

Call for the Provision of Free Legal Aid

TERMS OF REFERENCE

1. Contracting Authority

Ministry for Home Affairs, National Security and Law Enforcement

2. Relevant Background

Malta is an island in the Mediterranean Sea and is geographically prone to receiving irregular immigrants especially those who leave the shores of North Africa by sea. In the past years, the number of irregular boat arrivals soared and in consequence the International Protection Appeals Tribunal and Immigration Appeals Board have experienced a drastic increase in appeal cases. Apart from boat migrants, the International Protection Agency has been receiving many asylum applications from third country nationals arriving in Malta legally by air or sea.

3. Scope of the Contract

To provide free legal aid to Third Country Nationals in terms of the International Protection Act (Chapter 420), the Dublin Regulation (EU) 604/2013, the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations (Subsidiary Legislation 217.12) and the Reception of Asylum Seekers Regulation (Subsidiary Legislation 420.06).

Legal aid lawyers must undertake to represent appellants to the best of their ability and submit an appeal on their behalf to the relevant board such as Immigration Appeals Board, International Protection Appeals Tribunal (IPAT) and any other pertinent Board as prescribed by law. Appellants are third country nationals who received a negative decision to their asylum application and age assessment application as well as third country nationals who have been issued with a detention order, a removal order or a decision for a transfer to another EU member-state under the Dublin Regulation. Appellants shall be referred to the lawyers by the Ministry for Home Affairs, National Security and Law Enforcement. Lawyers will be expected to meet the third country national either at the premises of the Agency for the Welfare of Asylum Seekers, at detention centres, IPAT, IAB, MHSE or any other pertinent place, prepare the appeal case and submit it to the respective Board and attend for hearings whereby he/she would be expected to represent the third country national to the best of his/her ability. This undertaking is to start as soon as practicable following the assignment of the case by the MHSE in order to respect the timeframes for appeals to either of the Boards.

Therefore, in order to represent such appellants the lawyers shall:

- Collect necessary documentation from MHSE, International Protection Agency and any other relevant entity.
- Meet third country nationals at detention centres, the Agency for the Welfare of Asylum Seekers, IPAT, IAB, MHSE or any other pertinent place.
- Attend hearings before IAB and IPAT.
- Submit appeal documents to the Immigration Appeals Board, International Protection Appeals Tribunal and Immigration Appeals by the deadline set by the Boards.
- Follow up assigned appeals as required.

4. Geographical Area to be covered

The place of provision of the service shall be various, including, MHSE, International Protection Appeals Tribunal, Immigration Appeals Board, Detention Centres, International Protection Agency, Agency for the Welfare of Asylum Seekers and any other pertinent place as needed.

5. Specific Activities

5.1 Assignment of duties and responsibilities in Asylum appeal cases - International Protection Appeals Tribunal

To provide in terms of the International Protection Act (Chapter 420) such legal assistance as formally requested by an asylum seeker whose claim for asylum has been rejected at the first instance. To examine the grounds of appeal and present, in writing, the appellant's case before the International Protection Appeals Tribunal, established for this purpose. To attend, if required, to sessions of the International Protection Appeals Tribunal to explain case submissions and provide other general assistance to respondents during their appeal. To carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by MHSE Report on the outcomes of interviews held with appellants and bring to MHSE's attention any pertinent matters which may arise.

The legal aid lawyer should submit the appeal as soon as possible after the appellant is interviewed and by no later than 15 days from the issuance of the negative decision issued by the International Protection Agency. Failure to do so might lead to MHSE to terminate the contract.

Payment fee in asylum appeals is 100 euro (inc. VAT) per case submission. Invoice is to be submitted once appeal documents are submitted to the International Protection Appeals Tribunal.

5.2 Assignment of duties and responsibilities in Dublin transfer cases - International Protection Appeals Tribunal

To provide in terms of Article 28(6) of the Dublin Regulation (EU) 604/2013 such legal assistance as formally requested by an asylum seeker whose claim for asylum has been rejected by an EU member state as per Dublin criteria. To examine the grounds of appeal and present, in writing, the appellant's case before the International Protection Appeals Tribunal established for this purpose. To attend, if required, to sessions of the International Protection Appeals Tribunal to explain case submissions and provide other general assistance to respondents during their appeal. To carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by MHSE. Report on the outcomes of interviews held with appellants and bring to MHSE's attention any pertinent matters which may arise.

The legal aid lawyer should submit the appeal as soon as possible after the appellant is interviewed and by no later than 15 days from the issuance of the negative decision issued by the International Protection Agency. Failure to do so might lead to MHSE to terminate the contract.

Payment fee in Dublin appeals is 80 euro (inc. VAT) per case submission. Invoice is to be submitted once appeal documents are submitted to the International Protection Appeals Tribunal.

5.3 Assignment of duties and responsibilities in Detention cases - Immigration Appeals Board

To provide in terms of the Reception of Asylum Seekers Regulations (Subsidiary Legislation 420.06) legal assistance and representation entailing preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. To examine the grounds of appeal and present, in writing, the appellant's case before the Immigration Appeals Board to attend, if required, to sessions of the Immigration Appeals Board to explain case submissions and provide other general assistance to respondents during their appeal. To carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by MHSE. Report on the outcomes of interviews held with appellants and bring to MHSE's attention any pertinent matters which may arise. Failure to do so might lead to MHSE to terminate the contract.

Appointment of legal aid and first hearing shall be carried out within 7 working days of the issuance of detention order.

Payment fee in detention appeals is 40 euro (inc. VAT) per case submission. Invoice is to be submitted once appeal documents are submitted to the Immigration Appeals Board.

5.3 Assignment of duties and responsibilities in Removal procedures - Immigration Appeals Board

To provide in terms of the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations (Subsidiary Legislation 217.12) legal assistance and representation entailing preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. To examine the grounds of appeal and present, in writing, the appellant's case before the Immigration Appeals Board. To attend, if required, to sessions of the Immigration Appeals Board to explain case submissions and provide other general assistance to respondents during their appeal. To carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by MHSE. Report on the outcomes of interviews held with appellants and bring to MHSE's attention any pertinent matters which may arise. Failure to do so might lead to MHSE to terminate the contract.

Appointment of legal aid and first hearing shall be carried out as soon as possible following the issuance of the removal order.

Payment fee in removal appeals is 80 euro (inc. VAT) per case submission. Invoice is to be submitted once appeal documents are submitted to the Immigration Appeals Board.

5.4 Assignment of duties and responsibilities in Age Assessment cases, Immigration Appeals Board

To provide in terms of Regulation 16(1) of the Reception of Asylum Seekers Regulation (Subsidiary Legislation 420.06) legal assistance and representation entailing preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. Appeals related to age assessment to the Immigration Appeals Board must be submitted within **3 working days** from the age assessment decision. Failure to do so might lead to MHSE to terminate the contract. To examine the grounds of appeal and present, in writing, the appellant's case before the Immigration Appeals Board. To attend, if required, to sessions of the Immigration Appeals Board to explain case submissions and provide other general assistance to respondents during their appeal. To carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by MHSE. Report on the outcomes of interviews held with appellants and bring to MHSE's attention any pertinent matters which may arise.

Payment fee in age assessment appeals is 80 euro (inc. VAT) per case submission. Invoice is to be submitted once appeal documents are submitted to the Immigration Appeals Board.

6. Selection Criteria

In order to be considered eligible for the award of the contract, bidders must submit a copy of their CV and legal warrant.

7. Award Criteria

A contract will be awarded to the first 15 bidders who submit their bid by the set deadline and who satisfy the administrative and technical criteria.

8. Financial Terms

This is a fee-based service contract. Lawyers will be paid:

- Asylum Appeals: 100 euro (inc. VAT) for every appeal submission.
- Dublin Appeals: 80 euro (inc. VAT) for every appeal submission.
- Age Assessment: 80 euro (inc. VAT) for every appeal submission.
- Detention: 40 euro (inc. VAT) per case.
- Removal: 80 euro (inc. VAT) per case.

The Contracting Authority shall pay the lawyer sums due of complete cases which are to be invoiced on a monthly basis.

The appointed lawyers are bound to submit an original invoice on a monthly basis for appeal cases together with an attendance sheet, signed both by the lawyer and the appellant.

The lawyer shall not ask for payment from appellants.

9. Contractual Conditions

1. Lawyers shall attend any required training and information sessions during the duration of the contract.

2. Should any lawyer appointed as Legal Aid request payment from appellants, the contractor shall replace the lawyer/expert or terminate his service.
3. In justified circumstances, cases which had been assigned to a legal aid lawyer may be re-assigned to other lawyers within the legal aid pool. In this respect a legal aid lawyer may be required to pass on any material obtained or compiled of a particular case to the newly assigned legal aid lawyer representing the appellant.

4. Execution of the Contract

This contract is to commence as soon as the contract is signed between the two parties.

The contract is for a period of two (2) years which may be extended by further two (2) periods of six (6) months each.

5. Assumptions Underlying the Project Intervention

The higher the number of asylum applications the higher the number of assigned appeal cases to legal aid lawyers. Therefore, in case of a migration influx, legal aid lawyers shall cater for a larger case load.

An interpreter will be provided by the Contracting Authority in case of language communication difficulty.

6. Risks

At any point in time, appellants may decide to opt for a private lawyer.

7. Management Structure

Legal aid lawyers should refer to the Office of the Permanent Secretary within the Ministry for Home Affairs, National Security and Law Enforcement.

8. Reporting Requirements

1. Appeal documents which are to be submitted to the IPAT, IAB or other pertinent Board.
2. Attendance sheet for each appeal.