

MEMORANDUM FOR THE CABINET BY THE HON MINISTER OF JUSTICE  
AND PARLIAMENTARY AFFAIRS ON THE ATTACHED TWO SETS OF  
AMENDMENTS TO THE CRIMINAL CODE

1. Two sets of amendments to the Criminal Code are being submitted for the Cabinet's approval with this Memorandum. The set of amendments intended to introduce the right of appeal from decisions given in any trial by jury are by far the most important since they are intended to implement the provision of section 104(1) of the Constitution of Malta which lays down that not later than three years from the date of Independence "there shall be a right of appeal to a Superior Court against any judgment, other than a judgment of acquittal, of any Superior Court given in its original jurisdiction in any criminal matter."

Amendments intended to introduce the right of appeal.

2. In the drafting of these amendments, the provisions of the British law on the same subject have been closely followed in so far as possible within the framework of our Criminal Code. This has been done because it has been deemed proper to draw up from the experience which the British legislator has accumulated in the course of sixty years, it being well known how very careful he has been from time to time to review his own law on criminal appeals, such last review having been carried out as recently as last year with the enactment of the Criminal Appeal Act, 1966 as a result of the Report of the Interdepartmental Committee on the Court of Criminal Appeal presented to Parliament in 1965.

3. There is, however, a fundamental difference between the right of appeal in criminal matters in the United Kingdom law and such right in the Bill which is being submitted to the Cabinet. In fact, while in the United Kingdom legislation the right of appeal is only granted as of right against the conviction of the accused on any ground of appeal which involves a question of law alone, in the present Bill the right of appeal is granted to the accused person as of right both against the conviction and against the sentence (unless it is a sentence fixed by law) in any case and without any restriction, this being due to the express mandatory terms of the provision of the Constitution of Malta reported above, which does not allow otherwise.

4. One of the main consequences of the introduction of the right of appeal from decisions given in trials by jury

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is that the Criminal Court shall henceforth always consist of only one Judge and the present provision in section 448(2) of the Criminal Code, whereby the Court is to consist of three Judges in cases in which the punishment of death is demanded in the indictment and in cases of offences liable to hard labour or imprisonment for a term exceeding twelve years, is deleted. Similarly, the Criminal Court is no longer to be constituted of three Judges whenever a point of law is to be decided, the principle now affirmed and adopted being that, once the decisions given by the Criminal Court are always subject to appeal, at least in so far as the accused is concerned, one Judge alone can be entrusted to give any decision on any matter.

5. Another important consequence of the introduction of the right of appeal is the repeal of section 498 of the Criminal Code which empowers the Court, whenever it is of the opinion that a verdict of guilty returned by the jury is erroneous, ex officio or at the request of the accused, to "order a new trial before another jury whose verdict shall be final". The reason for the repeal of this provision is obvious: on the one hand the Constitution of Malta does not allow any verdict of the jury to "be final" and, on the other hand, if the jury in a new trial were again to return a verdict of guilty, it would be absurd to grant a right of appeal against the identical verdicts of two different juries.

6. *When dealing with appeals from decisions given in the Criminal Court*  
The Court of Criminal Appeal will consist of three Judges, namely, the Chief Justice, the Vice-President of the Constitutional Court and another of Her Majesty's Judges appointed by the Governor-General.

7. The fundamental principle asserted in the Bill is that the Court of Criminal Appeal shall allow an appeal against conviction "if they think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory or that the judgment of the Criminal Court should be set aside on the ground of a wrong decision of any question of law or that there was a material irregularity in the course of the trial". But the Court of Criminal Appeal shall not, in any case, allow an appeal "if they consider that no miscarriage of justice has actually occurred." The United Kingdom Criminal Appeal Act, 1907, was even stricter than this since the Court of Criminal Appeal, under that Act, would not

allow/....

allow an appeal if they considered that there was no substantial miscarriage of justice. However, the Criminal Appeal Act, 1966 has deleted the word "substantial" and, in the present Bill, the more recent approach to the matter by the British legislator has been adopted. This is, of course, all to the advantage of the accused.

8. Right of appeal is granted to the person accused against a verdict of the jury of "not guilty on the ground of his insanity". On any such appeal the Court of Criminal Appeal may -

- a) dismiss the appeal and confirm the verdict, which will imply that the person concerned will have to remain in custody in the Hospital for Mental Diseases;
- b) substitute a verdict of acquittal for the verdict of the jury, if the Court is satisfied that the accused was not responsible for the facts or omissions constituting the offence: this will imply repeal of the order remitting the accused to the Hospital for Mental Diseases;
- c) dismiss the appeal if the Court is satisfied that the accused committed facts or made omissions constituting an offence other than the offence charged and was insane at the time of such facts or omissions: this will imply that the order of the Criminal Court remitting the accused to the Hospital for Mental Diseases will have to stand firm;
- d) sentence the accused for the offence charged or any offence involved, if the Court is satisfied that the accused was guilty of such offence and that he was not insane at the time thereof: but in this case the Court would never pass a sentence of death.

9. A woman who has been sentenced to death and whose allegation of pregnancy has not been upheld by the special verdict of the jury, may appeal against such verdict and, if the Court of Criminal Appeal were to allow such an appeal, the Court would substitute for the death sentence a sentence of imprisonment with hard labour for life.

10. The Court of Criminal Appeal is given special powers to allow the production of new evidence if it deems so proper in the interests of justice, and certain circumstances

are/.....

are set out under which the Court would be bound to allow the production of such new evidence. However, in the case of the production of new evidence, the Court of Criminal Appeal may if it thinks that the interests of justice so require, instead of acquitting the accused, order that he be retried upon a fresh indictment. The necessity of this provision is obvious as the prosecution should in certain circumstances be placed in the position of causing further investigations to be made in the light of the fresh evidence produced.

11. The Crown Advocate-General is not under any circumstances, granted any right of appeal from a verdict of acquittal or from a sentence but is only granted the right of appeal from a decision given by the Criminal Court, after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty (namely, before the trial proper starts before the jury), on any of the following pleas:-

- a) plea to the jurisdiction of the Court;
- b) plea of nullity or of defect in the indictment;
- c) plea of extinguishment of action;
- d) plea of "autrefois convict" or "autrefois acquit";
- e) plea as to the admissibility of the evidence intended to be produced in the trial.

12. The Bill contains provisions enabling the Court of Criminal Appeal to stay the execution of the sentence pending and until determination of the appeal.

13. The Bill establishes a machinery which may be of great help in the exercise of the prerogative of mercy, since it contains a provision which empowers the Prime Minister either to refer a whole case to the Court of Criminal Appeal to be dealt with as an appeal by the person convicted or to refer to that Court any particular point for their opinion. By laying down that, in any such case, the Court of Criminal Appeal may exercise its functions in the absence of the person concerned, the provision under reference makes also possible the rehabilitation of an innocent person who has been convicted erroneously, after such person's death.

Other/....

Other amendments to the Criminal Code

14. The other set of amendments being submitted to the Cabinet concerns amendments made in order to bring certain provisions of the Criminal Code in line with Malta's Independence and amendments made in order to increase pecuniary punishments in certain cases.

Amendments consequential to Independence.

15. In section 5 of the Criminal Code, which contains provisions as to the jurisdiction of our criminal courts, references to "any natural-born or naturalized Maltese" have been replaced by references to "any citizen of Malta".

16. In section 56 which makes it a crime to "subvert or attempt to subvert the Government of Her Majesty, Her Heirs and Successors, established in the Island of Malta and its Dependencies, or in any other of the dominions of the British crown", the underlined words have been deleted. These same words have been deleted where they occur in sections 71 and 73 of the Criminal Code, which respectively deal with the unlawful endeavour to compel Government to alter measures or counsels and with unlawful assembly with seditious intent.

17. In section 179, which makes it a crime to counterfeit "the Great Seal of the Realm, Her Majesty's Privy Seal, or the Public Seal of Malta", the reference to the Great Seal of the Realm has been cancelled.

18. Section 303 of the Criminal Code lays down that "Whosoever shall purchase or otherwise receive from any person belonging to or in the employment of the Naval, Military or Air Service, any kind of provisions, ammunition or clothing, or other articles of Naval, Military, or Air Force Service, for the disposal of which no written permission shall have been given by the competent authority, shall, on conviction be liable to a fine (multa) or imprisonment for a term not exceeding one month". These references to the "Naval Military, or Air Service" are now replaced by references to the "armed forces of Malta".

Increase of pecuniary punishments

19. Magistrates and Judges have been complaining that, in certain cases in which the law confers them the discretion

to apply/....

to apply imprisonment or a "multa", they have often found themselves in a difficult position because, while on the one hand they did not feel that they should inflict imprisonment, on the other hand they felt that the maximum multa which the law allowed them to inflict was too low in the particular circumstances with which they were to deal. Moreover, the "multa" established in the Criminal Code for certain crimes nowadays appears completely inadequate to the nature of the offence involved. The Bill, therefore, increases from £20 to £200 the maximum multa established generally by section 13(1) of the Criminal Code for cases in which the law does not otherwise provide and from £40 to £400 in the case of concurrent offences. Moreover the maximum "multa" is increased from £100 to £500, from £50 to £200 and from £25 to £100 respectively in the case of involuntary homicide, involuntary grievous harm of greater gravity and involuntary grievous harm of lesser gravity.

Coming into force of amendments.

20. All the amendments will come into force on the 20th September, 1967 so as to give time to the Registrar of the Superior Courts and to the Judges to organise themselves for the fundamental change in our criminal system brought about by the introduction of the right of appeal from decisions in trials by jury. Amongst other things the provision of the Criminal Code which lays down that shorthand notes of the proceedings at the trial are to be taken, and which is still not in force, will have to be brought into operation.

21. Hon. Ministers are asked to approve the two sets of amendments under reference for inclusion in a single Bill amending the Criminal Code.

12th July, 1967.

THIRD  
(Revised Draft)

Proposed amendments to the Criminal Code  
to introduce right of appeal from Judgments of H.M.'s  
Criminal Court

Amendment of  
section 414  
of the  
principal  
law.

1. Immediately after subsection (5) of section 414 of the principal law there shall be added the following proviso:-

"Provided that the Crown Advocate-General shall file such application if the accused by application to the Court of Criminal Inquiry makes a request to that effect before the record is transmitted to the Crown Advocate-General in terms of <sup>the law present</sup> ~~this~~ subsection".

Amendment of  
section 429  
of the  
principal  
law.

2. Section 429 of the principal law shall be amended as follows:-

- (a) in subsection (1), for the words "His Majesty's Criminal Court" there shall be substituted the words "Her Majesty's Court of Criminal Appeal";
- (b) in subsection (2), for the words "Her Majesty's Criminal Court" there shall be substituted the words "Her Majesty's Court of Criminal Appeal".

Substitution  
of section  
430 of the  
principal  
law.

3. For section 430 of the principal law there shall be substituted the following:-

"Constitution of Court of Criminal Appeal for appeals from judgments of Court of Judicial Police. 430. One of the Judges ordinarily sitting in Her Majesty's Court of Criminal Appeal or ordinarily sitting in Her Majesty's Criminal Court shall sit without a jury in Her Majesty's Court of Criminal Appeal for the hearing and determination of appeals from judgments of the Court of Judicial Police".

Amendment of  
section 445  
of the  
principal  
law.

4. In subsection (3) of section 445 of the principal law, for the words "if he and two of His Majesty's Judges, other than the Judge ordinarily sitting in His Majesty's Criminal Court, shall be of the opinion" there shall be substituted the words "if he and one of Her Majesty's Judges, other than a Judge ordinarily sitting in Her Majesty's Court of Criminal Appeal or a Judge ordinarily sitting in Her Majesty's Criminal Court, shall be of the opinion".

Amendment of section 448 of the principal law.

5. Section 448 of the principal law shall be amended as follows:-

(a) for subsections (1) and (2) there shall be substituted the following:-

"(1) Her Majesty's Criminal Court shall consist of one of Her Majesty's Judges sitting with a jury for the trial of every offence which may be prosecuted according to law in the Island of Malta and its Dependencies saving the provisions of section 382";

(b) subsections (3), (4), (5) and (6) shall be respectively renumbered as subsections (2), (3), (4) and (5).

Amendment of section 458 of the principal law.

6. Section 458 of the principal law shall be amended by the deletion of subsections (9) and (10).

Amendment of section 461 of the principal law.

7. Section 461 of the principal law shall be amended as follows:-

(a) by the deletion of subsection (6);

(b) by the renumbering of subsection (7) as subsection (6).

Amendment of section 466 of the principal law.

8. Section 466 of the principal law shall be amended as follows -

(a) for subsection (3) there shall be substituted the following:-

"(3) The Court shall determine any plea as to the admissibility of evidence after hearing the Crown Advocate-General and the accused or his advocate in the manner prescribed in section 502;"

(b) in subsection (5) there shall be deleted the words "whether consisting of three Judges, or of one Judge only, in accordance with the provisions of section 448".

Amendment of section 476 of the principal law.

10. In section 476 of the principal law, for the words beginning with the words "the Judge or" and ending with the words "address the jury" there shall be substituted the words "the Judge shall address the jury".

Amendment of section 491 of the principal law.

11. For subsection (4) of section 491 of the principal law there shall be substituted the following:-

"(4) The Court shall pronounce judgment on any question so referred to it by the jury on the



Amendment of  
section 474A  
of the  
principal  
law.

9. Section 474A of the principal law shall be amended as follows:-

- (a) by the deletion in subsection (1) of the words "sitting with or without a jury";
- (b) by the deletion in the same subsection of the words "the Court so directs" and the substitution therefor of the words "Her Majesty's Criminal Court or Her Majesty's Court of Criminal Appeal so directs".

same day or on any other day, after hearing the Crown Advocate-General and the accused or his advocate in the manner provided in section 502".

Repeal of section 498 of the principal law.

12. Section 498 of the principal law is hereby repealed.

Amendment of section 502 of the principal law.

13. For subsection (2) of section 502 of the principal law there shall be substituted the following:-

"Issue to be determined by Court.

(2) After the submission of the Crown Advocate-General and of the accused or his advocate, the Court shall decide whether the punishment demanded is that which ought to be applied according to law and, if it decides that it is not, it shall determine the punishment applicable to the case, stating the reasons for its decision.

Substitution of section 503 of the principal law.

14. For section 503 of the principal law there shall be substituted the following:-

"Judgment.

503. The Court shall pronounce judgment as soon as possible."

Repeal of section 505 of the principal law.

15. Section 505 of the principal law is hereby repealed.

Amendment of section 507 of the principal law.

16. Section 507 of the principal law shall be amended as follows:-

(a) in subsection (1), there shall be deleted the words "or any of the sitting Judges, as the case may be,";

(b) in subsection (3), there shall be deleted the words beginning with the words "and the Court" and ending with the words "of acquitting the accused", and for the semicolon after the word "guilty" there shall be substituted a full-stop.

Insertion of new sections in the principal law.

17. Immediately after section 508 of the principal law, there shall be inserted the following new title and sections:

"TITLE V

OF HER MAJESTY'S COURT OF CRIMINAL APPEAL

Her Majesty's Court of Criminal Appeal.

508 A. (1) There shall be a Court of Criminal Appeal which shall have jurisdiction to hear and determine appeals under this Title and appeals from judgments of the Court of Judicial

Police as well as to deal with other proceedings under this Title.

(2) Saving the provision of section 430 in regard to the constitution of the said Court for the hearing of appeals from judgments of the Court of Judicial Police, Her Majesty's Court of Criminal Appeal shall consist of the Chief Justice, who shall be the President of the Court, the Vice-President of the Constitutional Court and another of Her Majesty's Judges appointed by the Governor-General:

Provided that, in the case of absence or lawful impediment of any of the members of the Court, the Governor-General shall appoint another or others of Her Majesty's Judges to sit instead, so, however, that the Vice-President of the Constitutional Court if present and able to sit shall preside over the Court in the absence or lawful impediment of the Chief Justice.

(3) The determination of any question before the Court of Criminal Appeal shall be according to the opinion of the majority of the members of the Court hearing the case and one judgment shall be delivered as the judgment of the whole Court.

(4) The Court of Criminal Appeal shall for the purposes of and subject to the provisions of this Title have full power to determine, in accordance with this Title, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

(5) The provisions contained in this Title shall not apply to appeals from judgments of the Court of Judicial Police.

Appeal at  
the instance  
of the  
accused or  
of the  
Crown  
Advocate-  
General.

508 B. (1) An appeal shall lie to the Court of Criminal Appeal at the instance of the accused or of the Crown Advocate-General from any decision given after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty from any decision on any of the pleas referred to in paragraphs (a), (b), (c), (d) and (g) of subsection (1) of section 461 and from any decision

given/....

given at the stage referred to in subsection (1) of section 466 on the plea to the admissibility of evidence therein mentioned.

(2) An appeal shall also lie at the instance of the accused from any decision given on an application of the Crown Advocate-General under subsection (5) of section 414 or from any decision given after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty on any of the pleas referred to in paragraphs (e) and (f) of the said subsection (1) of section 461.

(3) Where the accused or, as the case may be, the Crown Advocate-General desires to enter an appeal under subsection (1) or (2) of this section he must give notice of appeal by means of a note immediately after the decision of the Court is pronounced and thereupon the Court, if the case so requires, shall stay further proceedings until the expiration of the time allowed as hereinafter provided for the appeal or, if an appeal is entered, until the determination thereof by the Court of Criminal Appeal.

(4) An appeal under subsection (1) or (2) of this section shall be made by application filed in the Court of Criminal Appeal within three working days from the date of the decision appealed from.

(5) Any appeal made under this section by the Crown Advocate-General shall not stay the execution of the decision appealed from.

(6) On any appeal under this section, the Court of Criminal Appeal shall, if they allow the appeal, set aside the decision appealed from and make such order for the discharge of the accused or the further prosecution of the proceedings or give such other directions as the case may require.

(7) The default of the accused to make an appeal under this section shall not preclude him from raising the question which he could have raised by any such appeal in any appeal which he may make under the next following section.

*for make such  
other orders  
including  
orders for the  
re-arrest or  
custody of  
the person  
accused*

Appeals  
against  
conviction  
or sentence.

508 C. A person convicted on indictment may appeal to the Court of Criminal Appeal against his conviction in all cases or against the sentence passed on his conviction unless the sentence is one fixed by law.

Determina-  
tion of  
appeals in  
ordinary  
cases.

508 D. (1) The Court of Criminal Appeal on any appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory or that the judgment of the Criminal Court should be set aside on the ground of a wrong decision of any question of law or that there was a material irregularity in the course of the trial, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(2) Subject to the special provisions of the next following section, the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence the Court of Criminal Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (not being a sentence of greater severity) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal.

Powers of  
Court of  
Criminal  
Appeal in  
special  
cases.

508 E. (1) If it appears to the Court of Criminal Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as they think proper and as may be warranted in law by the verdict on the count or part/....

part of the indictment on which the Court consider that the appellant has been properly convicted:

Provided that such other sentence shall not be of greater severity than the sentence passed at the trial taken as a whole, whether or not the last-mentioned sentence was expressed to be passed on that part of the indictment.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Criminal Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) Where on conviction of the appellant the jury have found a verdict falling within the provision of subsection (3) of section 491, and the Court of Criminal Appeal consider that a wrong conclusion has been arrived at by the Criminal Court on the effect of that verdict, the Court of Criminal Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence (not being a sentence of greater severity) in substitution for the sentence passed at the trial as may be warranted in law.

(4)  
508 F. (1) A person in whose case a verdict of not guilty on the ground of his insanity at the time of the act or omission charged is returned may appeal against the verdict and on any such appeal the same provision as contained in subsection (1) of section 508 D shall, subject as hereinafter provided, apply.

(2) Where apart from this section -

(e)/....

(4) Where on an appeal against conviction

the Court of Criminal Appeal are of opinion that although the appellant committed the act or made the omission charged against him he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody in the Hospital for Mental Diseases in which case the provisions of subsections (1), (2) and (3) of section 619 shall apply.

- (a) an appeal against a verdict such as is mentioned in subsection (1) of this section would fall to be allowed, and
- (b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Criminal Appeal may dismiss the appeal if of opinion that, but for the insanity of the accused, the proper verdict would have been that he was guilty of an offence other than the offence charged.

(3) In the case of an appeal under subsection (1) of this section the appeal may be heard and determined in the absence of the appellant and, if he is not assisted by an advocate, the provisions of section 512 shall apply.

(4) Where in accordance with subsection (1) of this section an appeal is allowed -

- (a) if the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Criminal Appeal are of opinion that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court shall substitute for the verdict of not guilty on the ground of insanity a verdict of guilty of that offence, and shall have the like powers of punishing or otherwise dealing with the accused as the Court before which he was tried would have had if the jury had come to the substituted verdict;
- (b) in any other case, the Court of Criminal Appeal shall substitute for the verdict of the jury a verdict of acquittal:

Provided that where the offence mentioned in paragraph (a) is one for which the sentence is fixed by law, the sentence shall (whatever the circumstances)



be one of imprisonment for life or for a term not less than twelve years.

(5) The term of any sentence passed by the Court of Criminal Appeal in the exercise of the powers conferred by paragraph (a) of subsection (4) of this section shall, unless the Court otherwise direct, begin to run from the time when it would have begun to run if passed in the proceedings in the Criminal Court.

Appeal from verdict on allegation of pregnancy.

L-ARKIVJI NAZZJONALI TA' MALTA

508 G. (1) Where a sentence of death has been passed upon a woman consequent upon a verdict of the jury under Sub-Title I of Title VIII of Part II of Book First of this Code that she is not pregnant, the person so sentenced may appeal against such verdict to the Court of Criminal Appeal and, if such an appeal is allowed, the Court shall quash that sentence and pass in substitution therefor a sentence of imprisonment with hard labour for life.

(2) The time for filing the application of appeal shall be reckoned from the date of sentence or, if the allegation that the woman is pregnant is made after sentence has already been passed as provided in section 615, from the date of the verdict.

Form and time for entering appeal.

508 H. Any appeal under this Title shall be brought before the Court of Criminal Appeal by an application to be filed in that Court, except where otherwise provided, within fifteen working days from the date of the decision appealed from.

Contents of application of appeal.

508 I. (1) Besides the indications common to judicial acts, the application shall contain a brief but clear statement of the facts of the case, the grounds of the appeal and the relief sought by the appellant.

(2) The application shall, on pain of nullity, be signed by an advocate or by the appellant himself.

(3) The record of the proceedings of the Criminal Court shall be lodged by the Registrar

of/....

of the Superior Courts before the Court of Criminal Appeal within two working days from the day when the application is filed.

(4) A copy of the application shall be served on the Crown Advocate-General or on the accused, as the case may require, at least eight working days before the day appointed for the hearing of the appeal, unless the Court shall in any case of urgency direct service with a shorter notice.

Supplemental powers of the Court of Criminal Appeal.

508 J. The Court of Criminal Appeal may, if they think it necessary or expedient in the interests of justice -

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case; and
- (b) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend for examination and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in any manner provided by law; and
- (c) if they think fit receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application, subject to the provisions of section 631.

Duty to admit evidence.

508 K. Without prejudice to the generality of the last preceding section, where evidence is tendered to the Court under that section, the Court shall, unless they are satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise their power under that section of receiving it if -

- (a) it appears to them that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and
- (b) they are satisfied that it was not adduced at the trial, but that there is a reasonable explanation for the failure so to adduce it.

Power of  
Court of  
Criminal  
Appeal to  
order new  
trial.

508 L. (1) Where an appeal against conviction is allowed by reason only of evidence received or available to be received by the Court of Criminal Appeal under sections 508 J and 508 K and it appears to the Court that the interests of justice so require, the Court may, instead of directing the entry of a judgment and verdict of acquittal as provided by subsection (2) of section 508 D or by paragraph (b) of subsection (4) of section 508 F, order the appellant to be retried.

(2) An appellant shall not be retried by virtue of this section for any offence other than -

- (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as aforesaid;
- (b) any offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
- (c) any offence charged in an alternative count of the indictment in respect of which the jury were discharged from giving a verdict in consequence of convicting him of the first-mentioned offence.

(3) An appellant who is to be retried for an offence in pursuance of an order under subsection (1) of this section shall be tried upon a fresh indictment.

(4) The Court of Criminal Appeal may, upon ordering a retrial under subsection (1) of this section, make such orders as appear to the Court to be necessary or expedient for the custody or admission to bail of the appellant pending the retrial.

(5) Where a new trial is ordered under subsection (1) of this section in the case of a person who, immediately before the determination of his appeal, was liable to be detained in the Hospital for Mental Diseases in pursuance of the order of the Criminal Court, the order shall continue in force pending the retrial as if the appeal had not been allowed and any order made by the Court of Criminal Appeal under the last preceding subsection of this section for his custody or admission to bail shall have effect subject to the said order.

(6) On a retrial ordered under subsection (1) of this section a transcript of the shorthand notes of the evidence given by any witness at the original trial may, with the leave of the Judge, be read as evidence -

- (a) by agreement between the prosecution and the defence; or
- (b) if the Judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find him or to secure his attendance have been made without success.

(7) Where a person ordered to be retried under subsection (1) of this section is again convicted on the retrial, the Criminal Court may pass in respect of the offence any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction.

(8) Where the person convicted on retrial is sentenced to imprisonment or detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run, but in computing the term of his sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded any time during which he was at large after being admitted to bail under subsection (4) of this section.

Stay of  
execution  
of judgment.

508 M. (1) Except where a person has been convicted of a crime referred to in subsection (1)

of/....

of section 569, the Court of Criminal Appeal may, if they deem fit, on the application of the appellant admit the appellant to bail pending the determination of his appeal made under section 508 B or 508 C.

(2) The provisions of Title IV of Part II of Book Second of this Code shall mutatis mutandis apply.

(3) The time during which an appellant, pending the determination of his appeal, is admitted to bail shall not count as part of any term of imprisonment or detention under his sentence.

(4) Any time during which the appellant is in prison pending determination of the appeal shall count as part of the term of imprisonment or detention under his sentence.

Challenge or  
abstention  
of Judge.

508 N. (1) Any objection to any Judge sitting in the Court of Criminal Appeal shall be raised, and the decision of the Court thereon shall be given, before the appellant begins to make his submissions to the Court on the merits of the appeal.

(2) The provisions of subsections (2), (3), (4), (5), (6), (7) and (8) of section 458 and the provisions of section 459 shall apply in any proceedings before the Court of Criminal Appeal, so, however, that, for the purpose of such proceedings, any reference in those provisions to the reading out of the indictment shall be construed as a reference to the commencement of the submissions by the appellant on the merits of the appeal, the reference in the said subsections (2) and (4) to the accused shall be construed as a reference to the appellant and the reference in the said subsection (4) to the hearing of the cause shall be construed as a reference to the hearing of the appeal.

Death or  
illness of  
Judge, Crown  
Advocate-  
General, or  
accused or  
his advocate.

508 O. (1) If, during the hearing of the appeal, any of the sitting Judges dies or becomes ill, another Judge shall be surrogated as provided under section 508 A and all proceedings shall take place anew if the Court, in the interests of justice, shall so deem fit or if the accused makes a demand to that

effect/....

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K  
(2) The power of the Court of Criminal Appeal

under subsection (1) of this section to admit an appellant to bail, may be exercised by any Judge of the Court in the same manner as it may be exercised by the Court and subject to the same provisions; but, if the Judge refuses an application on the part of the appellant, the appellant shall be entitled to have the application determined by the Court of Criminal Appeal.

effect:

Provided that the proceedings shall in any case take place anew where the surrogated Judges are two or more:

Provided further that it shall not be lawful to raise again any objection to a Judge sitting in the Court which has been already decided or any question on which the Court has already given judgment before the surrogation of the Judge or Judges has taken place.

(2) If the Crown Advocate-General dies or becomes ill or if the advocate for the appellant dies or becomes ill or if the appellant himself becomes ill, during the hearing of the appeal, it shall be within the discretion of the Court as the interests of justice may require to order that all proceedings shall take place anew:

Provided that in the case of the death of the advocate for the appellant or in the case of illness of such advocate and substitution by another advocate, all proceedings shall always take place anew if the appellant makes a demand to that effect.

508 P. (1) The provisions of section 432, subsection (1) of section 433, sections 434, 435, 437, 439, 454, 456 and 464 shall apply in any proceedings before the Court of Criminal Appeal, provided that, for the purpose of such proceedings, any reference in those provisions to the Superior Court and to the Inferior Court shall be construed as being a reference respectively to the Court of Criminal Appeal and to the Criminal Court.

(2) Notwithstanding the provisions of section 432, where the appellant who has made the declaration on oath referred to in that section, cannot be assisted by the Advocate for Poor for the reason stated in paragraph (a) of the same section and where he was assisted before the Criminal Court by an advocate appointed in terms of section 565, the Court of Criminal Appeal shall, in so far as possible, appoint/....

appoint the same advocate to assist the appellant in the proceedings of appeal, and the provisions of sections 565, 566 and 567 shall apply in respect of such appointment.

Recommendation by Judge sitting in the Court of Criminal Appeal.

508 Q. Any Judge may exercise, in relation to any matter which has been dealt with by the Court of Criminal Appeal while he was sitting therein, the power of recommendation mentioned in section 506 in like manner as such power may be exercised by a Judge sitting in the Criminal Court.

Functions of Registrar and Marshal may be performed by Deputy Registrar and Usher respectively.

508 R. The functions of the Registrar and of a Marshal may, in the Court of Criminal Appeal, be performed by a Deputy Registrar or an Usher respectively.

Prerogative of mercy.

508 S. (1) Nothing in this Title shall affect the prerogative of mercy, but the Prime Minister on an application made to him by a person convicted on indictment or without any such application may, if he thinks fit, at any time either -

- (a) refer the whole case to the Court of Criminal Appeal and the case shall then be treated for all purposes as an appeal to that Court by the person convicted, or
- (b) if he desires the assistance of the Court of Criminal Appeal on any point arising in the case, refer that point to that Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Prime Minister with their opinion thereon accordingly.

(2) The power of the Court of Criminal Appeal to exercise its functions under this section may be exercised notwithstanding that the person concerned is for any reason not present.

Interpretation. 508 T. In this Title, unless the context otherwise requires, the expression "appellant" includes a person who has been convicted and desires to appeal under this Title; and



the expression "sentence" includes any order of the Court made on conviction with reference to the person convicted and the power of the Court of Criminal Appeal to pass a sentence includes a power to make any such order."

Substitution of General Title preceding section 509 of the principal law.

18. For the title "PROVISIONS APPLICABLE TO THE COURTS OF JUDICIAL POLICE AND TO HIS MAJESTY'S CRIMINAL COURT", immediately preceding section 509 of the principal law there shall be substituted the following Title:-

"PROVISIONS APPLICABLE TO THE COURTS OF CRIMINAL JUSTICE"

Amendment of section 510 of the principal law.

19. In subsection (4) of section 510 of the principal law, for the words "His Majesty's Criminal Court" there shall be substituted the words "Her Majesty's Criminal Court or Court of Criminal Appeal".

Amendment of section 516 of the principal law.

20. In section 516 of the principal law, for the words "His Majesty's Criminal Court" there shall be substituted the words "Her Majesty's Criminal Court or Court of Criminal Appeal".

Amendment of section 519 of the principal law.

21. In subsection (2) of section 519 of the principal law, for the words "His Majesty's Criminal Court" there shall be substituted the words "Her Majesty's Criminal Court or Court of Criminal Appeal".

Amendment of section 525 of the principal law.

22. In subsection (1) of section 525 of the principal law, for the words "if it is His Majesty's Criminal Court" there shall be substituted the words "if it is Her Majesty's Criminal Court or Court of Criminal Appeal".

Amendment of section 545 of the principal law.

23. In subsection (2) of section 545 of the principal law, after the words "or while he is in Police custody" there shall be inserted the words "or while he is in custody in the Hospital for Mental Diseases by an order made under a provision of this Code".

Amendment of section 574 of the principal law.

24. Section 574 of the principal law shall be amended by the addition in subsection (3) after the words "whereupon the Court shall" of the words "if the application is opposed by the Crown Advocate-General".

Amendment  
of section  
578 of the  
principal  
law.

25. In section 578 of the principal law for the words "shall be from ten to five hundred pounds sterling" there shall be substituted the words "shall be of such amount as the Court shall determine having regard to the special circumstances of the case".

Amendment  
of section  
615 of the  
principal  
law.

26. In subsection (1) of section 615 of the principal law, there shall be deleted the words "and the Court shall consist of three of His Majesty's Judges".

Amendment  
of section  
643 of the  
principal  
law.

27. Section 643 of the principal law shall be amended as follows:-

- (a) in subsection (1), for the words "or in His Majesty's Criminal Court sitting as an appellate Court" there shall be substituted the words "or in Her Majesty's Court of Criminal Appeal sitting as an appellate Court from judgments of the Court of Judicial Police";
- (b) in the last proviso to subsection (1), after the words "His Majesty's Criminal Court" there shall be added the words "and Her Majesty's Court of Criminal Appeal".

Amendment  
of section  
658 of the  
principal  
law.

28. Section 658 of the principal law shall be amended as follows:-

- (a) in subsection (2) for the words "of His Majesty's Criminal Court" there shall be substituted the words "of the Court of Criminal Appeal and of the Criminal Court";
- (b) immediately after subsection (2) there shall be added the following proviso:-

"Provided that as regards the Court of Criminal Appeal, the Court may if the appellant is in custody and they are of opinion that the appeal should be allowed and the appellant discharged pronounce forthwith their decision discharging the appellant and reserve to give their reasons at a later date even in the absence of the person concerned."

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Amendment  
of section  
661 of the  
principal  
law.

29. Section 661 of the principal law shall be amended by the insertion after the words "shall be carried into effect" in the proviso of the words following:-

"until/....

"until after expiration of the time within which an appeal may be made and, if an appeal is made, until after determination of the appeal, and"

Amendment of section 662 of the principal law.

30. Section 662 of the principal law shall be amended as follows:-

- (a) in subsection (1), immediately after the words "of the Criminal Court" there shall be inserted the words "and of the Court of Criminal Appeal";
- (b) in subsection (2), for the words "shall be deemed to be a decision of the Criminal Court" there shall be substituted the words "or of the Criminal Court shall be deemed to be a decision of the Court of Criminal Appeal".

Amendment of section 663 of the principal law.

31. Section 663 of the principal law is amended by the addition of the words "or any subsequent appeal" after the words "at the trial".

Amendment of section 675 of the principal law.

32. In section 675 of the principal law, for the words "until termination of the trial" there shall be substituted the words "until the expiration of the time within which an appeal may be made and, if an appeal is made, until the determination of the appeal".

Amendment of section 676 of the principal law.

33. In section 676 of the principal law, for the words "When the trial is terminated" there shall be substituted the words "when the time within which an appeal may be made expires or, if an appeal is made, when the appeal is determined".

Amendment of the Probation of Offenders Act, 1957.

34. The provisions of section 2 of the Probation of Offenders Act, 1957 shall have effect subject to the amendment shown in the Schedule hereto.

SCHEDULE/....

SCHEDULE

(Section .....)

In section 2 of the Probation of Offenders Act, 1957, for the definition of "Her Majesty's Criminal Court" there shall be substituted the following:-

"Her Majesty's Criminal Court" shall be deemed to include Her Majesty's Court of Criminal Appeal and any reference to a conviction by or before Her Majesty's Criminal Court shall be deemed to include a conviction or the affirmation of a conviction by Her Majesty's Court of Criminal Appeal."

cc

Amendments to the Criminal Code

- Amendment of section 5 of the principal law. 1. Section 5 of the principal law shall be amended as follows:-
- (a) in paragraph (b), for the words "against any natural-born or naturalized Maltese" there shall be substituted the words "against any citizen of Malta";
- (b) in paragraph (c), for the words "against any natural-born or naturalized Maltese" there shall be substituted the words "against any citizen of Malta" and for the words "against the person of a subject of His Majesty" there shall be substituted the words "against the person of a citizen of Malta".
- Amendment of section 13 of the principal law. 2. In subsection (1) of section 13 of the principal law, for the words "twenty pounds" there shall be substituted the words "two hundred pounds".
- Amendment of section 19 of the principal law. 3. In paragraph (f) of section 19 of the principal law, for the words "forty pounds", wherever they occur, there shall be substituted the words "four hundred pounds".
- Amendment of section 56 of the principal law. 4. In subsection (1) of section 56 of the principal law there shall be deleted the words "or in any other of the dominions of the British Crown".
- Amendment of section 71 of the principal law. 5. In section 71 of the principal law there shall be deleted the words "or in any other of the dominions of the British Crown".
- Amendment of section 73 of the principal law. 6. In section 73 of the principal law there shall be deleted the words "or in any other of the dominions of the British Crown".
- Amendment of section 89 of the principal law. 7. In section 89 of the principal law for the words "any subject of His Majesty" there shall be substituted the words "any citizen of Malta".

Amendment of the Maltese text of section 167 of the principal law. 8. In the Maltese text of section 167 of the principal law, for the number "165" there shall be substituted the number "164".

Amendment of section 178 of the principal law. 9. In subsection (1) of section 178 of the principal law there shall be deleted the words "whether general or local".

Amendment of section 179 of the principal law. 10. In section 179 of the principal law there shall be deleted the words "the Great Seal of the Realm".

Amendment of section 182 of the principal law. 11. In subsection (2) of section 182 of the principal law there shall be deleted the words "of the United Kingdom, or any of His Majesty's Colonies, or".

Amendment of section 239 of the principal law. 12. In section 239 of the principal law, for the words "one hundred pounds" there shall be substituted the words "five hundred pounds".

Amendment of section 240 of the principal law. 13. Section 240 of the principal law shall be amended as follows:-

(a) in paragraph (a) of subsection (1), for the words "not exceeding fifty pounds" there shall be substituted the words "not exceeding two hundred pounds";

(b) in paragraph (b) of subsection (1), for the words not exceeding "twenty-five pounds" there shall be substituted the words "not exceeding one hundred pounds".

Amendment of the English text of section 300 of the principal law. 14. In the English text of section 300 of the principal law there shall be deleted the words "stolen articles".

Amendment of  
section 303  
of the  
principal law.

15. In section 303 of the principal law -

(a) for the words "belonging to or in the employment of the Naval, Military or Air Service" there shall be substituted the words "belonging to or in the employment of the armed forces of Malta";

(b) for the words "or other articles of Naval, Military, or Air Force service" there shall be substituted the words "or other articles of the armed forces of Malta".