L.N. 378 of 2020

ATTORNEY GENERAL ORDINANCE (CAP. 90)

STATE ADVOCATE ACT (CAP. 603)

Prosecution of Offences (Transitory Provisions) Regulations, 2020

IN EXERCISE of the powers conferred by article 3(c) of the Attorney General Ordinance and of article 1 of the State Advocate Act the Minister for Justice, Equality and Governance has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Prosecution of Offences (Transitory Provisions) Regulations, 2020.

(2) These regulations shall come into force on the 1st October 2020.

Prosecutions by Attorney General and delegation of functions. Cap. 90.

2. (1) The powers and functions of the Attorney General as provided under article 3 of the Attorney General Ordinance shall insofar as they refer to the power to institute and conduct prosecutions before the Court of Magistrates either as a court of criminal judicature or as a court of criminal inquiry apply in respect of the crimes listed in the Schedule.

(2) Without prejudice to paragraph (f) of item 1 of the Schedule, the powers and functions referred to in sub-regulation (1) shall also apply to any crime charged together with a crime listed in the Schedule.

(3) The powers and functions referred to in sub-regulation (1) shall be subject to being delegated in full or in part by the Attorney General, by general or special direction, to the Commissioner of Police or to another public authority having prosecution powers. In the exercise of the said functions in relation to the conduct of prosecutions the Attorney General may also, in the absence of delegation, obtain the assistance of the Commissioner of Police or of such other public authority having prosecution powers.

(4) In prosecutions conducted by the Attorney General before the Court of Magistrates, the following functions shall be executed by the Executive Police:

(a) the service of charges in terms of articles 358 and 360 of the Criminal Code; Cap. 9.

(b) the execution of warrants and orders of arrest or search in terms of article 359 of the Criminal Code; Cap. 9.

(c) the service of subpoenae of witnesses in terms of article 365 of the Criminal Code and the service of any other acts which the prosecution is required to serve on any person; Cap. 9.

(d) the execution of judgments and orders in terms of article 366 of the Criminal Code. Cap. 9.

SCHEDULE

Powers of the Attorney General to prosecute

1. The Attorney General shall have the power to decide whether a prosecution is or is not to be instituted in the following categories of offences when the charges are to be filed in the Court of Magistrates as a court of criminal judicature or in the Court of Magistrates as a Court of criminal inquiry on or after the 1st October 2020:

(a) Genocide, Crimes against Humanity and War Crimes under Title I of Part II of Book First of the Criminal Code;

(b) Crimes Against the Safety of the Government under Title I Bis of Part II of Book First of the Criminal Code;

(c) Acts of terrorism, Funding of Terrorism and Ancillary Offences under Sub-Title IVA of Title IX of Part II of Book First of the Criminal Code;

(d) Wilful Homicide under Sub-Title I of Title VIII of Part II of Book First of the Criminal Code;

(e) Unlawful Exaction, Extortion, Bribery, Embracery and Corruption, Trading in Influence, and Accounting Offences under Sub-title IV of Title III of Part II of Book First of the Criminal Code;

(f) Crimes of money laundering under article 3 of the Prevention of Money Laundering Act except where such crimes are prosecuted together with crimes against the Dangerous Drugs Ordinance or the Medical and Kindred Professions Ordinance;

(g) Cases of fraud and misappropriation where the financial loss caused is of at least fifty thousand euro (€50, 000);

(h) Cases of evasion of customs, excise or other import duty where the duty evaded amounts to at least five hundred thousand euro (€500, 000);

(i) Attempts or conspiracy to commit or complicity in the offences mentioned in paragraphs (a), (b), (c), (d), (e), (f), (g) or (h).

Powers not to prejudice the exercise of other powers granted by law

2. Nothing in this Schedule shall be interpreted:

(a) as excluding the Commissioner of Police or any other public authority having prosecution powers under any other law from exercising or from continuing to exercise the said powers after the coming into force of this Schedule; or

(b) as giving rise to any defect in the proceedings:

(i) in cases where such powers are exercised after the coming into force of this Schedule or where proceedings commenced before the coming into force of this Schedule are continued in the name of the Commissioner of Police or of any other public authority having prosecution powers after the said coming into force; or

(ii) where it results that the amount of financial loss or evasion of any tax or duty does not reach or exceeds the minimum threshold established under paragraphs (g) or (h) of item 1.

3. Without prejudice to the provisions of item 2, the Executive Police shall not on or after the 1st October 2020 institute or pursue any prosecution for the crimes listed in item 1 in the absence of a decision to prosecute having been taken by the Attorney General.

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