

Criminal Law Update - Act XIV of 2017

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In this article, Jessica Spiteri discusses the recent changes made to the Criminal Code, as well as Chapter 65 (Traffic Regulation Ordinance) of the Laws of Malta, which delves on traffic-related offences.

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Introduction

Act XIV of 2017 (hereinafter referred to as ‘the Act’) updated the Traffic Regulation Ordinance (hereinafter referred to as ‘the Ordinance’) as well as Article 225 of the Criminal Code (hereinafter referred to as ‘the Code’). In order to discern the new law found in Article 225, one must understand the elements that arise out of the provisions.

The Ordinance

Article 15 of the Ordinance, relating primarily to driving a motor vehicle without a licence, was the first to be updated. The Article starts by explaining that a person who drives a motor vehicle or any other type of vehicle without the requisite licence in a negligent, dangerous manner, where it causes or suffers damage, or permits his car to be driven by a person who is not licensed to drive it or another type of vehicle, shall be liable to a ‘fine (*multa*) not exceeding one thousand and two hundred euro (€1,200) or to imprisonment not exceeding one year’.

Therefore, one can see that instead of the fine being increased, the period of imprisonment was increased from six months to one year. If the punishment had to be made harsher to show the severity of one driving without a licence negligently or dangerously, not only would that person put himself in danger, but he would be a threat to the other persons in the vehicle or on the street. The law here is aimed at protecting public health and public order.

Furthermore, when a person uses an identification number other than that allotted to them by the police or the authority in relation to a particular motor vehicle *‘shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding one thousand and two hundred euro (€1,200) or to imprisonment not exceeding six months or to both such fine and imprisonment’*.

Article 15G, relating to procedure by which local wardens, now referred to as community officers, carry out breath tests on drivers under a reasonable suspicion of driving under the influence, was also updated. Article 15GA(1) states that the stipulations in Article 15C, which apply to breath tests, apply also, in an altered manner, to community officers. Article 15GA(2) states that if such citizen refuses or abstains from giving such sample of breath to the community officer as defined under this article, then that person shall be guilty of an offence and the provisions of Article 15E(4) apply. Article 15E(4) states that if anyone fails or refuses to provide the sample of breath needed for the breath test, one shall be guilty of an offence and, unless the contrary is proven, it will be presumed that the *‘proportion of alcohol in that person’s blood exceeds the prescribed limit’*. In addition, this article makes an important and valid point by providing that *‘it shall be a defence for such person to prove that his failure to provide a specimen was due to physical or mental incapacity to provide it or because its provision would entail a substantial risk to his health.’*

Article 15G(3) states that if such person refuses to provide a sample of breath to the community officer, the community officer may forbid that person from driving

their car until the police arrive. If a person keeps on driving even though they are ordered by the community officer to stop, they shall be guilty of an offence as if the *'order given by the community officer was given by the police'*. This gives the community officer the strength of a police officer in this regard, although their general obligations and duties remain different.

Furthermore, Article 15G(4) deals with the results of breath tests. If the community officer has reasonable suspicion that the level of alcohol in that driver's breath is more than the prescribed limit, then there can be the request for police presence. Police officers are summoned to the site and the person who gave the sample would be prohibited by such officer to drive and the aforementioned provisions of sub-article 3 apply *mutatis mutandis*.

Article 15H(1)(a) and (b) now prescribe *'a fine of not less than one thousand eight hundred euro (€1,800) or to imprisonment not exceeding six months'* and *'a fine (multa) of not less than three thousand euro (€3,000) or to imprisonment not exceeding one year'* respectively for the offences mentioned in Articles 15A and 15B. Article 15A speaks of the person who is unable or unfit to drive, and 15B of when the driver of a motor vehicle has an alcohol concentration in their breath above the prescribed limit. Act also added a third sub-article to Article 15H:

(3) In addition to the penalties under sub-articles (1) and (2), the court may also impose a Probation Order in accordance with Article 7 of the Probation Act which shall include an order whereby the offender shall be ordered to attend a rehabilitation programme, with expenses charged

upon him, or a Community Service Order in accordance with Article 11 of the Probation Act.

Provided that in the case of a conviction due to a person having been unfit to drive through drink or for an offence under article 15B, the provisions of this sub-article shall apply only where the proportion of alcohol in the breath, blood or urine exceeds the prescribed limit by eight microgrammes or more in the breath or by twenty milligrammes or more in the blood or by twenty-three milligrammes or more in urine.

Article 15I was not updated in regard to the definition of ‘breath test’ or ‘drug’, but in regard to the drinking limits prescribed by law for various categories of drivers. Drivers of vehicles that are not commercial vehicles, buses, or coaches may not exceed such limits ‘22 microgrammes of alcohol in 100 millilitres of breath’, ‘50 milligrammes of alcohol in 100 millilitres of blood’, and ‘67 milligrammes of alcohol in 100 millilitres of urine’.

Drivers of commercial vehicles may not exceed ‘9 microgrammes of alcohol in 100 millilitres of breath’, ‘20 milligrammes of alcohol in 100 millilitres of blood’, and ‘27 milligrammes of alcohol in 100 millilitres of urine’. Drivers of buses, coaches, and other vehicles carrying passengers for a fee may not exceed ‘0 microgrammes of alcohol in 100 millilitres of breath’, ‘0 milligrammes of alcohol in 100 millilitres of blood’, and ‘0 milligrammes of alcohol in 100 millilitres of urine’. Drivers in possession of a probationary driving licence may not exceed ‘9 microgrammes of alcohol in 100 millilitres of breath’, ‘20 milligrammes of alcohol in 100 millilitres of blood’, and ‘27 milligrammes

of alcohol in 100 millilitres of urine’.

Article 15I is the one that has left the most effects and impacts on citizens, particularly on young drivers. When the bill became law, alcohol limits became much tighter than they were before. By lowering the permissible alcohol limit, Malta is now at par with other European Union Member States. Before being reduced to 0.5g, the EU average, the limit was of 0.8 grammes of alcohol per litre of blood, the highest in the EU. In layman terms, the average man who wants to drink and drive is now limited to just under a pint of beer or a large glass of wine. On the other hand, the average woman who wants to drink and drive is now limited to half a pint of beer or a small glass of wine. It was made clear by the Minister for Transport, Infrastructure and Capital Projects that Malta was to do everything possible to cater for when these changes took effect. Many campaigners made it clear that the new limit will cut the number of deaths and serious injuries on Malta’s roads.

Article 225 of the Code states that:

(1) Whosoever, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87).

(2) Where the offender has caused the death of more than one person or where in addition to causing the death of a person the offender has also caused bodily harm to another person or other persons the

punishment shall be that of imprisonment of a term of up to ten years.

Here, one can link this update with those carried out with respect to the Ordinance in the words ‘*imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations*’. The regulations referred to hereto are those set forth in the Ordinance. As penalties for those driving under the influence were harshened in terms of the Ordinance, the amendment to the Code lengthened the punishment of imprisonment to a period of up to ten years.

This Sub-title of the Code, entitled ‘*Of Involuntary Homicide or Bodily Harm*’ has two limbs. Firstly, one finds the notion of negligence. Secondly, there is the added layer of imprudence, carelessness, unskillfulness, or non-observance of regulations [of the Ordinance]. Therefore, the law attributes a negative indirect intent as this event is foreseeable. The offender should have realised what was going to happen as a result of their actions and this foreseeability entails criminal liability. Here, one must distinguish from actual foresight, which is absent in the crimes being discussed, from foreseeability. Soler states that such crime ‘*ma kienx previst imma kien prevedibbli*’, meaning that it might not have been foreseen, but was foreseeable.

When one has lack of foresight and the event was not foreseeable, there is no offence, but a situation of *casus*. When there is criminal liability, however, one has *culpa*, i.e. negligence. Carrara states that: ‘*l’omicidio può essere doloso, colposo, o preterintenzionale*’; meaning that homicide may be intentional, negligent, or unintentional.

Involuntary crimes which arise from negligence, one does not foresee what is going to happen, even though one should have. Therefore, the courts determine if there was foresight on a case-by-case basis; if there was foresight and the victim dies, it would be wilful homicide. If there was no foresight, one does not have *dolus*, but *culpa*, and therefore, foreseeability. Therefore, there can be *casus*, where there is an accident that was neither foreseen nor foreseeable; if there was foresight, there is *dolus*, but if there was no foresight but there was foreseeability, there is *culpa*.