

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:

1. line-ups of suspects for identification purposes;
2. confrontations;

3. 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 may 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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