



Access to Legal Assistance in Malta

Assessment of the Legal Aid System in Malta

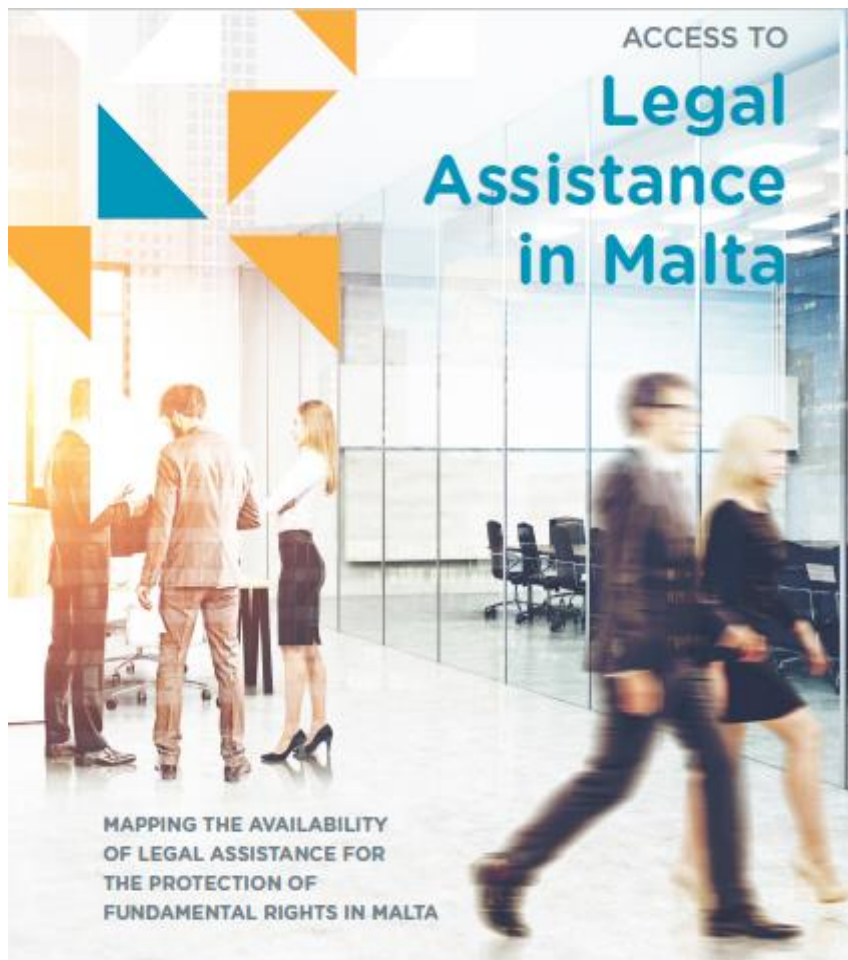
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Outline of the Presentation:

- A quick overview of the Report: *Access to Legal Assistance in Malta - Mapping the availability of legal assistance for the protection of fundamental rights in Malta*
- Reflections on the issues raised in relation to the Legal Aid system in Malta
- Focus on recommendations and possible way forward
- Q&As



Report:

- **Objective:** analyse the availability and outline the importance of having access to legal assistance for individuals who cannot afford the costs of legal representation in Malta.
- *Section 1:* highlights existing international and European human rights standards relating to access to legal aid and Malta's obligations
- *Section 2: analyses the legislative, judicial and administrative implications of the Maltese legal aid system*
- *Section 3:* examines the provision of *pro bono* legal assistance and how it can support the formal legal aid

Methodology: research, consultation, evaluation

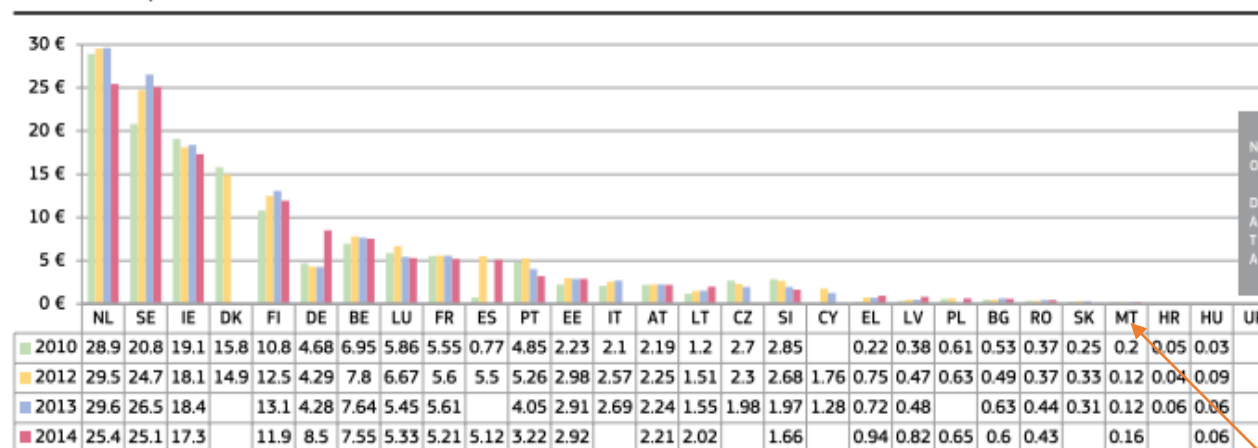


The Maltese Legal Aid System: Challenges & Opportunities

- Funding: Malta tends to be on the lower scale in relation to the amounts allocated in national budgets
- Improvement in recent years: €150,000 allocated during the last budget (approx 0.34cents)

e.g. the Netherlands, at the top end, allocated €25.40 p/p to legal aid, whereas Malta allocated €0.16 p/p.

Source: CEPEJ study



Source: 2016 EU Justice Scoreboard



The Maltese Legal Aid System: Challenges & Opportunities

Eligibility on Merit:

Criminal: The right to legal assistance and to legal aid starts from the moment the person becomes a suspect and before they are questioned by the police or other authority. Unclear if there is a means test.

Civil:

Applicant must show a probable cause for litigation (*probabilis causa litigandi*) ... ie: a party to a civil dispute or who has good grounds for commencing civil legal action.



Excludes any pre-litigation advice, out-of-court settlements, mediation and arbitration proceedings etc.



The Maltese Legal Aid System: Challenges & Opportunities

Eligibility on Means:

Criminal: Conflicting information on whether a means tests is always carried out for trials. It is never carried out for urgent proceedings, such as arrest.

Civil: Persons whose maximum income do not exceed the national minimum wage and total assets do not exceed €6,988.12.

NB: The national minimum wage currently stands at €8,827.52, whereas the average household gross income stands at €31,429.



The Maltese Legal Aid System: Challenges & Opportunities

Lawyers on the Legal Aid Roster

- **Specialisation:** One general list of legal aid lawyers: these lawyers cover both civil and criminal cases depending on roster
- **Payment:** lawyers are paid a lump sum amount irrespective of the number or complexity of cases
- **Personalised service:** different lawyers are allocated to the same client for separate but connected cases
- **Appointment:** not made through a public call or expression of interest



The Maltese Legal Aid System: Challenges & Opportunities

Legislation:

No Special law: there is no special law that gathers all the ad hoc provisions governing the right to Legal Aid. The Legal Aid Agency Orders relate to the setting up of the Agency and administrative matters.

Right of Appeal: there is no right of appeal from the decision of the Legal Aid Agency in case a rejection for request for legal aid

Complaints: there is no procedure in place to receive complaints relating to the service being provided by the assigned lawyer



Legal Aid Agency

With the establishment many issues that were identified by the Justice Reform Commission and by stakeholders were resolved:

- The setting up of a department with proper administrative support;
 - Full-time employees and Advocate for Legal Aid;
 - Separation from the Office of the AG into an independent department;
 - Fixed opening hours in line with other government departments.
-
- Increase in the amounts paid to Legal Aid lawyers on the roster was increased to €6,000 annually.



Recommendations:

- **Merit:** The extension of the scope of legal aid to include pre-litigation advice and representation in other out-of-court proceedings.
- **Means:** should be raised to reflect the situation on the ground: JRC suggests raising the amount of assets to €10,000 and the amount referred to as minimum wage increased to €3,000 over the nmw.
- **Lawyers:**
 - i. Lawyers should be selected by means of a public call.
 - ii. There should be specialised lists of lawyers (e.g.: criminal, civil, immigration).
 - iii. The list should include both male and female lawyers and the client should be able to chose gender of lawyer.
 - iv. Once a legal aid lawyer is appointed, then that lawyer should pursue all cases of the beneficiary.
 - v. Lawyers should be paid per case and depending on the complexity of the case/s.



Recommendations:

- **Legislation:**
 - i. Consolidation of laws in relation to scope, eligibility and administration (Legal Aid, TCN unit).
 - ii. Inclusion of the right to appeal a negative decision for legal aid.

- **Information:**
 - i. There is need for information in crucial areas, such as courts, police stations, e.g. Victims of Crime
 - ii. There is need for the gathering of statistics by the Agency to be able to inform policy and laws.



The ethos behind providing pro bono legal work is that many lawyers consider such work as an integral part of being a member of the legal profession providing access to justice

- [Pro Bono](#)

Defn. legal work that is carried out unpaid for the good of the general

Pro Bono: structure or system through which legal assistance could be provided by private lawyers on a pro bono basis. Complements but not replaces public legal aid.

Form: legal advice and representation for clients on a low income, legal research and analysis in collaboration with NGOs and legal training in particular areas.

Who: private lawyers, NGOs and legal clinics

However: the public legal aid services and any *pro bono* legal services must be kept distinct and separate.



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FACTSHEET NO 3

MALTESE COURT SYSTEM SIMPLIFIED: CIVIL ISSUES

The Courts are divided into **Superior** (Constitutional and **Appeals** Courts (Court of Magistrates))

Constitutional Court	As an Appeals Court
	As a court of Original Jurisdiction
Court of Appeal	Appeals from the First Instance Court
	Appeals from the Administrative Tribunal

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DISCRIMINATION AND EQUALITY BODIES IN MALTA

Collectively, Malta's Equality Bodies are responsible for addressing **discriminatory treatment** based on race, sex, age, religion, sexual orientation, gender identity and in various contexts.

THE NATIONAL COMMISSION FOR EQUALITY (NCPÉ)


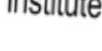
The NCPÉ investigates complaints of discriminatory treatment based on:

...in relation to: employment

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The image shows the cover of a factsheet titled "DISCRIMINATION AND EQUALITY BODIES IN MALTA". The cover features the logos of "aditus accessing rights" and "the critical institute" in the top left. The title is prominently displayed in the center. Below the title, there is a paragraph of text: "Collectively, Malta's Equality Bodies discriminatory treatment based on... and in various contexts." The text is partially obscured by a tilted image of the factsheet's content, which shows the same logos and the beginning of a sentence: "In relation to: ...ment ...tion". The bottom left corner of the cover mentions "THE NATIONAL COMMISSION OF EQUALITY (NCPE)". The top right corner indicates "FACTSHEET NO 5". A decorative graphic of blue and yellow triangles is located in the top right corner.

THE THIRD COUNTRY NATIONALS (TCN) UNIT: LEGAL AID

WHAT IS THE TCN UNIT

An office within the Ministry for Home Affairs and National Security, acting as a focal point in the areas of asylum and immigration.

ELIGIBILITY

A means test is not applied to migrants challenging a Detention Order, yet legal aid for issues relating to reception of asylum-seekers may be restricted to persons "lacking sufficient resources".

SCOPE

- Asylum appeals from a decision of the Office of the Refugee Commissioner before the Refugee Appeals Board;
- Review by asylum-seekers of immigration detention before the Immigration Appeals Board;
- Appeals by asylum-seekers from decisions taken under the Reception Regulations, which may include decisions relating to accommodation, schooling, material conditions, and access to the labour market for;
- Review by migrants of a Return Decision and a Removal Order before the Immigration Appeals Board (with restricted eligibility); and
- Appeals from decisions related to the determination of the age of unaccompanied minors before the Immigration Appeals Board.

ACCESSING TCN UNIT LEGAL AID

- Request a Legal Aid lawyer when notifying the Refugee Appeals Board of the intention to appeal or
- Request a Legal Aid lawyer when notifying the Immigration Appeals Board of the intention to appeal or
- Visit the TCN Unit at 28/18, Vincenti Buildings, Strada Street, Valletta, tel 2291 8209.

FACTSHEET NO 10

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RIGHTS OF VICTIMS OF CRIME

WHO IS A 'VICTIM'?

- a person who has suffered harm, including physical, mental or emotional harm or economic loss which was caused by a **criminal offence**; or
- family members** of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

RIGHT TO LEGAL AID FOR VICTIMS OF CRIME

Any victim who has been served with the notice of first hearing or admitted into the proceedings, or in cases where the prosecution lies with the injured party, may avail himself/herself of the right to legal aid. The victim may request an advocate for legal aid in writing or orally.

DURING THE TRIAL

Victim Support Unit: Under Maltese legislation, the Government should provide specialised assistance to victims of crimes including:

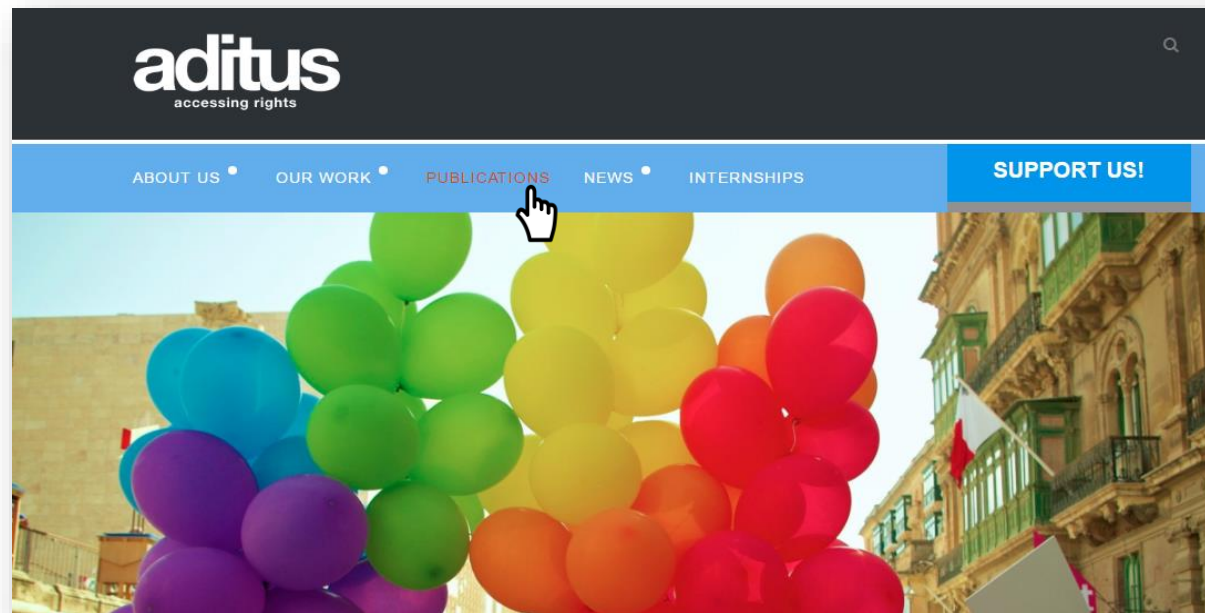
- information, advice and support;
- emotional and psychological support; and
- advice relating to secondary victimisation or intimidation.

Criminal Injuries Compensation Scheme Regulations: victims of criminal injury may apply for **compensation** if the crime giving rise to such injury has been subject of criminal proceedings or was reported to the police.

HOW?
https://servizz.gov.mt/en/Pages/Police_Justice-and-Defence/Justice/Administration-of-Justice/-Justice-and-default.aspx



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THANKS FOR LISTENING !

