

Naghti l-kunsens tiegħi.

(L.S.)

GEORGE ABELA
President

15 ta' Ġunju, 2010

ATT Nru. VI tal-2010

ATT biex jemenda l-Att dwar il-Probation, Kap. 446.

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

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2010 biex jemenda l-Att dwar il-*Probation*, u dan l-Att għandu jinqara u jfjtiehem haġa waħda mal-Att dwar il-*Probation*, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor
u bidu fis-sehh.
Kap. 446

(2) Id-disposizzjonijiet ta' dan l-Att għandhom jidhlu fis-sehh f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

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

Emenda tal-
artikolu 2 tal-
Att prinċipali.

(a) minnufih qabel it-tifsira ta' "dikjarata haġa ta' reat", għandhom jidhlu t-tifsiriet ġodda li ġejjin:

" "awtorità kompetenti" tfisser l-awtorità kompetenti ta' Malta mwaqqfa taht l-artikolu 26;

"Deċiżjoni Qafas" tfisser Deċiżjoni Qafas tal-Kunsill 2008/947/ĠAI tas-27 ta' Novembru 2008 kif emendata bid-Deċiżjoni Qafas 2009/299/ĠAI tas-26 ta' Frar 2009, dwar l-applikazzjoni tal-prinċipju ta' rikonoxximent reċiproku ta' sentenzi u deċiżjonijiet li jinvolvu *probation* bil-ħsieb ta' sorveljanza ta' miżuri ta' *probation* u ta' sanzjonijiet alternattivi;" u

(b) minnufih wara t-tifsira ta' "sanzjoni komunitarja" għandhom jidhlu t-tifsiriet ġodda li ġejjin:

" "Stat emittenti" tfisser dak l-Istat Membru minn fejn tingħata s-sentenza;

"Stat ta' eżekuzzjoni" tfisser dak l-Istat Membru fejn sanzjonijiet komunitarji jiġu sorveljati, wara deċiżjoni skont l-Artikolu 8 tad-Deċiżjoni Qafas tal-Kunsill 2008/947/ĠAI tas-27 ta' Novembru 2008 kif emendata mid-Deċiżjoni Qafas 2009/299/ĠAI tas-26 ta' Frar 2009;".

Emenda tal-artikolu 3 tal-Att prinċipali.

3. Il-paragrafu (h) tas-subartikolu (2) tal-artikolu 3 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"(h) jassenja l-uffiċjali tal-*probation* lil min ikun taħt *probation*, taħt ordni proviżorja ta' superviżjoni u sabiex jippreparaw rapporti ta' qabel is-sentenza skont dan l-Att."

Emenda tal-artikolu 7 tal-Att prinċipali.

4. L-artikolu 7 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minnufih wara l-ewwel proviso għandu jiżdied il-proviso ġdid li ġej:

"Iżda wkoll meta ordni ta' *probation* li kienet magħmula, tkun għal perjodu ta' inqas minn sena, dik l-ordni għandha titqies bħala ordni għal sena.";

(b) fl-aħħar proviso tas-subartikolu (2) tiegħu, minnufih wara l-kliem "b'dana iżda" għandha tiżdied il-kelma "wkoll"; u

(ċ) fis-subartikolu (8) tiegħu, minflok il-kliem "Il-qorti li tagħmel l-ordni ta' *probation* għandha minnufih tagħti kopja ta' l-ordni lil min ikun taħt *probation*, lid-Direttur" għandu jiġi sostitwit il-kliem "Il-Qorti li tagħmel l-ordni ta' *probation* għandha tordna li minnufih jingħataw kopji tal-ordni lil min ikun taħt *probation*, u lid-Direttur".

Emenda tal-artikolu 11 tal-Att prinċipali.

5. L-artikolu 11 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "jew aktar minn mitejn u erbgħin siegħa" għandhom jiġu sostitwiti l-kliem "jew aktar minn erba' mija u tmenin siegħa"; u

(b) fil-paragrafu (a) tas-subartikolu (3) tiegħu, minflok il-kliem "jkun adatt li jagħmel xogħol taħt dik l-ordni;" għandhom jiġu sostitwiti l-kliem "jkun adatt li jagħmel xogħol taħt dik l-ordni."; u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda meta l-qorti tkun hekk sodisfatta, tista' wara li tikkunsidra ċ-ċirkostanzi tal-ħati, tneħħi l-ħtieġa ta' rapport ta' qabel is-sentenza bil-miktub u tordna illi jkun sottomess rapport verbali, u dak ir-rapport verbali għandu jkun debitament reġistrat fil-proċedimenti tal-qorti."

6. Fis-subartikolu (1) tal-artikolu 14 tal-Att prinċipali minflok il-kliem "ta' mhux inqas minn tliet xhur u mhux aktar minn sena" għandhom jiġu sostitwiti l-kliem "ta' mhux inqas minn xahar u mhux aktar minn sentejn".

Emenda tal-artikolu 14 tal-Att prinċipali.

7. Minnufih wara l-artikolu 20 tal-Att prinċipali għandu jiżdied dan l-artikolu ġdid li ġej:

Żjieda ta' artikolu ġdid 20A fl-Att prinċipali.

"Sanzjoni komunitarja. 20A. Meta toħroġ sanzjoni komunitarja, il-Qorti tista' timponi limitazzjonijiet, fil-konfront tal-ħati, rigward it-tluq tiegħu minn Malta kif il-Qorti tista' tqis xieraq."

8. Is-subartikolu (1) tal-artikolu 21 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 21 tal-Att prinċipali.

"(1) Jekk f'xi waqt matul il-perjodu ta' *probation* il-Qorti Kriminali tkun tal-fehma li min ikun taħt *probation* ikun naqas li jħares xi waħda mill-ħtieġiet tal-ordni, il-qorti tista' toħroġ taħrika li fiha titlob lil min ikun taħt *probation* biex jidher quddiem dik il-qorti fil-post u l-ħin hemm speċifikati, jew tista', jekk iċ-ċirkostanzi jkunu hekk jeħtieġu, toħroġ mandat għall-arrest ta' min ikun taħt *probation*:

Iżda ħlief meta n-nuqqas allegat jingiebb għall-attenzjoni tal-qorti permezz ta' rikors mill-uffiċjal tal-*probation*, m'għandhom jinħarġu ebda tali taħrika jew mandat mill-Qorti Kriminali jew mill-Qorti tal-Minorenni, ħlief meta tingħata informazzjoni bil-miktub u li tkun konfermata b'għurament. F'kull każ l-informazzjoni għandha tiġi pprezentata fi żmien tliet xhur minn nuqqas allegat minn min ikun taħt *probation*:

Iżda wkoll il-Qorti għandha tappunta għas-smiġh ir-rikors fi żmien għoxrin ġurnata mill-preżentata tal-imsemmi rikors."

Enumerazzjoni mill-ġdid tal-artikoli 26, 27, u 28 tal-Att prinċipali.

9. L-artikoli 26, 27 u 28 tal-Att prinċipali għandhom jiġu enumerati mill-ġdid bhala l-artikoli 35, 36 u 37, rispettivament.

Żjieda ta' artikoli godda 26 sa 34 mal-Att prinċipali.

10. Minnufih wara l-artikolu 25 tal-Att prinċipali, għandhom jiżdiedu l-artikoli godda li ġejjin:

"Hatra ta' awtorità kompetenti skont id-Deciżjoni Qafas.

26. B'ordni tal-Ministru għandha titwaqqaf awtorità kompetenti, li l-funzjonijiet tagħha ikunu li tiegħu d-deciżjonijiet rigward sanzjonijiet komunitarji, partikolarment f'każijiet fejn ikun hemm nuqqas ta' konformità mas-sanzjonijiet komunitarji jew jekk il-persuna sentenzjata tikkommetti reat kriminali ġdid, skont l-artikolu 31(1), fejn Malta tkun jew l-Istat emittenti jew l-Istat ta' eżekuzzjoni għall-finijiet ta' rikonoxximent reċiproku ta' sanzjonijiet komunitarji bejn l-Istati Membri.

Tipi ta' miżuri ta' sanzjonijiet komunitarji.

27. (1) Skont id-Deciżjoni Qafas, is-sanzjonijiet komunitarji li ġejjin għandhom ikunu regolati mill-awtorità kompetenti:

(a) obbligu li l-persuna sentenzjata tinforma lil awtorità speċifika dwar kwalunkwe bidla ta' residenza jew post tax-xogħol;

(b) obbligu li ma tidholx f'ċerti lokalitajiet, postijiet jew żoni definiti fl-Istat emittenti jew ta' eżekuzzjoni;

(ċ) obbligu li jkun fih limitazzjonijiet dwar it-tluq mit-territorju tal-Istat ta' eżekuzzjoni;

(d) istruzzjonijiet marbuta ma' imġiba, residenza, edukazzjoni u taħriġ, attivitajiet ta' divertiment, jew li jkun fihom limitazzjonijiet dwar jew modalitajiet ta' twettiq ta' attività professjonali;

(e) obbligu li tirrapporta f'ħinijiet speċifiċi lil awtorità speċifika;

(f) obbligu li tevita kuntatt ma' persuni speċifiċi;

(g) obbligu li tevita kuntatt ma' oġġetti speċifiċi, li jkunu ntużaw jew li x'aktarx jintużaw mill-persuna sentenzjata bil-ħsieb li twettaq reat kriminali;

(h) obbligu li tikkumpensa finanzjarjament għall-ħsara kkawżata mir-reat u, jew obbligu li ttipprovdi evidenza ta' konformità ma' tali obbligu;

(i) obbligu li twettaq servizz komunitarju;

(j) obbligu li tikkopera ma' uffiċjal tal-*probation* u, jekk ikun meħtieġ, ma' rappreżentant ta' servizz soċjali b'responsabbiltajiet fir-rigward tal-persuni sentenzjati; u

(k) obbligu li jsirilha trattament terapewtiku jew trattament għal xi vizzju.

(2) L-awtorità kompetenti għandha tinnotifika lis-Segretarjat Ġenerali tal-Kunsill tal-Unjoni Ewropea, meta tkun qed timplimenta din id-Deċiżjoni Qafas, liema sanzjonijiet komunitarji, barra minn dawk imsemmija fis-subartikolu (1), hija lesta tissorvelja. Is-Segretarjat Ġenerali tal-Kunsill għandu jagħmel l-informazzjoni li jirċievi disponibbli għall-Istati Membri kollha u għall-Kummissjoni.

28. (1) Meta Malta hija l-Istat emittenti, l-awtorità kompetenti għandha, fuq inizzjattiva tagħha jew fuq talba tal-persuna sentenzjata, tibgħat sanzjoni komunitarja lill-awtorità kompetenti tal-Istat Membru li fih il-persuna sentenzjata hija legalment u ordinarjament residenti, f'każijiet fejn il-persuna sentenzjata irritornat jew trid tiritorna f'dak l-Istat:

Izda l-awtorità kompetenti għandha tagħti l-kunsens tagħha sabiex tintbagħat sanzjoni komunitarja, fuq it-talba tal-persuna sentenzjata, meta l-persuna sentenzjata ma kkommettietx reati sussegwenti u taħt dawk il-kondizzjonijiet li thoss li huma xierqa li timponi.

Sanzjonijiet komunitarji mibgħuta lill-awtoritajiet kompetenti tal-Istati Membri meta Malta hija l-Istat emittenti.

(2) Meta, fl-applikazzjoni tad-disposizzjonijiet tas-subartikolu (1), l-awtorità kompetenti tibgħat sanzjoni komunitarja, għandha tiżgura li din tkun akkumpanjata b'ċertifikat, fil-forma li tiġi preskritta mill-Ministru permezz ta' regolamenti magħmulin taħt dan l-artikolu.

(3) Ladarba l-awtorità kompetenti tal-Istat ta' eżekuzzjoni tkun irrikonoxxiet is-sanzjoni komunitarja li tkun intbagħttilha u tkun infurmat lill-awtorità kompetenti dwar l-istess rikonoxximent, l-awtorità kompetenti ta' Malta ma għandux ikollha aktar il-kompetenza fir-rigward tas-sorveljanza tas-sanzjoni komunitarja imposta, u lanqas biex tiehu xi deċiżjoniet sussegwenti msemmijin fl-artikolu 31(1).

(4) Il-kompetenza msemmija fis-subartikolu (3) għandha tmur lura għand l-awtorità kompetenti:

(a) hekk kif l-awtorità kompetenti tkun innotifikat lill-awtorità kompetenti tal-Istat ta' eżekuzzjoni dwar l-irtirar taċ-ċertifikat imsemmi fis-subartikolu (2), sakemm is-sorveljanza fl-Istat ta' eżekuzzjoni ma tkunx diġà bdiet;

(b) fil-każijiet jew kategoriji ta' każijiet li jiġu speċifikati mill-Istat ta' eżekuzzjoni fejn dan l-Istat jista' jirrifjuta li jassumi r-responsabilità tas-sorveljanza, partikolarment:

(i) f'każijiet relatati ma' sanzjoni alternattiva, fejn is-sentenza ma tkunx waħda ta' kustodja jew fiha xi miżura li tinvolvi çahda ta' libertà li għandha tiġi enforzata f'każijiet ta' nuqqas ta' konformità mal-obbligi jew l-istruzzjonijiet konċernati;

(ii) f'każijiet relatati mal-libertà kondizzjonata; u

(iii) f'kazijiet fejn is-sentenza tirrigwarda atti li ma jikkostitwixxux reat skont il-liġi tal-Istat ta' eżekuzzjoni, indipendentement mill-elementi kostitwenti jew mid-deskrizzjoni tiegħu;

(è) fil-kazijiet fejn il-ġurisdizzjoni tal-Istat ta' eżekuzzjoni tintemm skont id-disposizzjonijiet tal-artikolu 32.

Rikonixximent ta' sanzjonijiet komunitarji fejn Malta hija l-Istat ta' eżekuzzjoni.

29. (1) Fejn Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti għandha fi żmien sittin jum minn meta tirċievi s-sanzjoni komunitarja, tirrikonoxxi s-sanzjoni komunitarja mibgħuta, u ssegwi l-proċeduri neċessarji msemmija fl-artikolu 28(2), u għandha mingħajr dewmien tiegħu dawk il-miżuri neċessarji għas-sorveljanza tas-sanzjoni komunitarja, sakemm ma tiddeċidix li tirrifjuta r-rikonoxximent u s-sorveljanza minhabba r-raġunijiet imsemmija fl-artikolu 30:

Iżda meta, f'kazijiet eċċezzjonali, ma jkunx possibbli għall-awtorità kompetenti li tikkonforma mal-limitu ta' żmien previst fis-subartikolu (1), hija għandha minnufih tinforma lill-awtorità kompetenti tal-Istat emittenti, bi kwalunkwe mezz, waqt li tagħti r-raġunijiet għad-dewmien u tindika kemm bi hsiebha tiegħu żmien biex tagħti deċiżjoni finali.

(2) Meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti tista' tipposponi d-deċiżjoni dwar ir-rikonoxximent tas-sanzjoni komunitarja fis-sitwazzjoni fejn iċ-ċertifikat imsemmi fl-artikolu 28(2) huwa inkomplet jew ma jikkorrispondix mas-sanzjoni komunitarja, sa dik l-iskadenza raġonevoli stabbilita biex iċ-ċertifikat ikun kompletat jew ikkoreġut.

Raġunijiet għar-rifjut ta' rikonoxximent u sorveljanza.

30. Meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti tista' tiċhad li tirrikonoxxi s-sanzjoni komunitarja u tassumi r-responsabbiltà għas-sorveljanza tas-sanzjonijiet komunitarji skont l-Artikolu 11 tad-Deċiżjoni Qafas jekk:

(a) iċ-ċertifikat imsemmi fl-artikolu 28(2) ma jkunx komplet jew ma jkunx jaqbel manifestament mas-sanzjoni komunitarja u ma jkunx ikkompletat jew ikkorreġut f'terminu raġonevoli stabbilit mill-awtorità kompetenti;

(b) il-kriterji stabbiliti fl-artikolu 28(1) m'humiex sodisfatti;

(ċ) ir-rikonoxximent tas-sanzjoni komunitarja u l-preżunzjoni tar-responsabbiltà għas-sorveljanza tas-sanzjoni komunitarja jmorru kontra l-prinċipju *ne bis in idem*;

(d) is-sentenza tirrigwarda atti li ma jkostitwixxux reat taħt il-liġijiet ta' Malta;

(e) l-infurzar tas-sentenza huwa prekluz bil-preskrizzjoni skont il-liġijiet ta' Malta u jirrigwarda att li jaqa' fil-kompetenza tagħha skont dik il-liġi;

(f) ikun hemm immunità skont il-liġijiet ta' Malta, li tagħmel is-sorveljanza tas-sanzjonijiet komunitarji;

(g) taħt il-liġijiet ta' Malta, il-persuna sentenzjata, minhabba fl-età tagħha, ma tistax tinżamm kriminalment responsabbli għall-atti li fuqhom inġhatat is-sentenza;

(h) is-sentenza nġhatat *in absentia*, sakemm:

(i) iċ-ċertifikat imsemmi fl-artikolu 28(2) jiddikjara li l-persuna kienet ġiet imħarrka personalment jew mgħarrfa permezz ta' rappreżentant kompetenti skont il-liġijiet ta' Malta dwar il-ħin u l-post tal-proċeduri, jew dik il-persuna attwalment irċiviet informazzjoni uffiċjali tal-ħin skedat u l-post tal-proċeduri u kienet mgħarrfa wkoll li deċiżjoni tista' tingħata jekk ma tidhirx għall-proċeduri; jew

(ii) il-persuna kienet tat prokura lil konsulent legali, li kien appuntat mill-persuna konċernata jew mill-iStat, biex jidher minflokha u dak il-konsulent legali kien fil-fatt deher fil-proċeduri; jew

(iii) il-persuna indikat lill-awtorità kompetenti li ma kellhiex intenzjoni li tikkontesta l-imputazzjonijiet miġjuba kontriha; jew

(iv) sussegwentement għad-deċiżjoni, li kienet ser tkun notifikata lilha, il-persuna kkonċernata, wara li kienet mgħarrfa bid-dritt għall-appell jew għar-ritrattazzjoni, iddikjarat espressament illi ma kellhiex l-intenzjoni li tikkontesta d-deċiżjoni jew ma kkontestatx dik id-deċiżjoni fiż-żmien applikabbli;

(i) is-sanzjoni komunitarja tipprovdi għal trattament mediku u, jew terapewtiku li Malta ma tistax tissorvelja minhabba fis-sistema legali jew tal-kura tas-saħħa tagħha;

(j) is-sanzjoni komunitarja hija ta' tul ta' żmien ta' inqas minn sitt xhur; jew

(k) is-sentenza tkun relatata ma' reati kriminali li taħt il-liġijiet ta' Malta huma meqjusa bħala li twettqu kollha kemm huma jew f'parti kbira jew essenzjali fit-territorju tiegħu, jew f'post ekwivalenti għat-territorju tiegħu.

Ġurisdizzjoni għat-tehid tad-deċiżjonijiet kollha sussegwenti u l-liġi regolatorja meta Malta hija l-Istat ta' eżekuzzjoni.

31. (1) Meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti għandu jkollha l-ġurisdizzjoni li tiegħu d-deċiżjonijiet sussegwenti kollha relatati ma' sanzjoni komunitarja, b'mod partikolari f'każ ta' nuqqas ta' konformità ma' sanzjoni komunitarja jew jekk il-persuna sentenzjata twettaq reat kriminali ġdid. Tali deċiżjonijiet sussegwenti jistgħu jinkludu:

(a) il-modifika tal-obbligi jew l-istruzzjonijiet li jinsabu fis-sanzjoni komunitarja, jew il-modifika tat-tul ta' zmien tas-sanzjoni komunitarja;

(b) ir-revoka tas-sospensjoni tal-eżekuzzjoni tas-sentenza jew ir-revoka tad-deċiżjoni dwar sanzjoni komunitarja;

(ċ) l-impożizzjoni ta' sentenza ta' kustodja jew miżura li tinvolvi ċ-ċaħda tal-libertà f'każ ta' sanzjoni komunitarja.

(2) Jekk in-natura jew it-tul ta' zmien tas-sanzjoni komunitarja, ikunu inkompatibbli mal-ligijiet ta' Malta meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti tista' tadattahom b'mod konformi man-natura u t-tul ta' zmien tas-sanzjonijiet komunitarji, li japplikaw, skont il-ligijiet ta' Malta, għal reati ekwivalenti. Is-sanzjoni komunitarja li giet adottata jew it-tul tagħha għandha tikkorrispondi kemm jista' jkun ma' daww imposti fl-Istat emittenti:

Izda fejn is-sanzjoni komunitarja jew il-perjodu tas-sanzjoni komunitarja tkun giet adattata peress li t-tul ta' zmien tagħha jaqbez it-tul ta' zmien massimu previst taħt il-ligijiet ta' Malta, meta Malta hija l-Istat ta' eżekuzzjoni, it-tul ta' zmien tas-sanzjoni komunitarja ma għandux ikun inqas mit-tul ta' zmien massimu previst għal reati ekwivalenti skont il-ligijiet ta' Malta:

Izda wkoll is-sanzjoni komunitarja adattata m'għandiex tkun aktar severa jew itwal mis-sanzjoni komunitarja li giet imposta originarjament.

(3) Meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti għandha tinforma mingħajr dewmien lill-awtorità kompetenti tal-Istat emittenti, bi kwalunkwe mezz li jhalli rekord bil-miktub, bid-deċiżjonijiet kollha dwar:

(a) il-modifika tas-sanzjoni komunitarja;

(b) ir-revoka tas-sospensjoni tal-eżekuzzjoni tas-sentenza jew ir-revoka tad-deċiżjoni dwar is-sanzjoni komunitarja;

(ċ) infurzar ta' piena ta' kustodja jew miżura li tinvolvi ċ-ċaħda tal-libertà minħabba fin-nuqqas ta' konformità mas-sanzjoni komunitarja;

(d) l-iskadenza tas-sanzjoni komunitarja.

(4) Jekk tintalab hekk mill-awtorità kompetenti tal-Istat emittenti, l-awtorità kompetenti għandha tinformaha dwar it-tul massimu taċ-ċaħda tal-libertà li hija prevista fil-ligijiet nazzjonali ta' Malta għar-reat, li rriżulta fis-sentenza, u li jista' jiġi impost fuq il-persuna sentenzjata fil-każ ta' ksur tas-sanzjoni komunitarja. Din l-informazzjoni għandha tiġi pprovduta immedjatement wara li tiġi riċevuta s-sanzjoni komunitarja flimkien maċ-ċertifikat imsemmi fl-artikolu 28(2).

Tnien tal-
għurisdizzjoni tal-
Istat ta'
eżekuzzjoni.

32. (1) Meta Malta hija l-Istat ta' eżekuzzjoni, jekk il-persuna sentenzjata taħrab jew ma tibqax ikollha residenza legali f'Malta, l-awtorità kompetenti tista' tittrasferixxi l-għurisdizzjoni fir-rigward tas-sorveljanza tad-deċiżjonijiet ulterjuri kollha relatati mas-sentenza lura lill-awtorità kompetenti tal-Istat emittenti.

(2) Jekk ikunu qed jittieħdu proċeduri kriminali godda kontra l-persuna kkonċernata fl-Istat emittenti, l-awtorità kompetenti tal-Istat emittenti tista' titlob lill-awtorità kompetenti tal-Istat ta' eżekuzzjoni biex tittrasferixxi l-għurisdizzjoni fir-rigward tas-sorveljanza tas-sanzjoni komunitarja u fir-rigward tad-deċiżjonijiet ulterjuri kollha relatati mas-sentenza lura lilha.

(3) Meta, fl-applikazzjoni ta' dan l-artikolu, il-ġurisdizzjoni tiġi trasferita lura lill-Istat emittenti, l-awtorità kompetenti ta' dak l-Istat għandha terġa' tibda tali ġurisdizzjoni. Għas-sorveljanza ulterjuri tas-sanzjonijiet komunitarji, l-awtorità kompetenti tal-Istat emittenti għandha tiegħu kont tat-tul ta' żmien u l-grad ta' konformità mas-sanzjonijiet komunitarji f'Malta, kif ukoll ta' kull deċiżjoni mehuda minn Malta skont l-artikolu 31(3).

Informazzjoni mill-Istat ta' eżekuzzjoni fil-kazijiet kollha.

33. Meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti għandha, skont l-Artikolu 18 tad-Deċiżjoni Qafas, tinforma mingħajr dewmien lill-awtorità kompetenti tal-Istat emittenti, b'kull mezz li jhalli rekord bil-miktub:

(a) dwar it-trasmissjoni tas-sanzjoni komunitarja flimkien maċ-ċertifikat imsemmi fl-artikolu 28(2) lill-awtorità kompetenti responsabbli għar-rikonoxximent tagħha u għat-teħid ta' miżuri riżultanti għas-sorveljanza tas-sanzjoni komunitarja u meta ma jkollhiex kompetenza biex tirrikonoxxiha u biex tiegħu dawk il-miżuri għas-sorveljanza, hija għandha *ex officio*, tibgħatha lill-awtorità kompetenti tal-Istat emittenti;

(b) dwar il-fatt li fil-prattika huwa impossibbli li jkunu sorveljati s-sanzjonijiet komunitarji għar-raġuni li, wara t-trasmissjoni tas-sanzjoni komunitarja flimkien maċ-ċertifikat imsemmi fl-artikolu 28(2) lil Malta, il-persuna sentenzjata ma tkunx tista' tinstab fit-territorju ta' Malta, f'liema każ ma għandu jkun hemm l-ebda obbligu għal Malta li tissorvelja s-sanzjoni komunitarja;

(ċ) dwar id-deċiżjoni finali għar-rikonoxximent tas-sanzjoni komunitarja u t-teħid tar-responsabbiltà għas-sorveljanza tas-sanzjoni komunitarja;

(d) dwar kull deċiżjoni li ma tigix rikonoxxuta s-sanzjoni komunitarja, u li tassumi responsabbiltà għas-sorveljanza tas-sanzjoni komunitarja skont l-artikolu 31(2), flimkien mar-raġunijiet għad-deċiżjoni;

(e) dwar kull deċiżjoni biex tiġi adattata s-sanzjoni komunitarja skont id-disposizzjonijiet tal-artikolu 31(2), flimkien mar-raġunijiet għad-deċiżjoni;

(f) dwar kull deċiżjoni dwar amnestija jew maħfra mogħtija mill-Istat emittenti jew mill-Istat ta' eżekuzzjoni li jwasslu biex ma jkunx hemm sorveljanza tas-sanzjoni komunitarja, flimkien, fejn applikabbli, mar-raġunijiet għad-deċiżjoni.

Konsultazzjonijiet bejn l-awtoritajiet kompetenti.

34. Fejn u kull meta jinħass li huwa xieraq, l-awtorità kompetenti għandha tikkonsulta mal-awtorità kompetenti ta' Stat Membru ieħor, sew jekk ikun l-Istat emittenti jew l-Istat ta' eżekuzzjoni, skont il-każ xi jkun, bil-ħsieb li jiffacilitaw l-applikazzjoni bla xkiel u effiċjenti tad-Deċiżjoni Qafas."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 235 tad-9 ta' Ġunju, 2010.

MICHAEL FRENDU
Speaker

PAULINE ABELA
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE ABELA
President

15th June, 2010

ACT No. VI of 2010

AN ACT to amend the Probation Act, Cap. 446.

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. 446.

1. (1) The short title of this Act is the Probation (Amendment) Act, 2010, and this Act shall be read and construed as one with the Probation Act, hereinafter referred to as "the principal Act".

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

Amendment of
article 2 of the
principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "community service order", there shall be inserted the following new definition:

" "competent authority" means the competent authority of Malta established under article 26;"

(b) immediately after the definition "Director", there shall be inserted the following new definitions:

" "executing State" means the Member State in which the community sanctions are supervised following a decision in accordance with Article 8 of the Council Framework Decision 2008/947/JHA of 27 November 2008 as amended by Council Framework Decision 2009/299/JHA of 26 February 2009;

"Framework Decision" means Council Framework Decision 2008/947/JHA of 27 November 2008 as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 on the application of the principal of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;"; and

(c) immediately after the definition "institution", there shall be inserted the following new definition:

" "issuing State" means the Member State in which the judgment is delivered;".

3. Paragraph (h) of subarticle (2) of article 3 of the principal Act shall be substituted by the following:

Amendment of article 3 of the principal Act.

"(h) to assign probation officers to probationers, to supervise provisional orders of supervision and to prepare pre-sentencing reports in accordance with this Act.".

4. Article 7 of the principal Act shall be amended as follows:

Amendment of article 7 of the principal Act.

(a) in subarticle (2) thereof, immediately after the first proviso there shall be added the following new proviso:

"Provided further that where a probation order which has been made is of a period of less than one year, that order shall be deemed to be of one year.";

(b) in the last proviso of subarticle (2) thereof, immediately after the word "provided" there shall be added the word "further"; and

(c) in subarticle (8) thereof, for the words "The court by which a probation order is made shall forthwith give copies of the order to the probationer, to the Director" there shall be substituted the words "The court by which a probation order is

made shall order that copies of the order be served forthwith on the probationer and the Director".

Amendment of article 11 of the principal Act.

5. Article 11 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words "or more than two hundred and forty hours" there shall be substituted the words "or more than four hundred and eighty hours"; and

(b) in paragraph (a) of subarticle (3) thereof, for the words "to perform work under such an order;", there shall be substituted the words "to perform work under such an order:."; and immediately thereafter there shall be added the following new proviso:

"Provided that where the court is so satisfied, it may, after considering the offender's circumstances, dispense from the need of a written pre-sentencing report and order that a verbal report be submitted, and such verbal report shall be duly recorded in the court's proceedings."

Amendment of article 14 of the principal Act.

6. In subarticle (1) of article 14 of the principal Act, for the words "of not less than three months and not more than one year" there shall be substituted the words "of not less than one month and not more than two years".

Addition of new article 20A to the principal Act.

7. Immediately after article 20 of the principal Act there shall be added the following new article:

"Community sanction.

20A. A court, on making a community sanction, may subject an offender, in respect of whom the community sanction is in force, to the limitations on leaving Malta as the court may deem fit."

Amendment of article 21 of the principal Act.

8. Subarticle (1) of article 21 of the principal Act shall be substituted by the following:

"(1) If at any time during the probation period it appears to the Criminal Court that the probationer has failed to comply with any of the requirements of the order, the court may issue a summons requiring the probationer to appear before such court at the place and time specified therein, or may, if the circumstances so require, issue a warrant for the probationer's arrest:

Provided that except where the alleged failure is brought to the attention of the court by means of an application by the

probation officer, no such summons or warrant shall be issued by the Criminal Court, or by the Juvenile Court, except on an information in writing and confirmed on oath. In either case the information must be filed within three months of the alleged failure by the probationer:

Provided further that the Court shall appoint for hearing the application within twenty days of the filing of the said application."

9. Articles 26, 27 and 28 of the principal Act shall be renumbered as articles 35, 36 and 37, respectively.

Re-numbering of articles 26, 27 and 28 of the principal Act.

10. Immediately after article 25 of the principal Act, there shall be inserted the following new articles:

Addition of new articles 26 to 34 to the principal Act.

"Designation of competent authority in accordance with Framework Decision.

26. There shall be a competent authority, to be designated by order of the Minister, whose functions shall be the taking of decisions relating to community sanctions, in particular, in case of non-compliance with community sanctions or if the sentenced person commits a new criminal offence, in accordance with article 31(1), where Malta is either the issuing or executing State for the purposes of the mutual recognition of the community sanctions between Member States.

Types of community sanctions.

27. (1) In accordance with the Framework Decision, the following community sanctions shall be regulated by the competent authority:

(a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

(c) an obligation containing limitations on leaving the territory of the executing State;

(d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

(e) an obligation to report at specified times to a specific authority;

(f) an obligation to avoid contact with specific persons;

(g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

(h) an obligation to compensate financially for the prejudice caused by the offence and, or an obligation to provide proof of compliance with such an obligation;

(i) an obligation to carry out community service;

(j) an obligation to cooperate with a probation officer, and if necessary with a representative of a social service having responsibilities in respect of sentenced persons; and

(k) an obligation to undergo therapeutic treatment or treatment for addiction.

(2) The competent authority shall notify the General Secretariat of the Council of the European Union, when implementing the Framework Decision, which community sanctions, apart from those referred to in subarticle (1), it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Forwarding of
community
sanctions to
competent
authorities of
member states
where Malta is
the issuing State.

28. (1) Where Malta is the issuing State, the competent authority shall, on its own initiative, or upon the request of the sentenced person, forward a community sanction to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State:

Provided that the competent authority shall only consent to the forwarding of a community sanction, upon the request of the sentenced person, where the sentenced person has not committed subsequent offences and under such conditions it may deem fit to impose.

(2) When, in applying the provisions of subarticle (1), the competent authority forwards a community sanction to the executing State, it shall ensure that it is accompanied by a certificate, in such form as may be prescribed by the Minister by regulations made under this article.

(3) Once the competent authority of the executing State has recognised the community sanction forwarded to it and has informed the competent authority of such recognition, the competent authority in Malta shall no longer have competence in relation to the supervision of the community sanction imposed, nor to take any subsequent decisions referred to in article 31(1).

(4) The competence referred to in subarticle (3) shall revert to the competent authority:

(a) as soon as the competent authority has notified the competent authority of the executing State about the withdrawal of the certificate referred to in subarticle (2), provided that supervision in the executing State has not yet begun;

(b) in cases or categories of cases to be specified by the executing State where it may refuse to assume the responsibility of supervision, in particular:

(i) in cases relating to an alternative sanction, where the judgement does not contain a custodial sentence or measure involving the deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(ii) in cases relating to a conditional discharge; and

(iii) in cases where the judgement relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described;

(c) in cases where the jurisdiction of the executing State has ended in accordance with the provisions of article 32.

Recognition of community sanctions where Malta is the executing State.

29. (1) Where Malta is the executing State, the competent authority shall within sixty days of receipt of the community sanction, recognise the community sanction forwarded, and follow the necessary procedure referred to in article 28(2), and shall without delay take all necessary measures for the supervision of the community sanction, unless it decides to refuse recognition and supervision on the grounds referred to in article 30:

Provided that when, in exceptional circumstances, it is not possible for the competent authority to comply with the time limit provided for in subarticle (1), it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

(2) Where Malta is the executing State, the competent authority may postpone the decision on recognition of the community sanction in the situation where the certificate referred to in article 28(2) is incomplete or does not correspond to the community sanction, until a reasonable deadline is set for the certificate to be completed or corrected.

Grounds for refusing recognition and supervision.

30. Where Malta is the executing State, the competent authority may refuse to recognise the community sanctions and assume responsibility for supervising community sanctions on the following grounds, in accordance with Article 11 of the Framework Decision:

(a) the certificate referred to in article 28(2) is incomplete or manifestly does not correspond to the community sanction and has not been completed or corrected within a reasonable period set by the competent authority;

(b) the criteria set out in article 28(1) are not satisfied;

(c) the recognition of the community sanction and assumption of the responsibility for supervising community sanctions would be contrary to the principle of *ne bis in idem*;

(d) the judgment relates to acts which do not constitute an offence under the laws of Malta;

(e) the enforcement of the sentence is barred by prescription according to the laws of Malta and falls within its competence according to that law;

(f) there is immunity under the laws of Malta, which makes it impossible to supervise community sanctions;

(g) under the laws of Malta, the sentenced person cannot, owing to his age, be held criminally liable for the offences in respect of which the judgment was issued;

(h) the judgment was rendered *in absentia*, unless:

(i) the certificate referred to in article 28(2) states that the person summoned personally or informed through a representative competent according to the laws of Malta of the time and place of the proceedings, or that the person actually received official information of the scheduled time and place of the proceedings and was also informed that a decision may be handed down if he does not appear for the proceedings; or

(ii) the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to appear in his stead and that legal counsellor in fact appeared during the proceedings; or

(iii) the person indicated to a competent authority that he does not intend to contest the charges against him; or

(iv) subsequent to the decision, which would have been served upon him, the person concerned, after being informed of his right to appeal or to a retrial, expressly stated that he does not intend to contest the decision or did not contest such decision within the applicable time frame;

(i) the community sanction provides for medical and, or therapeutic treatment which Malta is unable to supervise in view of its legal or healthcare system;

(j) the community sanction is of less than six months' duration; or

(k) the judgement relates to criminal offences which under the laws of Malta are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

Jurisdiction to take all subsequent decisions and governing law where Malta is the executing State.

31. (1) Where Malta is the executing State, the competent authority shall have jurisdiction to take all subsequent decisions relating to a community sanction, in particular in case of non-compliance with a community sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions may include:

(a) the modification of obligations or instructions contained in the community sanction or the modification of the duration of the community sanction;

(b) the revocation of the suspension of the execution of the judgement or the revocation of the decision regarding a community sanction; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of a community sanction.

(2) If the nature or duration of the relevant community sanction is incompatible with the laws of Malta when Malta is the executing State, the competent authority may adapt them in line with the nature and duration of community sanctions, which apply under the laws of Malta, to equivalent offences. The adapted community sanction or its duration shall correspond as far as possible to that imposed in the issuing State:

Provided that where the community sanction or the duration of the community sanction has been adapted because its duration exceeds the maximum duration provided for under the laws of Malta, where Malta is the executing State, the duration of the adapted community sanction, shall not be below the maximum duration provided for equivalent offences under the laws of Malta:

Provided also that the adapted community sanction shall not be more severe or longer than the community sanction which was originally imposed.

(3) Where Malta is the executing State, the competent authority shall without delay inform the competent authority of the issuing State, by any means which leaves a written record, of all the decisions taken on:

(a) the modification of community sanction;

(b) the revocation of the suspension of the execution of the judgement or revocation of the decision regarding a community sanction;

(c) the enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a community sanction;

(d) the lapse of the community sanction.

(4) If so requested by the competent authority of the issuing State, the competent authority shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national laws of Malta for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the community sanction. This information shall be provided immediately after receipt of the community sanction together with the necessary certificate set out in article 28(2).

End of
jurisdiction of the
executing State.

32. (1) Where Malta is the executing State, if the sentenced person absconds or no longer has a lawful residence in Malta, the competent authority may transfer the jurisdiction in respect of the supervision of all further decisions relating to the judgement back to the competent authority of the issuing State.

(2) If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority to transfer jurisdiction in respect of the supervision of the community sanction and in respect of all further decisions relating to the judgement back to it.

(3) When, in the application of this article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the community sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the community sanctions in Malta, as well as of any decisions taken by Malta in accordance with article 31(3).

Information from
the executing
State in all cases.

33. Where Malta is the executing State, the competent authority shall, in accordance with Article 18 of the Framework Decision, without delay inform the competent authority of the issuing State, by any means which leaves a written record, of:

(a) the transmission of the community sanction together with the certificate referred to in article 28(2) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the community sanction and where it has no competence to recognise it and take the said measures for the supervision, it shall, *ex officio*, forward it to the competent authority of the issuing State;

(b) the fact that it is in practice impossible to supervise the community sanctions for the reason that, after transmission of the community sanction, together with the certificate referred to in article 28(2), to Malta, the sentenced person cannot be found in the territory of Malta, in which case Malta shall be under no obligation to supervise the community sanction;

(c) the final decision to recognise the community sanction and to assume responsibility for supervising the community sanction;

(d) any decision not to recognise the community sanction and to assume responsibility for supervising the community sanction in accordance with article 31(2), together with the reasons for the decision;

(e) any decision to adapt community sanction in accordance with the provisos to article 31(2), together with the reasons for the decision;

(f) any decision on amnesty or pardon granted by the issuing or executing State which leads to not supervising the community sanction, together, where applicable, with the reasons for the decision.

Consultations
between
competent
authorities.

34. Where and whenever it is felt appropriate, the competent authority shall consult with the competent authority of another Member State being the issuing State or the executing State as the case may be, with a view to facilitating the smooth and efficient application of the Framework Decision."

Passed by the House of Representatives at Sitting No. 235 of the
9th June, 2010.

MICHAEL FRENDÓ
Speaker

PAULINE ABELA
Clerk to the House of Representatives