

Memorandum by the Hon. Minister of JusticePayment of fees to the Official Curators and Advocates
and Legal Procurators for the Poor

1. In civil cases before any of H.M's Superior Courts, poor persons admitted by the Court to free legal aid are assigned an Advocate and a Legal Procurator taken by rotation from a list of nine Advocates and nine Legal Procurators for the Poor, who are appointed to such office periodically, generally for a two year term, by the Minister of Justice.

2. The Advocate and Legal Procurator for the Poor, in civil cases, receive their respective fee -

(i) if the party admitted to free legal aid whom they have assisted succeeds in its action and, as a consequence of such success, receives property, in cash or otherwise, sufficient for the payment of the legal fees; or

(ii) if the judgment provides that all the legal costs of the case are to be borne by the other party to the suit and such party is not itself also proceeding "in forma pauperis".

3. A considerable number of cases in which Advocates and Legal Procurators for the Poor are required to give their legal assistance are such that (a) either it is legally impossible for them - owing to the above rules - to receive any fee at all, such as in certain cases of legal separation where both parties are

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proceeding "in forma pauperis" or cases of correction of acts of civil status and all cases of whatever nature where the assisted poor person is on the losing side and is cast in costs, or (b) it is practically impossible for the Advocate and Legal Procurator to recover their fees such as in cases of liquidation of very small estates.

4. It is to be observed that, since a person applying for free legal aid has only to show that it has a "prima facie" case in its favour, there always is a certain number of cases in which such persons are unsuccessful and are cast in costs, so that the Advocate and the Legal Procurator concerned receives no fee at all. Moreover, an Advocate and a Legal Procurator, to whom the legal assistance of a person admitted by the Court to free legal aid has been assigned, have no right to deny such assistance, even if they feel that the case entrusted to them is a very weak one.

5. The disadvantage of Advocates and Legal Procurators, ensuing from what has been stated above, is to some extent offset by the fact that they also are "ex officio" curators; that is to say, whenever relatives or friends are not themselves ready to represent in law-suits absent persons, incapacitated persons or other persons not having legal capacity "litigandi" and not being legally represented, one of the Advocates for the Poor and one of the Legal Procurators for the Poor are appointed by the Court to be "curators ad litem". Such curators average ... per year, so that each Advocate and Legal Procurator for the Poor is assigned every year

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an average of 14 such curatorships which are also assigned by rotation. Curators "ex officio" are paid their fee by the party on whose application they have been appointed, provided that, if such party has been proceeding "in forma pauperis" and has not recovered anything from the law-suit, the said curators are not paid at all. The amount which an individual curator may receive in any one year depends on luck: normally it is a very low figure - sometimes falling below £30 for an Advocate and below £10 for a Legal Procurator: quite exceptionally, the figure may exceed £100 for an Advocate and £33 for a Legal Procurator. There was a very exceptional case some years ago where an Advocate-curator received a fee in excess of £500.

6. The Chamber of Advocates and practically the whole legal profession through it has been for a long time expressing dissatisfaction with the existing system in the matter under discussion and on the 8th February, 1963, the Chamber of Advocates informed Government that none of its members would be accepting appointment to the office of curator "ex officio" and Advocate for the Poor unless the present system, particularly in regard to fees payable to Advocates, was re-organized. However, after discussions with the Minister of Justice, the Chamber of Advocates instructed its members to accept appointment to the above office up to the 31st August, 1963, in order to give Government sufficient time to consider the matter.

7. Under cover of a letter dated 28th May, 1963, a Committee appointed for the purpose by the Chamber of Advocates submitted to the Minister of Justice a draft

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amendment of the provisions of the Code of Organization and Civil Procedure anent proceedings "in forma pauperis". The draft does not only concern the payment of fees to Advocates but also concerns a revision of the means-test in order that a person may qualify for free legal aid; as a matter of fact, the re-organization of the whole system of proceedings "in forma pauperis" is envisaged in the said draft. The present Memorandum, however, only concerns the matter which is most urgent, that is to say, the matter of fees payable to Advocates and Legal Procurators for the Poor; all the other matters and especially that of the means-test need to be gone into more deeply than they have been in the proposed draft and are, therefore, left over for future study.

8. The gist of the reform proposed by the said Committee, in regard to professional fees, is that any person admitted to free legal aid should be granted a "Legal Aid Certificate" and that it should be allowed to "brief an Advocate and Legal Procurator of his trust". The professional fees of the chosen advocate and legal procurator would have to be paid in full by the Government, through the Registrar of the Superior Courts, who would have also to meet any liability of the "poor" litigant in respect of fees and disbursements of curators, referees and witnesses.

9. The reform as suggested by the said Committee would, of course, be the "ideal" of what could be done, since it would satisfy the fundamental right of every individual, independently of whether he is rich or poor, to choose the lawyer he considers the best for his own

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purposes. But it does not appear that Government can in the present moment even entertain the proposed reform. An estimate of what it would cost is impossible to make, since past statistics would be of no avail once the effect of the reform itself would undoubtedly be to encourage litigation "in forma pauperis" and to widen very considerably its field.

10. In the present circumstances, the Minister of Justice is of the opinion and recommends that Advocates and Legal Procurators for the Poor be paid respectively a fixed annual fee of £100 and £33, in addition to the rights competing to them under the provisions of the Code of Organization and Civil Procedure. Since there are nine advocates and nine legal procurators for the poor, this would cost Government £1,197 per year and would not render necessary any amendment to the said Code, it being possible for the fee to be mentioned and fixed in the letter of appointment on a contractual basis. The fee could be even varied, according to prevailing circumstances, on each new biennial appointment if the present system of making appointments for two years is continued. A condition of every appointment would be that the fixed fee would cease to be payable on the lapse of the appointment, even though Advocates and Legal Procurators would be normally required to dispose of matters commenced by them prior to the termination of their office. Moreover, the new system should not be made to apply to Advocates and Legal Procurators for the Poor in Gozo, where litigation "in forma pauperis" is extremely rare.

11. The contention of the Chamber of Advocates is that there are no social services at present to the

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maintenance of which Government does not contribute and that there is no reason why "free legal aid" should be an exception to such rule and why the full burden of such social service should be borne by the legal profession. They further quote a resolution passed by the Committee on the Judiciary and the Legal Profession at the New Delhi Congress of the International Commission of Jurists, where "inter alia" it was resolved that the poor were entitled to legal representation by "lawyers of the requisite standing and experience"; that "this is a question which cannot be altogether dissociated from the question of adequate remuneration for the services rendered"; that "the primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided" and that "an obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility".

12. The present position is in many European countries that the State or local authorities either pay for or contribute substantially to the maintenance of free legal aid. In England, the State makes a yearly grant towards the cost of legal aid. In the year ending March 31, 1958, it was £1,350,000. In France, Norway and Sweden the cost of legal aid is met by the State; in Germany either by the State or by local authority; in Denmark by the local authority. In criminal matter, also in Malta the Advocate for the Poor is paid by the Government on the basis of a yearly salary: where there are more than one co-accused requiring free legal aid and an additional Advocate is required, it has become the

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practice in recent years to pay him an appropriate fee.

13. In the light of the aforesaid considerations, Hon. Ministers are required to state whether they approve the recommendation made by the Minister of Justice in paragraph 10. Apart from the fact that the claim made by the Chamber of Advocates seems to be upheld by the principles of justice and is in keeping with the prevailing practice in other European countries, the alternative to the implementation of the said recommendation would be a stalemate in the administration of justice in so far as persons admitted to free legal aid are concerned and even a temporary stalemate might prove of irreparable prejudice to the said persons where legal proceedings are subject to peremptory legal terms. On the other hand, it is legally impossible to oblige an Advocate or a Legal Procurator to accept the office of Advocate or Legal Procurator for the Poor.

5th August, 1963.