

I assent.

(L.S.)

DOLORES CRISTINA
Acting President

19th July, 2016

ACT No. XXXVII of 2016

AN ACT to amend the Criminal Code, Cap. 9. and to provide for any other matters ancillary or consequential thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Criminal Code (Amendment) Act, 2016 and this Act shall be read and construed as one with the Criminal Code, hereinafter referred to as the "Code".

Short title and
commencement.

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(2) This Act shall come into force on such date as the Minister responsible for Justice may by order in the Gazette establish and different dates and transitory arrangements may be established in respect of different provisions and purposes of this Act.

2. Article 82A of the Code shall be amended as follows:

Amendment of
article 82A of
the Code.

(a) in sub-article (1) thereof the words "violence or racial hatred" shall be substituted with the words "violence or racial or religious hatred" and the words "or whereby such violence or racial hatred" shall be substituted with the words "or whereby such violence or racial or religious hatred"; and

(b) in sub-article (2) thereof the words "violence or racial hatred" wherever they occur shall be substituted with the words "violence or racial or religious hatred".

3. Articles 163 and 164 of the Code shall be deleted.

Deletion of
articles 163 and
164 of the Code.

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Amendment of
article 165 of
the Code.

4. Sub-article (1) of article 165 of the Code shall be amended
as follows:

(a) the words "of the Roman Catholic Apostolic
Religion or of any other" shall be substituted by the word "any";
and

(b) the words "shall on conviction be liable to
imprisonment for a term not exceeding one year" shall be
substituted by the words "shall, if the impediment or
disturbance causes no serious danger to public order be liable to
a punishment of up to six months imprisonment and if such a
serious danger results the punishment shall be increased by one
degree".

Substitution of
the heading of
Sub-title II of
Title VII of Part
II of Book First
of the Code.

5. Immediately before article 198 of the Code, the heading of
Sub-title II of Title VII of Part II of Book First shall be substituted by
the following new heading:

"Sub-title II
OF SEXUAL OFFENCES".

Substitution of
article 208 of
the Code.

6. Article 208 of the Code shall be substituted by the
following new article:

"Display of
pornographic
material in
public places.

208. (1) Whosoever displays or
permits to display any pornographic material
in a public place shall, on conviction, be
liable to a fine (*multa*) of not less than one
thousand euro (€1,000) and not more than
three thousand euro (€3,000).

(2) For the purposes of this article,
"public place" means any place to which the
public have or are permitted to have access,
whether on payment or otherwise:

Provided that for the purposes of
this article a "public place" shall not include
a place to which the public are permitted to
have access only on payment which is or
includes payment for the said display, or to a
shop or establishment, or to any part of such
shop or establishment, to which the public
can only gain access by passing beyond an
adequate warning notice:

Provided further that these exclusions shall only apply where minors are not permitted to enter while the display in question is continuing.

(3) This article shall not apply to any material:

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(a) that is included by any person in a television broadcasting service regulated by the Broadcasting Authority within the meaning of the Broadcasting Act; or

(b) included in the display of an art gallery or museum and visible only within the gallery or museum where the organiser of the display has taken reasonable precautions for the protection of minors; or

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(c) included in a film exhibition which is subject to the Cinema and Stage-Age Classification Regulations; or

(d) which otherwise serves the public good on the ground that it is in the interests of science, literature, art or learning or other objects of general concern.

(4) For the purposes of this article, material shall include anything capable of being displayed, except that it does not include an actual human body or any part thereof and nothing in this article shall be construed as permitting any show of live and actual sexual activity involving the sexual organs made solely or principally for the purpose of sexual arousal. In determining for the purpose of this article whether any displayed material is pornographic:

(a) there shall be disregarded any part of that material which is not exposed to view;

(b) account may be taken of the effect of juxtaposing one thing with another.

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(5) A warning notice shall not be adequate for the purposes of this article unless it complies with the following requirements:-

(a) The warning notice must contain the following words, and no others:-

"WARNING Persons passing beyond this notice will find material on display which they may consider indecent. No admittance to persons under 18 years of age.";

(b) the word "WARNING" must appear as a heading;

(c) no pictures or other matter shall appear on the notice;

(d) the notice must be so situated that no one could reasonably gain access to the shop or establishment, or part of the shop or establishment in question, without being aware of the notice and it must easily be legible by any person gaining such access."

Addition of new articles 208D and 208E to the Code.

7. Immediately after article 208C of the Code there shall be added the following new articles:

"Offences relating to extreme pornographic images.

208D. (1) Whosoever, for gain, distribution, or for display in a public place or in a place accessible to the public, manufactures, prints, or otherwise makes, or introduces into Malta, or acquires, keeps, puts into circulation or exports, any extreme pornographic image shall, on conviction, be liable to imprisonment for a term from eighteen months to three years or to a fine (*multa*) of not less than three thousand euro (€3,000) and not more than six thousand euro (€6,000), or to both such imprisonment and fine.

(2) Whosoever trades in any image mentioned in sub-article (1), even if such trade is clandestine, or distributes any such image or displays any such image in public or in a place accessible to the public, shall, on conviction, be liable to the punishment prescribed in sub-article (1).

(3) It is a defence for a person charged with an offence under this article to show that:

(a) he had a legitimate reason for being in possession of the image concerned;

(b) he had not seen the image concerned in any material, article or communication obtained or received by him and did not know, nor had any cause to suspect that such material, article or communication contained an extreme pornographic image;

(c) he was sent the image concerned without any prior request having been made by him or on his behalf:

Provided that it shall not be a defence under paragraph (c) if such person has seen, or is reasonably suspected to have seen the image, and kept the image concerned for an unreasonable amount of time;

(d) he directly and consensingly participated in the act depicted in the image:

Provided that it shall not be a defence under paragraph (d) if such person shows, gives or offers for sale the image to any person who was not a direct participant in the act depicted:

Provided further that it shall neither be a defence under this paragraph if the act depicted in the image involves:

(i) an act of rape or other non-consensual penetrative activity;

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(ii) an act of necrophilia or bestiality;

(iii) a sexual act or image involving a minor.

(4) For the purposes of this article an image shall be regarded as an extreme pornographic image if it is so described or defined by regulations made under sub-article (5) or is otherwise to be so regarded in accordance with any regulation made as aforesaid.

(5) The Minister responsible for justice shall make regulations for the purpose of describing or defining or otherwise establishing what is to be regarded as an extreme pornographic image for the purposes of this article and may by such regulations make provision regarding the criteria to be followed for that purpose and may make different provisions for different circumstances and different purposes.

Non-consensual disclosure of private sexual photographs and films.

208E. (1) Whosoever, with an intent to cause distress, emotional harm or harm of any nature, discloses a private sexual photograph or film without the consent of the person or persons displayed or depicted in such photograph or film shall on conviction be liable to imprisonment for a term of up to two years or to a fine (*multa*) of not less than three thousand euro (€3,000) and not more than five thousand euro (€5,000), or to both such imprisonment and fine.

(2) A person shall not be guilty of an offence under this article if:-

(a) he has disclosed the sexual photograph or film solely to the person or persons displayed or depicted in such photograph or film; or

(b) the disclosure was necessary for the purpose of preventing, detecting or investigating a crime; or

(c) to the extent that it is reasonably required, the disclosure is authorised by a court or tribunal in the course of judicial proceedings:

Provided that where authorisation is so granted by a court or tribunal, the sexual photograph or film shall, without delay, be sealed by the registrar or deputy registrar of that court or tribunal and shall only be accessible by the parties to the suit or to their authorised legal representatives.

(3) When the offence provided for in this article is committed as a means or in the context of blackmail the punishment shall be increased by one degree.

(4) In this article:

"disclosure" shall be construed as also including the publication, distribution, trade, circulation or unauthorised use of private sexual photographs and films, by any means;

"private" shall refer to any photograph or film taken without the consent or knowledge of the person or persons depicted therein, or to any photograph or film which was never intended for public consumption;

"sexual" shall include the depiction of all or part of a person's exposed genitals or pubic area, or, in the case of females, of the breasts, or of any content that, when taken as a whole, a reasonable person would consider to be sexual because of its nature;

"photograph or film" means a moving or still image or data, stored by any means, which is capable of conversion into a moving or still image."

8. Sub-article (3) of article 82 of the Customs Ordinance shall be substituted by the following:

"(3) Where the Commissioner has reason to suspect that any material containing extreme pornographic images has been

Consequential
amendment to
the Customs
Ordinance.
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imported into Malta in contravention of any regulations made under sub-article (1), but so that no other offence against this Ordinance is committed in connection with or for the purpose of the importation thereof, the Commissioner may detain and open and, subject to the provisions of the next following sub-article, with the written authority of the Minister responsible for customs, destroy such material."

Repeal of
S.L. 9.05.

9. The Pornography and Obscenity Regulations are hereby repealed.

Passed by the House of Representatives at Sitting No. 416 of the 12th July, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

