

PILN

guidebook

for victims



PUBLIC
INTEREST
LITIGATION
NETWORK



DAPHNE
CARUANA
GALIZIA
FOUNDATION

The Public Interest Litigation Network (PILN)

The PILN is a network of lawyers mostly from Malta who are committed to providing a pathway to justice to victims and bereaved families by assisting in cases that are of public interest. This guidebook answers common questions bereaved families have, and explains legal terms and proceedings. At the end of the guidebook you will find contact details of other organisations that can also support you.

What does the PILN lawyer need from me?

- Provide the lawyer with all the facts and circumstances of your complaint.
- Allow the lawyer to ask questions and answer as best you can.
- Provide the lawyer with copies of all the relevant documents to the case as soon as possible.
- Treat the lawyer with courtesy and respect.
- Inform the lawyer if you will be late or if you are unable to keep an appointment.

Do I need to pay court fees and lawyers' fees to open a case with the PILN's help?

No, the PILN lawyers' services are pro bono. This means that the lawyers do not charge for the services they offer you. The court fees to open the court case are paid for by The Daphne Caruana Galizia Foundation. Any other fees, such as court-appointed experts will be paid for by The Daphne Caruana Galizia Foundation or the client, depending on the particular situation.

If the PILN lawyer demands gifts, unauthorised payments or other favours for his/her services, please tell The Daphne Caruana Galizia Foundation about this.

How can I get in touch with the PILN about a potential case?

You can contact the PILN by sending an email to governance@piln.mt or calling on +356 99988203 to set up an appointment.

How will I know if my case is of public interest?

A case can be considered to be of public interest when:

1. you are facing systemic discrimination that means you and others face unfair disadvantage;
2. your human rights are violated, especially if you are particularly vulnerable or disadvantaged;
3. you would like to address a power imbalance in society;
4. you would like to enforce the rule of law;
5. you have a private interest that may have a large social impact on the general public if your case is successful.

Has too much time passed since the incident for me to file a case?

There is no time limit (prescriptive period) when it comes to human rights cases. This means you can open a case no matter how much time has passed since the incident happened. For civil cases, the prescriptive period is two years from the date of the accident or crime.

General Questions

What's the difference between a civil and criminal case?

A civil case is a private lawsuit. The person who files the case is the plaintiff. The person against whom the case is filed is the defendant. The plaintiff claims that the defendant has failed to carry out an obligation towards the plaintiff. The plaintiff may ask the court to order the defendant to fulfil the duty, to pay damages for the harm done, or both.

A criminal case is normally brought by the Executive Police or the Attorney General. A criminal case concerns an offence committed against the State or the community.

What immediate action can a victim or family member take to protect their interests after an incident?

Generally, the police will take control of the scene of an incident once it is reported and access will be limited.

However, if you do manage to legally get access to the scene of an incident, you can take photos of relevant elements which can be useful later in the legal process (e.g. in the event of a traffic accident, take photos of the exact location of the accident, stop signs, blood stains, etc.)

If there are witnesses to the incident, it may be advisable to reach out to them and ask for their contact details. Their testimony may be useful during legal proceedings.

On average, how long does it take for a court case to be decided?

The length of a lawsuit cannot really be calculated beforehand. Every case is different and any case can be subject to unexpected court delays.

What is legal aid and can I access it?

Legal aid is legal representation provided by the State. In civil cases, legal aid is provided when a plaintiff or defendant cannot afford to pay for a lawyer. In a criminal case, if you would like a legal aid lawyer, one will be appointed for you regardless of how much money you have.

To access legal aid for a civil case, you need to fit certain criteria:

- You cannot own more than €13,000 in assets (liquid or fixed), and
- You cannot earn more than the national minimum wage (circa €11,000 per year)
 - If you pay rent or maintenance for a child, the amounts can be subtracted from the total amount you earn to test whether you are able to claim legal aid. For instance, if you earn €15,000 a year and pay €6,000 in rent, per year you can still access the service if you provide proof of your rental payments.

You can find out more about legal aid and apply on the official website:

<https://legalaidsmalta.gov.mt/en/>

What should I do if a person/entity I am suing contacts me directly to settle the matter out of court?

Always seek legal advice if you are contacted by the person/s you are suing. Do not agree to anything without consulting your lawyer. The person can request a meeting or just ask to meet informally to talk it out. Do not agree to do this without talking to your lawyer first, because there may be legal or safety risks.

I was told I can access Criminal Injuries Compensation. What would it entitle me to?

Maltese and European citizens are entitled to claim compensation for the injuries they have sustained:

- if the injuries are reported to the police straight away, or
- if the injuries result in a case being initiated in the criminal court.

Such compensation can be claimed either by the victim him/herself or by the victim's dependent/s or by a person who has lost money or faced expenses because of the crime involving the victim. According to the Servizz.gov, this compensation cannot be claimed if the victim was fully or partly responsible for the crime. The maximum amount a claimant can receive through this fund is €23,300 and the payment will be made in a lump sum.

If you accept criminal injuries compensation, you surrender your rights as a victim of crime. This means only the State will be able to take action against the perpetrator. You will no longer be able to sue the perpetrator yourself in a civil court.

Will the lawyer be able to represent me in court if I am unable to attend?

If you are unable to be present in court (due to medical reasons, no longer living in the country, or work reasons, et cetera), you are still able to continue with court proceedings by signing over your Power of Attorney (POA), more commonly known as "prokura", to your lawyer. The POA is a legal document that allows your lawyer to make decisions on your behalf about the court case.

You can cancel the POA whenever you want. To do this, you need to print, fill in and sign a simple form and hand it in at The Office of the Notary to Government, at 2/3 , Mikiel Anton Vassalli Street, Valletta VLT 1310. If you need to do this, your lawyer will explain the process to you.

Can I speak to the press before, during or after the court case?

Yes, but it would be best to get advice from your lawyers about what you say and when to say it. What you say to the press may be misinterpreted and used against you in court. It is your lawyers' duty to advise you specifically about what you should or shouldn't say to the press - do not hesitate to ask questions and demand a specific answer from your lawyer.

Generally speaking, if you stick to the facts of the case and speak about the victim as an individual (their life, interests, hopes, etc.) this should not prejudice your legal position. In fact, it is advisable to keep the case in the public eye and the memory of the individual alive. But again, always check with your lawyer first.

It is also important to note that it is best to speak to the press in writing. The written correspondence is evidence of what you say. If you decide to open a case with the PILN, the team at the Daphne Caruana Galizia Foundation will guide you on such matters.

A politician has contacted me to advocate for my cause on my behalf. What should I do?

Even though the politician may have the best intentions, it is important that your case does not get turned into a political or partisan issue. Your fight is for justice, not a partisan matter.

If you are contacted by anyone (public or private) about your case, it is best to contact your lawyer or a member of the team on your case for advice. Do not engage with that person until you have received legal guidance on what to do next.

The courts have told me I must prepare an affidavit to tell my version of events. How do I go about making one?

An affidavit is a written statement given under oath declaring that certain facts are true to the best of the person's knowledge. The statement must be written in the first person, detailing the facts of the event you are giving an account of.

There is no need for the affidavit to be a long document, as long as you give all the details relevant to the event.

The document will need to be signed and stamped by a notary or a Commissioner for Oaths. You can do this by going to the Commissioner for Oaths' office at the Courts of Malta. The office is situated at the side of the law courts and the signature and stamp is provided against a small fee.

Criminal Law

What crimes can I report?

You can report any crime that you witness or are a victim of, to the police. Alternatively, your family or your lawyer can report such crimes on your behalf.

How can I report a crime?

You can report crimes to the police, either orally or in writing. The report must include:

1. your personal details
2. the offence
3. information or description of the offender
4. description of the incident
5. list of witnesses

Once the incident/crime has been reported, you should get a reference number to track the progress of the case.

Will the case go to court? If so, what is the procedure?

The case may or may not go to court depending on the related facts. If there is enough evidence, the police will bring the case to court and you may be called in to testify as a victim or witness of the crime.

Following a report to the police, if there is enough evidence to back up the report, a magisterial inquiry is initiated to investigate who is criminally responsible for the crime. Although the police and the inquiring magistrate work together, they conduct their own separate investigations.

Once the magisterial inquiry is appointed, the next legal procedure is the compilation of evidence. The magisterial inquiry does not necessarily need to be concluded before the compilation of evidence begins. Compilation of evidence is the process through which the police or the Attorney General lawyer present all their evidence before the magistrate.

Depending on the seriousness of the crime and the punishment it may carry, the case will either go to the Court of Magistrates (for less severe crimes) or to the Criminal Court for a trial by jury. There is no jury involved in proceedings in the Court of Magistrates, i.e. for less severe crimes.

A jury is made of nine individuals who will be responsible for voting on whether the individual being tried is guilty or innocent. If the accused is found guilty, the judge decides the penalty and sentences the accused.

If the person who has been sentenced does not agree with the guilty verdict or the penalty, they may appeal the decision in the Court of Criminal Appeal. If the person is being tried before the Court of Magistrates, they may submit an appeal within eight working days of the Magistrate's decision. If they are being tried in the Criminal Court, they can submit an appeal within 15 working days from the date of the sentence.

Inquiries

What is a magisterial inquiry and when does it happen?

A magisterial inquiry is an investigation carried out by a magistrate to establish who is responsible for a crime. There are two principles that need to be satisfied for a magistrate to carry out a magisterial inquiry: the incident must carry a jail term of more than three years and the evidence in the case needs to be preserved immediately.

A magisterial inquiry can be started upon request by the police or by a private citizen who has made a report or complaint.

How long does a magisterial inquiry take to be concluded?

The length of magisterial inquiries varies. The large backlog of cases in Malta means magisterial inquiries can take a few years to be resolved, depending on the complexity of the case.

What is a public inquiry and how does it differ from a magisterial inquiry?

A public inquiry can be appointed by the Prime Minister or by a minister, and is conducted independently of State authorities and has comprehensive, transparent and accessible terms of reference. Rather than assessing who is criminally responsible, as a magisterial inquiry does, a public inquiry analyses the broader systems in which the crime was committed. A public inquiry questions whether there are any shortcomings in the country's legal, administrative or political structures. It is usually appointed after much political and public pressure, as was seen in past public inquiries.

In Malta, there have only been three public inquiries. These are the inquiry into the assassination of journalist Daphne Caruana Galizia and that into the death of construction worker Jean Paul Sofia, as well as the 1996 public inquiry into allegations of bribery on a contract for new bus tickets.

What is an independent inquiry and how does it differ from a public inquiry?

An independent inquiry is appointed by the Prime Minister or minister to look into the state's responsibility under the Inquiries Act in an incident, focusing particularly on the conduct of any government department or public officers, their responsibilities and functions, or any other issues concerning the service of the government.

Whenever there is a suspicious or violent death, the government is obliged to launch an independent inquiry under the European Convention for Human Rights. But the follow-up to the outcome of that inquiry is a purely political decision that often leaves people questioning if there is anything to hide. What determines whether that independent inquiry is public (heard in the open) or not depends on the terms of reference.

An example of a recent independent inquiry is that into the femicide of Bernice Cassar.

Civil Law

What is civil law?

Civil law concerns the rights and obligations people have towards each other and provides a system of remedies. For example, the court may order the defendant to pay damages, which are an amount of money to compensate for the harm done, or the courts may order the losing party to pay the court fees of the winning party.

How are damages calculated? How much am I likely to receive if I win my case?

If the court awards you damages, the court takes into consideration:

- the level of disability (assessed by a court appointed medical expert) of the victim
- the income of the victim before the incident
- the remaining working life expectancy (taking into consideration the victim's age, change in job rank and cost-of-living increase)
- moral damages, this would be a compensation for mental distress caused due to the crime.

The rough formula for calculating compensation is:

Yearly Income x Percentage Disability x Remaining years till pension – 20% lump sum payment

Fundamental Human Rights

What are fundamental human rights and to whom do they apply?

Every person, irrespective of their nationality, sex, religious beliefs, etc has basic rights and freedoms which are based on shared values like dignity, fairness, equality, and respect. These rights are protected by law and they can never be taken away from you, although they can sometimes be restricted. These fundamental human rights are protected by the Constitution of Malta, and also by the European Convention on Human Rights (Council of Europe) and the EU Charter of Fundamental Human Rights (European Union).

The Convention for the Protection of Human Rights and Fundamental Freedoms:

- Article 1 - Obligation to respect human rights
- Article 2 - Right to life
- Article 3- Prohibition of torture
- Article 4 - Prohibition of slavery and forced labour
- Article 5 - Right to liberty and security
- Article 6 - Right to fair trial
- Article 7 - No punishment without law
- Article 8 - Right to respect for private and family life
- Article 9 - Freedom of thought, conscience and religion
- Article 10 - Freedom of expression
- Article 11 - Freedom of assembly and association
- Article 12 - Right to marry
- Article 13 - Right to an effective remedy
- Article 14 - Prohibition of discrimination
- Article 15 - Derogation in time of emergency

- Article 16 - Restrictions on political activity of aliens
- Article 17 - Prohibition of abuse of rights
- Article 18 - Limitation on use of restrictions on rights

What is considered a human rights violation?

A human rights violation is any action or inaction which deprives an individual of their rights. For example, discrimination at work based on personal traits like sexuality or race; unlawful detention or detention under unsanitary and inhumane conditions; denial of health services; failure of the State to take effective measures against domestic violence.

What happens if I win my court case?

You will be awarded financial compensation, which depends on the severity of the case.

Useful Contacts

aditus foundation

Legal assistance specific to migration, asylum, and LGBTIQ+ issues

Tel: +356 20106295

Email: info@aditus.org.mt

Caritas Malta

Support for addiction, homelessness, Huntington's Chorea, epilepsy, mental health, marital separation and widowhood, emotional support, and supportive employment

Tel: +356 22199000

Email: info@caritasmalta.org

Department for Industrial and Employment Relations

Employee protection and support

Address: 121, Melita Street, Valletta, VLT 1121

Tel: 1575

Email: info.dier@gov.mt

Kellimni.com

Free online psychological support

Website: kellimni.com

Legal Aid

Provision of legal assistance by the State to those who are unable to afford legal representation

Tel: 22471500

Malta Police Force

Tel: 21224001

Mater Dei Hospital

Tel: 25450000

Occupational Health and Safety Authority

Protection of physical, psychological, and social well-being of all workers

Tel: 21247677/8

PILN

Tel: 99988203

Email: governance@piln.mt

Richmond Foundation

Psychological services

Tel: +356 21 224580/+356 21 482336/+356 21 480045

Email: info@richmond.org.mt

SOS Malta

Support services for people experiencing times of crisis

Tel: +356 2124 4123

Email: info@sosmalta.org

Glossary

Affidavit

A written declaration or statement that is made under oath which declares that certain facts are true to the best of the person's knowledge. Affidavits are usually collected in preparation for a trial.

Attur

Plaintiff - In a civil case the plaintiff refers to the person or group who initiates a lawsuit against another person or group. The plaintiff accuses the defendant of wrongdoing.

Differita

Deferred - When a case is deferred this means that the case has been postponed or delayed.

Digriet

Decree - A decree is an order handed down by a judge that resolves the issues in a court case. It is an official order that has the force of the law.

Eżekuttur

Executor - An executor is someone named in a will as the person who will carry out the formal wish and testament of the person who created the will. Typical duties of an executor include paying outstanding taxes/debt and distributing any remaining assets among heirs.

Ġurament

Oath - An oath is a public pledge that a person will carry out some action or duty, generally with the promise of doing so truthfully. When a person takes an oath they are swearing that they will tell the truth or face a penalty. Oaths are often sworn in the name of a god.

Ġurisdizzjoni

Jurisdiction - Jurisdiction is the power of a court to judge cases and issue orders. It refers to the territory within which a court or government agency may properly apply its power.

Ġurisprudenza

Jurisprudence - The study of law or case law.

Ilment

Complaint - A civil case is started once a plaintiff files a complaint.

Inter alia

Meaning "amongst other things".

Konvenut

Defendant - In a civil case this refers to the person who the plaintiff has sued. In a criminal case this refers to the person who has been accused of the crime.

Kwerela

Complaint in the context of criminal proceedings. Certain crimes such as rape and theft require the complaint of the injured party and the police cannot prosecute without it.

Liberat

Discharged - When an accused is discharged it is as though the trial never took place and therefore the person may be charged again.

Mehlus

Acquitted or released from prison. When an accused is acquitted the court will have heard all the evidence and concluded that s/he should not be found guilty as charged.

Nfondati

Unfounded - If an allegation is investigated by law enforcement authorities and found to be false or there is no credible evidence to support the allegation, then the court will conclude that it has not occurred.

Parti dispożittiva

Every judgement has a "parti dispożittiva" and in this part the court gives its decisions and orders an action to be taken.

Parte civile

A plaintiff for damages or injured party in criminal proceedings.

Pro bono

The provision of legal services for free or with significantly reduced fees.

Proċeduri

Proceedings - All methods invoking the action of a court; any legal action.

Prokura

Power of attorney - The legal authorisation for a designated person to make decisions about another person's legal affairs, finances, or medical care.

Rikors

Application - An official request or petition for something. This is filed in court and is usually done in writing

Rikorrent

Applicant - A person who starts legal proceedings.

Ritrattazzjoni

Retrial - A new trial for a case that has already been tried to re-examine some or all of the matter from a concluded trial. Usually the completed trial is set aside and tried again from the beginning.

Seduta

Sitting or hearing - A session of a court.

Stharriġ Ġudizzjarju

Judicial review - Type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. They challenge the way a decision has been made and not the decision itself.

Taħrika

Summons before the court - A summons is a form prepared by the plaintiff and issued by a court informing the defendant that they are being sued or are required to appear in court.

Trattazzjoni

The handling (or treating) of an argument in a systematic way.

Verbal

Written account of a court sitting.

Xhud

Refers to a person who comes to court and swears under oath to give truthful evidence. They are usually persons who have first-hand knowledge of the event or expert evidence.
