most suitable method of dealing with the case.

(3) Where a person has been convicted of an offence and the court is of opinion that information ought to be obtained about the circumstances or home surroundings of the accused before the method of dealing with the offender is determined, the court shall, notwithstanding anything contained in the Criminal Code, adjourn the case to enable the compilation of the pre-sentencing report by the Department.

Cap. 9.

(4) The provisions of the foregoing subarticles shall apply *mutatis mutandis*, to proceedings before the Criminal Court or the Court of Criminal Appeal.

(5) Where a pre-sentencing report is made to any court, a copy of the report shall be given by the Court to the offender or his advocate or legal procurator and the prosecution:

Provided that if the offender is under sixteen years of age and is not represented by an advocate or legal procurator, a copy of the report need not be communicated to him but shall be referred to his parent or guardian.

(6) Except in so far as it is cited in the judgement, a pre-sentencing report shall be considered as a confidential document. No information contained therein may be communicated in any form to third parties without the consent of the accused or the court. The probation officer shall have a right of access at reasonable times to the acts of the criminal proceedings, including documents contained therein.

Probation order.
Amended by: VI. 2001.4.

7. (1) The court may, subject to the provisions of the following subarticle, instead of sentencing the offender, make a probation order, that is to say, an order requiring the offender to be under the supervision of a probation officer for a period to be specified in the order of not less than one year and not more than three years.

(2) Any order made in accordance with subarticle (1) shall only be made if:

(*a*) the offender is convicted of an offence, not being an offence punishable only with a fine (*multa* or *ammenda*), and not being an offence which apart from any increase of punishment in view of continuity or of previous convictions, which is punishable with imprisonment for a term not exceeding seven years; and

(*b*) the court is satisfied that the supervision of the

offender by a probation officer is desirable in the interest of securing the rehabilitation of the offender and, or protecting the public from harm from the offender or preventing the commission of further offences; and

(*c*) having regard to the circumstances of the case, including the nature of the offence and the character of the offender, the issue of such order is appropriate:

Provided that where in the opinion of the court circumstances, which are to be clearly stated in the order, exist that merit the placing of the offender under a probation order in the case of an offence which, apart from any increase of punishment in view of continuity or of previous conviction, is punishable with imprisonment for a term exceeding seven years but not ten years, the court may make a probation order:

Provided further that where a probation order which has been made is of a period of less than one year, that order shall be deemed to be of one year:

Provided further that the Court may, if it deems it to be in the best interest of the person accused, issue a provisional order of supervision of the accused by a probation officer, even during any criminal proceedings, under such conditions as the Court may deem fit.

(3) Without prejudice to the provisions of the following subarticles of this article, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by the offender of the same offence or the commission of other offences, and the court may also give to the probation officer such directions as it may deem necessary for securing these purposes.

(4) A probation order may include requirements relating to the residence of the offender:

Provided that -

(*a*) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(*b*) where the order contains any such requirements, the place at which the probationer is to reside thereat shall be specified in the order. If the probationer is required to reside in an institution, the period for which the offender is required to reside shall not extend beyond twelve months from the date of the order.

(5) Without prejudice to the generality of subarticle (2), where in the opinion of the court the mental condition of the offender is such as requires and as may be susceptible to treatment, but not such as to justify other measures or procedures, or where the court is satisfied that -

(*a*) the offender is a drug addict; and

(*b*) that proper arrangements have been or can be made for treatment,

a probation order may include a requirement that the offender shall submit to treatment not exceeding the length of the order by or under the directions of a suitably qualified person with a view to the improvement of the offender's mental condition or with a view to freeing the offender from drug addiction.

The treatment may be of any of the following kinds:

(*c*) treatment as a non-resident patient in a hospital or other appropriate agency or institution;

(*d*) treatment as a resident patient in a hospital or other appropriate agency or institution; or

(*e*) treatment by or under the direction of a suitably qualified person as may be specified in the order.

In any such case an amendment of the order under article 10 may also be made on an application made by a suitably qualified person, in conjunction with the probation officer responsible for the treatment of the offender.

(6) Where the court deems that such an order may help in the rehabilitation of the offender, it may include as a condition in the probation order, an order that for a period not exceeding six weeks the probationer shall, when not required to be out to work or study, present himself and remain at such residential institutions as may be approved by the Minister for the purpose, provided that such requirement may be restricted by the court to Saturdays and public holidays and the period after seven in the evening on the eve of Saturdays and public holidays.

(7) Before making a probation order, the court shall explain to the offender, in ordinary language, the effect of the order including any additional requirements proposed to be inserted therein under subarticle (3), subarticle (4), subarticle (5) or subarticle (6), and that if the offender fails to comply therewith or commits another offence, the offender will be liable to be sentenced for the original offence. If the offender is not less than fourteen years of age, the court shall not make the order unless the offender expresses willingness to comply with the requirements thereof.

(8) The court by which a probation order is made shall order that copies of the order be served forthwith on the probationer and the Director who shall assign a probation officer to be responsible for the supervision of the probationer, and to the person in charge of any institution or hospital or other place in which the probationer is required by the order to reside. If the probationer is a minor, a copy of the probation order shall also be furnished to the parent or person charged with the upbringing of the probationer, if any.

Duties of probation officer.

8. (1) Subject to the directions of the court by which a probation order is made, it shall be the duty of a probation officer -

(*a*) to advise and assist the probationer;

(*b*) to visit and receive reports from the probationer and

other professionals involved in the case, at such reasonable intervals as may be specified in the probation order, or, subject thereto, as the Director may think fit;

(*c*) to plan, monitor, and assist the probationer in fulfilling the conditions of the probation order;

(*d*) to secure the compliance of the offender to any community sanction;

(*e*) to arouse consciousness of the probationer to the harm caused to the victim of crime and society;

(*f*) to report to the court verbally or in writing, at least once every six months, as to the progress of the probation;

(*g*) where necessary, to assist the probationer in furthering appropriate social and educational endeavors;

(*h*) where necessary, to assist the offender in finding suitable employment;

(*i*) to keep detailed records on each person under his care who has been sentenced to a community sanction;

(*j*) to provide verbal or written reports on the progress made by the probationers to the Director; and

(*k*) to act in accordance with the instructions of the Director when a probationer is to be arraigned in court after a breach of the conditions of a community sanction.

(2) It shall also be the duty of a probation officer to inquire, in accordance with any directions of the court, into the circumstances or home surroundings of any probationer with a view to assisting the court in determining the most suitable method of dealing with the case.

Selection of probation officers.

9. (1) The Director shall, after consultation with the court, assign a probation officer to be responsible for the supervision of a probationer:

Provided that more than one probation officer may be assigned to the same probationer, each dealing with a particular aspect of the case as the Director may determine.

(2) The Director, where the circumstances permit, shall assign a probation officer experienced in dealing with children or young persons to supervise an offender who is under the age of sixteen years.

Discharge and amendment of probation order.

10. (1) The court by which the probation order was made may, upon application made by the Director or by the probationer, cancel the order.

(2) The court by which the probation order was made may, upon application made on a report from the probation officer or upon application made by the Director or by the probationer, by order amend a probation order by cancelling any of the

requirements thereof or by inserting therein, either in addition to or in substitution for any such requirement, any requirement which could be included in the order if it were then being made by that court in accordance with the provisions of article 7:

Provided that -

(*a*) the court shall not amend a probation order by reducing the probation period to less than one year or by extending that period beyond the end of three years from the date of the original order,

(*b*) when the court proposes to amend a probation order, otherwise than on the application of the probationer, it shall summon the probationer to appear before the court, and if the probationer is not less than fourteen years of age, the court shall not amend a probation order until the probationer expresses willingness to comply with the requirements of the order as amended.

(3) On the making of an order cancelling or amending a probation order, the provisions of article 7(7) and (8) shall *mutatis mutandis* apply.

(4) Where, under the following provisions of this Act, a probationer is sentenced for the offence for which he was placed on probation, the probation order shall cease to have effect. The court shall direct that a copy of the judgment be transmitted without delay to the Director.

Community service order. *Amended by: VI. 2001.5; XXIII. 2012.3.*

11. (1) A community service order may be given to an offender aged sixteen years and over, convicted of an offence for which, in the opinion of the Court, the appropriate sentence would, except for the provisions of this article, be one of imprisonment. Such an offence must not be punishable only by a fine (*multa* or *ammenda*) and cannot be an offence, which apart from any increase in punishment in view of the continuity or of previous convictions, is punishable with imprisonment exceeding seven years and the provisions of the proviso to article 7(2) shall apply *mutatis mutandis* to this subarticle.

(2) The court may, instead of sentencing the offender to imprisonment, order the offender to be placed on a community service order. A community service order shall require the offender to perform unpaid work or unpaid work and training, if such would be recommended in the reports referred to in article 11(3)(*a*), for a number of hours as specified in the order. In any such case no order shall require the offender to perform less than forty hours of work or more than four hundred and eighty hours.

(3) The court shall not make a community service order unless the following conditions have been met:

(*a*) the court is satisfied, after considering the offender's circumstances and the pre-sentencing report, that the offender is suitable to perform work under such an order:

Provided that where the court is so satisfied, it may,

after considering the offender's circumstances, dispense from the need of a written pre-sentencing report and order that a verbal report be submitted, and such verbal report shall be duly recorded in the court's proceedings;

(*b*) that arrangements can be made for such work;

(*c*) the offender has agreed to the order; and

(*d*) the offender has signed the community service work agreement form.

(4) Before making a community service order in respect of an offender the court shall explain to the offender in ordinary language the effect of the order and that if the offender fails to comply therewith or commits another offence, the offender will be liable to be sentenced for the original offence.

(5) The court by which the community service order is made shall forthwith give copies of the order to the offender, to the Director, the community service officer assigned to the case by the Director, and to the agencies and authorities responsible for the supervision of the community service order.

(6) It shall be duty of the Director to assign work to the probationer in accordance with the community service order.

Regulation of hours of work.

12. (1) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders.

(2) Where a court makes a community service order and there is in force in respect of the offender at the time of the making of that order another such order (made by the same or a different court) the court making the later order may direct in that order that the hours of work specified therein shall be concurrent with or additional to those specified in the earlier order.

(3) When a court makes a community service order and there is in force a prison sentence or the offender is detained without bail, the community service order shall come into effect after the release of the offender from prison, provided that the community service officer in charge of the case is of the opinion that the offender is still suitable to perform community service work. If the offender is not still suitable to perform the community service required, the community service officer shall return the case to the court. In such cases the court shall deal with the offender as if the community service order had never been made.

Duties of offender under community service order.

13. An offender in respect of whom a community service order is in force shall:

(*a*) report to the relevant authority from time to time according to the instructions issued by the community service officer;

(*b*) perform satisfactorily for the number of hours

specified in the order such work at such times as shall be directed by or on behalf of the relevant authority;

(*c*) notify the community service officer to whom the offender is required to report under this subarticle of any change of his address.

Community service work. *Amended by: L.N. 426 of 2007; VI. 2001.6; XXIII. 2012.4.*

14. (1) Subject to the provisions of article 11, the work to be performed under a community service order shall be performed in the period of not less than one month and not more than two years beginning on the date of the order:

Provided that, on application of the offender or the Director, and if it appears to the court to be in the interest of justice, having regard to the circumstances of the case, the court may extend the period of two years.

(2) Directions given under subarticle (1) shall, so far as practicable, avoid any interference with the times during which the offender normally works or attends a school or other educational or training establishment.

Breach of community service order.

15. (*Deleted by: Act XXIII. 2012.5*).

Extension.

16. (*Deleted by: Act XXIII. 2012.6*).

Summoning of offender.

17. (*Deleted by: Act XXIII. 2012.7*).

Combination order.

18. The court may, instead of sentencing the offender to imprisonment, order the offender to be placed on a combination order. A combination order shall require the offender to be placed under probation supervision as specified in article 7 and perform a community service order, as specified in article 11. Nevertheless, such order shall not require the offender to perform less than forty hours of work or more than one hundred hours in addition to any number of hours of work still to be performed under any previous community service order.

Duties of offender under combination order.

19. An offender in respect of whom a combination order is in force shall:

(*a*) report to the probation officer assigned to him by the Director from time to time according to the instructions issued by the probation officer;

(*b*) report to the relevant authority from time to time according to the instructions issued by the community service officer;

(*c*) perform satisfactorily for the number of hours specified in the order such work at such times as shall be directed by or on behalf of the relevant authority;

(*d*) notify the community service officer to whom the offender is required to report under this subarticle of any change of his address.

Applicable rules.

20. The provisions of this Act applicable to probation orders and community service orders shall apply to combination orders.

Community sanction. *Added by: VI. 2010.7.*

20A. A court, on making a community sanction, may subject an offender, in respect of whom the community sanction is in force, to the limitations on leaving Malta as the court may deem fit.

Breach of conditions. *Amended by: L.N. 426 of 2007; VI. 2010.8; XXIII. 2012.8; IV. 2014.41; XXXVIII. 2014.2.*

21. (1) If at any time during the probation period it appears to the Court of Magistrates, the Juvenile Court, the Criminal Court or the Court of Criminal Appeal, as the case may be, that the probationer has failed to comply with any of the requirements of the community sanction, the competent court may issue a summons requiring the probationer to appear before such court at the place and time specified therein, or may, if the circumstances so require, issue a warrant for the probationer's arrest:

Provided that except where the alleged failure is brought to the attention of the court by means of an application by the probation officer, no such summons or warrant shall be issued by the respective Court, except on an information in writing and confirmed on oath. In either case the information must be filed within three months of the alleged failure by the probationer:

Provided further that the Court shall appoint for hearing the application within twenty days of the filing of the said application.

(2) If it is proved to the satisfaction of the court, that the probationer has failed to comply with any of the requirements of the community sanction, that court may, without prejudice to the continuance of the sanction, impose on the offender a fine (*ammenda*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94), or may deal with the probationer, for the offence in respect of which the community sanction was made, in any manner in which the court could deal with the offender if he had just been convicted by or before that court of that offence.

(3) A fine imposed under this article in respect of a failure to comply with the requirements of a probation order shall be deemed for the purposes of any enactment, but saving the provisions of article 22(1), to be a sum adjudged to be paid following a conviction.

Absolute or conditional discharge.

22. (1) Where a court by which a person is convicted of an offence (not being an offence punishable only be a fine (*multa* or *ammenda*) and not being an offence which apart from an increase of punishment in view of continuity or previous convictions, is punishable with imprisonment for a term exceeding seven years) is of opinion that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment and that a probation order, a community service order or a combination order are not appropriate, the court may make an order discharging the offender absolutely, or, if the court thinks fit, discharging the offender subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified therein. The provisions of the proviso to article 7(2) shall *mutatis mutandis* apply to this subarticle.

(2) An order discharging a person subject to such a condition as aforesaid is in this Act referred to as "an order for conditional discharge" and the period specified in any such order as "the period

of conditional discharge".

(3) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if the offender commits another offence during the period of conditional discharge, the offender will be liable to be sentenced for the original offence.

(4) Where, under the provisions in this Act, a person conditionally discharged is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

Conviction following an order.

23. (1) If a person in whose case a community sanction or an order for conditional discharge has been made, is subsequently convicted by or before any court of an offence committed during the probation period or during the period of conditional discharge, the court -

(*a*) if it is the same court that had made the probation order, the community service order, the combination order or the order for conditional discharge, may deal with that person for the offence for which the order was made in any manner in which it could deal with the offender if he had just been convicted by or before that court of that offence;

(*b*) if it is a different court, it shall commit that person before the court by which the probation order, the community service order, the combination order or the order for conditional discharge was made and such court shall as soon as practicable, cause such person to appear or be brought before it, and on proof to its satisfaction of the conviction in respect of the further offence, may deal with that person for the offence for which the order was made in any manner in which it could deal with the offender if he had just been convicted by or before it of that offence.

(2) Subject to the provision of subarticle (3), where a person is dealt with for the offence for which he was placed on probation on a community service order or a combination order or conditionally discharged, it shall not be lawful for the court to place the offender under a community sanction or to make an order as provided in article 22(1).

(3) Subarticle (2) shall not apply where the offence committed during the probation period or during the period of conditional discharge and for which the person is subsequently convicted, is a contravention or is a crime of involuntary homicide, or involuntary bodily harm, or involuntary damage to property.

(4) For the purpose of subarticle (1) -

(*a*) the Court of Magistrates (Malta), the Court of Magistrates (Gozo) and the Juvenile Court shall be deemed to be the same court;

(*b*) the Court of Criminal Appeal in the determination of

appeals from judgments of the Courts of Magistrates (Malta), the Court of Magistrates (Gozo) and the Juvenile Court shall be deemed to be a different Court from the Court of Criminal Appeal in the determination of appeals for decisions of the Criminal Court.

Payment of damages. *Amended by: XIII.2018.28.*

24. (1) A court, on making a probation order, community service order, combination order, an order for conditional discharge or on discharging any offender absolutely may, without prejudice to its power of awarding costs under articles 380 and 533 of the Criminal Code, order the offender to pay such damages for injury or compensation for the loss as the court thinks reasonable.

Cap. 9.

(2) When issuing an order under sub-article (1), the Court may direct that such costs or damages are paid in instalments, in particular having regard to any other obligations which the offender has towards the victim or any of the victim's dependants.

(3) An order for the payment of damages or compensation as aforesaid may be enforced in like manner as if it had been given in a civil action between the offender and the person to whom the damages or compensation are ordered to be paid:

Provided that nothing in this article shall derogate from any right of such person to recover any greater amount by any other means from the offender or any other person liable to pay the same.

Effects of community sanction and discharge.

25. (1) Subject as hereinafter provided, a conviction for an offence for which an order is made under this Act placing the offender on a community sanction or discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose whatsoever other than -

(*a*) the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act, and

(*b*) in the case of a public officer, the purposes or any disciplinary proceedings which may be taken against, or any disciplinary punishment which may be imposed upon, such public officer in consequence of any such conviction or of any of the facts constituting the offence:

Provided that where an offender, being not less than eighteen years of age at the time of the conviction of an offence for which he is placed on a community sanction or conditionally discharged as aforesaid, is subsequently sentenced for that offence, the provisions of this subarticle shall cease to apply to the conviction.

(2) Without prejudice to the foregoing provisions of this article, the conviction of an offender who is placed on probation, on a community service order, on a combination order or discharged absolutely or conditionally as aforesaid shall in any event be disregarded for the purposes of any enactment which

imposes or authorizes any interdiction, disqualification, disability or other penalty upon convicted persons.

(3) The provisions of article 7(1), of article 11(2), of article 18, and of article 23(1) and (2) shall not affect -

(*a*) any right of any such offender as aforesaid to appeal against the conviction or to rely thereon in bar of any subsequent proceedings for the same fact;

(*b*) the revesting or restoration of any property in consequence of the conviction of any such offender;

Cap. 9.

(*c*) the operation of article 23 of the Criminal Code or of any other provision of that Code or of any other law relating to the forfeiture of any property or its retention by the registrar of any court or by any other officer authorized by law to seize or to retain any property connected with criminal proceedings;

Cap. 9.

(*d*) the making of any order under article 377 of the Criminal Code or under the provisions or any other law requiring or authorizing the making of any order for the abatement of a nuisance or inconvenience or for the carrying out of the law by the offender or by the Police at the expense of the offender;

Cap. 9.

(*e*) the liability of any such offender as aforesaid to be required by the court to enter into his own recognizance or to find a surety in terms of articles 249, 383 and 384 of the Criminal Code;

Cap. 9.

(*f*) the making of any order by the court as to the payment of costs under articles 380 and 533 of the Criminal Code;

Cap. 9.

(*g*) the operation of article 35(3), (5) and (6) of the Criminal Code;

(*h*) the right of any interested party to produce when appropriate in any criminal or civil proceedings evidence to show that a person discharged absolutely or conditionally as aforesaid or in respect of whom a community sanction has been made, who is a party to the proceedings or is produced as a witness, has been convicted of an offence, provided such evidence is considered by the court to be relevant.

Designated authorities. *Added by: VI. 2010.10. Substituted by: XXIII. 2012.10.*

26. (1) The provisions of articles 27 to 34 shall be limited to the transmission and execution of judgements imposing community sanctions between Malta and a Member State of the European Union, and shall apply to judgements received in Malta after the 16th December, 2008.

(2) For the purposes of articles 26 to 34, both inclusive:

(*a*) the Attorney General shall be competent to receive a judgement imposing a community sanction issued in the issuing State and to transmit to the executing State a judgement imposing a community sanction issued in Malta by the courts of criminal jurisdiction;

(*b*) the courts of criminal jurisdiction shall be competent to issue a judgement imposing a community sanction;

(*c*) "judgement" shall mean a final decision or order of a court establishing that a natural person has committed a criminal offence and imposing a community sanction.

Types of community sanctions. *Added by: VI. 2010.10. Amended by: XXIII. 2012.11.*

27. In accordance with the Framework Decision, the following community sanctions shall be regulated by a court of criminal jurisdiction:

(*a*) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

(*b*) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

(*c*) an obligation containing limitations on leaving the territory of the executing State;

(*d*) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

(*e*) an obligation to report at specified times to a specific authority;

(*f*) an obligation to avoid contact with specific persons;

(*g*) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

(*h*) an obligation to compensate financially for the prejudice caused by the offence and, or an obligation to provide proof of compliance with such an obligation;

(*i*) an obligation to carry out community service;

(*j*) an obligation to cooperate with a probation officer, and if necessary with a representative of a social service having responsibilities in respect of sentenced persons; and

(*k*) an obligation to undergo therapeutic treatment or treatment for addiction.

Forwarding of community sanctions to competent authorities of Member States where Malta is the issuing State. *Added by: VI. 2010.10. Amended by: XXIII. 2012.12.*

28. (1) Where Malta is the issuing State, the court of criminal jurisdiction shall, on its own initiative, or upon the request of the sentenced person, forward a community sanction to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State:

Provided that the court of criminal jurisdiction shall only consent to the forwarding of a community sanction, upon the request of the sentenced person, where the sentenced person has not committed subsequent offences and under such conditions it may deem fit to impose.

(1A) The court of criminal jurisdiction may, upon the request of the sentenced person, forward a judgement imposing a community sanction to the competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, provided that the latter authority has consented to such forwarding.

(2) When, in applying the provisions of subarticle (1), the competent authority forwards a community sanction to the executing State, it shall ensure that it is accompanied by athe certificate which shall be signed and its content certified as accurate by the Attorney General.

(3) Once a community sanction has been forwarded to an executing State under this article and the said State has informed the court of criminal jurisdiction or the Attorney General, as the case may be, that it has recognised the community sanction forwarded, the court of criminal jurisdiction shall no longer have competence over the supervision measures imposed in that sanction nor will it be competent to take decisions referred to in article 31(1) unless any of the following occurs:

(*a*) the sentenced person absconds or no longer resides in the executing state; or

(*b*) new criminal proceedings have been instituted against the sentenced person before the Maltese courts.

(4) The competence referred to in subarticle (3) shall revert to the court of criminal jurisdiction, as the case may be:

(*a*) as soon as the court of criminal jurisdiction or the Attorney General upon a request by the said court, has notified the competent authority of the executing State about the withdrawal of the certificate referred to in subarticle (2), provided that supervision in the executing State has not yet begun;

(*b*) in cases or categories of cases to be specified by the executing State where it may refuse to assume the responsibility of supervision, in particular:

(i) in cases relating to an alternative sanction, where the judgement does not contain a custodial sentence or measure involving the deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(ii) in cases relating to a conditional discharge; and

(iii) in cases where the judgement relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described;

(*c*) in cases where the jurisdiction of the executing State has ended in accordance with the provisions of article 32.

Contents of certificate. *Added by: XXIII. 2012.13.*

28A. A judgement transmitted in accordance with article 28, shall contain:

(*a*) a statement that the judgement relates to:

(i) conduct which is a scheduled offence:

Provided that in such cases there shall be no verification whether the conduct is a criminal offence in Malta; or

(ii) conduct which would constitute an offence under the law of Malta if it occurred in Malta:

Provided that the description of the offence shall not be regarded as material if the offence under the law of Malta and the law of the issuing State are substantially of the same nature; and

(*b*) information indicating the nature and duration of the supervisory measures.

Mode of transmission. *Added by: XXIII. 2012.13.*

28B. (1) A judgement imposing a community sanction shall be transmitted with the certificate containing the information prescribed therein, by any means capable of producing a written record under conditions permitting the ascertainment of its authenticity.

(2) If so required by the executing State, the original judgement imposing the community sanction or a certified copy of it, and the original of the certificate, shall be sent to the executing State.

Attorney General's certificate. *Added by: VI. 2010.10. Substituted by: XXIII. 2012.14.*

29. (1) Where the Attorney General receives a community sanction in terms of article 26(1)(*a*), the Attorney General shall, in his own individual discretion and subject to the provisions of article 30, issue a certificate to the effect that the judgement is one referred to in the Framework Decision and such certificate shall be conclusive evidence of its contents.

(2) Without the need of any further authority other than that conferred by this article, the judgement, together with the certificate referred to in sub-article (1), shall be transmitted to the court of criminal jurisdiction for execution in accordance with article 29A.

Execution, by courts, of community sanction orders. *Added by: XXIII. 2012.15.*

29A. (1) The following provisions shall apply where a judgement is transmitted to a court of criminal jurisdiction under article 29(2).

(2) The court of criminal jurisdiction, within sixty days of receipt of the judgement and the certificate, shall recognise the judgement as if it were a sentence made by the said court imposing a community sanction under this Act.

(3) A copy of the judgement and the certificate shall be served on the sentenced person.

(4) The judgement shall have the same effect as a sentence ordering a community sanction, under this Act, and the provisions of this Act shall *mutatis mutandis* apply to the said judgement, so however that any reference to a community sanction under this Act shall be construed as a reference to the said judgement.

(5) If, in exceptional circumstances, it is not possible for the court to comply with the time limit provided for in sub-article (2), it shall inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

Grounds for refusing recognition and supervision. *Added by: VI. 2010.10. Amended by: XXIII. 2012.16.*

30. (1) The Attorney General may refuse to recognise the community sanctions on the following grounds, in accordance with Article 11 of the Framework Decision:

(*a*) the certificate is incomplete or manifestly does not correspond to the community sanction and has not been completed or corrected within a reasonable period set by the competent authority;

(*b*) if the sentenced person is not resident in Malta and the sentenced person has returned or wants to return to Malta;

(*ba*) if the sentenced person is not resident in Malta the said person requested the community sanction to be forwarded to Malta without the consent of the Maltese authorities;

(*bb*) if the community sanction provides for supervisory measures other than those referred to under article 27;

(*c*) the recognition of the community sanction and assumption of the responsibility for supervising community sanctions would be contrary to the principle of *ne bis in idem*;

(*d*) the judgment relates to acts which do not constitute an offence under the laws of Malta;

(*e*) the enforcement of the sentence is barred by prescription according to the laws of Malta and falls within its competence according to that law;

(*f*) there is immunity under the laws of Malta, which makes it impossible to supervise community sanctions;

(*g*) under the laws of Malta, the sentenced person cannot, owing to his age, be held criminally liable for the offences in respect of which the judgment was issued;

(*h*) the judgment was rendered *in absentia*, unless:

(i) the certificate referred to in article 28(2) states that the person summoned personally or informed through a representative competent according to the laws of Malta of the time and place of the proceedings, or that the person actually received official information of the scheduled time and place of the proceedings and was also informed that a decision may be handed down if he does not appear for the proceedings; or

(ii) the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to appear in

his stead and that legal counsellor in fact appeared during the proceedings; or

(iii) the person indicated to a competent authority that he does not intend to contest the charges against him; or

(iv) subsequent to the decision, which would have been served upon him, the person concerned, after being informed of his right to appeal or to a retrial, expressly stated that he does not intend to contest the decision or did not contest such decision within the applicable time frame;

(*i*) the community sanction provides for medical and, or therapeutic treatment which Malta is unable to supervise in view of its legal or healthcare system;

(*j*) the community sanction is of less than six months' duration; or

(*k*) the judgement relates to criminal offences which under the laws of Malta are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

(2) Where the certificate is incomplete or does not correspond to the community sanction, the Attorney General may postpone the decision referred to under article 29 until a reasonable deadline is set for the certificate to be completed or corrected.

Jurisdiction to take all subsequent decisions and governing law where Malta is the executing State. *Added by: VI. 2010.10. Amended by: XXIII. 2012.17.*

31. (1) Where Malta is the executing State, the court of criminal jurisdiction shall have jurisdiction to take all subsequent decisions relating to a community sanction, in particular in case of non-compliance with a community sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions may include:

(*a*) the modification of obligations or instructions contained in the community sanction or the modification of the duration of the community sanction;

(*b*) the revocation of the suspension of the execution of the judgement or the revocation of the decision regarding a community sanction; and

(*c*) the imposition of a custodial sentence or measure involving deprivation of liberty in case of a community sanction.

(2) If the nature or duration of the relevant community sanction is incompatible with the laws of Malta when Malta is the executing State, the court of criminal jurisdiction may adapt them in line with the nature and duration of community sanctions, which apply under the laws of Malta, to equivalent offences. The adapted community sanction or its duration shall correspond as far as possible to that imposed in the issuing State:

Provided that where the community sanction or the duration

of the community sanction has been adapted because its duration exceeds the maximum duration provided for under the laws of Malta, where Malta is the executing State, the duration of the adapted community sanction, shall not be below the maximum duration provided for equivalent offences under the laws of Malta:

Provided also that the adapted community sanction shall not be more severe or longer than the community sanction which was originally imposed.

(3) The court of criminal jurisdiction shall without delay request the Attorney General to inform the competent authority of the issuing State, by any means which leaves a written record, of all the decisions taken on:

(*a*) the modification of community sanction;

(*b*) the revocation of the suspension of the execution of the judgement or revocation of the decision regarding a community sanction;

(*c*) the enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a community sanction;

(*d*) the lapse of the community sanction.

(4) If so requested by the competent authority of the issuing State, the Attorney General, upon a request by the court of criminal jurisdiction, shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national laws of Malta for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the community sanction. This information shall be provided immediately after receipt of the community sanction together with the necessary certificate.

End of jurisdiction of the executing State.
Added by: VI. 2010.10.
Amended by: XXIII. 2012.18.

32. (1) Where Malta is the executing State, if the sentenced person absconds or no longer has a lawful residence in Malta, the court of criminal jurisdiction may transfer the jurisdiction in respect of the supervision of all further decisions relating to the judgement back to the competent authority of the issuing State.

(2) If new criminal proceedings against the person concerned are taking place in the issuing State, the court of criminal jurisdiction of the issuing State may request the court of criminal jurisdiction to transfer jurisdiction in respect of the supervision of the community sanction and in respect of all further decisions relating to the judgement back to it.

(3) When, in the application of this article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the community sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the community sanctions in Malta, as well as of any decisions taken by Malta in accordance with article 31(3).

Information from the executing State in all cases. *Added by: VI. 2010.10. Amended by: XXIII. 2012.19.*

33. The issuing authority shall be informed, by any means which leaves a written record, of:

(*a*) the transmission of the community sanction together with the certificate to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the community sanction and where it has no competence to recognise it and take the said measures for the supervision, it shall, *ex officio*, forward it to the competent authority of the issuing State;

(*b*) the fact that it is in practice impossible to supervise the community sanctions for the reason that, after transmission of the community sanction, together with the certificate, to Malta, the sentenced person cannot be found in the territory of Malta, in which case Malta shall be under no obligation to supervise the community sanction;

(*c*) the final decision to recognise the community sanction and to assume responsibility for supervising the community sanction;

(*d*) any decision not to recognise the community sanction and to assume responsibility for supervising the community sanction in accordance with article 31(2), together with the reasons for the decision;

(*e*) any decision to adapt community sanction in accordance with the provisos to article 31(2), together with the reasons for the decision;

(*f*) any decision on amnesty or pardon granted by the issuing or executing State which leads to not supervising the community sanction, together, where applicable, with the reasons for the decision.

Consultations between competent authorities. *Added by: VI. 2010.10.*

34. Where and whenever it is felt appropriate, the competent authority shall consult with the competent authority of another Member State being the issuing State or the executing State as the case may be, with a view to facilitating the smooth and efficient application of the Framework Decision.

Definition.

34A. For the purposes of article 26, the term "community sanction" shall be deemed to also include a suspended sentence or a suspended sentence supervision order within the meaning of articles 28A and 28G respectively of the Criminal Code, and a suspended sentence within the meaning of the Framework Decision.

Cap. 9.

Regulations. *Re-numbered by: VI. 2010.9.*

35. The Minister may make regulations -

(*a*) prescribing the qualifications for appointment of probation officers;

(*b*) prescribing the duties of the Director;

(*c*) prescribing any duties of probation officers in addition to those provided by this Act;

(*d*) prescribing the forms of records to be kept by

probation officers under this Act;

(*e*) providing for regulations for the performance of work under community service orders;

(*f*) limiting the number of hours of work to be done under such an order on any one day;

(*g*) providing for the reckoning of time worked under such orders;

(*h*) regulating the discipline in, and other matters relating to residential institutions approved by the Minister for the purposes of article 7(6); and

(*i*) generally for the better carrying out of the purposes and provisions of this Act.

Rules of Court. *Re-numbered by: VI. 2010.9.* Cap. 12.

36. The Board referred to in article 29 of the Code of Organization and Civil Procedure may, in accordance with the provisions of that article, make Rules of Court regulating any matter or proceeding had or taken under this Act and prescribing the forms to be used for any such matter or proceeding and the fees payable in respect thereto.

Transitory provision. *Re-numbered by: VI. 2010.9.* Cap. 152.

37. (The provisions of the Probation of Offenders Act (repealed by this Act) shall continue to apply to any order or conditional discharge issued under the provisions thereof prior to the coming into force of this Act.

SCHEDULE

Added by: XXIII. 2012.21.

(Article 2)

1. Participation in a criminal organisation.
2. Terrorism.
3. Trafficking in human beings.
4. Sexual exploitation of children and child pornography.
5. Illicit trafficking in narcotic drugs and psychotropic substances.
6. Illicit trafficking in weapons, munitions and explosives.
7. Corruption.
8. Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests.
9. Laundering of the proceeds of crime.
10. Counterfeiting currency, including of the euro.
11. Computer-related crime.
12. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties.
13. Facilitation of unauthorised entry and residence.
14. Murder, grievous bodily injury.
15. Illicit trade in human organs and tissue.
16. Kidnapping, illegal restraint and hostage-taking.
17. Racism and xenophobia.
18. Organised or armed robbery.
19. Illicit trafficking in cultural goods, including antiques and works of art.
20. Swindling.
21. Racketeering and extortion.
22. Counterfeiting and piracy of products.
23. Forgery of administrative documents and trafficking therein.
24. Forgery of means of payment.
25. Illicit trafficking in hormonal substances and other growth promoters.
26. Illicit trafficking in nuclear or radioactive materials.
27. Trafficking in stolen vehicles.
28. Rape.
29. Arson.
30. Crimes within the jurisdiction of the International Criminal Court.
31. Unlawful seizure of aircraft/ships.
32. Sabotage.