



Appendix 12

The role of the State in relation to maintaining its citizens
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I have been asked to outline the role of the State in relation to maintaining its citizens. The State is deemed to be responsible for establishing and maintaining a stable and financially sound social security system where those persons who cannot earn their own living because of sickness, unemployment, old age, occupational injury or disease, maternity, invalidity, or death of the breadwinner should be guaranteed a decent standard of living.

The Social Security Act Chapter 318 of the Laws of Malta is widely considered as the main tool which defines local social security standards. This instrument should promote social security standards based on social justice. Until December 1986, Social Security in Malta was administered through separate laws, namely the Old Age Pensions Act of 1948, the National Assistance Act of 1956 and the National Insurance Act of 1956. A more comprehensive approach was adopted in January 1987 when this legislation was consolidated into the Social Security Act 1987.

The Social Security Act provides for two basic schemes, contributory and non-contributory. The contributory scheme is a pay-as-you-go insurance, based on the payment of weekly contributions from wages and salaries in the case of employed persons or from gainful activity in the case of self-occupied persons. Entitlement to benefits is determined by a contribution test. This means that a person contributes towards the scheme while engaged in gainful activity so as to provide for eventual contingencies when these arise, such as sickness, unemployment, occupational injury, invalidity, widowhood or retirement.

However, this first type of scheme falls outside the purview of today's discussion. This is precisely because maintenance payments by the State are made on the basis of the non-contributory scheme.

The non-contributory scheme is funded from general taxation and provides financial assistance determined by means testing. The Non-Contributory Scheme which was originally meant to provide for those persons at risk of poverty has over the years evolved into a comprehensive scheme with a number of provisions that are intertwined in such a way that one benefit supplements another. The aim was to facilitate the simultaneous award of more than one benefit and to provide fairly comprehensive coverage in those cases with various needs and where therefore more than one contingency is present. Moreover, by targeting specific conditions and situations, this scheme has over the years provided additional financial assistance to such specific categories as persons with a disability, single parents, and deprived households.

The following table outlines the various contributory and non-contributory benefits

Contributory Benefits	Non-contributory Benefits
Pensions in respect of Retirement	Children's Allowance
Pensions in respect of Invalidity	Disabled Child Allowance
Pensions in respect of Widowhood	Maternity Benefit
Injury Pensions	Pension i.r.o. Age
Injury Benefit	Pension i.r.o. Visually Impaired

Unemployment Benefit	Pensions in respect of Disability
Special Unemployment Benefit	Carer's pension
Sickness Benefit	Social Assistance
Orphan's Allowance	Milk grant
Marriage Grant	Medical Assistance
	Supplementary Assistance
	Leprosy Assistance
	Tuberculosis Assistance
	Energy Benefit

The Social Security Act outlines the current parameters adopted to determine eligibility to the various means-tested benefits. The entitlement measure used to determine whether or not to award Social Assistance and Unemployment Assistance is based on 4 basic criteria for entitlement these are:-

1. The Household

The term "household" is defined by Article 2 of the Social Security Act, and means one person who in the opinion of the Director is living alone or two or more persons who in the opinion of the Director are living together as a family. The next step would then be to determine who in the household is filling the role of the "head of household". It is left up to the discretion of the Director to decide amongst the members of the household who is to be considered the head of the household. The determination of the formation of the household is of paramount importance since the benefit is granted according to the needs and composition of the household. Once this has been established the benefit is then granted to the head of household who is entrusted with administering it.

This has led to abuse by, for example, those who fraudulently claim to be two separate households so as to be able to claim more benefits and assistance. This was evidenced in couples who go through legal separation proceedings claiming they are now two separate households consequently each spouse may now claim in his and her own name but in actual fact they are eventually found to be living together.

It is to be noted that the department has adopted the practice, that adult persons who have never been married and who live with their parents are considered to form part of their parents' household and are thus not awarded social benefit entitlements in their own right. Even in this case there have been cases of abuse, whereby siblings apply in their own name as a separate household, while living in the garage or basement of his/her parents house.

2. Means tests

Non-contributory benefits entitlements are determined by a financial means test of the entire household which requires proof that the income of the entire household falls below an established threshold.

The means test varies according to the benefit being claimed. There are two means tests one based on the income of the household and the other on its capital. As a general rule in calculating the means of the household the matrimonial home or place of residence is not taken into consideration, however the value of any other property including any

settlement of property in trust is taken into consideration. Such property is quantified at 5.5% per annum so as to determine the possible revenue it could have yielded and establish whether such person passes or not the relevant means test. The *raison d'être* is that resorting to State for financial help should be the last remedy.

On the other hand, the income of claimant includes any income or privilege that is enjoyed or could be enjoyed by such person claiming the benefit or assistance. The Social Security Act in Part II of the Second Schedule clearly tries to curb another form of abuse by providing the Director the power to take into account for the purposes of calculating the means of the claimant any income or privilege which any member of the household had directly or indirectly deprived himself of in order to become entitled to social benefits or to become so entitled at a more advantageous rate.

It is to be noted that a distinction should be made between those persons who renounce to their right of maintenance and those who forfeit such right completely. In fact the department has taken the stand that in the case of those persons who forfeit their right to maintenance, such persons are to be granted social services since they are considered as not being in a position to receive the said maintenance. Whilst in the case of a person renouncing to such a right the department implements the provision laid down in Part II of the Second Schedule. This provides that the Director is in fact not satisfied that such person has actually taken care of his/her interest and is receiving all the income which is due by right before opting for social assistance, Consequently, this may lead to the Director's decision to reject such person's claim to social assistance. I must emphasize that each case is obviously seen in light of the circumstances of the individual applying. I am here only stating the general rule laid down by law.

I must point out that the fact that a spouse is in receipt of maintenance does not categorically disqualify such person from receiving social assistance but only that such amounts are taken into consideration when calculating the rate of benefit even more so when maintenance is being received only for the children. Thus, for example, when calculating the amount of social assistance to be granted to a mother and her children who is in receipt of maintenance only for the said children in such cases the amount of maintenance paid in lieu of the children is multiplied by 0.162 and the resulting amount is taken into consideration and deducted from the amount of social assistance that the mother quantified for.

A relevant and important provision in the Social Security Act is Article 30 (11) which states that the Director may, if he so deems fit in the circumstances of the case, take proceedings before the competent Civil Court against such relatives being the spouse, father, mother, sons or daughters as the case may be, of any person in respect of whom Social Assistance is claimed or received under this article to compel them to refund any such assistance that is paid to or on behalf of such person and the court shall order the refund of any sum paid as Social Assistance up to such sum as would have been due by such relatives or relative had the person to whom Social Assistance is paid had claimed maintenance from such relatives in accordance with the provisions of the Civil Code:

Provided that notwithstanding that the person in respect of whom Social Assistance has been paid by the Director may have in a contract of personal separation renounced to the right to maintenance from his or her spouse, the Director may still claim refund under this sub-article from the spouse of the person to whom Social Assistance has been paid, and

such spouse shall be liable to refund such Social Assistance to the full extent as if such renunciation had not taken place, unless it is proved to the satisfaction of the Director that the party to whom Social Assistance has been paid has been guilty of adultery or has abandoned the other spouse as provided in articles 38 and 41 of the Civil Code.”

It is pertinent to note that this provision has to date never been availed of.

3. Employment

(a) Social Assistance which is awarded to persons who are considered by ETC or by the Department of Social Service Medical Panel to be incapable of working, and

(b) Unemployment Assistance which is awarded to persons who are registering for work under ETC Part 1 register.

4. Benefit Rate

The rates of the major benefits (Social Assistance and Unemployment Assistance) are the same - except for single unmarried parents living with their parents or relatives as these receive only 75% of the full benefit rates on the assumption that they are enjoying certain privileges arising from the household in which they are living (e.g. in terms of water, electricity, rents etc.).

Non-Contributory Benefits

Non -Contributory Benefits	Capital / Means Test	Social Security Act Provisions
Leprosy Assistance	No capital or means test but benefit is paid upon diagnosis.	
Tuberculosis Assistance	No capital or means test but benefit is paid upon diagnosis.	
Sickness Assistance	Yes Capital Test: Lm 6,000 (single person), Lm 10,000 (married person) Income Test: Lm 52.42 per week (single person), Lm 62.66 per week + Lm 3.50 for each additional dependent member of the household	Payable to the head of household if he or any member of the household is suffering from a chronic disease or condition which requires a special diet not normally incurred by the household. The person for whom Sickness Assistance has been requested must not be an employed or a self occupied person.
Free Medical Aid (Pink Card)	Yes unless suffering from any of the listed diseases in the Social Security Act.	Payable to the head of household if he or any member of the household is a person who on account of

		physical or mental impairment, sickness or disease (not hospitalized), is in need of medical, surgical or pharmaceutical aid.
Milk Grant	Yes Capital Test: Lm 6,000 (single person), Lm 10,000 (married person) and must be in receipt of SA	Payable to head of household receiving Social Assistance or Tuberculosis Assistance if he or any member of the household has the care or custody of a child under 40 weeks of age requiring to:- (a) either be weaned; or (b) is losing weight in spite of being breastfed; or (c) cannot be breastfed for Health reasons.
Children's Allowance	No, all children are entitled to children's allowance.	Payable to the head of household who has the care and custody of his child under 16 years of age.
Disabled Child Allowance	No	Payable to a disabled child suffering from cerebral palsy or severe mental sub-normality or severely disabled or a child under 14 years of age who is visually impaired. The child shall remain eligible if the annual income of the head of household does not exceed the established threshold.
Child in Care Benefit	No	Payable to the head of household or the head of the residential institution in respect of a child who is either a fostered child or is certified as being under the care of the institution.
Maternity Benefit	No	Payable to locally residing citizens or locally residing persons married to Maltese citizens in respect of the last 8 weeks of pregnancy and the first 6 weeks after childbirth. Only payable if the female is not entitled to maternity leave which

		results from her employment.
Social Assistance	Yes Capital Test: Lm 6,000 (single person), Lm 10,000 (married person)	Payable to heads of household who are either unemployed or actively seeking employment, and, where the relative financial means fall below the amount established by the Social Security Act.
Social Assistance Carers	Yes Means-testing same as SA but only the carer's means is taken into consideration	Payable to single or widowed persons who are unemployed and who are caring for an elderly or physically/mentally disabled relative (identified) on a full-time basis.
Emergency Assistance (Benefits payable <i>ex gratia</i>)	No	Granted to persons who are or have been rendered destitute by the head of household to the extent that he or she becomes an inmate of any institute for the care and welfare of such persons. This benefit is payable by the Department of Social Welfare Standards.
Supplementary Allowance	Yes Married person - Lm4200 Single person - Lm3270	Payable to the head of household who is not entitled to Children's Allowance or the Child In Care Benefit and whose total income falls below the limits outlined by the Social Security Act from time to time. At present the income limit for this type of allowance stands at Lm 4200 for a married person and Lm 3270 in the case of a single person.
Carer's Pension	Yes	Payable to single or widowed citizens of Malta who are regularly residing in Malta and who are regularly taking care all by themselves on a full-time basis of a bed-ridden or wheel-chair bound near relative (identified) living in

		their same household.
Disability Pension	Yes No capital test but income test based on national minimum wage.	Payable to citizens of Malta, who are normally resident in Malta, over 16 years of age and certified as suffering from a severe mental sub normality, or is severally disabled as defined by the Social Security Act or suffering from cerebral palsy. Various types of disability are listed under the Social Security Act.
Pension for the Visually Impaired		Payable to a citizen of Malta, who are normally resident in Malta, over 14 years of age whose visual activity has been certified by an ophthalmologist to be so low as to render such persons unable to perform any work for which eyesight is essential.
Age Pension	Yes	Payable to citizens of Malta who are normally resident in Malta and over the age of 60 years.

As I have explained the eligibility of the non-contributory provisions is determined by social circumstances, assets and financial means of the claimant or beneficiary. Thus the main guiding principles for entitlement are the social and financial conditions. Subsequently to establishing whether such claimant is eligible or not reference is then made to the Social Security Act to determine the relative rate of entitlement attached to the claim being made. It may therefore be safely assumed that these criteria constitute the core indicators of need, alternatively that the social security system retains these criteria as its baseline to help keep people live a decent life.

By way of conclusion, it may be pertinent to state that a social security system should enhance the social protection and prospects of persons who are financial, social and health conditions expose them to the risk of poverty and social exclusion. In safeguarding the interests of the most vulnerable, the State should ensure that its policies do not militate against labour force participation or discriminate between classes of persons whilst simultaneously complementing other support systems and addressing the priority needs dictated by emerging social patterns and demographic realities however still ensuring a fair and just distribution of resources.

The development of Social Security in Malta shows that this system was over the years extended and amended to meet specific emerging needs. As a result, the country has for the past five years enjoyed a sound universal social security system but a review of this

system is in fact required and this should be done in a holistic manner and not in a fragmented manner as has happened in the past so as to reflect the current social realities and experiences the country is undergoing.

In calculating the means of the person claiming any benefit or assistance the Dir Any income or privilege which is, or could be received or enjoyed by any member of the household including any entitlement of such member to benefit under a trust or in whose favour a discretion to distribute property, including income or privilege, held in trust may be exercised who is neither an employed person nor a self employed or self-occupied person in terms of this Act:

- “Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children”. This is a general duty that parents have towards their children. If for whatever reason the parents cannot fulfill this obligation, then such obligation rests on other ascendants.
- Our law states that maintenance includes “food, clothing, health and habitation”. With regard to children and other descendants it also includes those expenses necessary for health and education.
- Maintenance may also be paid in kind, by taking into one’s house and maintaining the person entitled to maintenance.
- In order to calculate maintenance regard must be had to the need of the person claiming it and the means of the person liable to provide it. Regard must also be given as to whether the claimant can provide for his own maintenance (e.g. by exercising a profession etc.)
- If a person who is supplying maintenance becomes unable to continue doing so, he may demand to be released from his obligation, or alternatively, for the amount of maintenance to be reduced.

Right to Maintenance

- A spouse has a right to maintenance which takes precedence over any right that a parent or other ascendant may have. If both the spouse and the child claim maintenance, they hold an equal right
- The spouses may not claim maintenance from their children (or descendants/ascendants) if that maintenance can be obtained from the other spouse. In spite of this, the law provides that children are bound to maintain their parents or other ascendants that are indigent.
- Liability of maintenance is extended to brothers and sisters, if there are no other persons liable to provide it. With regard to a brother or sister who has received maintenance, if within ten years he becomes able to repay the amount of maintenance received and a claim for reimbursement is made, that brother/sister will become liable to reimburse the maintenance received.
- The Civil Code provides for an order in which persons may be liable for maintenance, due to the fact that there may be more than one person claiming maintenance from the same person. Nevertheless, in urgent cases, the Court may condemn a person to pay maintenance (while reserving the right this person may have to claim reimbursement from the person who was supposed to supply such maintenance
- Once maintenance is provided, the beneficiary may not claim repayment of any amount which may have been given after the reason for maintenance no

longer existed. Neither can a beneficiary demand payment of maintenance in arrears in the case where the person liable to pay maintenance had been unable to do so and subsequently started paying (upon a change of circumstances).

Cases of Personal Separation

- In separation cases, the court may order that during the proceedings, one of the spouses pays maintenance allowance (bare subsistence) to the other spouse. Any such payment shall be made, taking into account the needs of the claimant spouse and the means of the spouse liable to pay maintenance. In the case that a claim for maintenance is then not upheld, the person who paid maintenance may claim reimbursement of any amount he has paid as maintenance.
- If a spouse is found guilty of having given cause to the separation, he/she cannot under any circumstances compel the other spouse to provide him/her with maintenance in virtue of the obligations arising from marriage.
- On the other hand, if a spouse gives cause to the separation, he/she is not relieved from the duty of maintenance towards the other spouse (if such maintenance is due).
- A spouse loses the right to maintenance from the other spouse if he/she has left the matrimonial home without valid reason and refuses to return.
- The Court may at its discretion order that a lump sum be paid to the spouse who is entitled to maintenance, instead of weekly/monthly payments. In this way, the spouse to whom maintenance is due will be financially independent or less dependant on the other spouse. The lump sum may also be granted in order to enable the spouse to whom maintenance is due to receive training or to commence/continue an activity that generates income.
- The Court may also order that in lieu of the lump sum or of part of it, that the spouse to whom maintenance is due is given property in ownership, usufruct, use or habitation.
- In the case where one of the spouses is an absentee at law, the other spouse may, in case of need, ask for an allowance for maintenance. This allowance is fixed in accordance with the means of the family of the absentee.
- If the means of the spouse liable to provide maintenance is unable to continue doing so, the Court may order that the maintenance be varied or stopped. This cannot be done if a lump sum or property were given in total satisfaction of the obligation of maintenance.
- An obligation to supply maintenance shall stop if the person who is entitled to it contracts marriage in spite of the justified opposition of the person bound to provide such maintenance.

- On the other hand if the couple voluntarily starts cohabiting after their separation, such cohabitation will act as a reunion and shall restore their obligations of cohabitation and maintenance.

Maintenance due to children

- Maintenance may be refused to children (or other descendants) on the same grounds as an ascendant may disinherit a descendant. Maintenance to a brother or sister may be refused on grounds of grievous injury committed to himself or his relatives (unless such things happened very long before the claim for maintenance was made).

Moreover, a parent may deny maintenance to his/her child if the child refuses, without just cause, to follow that parent's directions with regard to his conduct and education, as well as if the child refuses to live in the house which the parent has chosen for his habitation.