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**Opinion No. 993 / 2020**

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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MALTA**

**ACT NO. XLI OF 2020  
TO CONTINUE IMPLEMENTING REFORMS IN THE JUSTICE SECTOR  
BY PROVIDING FOR THE JUDICIAL REVIEW  
OF DECISIONS NOT TO PROSECUTE AND OTHER DECISIONS  
OF THE ATTORNEY GENERAL**

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

7th August, 2020

**ACT No. XLI of 2020**

*AN ACT to continue implementing reforms in the Justice Sector by providing for the judicial review of decisions not to prosecute and other decisions of the Attorney General.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

**1.** (1) The short title of this Act is the Judicial Review (Decisions not to Prosecute and Other Decisions of the Prosecution) Act, 2020. Short title and commencement.

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

**Part I**  
**Amendments to the Constitution of Malta**

**2.** This Part amends the Constitution of Malta and it shall be read and construed as one with the Constitution of Malta, hereinafter in this Part referred to as "the Constitution". Amendments to the Constitution of Malta.

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Amendment of  
article 91 of the  
Constitution.

**3.** In sub-article (3) of article 91 of the Constitution, the words "the Attorney General shall not be subject to the direction or control of any other person or authority" shall be substituted by the words "the Attorney General shall have Constitutional independence and shall not be subject to the direction or control of any other person or authority except insofar as a law may provide:

(a) for the judicial review of a decision not to prosecute or of any other decision taken by the Attorney General, on the grounds of illegality or unreasonableness; or

(b) for the judicial review on the basis of criteria established by law of a decision of the Attorney General that a prosecution should take place in a superior court of criminal jurisdiction where the punishment applicable would be higher than that which would apply had the same offence been tried before an inferior court of criminal jurisdiction."

## **Part II**

### **Amendments to the Criminal Code**

Amendments to  
the Criminal  
Code.  
Cap. 9.

**4.** This Part amends the Criminal Code and it shall be read and construed as one with the Criminal Code, hereinafter in this Part referred to as "the Code".

Amendment of  
article 541 of  
the Code.

**5.** Immediately after sub-article (3) of article 541 of the Code there shall be added the following new sub-article:

"(4) (a) In cases where for the exercise of the criminal action the decision to prosecute is vested in the Attorney General, any injured party may within a period of one month from when he knows or could have known, whichever is the earlier, of the decision of the Attorney General not to prosecute, request the Attorney General in writing, and giving reasons, to reconsider the decision.

(b) If within one month from the request for re-consideration referred to in paragraph (a) the Attorney General either informs the injured party that he has reconsidered the case and decided to confirm his decision against the institution of criminal proceedings or fails to reply to the injured party then the injured party shall be entitled to seek judicial review of the decision of the Attorney General not to prosecute in accordance with the provisions of article 469B of the Code of Organization and Civil Procedure:

Cap. 12.

Cap. 326. Provided that for the purposes of this sub-article, the Auditor General, the Commissioner for Standards in Public Life, the Permanent Commission Against Corruption and the Ombudsman shall be entitled to make any claim and to exercise any action which according to this sub-article pertains to the injured party when they shall have reported any corrupt practice as defined in the Permanent Commission Against Corruption Act to the Attorney General."

6. The proviso to sub-article (6) of article 569 of the Code shall be substituted by the following: Amendment of article 569 of the Code.

"Provided that where the Attorney General shall have directed that no proceedings are to be taken, the provisions of sub-article (4) of article 541 shall apply."

### Part III

#### Amendments to the Code of Organization and Civil Procedure

7. This Part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code". Amendments to the Code of Organization and Civil Procedure. Cap. 12.

8. Immediately after article 469A of the Code there shall be added the following new article: Addition of new article to the Code.

"Judicial review of a decision of the Attorney General. 469B. (1) Where the Attorney General takes a decision:

(a) not to prosecute in accordance with the powers conferred upon him by any law; or

(b) not to allow the inspection or the issuing of copies of a *procès-verbal* or of any depositions or documents filed therewith in terms of the proviso to article 518 of the Criminal Code,

Cap. 9.

the courts of justice of civil jurisdiction, giving due account to the constitutional independence of the Attorney General, may enquire into the validity of the said decision and declare such decision null, invalid or without effect and consequently send back the matter to the Attorney General for review in accordance with the judgment of the court only in the case of a finding that the decision is not properly directed on legal considerations or is unreasonable in that it is not open to a reasonable prosecutor.

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(2) An action for judicial review of a decision of the Attorney General as provided in paragraph (a) of sub-article (1) may be filed only by the injured party and an action in terms of paragraph (b) of sub-article (1) shall be filed by the claimant within two months from when the injured party or the claimant becomes aware or could have become aware of the decision, whichever is the earlier:

Provided that where the law provides for a procedure whereby the Attorney General may be requested to conduct an internal review of the decision, the said period of two months shall commence to run as from the date when the injured party is informed of the results of the said review:

Provided further that for the purposes of this article, the Auditor General, the Commissioner for Standards in Public Life, the Permanent Commission Against Corruption and the Ombudsman shall be entitled to make any claim and to exercise any action which according to this article pertains to the injured party when they shall have reported any corrupt practice as defined in the Permanent Commission Against Corruption Act to the Attorney General.

Cap. 326.

(3) Judicial review cannot be made where an agreement has been reached with the competent authorities of another country that the courts of that country shall exercise jurisdiction over the crime."

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Passed by the House of Representatives at Sitting No. 366 of the 29th July, 2020.

CLAUDETTE BUTTIGIEG  
*Deputy Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*