

**168. L-Onor. Jose' Herrera MP u l-Onor. Angelo Farrugia MP jipponu:**

An act to amend Chapter 9 of the Laws of Malta (The Criminal Code) in order to introduce the concept of plea bargaining before the Court of Magistrates as a Court of Criminal Judicature.

1. This Act can be referred to as the Act of 2005 regarding plea bargaining before the Court of Magistrates as a Court of Criminal Judicature.

2. After Article 377 (5) there shall be added the following sub articles:

(6) In every case before the Court of Magistrates as a Court of Criminal Judicature and in any stage of the proceedings, before the hearings are concluded the accused and the prosecuting officer may request the Court, in the eventuality of a plea of guilty, to apply a sanction or measure or were provided for by law, a combination of sanctions or measures, of the kind and quantity agreed between them and to which the accused can be sentenced upon conviction for the offence or offences with which he is accused and a mention of such fact shall be entered in the record of the case.

(7) If the Court is satisfied that the sanction or measure or combinations of sanctions or measures, requested as provided in the afore mentioned proviso, is one which it would have been lawful for it to impose upon conviction for the offence to which the accused had pleaded guilty and does not have cause to order the continuation of the course for any reason mentioned in sub article (3) of Article 392(a) or for any other reason to reject the request and after explaining to the accused in clear terms the consequences of his request, the Court shall upon a plea of guilty by the accused proceed to pass the sentence indicated to it by the parties declaring in its judgement that the sentence being awarded is being so awarded at the request of the parties.

(8) The dispositions of sub articles (3) (4) (5) of Article 453 A shall *mutatis mutandis* apply to any sentence given by the Magistrates Courts as a Court of Criminal Judicature at the request of the parties.

**Objects and Reasons**

This law is being proposed in order to remove a grave lacuna that exists in the Criminal Code with regards to the institute of plea bargaining in penal cases or a judgement suggested by the parties and this since this concept is regulated only in instances of when a person is arraigned before the Courts of Magistrates as a court of Criminal Inquiry at the stage of arraignment when the accused is requested to plead guilty or otherwise, or before the Criminal Court during the stage of the reading of the bill of indictment when the accused is being requested to plead guilty or otherwise according to the same bill of indictment.. It must be stated however that these two instances cover only a minimal if not a residual amount of cases pending before the Courts with Criminal Jurisdiction while in practice plea bargaining is carried out very commonly in an informal manner before the Courts of Magistrates as a Court of Criminal Judicature which Courts effectively deal with the bulk of all penal cases. By introducing such amendments an incentive is hereby being introduced whereby a large number of Criminal cases can be determined speeditiously.

Att biex jigi emendat il-Kap 9 tal-Ligijiet ta' Malta (Kodici Kriminali) sabiex jigi ntrodott il-kuncett ta' patteggjament quddiem il-Qorti tal-Magistrati, bhala Qorti ta' Gudikatura Kriminali

1. Dana l-Att jista jissejjah l-Att ta' 1-2005, dwar il-patteggjament quddiem il-Qorti tal-Magistrati, bhala Qorti ta' Gudikatura Kriminali.

2. Wara l-hrlikolu 377 (5) ghandhom jiziedu is-segwenti sub-artikoli:

(6) F' kull kawza quddiem il-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali, fi kwalunkwe stadju qabel l-gheluq tas-smiegh tal-kawza l-imputat u l-ufficjal prosekutur jistghu jitolbu lill-qorti sabiex jekk ikun hemm ammissjoni ta' htija, li tapplika sanzjoni jew mizura jew meta jkun hekk provdut mill-ligi kombinazzj mi ta' sanzjonijiet j ew mizuri, tax-xorta u l-kwantita miftiehrna bejniethom, u li dwarhoin l-imputat ikun jista jinghata sentenza meta jinsab hati ghar-reat jew ir-reati li jigi akkuzat bihom u ta' din it-talba ghandha f'kull kaz titnizzel tifikira fl-atti.

(7) Jekk il-qorti tkun sodisfatta li s-sanzjoni jew il-mizura jew il-kumbinazzjoni ta' sanzjonijiet u mizuri mitluba kif inghad fil-proviso precedenti jkun tali li kien ikun legittimu illi hija timponi mas-sejbien ta' htija ghar-reat li dwaru l-imputat ikun ammetta l-htija u ma jkollhiex ghaliex tordna l-prosegwiment tal-kawza ghal xi raguni msemnija fis-sub-artikolu (3) tal-Artikolu 392A jew ghal xi raguni ohra li tichad it-talba, u wara li tispjega lill-imputat bi kliem car x'jkunu l-konsegwenzi tat-talba tieghu l-qorti ghandha meta ssir l-ammissjoni ta' htija ta' l-imputat tghaddi biex taghti s-sentenza lilha ndikata mill-partijiet fejn tiddikjara fid-decizjoni taghha li s-sentenza tkun qieghda hekk tigi moghtija fuq talba tal-partijiet.

(8) Id-dispozizzjonijiet ta' sub-artikoli (3), (4), (5) ta' l-Artikolu 453A ghandhom *mutatis rnutandis* japplikaw ghal kull sentenza moghtija mill-Qorti tal-Magistrati, bhala Qorti ta' Gudikatura Kriminali fuq talba tal-partijiet

#### Ghanijiet u Ragunijiet

Din il-Ligi qieghda tigi proposta sabiex titneha l-lacuna grossolana ezistenti fil-Kodici Kriminali ghal dak li jikkoncerna l-istitut tal-patteggjament tal-kawzi penali jew tas-sentenza fuq talba tal-partijiet u dan peress illi dan il-kuncett huwa regolat biss fl-istanza ta' meta bniedem jitressaq quddiem il-Qorti tal-Magistrati bhala Qorti Istrutturja fl-istadju tal-prezentata meta jintalab sabiex iwiegeb dwar jekk huwiex hati jew le, jew quddiem il-Qorti Kriminali fl-istadju tal-qari tal-Att tal-Akkuza meta jigi mitlub sabiex iwiegeb jekk huwiex hati skond dak l-Att ta' akkuza. Madankolu dawn iz-zewg istanzi ikopru biss persentagg minimu jekk mhux irrizzorju ta' kawzi pendenti quddiem il-Qorti ta' Gurisdizzjoni Kriminali mentri il-prassi li jsiru patteggjamenti fil-kawzi kriminali hija wahda ben abbracjata u wzata b' mod informali quddiem il-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali liema Qorti effettivamnet titratta mal-buona parti tal-kawzi kollha penali. B'dan il-mod ser tigi introdotta incentiva sabiex nurnru ikbar ta' kawzi kriminali jigu facilment risolti.