Vádlottak (büntetőeljárás)

Málta

Ezek az ismertetők arról adnak tájékoztatást, mi történik, ha valakit olyan bűncselekmény elkövetésével gyanúsítanak vagy vádolnak meg, amely bírósági tárgyalást von maga után.

Amennyiben ön bűncselekmény sértettje, jogairól itt kaphat teljes körű tájékoztatást.

A büntetőeljárás összefoglalása

Mindig a törvényszék előtt emelnek vádat ön ellen. Ha őrizetben van, amikor vádat emelnek ön ellen, a bíróságnak először azt kell eldöntenie, hogy megalapozza-e jogi rendelkezés a további fogva tartását, majd tájékoztatja önt arról, hogy óvadék kifizetését kérelmezheti. Ha nincs őrizetben, amikor vádat emelnek ön ellen, akkor tájékoztatják a vádakról és arról, hogy mikor kell az első bírósági meghallgatáson megjelennie.

Az ön ellen emelt vádak súlyosságától függően három különböző típusú tárgyalásra kerülhet sor:

A törvényszék előtti egyszerűsített eljárás

Vádemelés
A vádhatóság érveinek ismertetése, amelyet a végrehajtó rendőrség végez
A védelem érveinek előterjesztése
Záróbeszédek
Ítélethozatal

A törvényszék előtti, a bizonyítékok összegyűjtését követő eljárás

Vádemelés
A vádhatóság érveinek ismertetése, amelyet a végrehajtó rendőrség és a főügyészség végez
A védelem érveinek előterjesztése
Záróbeszédek
Ítélethozatal

Esküdtszék általi tárgyalás

Előzetes és a bizonyítékok elfogadhatóságára vonatkozó védekezések
A vádirat felolvasása
A vádhatóság beszéde
A vádhatóság érveinek ismertetése, amelyet a főügyész végez
A védelem érveinek előterjesztése
A vádhatóság válasza
A védelem viszonválasza
Összefoglalás
Ítélethirdetés
Büntetéskiszabás

Az eljárás mindezen szakaszairól és az ön jogairól további részleteket az ismertetőkben talál. Ezek az információk nem helyettesítik a jogi tanácsadást és csak tájékoztatási célt szolgálnak.

Az Európai Bizottság szerepe

Vegye figyelembe, hogy az Európai Bizottságnak nincs szerepe a tagállamokon belüli büntetőeljárásokban, és panasz esetén nem segíthet önnek. Az alábbi ismertetőkben talál információkat arról, hogy panasz esetén mit kell tennie és kihez fordulhat.

A keresett információkért kattintson az alábbi hivatkozásokra:

1 – A bűncselekmény nyomozása során engem megillető jogok
2 – Jogaim a tárgyalás során
3 – Jogaim a tárgyalást követően

Utolsó frissítés: 23/03/2023

E lap nemzeti nyelvű változatát az adott tagállam tartja fenn. Az Európai Bizottság szolgálata készíti el a fordításokat a többi nyelvre. Előfordulhat, hogy az eredeti dokumentumon az illetékes tagállami hatóság által végzett változtatásokat a fordítások még nem tükrözik. Az Európai Bizottság nem vállal semmifajta felelősséget az e dokumentumban szereplő vagy abban hivatkozott információk vagy adatok tekintetében. Az ezen oldalért felelős tagállam szerzői jogi szabályait a Jogi nyilatkozatban tekintheti meg.

1 - My rights during investigation

A. If I am a foreign national, does this effect the investigation?

Criminal action can be brought against any person who commits a crime and over whom the Maltese authorities have jurisdiction. The procedures followed during the investigation are the same for both Maltese citizens and foreign nationals. Nonetheless, the law guarantees certain rights for persons who are not Maltese nationals or resident in Malta, principally the right to an interpreter when the suspect is unable to understand and speak Maltese and the right of the person to communicate with the consular authorities while deprived of liberty.

B. What are the stages of an investigation?

i. Evidence gathering phase / Powers of investigators

Criminal action is initiated when the police receives a report, information or a complaint. Once the police is notified by one of these means, it launches its investigation by gathering evidence with a view to determining whether a crime has been committed and who is to be held responsible for the commission of that crime.

To this end, the law empowers the police to oblige any person who may have any information regarding the crime under investigation to provide such information. This includes the gathering of material evidence and the taking of witness accounts.

ii. Police custody

Once it is established that there is reasonable suspicion that a person committed a crime, the police may ask the magistrate to issue an arrest warrant against the suspect. There are also circumstances where the police can arrest a person for investigation purposes without requiring a warrant issued by a magistrate.
The moment the suspect is arrested, they are informed of their rights in a language they understand, including the reason for their arrest, their right to remain silent, and their right to consult a lawyer of their choice. They are also given a copy of the letter stipulating their rights.
During this period, the police may conduct searches on the person under custody for anything that may serve as evidence relating to the crime, or if there is a suspicion that the person may pose a danger to themselves or to others, or may have in their possession something that they could use to abscond from custody.
The police may also collect bodily samples and fingerprints. DNA may be taken and registered, with the appropriate consent. If the person refuses to give their fingerprints, they may be obliged to do so by means of an order issued by a magistrate. However, DNA registration cannot be mandatory.

iii. Interrogation:

The suspect may be interrogated by the police in connection with a crime that is being investigated. During the interrogation, the police may ask any question that can help it gather information that may be brought forward as evidence, both for and against the suspect. During the interrogation, the suspect may ask to be accompanied by a lawyer of their choice.

iv. Pre-trial detention

In accordance with the Laws of Malta, a person cannot be held under arrest for a longer period than necessary and in any case not longer than forty-eight (48) hours. During this period of arrest, the police should determine whether it intends to immediately bring the suspect before a court under arrest, or whether it will be releasing the person, on the grounds that the reasonable suspicion no longer exists, or else in order to further investigate the case before deciding to take the matter to court.

C. What are my rights during the investigation?

i. Do I have a right to an interpreter and to translations?

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to an interpreter, free of charge.
The interpreter can help you to talk to your lawyer and must keep the content of that communication confidential.
You have the right to translation of at least the relevant passages of essential documents, including any order by a judge or a magistrate enabling your arrest or detention in custody, any charge or indictment and any judgment. You may in certain circumstances be provided with an oral translation or summary translation.

ii. What are my rights to information and access to the case-file?

When you are arrested and detained, you or your lawyer have the right to access essential documents necessary to challenge the arrest or detention.
If your case is taken to court, you or your lawyer have the right to access the material evidence for or against you.

iii. What is my right of access to a lawyer and that a third person be informed of my situation?

You have the right of access to a lawyer while you are held in detention. That right becomes effective from the moment you are detained and before you are interrogated.
You have the right to be provided with a list of lawyers and a list of legal procurators from which you can choose one to assist you or else choose to be assisted by a Legal Aid lawyer. In the latter case, the legal assistance is free of charge.
The police cannot suggest the name of a lawyer whom you can engage during arrest or detention.
No later than an hour before the start of the interrogation, you and your lawyer have the right to be informed of the alleged crime which is the subject of your interrogation. This information should be made available to you not less than an hour before the start of the interrogation.
Once you are in detention, you have the right to meet and communicate privately with the lawyer representing you, even before being interrogated by the police.
You have the right to have your lawyer present with you and to have them participate effectively while you are being interrogated.
The whole interrogation, all replies given and the procedures relating to the interrogation of the suspected or accused person should be recorded by audio-visual means, when this is deemed possible by the interrogating officer; you have the right to be given a copy of the recording once the interrogation is concluded.
You have the right to have your lawyer attend any of the following acts of investigation or collection of evidence:
line-ups of suspects for identification purposes;
confrontations;
reconstructions of the scene of crime.
The confidentiality of the communication with your lawyer in the exercise of your right of access to a lawyer should be respected.
Once you are arrested, you should be informed of your right to have at least one person, such as a relative, teacher or any other person of your choice, informed that you have been deprived of your liberty.
In certain cases prescribed by law, your right to inform another person of your detention may be temporarily restricted.
In such cases, the police will inform you accordingly.
If you are a foreigner, you may inform the police if you wish your consular authority or embassy to be informed of your detention.
You may also choose to inform the police if you wish to contact an official at your consular authority or embassy.

iv. What is my right to legal aid?

The police will ask you which lawyer or legal procurator you wish to engage for assistance. The police will also ask you if you wish to be assisted by a Legal Aid lawyer. If you choose to be assisted by a Legal Aid lawyer, the assistance will be offered free of charge.
During arrest, legal counsel is limited to an hour before the interrogation. You may also seek counsel over the telephone.

v. What is important to know about the:

a. Presumption of innocence

Notwithstanding any preventive action which may be taken in the interest of the administration of justice, every person is presumed to be innocent until a final and definitive judgment is delivered by the court hearing the case determining whether or not that person has committed the crime.

b. Right to remain silent and not to incriminate oneself

When you are interrogated by the police or other competent authorities, you have the right to remain silent and not to incriminate yourself.
Your lawyer can help you to decide on that.

c. Burden of proof

The burden of proof for determining the guilt of the suspect or accused rests with the prosecution, except in those specific cases where the law requires certain particular facts to be proven by such person.

Any reasonable doubt concerning guilt should benefit the suspected or accused person, including in cases where the court evaluates whether the accused person should be acquitted.
The suspected or accused person many challenge the evidence brought against them. If the evidence involves witnesses, the person may cross-examine them or bring forward their own witnesses to challenge their testimony.
In the case of documentary evidence, the suspected or accused person may cross-examine the witness or the court experts producing such documents or bring forward their own witnesses to challenge that evidence. However, you may not produce your own expert report. An expert report may be challenged only by means of cross-examination of the court expert in connection with their findings or competence.
The suspected or accused person may also summon witnesses and produce documentary evidence to substantiate their defence.
If the trial is heard by the Criminal Court, the law establishes a time limit, running from the moment the accused person receives the bill of indictment, within they must indicate the witnesses and all other evidence that they intend to produce in their defence during the trial. There is no such restriction when the trial takes place before the Court of Magistrates.

vi. What are the specific safeguards for children?

If the witness or the victim of an alleged crime is a minor, the practice of both the police and the courts is that, as far as possible, minors are not summoned to court; this is not always possible, however. As regards testimony by minors, the courts usually use video conferencing. If the minor is a victim, they are spoken to by the magistrate – assisted by a child psychologist – in a dedicated room, which may be in the court building, by means of video conferencing, so that the minor is not in the same room as the accused person. Legally, the courts, particularly the Juvenile Court, also have the power to appoint a children's advocate (Article 25 of Chapter 602 and Subsidiary Legislation 12.20) to defend the rights of the minor, whether they are the victim or the accused. This also transpires clearly from Chapter 602 of the Laws of Malta, and even more so from the Child's Act. This Chapter also provides for an equipped location outside the court building, called the 'children's house', where a vulnerable minor victim may be spoken to, both by the magistrate and by a group of trained experts called 'child interviewers'.

vii. What are the specific safeguards for vulnerable suspects?

Firstly, if it is deemed necessary, owing to the psychological and physical condition of the suspect or the nature of the crime, to detain the arrested person at the police custody lockup during the investigation, they are placed under 'constant watch', with a police officer physically guarding the cell 24/7, in the best interests of the detainee's health. As is the case of all suspected or arrested persons, if the person asks for any type of medical assistance, this is provided immediately, including transport to a clinic or hospital, depending on the circumstances. If a doctor declares, after having examined the same suspected vulnerable person, that they should not be held in a cell, the investigating official is informed immediately and remedial action (such as the granting of police bail) is taken accordingly.

D. What are the legal time limits during investigation?

The legal time limits during investigation depend primarily on the nature of the crime. Every crime carries with it a punishment in accordance with the Criminal Code. For instance, prescription in terms of Article 688 of Chapter 9 of the Laws of Malta sets out the standard parameters for the legal time limits within which a crime can be investigated. On expiry of this time limit, prescription applies and the investigation of that particular crime by the police becomes time-barred. It is also worth mentioning that, in accordance with Article 692 of Chapter 9 of the Laws of Malta, if in any criminal case the identity of the alleged offender is unknown, not due to any shortcoming from the investigating official, prescription does not start running. An example of this could be a murder case where there is a victim, but there is no indication of who the killer might be.

E. What are the pre-trial preparations, including alternatives to pre-trial detention and possibilities for transfer to the State of origin (European Supervision Order)?

The preparations the police should make before the hearing of the case can commence in court include:
the summoning of witnesses in the case;
if the person is arraigned by means of a summons, the prosecuting officer should ensure that the summons containing the charges against the accused are served in accordance with the law;
unless the crime is one directly involving the office of the Attorney General, the prosecuting officer should discuss the case and, more specifically, the charges with that office, especially where the case is a complicated one;
if the person is arraigned under arrest, the prosecuting officer should inform the accused's defence counsel, and the accused will be escorted to court by the police.
Alternatives to pre-trial detention include cases where the person is arraigned by means of a summons or where the person is granted police bail until such time as the investigating officer concludes their investigations and the person is subsequently arraigned either under arrest or by means of a summons.
The possibility of transfers to the State of origin involve *ad hoc* procedures that fall under the remit of the Attorney General. These procedures apply only in specific cases, e.g. an extradition request or a request by a convict serving a prison sentence to the competent local authorities and the authorities of their country of residence to continue serving the sentence in their own country.

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2 - My rights during trial

A. Where will the trial take place?

The trial takes place at the Courts of Justice in Valletta. Depending on the seriousness of the charges against you, procedures are brought against you before the Court of Magistrates as a Court of Criminal Judicature if the offence falls within its jurisdiction, or before the Court of Magistrates as a Court of Inquiry, if the offence does not fall within the jurisdiction of the Court of Magistrates as a Court of Criminal Judicature.
Once the inquiry is completed in the Court of Magistrates as a Court of Inquiry, it will be decided whether the offence is to be judged by the Court of Magistrates as a Court of Criminal Judicature or by the Criminal Court, i.e. by a jury. In any case, a judgment will be delivered which will either sentence the person found guilty to the relevant punishment or acquit them.

B. Can the charges be modified? If so, what is my right to information in this regard?

Yes, the charges can be modified. If this happens, generally, and the changes are significant, new charges will be issued against the person and a new examination will be carried out in Court. Evidence is presented again unless a waiver is given by the person.

C. What are my rights during my appearance in Court?

Your rights during your appearance in court are to be assisted by a lawyer of your choice and, if you do not have the means, to have a Legal Aid lawyer assigned to you. You may also choose to defend your own case. Another right is that you are presumed to be innocent until a court rules that you are guilty. You have the right to be assisted by an interpreter and to cross-examine the prosecution witnesses and examine your own witnesses. You also have the right to choose not to testify in the proceedings brought against you.

i. Should I be present in Court? What are the conditions for me to be absent during the court case?

Yes, you should always be present at court sessions, since our system does not recognise trials *in absentia*. If you are unable to attend due to illness or travel or for any other reason, you should file an application in court through your lawyer.

ii. What is my right to an interpreter and to translated documents?

If the magistrate is conversant in the language spoken by the witness, they may translate the testimony into the language in which the written proceedings are conducted; in any other case, or upon your request, a sworn interpreter will be engaged.

Do I have the right to a lawyer?

During the hearing of the court case, one of your rights is to be assisted by a lawyer of your choice at your own expense, or by a lawyer appointed by the court as a Legal Aid lawyer.

If you do not have the financial means to pay the lawyer of your choice, you should submit your request either to the adjudicator, who will record it in the case-file, or to the Legal Aid Malta Agency, who will file an application on your behalf for assistance by a Legal Aid lawyer.

In summary cases, the adjudicator, after hearing your request, orders you to be assisted by the Legal Aid lawyer who happens to be working on the day.

In compilation of evidence proceedings and/or criminal trials, requests for a Legal Aid lawyer may be made to the adjudicator, who will refer the request to the Legal Aid Agency, who in turn will file a note specifying the lawyer who will assist you. Otherwise, you can ask the Legal Aid Agency to file an application on your behalf. The Legal Aid lawyer may not be changed unless there is a legitimate impediment.

iv. Which other procedural rights should I be aware of? (e.g. appearance of suspects before the Court)

A person has the right to summon their witnesses to testify. Any person of sound mind can be summoned as witness, unless a plea is raised against their competence.

Regarding the rights of suspected or accused persons, more information is available in Articles 534A-534AG of the Criminal Code, Chapter 9 of the Laws of Malta. Besides all that has been mentioned concerning the arrest or detention of a person at any stage of criminal proceedings, any document in the possession of the police relating to the specific case, and which is essential for an effective challenge to the legality of the arrest or detention, should be made available to the person under arrest or their lawyer.

D. Possible sentences

The sentences that may be handed down if you are found guilty are:

imprisonment;

solitary confinement;

interdiction;

a fine.

If you are found guilty of a contravention, the punishments that may be handed down are:

detention;

a fine;

a reprimand or admonition.

Alternative sanctions may also be handed down, such as: probation, suspended sentence, and community orders.

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3 - My rights after trial

Do I have the right to appeal the court's decision?

A person who is found guilty of a charge may appeal against the conviction in all cases, or against the sentence handed down in respect of their conviction, unless that sentence is established by law. An appeal may never result in a more severe sentence. The accused may also appeal against the guilty verdict on grounds of insanity. In certain cases, the court may also order a retrial of the case.

B. What other recourse options do I have?

Following a conviction, you may request a presidential pardon. This is a very powerful discretionary tool, regulated by Article 93 of the Constitution of Malta, and is vested in the executive branch of the State, specifically the President of Malta. A presidential pardon authorises the President, through Cabinet, to assume the power ordinarily bestowed upon the judicial organ of the State.

Generally, a pardon may halt the effects of a criminal conviction, for instance by ordering the immediate release of a prisoner serving a prison sentence. The President may also, in accordance with Article 93 of the Constitution, substitute the punishment with a less severe one or otherwise take action pursuant to a change in the law whereby the relative punishment has been reduced.

C. What are the consequences if I am convicted?

The consequences of a criminal conviction include a fine or a period of imprisonment, the loss of a clean criminal record, and damage to the person's reputation.

i. The criminal record

Every conviction handed down by the Courts of criminal jurisdiction is registered in the criminal record of the person found guilty except where:

the conviction is for a contravention;

the convicted person found guilty of a crime was under the age of eighteen years when the crime occurred;

the convicted person is granted a pardon by the President of Malta in respect of that conviction;

an order is issued under the Probation Act;

the person is found guilty for an offence punishable by a fine of not more than €200 which has been paid, where that person does not have a previous conviction.

No conviction will be recorded after the expiry of the period established in the Second Schedule of the Conduct Certificates Ordinance (Chap. 77) from when the conviction was handed down.

The benefit of not having the conviction recorded, as stated above, is not granted to repeat offenders for the crime of theft, fraud or sale or trafficking of medicines in breach of the provisions of the Dangerous Drugs Ordinance or the Medical and Kindred Professions Ordinance, or to persons convicted for the

crimes listed in Schedule Three of the Ordinance (such as crimes against the security of the Government), perjury and false oath or any other crime that breaches public trust.

v. Execution of sentence, transfer of prisoners, probation and alternative sanctions

Besides convictions of imprisonment and/or fines, there are also other alternative sanctions. These are probation, suspended sentence and community service orders.

A foreign person who has been sentenced to imprisonment in Malta may, under certain circumstances, serve their sentence in their country of residence, pursuant to both the European Convention on the Transfer of Sentenced Persons (ETS No 112) and Council Framework Decision 2008/909/JHA, depending on the case.

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