

MALTA

ATT Nru. VIII ta' l-1986

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT biex ikompli jemenda l-Ordinanza dwar il-Mediċini Perikolużi, Kap. 161.

ACT No. VIII of 1986

AN ACT enacted by the Parliament of Malta.

AN ACT further to amend the Dangerous Drugs Ordinance, Cap. 161.

Naghti l-kunsens tiegħi.

(L.S.)

AGATHA BARBARA
President

21 ta' Marzu, 1986

ATT Nru. VIII ta' l-1986

*ATT biex ikompli jemenda l-Ordinanza dwar il-Mediċini Perikolużi,
Kap. 161.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1986 li jemenda l-Ordinanza dwar il-Mediċini Perikolużi u għandu jinqara u jiftiehem haġa waħda ma' l-Ordinanza dwar il-Mediċini Perikolużi, hawnhekk iżjed 'il quddiem imsejha "il-liġi prinċipali". Titolu fil-qosor.

2. L-artikolu 22 tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu —

(i) minflek il-kliem "kontra din l-Ordinanza." fil-paragrafu (d) tiegħu għandhom jidhlu l-kliem "kontra din l-Ordinanza; jew": u

(ii) minflok il-kliem "ikun hati ta' reat kontra din l-Ordinanza." għandu jidhlo dan li ġej:

"(e) ikun ċittadin ta' Malta jew resident permanenti f'Malta, li f'xi post barra minn dawn il-Gzejjer jagħmel xi haġa li jekk issir f'dawn il-Gzejjer tikkostitwixxi reat ta' bejgħ jew traffikar ta' mediċina kontra din l-Ordinanza jew reat taht il-paragrafu (f) ta' dan is-subartikolu; jew

(f) jassoċja ruħu ma' xi persuna jew persuni oħra f'dawn il-Gzejjer jew barra minn dawn il-Gzejjer sabiex ibiegħ jew jittraffika mediċina f'dawn il-Gzejjer kontra

Emenda ta'
l-artikolu 22 tal-
liġi prinċipali.

d-dispożizzjonijiet ta' din l-Ordinanza, jew li jippromovi, jikkostitwixxi, jorganizza jew jiffinanzja l-assoċjazzjoni, ikun hati ta' reat kontra din l-Ordinanza.

Ghall-finijiet tal-paragrafu (e) ta' dan is-subartikolu l-espressjoni "resident permanenti" tfisser persuna li favur tagħha jkun inhareġ permess ta' residenza skond id-dispożizzjonijiet li jinsabu fil-artikolu 7 ta' l-Att ta' l-1970 dwar l-Immigrazzjoni.

(1A) L-assoċjazzjoni ta' persuni msemmija fil-paragrafu (f) tas-subartikolu preċedenti teżisti malli jiġu kkumbinati jew miftehma l-mezzi, ikunu li jkunu, li bihom dawk il-persuni għandhom jimxu.

(1B) Ghall-finijiet ta' din l-Ordinanza l-kelma "jittraffika" tinkludi l-importazzjoni, il-manifattura, l-esportazzjoni u d-distribuzzjoni.";

(b) fis-subartikolu (2) tiegħu —

(i) minflok il-paragrafu (a) tiegħu għandu jidhol dan li ġej:

“(a) meta tinsab hatja mill-Qorti Kriminali —

(i) meta r-reat ikun il-bejgħ jew traffikar ta' mediċina bi ksur tad-dispożizzjonijiet ta' din l-Ordinanza, jew il-promozzjoni, kostituzzjoni, organizzazzjoni jew finanzjament ta' assoċjazzjoni taħt il-paragrafu (f) tas-subartikolu (1) ta' dan l-artikolu, prigunerija għal żmien ta' mhux inqas minn erba' snin iżda mhux iżjed minn għoxrin sena u multa ta' mhux inqas minn elf lira Maltija iżda mhux iżjed minn hamsin elf lira Maltija; u

(ii) għal kull reat iehor prigunerija għal żmien ta' mhux inqas minn tnax-il xahar iżda mhux iżjed minn għaxar snin u multa ta' mhux inqas minn mitejn lira Maltija iżda mhux iżjed minn għaxart elef lira Maltija; jew”;

(ii) minflok is-sub-paragrafi (i) u (ii) tal-paragrafu (b) tiegħu għandu jidhol dan li ġej:

“(b) meta tinsab hatja mill-Qorti tal-Maġistrati —

(i) fil-każ li persuna tinsab hatja ta' reat taħt il-paragrafu (b), (c) jew (e) ta' l-artikolu 8, jew tinsab hatja ta' reat dwar bejgħ jew traffikar ta' xi mediċina oħra bi ksur tad-dispożizzjonijiet ta' din l-Ordinanza, jew tinsab hatja ta' reat dwar il-promozzjoni, kostituzzjoni, organizzazzjoni jew finanzjament ta' assoċjazzjoni taħt il-paragrafu (f) tas-subartikolu (1) ta' dan l-artikolu, prigunerija għal żmien ta' mhux inqas minn sitt xhur iżda mhux iżjed minn hames snin u multa ta' mhux inqas minn mitejn lira Maltija iżda mhux iżjed minn elfejn lira Maltija; u

(ii) għal kull reat iehor fil-każ ta' persuna li tinsab hatja, multa ta' mhux inqas minn mitejn lira Maltija iżda mhux iżjed minn elf lira Maltija jew prigunerija għal żmien ta' mhux inqas minn tliet xhur iżda mhux iżjed minn tnax-il xahar, jew dik il-multa u prigunerija flimkien.”;

(ċ) minnufih wara s-subartikolu (3) tiegħu għandu jiżded is-subartikolu ġdid li ġej:

“(3A) Meta reat kontra din l-Ordinanza li dwaru persuna tkun instabet hatja jkun jew jirreferi għall-bejgħ jew traffikar ta’ mediċina, jew ikun il-promozzjoni, il-kostituzzjoni, l-organizzazzjoni jew il-finanzjament ta’ assoċjazzjoni taht il-paragrafu (f) tas-subartikolu (1) ta’ dan l-artikolu, il-Qorti għandha, fuq it-talba tal-prosekuzzjoni, b’zieda ma’ kull piena oħra —

(a) meta xi proprjetà immobbli tkun ġiet użata biex tinzamm jew tinhażen jew biex tinbiegħ jew tiġi traffikata, dik il-mediċina, kif deskritt fl-att ta’ l-akkuża jew fl-akkuża, tordna l-konfiska favur il-Gvern ta’ kull dritt reali li l-hati jkollu fuq dik il-proprjetà immobbli;

(b) meta l-hati ma jkunx is-sid assolut iżda jkollu xi titolu reali ieħor fuq il-proprjetà immobbli, jew ikollu titolu, barra minn titolu reali, li bis-saħħa tiegħu jkollu l-kontroll ta’ dik il-proprjetà jew dritt għal aċċess għaliha, il-Qorti għandha tordna lill-hati li jhallas multa ta’ mhux inqas minn hamest elef lira Maltija iżda mhux iżjed minn tletin elf lira Maltija kif il-Qorti tistabbilixxi wara li tqis il-valur tal-proprjetà immobbli u l-valur tat-titolu reali fuqu, jekk ikun hemm, li jkun konfiskat kif intqal qabel:

(ċ) bla hsara għad-dispożizzjonijiet tal-Kodiċi Kriminali u ta’ l-Ordinanza tad-Dwana, tagħmel ordni li bih id-dispożizzjonijiet tal-paragrafi (a) u (b) ta’ dan is-subartikolu jiġu applikati *mutatis mutandis* għal jew dwar xi biċċa tal-baħar jew vettura wżati biex tinzamm jew tinhażen, jew biex tinbiegħ jew tiġi traffikata dik il-mediċina; u

(d) tordna l-konfiska favur il-Gvern ta’ kull flejjes jew proprjetà mobbli oħra, u tal-proprjetà immobbli kollha tal-persuna hekk misjuba hatja wkoll jekk il-proprjetà immobbli minn meta l-hati jkun ġie akkużat tkun għaddiet għand terzi persuni.”; u

(d) fis-subartikolu (7) tiegħu minflok il-kliem “imsemmija fis-subartikolu (3)” għandhom jidhlu l-kliem “imsemmija fis-subartikoli (3) u (3A)”.

3. Minnufih wara l-artikolu 22 tal-ligi prinċipali għandhom jiżdiedu l-artikoli godda li ġejjin:

Zieda ta’ artikoli godda mal-ligi prinċipali.

“Iffriżar ta’ proprjetà ta’ persuna akkużata.

22A. (1) Meta persuna tiġi akkużata taht l-artikolu 22 ta’ din l-Ordinanza, b’bejgħ jew bi traffikar ta’ mediċina jew bi promozzjoni, kostituzzjoni, organizzazzjoni jew finanzjament ta’ assoċjazzjoni taht il-paragrafu (f) tas-subartikolu (1) ta’ dak l-artikolu, il-Qorti għandha fuq it-talba tal-prosekuzzjoni tagħmel ordni —

(a) li jissekwestra f'idejn terzi persuni b'mod ġenerali l-flejjes u l-proprjetà mobbli kollha li jkunu dovuti lil jew ikunu jmissu lill-akkużat jew ikunu proprjetà tiegħu, u

(b) li jipprojbixxi lill-akkużat milli jittrasferixxi jew xort'ohra jiddisponi minn xi proprjetà mobbli jew immobbli:

Iżda l-Qorti għandha f'dak l-ordni tistabbilixxi xi flejjes jistgħu jithallsu lil jew jiġu riċevuti mill-akkużat fil-waqt li jkun qed isehh dak l-ordni, fejn jiġu speċifikati l-għejjun, il-mod u modalitajiet oħra ta' hlas, inklużi salarju, paga, pensjoni u benefiċċji soċjali li jithallsu lill-akkużat, sabiex huwa u l-familja tiegħu jithallilhom għixien deċenti f'ammont, fejn ikun hemm mezz biżżejjed, ta' sitt elef lira Maltija fis-sena:

Iżda wkoll l-Qorti tista' barra minn dan —

(a) tawtorizza l-hlas ta' djun li jkollhom jithallsu mill-akkużat lil kredituri *bona fide* u li jkunu saru qabel ma jkun sar dak l-ordni; u

(b) għal raġuni tajba tawtorizza lill-akkużat biex jittrasferixxi proprjetà mobbli jew immobbli.

(2) Dak l-ordni għandu —

(a) jibda jsehħ u jorbot lit-terzi persuni kollha immedjatement malli jsir, u r-Registatur tal-Qorti għandu jiehu hsieb li avviż dwaru jiġi pubblikat mingħajr dewmien fil-Gazzetta, u għandu jiehu hsieb ukoll li kopja tiegħu tiġi reġistrata fir-Registru Pubbliku dwar proprjetà immobbli, u

(b) jibqa' jsehħ sakemm il-proċedimenti jkunu ġew deċiżi b'mod finali u konkluziv, u fil-każ li persuna tinsab hatja, sakemm is-sentenza tkun giet eżegwita.

(3) Il-Qorti tista' f'ċirkostanzi partikolari tibdel dak l-ordni, u d-dispożizzjonijiet tas-subartikoli ta' qabel għandhom japplikaw għal dak l-ordni kif hekk mibdul.

(4) Kull ordni bħal dak għandu jkun fih l-isem u l-kunjom ta' l-akkużat, il-professjoni, is-sengħa jew stat ieħor tiegħu, isem missieru, isem ommu u kunjom ta' xhubitha, post tat-twelid u post ta' residenza u n-numru tal-Karta ta' l-Identità tiegħu.

(5) Meta xi flus ikunu jew isiru dovuti lill-akkużat mingħand xi persuna fil-waqt li dak l-ordni jkun fis-sehħ dawk il-flus għandhom, sakemm ma jkunx ordnat xort'ohra f'dak l-ordni, jiġu depożitati f'bank għall-kreditu ta' l-akkużat.

(6) Meta dak l-ordni ma jibqax fis-sehħ kif provdut fil-paragrafu (b) tas-subartikolu (2) ta' dan l-artikolu r-Registatur tal-Qorti għandu jiehu hsieb li avviż f'dak is-sens jiġi pubblikat fil-Gazzetta, u għandu jirreġistra fir-Registru Pubbliku nota li thassar ir-reġistrazzjoni ta' dak l-ordni.

Piena għall-ksur ta' l-ordni tal-Qorti.

22B. Kull persuna li tagħmel xi haġa bi ksur ta' l-ordni tal-Qorti msemmi fl-artikolu 22A ta' din l-Ordinanza tkun hatja ta' reat u tehel meta tinsab hatja ammenda ta' mhux iżjed minn hames mitt lira Maltija, u l-Qorti tista' tordna lill-persuna hekk misjuba hatja li tiddepożita f'bank għall-kreditu ta' l-akkużat l-ammont tal-flejjes jew il-valur ta' proprjetà mobbli oħra mħallsa jew konsenjata bi ksur ta' dak l-ordni tal-qorti.

Proċedimenti speċjali tal-Qorti.

22Ċ. (1) Meta jkun sar ordni ta' konfiska taht il-paragrafu (d) tas-subartikolu (3A) ta' l-artikolu 22 ta' din l-Ordinanza, il-persuna misjuba hatja, jew it-terza persuna msemmija f'dak il-paragrafu, tista' tibda azzjoni għal dikjarazzjoni li xi proprjetà jew kull proprjetà mobbli jew immobbli hekk konfiskata ma tkunx profitti jew dħul mill-egħmil tar-reat lanqas proprjetà akkwistata jew miksuba, direttament jew indirettament, minn jew permezz ta' xi profitti jew dħul bħal dawk.

(2) Dik l-azzjoni għandha tinbeda b'rikors fil-Prim'Awla tal-Qorti Ċivili mhux iktar tard minn tliet xhur mid-data li fiha s-sentenza li tordna l-konfiska tkun saret finali u konkluziva.

(3) Ir-rikorrent għandu b'sustenn għat-talba tiegħu, jehmeż mar-rikors id-dokumenti kollha li hu jkun jista' jipproduci u għandu jagħti fir-rikors tiegħu l-ismijiet tax-xhieda kollha li jkun bi hsiebu jgħib, fejn iġid dwar kull wieħed il-prova li jkun bi hsiebu jagħmel.

(4) Il-Qorti għandha, mingħajr dewmien, tqiegħed ir-rikors għas-smiġ f'data kmieni, liema data m'għandha f'ebda każ tkun iktar tard minn tletin jum mid-data tal-preżentata tar-rikors.

(5) Ir-rikors u l-avviż tad-data stabbilita għas-smiġ għandhom jiġu notifikati lill-Kummissarju tal-Pulizija mingħajr dewmien, u l-imsemmi Kummissarju għandu jippreżenta r-risposta tiegħu għar-rikors fi żmien hmistax-il jum wara d-data tan-notifika tar-rikors.

(6) Il-Qorti għandha tisma' r-rikors sat-tmiem fi żmien għoxrin jum tax-xogħol mid-data stabbilita għas-smiġ originali tar-rikors, u ma jingħata ebda aġġornament hlief jew bil-kunsens taż-żewġ partijiet jew għal raġuni eċċezzjonali li tigi registrata mill-Qorti, u dik id-data aġġornata ma tkunx aktar tard minn dak li hu ġustifikat b'dik ir-raġuni.

(7) Bla hsara għad-dispożizzjonijiet ta' qabel ta' dan l-artikolu, id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar il-proċedimenti quddiem il-Prim'Awla tal-Qorti Ċivili, għandhom japplikaw dwar kull rikors bħal dak.

(8) Kull sentenza li tirrevoka l-konfiska ta' proprjetà immobbli titqies li tittrasferixxi t-titolu ta' dik il-proprjetà lura mingħand il-Gvern lill-parti li favur tagħha tingħata, u dik il-parti tkun tista' tikseb ir-registrazzjoni ta' dak it-trasferiment fir-Registru Pubbliku.

Radd lura ta' proprjetà li ma tibqax konfiskata. 22D. Meta l-Qorti tilqa' talba għal dikjarazzjoni kif provdut fis-subartikolu (1) ta' l-artikolu 22Ċ dwar proprjetà konfiskata, dik il-proprjetà ma tibqax konfiskata u tintradd lura lir-rikorrent bis-saħħa tas-sentenza meta din tkun finali u konkluziva, u ma' dan ir-rikorrent ikollu l-jedd li jieħu lura d-dhul riċevut mill-Gvern minn dik il-proprjetà matul il-perijodu tal-konfiska tagħha.”.

Żieda ta' artikolu ġdid 22E mal-liġi prinċipali. 4. Minnufih wara l-artikolu 22D tal-liġi prinċipali għandu jżied l-artikolu ġdid li ġejj:

“Distruzzjoni ta' mediċini wara li jsir il-proċess verbal. 22E. (1) Malli jinbdew il-proċedimenti taħt l-artikolu 22 ta' din l-Ordinanza, il-mediċina li dwarha persuna tkun akkużata għandha tiġi esebata materjalment fil-Qorti, kemm jista' jkun possibbli, u segwita l-proċedura li ġejja.

(2) Il-Qorti għandha tinnomina perit fotografiku biex jieħu ritratti, kif indikat mill-Qorti, tal-mediċina fl-oġġett li fih tkun kontenuta, fil-pakki, fil-kolli jew f'reċipjenti tagħha, u għandha wkoll tinnomina perit biex janalizza u jstabilixxi l-kwantità, ix-xorta u l-forma preċiżi u jagħti l-aktar deskrizzjoni eżatta tal-mediċina, u biex jieħu kampjuni tagħha biex jinżamm bħala prova.

(3) Il-periti għandhom, kemm jista' jkun malajr, jipprezentaw il-Qorti u jikkonfermaw bil-ġurament rapport bil-miktub tal-konkluzjonijiet tagħhom, flimkien ma' l-imsemmija ritratti u kampjuni.

(4) Il-Qorti, meta tkun sodisfatta b'dak ir-rapport jew b'dawk ir-rapporti għandha tgħaddi biex il-mediċina, barra mill-kampjuni, tiġi distrutta taħt is-sorveljanza tagħha u tagħmel proċess verbal.

(5) Il-proċess verbal jitqies li jkun sar b'mod regolari jekk ikun fih deskrizzjoni qasira tal-mediċina, ikollu r-rapport jew ir-rapporti tal-periti mehmuzin miegħu u jkun iffirmit mill-Qorti.

(6) Il-proċess verbal magħmul kif intqal qabel ikun prova tal-kontenut tiegħu f'kull proċedimenti kriminali.”.

Żieda ta' artikoli ġodda mal-liġi prinċipali. 5. Minnufih wara l-artikolu 26 tal-liġi prinċipali għandhom jizdiedu l-artikoli ġodda li ġejjin:

“Detenzjoni waqt kumpilazzjoni. 27. Minkejja d-dispożizzjonijiet tal-Kodiċi Kriminali, u bla hsara għat-tiġdid mill-President taż-żmien tal-kompilazzjoni kif provdut fis-subartikolu (1) ta' l-artikolu 413 ta' dak il-Kodiċi, meta l-Avukat Ġenerali jkun ordna li persuna akkużata b'bejgħ jew traffikar ta' mediċina kontra din l-Ordinanza jew akkużata bi promozzjoni, kostituzzjoni, organizzazzjoni jew finanzjament ta' assoċjazzjoni taħt il-paragrafu (f) tas-subartikolu (1) ta' l-artikolu 22 għandha tiġi proċessata mill-Qorti Kriminali, dik il-persuna għandha tit-

ressaq b'arrest u l-Qorti tal-Pulizija Ġudizzjarja bhala Qorti Istrutturja ghandha ttemm l-kumpilazzjoni fi żmien għoxrin jum minn meta dik il-persuna tkun hekk tressqet, u sakemm jgħaddi dak iż-żmien jew, jekk il-kumpilazzjoni tkun intemmet f'data qabel, sa dak il-jum, il-persuna akkuzata ma tinghatax liberta' provizorja izda f'egħluq dawk l-għoxrin jum jew dik id-data qabel kif intqal, il-Qorti tista' tagħti l-liberta' provizorja skond id-dispożizzjonijiet ta' dak il-Kodiċi.

Piena
pekunjarja
tingabar
bhala dejn
ċivili.

28. (1) Meta persuna tinsab hatja ta' reat kontra din l-Ordinanza, il-piena pekunjarja ghandha, fuq it-talba tal-prosekuzzjoni titqies li hi dejn ċivili u tigi dikjarata mill-Qorti kompetenti li tagħti s-sentenza bhal li hi hekk dovuta u li titħallas lill-Gvern u tista' tigi eżegwita fl-istess Qorti li tagħti s-sentenza bl-istess mod bħallikieku ngħatat f'azzjoni ċivili li tkun saret kif imiss bejn il-Gvern u l-persuna misjuba hatja.

(2) Meta izda l-prosekuzzjoni tgharraf lill-qorti kompetenti li l-piena pekunjarja ma tkunx ingabret mill-Gvern kif provdut fis-subartikolu ta' qabel dan, dik il-piena jew dik il-parti minnha li ma tkunx ingabret, ghandha titqies bhala multa jew ammenda li tkun ingħatat mill-Qorti u tinbidel fi prigunerija, mingħajr il-benefiċċju taż-żmien għal hlas, skond id-dispożizzjonijiet tal-Kodiċi Kriminali.

Tnaqqis
ta' piena.

29. Meta dwar persuna misjuba hatja ta' reat kontra din l-Ordinanza, il-prosekuzzjoni tiddikjara fil-proċess li dik il-persuna tkun ghenet lill-Pulizija biex taqbad lill-persuna jew lill-persuni li jkunu pprovdewlha l-medicina, jew il-persuna misjuba hatja kif intqal qabel tipprova għas-sodisfazzjon tal-Qorti li tkun hekk ghenet lill-Pulizija, il-piena titnaqqas, dwar prigunerija, bi grad wiehed jew tnejn, u dwar piena pekunjarja, b'terz jew b'nofs.

Xieħda minn
kompliċi.

30. Minkejja d-dispożizzjonijiet tas-subartikolu (3) ta' l-artikolu 635 tal-Kodiċi Kriminali meta persuna tkun xtrat jew xort'ohra kisbet jew akkwistat medicina bi ksur tad-dispożizzjonijiet ta' din l-Ordinanza, ix-xieħda ta' dik il-persuna fi proċedimenti kontra l-persuna li mingħandha tkun xtrat, kisbet jew akkwistat il-medicina, m'għandhiex għalfejn tkun korraborata b'ċirkostanzi ohra.

Ordni
għall-proċess
mill-Qorti
tal-Pulizija
Ġudizzjarja
bhala Qorti
ta' Ġudikatura
Kriminali.

31. Minkejja li l-Avukat Ġenerali jkun ordna skond id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 22 ta' din l-Ordinanza, li persuna tigi proċessata mill-Qorti Kriminali, huwa jista', f'kull żmien qabel ma jippreżenta l-att ta' l-akkuza, jordna li dik il-persuna tigi proċessata quddiem il-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja, u malli jsir dak l-ordni l-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja bhala Qorti ta' Ġudikatura Kriminali tkun kompetenti li tipproċessa lil dik il-persuna daqslikieku ma jkun ingħata ebda ordni qabel.

Reati fil-kompetenza tal-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja bhala Qorti ta' Ġudikatura Kriminali.

32. Minkejja d-dispożizzjonijiet ta' l-artikolu 382 tal-Kodiċi Kriminali u bla ħsara għad-dispożizzjonijiet ta' l-artikolu 31 ta' din l-Ordinanza, il-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja tkun kompetenti li tipproċessa r-reati kollha kontra din l-Ordinanza kif ordnat mill-Avukat Ġenerali skond id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 22 ta' din l-Ordinanza.”.

Żieda ta' artikolu ġdid 33 mal-liġi prinċipali.

6. Minnufih wara l-artikolu 32 tal-liġi prinċipali għandu jżied l-artikolu ġdid li ġej:

“Jedd għal appell.

33. Minkejja d-dispożizzjonijiet tal-Kodiċi Kriminali, l-Avukat Ġenerali dejjem ikollu jedd ta' appell lill-Qorti ta' l-Appelli Kriminali minn kull deċiżjoni mogħtija mill-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja dwar proċedimenti kriminali li jinqalghu mid-dispożizzjonijiet ta' din l-Ordinanza.”.

Rizervi.

7. (1) Id-dispożizzjonijiet ta' l-artikolu 30 tal-liġi prinċipali għandhom japplikaw għal kull proċedimenti li fil-jum tal-bidu fis-seħh ta' dan l-Att ikunu pendenti quddiem xi Qorti.

(2) Id-dispożizzjonijiet ta' l-artikolu 31 tal-liġi prinċipali għandhom japplikaw għal kull proċedimenti li dwarhom att ta' akkuża ma jkunx għadu gie pprezentat mill-Avukat Ġenerali fil-jum tal-bidu fis-seħh ta' dan l-Att.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 331 tas-17 ta' Marzu, 1986.

C. MIFSUD
Skrivan tal-Kamra tad-Deputati

DANIEL MICALLEF
Speaker

I assent.

(L.S.)

AGATHA BARBARA
President

21st March, 1986

ACT No. VIII of 1986

AN ACT further to amend the Dangerous Drugs Ordinance, Cap. 161.

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. This Act may be cited as the Dangerous Drugs (Amendment) Act, 1986, and shall be read and construed as one with the Dangerous Drugs Ordinance, hereinafter referred to as "the principal law". Short title.

2. Section 22 of the principal law shall be amended as follows: Amendment of section 22 of the principal law.

(a) in subsection (1) thereof—

(i) for the words "against this Ordinance," in paragraph (d) thereof there shall be substituted the words "against this Ordinance; or"; and

(ii) for the words "shall be guilty of an offence against this Ordinance." there shall be substituted the following:

"(e) being a citizen of Malta or a permanent resident in Malta, who in any place outside these Islands does any act which if committed in these Islands would constitute an offence of selling or dealing in a drug against this Ordinance or an offence under paragraph (f) of this subsection; or

(f) who with another one or more persons in these Islands or outside these Islands conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy,

shall be guilty of an offence against this Ordinance.

For the purposes of paragraph (e) of this subsection the expression “permanent resident” means a person in favour of whom a permit of residence has been issued in accordance with the provisions contained in section 7 of the Immigration Act, 1970.

(1A) The conspiracy referred to in paragraph (f) of the preceding sub-section shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(1B) For the purposes of this Ordinance the word “dealing” includes importation, manufacture, exportation and distribution.”;

(b) in subsection (2) thereof —

(i) for paragraph (a) thereof there shall be substituted the following:

“(a) on conviction by the Criminal Court —

(i) where the offence consists in selling or dealing in a drug contrary to the provisions of this Ordinance, or in promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of this section, to imprisonment for a term of not less than four years but not exceeding twenty years and to a fine (*multa*) of not less than one thousand Maltese liri but not exceeding fifty thousand Maltese liri; and

(ii) for any other offence to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than two hundred Maltese liri, but not exceeding ten thousand Maltese liri; or”;

(ii) for sub-paragraphs (i) and (ii) of paragraph (b) thereof there shall be substituted the following:

“(b) on conviction by the Court of Magistrates —

(i) in the case of a conviction for an offence under paragraph (b), (c) or (e) of section 8, or a conviction for an offence consisting in selling or dealing in any other drug contrary to the provisions of this Ordinance, or a conviction for an offence of promoting, constituting, organising or financing of a conspiracy under paragraph (f) of subsection (1) of this section, to imprisonment for a term of not less than six months but not exceeding five years and to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding two thousand Maltese liri; and

(ii) for any other offence, in the case of a conviction, to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding one thousand Maltese liri or to imprisonment for a term of not less than three months but not exceeding twelve months, or to both such fine and imprisonment.”;

(c) immediately after subsection (3) thereof there shall be added the following new subsection:

“(3A) Where an offence against this Ordinance in respect of which a person has been found guilty consists in or refers to the selling or dealing in a drug, or consists in the promotion, constitution, organisation or financing of a conspiracy under paragraph (f) of subsection (1) of this section, the Court shall, at the request of the prosecution, in addition to any other punishment —

(a) where any immovable property has been used for the keeping or storing, or for the selling or dealing in such drug, as described in the bill of indictment or in the charge, order the forfeiture in favour of the Government of any real title which the offender holds on such immovable property;

(b) where the offender is not the absolute owner but holds any other real title on the immovable property, or has a title, other than a real title, in virtue of which he has the control of or a right of access to such property, the Court shall order the offender to pay a fine (*multa*) of not less than five thousand Maltese liri but not exceeding thirty thousand Maltese liri as the Court shall determine after taking into account the value of the immovable property and the value of the real title thereon, if any, forfeited as aforesaid;

(c) saving the provisions of the Criminal Code and of the Customs Ordinance, make an order whereby the provisions of paragraphs (a) and (b) of this subsection shall be applied *mutatis mutandis* to or in respect of any vessel or vehicle used for the keeping or storing, or for the selling or dealing in such drug; and

(d) order the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the person so found guilty even if the immovable property has since the offender was charged passed into the hands of third parties.”; and

(d) in subsection (7) thereof for the words “mentioned in subsection (3)” there shall be substituted the words “mentioned in subsections (3) and (3A)”.

3. Immediately after section 22 of the principal law there shall be added the following new sections:

Addition of new sections to the principal law.

“Freezing of property of person accused.

22A. (1) Where a person is charged under section 22 of this Ordinance, with selling or dealing in a drug, or with promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of that section, the Court shall at the request of the prosecution make an order —

(a) attaching in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the accused, and

(b) prohibiting the accused from transferring or otherwise disposing of any movable or immovable property:

Provided that the Court shall in such an order determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of six thousand Maltese liri every year:

Provided further that the Court may also—

(a) authorise the payment of debts which are due by the accused to *bona fide* creditors and which were contracted before such order was made, and

(b) on good ground authorise the accused to transfer movable or immovable property.

(2) Such order shall—

(a) become operative and binding on all third parties immediately it is made, and the Registrar of the Court shall cause a notice thereof to be published without delay in the Gazette, and shall also cause a copy thereof to be registered in the Public Registry in respect of immovable property, and

(b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.

(3) The Court may for particular circumstances vary such order, and the provisions of the foregoing subsections shall apply to such order as so varied.

(4) Every such order shall contain the name and surname of the accused, his profession, trade or other status, father's name, mother's name and maiden surname, place of birth and place of residence and his Identity Card number.

(5) Where any money is or becomes due to the accused from any person while such order is in force such money shall, unless otherwise directed in that order, be deposited in a bank to the credit of the accused.

(6) When such order ceases to be in force as provided in paragraph (b) of subsection (2) of this section the Registrar of the Court shall cause a notice to that effect to be published in the Gazette, and shall enter in the Public Registry a note of cancellation of the registration of that order.

Penalty for
contravening
Court order.

22B. Any person who acts in contravention of a court order mentioned in section 22A of this Ordinance shall be guilty of an offence and shall on conviction be liable to a fine (*ammenda*) not exceeding five hundred Maltese liri, and the Court may order the person so found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

Special Court
proceedings.

22C. (1) Where an order of forfeiture is made under paragraph (d) of subsection (3A) of section 22 of this Ordinance, the person found guilty, or the third party therein mentioned, may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of the offence nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

(2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

(3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The Court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.

(6) The Court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the Court, and such adjourned date shall not be later than that justified by any such reason.

(7) Saving the preceding provisions of this section, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.

(8) Any judgement revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

Reversion of property ceasing to be forfeited.

22D. When the Court allows the demand for a declaration as provided in subsection (1) of section 22C in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.”.

Addition of new section to the principal law.

4. Immediately after section 22D of the principal law there shall be added the following new section:

“Destruction of drugs after drawing up a *procès-verbal*.

22E. (1) At the commencement of proceedings under section 22 of this Ordinance, the drug in respect of which a person is charged shall be exhibited materially in Court, as far as possible, and the following procedure shall be followed.

(2) The Court shall appoint a photographic expert to take pictures, as shall be indicated by the Court, of the drug in its containers, wrappings, packages or receptacles, and shall also appoint an expert to analyse and establish the exact quantity, kind and form and give the most accurate description of the drug, and to take samples thereof for preservation as evidence.

(3) The experts shall, as early as possible, file in Court and confirm on oath a written report of their findings, together with the photographs and samples aforementioned.

(4) The Court, upon being satisfied with such report or reports shall proceed to have the drug, other than the samples, destroyed under its supervision and draw up a *procès-verbal*.

(5) The *procès-verbal* shall be deemed to have been regularly drawn up if it contains a short description of the drug, the experts’ report or reports are attached thereto and it is signed by the Court.

(6) The *procès-verbal* drawn up as aforesaid shall be evidence of its contents in any criminal proceedings.”.

Addition of new sections to the principal law.

5. Immediately after section 26 of the principal law there shall be added the following new sections:

“Detention during inquiry.

27. Notwithstanding the provisions of the Criminal Code, and saving the extensions by the President of the term of the inquiry as provided in subsection (1) of section 413 of that Code, where the Attorney General has directed that a person charged with selling or dealing in a drug against this Ordinance or charged with promoting, constituting, organising or financing a conspiracy under paragraph (f) of subsection (1) of section 22 is to be tried in the Criminal Court, such person shall be arraigned under arrest and the Court of Judicial Police as a Court of Criminal Inquiry shall conclude the

inquiry within the term of twenty days from the arraignment, and until the expiration of that term or, if the inquiry is concluded at an earlier date, until such day, the person accused shall not be granted temporary release from custody, but at the end of those twenty days or such earlier date as aforesaid, the Court may grant temporary release from custody in accordance with the provisions of that Code.

Pecuniary penalty recoverable as a civil debt.

28. (1) On a conviction for an offence against this Ordinance, the pecuniary penalty shall, at the request of the prosecution, be deemed to be a civil debt and shall be declared by the competent Court in passing judgment as being so owed and payable to Government and shall be executable in the same court pronouncing judgment in the same manner as if it had been given in a civil action duly instituted between the Government and the person convicted.

(2) Where however the prosecution informs the competent Court that the pecuniary penalty has not been recovered by the Government as provided for in the preceding subsection, such penalty or any part thereof not recovered, shall be treated as a fine (*multa* or *ammenda*) as inflicted by the Court and shall be converted into imprisonment, without the benefit of time for payment, in accordance with the provisions of the Criminal Code.

Diminution of punishment.

29. Where in respect of a person found guilty of an offence against this Ordinance, the prosecution declares in the records of the proceedings that such person has helped the Police to apprehend the person or persons who supplied him with the drug, or the person found guilty as aforesaid proves to the satisfaction of the Court that he has so helped the Police, the punishment shall be diminished, as regards imprisonment by one or two degrees, and as regards any pecuniary penalty by one-third or one-half.

Evidence by accomplice.

30. Notwithstanding the provisions of subsection (3) of section 635 of the Criminal Code where a person has purchased or otherwise obtained or acquired a drug contrary to the provisions of this Ordinance, the evidence of such person in proceedings against the person from whom he shall have purchased, obtained or acquired the drug, shall not require to be corroborated by other circumstances.

Direction for trial by the Court of Judicial Police as a Court of Criminal Judicature.

31. Notwithstanding that the Attorney General has directed in accordance with the provisions of subsection (2) of section 22 of this Ordinance, that a person be tried in the Criminal Court, he may, at any time before the filing of the bill of indictment, direct that that person be tried before the Court of Magistrates of Judicial Police, and upon such direction the Court of Magistrates of Judicial Police as a Court of Criminal Judicature shall become competent to try that person as if no previous direction had been given.

Offences cognizable by the Court of Judicial Police as a Court of Criminal Judicature.

32. Notwithstanding the provisions of section 382 of the Criminal Code and without prejudice to the provisions of section 31 of this Ordinance, the Court of Magistrates of Judicial Police shall be competent to try all offences against this Ordinance as directed by the Attorney General in accordance with the provisions of subsection (2) of section 22 of this Ordinance.”.

Addition of new section 33 to the principal law.

6. Immediately after section 32 of the principal law there shall be added the following new section:

“Right of appeal.

33. Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates of Judicial Police in respect of criminal proceedings arising out of the provisions of this Ordinance.”.

Savings.

7. (1) The provisions of section 30 of the principal law shall apply to any proceedings which on the day of the coming into force of this Act are pending before any Court.

(2) The provisions of section 31 of the principal law shall apply to any pending proceedings in respect of which a bill of indictment has not yet been filed by the Attorney General on the day of the coming into force of this Act.

Passed by the House of Representatives at Sitting No. 331 of the 17th March, 1986.

DANIEL MICALLEF
Speaker

C. MIFSUD
Clerk to the House of Representatives