How to bring a case to court

Malta

1 Do I have to go to court or is there another alternative?

Yes, you have to go to court to bring a case in Malta. An advocate (lawyer) or legal procurator makes an application to the court and pays the relevant charge. If the case is to be brought before a superior court, the person filing the suit has to take an oath.

2 Is there any time limit to bring a court action?

No, a case may be brought to court at any time. However, the respondent is entitled to plead prescription at any stage of the proceedings in court.

3 Should I go to a court in this Member State?

The person bringing the case must be physically present in the court hall during the sessions. In his absence, the lawyer or legal procurator acts as his representative. If a party is absent from Malta, a curator is appointed in Malta to continue the judicial proceedings in the absence of the party.

4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?

Although Malta has only one court building, this is divided into several different courts, according to the subject-matter of the case, the value of the applicant' s claim and the applicant's place of residence. The different courts in Malta are shown below:

a. Civil Court (Family Section) [Qorti Ċivili (Sezzjoni tal-Familja)] - hears any request related to families such as separation proceedings, divorce, maintenance issues, filiation and annulment.

b. Court of Magistrates (Gozo Family Section) [Qorti tal-Maġistrati (Għawdex Sezzjoni Familja)] – as in 'a' above but persons bring cases in this court against persons who reside in Gozo or who have their ordinary residence in the Island of Gozo;

c. The First Hall of the Civil Court (Constitutional Jurisdiction) [Prim' Awla tal-Qorti Ċivili (sede Kostituzzjonali)] - cases of a constitutional nature;

d. Court of Magistrates (Malta) [Qorti tal-Maġistrati (Malta)] – hears and decides cases of a purely civil nature regarding all claims of an amount not exceeding €15,000 against persons who reside or have their ordinary residence in some part of the Island of Malta and any other claim stipulated under Maltese law;

e. Court of Magistrates (Gozo Inferior Jurisdiction) [Qorti tal-Maġistrati (Għawdex Inferjuri)] - as in 'd' above, however, this court is used by persons wishing to bring cases against a person who resides in Gozo or who has his ordinary residence in the Island of Gozo. It also has the powers given to the Civil Court in its Voluntary Jurisdiction.

f. First Hall of the Civil Court [Prim' Awla tal-Qorti Ċivili] - hears and decides cases of a purely civil nature regarding all claims of an amount exceeding €15.000, as well as any cases (regardless of the value of the claim) in which there are claims on immovable property, or concerning easements, burdens or rights annexed to immovable property, including any claim for the ejectment or eviction from immovable property, whether urban or rural, tenanted or occupied by persons residing or having their ordinary abode within the limits of the jurisdiction of such court.

g. Court of Magistrates (Gozo) (Superior Jurisdiction) (General Section) [Qorti tal-Maġistrati (Għawdex) Gurisdizzjoni Superjuri, Sezzjoni Ġenerali)] - as in 'f' however, this court is used by persons who want to bring a case against a person residing in Gozo or who has his ordinary residence in the Island of Gozo;

h. First Hall of the Civil Court in its Voluntary Jurisdiction [Prim' Awla tal-Qorti Ċivili, Ġurisdizzjoni Volontarja] - This court hears non-contentious matters, such as the opening of secret wills, tutelage and adoption. Furthermore, this court authorises or gives its permission for the conclusion of contracts. This court also authorises the adoption of provisions that the law does not permit unless prior authorisation or permission has been granted.

Together with these courts, there are also a number of Tribunals. The Small Claims Tribunal (Tribunal tat-Talbiet iż-Żgħar) (which hears and decides all money claims not exceeding €5.000), the Administrative Review Tribunal (Tribunal ta' Reviżjoni Amministrattiva) and the Industrial Tribunal (Tribunal Industrijali). In Malta there is also an Arbitration Centre (Ċentru tal-Arbitraġġ) providing services related to arbitration. Maltese law provides that in certain circumstances the parties are compelled to go to arbitration (mandatory arbitration). Disputes concerning commonhold properties and motor vehicle traffic are subject to mandatory arbitration.

All these courts are courts of first instance and all are ordinary courts. Appeals against the decisions of these courts may therefore be lodged in the Court of Appeal (Qorti tal-Appell). Appeals against decisions delivered by the Small Claims Tribunals, the Arbitration Centre or the Courts of Magistrates must be filed in the Court of Appeal in its Inferior Jurisdiction (with one judge presiding). Appeals against the First Hall of the Civil Court must be filed in the Court of Appeal in its Superior Jurisdiction (with three judges presiding). Appeals on decisions delievered by the First Hall of the Civil Court (Constitutional Jurisdiction) are to be filed in the Constitutional Court (Qorti Kostituzzjonali), and appeals against a decision of the Court of Magistrates (Gozo), both in its inferior and in its superior jurisdiction, must always be filed in the Court of Appeal in Malta.

5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?

Kindly refer to the answer in question 4.

6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?

A lawyer or legal procurator is needed to bring action in the Inferior Courts. If action is brought in the Superior Courts, both a lawyer and a legal procurator are required.

7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?

In the Court registry.

8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?

The application must be drawn up in the Maltese language. It must be filed in writing and the lawyer or legal procurator must file it in person.

A request may also be filed for proceedings to be conducted in the English language if one of the party is a foreigner.

In Malta there is no possibility of filing an application by e-mail or fax.

9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?

There are forms to be completed when bringing a case in the Arbitration Centre or the Small Claims Tribunal. However, there are no forms for filing suit in the Courts of Magistrates or the First Hall of the Civil Court. When action is brought in the First Hall of the Civil Court, it is essential that the application contains:

(a) a statement which gives in a clear and explicit manner the subject of the case in separate numbered paragraphs, in order to emphasise the claim and also declare which facts the applicant was personally aware of;

(b) the cause of the claim;
(c) the claim or claims, which shall be numbered; and
(d) in every sworn application, the following notice shall be printed in clear and legible letters immediately under the Court heading:
"*Whosoever is in receipt of this sworn application in his regard shall file a sworn reply within twenty (20) days from the date of service thereof, which is the date of receipt. Should no written sworn reply be filed in terms of the law within the prescribed time, the Court shall proceed to adjudicate the matter according to law.*
It is for this reason in the interest of whosoever receives this sworn application to consult an advocate without delay that he may make his submissions during the hearing of the case."
(e) Such documents as may be necessary in support of the claim shall be produced together with the sworn application.
(f) The sworn application shall be confirmed on oath before the registrar or legal procurator appointed as Commissioner for Oaths under the Commissioners for Oaths Ordinance (Cap 79).
(g) The plaintiff shall together with the declaration also give the names of the witnesses he intends to produce in evidence, stating in respect of each of them the facts and proof he intends to establish by their evidence.
(h) The application shall be served on the defendant.

10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?

Yes, when an application is made, the corresponding charge must be paid. The amount of the charge varies according to the type of case and/or the value of the claim.

11 Can I claim legal aid?

Yes, a person without resources may claim legal aid. A request for legal aid is made by application to the First Hall of the Civil Court. Requests may also be made verbally to a Legal Aid Lawyer. For legal aid to be granted certain criteria must be satisfied, namely, the applicant must take an oath before the Registrar and when the request is made verbally, he must take an oath before a Legal Aid Lawyer:
(a) that he believes that he has reasonable grounds for taking or defending, continuing or being a party to proceedings;
(b) that excluding the subject-matter of the proceedings, he does not possess property of any sort, the net value whereof amounts to €6,988.12, not including everyday household items that are considered reasonably necessary for the use by the applicant and his family, and that his yearly income is not more than the national minimum wage established for persons of eighteen years and over.

12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?

When an application is filed, the case is set for hearing by the court. The court notifies the applicant and the respondent with the date of first hearing (notice of hearing). One can also check whether his or her case has been set for hearing through the Courts of Justice website. The parties do not receive any confirmation whether the case has been filed correctly or not; however, it should be noted that the Court Registrar will not receive any sworn application that does not satisfy the elements indicated in question number 9.

13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?

The applicant is served with the notice of hearing. The date of the next hearing is fixed during the ongoing hearing. Some information on the case may be obtained from the Courts of Justice website.

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