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I assent.

**(L.S.)** **MARIE-LOUISE COLEIRO PRECA**
**President**

20th July, 2018

## ACT No. XXXII of 2018

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

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

Short title. Cap. 9. Cap. 537.

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

### PART I
### Amendment to the Criminal Code

Amendments to the Criminal Code. Cap. 9.

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

Amendment of article 15A of the Code.

**3.** In sub-article (1) of article 15A of the Code the words "including moral harm and, or psychological harm," shall be substituted by the words "including, only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First and of willful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for Justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, moral harm and or psychological harm,".

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Amendment of article 28H of the Code.

**4.** In sub-article (1) of article 28H of the Code the words "including moral and, or psychological harm" shall be substituted by the words "including, only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First and of wilful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First, up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, moral harm and, or psychological harm.".

Amendment of article 221 of the Code.

**5.** In sub-article (1) of article 221 of the Code the words "five years" shall be substituted by the words "two years".

Addition of new Sub-title XII and of new articles 366A to 366F to the Code.

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

"Sub-Title XII
Of the Presumption of Innocence

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

Presumption of innocence.

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

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

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Burden of proof.

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

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

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

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

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

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

Public references to guilt.

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

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

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

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

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

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

Provided that when a person stands accused before a court the application referred to in this sub-article shall be filed before the court where that person stands accused.

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Presentation of suspects and accused persons.

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

Provided that nothing in this article or in article 443 shall prevent the police or any court from applying measures of physical restraint that may be required in any particular case for reasons relating to security or to the prevention of suspects or accused persons from absconding or from having contact with other persons.

Right to silence and not to incriminate oneself.

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

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

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

Right to be present at the trial.

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

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

Amendment of article 500 of the Code.

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

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

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

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

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

Provided that if the court considers that it would be more just in the circumstances to do so, the court shall quash the sentence and send the case for retrial before the Criminal Court.".

Amendment of article 501 of the Code.

**8.** Sub-article (4) of article 501 of the Code shall be deleted.

Amendment of article 502 of the Code.

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

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

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

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

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

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

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

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

(ii) for the words "for that other offence, not being a

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

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

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

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

**10.** Article 508 of the Code shall be amended as follows:

Amendment of article 508 of the Code.

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

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

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

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

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

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

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

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

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

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

(d) in sub-article (4) thereof, for the words "the appellant"

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there shall be substituted the words "the accused"; and

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

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

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

Amendment of article 540A of the Code.

**11.** Article 540A of the Code shall be amended as follows:

(a) in sub-article (1), for the words "social worker" there shall be substituted the words "professional, trained by the designated agency in accordance with the Gender-Based Violence and Domestic Violence Act"; and

Cap. 581.

(b) in sub-article (3), for the words "the social worker" there shall be substituted the words "the professional".

PART II

Amendment to the Code of Organization and Civil Procedure

Amendment to the Code of Organization and Civil Procedure. Cap. 12.

**12.** This Part amends the Code of Organization and Civil Procedure, and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter referred to as "the Code".

Amendment of article 741 of the Code.

**13.** Immediately after paragraph (c) of article 741 of the Code there shall be added the following new paragraph:

"(d) Any reference to a "court" in the first sentence and in paragraph (b) of this article shall be deemed to include a reference to a Board or Tribunal established by law, so however that when a cause is commenced before a Board or Tribunal it may also be transferred for hearing before a court in accordance with the provisions of paragraph (b) of this article. When a cause is transferred to be heard in front of the Court, Board or Tribunal in accordance with paragraph (b) the said Court, Board or Tribunal may give all orders and make provisions as necessary, subject to such conditions and time limits as appear to them to be appropriate, so that the hearing of the cause will proceed in accordance with the formal and procedural requirements, including those relating to the payment of fees, applicable before that Court, Board or Tribunal.".

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## PART III
## Amendment to the Civil Code

Amendments to the Civil Code. Cap. 16.

**14.** This Part amends the Civil Code and it shall be read and construed as one with the provisions of the Civil Code hereinafter in this Part referred to as "the Code".

Amendment to article 1045 of the Code.

**15.** The first and second provisos to sub-article (1) of article 1045 of the Code shall be substituted by the following:

"Provided that in the case of damages arising from a criminal offence, other than an involuntary offence, and only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First of the Criminal Code and of wilful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First of the said Code, up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, the damage to be made good shall also include any moral harm and, or psychological harm caused to the claimant.". Cap. 9.

Amendment to article 2124 of the Code.

**16.** Immediately after sub-article (2) of article 2124 of the Code there shall be added the following new sub-article:

"(3) Where damages arise from a criminal offence committed against a minor, prescription shall run from the day on which the victim attains the age of majority.".

## PART IV
## Amendment to the Police Act

Amendments to the Police Act. Cap. 164.

**17.** This Part amends the Police Act and it shall be read and construed as one with the Police Act, hereinafter in this Part referred to as "the principal Act".

Amendment to article 35 of the principal Act.

**18.** Immediately after sub-article (5) of article 35 of the principal Act, there shall be added the following new sub-article:

"(5A) (a) There shall be such number of chambers of the Board as the Minister may prescribe.

(b) Where there is more than one chamber of the Board, cases shall be assigned to the various chambers in accordance with such rules as the Minister may prescribe.

(c) Each chamber of the Board shall be composed of a chairperson and two other members as provided in sub-articles (1)

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to (3), which together with all the other provisions of this Act other than this sub-article shall apply with respect to each chamber as if reference therein to the Board were a reference to a chamber of the Board.".

Addition of new article 108A to the principal Act.

**19.** Immediately after article 108 of the principal Act, there shall be added the following new article:

"Transitory provision.

108A. (1) Any inquiry, complaint, proceedings or other procedures which have hitherto been filed, instituted or followed before the Police Board prior to the entry into force of this Act which were valid at the time when such inquiry, complaint, proceedings or procedures were filed, instituted or followed shall continue to be valid after the entry into force of this Act.

(2) The provisions of sub-article (1) shall apply also to any recommendation, order or other decision delivered by the said Board and to the enforcement of such order and decision.

(3) The provisions of this Act shall apply to any procedures that were pending before the Police Board and which on the date of entry into force of this Act were still pending and have not been finally concluded.

(4) All causes which were pending before the Police Board shall be continued before the Independent Police Complaints Board.".

## PART V
## Amendment to the Drug Dependence (Treatment not Imprisonment) Act

Amendments to the Drug Dependence (Treatment not Imprisonment) Act. Cap. 537.

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

Amendment of article 6 of the principal Act.

**21.** In paragraph (c) of sub-article (4) of article 6 of the principal Act immediately after the words "the situation of any person referred to it" there shall be added the words "and to provide assistance to any person referred to it in particular with regard to any mental health issues and to assist any such person to overcome the social threats of addiction such as the absence of a fixed place of abode and unemployability and for this purpose the Board shall be entitled to consult the Housing Authority and JobsPlus".

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**22.** Article 8 of the principal Act shall be amended as follows: Amendment of article 8 of the principal Act.

(a) in sub-article (1) thereof, the words "and after consulting the Drug Offenders Rehabilitation Board" shall be deleted;

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

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

"(3A) In the event that the Drug Offenders Rehabilitation Board receives a referral in respect of a person who has already been referred before the Board and whose case is still pending before it, the Board shall inform the referring Court of that fact and it shall continue to consider the case only under the first referral:

Provided that the Board shall communicate its findings and decisions on the first referral to any Court which would have referred the same person to it.";

(d) in sub-article (5) thereof, for the words "considers that the accused has managed" there shall be substituted the words "considers that the accused although having previously suffered from drug dependence is free from drug dependence, or has managed" and the words "it shall refer the accused back to the Court." shall be substituted by the words "it shall refer the accused back to the Court:" and immediately thereafter there shall be added the following proviso:

"Provided that the Board shall have the power to extend the period of eighteen months referred to in this sub-article where it considers that there are exceptional circumstances which justify that extension. The Board's decision regarding the extension shall give reasons and shall be notified to the Court."; and

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

"(6A) Where the Court assuming the functions of a Drugs Court in terms of sub-article (1) is a court of appellate jurisdiction, any recall of cases made in terms of sub-article (6) shall only apply to criminal cases which are pending against the accused in that court of appellate jurisdiction. The said court of appellate jurisdiction shall however notify the Registrar of Criminal Courts and Criminal Tribunals of

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

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

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

Amendment of Act XXIV of 2014.

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

Substitution of article 50 of the amending principal Act.

**24.** Article 50 of the amending principal Act shall be substituted by the following:

"Addition of new article to the Code.

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

"Proceedings *in absentia.*

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

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(2) Where a person has been charged with an offence referred to in sub-article (1) and having been so notified, that person shall be informed by the Court by means of a note in the record of the case that if that person will not be present for future sittings of the same case, the Court shall proceed with the hearing of the case and that it will also decide the case in the absence of the accused. The Court shall also after each sitting note on the record that the accused was notified of the date and time of the next sitting:

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

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

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

(5) Without prejudice to the provisions of sub-article (2), a summons issued in respect of proceedings provided for under this article shall also contain an intimation that in default of appearance the person summoned may be deemed to have given his unequivocal consent for the trial to proceed in his absence.

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

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

(7) A judgment delivered in accordance with this article shall have its execution suspended until the lapse of all time limits for appeal from that judgment as provided in this article.".

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Passed by the House of Representatives at Sitting No. 137 of the 4th July, 2018.

ANĠLU FARRUGIA
*Speaker*

JOSANNE PARIS
*Acting Clerk of the House of Representatives*

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