



Malta

2 - My rights during the investigation of a crime

A criminal investigation may take place upon a report by a public officer, information provided by the general public or a complaint by an injured party. An investigation may also take place if a person is caught in the act of committing a crime.

What are the various stages pre-trial?

Investigation

The police may ask a person to attend the police station to answer questions. The purpose of this stage is to find out if there is enough evidence to suggest that a person, not necessarily the one being questioned, has been involved in a crime.

Arrest

If the police believe that there is enough evidence to suggest that a person has been involved in a crime then he can be arrested to allow the police to keep him for a period of time and question him officially. The purpose of this stage is to decide whether the person can be charged with a crime or not.

First court hearing

If a person is charged with a crime, he will be arraigned in Court and have his charges read out. If he is arraigned under arrest the Court will first decide whether his continued detention is founded on a provision of law and then inform the person that he may request bail.

Before the trial

Before the case comes to trial, the prosecution must collect and produce all the evidence in favour and against the accused. In more serious cases, the prosecution must bring enough evidence to show the Court that there is a strong case against the accused.

The prosecution, which is led by the police at this stage, have no obligation to divulge any information as to how they will be proving their case. They have no obligation to inform the accused or his lawyer about their case and what evidence they have. The accused person's lawyer may work with the accused to collect evidence for their own case.

Usually there are a number of preliminary hearings before the trial takes place.

My rights during the investigation

Click on the links below for more detailed information about the stages of the investigation pre-trial.

- [Investigation \(1\)](#)
- [Arrest \(2\)](#)
- [The first court hearing \(3\)](#)
- [Preparation of the case pre-trial \(4\)](#)
- [Preparation of the case by the defence \(5\)](#)

Investigation (1)

Why might the police want to question me?

If the police think that you have been involved in some way with a crime, or if you might be able to help with their investigations, they can invite you to assist them with their enquiries and to answer a range of questions.

What will I be told about my rights?

The police should not question you with a view to obtaining evidence, unless they have cautioned you, that is, told you about your rights.

Where, in the course of an investigation, you attend voluntarily at a police station or office, you will be free to leave at any time, unless and until you are informed that you are under arrest.

What happens if I don't speak the language?

If you don't understand the language, then the police will get an interpreter for you. The interpreter will be free of charge. The interpreter should translate the caution, the police's questions and your replies.

Can I have a lawyer?

You do not have a right to a lawyer during the interrogation. You do however have the right to speak to a lawyer for one hour prior to the interrogation. If you need an interpreter, he or she will also translate your conversation with your lawyer for you.

If you know the name of a lawyer, you can ask the police to contact him or her for you. If you do not know a lawyer, then the police will provide you with a list of lawyers made available by the Chamber of Advocates and you may choose a lawyer from that list. If you cannot afford a lawyer the police will contact the duty advocate for you. The duty advocate is available 24 hours per day. For more information, see [Getting legal advice](#).

Do I have to answer the police's questions?

You have the right to remain silent. Anything that you say can be recorded and used during the trial. However, if you want to answer the questions, it may be in your interests to do so. If you choose to consult a lawyer and then exercise your right to remain silent, such silence may be considered as amounting to corroboration of any evidence of guilt.

Can I be searched or asked to provide samples or fingerprints?

If you have not been arrested, samples may only be taken from you with your prior consent in writing. If you have been arrested, intimate and non-intimate samples may only be taken if your appropriate consent is given. If you refuse to give non-intimate samples (e.g. fingerprints), you may be compelled to do so upon an order by a Magistrate.

Arrest (2)

Why might an arrest happen?

Any police officer may arrest without warrant anyone who is in the act of committing or has just committed a crime punishable with imprisonment, or whom he reasonably suspects to be about to commit or of having just committed such a crime.

The police can also carry out an arrest if:

- the identity of the person is unknown;
- there is doubt whether the particulars furnished by him are true;
- the person has not furnished a satisfactory address for service;
- it is necessary to prevent him causing physical harm to himself or to any other person or causing loss or damage to property;
- it is necessary to prevent him from committing an offence against public decency;
- if there are reasonable grounds for believing that the arrest is necessary to protect a child or any other vulnerable person.

What will I be told about my arrest?

If you are arrested you must be informed that you are under arrest, even though the arrest may be obvious. The reasons for your arrest must also be explained. The person arresting you cannot use any harshness, bond or other means of restraint unless indispensably required to secure you, or which is necessary because of you resisting arrest.

I don't speak the local language. Can I have an interpreter?

If you don't understand the local language, the police must provide you with an interpreter and must not interview you until the interpreter is present.

Can I see a lawyer?

Everyone who is arrested has the right to have legal advice from the duty advocate. Legal advice is however limited to one hour prior to the interrogation. The police will contact a lawyer on your behalf. For more information, see [Investigation \(3\)](#). You may also get advice over the telephone.

You have the right to see a lawyer in private. If you need an interpreter, he or she should be present when you speak to your lawyer as well as when you speak to the police.

Do I have to answer questions from the police?

You have the right to remain silent. Anything that you say can be recorded and used during the trial. If you however opt to consult a lawyer and then exercise your right to remain silent, such silence may be considered as amounting to corroboration of any evidence of guilt.

What happens if I say something which is bad for my case?

You have a basic right not to incriminate yourself and you will be warned that you have the right to remain silent. You will also be warned about the consequences of not exercising your right to remain silent. This means that you are not required to give the police information which would prove that you are guilty.

No inference may be drawn from your failure to explain certain details such as why you were in a particular place at a particular time, or why you had certain objects in your possession. However failure to give such explanations could have a negative effect on your case.

Can I contact a friend or family member?

The Police have a duty to inform you without undue delay of your right to request that a relative or friend be informed of your arrest and your whereabouts unless such relative or friend is reasonably suspected of being involved in the offence being investigated.

I am from another Member State. Can I contact my Embassy?

It is customary for the Police to suggest or recommend that you contact your Embassy so that they will be notified about your arrest and the reasons for it and recommend a lawyer if you need one.

Will my fingerprints be taken? Can my DNA be recorded?

Your fingerprints may be taken and your DNA may be recorded if your appropriate consent is given. If you however refuse to give your fingerprints, you may be compelled to do so upon an order by a Magistrate. You may not, however, be compelled to have your DNA recorded.

Can there be a body search?


You may be searched by a police officer if he has reasonable grounds to suspect that you may present a danger to yourself or others, for anything that you might use to escape from custody and for anything which might be evidence related to an offence.

When your arresting officer has a reasonable suspicion that you have concealed an item related to an offence, he may request a Magistrate to order an intimate search of your person. The Magistrate will appoint an expert of your same sex to carry out the search or alternatively will appoint, with your prior consent, any medical practitioner to carry out such search.

How long can I be held by the police?

After you have been arrested, you may be held for up to forty-eight (48) hours. If you have not been released with six hours from your arrest the arresting officer must inform a Magistrate, giving all details as to time and place where you are being held. After forty-eight hours the police must charge you with a crime, release you on police bail or release you unconditionally.

What happens if I am arrested on a European Arrest Warrant?

If a [European Arrest Warrant](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm)  [#http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm) is issued by one Member State, you can be arrested in another Member State and sent back to the country concerned after a hearing before a Magistrate. You are entitled to have a lawyer and an interpreter if you need one.

The first court hearing (3)

Why does the first hearing take place?

There are two different situations:

- If you have been arrested and are in police custody, the purpose of the first court hearing is to have the charges read out. The Court will then first decide whether your continued detention is founded on a provision of law and then inform you that you may request bail;
- If you have been charged but are not in police custody, the purpose of the first court hearing is that of having the charges read out and hearing evidence brought forward by the prosecution in support of the charges.

If you are in police custody, you must appear before a court as soon as possible after you have been charged to hear evidence brought forward by the prosecution in support of the charges and to decide whether or not you should be released on bail.

If you are not in custody, you will be notified about the charges and of the date when you must appear in court for the first hearing.

Do I have a right to a lawyer?

When you appear in court you have a right to a lawyer of your own choice. If you cannot afford a lawyer, the State will provide you with legal aid. For more information, see [Getting legal advice](#).

Will there be an interpreter if I don't speak the language?

If you do not understand the Maltese language but speak English, the trial will be conducted in the English language. If you do not understand English, then the trial will be conducted in the Maltese language and an interpreter will be appointed to assist you. The services of the interpreter are free.

Do I have to speak in court?

You have the right to remain silent. You will however be asked whether you plead guilty or not guilty to the charges. Your lawyer will advise you on how to plead.

Do I have to give any other information?

Prior to pleading to the general issue of guilty or not guilty you will be asked, without oath, a few basic questions principally regarding your identity and place of residence.

Will I be released or held in custody after the hearing?

At the hearing, the court will decide whether you should be granted bail or not.

Normally if you do not have a criminal record, and you are not a risk to society, you will be released on bail, subject to certain conditions. If the court decides against granting bail, then you will be taken to prison until the next hearing where you can request bail once again. The court cannot decide not to grant bail until the trial. You may request bail at any stage of the proceedings.

If you are a foreigner, usually the court will not grant bail unless you have a fixed address.

Can I leave the country before the trial?

If you give sufficient security that you will return for the trial, then you can leave the country but you must come back for all court hearings. If you fail to attend any of the hearings, a warrant will be issued for your re-arrest. You could also be charged with the offence of breaching the bail conditions. In most cases, one of the bail conditions would be that you cannot leave the country but such a condition could be varied at some subsequent stage of the proceedings.

Preparation of the case pre-trial (4)

What happens before the trial?

In the period before the trial, the Attorney General collects up all the evidence in the case to ensure that the case is strong enough to justify the trial. The evidence is collected during the compilation of evidence. You will be present at this stage of the proceedings and can be assisted by your lawyer. You may test the evidence by cross-examining the prosecution's witnesses and you may also produce your own evidence.

Will the case always go to trial?

The Court of Magistrates conducting the compilation of evidence may decide that there is no case and would then discharge you. If you are discharged and the Attorney General does not agree with the Court's findings, he may, within one month, apply to the Criminal Court for your re-arrest. If the Court of Magistrates commits you for trial, the Attorney General may still order your discharge. The law does not provide an alternative to a trial.

Can I plead guilty before the trial?

You can plead guilty upon arraignment and if the punishment for the charge brought against you does not exceed ten years imprisonment, the Court of Magistrates will proceed to pass sentence. Such sentence will, save a few exceptions, appear on your conduct certificate.

If you plead guilty to the indictment before the Criminal Court, a jury will not be impanelled and the Court will pass judgement.

Can the charges against me change before the trial?

It is possible for the charges to change before the trial takes place, depending on the evidence collected in the compilation of evidence. The Attorney General may include in the indictment any charge resulting from the compilation of evidence. It is also possible for the charges, or some of the charges, to be dropped before the trial.

What kind of evidence will the prosecution collect?

The prosecution will interview witnesses in the case and also collect physical and forensic evidence. For example, the prosecution might collect documents from your home or place of work. The Court of Magistrates may order any inquest, search, experiment or any other thing necessary for the fullest investigation of the case. The Court may also order to be examined by experts any part of your body or the body of the person on whom or with whom the offence has been committed, if it is of the opinion that such examination is relevant to the case.

Can I prevent the prosecution from collecting certain evidence?

The compilation of evidence is not the appropriate stage of the proceedings to discuss the admissibility of evidence. You have a time-limit which starts to run from the date that you receive the indictment to challenge the inadmissibility of evidence that the prosecution intends to produce. However, if the evidence is highly inadmissible, the Court of Magistrates will consider not allowing it.

When will I find out about the evidence against me?

You will be present with your lawyer during the compilation of evidence and you will have the opportunity to cross-examine the prosecution's witnesses and see the physical evidence.

What happens if I live in another Member State?

If you have been allowed to go back to your home country, then you must come back for every court hearing before the trial.

If I am convicted, can I be tried again for the same crime?

Whether you are convicted or acquitted, you cannot be tried again for the same crime. However such decision belongs to the Court conducting the trial since the Court of Magistrates conducting the compilation of evidence is expressly forbidden from deciding whether you are being tried again for a crime which you have already been tried for.

Preparation of the case by the defence (5)

What happens before the trial?

If the trial is held before the Court of Magistrates, the prosecution will compile and conclude its evidence before you prepare your case. You may cross-examine the prosecution's witnesses when they are produced or you may reserve your right to cross-examine them at a later stage.

If the trial is held before the Criminal Court, where procedures are more solemn, you must prepare your list of witnesses and any other preliminary pleas within a stipulated time-limit that starts running from the day that you receive the bill of indictment.

When must I prepare my defence?

You have no specified time-limits to prepare your defence in a trial before the Court of Magistrates. When the prosecution concludes its case, you will be given a date to start your defence. You are not required to conclude your defence in one sitting.

When you receive a bill of indictment for trial before the Criminal Court, you may, within 15 working days, give notice of any preliminary pleas and indicate the witnesses and produce the documents and other evidence which you intend to use at the trial. This is a peremptory time-limit and it is advisable to speak to a lawyer as soon as you receive the bill of indictment.

Will I get information about the witnesses and other evidence against me?

In the case of a trial before the Court of Magistrates, witnesses for the prosecution will be heard and evidence will be produced in your presence. Before preparing your defence you may also request a copy of the acts of the proceedings which will include transcripts of the evidence and copies of other evidence produced.

In the case of a trial before the Criminal Court, the Attorney General must file the acts of the proceedings together with a list of witnesses and documents that he intends to produce at your trial. You will be notified with the list of witnesses and documents together with the bill of indictment. You may also request a copy of the acts of the proceedings from the Registry of the Criminal Court.

Can I prevent the prosecution from collecting certain evidence?

In cases before the Court of Magistrates, you may prevent the prosecution from producing evidence that is inadmissible i.e. not legally allowable. This can be done immediately or at any later stage of the proceedings.

Where an indictment has been filed against you, if pleas regarding the evidence intended to be produced by the prosecution have been raised within the time-limit, the Criminal Court will appoint a day for the hearing of those pleas. The Court will put the case off for its decision after hearing submissions by the parties. When the decision is delivered, if you wish to appeal to the Court of Criminal Appeal, you must file a note of appeal immediately after the decision of the Court is pronounced. You then have three working days to file the appeal.

If I am convicted, can I be tried again for the same crime?

Whether you are convicted or acquitted, you cannot be tried again for the same crime. The plea of double jeopardy may be raised at any stage before the Court of Magistrates, with the exception of the compilation of evidence.

The plea of double jeopardy may be raised before the Criminal Court as a preliminary plea. However, this plea may be raised at any stage by the Court itself even when no specific reference to it has been made.

I have already been tried in another Member State for this crime. What happens?

The Court of Magistrates or the Criminal Court will examine the contents of the decision of the other Member State and discharge you if it concludes that the crime is one for which you have already been convicted or acquitted.

How long will the trial last?

A trial before the Court of Magistrates will be conducted over a number of sittings that may take place within weeks or months of each other.

Most trials before the Criminal Court do not last longer than a week. However, trials which are serious may last longer than that.

Related links

 [Criminal Code](#)

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