Legal aid

Malta

1 What costs are involved in legal proceedings and who normally has to bear them?

The fees for judicial proceedings are set by law. Some payments have to be made at the beginning of court proceedings and others when court proceedings end. These are, in general, fixed fees which include court services. Court services cover registration fees, costs of summonses for the examination of witnesses, other costs related to case proceedings, and costs for copies of judgments. Barring some exceptions, fees due to lawyers in lawsuits are fixed by law. However, parties may agree otherwise in writing.

The fees mentioned above do not include additional court fees, which may, however, be established by the court in the event of a challenge.

As to who is to pay the costs, when the judgment is delivered, it is the court that determines the party who will pay them. As a general rule, the party losing the lawsuit would also be ordered to pay the costs, but the Court may decide otherwise depending on the case.

2 What exactly is legal aid?

Legal aid is a form of aid given at the expense of the state to a person at whose request – after an assessment is made of the financial situation by the officials of the Legal Aid Agency, and of the merits of the person's request by the Legal Aid Advocate depending on the type of case – a declaration is made as to whether the person has good cause to sue or defend him/herself, or to continue to be a party to proceedings in order to have access to the courts of justice.

Therefore, legal aid is the provision of legal assistance to people on a low income who cannot afford to pay for their representation and for access to the judicial system. Legal aid is important in order to provide access to justice to ensure equality before the law, the right to a lawyer and the right to a fair hearing for people lacking financial means. Equality is fundamental in a democratic society.

Legal aid is provided in all criminal cases and in almost all civil cases. In civil cases, a person must be eligible under both a means test and a test of the merits of the case.

3 What are the requirements for legal aid to be granted?

In civil cases: Legal aid is only granted to persons once the criteria of both the means test and the merits test are met.

Means test: For an applicant to qualify under the means criterion, the person concerned must not have held any kind of property, including available money, the net value of which exceeds €13,000 (or as established by law) during the last twelve months. In addition, the applicant's income in the last 12 months preceding the application for legal aid must not exceed the national minimum wage of persons over 18 years of age.

The means test does not take into account items needed every day at home by the applicant and family members or the applicant's principal residence or property (both movable and immovable) when this is the subject of the court proceedings.

Merits test: For an applicant to qualify under the merits criterion, the Legal Aid Advocate, after examining the nature of the case, must conclude whether the applicant has a valid right to sue or defend him/herself, or to continue or be a party to proceedings before the courts, namely, that the applicant has a *probabilis causa litigandi*. Each case is examined on its merits. The assessment of the merits is performed by the Legal Aid Advocate. It includes an examination of the case, the possibility of the outcome of the proceedings, and the prospect of success.

A person who is eligible and to whom the Court has assigned a lawyer and legal procurator for legal aid in civil cases will continue to be assisted until the proceedings are definitively concluded.

In criminal cases: Legal aid is not subject to the means test. In summary cases in the Qorti tal-Maġistrati bħala Qorti ta' Ġudikatura Kriminali (the Court of Magistrates as a Court of Criminal Judicature) the Court appoints a lawyer from the day's roster. In other criminal cases, the accused must inform the Court that he/she wishes to avail himself or herself of legal aid and this request must be registered in the records of the proceedings. The Court transmits the request together with the details of the accused to the Legal Aid Agency who must file a reply as to whether the request has been accepted and the name of the lawyer.

Criminal appeals: If a person wishes to appeal with the assistance of a legal aid lawyer against a judgment delivered in the Court of Magistrates, one must immediately inform the Legal Aid Agency on the same day or the day after the judgment is delivered so that the necessary arrangements can be made. Details of the judgement should be provided, in order to allow the assigned Legal Aid Advocate to determine whether there are sufficient grounds for appeal.

Persons under interrogation and/or arrest: If a person has been called in for questioning by the police or have been arrested you have the right to speak to a legal aid lawyer from the day's roster.

The procedure

In civil proceedings, in order to make an appointment with the resident Legal Aid Advocate, a person must first produce the documents mentioned below (or those documents applicable to the person, as the case may be) for the means test to be conducted and to establish whether the person is eligible for legal aid:

A document from the Department of Social Security showing the amount of money the person has received during the last twelve months;

A work FS3/Payslips of the last twelve months' wages;

An account (*statement*) covering the last twelve months of every bank account held by the person in his/her name;

A document from the Employment Agency showing the person's *job history*;

The identity card or passport.

Documents received by the person from the Court in case he/she wishes to be assisted with legal aid;

Other related documents, for example:

For personal separation: a marriage certificate and children's birth certificates;

For marriage annulment or divorce: a copy of the separation contract;

For changes to details in the Public Registry certificates: the person's birth/death/marriage certificate;

Inheritance issues: copy of will, etc.

In the meeting with an Agency official, it will be established whether the person is eligible, under the means test, for the legal aid service. If a person is eligible, an appointment is fixed with the resident Legal Aid Advocate to discuss his or her problem and/or the case in question. Based on the merits test performed, the resident Legal Aid Advocate informs the person concerned whether he/she has good reason to initiate proceedings or to make his/her defence, as the case may be.

A person will be eligible for legal aid after passing both the means test and the merits test. Once eligible, a person will be assisted to complete the legal aid application form required by law and take an oath on his or her financial means and the merits of the case.

A person who is ineligible, under one or both of the tests, will be sent a letter informing them of the rejection of their request and of the reasons for that rejection.

4 Is legal aid granted for all types of proceedings?

Legal aid is provided to individuals in all criminal cases and in almost all civil cases. In civil cases, a person must be eligible under both the means test and the merits test.

However, in cases concerning a correction or a cancellation of a registration, or concerning the registration of any birth, marriage or death certificate, the means assessment criteria do not apply.

Companies registered under the Companies Act are not entitled to the benefit of legal aid pursuant to Article 926 of Chapter 12 of the Laws of Malta.

5 Are there special procedures in cases of need?

In urgent situations (such as the issuance of a warrant) the law permits the Legal Aid Advocate to obtain provisional authorisation from the competent Court to file specific judicial acts on behalf of the person requesting legal aid, following which the means test and merits test must be performed.

If the competent Court subsequently removes the benefit of legal aid, judicial acts filed by the Legal Aid Advocate will not be rendered null, but any future benefit will be removed and the Court may order that the costs incurred during the provisional authorisation be paid by the applicant.

6 Where can I obtain a legal aid application form?

The application form can be filled in at the Malta Legal Aid office with the assistance of an official at the Legal Aid Agency. The content of the application must be sworn by the applicant. The request for legal aid can also be submitted by application to the Civil Court.

7 Which documents need to be submitted with the legal aid application form?

The application to initiate legal aid proceedings shall include the documents that requested in the section entitled ‘the procedure’ in reply number 3 above. The documents annexed to the application shall reflect the subject matter at issue about which the person is requesting the institution of proceedings. For example, if there is a request for a marriage annulment, a copy of the marriage certificate should be attached. Documents needed by the Legal Aid Advocate in order to be able to determine the reasons for granting, or not granting, the request for legal aid must be submitted to the Legal Aid Advocate upon request.

8 Where do I submit my application for legal aid?

You should refer it to the Malta Legal Aid offices: https://legalaidmalta.gov.mt/en/

9 How do I find out whether I am entitled to legal aid?

The applicant for the legal aid service will be formally informed by an SMS notification, telephone, letter or e-mail whether the application for the benefit of legal aid has been approved in accordance with the needs of each applicant. The applicant will be informed of the name of the lawyer and the legal procurator and of their mobile number.

10 What should I do, if I am entitled to legal aid?

If the applicant qualifies for legal aid, he/she will be informed of the name of the lawyer and legal procurator assigned to assist in the proceedings. It is the duty of the applicant to communicate with the lawyer assigned to him/her in order to fix an appointment to discuss the case and follow the initiated proceedings.

11 Who chooses my lawyer, if I am entitled to legal aid?

Once the application has been approved, the applicant is assigned a lawyer and a legal procurator whose name appears on the list available to the Court and whose name is next in the roster. If the applicant, for any valid reason, wishes to replace the lawyer with another lawyer who comes up next in the roster, it will be necessary to file an application in Court. It is only by means of a court decree that a legal aid lawyer can be replaced.

12 Does legal aid cover all the costs of the proceedings?

Legal aid to the applicant covers court costs. Accordingly, the applicant is exempted from paying fees or providing a guarantee for costs.

If the applicant wins his/her action in the lawsuit, he/she will have to pay the expenses of the lawyer, the legal procurator, the curators, the arbitrators and the experts (if any) from the amount he receives or from the proceeds of the sale by auction of immovable or movable property under the judgment without prejudice to his/her right to be reimbursed by any third party who may have been ordered to pay such costs.

13 Who bears the other costs, if I am entitled only to limited legal aid?

In Malta, the concept of partial legal aid service does not apply. This means that either the applicant has full legal aid service or the request for legal aid is rejected. If the party receiving legal aid is ordered to pay the costs of the proceedings, the Registrar of Civil Courts and Tribunals will not be able to claim reimbursement of the registry fees from the winning party.

14 Does legal aid also cover appeals?

If the applicant qualifies for legal aid, he/she will be entitled to legal aid assistance at all levels, including legal assistance in the courts of appeal.

15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)

If it is proved to the Court that during the time the applicant benefited from legal aid, he/she was aware that he/she was in possession of more capital or income than that established by law in order to benefit from legal aid, or that during the hearing of the case the applicant was aware that his/her income had increased to more than that established by law, and he/she did not report this, the Court may find the applicant in contempt of court. Proceedings for perjury may also be initiated against the applicant.

In both cases, the applicant will be liable for all the costs of the case in the same way as if he/she did not benefit from legal aid.

16 Can I contest a refusal to give legal aid?

There is no appeal against the decision rejecting a request for legal aid. However, if the report made by the Legal Aid Advocate is not in favour of the applicant, the Civil Court shall examine the report, giving the parties an opportunity to make submissions before deciding whether to accept the negative report or whether to reject the report and admit the party to the claim.

17 Does the request for legal aid have the effect to suspend the limitation period?

The request for legal aid does not have the effect to suspend the limitation period.

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