

Memorandum by the Minister of Justice

Criminal Code (Amendment) (No. 2) Bill

Revocation of the
Administration of Justice (Emergency) Regulations, 1940

Competence of Magistrates in Criminal Matters.

Since the promulgation of the Criminal Code in 1854, the ordinary limit of criminal jurisdiction of the Courts of Magistrates was three months' imprisonment or hard labour. In 1940 section 382 of the Code was amended so as to vest in the Attorney General, subject always to the non-objection of the accused, the right to send back for trial by the said Court any person who, after going through a "compilazione" was considered by the Attorney General as triable for an offence punishable with a term exceeding three months but not exceeding six months. This amendment of the ordinary law was, however, soon afterwards superseded by the Administration of Justice (Emergency) Regulations, 1940 (G.N. 337/40) which not only increased the jurisdiction up to two years but left the decision as to whether the accused should or should not be tried by judge and jury with the Attorney General.

Though this war-time measure was necessary in times of emergency the need of bringing it to an end has long been felt as a matter of principle and supported by all those who hold dear the right of trial by jury. In 1948 a Bill was introduced in the Legislative Assembly by the Labour Government to replace the regulations by an amendment of the Criminal Code which, if approved, would have led to -

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- (a) the ordinary jurisdiction of the Court, which implies a summary trial, being increased to one year,
- (b) the Attorney General being given the power, with the consent of the accused, to send back for trial by a Magistrate a person punishable with a term exceeding one year but not exceeding three years, and
- (c) the accused being given the right, on consenting to a summary trial, to be punished with not more than one year's imprisonment.

It was considered that the Bill was controversial in several respects, that is, in increasing by too much the ordinary jurisdiction of the Inferior Court, in going up to three years for the Attorney General's option and finally in introducing a sort of lottery as to the eventual results of the case. The Bill proved so controversial, both in and outside the House, that the House appointed a Select Committee which, after consulting several legal authorities, recommended (a) that the ordinary jurisdiction should not be increased to more than six months and (b) that the maximum punishment should remain the same whether the accused was tried by a jury or not, so that there could be no possible suggestion of any inducement being offered to renounce to trial by jury.

The Committee reported in 1950 but owing to a prorogation the Bill lapsed and no further action was thereafter taken till now. The Law Officers have now

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drafted the attached Bill which though short in length contains an important juridical principle.

The Bill faithfully reproduces the principles expounded by the Select Committee which appear to be very sound ones and, if approved, will have the highly desirable effect of (a) revoking the war-time imposition, (b) of restoring the accused's right to trial by jury (c) of putting into the statute book the less harmful aspect of the regulations (namely that of expanding the jurisdiction of the Magistrates to two years) subject, however, to the overriding requirement of the non-objection of the accused, and (d) of increasing the ordinary jurisdiction to six months so as to include all cases of simple theft and other minor cases. In all these respects it is considered that the Bill should prove a popular and welcome measure.

A question may arise when co-accused persons are not all in agreement in desiring to be tried summarily. The Hon. Mr Justice Harding, giving evidence before the Select Committee, had expressed the view that there should not be any objection to a separation of the cases in such instances, but the Committee preferred to take the view that all should stand or fall together. In deference to the wishes of the former Committee of the House, the Bill reflects the view of that Committee. But apart from this it is the considered opinion of this Ministry, formed after the most detailed consideration of the issues involved, that the separation of the cases in the Inferior Court could give rise to serious difficulties of practice and

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procedure, as the Attorney General has only a very limited time in which to file the indictment. Since there is only one record of the evidence collected in the "compilazione" the prosecution might not be in time to transmit such record of the case to the Superior Court before the case of those opting for a summary trial by the Inferior Court is concluded. This would give rise to serious embarrassment in the administration of justice. As the person claiming trial by jury will be, after all, only invoking access to the tribunal of the ordinary jurisdiction, this Ministry has concluded that both principle and practice militate in favour of the rule stated in the Bill. Reference is made to the Objects and Reasons. This Ministry has several other important amendments of the Criminal Code under consideration but the nature of this particular amendment suggests that it should be presented on its own.

In view of the importance of the Bill and of the desirability of doing away with the remains of war-time regulations wherever possible, Hon. Ministers are invited to approve that the Bill be introduced in the Assembly.

29th April, 1963.

A BILL
entitled

AN ACT further to amend the Criminal Code, Cap. 12

ENACTED by the Legislature of Malta.

Short title and
construction.

1. This Act may be cited as the Criminal Code (Amendment) (No. 2) Act, 1963 and shall be read and construed as one with the Criminal Code, hereinafter referred to as "the principal law".

Amendment of
section 382 of
the principal
law.

2. Section 382 of the principal law is amended →

- (a) by the deletion from paragraph (b) of subsection (1) of the word "three" and the substitution of the word "six";
- (b) by the deletion from paragraph (a) of subsection (3) of the words "exceeding three months but not exceeding six months" and the substitution of the words "exceeding six months but not exceeding two years"; and
- (c) by the addition, after paragraph (d) of subsection (3), of the following paragraph:-

"(e) Where the number of the accused sent for trial by the Court of Judicial Police under the provisions of paragraph (a) of this subsection is two or more
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and any one or more of them makes objection to the case being dealt with summarily, the provisions of the last foregoing paragraph shall apply in respect of all the accused so sent for trial by the said Court, including any of them who have not made such objection."

Amendment of section 383 of the principal law.

3. Section 383 of the principal law is amended by the deletion from paragraph (c) of subsection (2) of the word "three" and the substitution of the word "six".

Repeal of the Administration of Justice (Emergency) Regulations, 1940, and saving.

4. The Administration of Justice (Emergency) Regulations, 1940 (published as Government Notice, No. 337 dated 5th July, 1940) are revoked without prejudice to anything lawfully done or omitted to be done thereunder and in particular, but without prejudice to the generality of the foregoing saving, to the competence of the Court of Judicial Police as a Court of Criminal Judicature to try and deal with any person charged with an offence who, before the commencement of this Act, was sent by the Attorney General for trial by the said Court in accordance with those regulations.

Objects and Reasons

This Bill makes provision for the replacement, with an important modification, of the Administration of Justice (Emergency) Regulations,

1940, which are still in force under the Expiring Laws Continuance Act, 1963. Under those regulations the ordinary jurisdiction of the Court of Judicial Police in criminal matters was to all practical intents and purposes raised from three months to two years restriction of personal liberty, and the decision whether the case should go before such Court or before Her Majesty's Criminal Court sitting with a jury was left with the Attorney General.

The present Bill revokes those regulations and increases the summary jurisdiction of the Court of Judicial Police to cases involving up to six months imprisonment. The Bill also introduces into the Criminal Code, but subject in every case to the non-objection of the accused, the power of the Attorney General to send back for trial by the Court of Judicial Police any person who, after going through a preliminary inquiry by the same Court, is considered by the Attorney General to be triable for an offence punishable according to law with a punishment restrictive of personal liberty exceeding six months but not exceeding two years. In this respect the Bill does nothing more than to give further recognition to a principle already statutorily recognised by an amendment of the Code made by Ordinance No. XXIX of 1940, which, however, soon after its enactment, was superseded by the wartime regulations now to be revoked.

/The Bill

The Bill follows the recommendations made in 1950 by a Select Committee of the Legislative Assembly which was appointed to consider Bill No. 52 of 1948.

Clause 3 of the Bill contains an amendment of a consequential nature.