

Ministry for Justice, Culture and Local Government, Malta

National Justice Reform

May 2015

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GOVERNMENT'S POSITION

As the Commission is aware, from the onset of the new legislature the new Government has given great importance has been given to reform the justice system in Malta.

In fact one of the very first decisions was the establishment of a high-level Commission specifically tasked to come up with a plan to Reform the Justice System. In fact this Commission, headed by former ECHR Judge Dr Giovanni Bonello, was called the "Commission for a Holistic Reform in the Justice system."

By the end of 2013, the Bonello Commission managed to draw up a comprehensive report made up of 450 recommendations aimed at strengthening the justice system. These recommendations have the aim of strengthening the independence of the judiciary, improving the quality of the justice system and making procedures more efficient.

The Ministry for Justice, Culture and Local Government is committed to undertake this ambitious holistic reform in the justice sector. This program was initiated by the Government of Malta itself without the instigation of the EU. Several in-roads have been made (full list can be found hereunder).

In fact, over the course of the last two years, the Government of Malta has undertaken a considerable number of measures aimed at addressing the efficiency within the Justice System.

The Maltese Government is determined to continue its efforts to improve the Justice system, in particular to render the system an efficient and effective one, especially with regards to the business community and the general public.

FORTHCOMING INITIATIVES

DRAFT BILL TO IMPLEMENT REFORM IN THE ADMINISTRATION OF JUSTICE

Following the publication of the Final Report by the Bonello Commission, a mammoth task was undertaken to translate these 450 recommendations into positive law.

This task is nearing completion, with a 500-page first draft bill having been delivered to the Minister for Justice. This Bill encompasses most of the measures listed in the Final Report, along with additional measures and consequential amendments which need to be undertaken.

Once this Bill is reviewed by the Office of the Attorney General and then approved by Cabinet, the Bill will be tabled in the House of Representatives and upon publication, placed on the Parliamentary agenda.

It is customary under local parliamentary practice that an expedite consultation process is undertaken with a widespread number of stakeholders whilst a debate is going on in Parliament on a particular subject and any changes to the relevant bill are then adopted at Committee State.

The Government is aware that a number of stakeholders need to be adequately consulted on the changes proposed. These include:

- The Members of the Judiciary
- The Commission for the Administration of Justice
- The Chamber of Advocates
- The Notarial Council
- The Chamber of Legal Procurators
- The Executive Police
- The Opposition
- The financial services institutions
- The Malta Arbitration Centre
- The Malta Mediation Centre
- The Office of the President

In order for the relevant Bill to become law, certain amendments need to be made to the Constitution of Malta. Consequently, a number of amendments would require the support of a two-thirds majority in the House of Representatives.

The Government is confident that the Bonello report attracted and will continue to attract cross-party support. However, it is also realistic to point out that the Government must keep the door open to consultation and consensus building, not only with the Opposition but also with the stakeholders which will actually be implementing the changes themselves on the ground.

In the meantime, the Government of Malta has made significant progress in the last two years with regards to reforming the Justice Sector. As indicated earlier, there are some aspects of the reform which has already been implemented and others which are in the process of being implemented independently of the Reform Bill.

Such is the expediency with which the Government is working in order to implement Justice Reform.

CREATION OF THE OFFICE OF COURT ATTORNEYS

The priority project for 2015 with regards to the Justice Sector of the Ministry for Justice, Culture and Local Government is the creation of the Office of the Court Attorneys who will replace the existing Judicial Assistants and be given various other duties in order to alleviate the work load from the members of the Judiciary. The Court Attorneys – whose function is very similar to that of a Jurist in the European

Court of Human Rights - will carry out diverse functions such as conducting the pre-trial procedure and draft judgments handed out by the Judge they are assigned to.

LEGAL AID AGENCY

The creation of a Legal Aid Agency - which is separate from the Office of the Attorney General - is essential for a better functioning of this service. The Legal Notice which establishes this Agency was passed in the end of 2014. The Ministry for Justice is currently undergoing a capacity building exercise to improve the standards in this newly-set up agency.

ASSET MANAGEMENT BUREAU

The Draft Bill mentioned above incorporates provisions aimed at creating an Asset Management Bureau which will regulate and operate the freezing of proceeds of crime. The aim is to have a Public-Private Partnership with the public department remaining in charge of the administration whereas the private entity will be tasked with the execution of the freezing orders and the recovery of such proceeds.

COMPLETED INITIATIVES

DATA COLLECTION AND ANALYSIS

The EU Justice Scoreboard published on Monday 9th March 2015 is unequivocal in the fact that the biggest challenge in the Justice sector here in Malta is the delay in court proceedings. As from January of 2015, the Directorate General of Justice has embarked upon the project of data collection and data analysis of cases. One needs to note that although previously data on case management was being collected, this raw data was never properly analysed and placed into perspective. The Directorate General has now embarked upon determining the sore points within the Justice Sector which are causing delays and their actual causes in order to make specific recommendations for the improvement of efficiency in those areas which are falling behind.

Through this data collection and analysis it has been discovered that although the absolute numbers shed a negative light on the Maltese Justice System, when compared to other EU states, Malta has made marked improvements with regards to clearance rates and disposition time.

The same pattern can be observed with regards to administrative cases in front of the Administrative Tribunal where the clearance rate increased from 40% in 2013 to 149% in 2014. Between 2013 and 2014, the disposition time for administrative cases decreased by 30% (from 2036 days to 1408 days).

Likewise, in the Small Claims Tribunal the clearance rate increased from 100% in 2013 to 123% in 2014. Between 2013 and 2014, the disposition time for administrative cases decreased by 36% (from 445 days to 284 days).

This improvement is the result of a number of reforms that have been incessantly implemented.

IT IMPROVEMENTS

As the European Commission stated in the document "The 2015 EU Scoreboard Justice", which is based on the statistics of 2013, it emerged that measures taken by the end of 2013 in the field of IT have made a positive difference in Maltese and Gozitan Courts. So much so, that in certain areas such as in the case of filing applications online for small claims - which is a facility introduced at the end of 2013 - Malta has stood out as one of the only three EU countries which allow this facility.

The following are IT measures implemented by the Directorate for Civil Courts and Tribunals between 2013 and 2015:

- Lawyers and parties are advised on court sittings deferrals via SMS: When a case is to be deferred on an order by the Court an SMS is now being sent to lawyers and parties who register, days ahead. The purpose behind this initiative is to limit trips to the Court in vain where cases have been deferred.
- Emails to lawyers about orders (decrees): Any order given in the Criminal Court, Court of Criminal Appeal, Court of Magistrates, First Hall of the Civil Court and the Small Claims Tribunal are automatically sent to the attorney of the parties by email. This is to ensure that the lawyers know the outcome of their application in real time.
- Transcripts of witness statements are sent by email to the lawyers as soon as it is transcribed.
- Lawyers and legal procurators are notified by email about the status of the subpoena sent to the witnesses and parties. The result of each notification i.e. whether the result is positive (the documents have been successfully served) or negative (the documents were not served due to various reasons) is communicated to the lawyer or legal procurator. In this way the lawyer can take immediate action to address the situation and ensure that the procedure for the hearing of the case is not affected.
- Filing of Acts in Malta or in Gozo regardless of which court is hearing the case: Lawyers can now present judicial acts in the Court of Malta to be transmitted to the Court of Gozo where the case will be heard, and vice versa. This means that lawyers do not have to physically go from one island to another simply to present such an act.
- Civil Case Management System available online for the legal professionals: Another service intended to assist the legal profession is the online availability of the Civil Case Management System (LECAM). This online service allow lawyers, notaries and legal procurators to access documents, acts and the progress of their

client's case from their offices as opposed to physically going to the Court's Registry. Thus the legal profession can do research from the comfort of their offices 24/7. The information contained therein may be on official letters, promissory notes, protests, warrants, testimony transcripts, acts and *process verbale*. In this way each customer can go to his lawyer's office to be updated on the progress of his case.

The following are IT measures implemented by the Directorate for Criminal Courts and Tribunals between 2013-2015:

- Use of Court Halls: The system of hall usage was only used by the Deputies of the Registry to assign halls to the Judge/ Magistrate who would operate in it on the day of scheduled hearing. Changes were made where all Deputies of the Judiciary were given access to this system. Thus hearings which are planned in advance enter the system as soon as possible and are available to the public immediately, who can then confirm whether the sitting will be held on a particular day through accessing the courts' website from the comfort of his home.
- Transcripts of testimony and decrees: A new system has been introduced where witnesses' statements that are transcribed in criminal cases are sent via email to the lawyers of the parties in the case. This system reduces the extra trips conducted by the lawyers to the Magistrate's office to obtain such transcripts and at the same time they can analyse the process step by step from the comfort of their office. This system is used both for court decrees as well as the statements of witnesses given in compilation proceedings.
- Interconnectivity Project: A new program has been introduced to facilitate the movement of documents from Courts to the Office of the Attorney General and vice versa. The aim was to avoid duplication of work performed by these two offices.
- Pilot Project: Initiation of a pilot project in the Court of Magistrates relation to the hearing of traffic cases and family cases dealing with access and maintenance issues. The aims of this project are: -
 1. The defendants and witnesses are served with the subpoena by a private company and not by the police, resulting in more positive outcomes.
 2. Witnesses in a case do not go to Court in vain when the accused has not yet been served with the summons.
 3. The Deputy Registrar can write the record in the electronic system provided for by a private company and issue an

extract of the judgment so that the defendant and the parties may have a copy of the judgment immediately.

This 6-month pilot project has been a great success with only 2.8% of the subpoenas remaining unanswered. There have been plans for this system to be moved into a second hall, that dealing with family cases, in the coming months.

The following are IT measures implemented by the Directorate for the Courts of Gozo between 2013 and 2015:

- Scanning: Scanning equipment has been installed in the Court's Registry and Archive in order to improve the electronic services offered by the Gozo Court and thus also reduces bureaucracy.
- Video conference hearing witnesses: In November 2014 a pilot project was launched to facilitate the hearing of expert witnesses in criminal matters. This initiative is intended to make it easier for doctors to give their statements without the need to travel from Mater Dei Hospital to Gozo and wait for hours in the Gozitan Court. Through this system, they can give their statements on oath from Mater Dei itself via video-conferencing. This has been a success and it is currently being utilised in full-swing.
- Filing of Acts: The most important and overdue initiative and therefore, the most successful, was that a party who had a court case in Gozo could file acts and applications in the Courts of Malta and vice versa. Thus a party and its legal counsel can avoid going in person to the Court of the other. This initiative has significantly decreased and simplified bureaucracy and unnecessary hassle.

All these IT improvements have assisted in reducing the bureaucracy the Law Courts found themselves in. These measures have been praised by most of the members of the legal profession and the Judiciary as being simple yet positive improvements in increasing the efficiency of the Court system.

It is being presumed that all of the above mentioned IT changes have been taken into consideration by the European Commission in determining the country specific recommendations.

THE LAW COURTS BUILDINGS

Refurbishment of the Courts is being conducted. One of the projects envisioned is the creation of new Halls which would allow for more sittings to be conducted by the Judiciary. Furthermore, during 2013 several refurbishment projects were undertaken in the Courts of Gozo especially in the offices annexed to the Registry. Consultations with stakeholders on the project of finding new premises for the Gozo Courts were conducted and the relative building permit application was made.

At the end of October 2014, a new Building for the Judiciary has opened its doors. This building, called St. Thomas More Building, is for all intents and purposes a

dedicated hub of offices for Judges. In August 2014 the offices of the Chief Justice and thirteen other Judges, as well as their staff have been transferred to this new building.

This created space in the main Court building that can accommodate new judges, which has always been a problem when appointing new members of the Judiciary. During 2014, talks were held with the Ministry of Education with regards to the use of warehouses in Ospizio in Floriana. Through these talks, the Courts have acquired three warehouses that will be used as an archive. There was a lot of refurbishment which need to be conducted including replacement of the lighting system, replacement of windows, wall-cladding, painting and floor coverings. Shelving has been ordered for two of the warehouses. This measure will also create important new physical space in the main Court building.

AMENDMENTS TO THE CRIMINAL LAW

FREEZING OF ASSETS

Article 23D of Chapter 9 of the Laws of Malta came into force with the aim of facilitating the completion of the report of the freezing of assets. This report was prepared by several lawyers recruited by the courts and now this report is being reviewed by the Asset Management Unit within the Law Courts. In the past two years the Courts of Malta have issued a total of 140 order freezing assets.

ADMISSION OF GUILT

Introduction of Article 392 B of Chapter 9 of the Laws of Malta: The aim of the article was to decrease the length of proceedings in cases where the accused to a crime punishable by a term of imprisonment exceeding 10 years, admits to the charges being filed against him.

In the case that such admission is forthcoming, the Court of Magistrates as a Court of Criminal Inquiry is allowed to forego the compilation of evidence procedure, and the case shall be submitted to the Attorney General who shall notify the Registrar of the Court to appoint the case for the hearing by the Criminal Court within two months of receipt of the notification by the Court of Magistrates as a Court of Inquiry.

SENTENCE BARGAINING

Article 392A(5) of Chapter 9 of the Laws of Malta extending sentence bargaining to all Court of criminal law: This article is a means by which the defendant and the Attorney General can now reach an agreement with regards to the applicable penalty which the Prosecution would request should the accused admit to the charges against him i.e. sentence bargaining. The Court of Magistrates as a Court of Criminal Judicature would then apply the penalty agreed upon.

JUDGMENTS IN ABSENTIA

Introduction of Article 360B of Chapter 9 of the Laws of Malta: This article introduces the concept of judgments in absentia where the accused has been duly notified. This article applies only to the Court of Magistrates acting within its original competence (i.e. where the punishment meted out by the Court of Magistrates does not exceed 6 months imprisonment). This article will significantly

reduce the amount of delays caused when the accused is not present in the Court for the delivery of judgment.

This article will come into force once consensus is reached with the Opposition.

DRUG LAWS REFORM

Following extensive consultations with the public and various stakeholders, a new law entitled Drug Dependence (Treatment not Imprisonment) Act, was passed through Parliament and set into force on the 15th of April 2015.

The effects of the new law are that: (a) persons found in simple possession of drugs for the first time will appear before a Justice Commissioner, as opposed to appearing before the Court of Magistrates, who will give them a warning and impose administrative fines ranging between €75 and €125. In the case of cannabis the fine will be between €50 and €100. Repeat offenders will appear before the Offenders Rehabilitation Board, which will set conditions for rehabilitation. Breaking the conditions would be a criminal offence and will lead to the case being transmitted to the Court of Magistrates; (b) Persons found in possession of a drugs which does not fall in the definition of “simple possession” but is neither triable by jury could benefit from appearing in front of a Drug Board which would give a second chance to genuine victims of abuse

This reform will contribute to no end to more expedite proceedings, particularly in cases of simple possession.

ACTS OF PARLIAMENT

A number of laws were passed through parliament:

Act IV of 2013 **removes prescription** for offences committed by Ministers, Parliamentary Secretaries, Members of the House of Representatives, Mayors or Local Councillors and the offence involved the abuse of such office. It further implemented recommendations by Greco (Recommendation ii-iii), Third Evaluation Round, Evaluation Report on Malta on Incriminations (ETS 173 and 191, GPC 2)

Act VII of 2013 introduced in Malta the concept of protection of the **Whistleblower Act I of 2014 (31st January 2014) Introduction of offences of Female genital Mutilation, Enforced sterilization, Forced Marriage** enabled Malta to **ratify the Council of Europe Convention on Prevention and Combating of Violence** against Women and Domestic Violence Chapter 532, Laws of Malta -Ratification Act.

Act II of 2014 (14th February 2014) Following *M.D. And Others vs Malta*, 17/07/2012 (Application No. 64791/10) ECHR Article 197 amended to give Court discretion regarding the **loss of parental rights** following the finding of guilt for certain offences:

- Prostituting of spouse under age or of minor by husband or wife or tutor.
- Prostituting of descendant or spouse of age, by ascendant or husband or wife.

Act III of 2014 (14th February 2014) Article 35 was amended to **increase the age of criminal responsibility** from that of 9 years to 14 years. The proposed amendments now provide that minors under 14 years are deemed doli incapax although this in no way prevents the Minister from exercising his powers under the Children and Young Person (Care Orders) Act. Minors over 16 are similarly exempt from criminal responsibility if they act without mischievous discretion. However with regards to offences committed by minors acting with mischievous discretion and those minors who are doli incapax, the parent or any other person charged with the upbringing of the minor may still be subject to legal sanctions since in such cases vicarious responsibility attaches to the person charged with the minor's upbringing. This will remain unchanged with the proposed amendments. In line with recommendations of the CRC (Convention on the Rights of the Child) and UPR (Universal Periodic Review). Article 339(1Xh) amended - corporal punishment made illegal without qualification.

Act IV of 2014 (18th March 2014) effected the transposition of:

- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the **right to interpretation and translation in criminal proceedings**;
- Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on **combating the sexual abuse and sexual exploitation of children and child pornography**, and replacing Council Framework Decision 2004/68/JHA;
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on **the right to information in criminal proceedings**.

Act V of 2014 (25th March 2014) implemented increases of **penalties for crimes committed against public officers** and persons entrusted with public functions, judiciary, the Attorney General, juries.

Act XXIV of 2014 (1st August 2014) implemented:

- Council Framework Decision 2008/675/JHA on taking account of **convictions** in Member States of the European Union in the course of new criminal proceedings
- Council Framework Decision 2008/841/JHA on the **fight against organised crime**;
- Council Decision 2008/615/JHA on the stepping-up of **cross-border cooperation**, particularly in combating terrorism and cross-border crime;
- Ratification of Kampala Amendments to the Rome Statute;
- Strengthening the provisions on **offences motivated by xenophobia or homophobia**;
- Introduces **offences of promotion of violence or racial hatred** by public officers;

- Introduces **stalking and cyber bullying**.
- Amends **Extradition Act**

Act XXXI of 2014 (12th August 2014) introduced **new offences committed against elderly and dependent persons**

Act No. XXXVIII of 2014 (25th November 2014) amended the Probation Act to provide for a **more efficient mode of procedure** in particular when reviewing alleged breaches of probation orders.

Act III of 2015 dealt with the **Prevention of Money Laundering and Funding of Terrorism**

Act VIII of 2015 implemented Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on **attacks against information systems**, to **increase the competence of the Court of Magistrates** and to **establish the Asset Recovery Bureau**.

Victims of Crime Act (Act IX of 2015) implemented:

- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
- Provisions regarding protection of victims of trafficking in Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.
- Act No. XVII of 2013. Substantive provisions on incriminations of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. 6th December 2013

REGULATIONS

Decisions on Supervision Measures (Execution in the European Union) Regulations, 2013 16th August 2013 implemented:

Council Framework Decision 2009/829/JHA of 23rd October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

Extradition (Designated Foreign Countries) (Amendment) Order, 2013, L.N 247 of 2013

Extradition (Designated Foreign Countries) (Amendment No.2) Order, 2013, L.N. 421 of 2013

Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings Regulations (25th April 2014)

Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings European Protection Order (Execution) Regulations (22nd August 2014);

Transposition of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order Method of Service of Judicial Acts Regulations (22nd September 2014).

SETTING UP OF THE DIRECTORATE GENERAL

A Directorate General (Strategy & Support) was set up on 1 January 2014.

On the appointment of the Director General, there were two officers who were appointed with the Directorate, one Assistant Director (Justice Affairs) and a senior legal counsel. In November 2014 an amendment was made to the Second Schedule to the Public Administration Act, which included the Department of Justice to the list of Government departments, headed by the Director General responsible for justice.

The Directorate General was tasked to assist the Minister to determine whether to sign and ratify those Conventions which were still not signed and ratified. During 2014, the Directorate General processed a total of 16 Conventions.

TRANSPPOSITION OF EU DIRECTIVES

During 2014, the directorate general assisted in the transposition of 5 EU Directives, namely:

- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings;
- Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA;
- Directive 2011/99/EU of 13 December 2011 on the European Protection Order;
- Directive 2012/13/EU of the European Parliament and of the Council of 22 of May 2012 on the right to information in criminal proceedings; and
- Directive 2012/29/EU of the European Parliament and of the Council of 23 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.