

Malta

Penal Code

(excerpts)

To amend and consolidate the Penal Laws and the Laws of Criminal Procedure.

10th June, 1854

ORDER-IN-COUNCIL of the 30th of January, 1854, as amended by Ordinances: IV of 1856, VIII and IX of 1857, X of 1858, IX of 1859, V of 1868, VI of 1871, IV of 1874, III of 1877, I of 1879, III and VII of 1880, IV of 1882, III of 1885, II of 1886, IV and XVI of 1888, XIV of 1889, II of 1892, VIII of 1893, IV of 1894, III and X of 1896, IV of 1897; the Malta (Use of English Language in legal proceedings) Order-in-Council, 1899; Ordinances: III, VI, XI and XIII of 1899, XI, XII and XVI of 1900, VI and XVI of 1901, I of 1903, I and XII of 1904, XI of 1905, VIII of 1909, IV of 1910, IX of 1911, XII of 1913, II, VI and XII of 1914, IV of 1916, XIII and XIV of 1918; the Malta Constitution Letters Patent, 1921; Ordinance XVI of 1921; Acts: XII of 1922, I of 1924, XXVI of 1927, XVI of 1929; Ordinances: VI and VIII of 1930, XIII and XXVI of 1931, XVI of 1932, VI of 1933; Acts: XXVIII, XXXV and XLI of 1933; Ordinances: XXII, XXX and XXXVII of 1934, IX and XIII of 1935, XIV and XX of 1936, III and XV of 1937, I, XXIV, XXVII and XXXV of 1938, I and VI of 1939, XXIX of 1940; Government Notices Nos. 124 and 248 of 1941. Incorporating also Article 3 of Ordinance II of 1867, Ordinance IV of 1872, Article 30 of Ordinance VI of 1880 and Ordinance XXXVII of 1934. This Code was subsequently amended by Ordinances: VIII, XII and XXI of 1944, XXIV of 1946, VI of 1947; Acts: X of 1949, IX of 1950, IV of 1951, V of 1956, XII of 1957; Emergency Ordinance XX of 1959; Ordinances: XV of 1959, X of 1960, XXV of 1962; Legal Notice 4 of 1963; Acts: XVI and XXIII of 1963, XIII of 1964, XIX and XXXII of 1965; Legal Notice 46 of 1965; Acts: XXXI and XLIII of 1966, II, XXV and XXXI of 1967, XXVII of 1970, III and XXI of 1971, XXXIII of 1972, II, III, XI, XV, XXXVIII and XLVI of 1973, IV, VIII, XXXV and LVIII of 1974, XXIV, XXVII and XXXVII of 1975, III, XIV, XVIII, XIX and XXII of 1976, XI of 1977, XIII and XVIII of 1980, XLIX and LIII of 1981, IX of 1982, XIII and XIV of 1983, I of 1984, XXXII of 1986, XIII of 1987, XXII of 1988, XXIX of 1989, VIII and XXIX of 1990, XII of 1991, XIX of 1992, XXI of 1993, IV and XXIV of 1994, XXIV of 1995, XVI and XVII of 1996, XXXII of 1997, II and X of 1998, VII of 1999, X of 2000, III and VI of 2001, III, XIII, XXIV and XXXI of 2002, IX of 2003, III of 2004, I, V, VI, XIII, XX and XXII of 2005, XVI of 2006; Legal Notice 274 of 2007; Acts VI, XXIV and XXXI of 2007; Legal Notice 407 of 2007; and Acts VIII of 2008 and XI of 2009.

Crimes against Humanity. – Added by: XXIV. 2002.13.

54C.

(1) A crime against humanity is committed where any of the following acts is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) murder;

- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in subarticle (3), or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this sub-article or any crime under article 54A;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(2) For the purpose of subarticle (1) -

- (a) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in subarticle (1) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "the crime of apartheid" means inhumane acts of a character similar to those referred to in subarticle (1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

(3) For the purpose of this Title, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

(...)

Subtitle VIII BIS

OF THE TRAFFIC OF PERSONS

Traffic of a person of age for the purpose of exploitation in the production of goods or provision of services. – *Added by: III. 2002.50.*

248A.

(1) Whosoever, by any means mentioned in subarticle (2), trafficks a person of age for the purpose of exploiting that person in the production of goods or provision of services shall, on conviction, be liable to the punishment of imprisonment for a term from two to nine years.

For the purposes of this subarticle exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in subarticle (1) are the following:

(a) violence or threats, including abduction;

(b) deceit or fraud;

(c) misuse of authority, influence or pressure;

(d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.

Traffic of a person of age for the purpose of exploitation in prostitution, etc. – Added by: III. 2002.50.

248B.

Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in prostitution or in pornographic performances or in the production of pornographic material shall, on conviction, be liable to the punishment laid down in article 248A(1).

Traffic of a person of age for the purpose of exploitation in the removal of organs. – Added by: III. 2002.50.

248C.

Whosoever, by any means mentioned in article 248A(2), trafficks a person of age for the purpose of exploiting that person in the removal of any organ of the body shall on conviction be liable to the punishment of imprisonment for a term from four to twelve years.

Traffic of a minor for any of the purposes mentioned in articles 248A to 248C. – Added by: III. 2002.50.

248D.

Whosoever trafficks a minor for any of the purposes mentioned in articles 248A to 248C, both inclusive, shall, on conviction be liable to the same punishment laid down in those articles, as the case may be, even if none of the means mentioned in article 248A(2) has been used: Provided that where any of the means mentioned in article 248A(2) has been used in the commission of the offence under this article the punishment for the offence shall be increased by one degree.

General provisions applicable to this sub-title. – Added by: III. 2002.50. Amended by: L.N.407 of 2007; XXXI. 2007.14.

248E.

(1) In this sub-title, the phrase "trafficks a person" or "trafficks a minor" means the recruitment, transportation or transfer of a person, or of a minor, as the case may be, including harbouring and subsequent reception and exchange of control over that person, or minor, and includes any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of any country for any of the purposes mentioned in the preceding articles of this sub-title, as the case may be.

(2) Where any of the offences in articles 248A to 248D, both inclusive -

- (a) is accompanied by grievous bodily harm; or
- (b) generates proceeds exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87); or
- (c) is committed with the involvement of a criminal organisation within the meaning of article 83A(1), the punishment otherwise due shall be increased by one degree.

(3) The provisions of article 121D shall apply mutatis mutandis to the offences under this sub-title, so however that the punishment to which the body corporate shall be liable under this subarticle shall be the payment of a fine (multa) of not less than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) and not more than one million and eight hundred and sixty-three thousand and four hundred and ninety-eight euro and seventy-two cents (1,863,498.72).

(4) Where the person found guilty of any of the offences under this sub-title -

- (a) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and
- (b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and
- (c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D, the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) and not more than one million and one hundred and sixtyfour thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

(5) Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta.

(6) The offences committed under this sub-title shall not be liable to punishment if the offender was compelled thereto by another person where the provisions of article 33(b) do not apply.

(7) The provisions of article 14 of the Immigration Act shall not apply until the lapse of thirty days from the date that the Principal Immigration Officer has reasonable grounds to believe that the person concerned is a victim of any of the offences under this sub-title.

(...)

Traffic in persons to enter or leave Malta illegally. – Added by: III. 2002.72. Amended by: VI. 2005.3; L.N. 407 of 2007.

337A.

(1) Any person who with the intent to make any gain whatsoever aids, assists, counsels or procures any other person to enter or to attempt to enter or to leave or attempt to leave or to transit across or to attempt to transit across, Malta in contravention of the laws thereof or who, in Malta or outside Malta, conspires to that effect with any other person shall, without prejudice to any other punishment under this Code or under any other law, be liable to the punishment of imprisonment from six months to five years or to a fine (*multa*) of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) or to both such fine and imprisonment and the provisions of articles 21 and 28A and those of the Probation Act shall not apply:

Provided that where the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid number more than three the punishment shall be increased by one to three degrees:

Provided also that where the offence is committed—

(a) as an activity of a criminal organization; or

(b) while endangering the lives of the persons aided, assisted, counselled, procured or the object of the conspiracy as aforesaid, the punishment shall always be increased by two degrees even when the first proviso does not apply.

(2) Without prejudice to the provisions of article 5, the courts in Malta shall also have jurisdiction over the offence in this article where—

(a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;

(b) the offender is a Maltese national or permanent resident in Malta;

(c) the offence is committed for the benefit of a legal person established in Malta.