

# AN 'ITER' THROUGH MALTESE CRIMINAL PROCEEDINGS

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## **Arraignment & Inquiry**

Under the Maltese legal system, an arrested person must be arraigned before the Magistrates' Courts not later than forty-eight hours after his arrest, otherwise he must be released (section 365, Criminal Code). Upon arraignment, the Court must explain to the accused the nature of the charge preferred against him and inform him that he is not bound to answer any question nor to incriminate himself. The Court shall also inform the accused that he may, if he so desires, be assisted by an Advocate or a legal Procurator and that whatever he says may be received in evidence against him (section 404, Criminal Code). It shall be the duty of the Courts of Criminal Justice to see to the adequate defence of the parties charged or accused (section 512, Criminal Code). The Advocate for Legal Aid shall gratuitously undertake the defence of any accused who has briefed no other Advocate (section 564, Criminal Code).

Any accused person who is in custody for any crime or contravention may, on application, be granted temporary release from custody, upon giving sufficient security to appear at the proceedings at the appointed time and place (section 568, Criminal Code). Thus, bail is intended to secure appearance upon every Court's order, otherwise bail is forfeited (section 573, Criminal Code).

On the conclusion of the inquiry, incorporating the evidence in support of the Police report, the Court shall decide whether there are or are not sufficient grounds for committing the accused for trial on indictment. In the first case, the Court shall commit the accused for trial by the Criminal Court, and, in the second case, it shall order his discharge (Section 413, Criminal Code).

By virtue of Act XIII of 1980, in certain cases, the Magistrates' Courts are empowered to ask the accused whether he has any objection for the case to be tried by that Court, and if there is no objection on the part of the accused, the Court shall proceed to determine the case itself as a Court of Criminal Judicature.

Where the accused is committed for trial, upon receipt of the records of the inquiry by the Attorney-General, the Attorney-General shall be allowed the term of one month for the filing of the indictment (section 444, Criminal Code as amended by Act XIII of 1980).

### **Proceedings before the Criminal Court**

In virtue of S. 450 as amended by Act LIII 1981, when the indictment is filed, an official copy thereof, together with an official copy of the Note indicating the names of the witnesses, etc. whom the Attorney-General intends to produce at the trial, shall be served on the party accused. The accused shall, by means of a Note filed in the Registry of the Criminal Court not later than fifteen working days from the date of service: (i) give notice of any preliminary pleas (e.g. plea of nullity or of defect in the indictment), or pleas as to the admissibility of evidence, (ii) indicate the witnesses and produce the documents and objects which he intends to avail himself of during the trial. Upon receipt of a copy of the Note filed by the accused, the Attorney-General shall, within five days from such service, give notice of any plea as to the admissibility of the evidence which the accused intends to produce. The case is then appointed for the hearing of submissions regarding the preliminary pleas and the determination thereof, before the accused answers the questions whether he is guilty of the offence charged in the indictment (S. 462, Criminal Code). At the start of the sitting the Registrar shall read out the indictment (S. 460, Criminal Code).

An appeal shall lie from the decision of the Criminal Court regarding the pleas raised by the accused and/or the Attorney-General, to the Court of Criminal Appeal (Section 5088, Criminal Code).

If no pleas are raised or after the determination of such pleas in a definitive manner, the Criminal Court shall ask the accused through the Registrar whether he is guilty of the offence charged in the indictment (S. 462, Criminal Code) and if he answers 'not guilty', it shall then establish the date of the trial proper. The accused shall be allowed a term of at least ten days to prepare his defence; such period starts to run after a notice of the date fixed for the trial, is served on the party accused.

If the accused, in answer to the question whether he is guilty as charged, states that he is guilty of the offence, the Court shall in the most solemn manner warn him of the legal consequences of such statement, and shall allow him a short time to retract it; but if the accused persists in his statement, such statement shall be recorded and the Court shall proceed to press on the accused such sentence as would, according to law, be passed on an accused convicted of the offence. Nevertheless, if there is good reason to doubt whether the offence has really taken place at all, or whether the accused is guilty of the offence, the Court shall, notwithstanding the confession of the accused, order the trial of the case to be proceeded with as if the accused had not pleaded guilty (section 465, Criminal Code).

Where the Court wishes to know more about the social background of the offender, it is customary for the Court to appoint a probation officer to prepare a social enquiry report under Section 13 of the Probation of Offenders Act, 1957. This procedure is exceptionally adopted by the

Maltese Courts, whereas in the United States and in most other countries the presentence report is an integral part of the sentencing process.

### **Trial by Jury**

The Criminal Court shall consist of a Judge sitting with a jury. The jury shall decide on any matter touching the issue as to whether the accused is guilty or not guilty (S. 448, Criminal Code) and on the issue of insanity (section 414, Criminal Code); and the Court shall decide on the application of the law to the fact as declared by the jury, as well as on all other points relative to the proceedings (section 448, Criminal Code). It is the trial judge who decides which evidence is relevant to the issue and which questions are to be allowed.

In the absence, or after the determination of any plea against the admissibility of evidence, the Court shall impanel the jury and proceed with the trial, provided no appeal has been filed. The jury consists of a foreman and eight common jurors (S. 604). The procedure known as "jury vetting" does not exist under Maltese law. Nevertheless, challenges are contemplated by our legal system. Challenges may be either peremptory or for cause. Challenges are peremptory when made without reason assigned, and their effect shall be that the person challenged shall be excluded from serving as a juror at the trial. Challenges are for cause when made by assigning a reason, and their effect shall be that, if such reason is approved by the Court, the challenge shall be allowed and the person shall be excluded; but if the reason assigned is not so approved, the challenge shall be disallowed and the person admitted. The number of peremptory challenges allowed to the Attorney-General and to each of the accused is three; but, where the accused in one trial are more than three, each of them has a right to two peremptory challenges only (Section 605, Criminal Code).

After the jury is selected, the Attorney-General shall then address the jury on the facts constituting the offence preferred in the indictment and the evidence which he proposes to produce in support of those facts. (S. 468, Criminal Code). The Attorney-General shall call his witnesses examining them 'viva voce' and shall produce any other evidence he may have to offer (S. 469). When the case for the prosecution is concluded, the accused may, only if he so wishes, give evidence on oath; provided that the failure of the party charged to give evidence shall not be made the subject of adverse comment by the prosecution (S. 630). If the accused is admitted to give evidence at his own request, he may be cross-examined by the prosecution, notwithstanding that such cross-examination would tend to incriminate him as to the offence charged; otherwise, it shall not be lawful for the Court, the Attorney-General or the jury, during the trial, to put any other question to the accused with regard to the facts with which he is charged. (S. 466(7), Criminal Code). This is the privilege that protects a person from self-

incrimination.

After the evidence of the accused or when the case for the prosecution is concluded, the accused shall have the right to make his defence, either personally or by any Advocate, and to call and examine his witnesses and to produce any other evidence he may have to offer (S. 470).

After the close of the defence, the Attorney-General shall be allowed to reply if he so desires; but in such case, the accused shall have the right to a rejoinder (S. 475, C.C.)

After the conclusion of the case for the prosecution and for the defence, the Judge shall address the jury, explaining to them the nature and the ingredients of the offence preferred in the indictment, as well as any other point of law which in the particular case, may be connected with the functions of the jury, summing up, in such manner as he may think necessary, the evidence of the witnesses and other concurrent evidence, acquainting them with the powers which the jury may exercise in the particular case, and making all such other remarks as may tend to direct and instruct the jury for the proper discharge of their duties (S. 476, Criminal Code).

For every verdict of the jury, whether in favour of, or against the accused, there shall be necessary the concurrence of at least six votes (S. 479, Criminal Code).

Where on the reading out in Court of any verdict, the absence of the concurrence of at least six votes in support of such verdict is made to appear to the Court by a number of jurors sufficient to show such defect, the Court shall require the jury to retire for further deliberation under the direction of the foreman of the jury (section 494, Criminal Code). If this absence of concurrence persists, the jury is discharged and another date is set for a new trial before another jury.

Where the law by reason of any previous conviction prescribes an increase of punishment for a subsequent offence, the trial shall proceed as if the previous conviction and sentence of the accused had not been alleged in the indictment; and the allegation of any such previous conviction and sentence shall not be submitted to the jury until after and if the jury shall have declared the accused guilty of such subsequent offence: provided however, that, if upon the trial in respect of such subsequent offence or relapse, evidence is adduced as to the good character of the accused, it shall be lawful for the Attorney-General, in answer thereto, to read out the indictment and to prove the conviction of, and sentence passed on, the accused for previous offence, even before the jury shall have found the accused guilty (S. 501, Criminal Code).

### **Appeal Proceedings**

There are two types of appeal: (1) appeals from decisions regarding

preliminary pleas and pleas against the admissibility of evidence and from interlocutory decrees, and (2) appeals against conviction or sentence.

(1)(a) An appeal shall lie to the Court of Criminal Appeal at the instance of the Attorney-General or of the accused from any decision given after the reading out of the indictment and before the accused pleads to the general issue of guilty or not guilty, on any of the following pleas: plea to the jurisdiction of the Court, plea of nullity or defect in the indictment and any other preliminary plea of which notice had been given according to law; and also from any decision given after the accused pleads not guilty, on the plea against the admissibility of evidence. (b) An appeal shall also lie at the instance of the accused from any decision given on an application of the Attorney-General regarding the issue of insanity or from any decision given before the accused pleads to the general issue of guilty or not guilty, on any of the following pleas: plea of extinguishment of action, plea of 'autrefois convict' or 'autrefois acquit' plea of insanity of the accused at the time of the trial and plea relating to any other point of fact in consequence of which the trial should not take place at the time or at any future time. Where the Attorney-General or the accused desires to enter an appeal as stated above, he must give **notice of appeal** by means of a note immediately after the decision of the Court is pronounced, and thereupon the Court, if the case so requires, shall stay further proceedings until the expiration of the time allowed for the appeal, that is, **three** working days from the date of the decision appealed from, or, if an appeal is entered, until the determination thereof by the Court of Criminal Appeal (Section 508B)

(2) A person convicted on indictment may appeal to the Court of Criminal Appeal against his conviction in all cases or against the sentence passed on his conviction. The accused may appeal on the basis that he has been wrongly convicted on the facts of the case, or that there has been an irregularity during the proceedings, or a wrong interpretation or application of the law, which could have had a bearing on the verdict, provided that there was indeed a miscarriage of justice (S. 508D, Criminal Code). The Court of Criminal Appeal has certain powers which it may exercise in special cases, including the power to substitute one verdict for another (S. 508E, Criminal Code).

Appeals against conviction or sentences must be filled within **fifteen working** days from the date of the decision appealed from (S. 508H, Criminal Code).

In certain specified cases and only if it appears to the Court that the interests of Justice so require, the Court of Criminal Appeal may order the appellant to be retried (S. 508L, Criminal Code).