



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Response questionnaire project group Timeliness

Commission for the Administration of Justice (Malta)

1. The Court System and Available Statistics

1.1 The Court System

The Courts of Justice cater for all civil and criminal proceedings. The Maltese Courts include: The Constitutional Court, the Court of Appeal, the Court of Criminal Appeal, the Criminal Court, the Civil Court, the Magistrates' Court and the Juvenile Court. There are also a number of tribunals such as the Administrative Review Tribunal, the Small Claims Tribunal, and the Local Tribunals. There are also a number of Boards which deal with special matters such as leased urban property, rural leases, expropriation proceedings, taxation.

The Constitutional Court – This Court is composed of three judges. It has an appellate jurisdiction in cases involving alleged violations of human rights, the interpretation of the Constitution and invalidity of laws. It has original jurisdiction to decide questions as to membership of the House of Representatives and any reference made to it relating to voting for election of members of the House of Representatives.

The Court of Appeal - This Court is composed of three judges when it hears appeals from the judgments of the Civil Court, and of one judge when it hears appeals from the Court of Magistrates in its civil jurisdiction. An appeal also lies to the Court of Appeal from decisions of a number of administrative tribunals, mostly on points of law.

The Court of Criminal Appeal - This Court consists of three judges and hears appeals from persons convicted by the Criminal Court. A person convicted on indictment may appeal against his conviction in all cases or against the sentence passed on his conviction unless the sentence is one fixed by law. As a rule an appeal can never result in a sentence of greater severity but in some cases the Attorney General has a right of appeal where the punishment imposed is considered unduly lenient. An accused person may also appeal against a verdict of not guilty on the ground of insanity. In certain cases the Court may

also order a re-trial. The Attorney General, who is the prosecutor before the Criminal Court, cannot appeal from a verdict of acquittal. The Court also hears appeals by the accused and by the Attorney General from decisions on preliminary pleas and from decisions of pleas regarding the admissibility of evidence. This Court may also consist of one judge and hears appeals from judgments delivered by the Court of Magistrates in its criminal jurisdiction. In this case the person convicted can also appeal in all cases, whether against conviction or against the sentence passed. The Attorney General's right of appeal from these judgments is generally limited to appeals on points of law in respect of the less serious offences but relatively recently a general right of appeal has been granted to the Attorney General in the more serious cases.

The Criminal Court - In this Court the judge sits with a jury of nine persons to try, on indictment, offences exceeding the competence of the Court of Magistrates as a Court of Criminal Judicature. This court may, in certain exceptional cases, sit without a jury.

The Civil Court - There are three sections in the Civil Court to which are assigned categories of cases. The sections of the Civil Court are the Family Section, the Voluntary Jurisdiction Section (previously known as the Second Hall) and the general jurisdiction section - the First Hall of the Civil Court. In the case of all three Sections, one Judge presides. There are a number of Chambers in each Section.

The First Hall of the Civil Court takes cognizance of all causes of a civil and commercial nature exceeding the jurisdiction of the Courts of Magistrates. Of particular importance is that it takes cognizance of all applications for redress in respect of alleged violations of human rights and fundamental freedoms protected by both the Constitution of Malta and by the European Convention of Human Rights. This Convention has been incorporated as part of the Laws of Malta since 1987.

To the Civil Court (Family Section) are assigned those cases falling within the competence of the Civil Court and which relate to family matters, maintenance orders, child abduction and child custody.

To the Civil Court (Voluntary Jurisdiction Section) are assigned applications falling within the competence of the Civil Court and which relate to matters such as the authority to proceed with the tutorship of minors, adoption, the interdiction and incapacitation of persons, the opening of successions and the confirmation of testamentary executors.

The Magistrates' Courts - This Court, composed of one Magistrate, exercises both a civil and a criminal jurisdiction. The Court of Magistrates, in civil matters, has an inferior jurisdiction of first instance, limited to claims exceeding €3,494.06 but not exceeding €11,646.87. In criminal matters, the Court has a two-fold jurisdiction, namely, as a court of criminal judicature for the trial of offences which fall within its jurisdiction, and as a court of inquiry (a pretrial disclosure procedure) in respect of offences which fall within the jurisdiction of the Criminal Court. In the second case, it conducts the preliminary inquiry in respect of indictable offences and transmits the relative record to the Attorney General. The Attorney General may send for trial by this court any person charged with a

crime punishable with imprisonment for a term exceeding six months but not exceeding ten years if there is no objection on the part of such person. The court asks the accused whether he objects to his case being dealt with summarily and if the accused does not object, the court becomes competent to try the accused and proceeds to give judgment. There are several Chambers of the Court of Magistrates each presided by a Magistrate.

The Gozo Courts - The Court of Magistrates for Gozo in civil matters, has a two-fold Jurisdiction - an inferior jurisdiction comparable to that exercised by its counterpart Court in Malta, and a superior jurisdiction, both civil and commercial, in respect of causes which in Malta are cognizable by the First Hall of the Civil Court. Within the limits of its territorial jurisdiction, this Court has also the powers of a Court of voluntary jurisdiction.

The Juvenile Court - The Juvenile Court consists of a Magistrate. It is assisted by two persons one of whom must be a woman, whom the Court may consult in any case before it. The assistants are appointed from among persons who have previous experience and special qualifications for dealing with problems of juveniles. The assistants are consulted in open court. The Court hears charges against, and holds other proceedings relating to, minors under the age of 16 years, and may also issue Care Orders in their regard. Given the confidential nature of such sittings, attendance to hearings is restricted.

The Small Claims Tribunal - The Small Claims Tribunal is presided by an adjudicator who decides cases on principles of equity according to law. Adjudicators are appointed from among advocates for a term of five years. Adjudicators decide cases brought before them without delay. The aim is to have claims not exceeding the sum of €3,494.06 decided summarily. Sittings of this Tribunal are held in Malta and Gozo. An appeal from the decision of the Tribunal lies to the Court of Appeal on specific cases listed in the Act establishing the Tribunal.

The Administrative Review Tribunal - The Administrative Review Tribunal is an independent and impartial tribunal applying the principles of good administrative behaviour and is set up for the purpose of reviewing administrative acts. The Tribunal is assisted by two assistants and holds sittings in Malta and Gozo. Administrative acts include the issuing by the public administration i.e. the government of Malta including its Ministries and departments, local authorities and any body corporate established by law of any order, licence, permit, warrant, authorization, concession, decision or refusal to any demand of a member of the public. Any party to the proceedings before the Tribunal who feels aggrieved by a decision of the said Tribunal may appeal to the Court of Appeal sitting either in its superior or its inferior jurisdiction. This Tribunal started operating in the year 2009.

Local Tribunals - A number of minor infringements of the law such as minor traffic offences (parking violations, etc.), illegal disposal of litter, tenancy, etc., are penalised and are heard by Commissioners of Justice in Local Tribunals situated in various localities. The Commissioners are selected from among persons holding a law degree and given a three year appointment. As the offences have been depenalised the case may be decided even in the absence of the accused. Appeals are only possible on points of law.

1.2 Statistics information on Courts, judges and cases

Year 2009

Civil Courts

Court	Introduced Cases	Decided Cases
Constitutional Court	40	34
Court of Appeal (Superior)	317	292
Court of Appeal (Inferior)	271	307
First Hall of the Civil Court	1816	1009
Civil Court, Family Section	508	261
Court of Magistrates	557	310
Small Claims Tribunal*	1077	723
Administrative Review Tribunal	91	-

*The cases of the Small Claims Tribunal are not handled by judges but by adjudicators who are legal professionals (advocates).

Criminal Courts

Court	Introduced Cases	Decided Cases
Court of Criminal Appeal (Superior)	15	14
Court of Criminal Appeal (Inferior)	509	519
Criminal Court	57	29
Court of Magistrates	15888	15883
Inquiry	1336	1272

1.3 Statistics information on processing time

There are no specific statistics on processing time, both in case of the civil as well as the criminal courts. However, with regard to the civil courts, there are statistics regarding age analysis of pending cases:

Court	< 1 year	1-2 years	2-3 years	3-4 years	4-5 years	5-7 years	7-10 years	10 years +	Total
Constitutional Court	36	4	1	0	0	0	0	0	41
Court of Appeal (Superior)	287	237	57	7	1	4	1	9	603
Court of	165	14	5	2	0	1	0	0	187

Appeal (Inferior)									
First Hall of the Civil Court	1114	881	729	522	380	459	534	968	5587
Civil Court Family Section	433	295	165	105	89	125	38	23	1273
Court of Magistrates	373	225	187	92	89	100	85	73	1224
Small Claims Tribunal	763	228	72	33	10	12	1	1	1110

2. Statistics, Requirements and Transparency

2.1 What statistics are provided for on a regular basis?

The type of statistics provided on a regular basis are the following:

Civil Courts - Statistics regarding introduced cases, decided cases, terminated cases and pending cases as well as an age analysis of pending cases.

Criminal Courts – Statistics regarding introduced, terminated and pending cases.

2.2 Are provided statistics published?

Statistics are published on the internet on a monthly basis.

2.3 Is processing of individual cases transparent?

The Court minutes of every sitting of civil cases is published on the website, together with deferments. Judgments are also published on the website. In case of family court judgments, the names of the parties are not published.

2.4 Are requirements for processing time stipulated?

According to Article 195 of Chapter 12 of the Laws of Malta -- The Code of Organisation and Civil Procedure -- the Court shall at the first hearing of both the pre-trial stage and the trial stage plan in advance all the sittings to be held as well as the projected date of judgment and shall also direct the parties on what evidence and submissions it expects to be made at each sitting. All causes shall be appointed for hearing within two months and sittings shall be held on a bi-monthly basis.

According to the same Article, the date and time for hearing shall be determined at least two months prior to the date fixed for the hearing.

2.5 What are the consequences of exceeding required/reasonable processing time according to national rules or practice?

Article 195, referred to above, states that where a cause has been pending before a particular court for three or more years, any party to the case may, personally, and without the need of representation by any advocate, present an application to the Chief Justice requesting that, for the simple reason that the cause has taken so long, the presiding member of the court be changed and the case assigned to another member of the judiciary.

The same Article states that where a cause has been pending for judgment before a particular court for eighteen months or more, any party to the case may, personally, and without the need of representation by any advocate, present an application to the Chief Justice for this purpose, and the Chief Justice may, for the simple reason that the judgment has taken so long to be delivered, allow the request for the presiding member of the court to be changed and for the case for judgment to be assigned to another member of the judiciary.

This Article also states that the Chief Justice shall draw up a yearly report on any causes transferred as stated above detailing the possible reasons for such delays and shall send the report to the Commission for the Administration of Justice. The Commission shall take such action as it may deem appropriate in accordance with the Commission for the Administration of Justice Act and within three months, publish such report.

According to Article 11 of the Commission for the Administration of Justice Act, every judge and magistrate presiding over any court shall, not later than the fifteenth day of January of every year, make a report to the Commission for the Administration of Justice giving a list of all cases pending before the court over which he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending and the time within which the judge or magistrate, as the case may be, expects the case to be disposed of by the said court.

2.6 Can the parties and others make a complaint about the processing time?

As per 2.5 above.

2.7 Are user surveys on processing time carried out?

User surveys are not carried out.

3. Reduction of Caseload

3.1 Caseload per judge is a simple proportion between number of introduced cases and number of judges. Some possible solutions – *e.g.* increasing the number of judges, increasing the cost of litigation, reducing the jurisdiction of the courts by providing for mandatory arbitration – depend on political decisions in which the judiciary has no say.

The problem facing the individual judge is not so much the number of cases assigned to him – he has no control over that – as the number of cases on his list for hearing. In this regard, he has a measure of control and the following options are available:

- a. issuing decrees *in camera* (in terms of art. 173, Chapter 12) regulating the production of documentary and technical evidence to avoid the waste of time for the production of such evidence during hearings. Often, the production of documents during a regular hearing entails postponing the hearing to give the opposite party time to examine the document. Proper use of the powers given to the court by art. 173 will bring about a reduction in caseload because only those cases which are properly prepared for the oral hearing will be put on the list;
- b. making use of the pre-trial hearing (to be conducted by judicial assistants) in terms of reg. 12(10) of L.S.12.09 to define the main issues and clear any preliminary issues (*e.g.* the need to call third parties into the suit – unless this is done at an early stage of the proceedings, much time will be lost because all evidence heard before the calling into the suit may have to be repeated so as to give the joined party the opportunity to cross-examine all witnesses). Again, proper use of this procedure will ensure that the main hearing is focused on the outstanding issues.
- c. making use, in appropriate cases, of the power to refer the parties to mediation in terms of art. 17, Chapter 474. When the issues are properly defined, it may become apparent that the parties are not too far apart, and professional mediation may give useful results.

The above techniques are more likely to give the desired result if the written procedure is completed before the case is set down for hearing. It is only then that the judge can properly decide whether the case can be put down for hearing immediately or whether the case may be referred for preparatory work as detailed above. The imposition of strict legal time limits within which a case is to be appointed for hearing after filing, may restrict the proper administration and management of the caseload by the presiding judge. Imposed time limits may therefore prove counter-productive unless they make a reasonable allowance for the preliminary procedures.

- 3.2 Special summary procedures in terms of art. 167, Chapter 12, may be availed of for the recovery of money claims. Uncontested claims are catered for under art. 166A, Chapter 12.
- 3.3 Special summary procedures are fast tracked. If, during a summary hearing, defendant fails to show that he has a reasonable defence to the claim, judgment is delivered on the day. The procedure for uncontested claims is by judicial letter. If the claim made in the letter is not contested within 30 days, the letter becomes

an executive title as if it were a court judgment. This relatively recent instrument is proving quite effective.

- 3.4 Other than exercising strict control over the production of evidence and dilatory conduct on the part of the parties and legal counsel, very little can be done to speed up ordinary proceedings once the case has been set down for hearing. Since the law requires that cases be put on the list for hearing within a specified time, usually daily lists are quite long and only a brief time can be allowed to each case. This often results in cases having to be put off for continuation with the inevitable waste of time and needless repetitions that this entails. When handling long daily lists, the judge cannot be expected to remember the details of each case, and this limits his ability to exercise strict control. Nevertheless, strict case management by rejecting unjustified or insufficiently justified requests for postponement of cases, insisting that evidence is produced in a timely manner, that parties file their pleadings within the time allowed by the court and not allowing procrastination, punctual execution of court orders and punctual attendance at court sittings, the honouring of commitments and appointments by all parties and by the presiding judge, and similar measures go a long way to reduce delays in the processing of cases.

4. Increase of Capacity

- 4.1 Increasing courts or increasing judges is the prerogative of the executive and not within the remit of the judiciary. Reallocation of judges or cases is within the remit of the Chief Justice. Reallocation of judges or cases, however, may result in the more hard-working and productive judges being given a heavier case-load. This may prove unfair but necessary since the priority of the Courts and their constitutional obligation remains that of seeking to ensure to all citizens a trial within a reasonable time.
- 4.2 There are no deputy judges or trainee judges. Judicial assistants are available to conduct preliminary hearings and also to hear witnesses. The presiding judge must, however, monitor continuously the hearing of witnesses by judicial assistants to ensure progress and intervene where the judge notes inordinate delays. The authority of the judicial assistant to decide on issues such as *e.g.* admissibility of witnesses or relevance of questions, is limited. Judicial assistants tend to take longer than judges to hear the same evidence and they also hear a substantial amount of irrelevant evidence which inflates the case-file unnecessarily. The reason for this is the lack of assertiveness of some judicial assistance when confronted by experienced legal counsel. The same applies to judicial referees (technical experts) who, if not properly managed, may take years to file their reports. This makes the need of monitoring the activity of judicial assistants and of experts even more manifest. In the case of experts the best option would appear to be for witnesses to be heard by the judge or the judicial assistants properly supervised by the judge. The judge would then formulate the appropriate specific questions for the expert to answer.

- 4.3 Individual judges do have judicial assistants allotted to them, and they also have secretarial assistance. In practice, the amount and quality of work which can be delegated is limited. Some administrative work – *e.g.* screening of cases for selecting the best pre-trial procedure for the individual case (*vide* 3.1, *supra*) – is still done by the judge himself.
- 4.4 An experimental procedure – termed the “master” procedure – whereby all preliminary hearings in all cases were held before a single judge, the “Master”, who then allotted the cases to individual judges after dealing with preliminary issues, was tried some years ago. The experiment failed because it was poorly implemented. A “streaming” experiment, whereby cases dealing with the same type of subject-matter -- *e.g.* company law, industrial property, torts, property *etc.* -- are assigned to the same judge, is currently under way.

5. **Other initiatives**

The time limits set out in the law concern the time for filing written proceedings (binding the parties) and the time within which to set the case for hearing after filing (binding the court). In some procedures (*e.g.* applications for the revocation of precautionary warrants) the court is also bound to deliver judgment within a specified time. These timelimits are not always properly thought out and often are based on the assumption that the judge has a clean slate to start with and is not hampered by a back-log of cases.