VERŻJONI ELETTRONIKA

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,657, 11 ta' Ottubru, 2016
Taqsima C

Nru. 168

11. 10. 2016

MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Owen Bonnici, M.P., Ministru għall-Ġustizzja, Kultura u Gvern Lokali, u moqri għall-Ewwel darba fis-Seduta tal-10 ta' Ottubru, 2016.

ATT biex jipprovdi għal assistenza legali waqt detenzjoni u drittijiet oħra għal persuni arrestati.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Owen Bonnici, M.P., Minister for Justice, Culture and Local Government, and read the First time at the Sitting of the 10th October, 2016.

AN ACT to provide for legal assistance during detention and other rights to arrested persons.

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

Abbozz ta' Liġi
msejjaħ

ATT biex jipprovdi għal assistenza legali waqt detenzjoni u drittijiet oħra għal persuni arrestati.

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

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2016 li jemenda l-Kodiċi Kriminali (Emenda Nru. 2) u dan l-Att għandu jinqara u jinftiehem ħaġa waħda mal-Kodiċi Kriminali, hawn iżjed 'il quddiem imsejjaħ "il-Kodiċi". Titolu fil-qosor. u bidu fis-seħħ. Kap. 9.

(2) Dan l-Att għandu jidħol fis-seħħ fid-data li l-Ministru responsabbli għall-Ġustizzja jista' permezz ta' avviż fil-Gazzetta jistabbilixxi u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti u għanijiet differenti ta' dan l-Att.

(3) Avviż taħt is-subartikolu (2) jista' jagħmel dawk id-dispożizzjonijiet transitorji kif il-Ministru jidhirlu li huma neċessarji jew espedenti f'konnessjoni mad-dispożizzjonijiet li jkunu daħlu fis-seħħ u jista' ukoll iħassar il-kliem "fejn hu possibbli" fl-artikoli 355AUA(8)(ċ) u (d), u fl-Iskeda E tal-Kodiċi Kriminali.

2. L-intestatura tas-Sub-titolu IX tat-Titolu I tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi għandha tiġi sostitwita b'dan li ġej: Sostituzzjoni tal-intestatura tas-Sub-titolu IX tat-Titolu I tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi.

"Sub-titolu IX

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Dritt għal Assistenza Legali u Drittijiet Oħra waqt Detenzjoni".

Sostituzzjoni tal-artikolu 355AS tal-Kodiċi.

3. L-artikolu 355AS tal-Kodiċi għandu jiġi sostitwit b'dan li ġej:

"Dritt li tikkonsulta ma' tabib.

355AS. (1) Il-persuna suspettata jew il-persuna akkużata għandha, fuq talba tagħha stess, tkun tista' tikkonsulta ma' tabib tal-għażla tagħha u, jekk it-tabib ma jkunx disponibbli, tikkonsulta ma' xi tabib ieħor.

(2) Minnufih malli jseħħ l-arrest u mingħajr ebda dewmien, il-Pulizija Eżekuttiva jew kwalunkwe awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja għandhom jinfurmaw lill-persuna suspettata jew lill-persuna arrestata dwar dan id-dritt.

(3) Għandu jinżamm rekord li l-persuna suspettata jew il-persuna akkużata ġiet infurmata dwar dan id-dritt mill-Pulizija Eżekuttiva jew minn kwalunkwe awtorità oħra għall-infurzar tal-liġi jew minn awtorità ġudizzjarja.

(4) Il-kliem "il-persuna suspettata" u "il-persuna akkużata" f'dan l-artikolu għandhom l-istess tifsira mogħtija lilhom bl-artikolu 355AT(2).".

Sostituzzjoni tal-artikoli 355AT u 355AU tal-Kodiċi.

4. L-artikoli 355AT u 355AU tal-Kodiċi għandhom jiġu sostitwiti b'dan li ġej:

"Suġġett ta' dan is-Sub-titolu.

355AT. (1) Dan it-Sub-titolu jittrasponi d-dispożizzjonijiet tad-Direttiva 2013/48/UE tal-Parlament Ewropew u tal-Kunsill tat-22 ta' Ottubru 2013 dwar id-dritt tal-aċċess għal avukat fi proċeduri kriminali u fi proċeduri tal-mandat ta' arrest Ewropew, u dwar id-dritt li terza persuna tkun infurmata dwar it-tiċħid ta' libertà u li persuna tikkomunika ma' terzi persuni u mal-awtoritajiet konsulari waqt li tkun imċaħda mil-libertà, ippubblikata fil-Ġurnal Uffiċjali tal-Unjoni Ewropea fis-6 ta' Novembru 2013 (L 294/1).)

(2) Dan is-Sub-titolu jistabbilixxi r-regoli minimi li jikkonċernaw id-drittijiet ta':

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(a) il-persuna suspettata (hawn iżjed ’il quddiem f’dan is-Sub-titolu msejħa "il-persuna suspettata"), jiġifieri, persuna li tkun miżmuma jew arrestata mill-Pulizija Eżekuttiva jew kwalunkwe awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja fejn dik il-persuna ma tkunx għadha ma ġietx mixlija quddiem qorti tal-ġustizzja ta’ ġurisdizzjoni kriminali u tkun qed tiġi interrogata mill-Pulizija Eżekuttiva jew minn kwalunkwe awtorità oħra kif imsemmi fir-rigward ta’ reat kriminali;

(b) persuna mixlija jew akkużata li kkommettiet reat kriminali (hawn iżjed ’il quddiem f’dan is-Sub-titolu msejħa "il-persuna akkużata");”)

(ċ) persuna soġġetta għal proċeduri skont id-Deċiżjoni Kwadru tal-Kunsill tat-13 ta’ Ġunju 2002 fuq il-mandat ta’ arrest Ewropew u l-proċeduri ta’ ċediment bejn l-Istati Membri ppubblikata fil-Ġurnal Uffiċjali fit-18 ta’ Lulju 2002. (L.190/1), hawn iżjed ’il quddiem imsejħa "il-proċeduri tal-mandat ta’ arrest Ewropew".

(3) Il-persuni msemmija fis-subartikolu (2) għandhom igawdu mid-drittijiet li ġejjin:

(a) dritt ta’ aċċess għal avukat;

(b) li terza persuna tiġi infurmata dwar it-tiċħid tal-libertà tagħhom; u

(ċ) li jikkomunikaw ma’ terzi persuni u mal-awtoritajiet konsulari waqt li jkunu mċaħda mil-libertà tagħhom.

(4) Għall-finijiet ta’ dan is-Sub-titolu l-espressjoni "avukat" tfisser avukat jew prokuratur legali li huwa awtorizzat bil-liġi li jeżerċita dik il-professjoni rispettiva skont il-liġi.

Skop ta’ dan is-Sub-titolu.

355AU. (1) Dan is-Sub-titolu japplika għal persuni jew għal persuni akkużati fi proċeduri kriminali mill-ħin li jkunu mgħarrfa mill-Pulizija Eżekuttiva jew minn awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja, permezz ta’ notifika uffiċjali jew xort’oħra, li huma suspettati jew akkużati li kkommettew reat kriminali, u irrispettivament jekk ġewx imċaħda mil-libertà jew le.

(2) Dan is-Sub-titolu japplika sal-konklużjoni tal-proċeduri, li għandu jinftiehem li jfisser id-deċiżjoni finali tal-kwistjoni jekk il-persuna suspettata jew il-persuna akkużata wettqux reat, inkluż, fejn applikabbli, id-deċiżjoni u l-konklużjoni ta' kull appell.

(3) Dan is-Sub-titolu japplika wkoll għal persuni soġġetti għal proċeduri ta' mandat ta' arrest Ewropew skont id-Deċiżjoni Qafas 2002/584/JHA msemmija fl-artikolu 355AT(2)(ċ) (hawn iżjed 'il quddiem imsejħa "il-persuni li dwarhom tkun qed issir it-talba") mill-ħin li jkunu taħt arrest skont l-artikolu 355AUJ.

(4) Dan is-Sub-titolu japplika wkoll, taħt l-istess kondizzjonijiet kif previst fis-subartikolu (1), għal persuni għajr dawk suspettati jew akkużati li, matul l-interrogazzjoni mill-Pulizija Eżekuttiva jew minn awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja, isiru persuni suspettati jew persuni akkużati.

(5) Mingħajr preġudizzju għad-dritt ta' proċess kriminali ġust, fir-rigward ta' reati minuri -

(a) fejn il-liġi tipprovdi għall-impożizzjoni ta' sanzjoni minn awtorità għajr minn qorti li għandha ġurisdizzjoni f'materji kriminali, u l-impożizzjoni ta' dik is-sanzjoni tista' tiġi appellata jew mressqa quddiem dik il-qorti; jew

(b) fejn iċ-ċaħda tal-libertà ma tistax tkun imposta bħala sanzjoni,

dan is-Sub-titolu għandu japplika biss għall-proċeduri quddiem qorti li għandha ġurisdizzjoni f'materji kriminali:

Iżda, fi kwalunkwe eventwalità, dan is-Sub-titolu għandu japplika kompletament fejn il-persuna suspettata jew il-persuna akkużata tiġi mċaħda mil-libertà, irrispettivament mill-istadju tal-proċeduri kriminali.

Id-dritt ta' aċċess għal avukat fi proċeduri kriminali.

355AUA. (1) Il-persuna suspettata jew akkużata għandu jkollha d-dritt ta' aċċess għal avukat fil-ħin u b'tali mod li jħalliha teżerċita d-drittijiet ta' difiża tagħha b'mod prattiku u effettiv.

(2) Il-persuna suspettata jew akkużata għandu jkollha aċċess għal avukat mingħajr ebda dewmien. Fi kwalunkwe eventwalità, il-persuna suspettata jew akkużata għandu jkollha aċċess għal avukat mill-mument li sseħħ l-ewwel waħda minn dawn il-ġrajjiet:

(a) qabel ma tkun interrogata mill-Pulizija Eżekuttiva jew minn awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja fir-rigward tat-twettieq ta' reat kriminali;

(b) mat-twettieq minn awtoritajiet investigattivi jew awtoritajiet kompetenti oħra ta' xi att ta' natura investigattiva jew att ta' kollezzjoni ta' evidenza oħra skont is-subartikolu (8)(e);

(ċ) mingħajr ebda dewmien wara li tkun ġiet imċaħda l-libertà;

(d) meta tkun ġiet imħarrka sabiex tidher quddiem qorti li għandha ġurisdizzjoni f'materji kriminali, f'qasir żmien qabel ma titressaq quddiem dik il-qorti.

(3) Talba għall-assistenza legali għandha tiġi rrekordjata fir-rekord ta' kustodja flimkien mal-ħin meta din it-talba tkun saret sakemm it-talba ma tkunx saret f'ħin meta l-persuna li tkun għamlitha tkun il-qorti wara li tkun akkużata b'reat f'liema każ it-talba m'għandhiex għalfejn tiġi rrekordjata.

(4) Malli tkun saret talba għall-assistenza legali, il-persuna suspettata jew akkużata għandha tingħata lista ta' avukati mfassla mill-Kamra tal-Avukati u mill-Kamra tal-Prokuraturi Legali u sottomessa darba kull sena lill-Pulizija Eżekuttiva u lil kull awtorità oħra għall-infurzar tal-liġi jew ġudizzjarja, li minnha l-persuna akkużata jew suspettata tista' tagħżel avukat tal-għażla tagħha. Alternattivament, il-persuna suspettata jew akkużata tista' tagħżel sabiex tkun assistita minn Avukat tal-Għajnuna Legali f'liema każ l-Avukat tal-Għajnuna Legali għandu jassenja avukat għal dan il-għan.

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(5) Mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 355AUI(3), kwalunkwe uffiċjal tal-pulizija li jindika jew jagħmel tentattiv sabiex jindika lil persuna miżmuma l-avukat jew prokuratur legali li għandu jkun ingaġġjat waqt id-detenzjoni tagħha, ikun ħati ta' reat u jeħel ammenda u dan mingħajr preġudizzju għal kull proċedura dixxiplinari li tista' tittieħed kontrih bħala konsegwenza li jinstab ħati ta' dak ir-reat jew minflok il-prosekuzzjoni għal dak ir-reat f'konformità mar-regolamenti dixxiplinarji li jkunu fis-seħħ minn żmien għal żmien.

(6) Meta l-persuna miżmuma tagħżel li ma tfittix assistenza legali l-Pulizija Eżekuttiva, l-uffiċjal li jkun qiegħed jinvestiga jew kull awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja għandhom jirrekordjaw dan il-fatt bil-miktub fil-preżenza ta' żewġ xhieda u malli jsir dan tibda' l-interrogazzjoni minnufih. M'għandux ikun ammissibbli li l-Prosekuzzjoni tikkummenta waqt il-proċeduri quddiem il-qorti tal-ġustizzja ta' ġurisdizzjoni kriminali fuq il-fatt li l-persuna suspettata jew akkużata ma għażlitx li tagħmel użu mill-assistenza legali waqt li kienet qed tinżamm taħt arrest.

(7) Fejn fi kwalunkwe proċeduri quddiem qorti tal-ġustizzja ta' ġurisdizzjoni kriminali kontra persuna għal reat, tingħata evidenza li l-persuna suspettata jew akkużata -

(a) fi kwalunkwe ħin qabel ma ġiet akkużata bir-reat, fl-interrogazzjoni mill-Pulizija Eżekuttiva jew minn awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja waqt li qegħdin jippruvaw jiskopru jekk jew minn min ġie kommess ir-reat, tonqos milli semmi kwalunkwe fatt fid-difiża tagħha f'dawk il-proċeduri; jew

(b) malli tkun akkużata b'dak ir-reat jew tiġi infurmata uffiċjalment li tista' tgħaddi minn proċess ta' prosekuzzjoni għalih, tonqos milli semmi xi fatt,

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li jkun fatt li fiċ-ċirkostanzi li kienu jeżistu meta l-persuna suspettata jew akkużata setgħet raġjonevolment tkun mistennija li ssemmi waqt l-interrogazzjoni, meta ġiet akkużata jew infurmata, skont kif ikun il-każ, ebda inferenza ma tista' ssir min-nuqqas tal-persuna suspettata jew akkużata milli semmi fatti li jistgħu jiġu kkunsidrati bħala provi ta' ħtija jew li jammontaw għall-korroborazzjoni ta' kwalunkwe prova ta' ħtija tal-persuna suspettata jew akkużata.

(8) Id-dritt ta' aċċess għal avukat għandu jfisser dan li ġej:

(a) il-persuna suspettata jew akkużata, jekk tkun għażlet li teżerċita d-dritt tagħha għall-assistenza legali, u l-avukat tagħha, għandhom ikunu infurmati bl-allegat reat li għalih il-persuna suspettata jew akkużata ser tkun interrogata. Dik l-informazzjoni għandha tingħata lill-persuna suspettata jew akkużata qabel ma tibda' l-interrogazzjoni, liema ħin m'għandux ikun inqas minn siegħa qabel ma tibda' l-interrogazzjoni;

(b) il-persuna suspettata jew akkużata għandu jkollha d-dritt li tiltaqa' u tikkomunika fil-privat mal-avukat li jirrappreżentaha, inkluż interrogazzjoni minn qabel mill-pulizija jew minn awtorità oħra ta' infurzar tal-liġi jew ġudizzjarja;

(ċ) il-persuna suspettata jew akkużata għandu jkollha d-dritt li l-avukat tagħha jkun preżenti u jipparteċipa b'mod effettiv fl-interrogazzjoni. Dik il-parteċipazzjoni tista' tiġi regolata skont proċeduri li l-Ministru responsabbli għall-Ġustizzja jista' jistabbilixxi permezz ta' regolamenti, hekk iżda li dawk il-proċeduri ma jippreġudikawx l-eżerċizzju effettiv u l-essenza ta' dak id-dritt konċernat. Meta avukat jipparteċipa fl-interrogazzjoni, il-fatt li kien hemm dik il-parteċipazzjoni għandu jkun rreġistrat permezz tal-użu fejn huwa possibbli ta' mezzi awdjoviżwali skont il-paragrafu (d):

Iżda d-dritt tal-avukat li jipparteċipa b'mod effettiv ma għandux jinftiehem bħala dritt tal-avukat li jostakola l-interrogazzjoni jew li jissuġġerixxi tweġibiet jew reazzjonijiet oħra għall-interrogazzjoni u kull mistoqsija jew rimarka oħra mill-avukat għandha, ħlief f'ċirkostanzi eċċezzjonali, issir wara li l-Pulizija Eżekuttiva jew awtorità oħra investigattiva jew ġudizzjarja jkunu ddikjaraw li ma għandhomx aktar mistoqsijiet;

(d) l-interrogazzjoni, it-tweġibiet kollha li jingħataw għaliha u l-proċeduri kollha relatati mal-interrogazzjoni tal-persuna suspettata jew akkużata, għandhom fejn hu possibbli jkunu rrekordjati b'mezzi awdjoviżwali u f'dak il-każ għandha tingħata kopja tagħhom lill-persuna suspettata jew akkużata wara li tkun intemmet l-interrogazzjoni. Kwalunkwe *recording* għandu jkun ammissibbli bħala prova, sakemm il-persuna suspettata jew akkużata ma tallegax u ma tagħtix prova li r-*recording* mhuwiex ir-*recording* oriġinali u li dan ġie mbagħbas. M'hemmx għalfejn issir traskrizzjoni tar-*recording* meta tkun użata fi proċeduri fil-qorti tal-ġustizzja ta' ġurisdizzjoni kriminali, l-anqas ma hemm bżonn tal-firma tal-persuna suspettata jew akkużata f'dikjarazzjoni bil-miktub li tkun saret wara l-konklużjoni tal-interrogazzjoni ġaladarba l-mistoqsijiet u t-tweġibiet kollha, jekk hemm, ikunu ġew irrekordjati fuq mezzi awdjoviżwali;

(e) il-persuna suspettata jew akkużata għandu jkollha d-dritt li l-avukat tagħha jattendi għall-atti investigattivi jew ġbir ta' evidenza jekk il-persuna suspettata jew akkużata jeħtieġilha jew ġiet permessa li tattendi għall-att konċernat:

(i) ringiela ta' persuni suspettati għal finijiet ta' identifikazzjoni;

(ii) konfrontazzjonijiet;

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(iii) rikostruzzjoni tax-xena tad-delitt.

(9) L-informazzjoni ġenerali biex tiffaċilita l-għarfien li jingħata lil avukat minn persuni suspettati jew akkużati għandha tkun disponibbli skont is-subartikolu (4) jew dik il-proċedura oħra kif il-Ministru responsabbli għall-Ġustizzja jista' jistabbilixxi permezz ta' regolamenti.

(10) Minkejja d-dispożizzjonijiet ta' dan is-Sub-titolu li jikkonċernaw il-preżenza mandatorja ta' avukat, il-Pulizija Eżekuttiva jew awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja għandha tiżgura li l-persuni suspettati jew akkużati li huma mċaħda mil-libertà jkunu f'pożizzjoni li b'mod effettiv jeżerċitaw id-dritt tagħhom ta' aċċess għal avukat, sakemm ma jkunux irrinunzjaw għal dak id-dritt skont l-artikolu 355AUG.

(11) F'ċirkostanzi eċċezzjonali u fl-istadju ta' qabel il-ġuri biss, tista' ssir deroga temporanja mill-eżerċizzju tad-dritt previst fis-subartikolu (2)(ċ) fejn it-tbegħid ġeografiku tal-persuna suspettata jew akkużata tagħmilha impossibbli li tiżgura d-dritt ta' aċċess għal avukat mingħajr ebda dewmien wara li tkun ġiet imċaħda l-libertà.

(12) F'ċirkostanzi eċċezzjonali u fl-istadju ta' qabel il-ġuri biss, tista' ssir deroga temporanja mill-eżerċizzju tad-drittijiet previsti fis-subartikolu (8) sal-limitu ġustifikat fid-dawl taċ-ċirkostanzi partikolari tal-każ, fuq il-bażi ta' xi waħda minn dawn ir-raġunijiet konvinċenti li ġejjin:

(a) fejn hemm il-ħtieġa urġenti sabiex jiġu evitati konsegwenzi negattivi serji għall-ħajja, libertà jew integrità fiżika ta' persuna;

(b) fejn hi meħtieġa azzjoni immedjata mill-awtoritajiet investigattivi sabiex wieħed jipprevjeni perikolu sostanzjali għal proċeduri kriminali.

(13) Għall-finijiet ta' dan is-Sub-titolu, l-espressjoni "stadju qabel il-ġuri" tfisser l-istadju ta' qabel ma jkun ippreżentat l-att tal-akkuża fil-Qorti Kriminali, jew, skont kif ikun il-każ, qabel ma l-Avukat Ġenerali jibgħat ir-rekord ta' proċeduri lill-Qorti tal-Maġistrati bħala Qorti ta' Ġudikatura Kriminali, skont l-artikolu 370(3), sabiex il-persuna akkużata titressaq quddiem dik il-qorti.

Kunfidenzjalità

355AUB. (1) Il-kunfidenzjalità tal-komunikazzjoni bejn il-persuni suspettati jew akkużati u l-avukat tagħhom fl-eżerċizzju tad-dritt ta' aċċess għal avukat previst taħt dan is-Sub-titolu għandha tiġi rispettata.

(2) Dik il-komunikazzjoni għandha tinkludi laqgħat, korrispondenza, konverżazzjonijiet bit-telefon u kwalunkwe forma ta' komunikazzjoni oħra permessa bil-liġi.

Id-dritt li terza persuna tiġi infurmata dwar it-tiċħid tal-libertà.

355AUĊ. (1) Persuni suspettati jew akkużati li huma mċaħda mil-libertà għandhom ikunu infurmati, minnufih, mill-Pulizija Eżekuttiva jew minn kwalunkwe awtorità oħra ta' infurzar jew awtorità ġudizzjarja, li huma għandhom id-dritt li tiġi infurmata tal-inqas persuna waħda, bħal qarib jew imgħallem jew kwalunkwe persuna oħra tal-għażla tagħhom, nominata minnhom, dwar it-tiċħid tal-libertà tagħhom mingħajr ebda dewmien jekk iridu, sakemm dik il-persuna l-oħra mhijiex raġjonevolament suspettata li hija involuta fir-reat li qed jiġi investigat. Għandu jinżamm rekord dwar il-mod kif il-Pulizija Eżekuttiva jew awtorità oħra ta' infurzar jew awtorità ġudizzjara kkonċernata wettqet dmirijietha taħt dan l-artikolu.

(2) Jekk il-persuna suspettata jew akkużata hija taħt l-età, tal-inqas persuna li għandha awtorità tal-ġenituri, tutela, kurazija jew ħarsien fir-rigward tal-persuna taħt l-età għandha tkun infurmata minnufih malli tiġi mċaħda l-libertà u dwar ir-raġunijiet għat-tiċħid, sakemm ma jkunx kontra l-aħjar interess tal-minuri li dan isir, f'liema każ għandha tiġi infurmata persuna adulta oħra. Għall-finijiet ta' dan l-artikolu, persuna li hi taħt l-età ta' tmintax-il sena għandha tkun ikkunsidrata bħala persuna taħt l-età.

(3) Fil-każijiet kollha, id-dettalji tal-persuna msemmija fis-subartikolu (1) jew tad-detentur tal-awtorità ta' ġenitur, tutela, kurazija jew ħarsien fuq il-persuna taħt l-età msemmija fis-subartikolu (2) kif ukoll il-ġurnata u l-ħin li fihom tkun ingħatat l-informazzjoni lil dik il-persuna jew detentur tal-awtorità ta' ġenitur jew awtorità oħra kif intqal qabel, għandhom jiddaħħlu fir-rekord ta' detenzjoni tal-persuna suspettata jew fir-rekord tal-proċeduri tal-persuna akkużata, skont kif ikun il-każ.

(4) Fejn ikun ġustifikat fid-dawl taċ-ċirkostanzi partikolari tal-każ, tista' ssir deroga temporanja mill-applikazzjoni tad-drittijiet stabbiliti fis-subartikoli (1) u (2), fuq il-bażi ta' xi waħda mir-raġunijiet konvinċenti li ġejjin:

(a) fejn hemm ħtieġa urġenti ta' prevenzjoni minn konsegwenzi ħżiena għall-ħajja, libertà jew l-integrità fiżika ta' persuna;

(b) fejn hemm ħtieġa urġenti ta' prevenzjoni ta' sitwazzjoni fejn proċeduri kriminali jistgħu jkunu ppreġudikati b'mod sostanzjali:

Iżda f'kull każ bħal dan, id-dewmien m'għandux ikun ta' aktar minn sitt siegħat mill-ħin li seħħ l-arrest.

(5) Meta ssir deroga mill-applikazzjoni tad-dritt stabbilit fis-subartikolu (2), il-Pulizija Eżekuttiva jew kwalunkwe awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja kkonċernata għandha tiżgura li l-awtorità responsabbli għall-protezzjoni jew il-ħarsien ta' persuni taħt l-età, kif deċiż minn żmien għal żmien mill-Ministru responsabbli għall-Ġustizzja b'ordni fil-Gazzetta, tiġi infurmata mingħajr dewmien żejjed dwar it-tiċħid tal-libertà tal-persuna taħt l-età.

Id-dritt li wieħed jikkomunika ma' terzi persuni, waqt li jkun imċaħħad mil-libertà.

355AUD. (1) Il-persuna suspettata jew akkużata li tkun imċaħda mil-libertà għandu jkollha d-dritt li tikkomunika mingħajr dewmien żejjed, ma' tal-inqas terza persuna waħda, bħal qarib, ħabib jew kwalunkwe persuna oħra tal-għażla tagħha.

(2) Maġistrat jista', wara li tkun saret talba bil-miktub mill-Pulizija Eżekuttiva jew minn awtorità oħra tal-infurzar tal-liġi jew minn awtorità oħra għajr qorti li teżerċita funzjonijiet ġudizzjarji, jillimita jew jiddifferixxi l-eżerċitar tad-dritt imsemmi fis-subartikolu (1) fid-dawl ta' ħtiġiet urġenti jew ħtiġiet operazzjonali proporzjonati.

Dritt li wieħed jikkomunika ma' awtoritajiet konsulari.

355AUE. (1) Il-persuna suspettata jew akkużata li tkun ta' nazzjonalità oħra u li tkun imċaħda mil-libertà għandu jkollha d-dritt li tinforma lill-awtoritajiet konsulari tal-Istat tagħha dwar it-tiċħid tal-libertà mingħajr ebda dewmien żejjed u tikkomunika ma' dawk l-awtoritajiet, jekk hija tixtieq li tagħmel dan. Iżda, meta l-persuna suspettata jew akkużata jkollha żewġ nazzjonalitajiet jew aktar, hija tista' tagħżel liema awtorità konsulari, jekk ikun hemm, għandha tkun infurmata dwar it-tiċħid tal-libertà u li magħha tixtieq li tikkomunika.

(2) Persuni suspettati jew akkużati għandu jkollhom ukoll id-dritt li jżuruhom l-awtoritajiet konsulari tagħhom, id-dritt li jitkellmu u jikkorrispondu magħhom u d-dritt li jkollhom rappreżentanza legali rranġata mill-awtoritajiet konsulari tagħhom, soġġett għall-qbil ta' dawk l-awtoritajiet u r-rieda tal-persuni suspettati jew akkużati kkonċernati.

(3) L-eżerċizzju tad-drittijiet imniżżla f'dan l-artikolu jista' jkun regolat b'dawk ir-regolamenti li jsiru mill-Ministru responsabbli għall-Ġustizzja jew b'dawk il-proċeduri li jistgħu jkunu fis-seħħ minn żmien għal żmien, sakemm dawk ir-regolamenti jew proċeduri jippermettu li jingħata effett sħiħ lill-finijiet li għalihom huma intiżi dawk id-drittijiet.

Kundizzjonijiet ġenerali għall-appliokazzjoni ta' derogi temporanji.

355AUF. (1) Kull deroga temporanja taħt l-artikolu 355AUA(11) jew (12) jew taħt l-artikolu 355AUC(4) għandha:

(a) tkun proporzjonata u ma tmurx lil hinn minn dak li huwa neċessarju;

(b) tkun strettament limitata biż-żmien;

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(ċ) ma tkunx ibbażata esklussivament fuq it-tip jew is-serjetà tal-allegat reat; u

(d) ma tippreġudikax l-imparzjalità ġenerali tal-proċeduri.

(2) Derogi temporanji taħt l-artikolu 355AUA (11) jew (12) jistgħu jiġu awtorizzati biss permezz ta' deċiżjoni debitament motivata abbażi ta' każ b'każ minn Maġistrat, liema deċiżjoni tista' tkun soġġetta għal appell fil-Qorti tal-Appell Kriminali kif kostitwita skont l-artikolu 418 permezz ta' rikors li jiġi ppreżentat fi żmien jumejn ta' xogħol minn meta tkun ingħatat id-deċiżjoni. Il-Qorti tal-Appell Kriminali għandha tirregola l-proċedura tagħha fir-rigward tad-deċiżjoni tal-appell. Il-preżentata ta' appell m'għandhiex twaqqaf l-eżekuzzjoni tad-deċiżjoni tal-Maġistrat sakemm il-Qorti tal-Appell Kriminali ma tordnax xort'oħra. Id-deċiżjoni debitament motivata għandha tkun irrekordjata fl-atti tal-proċeduri relattivi.

(3) Derogi temporanji taħt l-artikolu 355AUC(4) jistgħu jiġu awtorizzati abbażi ta' każ b'każ biss, minn Maġistrat.

Rinunzja.

355AUG. (1) Mingħajr preġudizzju għad-dispożizzjonijiet ta' dan is-Sub-titolu li jeħtieġ il-preżenza mandatorja jew assistenza ta' avukat, fir-rigward ta' kwalunkwe rinunzja ta' dritt imsemmi fl-artikoli 355AUA u 355AUH:

(a) il-persuna suspettata jew akkużata għandha tingħata, verbalment jew bil-miktub, informazzjoni ċara u suffiċjenti b'lingwa sempliċi u li tinftiehem dwar il-kontenut tad-dritt ikkonċernat u l-konsegwenzi possibbli f'każ li ssir rinunzja għalih;

(b) ir-rinunzja għandha tingħata volontarjament u b'mod inekwivoku.

(2) Ir-rinunzja, li tista' ssir bil-miktub jew verbalment, għandha tkun reġistrata kif ukoll iċ-ċirkostanzi li fihom tkun saret ir-rinunza, bl-użu ta' kwalunkwe proċedura ta' rekordjar permessa bil-liġi.

(3) Il-persuna suspettata jew akkużata tista' tirrevoka r-rinunzja sussegwentament fi kwalunkwe stadju waqt il-proċeduri kriminali, u għandha tkun infurmata dwar din il-possibilità. Dik ir-revoka għandu jkollha effett biss mill-mument li tkun saret.

Id-dritt ta' aċċess għal avukat fi proċeduri ta' mandat ta' arrest Ewropew.

355AUH. (1) Persuna li tkun qed tiġi mitluba għandu jkollha d-dritt ta' aċċess għal avukat malli jseħħ l-arrest f'Malta skont mandat ta' arrest Ewropew.

(2) Fir-rigward tal-kontenut tad-dritt ta' aċċess għal avukat f'Malta bħala l-Istat Membru li qed jeżegwixxi, il-persuna li qed tiġi mitluba għandu jkollha dawn id-drittijiet li ġejjin f'Malta:

(a) id-dritt ta' aċċess għal avukat f'tali ħin u b'tali mod li jippermetti l-persuna li qed tiġi mitluba sabiex teżerċita d-drittijiet tagħha b'mod effettiv u fi kwalunkwe eventwalità mingħajr ebda dewmien żejjed mit-tiċħid tal-libertà;

(b) id-dritt li tiltaqa' u li tikkomunika mal-avukat li qed jirrappreżentaha;

(ċ) id-dritt li l-avukat tagħha jkun preżenti u, skont il-proċeduri stabbiliti bil-liġi, jipparteċipa, waqt is-smigħ tal-persuna li qed tiġi mitluba mill-awtorità ġudizzjarja kompetenti li qed teżegwixxi f'Malta. Meta avukat jipparteċipa waqt is-smigħ, dan għandu jiġi registrat fir-rekords tal-proċeduri tal-awtorità kompetenti ġudizzjarja f'Malta.

(3) Id-drittijiet previsti fl-artikoli 355AUB, 355AUĊ, 355AUD, 355AUE, 355AUG, u, meta tkun applikata deroga temporanja taħt l-artikolu 355AUĊ(4), fl-artikolu 355AUF, għandhom japplikaw, *mutatis mutandis*, għall-proċeduri ta' mandat ta' arrest Ewropew f'Malta bħala l-Istat Membru li qed jeżegwixxi.

(4) L-awtorità kompetenti f'Malta bħala l-Istat Membru li qed jeżegwixxi għandha, mingħajr ebda dewmien żejjed wara li tkun ġiet imċaħda l-libertà, tinforma lill-persuni li qed jiġu mitluba li għandhom id-dritt li jaħtru avukat fl-Istat Membru, jiġifieri, Stat Membru tal-Unjoni Ewropea li jkun ħareġ il-mandat ta' arrest Ewropew bil-għan li tiġi arrestata u ċeduta minn Malta l-persuna li qed tiġi mitluba. L-irwol ta' dak l-avukat fl-Istat Membru li jkun ħareġ il-mandat ta' arrest Ewropew ikun li jassisti lill-avukat f'Malta, bħala l-Istat Membru li qed jeżegwixxi, billi jipprovdi lil dak l-avukat informazzjoni u parir bil-għan li jkunu eżerċitati b'mod effettiv id-drittijiet tal-persuna li qed tiġi mitluba taħt id-Deċiżjoni Qafas 2002/584/ĠAI.

(5) Meta persuna li qed tiġi mitluba tixtieq teżerċita d-dritt li taħtar avukat fl-Istat Membru li ħareġ il-mandat ta' arrest Ewropew u ma jkollhiex diġà avukat, l-awtorità kompetenti f'Malta bħala l-Istat Membru li qed jeżegwixxi għandha minnufih tinforma lill-awtorità kompetenti tal-Istat Membru li ħareġ il-mandat ta' arrest Ewropew.

(6) L-awtorità kompetenti f'Malta bħala l-Istat Membru li ħareġ il-mandat fi proċeduri ta' arrest Ewropew għandha, mingħajr ebda dewmien żejjed, wara li tkun saret talba minn awtorità kompetenti fl-Istat Membru li jeżegwixxi, tipprovdi lill-persuni li qed jiġu mitluba informazzjoni li tiffaċilita l-ħatra tal-avukat tagħhom f'Malta.

(7) Id-dritt ta' persuna li qed tiġi mitluba li taħtar avukat fl-Istat Membru li ħareġ il-mandat ta' arrest Ewropew huwa mingħajr preġudizzju għaż-żminijiet stabbiliti fid-Deċiżjoni Qafas 2002/584/ĠAI jew l-obbligu tal-awtorità ġudizzjarja li qed teżegwixxi f'Malta li tiddeċiedi, fi żmien dawk il-perjodi ta' żmien u l-kundizzjonijiet imfissra fid-Deċiżjoni Qafas, jekk il-persuna għandhiex tiġi ċeduta.

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Rimedji.

355AUI. (1) Il-persuna suspettata jew akkużata fi proċeduri kriminali, u l-persuni li qed jiġu mitluba fi proċeduri ta' mandat ta' arrest Ewropew, għandhom ikunu intitolati li jfittxu rimedju fl-eventwalità li jkunu nkisru d-drittijiet tagħhom taħt dan is-Sub-titolu quddiem il-qrati ta' ġurisdizzjoni kriminali li jistgħu jkunu inkarigati bil-każ tagħhom jew quddiem Maġistrat. Talba bħal dik għal rimedju għandha ssir minnufih u l-qorti li tisma' t-talba jkollha l-awtorità li tagħti r-rimedju kif jidhrilha li huwa xieraq,

(2) Mingħajr preġudizzju għad-dispożizzjonijiet ta' dan il-Kodiċi li jirrigwardaw l-ammissibilità tal-evidenza, id-drittijiet tad-difiża u l-proċeduri xierqa għandhom ikunu rispettati fil-proċeduri kriminali kollha, fil-valutazzjoni tad-dikjarazzjonijiet magħmula minn persuni suspettati u akkużati jew mill-evidenza li tinġieb bi ksur tad-dritt tagħhom għal avukat jew f'każijiet fejn deroga għal dan id-dritt kienet awtorizzata skont l-artikolu 355AUA(12).

Persuni vulnerabbli.

355AUJ. (1) Il-Pulizija Eżekuttiva u kull awtorità oħra ta' infurzar tal-liġi jew awtorità ġudizzjarja għandhom jiżguraw li l-bżonnijiet partikolari ta' persuni suspettati vulnerabbli jew persuni akkużati vulnerabbli għandhom jingħataw kas fit-twettieq tad-dispożizzjonijiet ta' dan is-Sub-titolu.

(2) Il-Ministru responsabbli għall-Ġustizzja jista' jagħmel regolamenti biex jagħti effett aħjar lid-dispożizzjonijiet ta' dan l-artikolu.

(3) Għall-finijiet ta' dan is-Sub-titolu, l-espressjoni "persuni vulnerabbli" għandu jkollu l-istess tifsir mogħti lilha fl-artikolu 208AĊ(2).

Klawżola ta' ebda rigressjoni.

355AUK. Xejn f'dan is-Sub-titolu m'għandu jinftiehem li jillimita jew li jidderoga minn kwalunkwe dritt u proċedura ta' salvagwardja li hemm fil-Kostituzzjoni, fil-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, fil-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, jew fi kwalunkwe dispożizzjoni rilevanti oħra ta' liġi internazzjonali jew nazzjonali li huma infurzabbli fil-qrati ta' Malta u li jipprovdu livell ogħla ta' protezzjoni.".

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5. Minnufih wara l-paragrafu (e) tal-artikolu 534AB(1) tal-Kodiċi għandhom jiżdiedu l-paragrafi li ġejjin: Emenda tal-artikolu 534AB tal-Kodiċi.

"(f) id-dritt li terza persuna tiġi infurmata dwar it-tiċħid tal-libertà tal-persuna suspettata jew akkużata;

(g) id-dritt li tikkomunika ma' terzi persuni u mal-awtoritajiet konsulari meta l-persuna suspettata jew akkużata tkun imċaħda mil-libertà tagħha;

(h) id-dritt li tkun tista' tikkonsulta ma' tabib;

(i) jekk il-persuna suspettata jew akkużata tkun illitterata, id-dritt li jkollha l-Ittra ta' Drittijiet moqrija u spjegatha lilha.".

6. Fl-artikolu 658 tal-Kodiċi, minflok il-kliem "jew bil-miktub jew verbalment, tista' tittieħed bi prova kontra min" għandhom jidħu l-kliem "kemm bil-miktub, b'mezzi awdjoviżwali jew b'mezzi oħra, tista' tittieħed bi prova kontra jew favur min, skont kif ikun il-każ,". Emenda tal-artikolu 658 tal-Kodiċi.

7. Fis-subartikolu (1) tal-artikolu 659 tal-Kodiċi, minflok il-kliem "Meta l-konfessjoni titniżżel bil-miktub" għandhom jidħlu l-kliem "Fejn mhuwiex possibbli li tiġi rrekordjata konfessjoni b'mezzi awdjoviżwali skont l-artikolu 355AUA(8)(e), meta l-konfessjoni titniżżel bil-miktub". Emenda tal-artikolu 659 tal-Kodiċi.

8. L-artikolu 660 tal-Kodiċi għandu jiġi sostitwit b'dan li ġej: Sostituzzjoni tal-artikolu 660 tal-Kodiċi.

"Konfessjoni għandha tiġi prodotta sħiħa.

660. Ma tistax tingħata, bħala evidenza, parti biss minn *recording* awdjoviżwali jew ta' dikjarazzjoni bil-miktub jew bil-fomm kontra l-akkużat ħlief f'ċirkostanzi straordinarji li l-qorti tista' tippermetti.".

9. L-Iskeda E li tinsab mal-Kodiċi għandha tiġi emendata kif ġej: Emenda tal-Iskeda E li tinsab mal-Kodiċi.

(a) is-sitt paragrafi taħt l-intestatura "A. ASSISTENZA MINN AVUKAT/DRITT GĦAL GĦAJNUNA LEGALI" fit-Taqsima I tagħha għandhom jiġu sostitwiti b'dan li ġej:

"Inti għandek id-dritt li jkollok aċċess għal avukat waqt li tkun miżmum f'detenzjoni. Dak id-dritt jibda' mill-mument li tkun detenut u qabel ma tiġi interrogat.

Inti għandek id-dritt li tingħata lista ta' avukati u

lista ta' prokuraturi legali li minnhom tista' tagħżel wieħed sabiex jassistik jew tagħżel li tkun asssistit minn Avukat tal-Għajnuna Legali. Fil-każ tal-aħħar, l-assistenza legali hija mingħajr ħlas. Il-pulizija ma tistax tindikalek isem ta' avukat li inti tista' tingaġġja waqt l-arrest jew detenzjoni.

Mhux inqas minn siegħa qabel ma' tibda' l-interrogazzjoni, inti u l-avukat għandkom id-dritt li tkunu infurmati dwar l-allegat reat li għalih inti ser tkun interrogat. Dik l-informazzjoni għandha tingħata lilek qabel ma tibda' l-interrogazzjoni, liema żmien ma jistax ikun inqas minn siegħa qabel ma tibda' l-interrogazzjoni.

Malli tibda' d-detenzjoni, għandek id-dritt li tiltaqa' fil-privat u tikkomunika mal-avukat li qed jirrappreżentak, inkluż qabel ma tinterrogak il-pulizija.

Għandek id-dritt li jkollok l-avukat tiegħek preżenti u jipparteċipa b'mod effettiv waqt li tkun qed tiġi interrogat.

L-interrogazzjoni kollha, it-tweġibiet kollha li jingħataw u l-proċeduri relatati mal-interrogazzjoni tal-persuna suspettata jew akkużata huma, fejn huwa possibbli, irrekordjati b'mezzi awdjoviżwali;, inti għandek id-dritt li tingħata kopja tar-*recording* wara li tkun ġiet konkluża l-interrogazzjoni.

Inti għandek id-dritt li l-avukat tiegħek jattendi għall-atti tal-investigazzjoni jew tal-ġbir ta' evidenza li ġejjin:

(i) ringieli ta' persuni suspettati għal finijiet ta' identifikazzjoni;

(ii) konfrontazzjonijiet;

(iii) rikostruzzjonijiet tax-xena tad-delitt.

Il-kunfidenzjalità tal-komunikazzjoni mal-avukat tiegħek fl-eżerċizzju tat-dritt tiegħek li jkollok aċċess għal avukat tiġi rrispettata.

Malli tiġi arrestat inti għandek tkun infurmat dwar id-dritt tiegħek li tal-inqas persuna waħda, bħal qarib, imgħallem jew kwalunkwe persuna oħra tal-għażla tiegħek tiġi infurmata dwar it-tiċħid tal-libertà tiegħek.

Jekk inti persuna taħt l-età, jiġifieri persuna taħt it-tmintax-il sena, persuna li teżerċita l-awtorità ta' ġenitur, tutela, kurazija jew li tieħu ħsieb il-ħarsien tiegħek tkun infurmata dwar l-arrest jew detenzjoni tiegħek u r-raġunijiet għal dak l-arrest jew detenzjoni.";

(b) il-kliem "Dan id-dewmien ma għandux ikun ta' aktar minn sitt siegħat mill-ħin meta jkun sar tal-arrest." fit-tieni paragrafu taħt l-intestatura "F. ID-DRITT LI TINFORMA LIL XI ĦADD IEĦOR BL-ARREST JEW BID-DETENZJONI TIEGĦEK/ID-DRITT LI TINFORMA L-KONSOLAT JEW L-AMBAXXATA TIEGĦEK" fit-Taqsima I tagħha għandhom jitħassru; u

(ċ) is-sitt paragrafi taħt l-intestatura "B. ASSISTENZA MINN AVUKAT" fit-Taqsima II tagħha għandhom jiġu sostitwiti b'dan li ġej:

"Inti għandek id-dritt li jkollok aċċess għal avukat waqt li tkun miżmum f'detenzjoni. Dak id-dritt jibda' mill-mument li tkun detenut u qabel ma tiġi interrogat.

Inti għandek id-dritt li tingħata lista ta' avukati u lista ta' prokuraturi legali li minnhom tista' tagħżel wieħed sabiex jassistik jew tagħżel li tkun assistit minn Avukat tal-Għajnuna Legali. Fil-każ tal-aħħar, l-assistenza legali hija mingħajr ħlas. Il-pulizija ma tistax tindikalek isem ta' avukat li inti tista' tingaġġja waqt l-arrest jew detenzjoni.

Mhux inqas minn siegħa qabel ma tibda' l-interrogazzjoni, inti u l-avukat għandkom id-dritt li tkunu infurmati dwar l-allegat reat li għalih inti ser tkun interrogat. Dik l-informazzjoni għandha tingħata lilek qabel ma tibda' l-interrogazzjoni, liema żmien ma jistax ikun inqas minn siegħa qabel ma tibda' l-interrogazzjoni.

Malli tibda' d-detenzjoni, għandek id-dritt li tiltaqa' fil-privat u tikkomunika mal-avukat li qed jirrappreżentak, inkluż qabel ma tinterrogak il-pulizija.

Għandek id-dritt li jkollok l-avukat tiegħek preżenti u jipparteċipa b'mod effettiv waqt li tkun qed tiġi interrogat.

L-interrogazzjoni kollha, it-tweġibiet kollha li jingħataw u l-proċeduri relatati mal-interrogazzjoni tal-persuna suspettata jew akkużata huma, fejn huwa

possibbli, rrekordjati b'mezzi awdjoviżwali; inti għandek id-dritt li tingħata kopja tar-*recording* wara li tkun ġiet konkluża l-interrogazzjoni.

Inti għandek id-dritt li l-avukat tiegħek jattendi għall-atti tal-investigazzjoni jew tal-ġbir ta' evidenza li ġejjin:

(i) ringieli ta' persuni suspettati għal finijiet ta' identifikazzjoni;

(ii) konfrontazzjonijiet;

(iii) rikostruzzjonijiet tax-xena tad-delitt.

Il-kunfidenzjalità tal-komunikazzjoni mal-avukat tiegħek fl-eżerċizzju tat-dritt tiegħek li jkollok aċċess għal avukat tiġi rrispettata.

Malli tiġi arrestat inti għandek tkun infurmat dwar id-dritt tiegħek li tal-inqas persuna waħda, bħal qarib, imgħallem jew kwalunkwe persuna oħra tal-għażla tiegħek tiġi infurmata dwar it-tiċħid tal-libertà tiegħek.

Jekk inti persuna taħt l-età, jiġifieri persuna taħt it-tmintax-il sena, persuna li teżerċita l-awtorità ta' ġenitur, tutela, kurazija jew li tieħu ħsieb il-ħarsien tiegħek tkun infurmata dwar l-arrest jew detenzjoni tiegħek u r-raġunijiet għal dak l-arrest jew detenzjoni.".

Emendi konsegwenzjali għall-Att dwar il-Pulizija. Cap. 164.

10. L-Att dwar il-Pulizija għandu jiġi emendat kif ġej:

(a) l-artikolu 67 tiegħu għandu jiġi mħassar;

(b) ir-Raba' Skeda tiegħu għandha tiġi emendata kif ġej:

(i) ir-raba u l-ħames subparagrafi tal-paragrafu 4 tagħha, bit-titolu "Twiddiba" għandhom jiġu mħassra; u

(ii) minnufih wara l-paragrafu 7 tagħha għandu jiżdied il-paragrafu ġdid li ġej:

"7A. Assistenza legali waqt detenzjoni.

Persuna arrestata għandha tibbenefika mid-dritt għall-assistenza legali u mid-drittijiet elenkati fl-artikolu 355AUK(l) tal-Kodiċi Kriminali skont

id-dispożizzjonijiet tas-Sub-titolu IX tal-Ewwel Titolu tal-Ewwel Parti tat-Tieni Ktieb tal-Kodiċi Kriminali u d-dispożizzjonijiet li jinsabu f'dak is-Sub-titolu għandhom japplikaw u jiġu osservati waqt l-arrest, detenzjoni u interrogazzjoni tal-persuna arrestata.

Id-dispożizzjonijiet tal-paragrafi 8, 9 u 10 ta' din l-Iskeda għandhom japplikaw biss f'dawk is-sitwazzjonijiet fejn dikjarazzjoni ma' tkunx tista' ssir b'mezzi awdjoviżwali.".

Għanijiet u Raġunijiet

L-għan u r-raġunijiet ta' dan l-Abbozz ta' Liġi huma li jittrasponu fil-liġi nazzjonali d-dispożizzjonijiet tad-Direttiva 2013/48/UE tal-Parlament Ewropew u tal-Kunsill tat-22 ta' Ottubru 2013 dwar id-dritt tal-aċċess għal avukat fi proċeduri kriminalii u fil-proċeduri tal-mandat tal-arrest Ewropew, u dwar id-dritt li tinforma terza persuna malli tittieħed il-libertà u li tikkomunika ma' terzi persuni u mal-awtoritajiet konsulari waqt li tkun fin-nuqqas tal-libertà ppubblikata fil-Ġurnal Uffiċjali tal-Unjoni Ewropea tas-6 ta' Novembru 2013 (L 294/l), l-inkorporazzjoni ta' numru ta' rakkomandazzjonijiet magħmula fir-Rapport Finali tal-Kummissjoni għar-Riforma Ħolistika fil-Qasam tal-Ġustizzja datat 30 ta' Novembru 2013 (fil-paġni 184-185) relatati mad-dritt tal-assistenza legali u sabiex isiru emendi konsegwenzali oħra kemm fil-Kodiċi Kriminali u fl-Att dwar il-Pulizija fid-dawl tal-imsemmija Direttiva.

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A Bill
entitled

AN ACT to provide for legal assistance during detention and other rights to arrested persons.

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 and commencement.

Cap. 9.

1. (1) The short title of this Act is the Criminal Code (Amendment No. 2) Act, 2016, and this Act shall be read and construed as one with the Criminal Code, hereinafter referred to as "the Code".

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

(3) A notice under sub-article (2) may make such transitory provisions as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought into force and may also delete the words "where possible" in articles 355AUA(8)(c) and (d), and in Schedule E of the Criminal Code.

Substitution of the heading of Sub-title IX of Title I of Part I of Book Second of the Code.

2. The heading of Sub-title IX of Title I of Part I of Book Second of the Code shall be substituted by the following:

"Sub-title IX

Right to Legal Assistance and Other Rights during Detention".

3. Article 355AS of the Code shall be substituted by the following:

Substitution of article 355AS of the Code.

"Right to consult a medical practitioner.

355AS. (1) The suspect or accused person shall, at his request, be allowed to consult a medical practitioner of his choice and, if such medical practitioner is not readily available, any other medical practitioner.

(2) Immediately upon arrest and without undue delay, the Executive Police or any other law enforcement or judicial authority shall inform the suspect or an arrested person of such a right.

(3) A record shall be kept that the suspect or accused person has been duly informed of such right by the Executive Police or by any other law enforcement or judicial authority.

(4) The words "the suspect" and "the accused person" in this article have the same meaning assigned to them by article 355AT(2).".

4. Articles 355AT and 355AU of the Code shall be substituted by the following:

Substitution of articles 355AT and 355AU of the Code.

"Subject matter of this Sub-title.

355AT. (1) This Sub-title transposes the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union on 6 November 2013 (L 294/1).

(2) This Sub-title lays down minimum rules concerning the rights of:

(a) the suspect (hereinafter in this Sub-title referred to as "the suspect"), that is, a person who is detained or arrested by the Executive Police or any other law enforcement or judicial authority where such person has not been charged before a court of justice of criminal jurisdiction and who is being questioned by the Executive Police or any other authority as aforesaid in relation to any criminal offence;

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(b) a person charged or accused of having committed a criminal offence (hereinafter referred to in this Sub-title as "the accused person");

(c) a person subject to proceedings pursuant to Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States of 13 June 2002 published in the Official Journal on 18 July 2002 (L. 190/1), hereinafter referred to as "the European arrest warrant proceedings".

(3) The persons mentioned in sub-article (2) shall enjoy the following rights:

(a) to have access to a lawyer;

(b) to have a third party informed of the deprivation of their liberty; and

(c) to communicate with third persons and with consular authorities whilst deprived of their liberty.

(4) For the purpose of this Sub-title, the expression "lawyer" means an advocate or a legal procurator who is authorised by law to exercise that respective profession in terms of law.

Scope of this Sub-title.

355AU. (1) This Sub-title applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the Executive Police or by any other law enforcement or judicial authority, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.

(2) This Sub-title applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or the accused person has committed an offence, including, where applicable, sentencing and the resolution of any appeal.

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(3) This Sub-title applies also to persons subject to European arrest warrant proceedings in terms of Framework Decision 2002/584/JHA referred to in article 355AT(2)(c) (hereinafter referred to as "the requested persons") from the time of their arrest in accordance with article 355AUJ.

(4) This Sub-title also applies, under the same conditions as provided for in sub-article (1), to persons other than the suspect or the accused person who, in the course of questioning by the Executive Police or by another law enforcement or judicial authority, become suspects or accused persons.

(5) Without prejudice to the right to a fair trial, in respect of minor offences -

(a) where the law provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction,

this Sub-title shall only apply to the proceedings before a court having jurisdiction in criminal matters:

Provided that, in any event, this Sub-title shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

The right of access to a lawyer in criminal proceedings.

355AUA. (1) The suspect or the accused person shall have the right of access to a lawyer in such time and in such a manner so as to allow him to exercise his rights of defence practically and effectively.

(2) The suspect or the accused person shall have access to a lawyer without undue delay. In any event, the suspect or the accused person shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the Executive Police or by another law enforcement or judicial authority in respect of the commission of a criminal offence;

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(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with sub-article (8)(e);

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

(3) A request for legal assistance shall be recorded in the custody record together with the time when it was made unless the request is made at a time when the person who makes it is at court after being charged with an offence in which case the request need not be so recorded.

(4) Once a request for legal assistance is made, the suspect or the accused person shall be provided with a list of lawyers drawn up by the Chamber of Advocates and the Chamber of Legal Procurators and submitted on a yearly basis to the Executive Police and to any other law enforcement and judicial authority, from which the suspect or the accused person may select a lawyer of his own choice. Alternatively, the suspect or the accused person may elect to be assisted by the Advocate for Legal Aid in which case the Advocate for Legal Aid shall assign a lawyer for this purpose.

(5) Without prejudice to the provisions of article 355AUI(3), any police officer who indicates or attempts to indicate to a person detained the advocate or legal procurator who should be engaged during the detention of such person, shall be guilty of an offence and shall be punishable with a fine (*ammenda*) and this without prejudice to any disciplinary proceedings that may be taken against him as a consequence of a finding of guilt in respect of such an offence or in lieu of prosecution for such an offence in accordance with any disciplinary regulations in force from time to time.

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(6) Where the person detained chooses not to seek legal assistance the Executive Police, investigating officer or any other law enforcement or judicial investigating officer shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately. It shall not be admissible for the prosecution to comment during any proceedings before a court of justice of criminal jurisdiction on the fact that the suspect or the accused person did not avail himself of the right to legal assistance in the course of his detention under arrest.

(7) Where in any proceedings before a court of justice of criminal jurisdiction against a person for an offence, evidence is given that the suspect or the accused person -

(a) at any time before he was charged with the offence, on being questioned by the Executive Police or by any other law enforcement or judicial authority trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the suspect or the accused person could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, no inference may be drawn from the suspect's or the accused person's failure to mention facts which may be considered as evidence of guilt or as amounting to corroboration of any evidence of guilt of the suspect or the person accused.

(8) The right of access to a lawyer shall entail the following:

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(a) the suspect or the accused person, if he has elected to exercise his right to legal assistance, and his lawyer, shall be informed of the alleged offence about which the suspect or the accused person is to be questioned. Such information shall be provided to the suspect or the accused person prior to the commencement of questioning, which time shall not be less than one hour before questioning starts;

(b) the suspect or the accused person shall have the right to meet in private and communicate with the lawyer representing him, including prior to questioning by the police or by another law enforcement or judicial authority;

(c) the suspect or the accused person shall have the right for his lawyer to be present and participate effectively when questioned. Such participation may be regulated in accordance with procedures which the Minister responsible for justice may by regulations establish, provided that such procedures shall not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using where possible audiovisual means in terms of paragraph (d):

Provided that the right of the lawyer to participate effectively shall not be interpreted as including a right of the lawyer to hinder the questioning or to suggest replies or other reactions to the questioning and any questions or other remarks by the lawyer shall, except in exceptional circumstances, be made after the Executive Police or other investigating or judicial authority shall have declared that it has no further questions;

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(d) questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person, shall where possible be recorded by audio-visual means and in such case a copy of the recording shall be handed over to the suspect or the accused person following the conclusion of the questioning. Any such recording shall be admissible in evidence, unless the suspect or the accused person alleges and proves that the recording is not the original recording and that it has been tampered with. No transcription need be made of the recording when used in proceedings before any court of justice of criminal jurisdiction, nor need the suspect or the accused person sign any written statement made following the conclusion of the questioning once all the questions and answers, if any, are recorded on audio-visual means;

(e) the suspect or the accused person shall have the right for his lawyer to attend the following investigative or evidence-gathering acts if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a offence.

(9) General information to facilitate the briefing of a lawyer by suspects or accused persons shall be made available in terms of sub-article (4) or such other procedure as the Minister responsible for justice may by regulations establish.

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(10) Notwithstanding the provisions of this Sub-title concerning the mandatory presence of a lawyer, the Executive Police or any other law enforcement or judicial authority shall ensure that suspects or accused persons who are deprived of liberty shall be in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with article 355AUG.

(11) In exceptional circumstances and only at the pre-trial stage, a temporary derogation may be made from the application of the right provided for in sub-article (2)(c) where the geographical remoteness of the suspect or the accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

(12) In exceptional circumstances and only at the pre-trial stage, a temporary derogation from the application of the rights provided for in sub-article (8) may be made to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

(13) For the purposes of this Sub-title, the expression "pre-trial stage" means the stage immediately prior to the filing of the bill of indictment in the Criminal Court or, as the case may be, before the Attorney General sends the record of proceedings to the Court of Magistrates as a Court of Criminal Judicature, in terms of article 370(3), for the person accused to be tried by that court.

Confidentiality.

355AUB. (1) The confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Sub-title shall be respected.

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(2) Such communication shall include meetings, correspondence, telephone conversations and any other form of communication permitted by law.

The right to have a third person informed of the deprivation of liberty.

355AUC. (1) Suspects or accused persons who are deprived of liberty shall be informed, without undue delay, by the Executive Police or by any other enforcement or judicial authority, that they have the right to have at least one person, such as a relative or an employer or any other person of their choice, nominated by them, informed of their deprivation of liberty without undue delay if they so wish, unless such other person is reasonably suspected of being involved in the offence being investigated. A record shall be kept of the manner in which the Executive Police or other law enforcement or judicial authority concerned has discharged its duty under this article.

(2) If the suspect or accused person is a child, at least one person having parental authority, tutorship, curatorship or guardianship in respect of the child shall be informed as soon as possible of the deprivation of liberty and of the reasons therefor, unless it would be contrary to the best interests of the child to do so, in which case another appropriate adult shall be informed. For the purposes of this article, a person below the age of eighteen years shall be considered to be a child.

(3) In all cases, the details of the person mentioned in sub-article (1) or of the holder of parental authority, tutorship, curatorship or guardianship over the child mentioned in sub-article (2) as well as the day and time at which the information was given to such person or holder of parental or other authority as aforesaid, shall be entered in the detention record of the suspect or in the record of the proceedings of the person accused, as the case may be.

(4) It shall be permissible to temporarily derogate from the application of the rights set out in sub-articles (1) and (2) where justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

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(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised:

Provided that in any such case, the delay shall not be later than six hours from the time when the arrest was effected.

(5) Where a derogation from the application of the right set out in sub-article (2) is made, the Executive Police or other law enforcement or judicial authority concerned shall ensure that an authority responsible for the protection or welfare of children, as designated from time to time by the Minister responsible for justice by order in the Gazette, is informed without undue delay of the deprivation of liberty of the child.

The right to communicate, with third persons, while deprived of liberty.

355AUD. (1) The suspect or the accused person who is deprived of liberty shall have the right to communicate without undue delay with at least one third person, such as a relative, friend or other person nominated by him.

(2) A Magistrate may, following a written request from the Executive Police or any other law enforcement authority or from another authority other than a court exercising judicial functions, limit or defer the exercise of the right referred to in sub-article (1) in view of imperative requirements or proportionate operational requirements.

The right to communicate with consular authorities.

355AUE. (1) The suspect or the accused person who is a non-national and who is deprived of liberty shall have the right to have the consular authorities of his State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if he so wishes. However, where the suspect or accused person has two or more nationalities, he may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with which he wishes to communicate.

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(2) Suspects or accused persons shall also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities, subject to the agreement of those authorities and the wishes of the suspects or accused persons concerned.

(3) The exercise of the rights laid down in this article may be regulated by such regulations to be made by the Minister responsible for justice or by such procedures as may be in force from time to time, provided that such regulations or procedures enable full effect to be given to the purposes for which these rights are intended.

General conditions for applying temporary derogations.

355AUF. (1) Any temporary derogation under article 355AUA(11) or (12) or under article 355AUC(4) shall:

(a) be proportionate and not go beyond what is necessary;

(b) be strictly limited in time;

(c) not be based exclusively on the type or the seriousness of the alleged offence; and

(d) not prejudice the overall fairness of the proceedings.

(2) Temporary derogations under article 355AUA(11) or (12) may be authorised only by a duly reasoned decision taken on a case-by-case basis by a Magistrate, which decision may be subject to appeal to the Court of Criminal Appeal as constituted under article 418 by application to be filed within two working days from when the decision is given. The Court of Criminal Appeal shall regulate its own procedure with regard to the determination of such an appeal. The filing of an appeal shall not prevent the execution of the decision of the Magistrate unless the Court of Criminal Appeal otherwise orders. The duly reasoned decision shall be recorded in the relative acts of the proceedings.

(3) Temporary derogations under article 355AUC(4) may be authorised, only on a case-by-case basis, by a Magistrate.

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Waiver.

355AUG. (1) Without prejudice to the provisions of this Sub-title requiring the mandatory presence or assistance of a lawyer, in relation to any waiver of a right as referred to in articles 355AUA and 355AUH:

(a) the suspect or accused person shall be provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it;

(b) the waiver shall be given voluntarily and unequivocally.

(2) The waiver, which can be made in writing or orally, shall be noted as well as the circumstances under which the waiver was given, using any recording procedure permitted by law.

(3) The suspect or accused person may revoke a waiver subsequently at any point during the criminal proceedings, and shall be informed about this possibility. Such a revocation shall have effect only from the moment it is made.

The right of access to a lawyer in European arrest warrant proceedings.

355AUH. (1) A requested person shall have the right of access to a lawyer upon arrest in Malta pursuant to a European arrest warrant.

(2) With regard to the content of the right of access to a lawyer in Malta as the executing Member State, a requested person shall have the following rights in Malta:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested person to exercise his rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing him;

(c) the right for his lawyer to be present and, in accordance with procedures established by law, to participate during a hearing of the requested person by the competent executing judicial authority in Malta. Where a lawyer participates during the hearing, this shall be noted in the records of the proceedings of the competent judicial authority in Malta.

(3) The rights provided for in articles 355AUB, 355AUC, 355AUD, 355AUE, 355AUG, and, where a temporary derogation under article 355AUC(4) is applied, in article 355AUF, shall apply, *mutatis mutandis*, to European arrest warrant proceedings in Malta as the executing Member State.

(4) The competent authority in Malta as the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State, that is, a Member State of the European Union which has issued a European arrest warrant with a view to the arrest and surrender by Malta of a requested person. The role of that lawyer in the issuing Member State shall be to assist the lawyer in Malta, as the executing Member State, by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

(5) Where a requested person wishes to exercise the right to appoint a lawyer in the issuing Member State and does not already have such a lawyer, the competent authority in Malta as the executing Member State shall promptly inform the competent authority in the issuing Member State.

(6) The competent authority in Malta as the issuing Member State in European arrest warrant proceedings shall, without undue delay, upon a request from a competent authority in the executing Member State, provide the requested persons with information to facilitate their appointing a lawyer in Malta.

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(7) The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority in Malta to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

Remedies.

355AUI. (1) The suspect or accused person in criminal proceedings, and the requested persons in European arrest warrant proceedings, shall be entitled to seek redress in the event of a breach of their rights under this Sub-title before the courts of criminal jurisdiction which may be seized of their case, or before a Magistrate. Such a claim for redress shall be filed promptly and the court seized with the claim shall have authority to grant such redress as it deems appropriate, which redress shall be granted without undue delay. There shall be a right of appeal from a decision to grant or to deny such redress to the Court of Criminal Appeal as constituted under article 418. The said appeal shall be made by application to be filed within eight working days from the decision and the Court of Criminal Appeal shall regulate its own procedure with regard to the hearing of such an appeal.

(2) Without prejudice to the provisions of this Code related to the admissibility of evidence, the rights of the defence and the fairness of the proceedings shall be respected in all criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with article 355AUA(12).

Vulnerable persons.

355AUJ. (1) The Executive Police and any other law enforcement or judicial authority shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of the provisions of this Sub-title.

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(2) The Minister responsible for justice may make regulations to give better effect to the provisions of this article.

(3) For the purposes of this Sub-title, the expression "vulnerable person" shall have the same meaning assigned to it by article 208AC(2).

Non-regression clause.

355AUK. Nothing in this Sub-title shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, or other relevant provisions of international or national law which are enforceable in the courts of Malta and which provide a higher level of protection.".

Amendment to article 534AB of the Code.

5. Immediately after paragraph (e) of article 534AB(1) of the Code there shall be added the following paragraphs:

"(f) the right to have a third party informed of the suspect's or the accused person's deprivation of liberty;

(g) the right to communicate with third persons and with consular authorities when the suspect or an arrested person is deprived of his liberty;

(h) the right to be allowed to consult a medical practitioner;

(i) should the suspect or arrested person be illiterate, the right to have the Letter of Rights read out and explained to him.".

Amendment of article 658 of the Code.

6. In article 658 of the Code, for the words "whether in writing or orally, may be received in evidence against the person" there shall be substituted the words "whether in writing, orally, by audiovisual means or by other means, may be received in evidence against or in favour of the person, as the case may be,".

Amendment of article 659 of the Code.

7. In sub-article (1) of article 649 of the Code, for the words "If a confession is reduced to writing" there shall be substituted the words "Where it is not possible to record a confession by audiovisual means in terms of article 355AUA(8)(e), if a confession is reduced to writing".

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Substitution of article 660 of the Code.

8. Article 660 of the Code shall be substituted by the following:

"Confession to be produced in full.

660. It shall not be permissible to give in evidence only a part of an audiovisual recording or of a written or oral statement against the accused except in extraordinary circumstances which the court may allow.".

Amendment of Schedule E to the Code.

9. Schedule E to the Code shall be amended as follows:

(a) the six paragraphs under the heading "A. ASSISTANCE OF A LAWYER/ENTITLEMENT TO LEGAL AID" in Part I thereof shall be substituted by the following:

"You have the right to access a lawyer whilst in detention. Such right begins from the moment of your detention and before you are questioned.

You have the right to be provided with a list of advocates and a list of legal procurators from which you can choose one to assist you or to elect to be assisted by the Advocate for Legal Aid. In the latter case, legal assistance is free of charge. The police may not indicate to you the name of the lawyer you may engage during your arrest or detention.

Not less than one hour before the commencement of questioning, you and your lawyer have the right to be informed of the alleged offence about which you will be questioned. Such information shall be provided to you prior to the commencement of questioning, which time shall not be less than one hour before questioning starts.

Upon detention, you have the right to meet in private and communicate with the lawyer representing you, including prior to questioning by the police.

You have the right for your lawyer to be present and participate effectively when questioned.

All questioning, all answers given thereto and all the proceedings related to the questioning of the suspect or accused person are, where possible, to be recorded by audio-visual means; you have the right to be given a copy of the recording following the conclusion of the questioning.

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You have the right for your lawyer to attend the following investigative or evidence-gathering acts:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of an offence.

The confidentiality of your communication with your lawyer in the exercise of your right to access a lawyer shall be respected.

Upon arrest you are to be informed of your right to have at least one person, such as a relative, an employer or any other person of your choice informed of your deprivation of liberty.

If you are a child, that is, a person below the age of eighteen years, a person entitled to exercise parental authority, tutorship, curatorship or guardianship over you is informed of your arrest or detention and the reasons for such arrest or detention.";

(b) the words "Such delay may not be more than six hours from the time of arrest." in the second paragraph under the heading "F. INFORMING SOMEONE ELSE ABOUT YOUR ARREST OR DETENTION/INFORMING YOUR CONSULATE OR EMBASSY" in Part I thereof shall be deleted; and

(c) the six paragraphs under the heading "B. ASSISTANCE OF A LAWYER" in Part II thereof shall be substituted by the following:

"You have the right to access a lawyer whilst in detention. Such right begins from the moment of your detention and before you are questioned.

You have the right to be provided with a list of advocates and a list of legal procurators from which you can choose one to assist you or to elect to be assisted by the Advocate for Legal Aid. In the latter case, legal assistance is free of charge. The police may not indicate to you the name of the lawyer you may engage during your arrest or detention.

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The confidentiality of your communication with your lawyer in the exercise of your right to access a lawyer shall be respected.

Upon arrest you are to be informed of your right to have at least one person, such as a relative, an employer or any other person of your choice informed of your deprivation of liberty.

If you are a child, that is, a person below the age of eighteen years, a person exercising parental authority, tutorship, curatorship or guardianship over you is informed of your arrest or detention and the reasons for such arrest or detention.".

Consequential amendments to the Police Act. Cap. 164.

10. The Police Act shall be amended as follows:

(a) article 67 thereof shall be deleted;

(b) the Fourth Schedule thereto shall be amended as follows:

(i) the fourth and fifth sub-paragraphs of paragraph 4 thereof, entitled "Caution" shall be deleted; and

(ii) immediately after paragraph 7 thereof there shall be added the following new paragraph:

"7A. Legal assistance during detention.

An arrested person shall benefit from the right to legal assistance and from the rights listed in article 355AUK(1) of the Criminal Code in terms of the provisions of Sub-title IX of Title I of Part I of Book Second of the Criminal Code and the provisions contained in the said Sub-title shall apply and be observed during the arrest, detention and questioning of an arrested person.

The provisions of paragraphs 8, 9 and 10 of this Schedule shall apply only in those situations where a statement cannot be taken by audiovisual means.".

Objects and Reasons

The object and reasons of this Bill are to transpose into national law the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty published in the Official Journal of the European Union on 6 November 2013 (L 294/1), to incorporate a number of recommendations made in the Final Report of the Kummissjoni għal Riforma Ħolistika fil-Qasam tal-Ġustizzja dated 30 November 2013 (at pp. 184-185) related to the right to legal assistance and to make other consequential amendments both to the Criminal Code and the Police Act in the light of the aforesaid Directive.

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