

CHAPTER 420

REFUGEES ACT

AN ACT to make provisions relating to and establishing procedures with regard to refugees and asylum seekers.

1st October, 2001

ACT XX of 2000.

PART I

General Provisions

1. The title of this Act is Refugees Act. Title.
2. In this Act, unless the context otherwise requires- Interpretation.
 - "applicant" means a person who has made an application for a declaration under article 8;
 - "application" means an application for refugee status made under article 8;
 - "asylum seeker" means a person who has made an application for a declaration under article 8;
 - "the Commissioner" means the Refugee Commissioner; and includes to the extent and authority given, any other person temporarily authorised in that behalf by the Minister;
 - "Convention" means the 1951 Convention relating to the Status of Refugees done at Geneva on 28th July, 1951, to which Malta acceded on 17th June, 1971, and the 1967 Protocol relating to the Status of Refugees of 31st January, 1967 to which Malta acceded on 15th September, 1971, subject to the declarations and reservations made by Malta;
 - "Convention Travel Document" means the travel document referred to in article 28 of the Convention;
 - "declaration" means a declaration that a person is a refugee;
 - "dependent members of the family" means the spouse of the refugee, provided the marriage is subsisting on the date of the refugee's application, and such children of the refugee who on the date of the refugee's application are under the age of eighteen years and are not married;
 - "the High Commissioner" means the United Nations High Commissioner for Refugees or his representative;
 - "humanitarian protection" means special leave to remain in Malta until such time when the person concerned can return safely to his country of origin or otherwise resettle safely in a third country;
 - "immigration officer" means an immigration officer appointed under the Immigration Act; Cap. 217.
 - "manifestly unfounded application" means an application
 - (a) which is not related to refugee grounds as defined in

- the Convention; or
- (b) which is totally lacking in substance and the applicant provides no indications that he would be exposed to fear of persecution in his own country or his story contains no circumstantial or personal details; or
 - (c) in relation to which the applicant gives clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable; or
 - (d) in relation to which applicant bases his application on a false identity or on forged or counterfeit documents which he maintains as genuine when questioned about them; or
 - (e) in relation to which applicant deliberately made false representations of a substantial nature; or
 - (f) in relation to which applicant, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult; or
 - (g) in relation to which applicant deliberately failed to reveal that he had previously lodged an application for asylum in another country; or
 - (h) in relation to which the applicant, having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier; or
 - (i) in relation to which applicant has flagrantly failed to comply with the substantive obligations imposed by Malta's legal provisions relating to asylum procedures; or
 - (j) prior to which the applicant had made an application for recognition as a refugee in a country party to the Convention, and the Commissioner is satisfied that his application was properly considered and rejected in that country and the applicant has failed to show a material change of these circumstances;

"the Minister" means the Minister responsible for immigration, and any public officer to whom the Minister may delegate in writing any of the duties appertaining to him under this Act;

"prescribed" means prescribed by regulation, rule, order or other instrument made under any of the provisions of this Act empowering the making of any such instrument;

"refugee" means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is

outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it, but does not include a person -

- (a) who is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance;
- (b) with respect to whom there are serious reasons for considering that such person -
 - (i) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or
 - (ii) has committed a serious non-political crime outside Malta prior to his arrival in Malta; or
 - (iii) has been guilty of acts contrary to the purposes and principles of the United Nations:

Provided, that in the case where a person has more than one nationality, the term "country" mentioned above, shall refer to each country of which he is a national, and such a person shall not be considered as not having the protection of his country, if, without any founded fear of persecution, he has not sought the protection of one of the countries of which such a person is a national;

"safe country of origin" means a country of which an applicant is a national or citizen or, if he is not a national or citizen thereof, in which he has a right of residence and which, in general terms, is considered as presenting no serious risk of persecution on the basis of the following assessment criteria -

- (a) that the country generally tends not to generate refugees;
- (b) that the country formally adheres to its obligations according to international human rights instruments and both in its domestic law and practice meets those obligations and has moreover a history showing that it allows recognised national or international organisations to monitor its human rights record;
- (c) that the country demonstrates in law and in practice its capacity to adhere to democratic processes, including free elections, political pluralism and freedom of expression and thought with particular attention to the availability and effectiveness of legal avenues of protection and redress:

Provided that in any assessment reached of a country's capacity to be safe from persecution in terms of the Convention, allowance shall be made to the possibility of sudden dramatic changes in its political or legal situation which would render it no longer a

safe country;

"safe third country" means a country of which the applicant is not a national or citizen and where -

- (a) the life or freedom of the applicant would not be threatened within the meaning of Article 33 of the Convention; and
- (b) the applicant had resided for a meaningful period of time prior to his entry into Malta; and
- (c) the applicant would not be exposed to torture or inhuman or degrading treatment, and would be treated in accordance with basic human rights standards; and
- (d) the applicant had either already been granted protection or has had an opportunity, at the border or within the territory of that country, to make contact with that country's authorities in order to seek their protection, before applying for asylum in Malta, or where there is clear evidence of his admissibility to that country; and
- (e) the applicant is afforded effective protection against *refoulement* within the meaning of the Convention.

1951 Convention on the Status relating to Refugees.

3. This Act incorporates the obligations assumed by Malta under the Convention, and in its interpretation regard shall be had to the provisions of the Convention.

PART II

Procedures

Title I - The Refugee Commissioner

Establishment of Refugee Commissioner.

4. (1) There shall be a person who shall be known as the Refugee Commissioner.

(2) The Commissioner shall be appointed by the Prime Minister from among public officers or from among persons who in each case, in the opinion of the Prime Minister, have knowledge and experience in matters relating to refugees.

(3) The Commissioner shall perform such functions as are conferred on him by this Act, and without prejudice to the generality of the above, shall examine applications for refugee status and shall have the power to administer oath to any person.

(4) The Prime Minister may assign public officers to be members of the staff of the Commissioner as he may consider necessary to assist the Commissioner in the performance of his functions.

Title II - Refugee Appeals Board

Establishment of Refugee Appeals Board.

5. (1) The Refugee Appeals Board shall consist of a chairperson and two other members who shall be appointed by the Prime Minister from amongst persons of known integrity who appear to him to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the

purpose:

Provided that at least one of the members of the Board shall be a person who has practised as an advocate in Malta for a period or periods amounting, in the aggregate, to not less than seven years.

(2) The members of the Board shall hold office for a period of three years, and shall be eligible for reappointment. Appointment.

(3) The Minister may also appoint a substitute chairperson and substitute members of the Board to sit on the Board whenever the chairperson or members or any one of them is for some valid reason unable temporarily to attend and participate in the sittings of the Board:

Provided that, as far as practicable, the same chairperson and the same members shall hear and conclude the same case.

6. A member of the Board may only be removed from office by the Prime Minister on the grounds of gross negligence, incompetence, or acts, omissions or conduct unbecoming a member of the Board. Removal.

7. (1) The Board shall have power to hear and determine appeals against a recommendation of the Commissioner. Appeals to Board.

(2) Appeals to the Board shall be made within two weeks from the notification on the applicant of the recommendation of the Commissioner. Where the appeal is entered by the applicant a copy of the appeal shall be served on the Minister and the Commissioner. Where the appeal is entered by the Minister a copy of the appeal shall be served on the applicant and the Commissioner.

(3) When an appeal is entered by the Minister, an applicant who is in custody in virtue only of a deportation or removal order shall be released pending the decision of the Board.

(4) The Refugee Appeals Board shall, as the particular case may require, make arrangements to procure the attendance of an interpreter to assist at the hearings.

(5) An appellant shall have the right to free legal aid under the same conditions applicable to Maltese nationals.

(6) Provided all the parties agree thereto, the sittings of the Board shall be held *in camera*.

(7) Notwithstanding the provisions of the previous subarticle, a representative of the High Commissioner shall be entitled to attend the sittings of the Board.

(8) Subject to regulations made under article 19(1)(b) of this Act, the Board shall regulate its own procedure. The Board shall also through the Chairperson have the power to administer an oath to any person appearing before it.

(9) Notwithstanding the provisions of any other law, but without prejudice to article 46 of the Constitution of Malta and without prejudice to the provisions of article 4 of the European Convention Act the decision of the Board shall be final and conclusive and may not be challenged and no appeal may lie Cap. 319.

therefrom, before any court of law.

(10) Where the Board finds in favour of the applicant the Minister shall issue a declaration accordingly.

(11) The provisions of this article shall not apply in the case of applications that fall to be considered under accelerated procedures in terms of article 18 of this Act.

PART III

Treatment of Asylum Seekers and Refugees

Applications for
refugee status.

8. (1) A person seeking asylum in Malta shall be interviewed by an immigration officer as soon as practicable, and may apply to the Commissioner in the prescribed form for a declaration. The prescribed form shall, where possible, be in a language that the applicant understands. The immigration officer shall also inform such a person of his right to apply for a declaration and to consult the High Commissioner and to have legal assistance during all the phases of the asylum procedure.

(2) A person who at any time is in Malta (whether lawfully or unlawfully) and is seeking the status of a refugee in Malta may apply in the prescribed form to the Commissioner for a declaration and the Commissioner shall require the applicant to attend an interview within one week. An interview under this subarticle shall be conducted in private and, where necessary, with the assistance of an interpreter.

(3) All information concerning applications for refugee status shall remain confidential. Under no circumstance shall any information concerning such applications be disclosed to the authorities of the country of origin of the applicant, nor shall any information be requested from such authorities regarding the applicant.

(4) The High Commissioner shall have free access to any asylum seeker and to be present during any interview of such person by the Refugee Commissioner.

(5) The Commissioner shall as soon as possible examine any application for refugee status made in accordance with subarticles (1) or (2) hereof and shall recommend or otherwise to the Minister the acceptance of the application. In so doing he shall ensure that the applicant has presented his case fully, has supported it with testimonies and has given adequate explanations for all the reasons he has submitted in his application. Any decision by the Commissioner on any application shall be in writing and shall state the reasons supporting it.

(6) If the Commissioner recommends the acceptance of the application, the Minister shall make a declaration declaring applicant eligible for refugee status or appeal against such recommendation in accordance with article 7.

(7) The Commissioner may recommend to the Minister that, in spite of the fact that a person does not satisfy the requirements to be recognised as a refugee, such person should be granted

humanitarian protection in Malta.

(8) When such recommendation is made the Minister shall grant such humanitarian protection; such protection shall cease if the Minister is satisfied, after consulting the Commissioner, that such protection is no longer necessary.

9. (1) A person shall not be expelled from Malta or returned in any manner whatsoever to the frontiers of territories where, the life or freedom of that person would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Prohibition of *refoulement*.

(2) The provisions of subarticle (1) of this article shall not apply to a refugee in respect of whom there are reasonable grounds for regarding him as a danger to the security of Malta, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community.

10. (1) Notwithstanding the provisions of any other law to the contrary, an asylum seeker shall not be removed from Malta before his application is finally determined in accordance with this Act and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application. He shall also have access to state education and training in Malta and to receive state medical care and services.

Treatment of asylum seekers.

(2) An asylum seeker -

- (a) shall not seek to enter employment or carry on business unless with the consent of the Minister;
- (b) shall, unless he is in custody, reside and remain in the places which may be indicated by the Minister;
- (c) shall report at specified intervals to the immigration authorities as indicated by the Minister:

Provided that if any such applicant is in breach of any of the provisions of paragraphs (a), (b), (c) hereof he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not more than six months.

(3) If the applicant leaves Malta voluntarily, his application will be deemed to be withdrawn, unless his departure from Malta is authorised by the Minister.

11. (1) Notwithstanding the provisions of any other law to the contrary, and notwithstanding any deportation or removal order, a person declared to be a refugee shall be entitled -

Rights of refugees.

- (a) to remain in Malta, and to be granted personal documents, including a residence permit; and if in custody in virtue only of a deportation or removal order, to be immediately released;
- (b) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a Convention Travel Document entitling him to leave and return to Malta without the need of any visa;

(c) to have access to state education and training in Malta, and to receive state medical care and services.

(2) Dependant members of the family of a person declared to be a refugee, if they are in Malta at the time of declaration or if they join him in Malta, enjoy the same rights and benefits as the refugee.

Young persons.

12. Any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and for the purposes of this Act, shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act.

Cap. 285.

Resettlement.

13. The Minister may at the written request of an applicant or recognised refugee, and where necessary, with the assistance of the High Commissioner, facilitate the resettlement of any applicant or refugee to another country and do all that is required for the purpose.

Assistance.

14. The Commissioner shall ensure as far as possible that the application of this Act is in conformity with accepted international practice, and for this purpose may seek the assistance of the High Commissioner or of any national or international non-governmental body concerned with refugee matters.

PART IV

Revocation of Declaration

Cessation of
refugee status.

- 15.** (1) A person shall cease to possess refugee status if he -
- (a) has voluntarily re-availed himself of the protection of the country of his or her nationality, or having lost his nationality, has voluntarily re-acquired it; or
 - (b) has acquired a new nationality and enjoys the protection of the country of his new nationality; or
 - (c) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
 - (d) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; or
 - (e) is a person who has no nationality and, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, is able to return to the country of his habitual residence.

(2) A person who is notified that he has ceased to possess refugee status shall be entitled to appeal against such decision to the Refugee Appeals Board within two weeks of such notification and the provisions of article 7 of this Act shall *mutatis mutandis*

apply to such appeal. The decision of the Refugee Appeals Board shall be final.

16. (1) The Minister may revoke a declaration of refugee status if he is satisfied, after due investigation, that a person to whom a declaration has been given has been erroneously recognized as a refugee on an application which contains any materially incorrect or false information, or was so recognized owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application.

Cancellation of
Refugee status.

(2) A person in whose regard the Minister has revoked a declaration under subarticle (1) of this article shall be entitled to appeal against the revocation to the Refugee Appeals Board within one week of the notification of the revocation to him, and the provisions of article 7 of this Act, shall, *mutatis mutandis* apply to such appeal.

17. (1) The Minister may order the expulsion from Malta of any refugee on grounds of national security or public order, and pending such expulsion such person shall be held in custody.

Expulsion of a
refugee.

(2) The provisions of article 7 of this Act shall, *mutatis mutandis*, apply to expulsion orders issued under this article.

(3) Any refugee to whom this article applies shall be allowed a reasonable period of time within which to seek legal admission into another country.

PART V

Accelerated Procedures

18. (1) A person seeking asylum in Malta in terms of article 8 of this Act shall be examined under accelerated procedures in accordance with this article when -

Accelerated
procedures.

- (a) his application appears *prima facie* to be manifestly unfounded as defined in article 2 of this Act, or
- (b) the person is a national or citizen of a safe country of origin as defined in article 2 of this Act, or if he is not a national or citizen thereof, he has a right of residence therein, and there is no serious risk to him of persecution within the terms and scope of the Convention, or
- (c) the person has either already been recognized as a refugee in terms of the Convention in a safe third country as defined in article 2 of this Act or where he has had the opportunity, at its border or within its territory, to apply there for refugee status before coming to Malta and there is clear evidence of his admissibility to that third country.

(2) If after interviewing the applicant in accordance with the procedures outlined in article 8(1) of this Act, the immigration officer is of the opinion that the application falls into one or more of the categories specified in subarticle (1) (a) to (c) of this article, he shall immediately submit a report in writing on the case,

together with the application made by the person, to the Commissioner, and a copy of all the material sent to the Commissioner shall also be sent by the immigration officer to the Chairman of the Refugee Appeals Board.

(3) Where a report is made to the Commissioner under the foregoing provisions, the Commissioner shall examine the application without delay and in any case within three days after receiving the report from the immigration officer in accordance with subarticle (2) hereof.

(4) The Chairman of the Refugee Appeals Board shall, within three days and independently of the examination being carried out by the Commissioner, examine an application referred to him by the immigration officer in accordance with subarticle (2) hereof.

(5) The opinion of the Commissioner and the Chairman of the Refugee Appeals Board on any matter referred to them in accordance with subarticle (2) hereof shall be formed independently of each other on the basis of a separate interview with the applicant, on the documentation provided by the immigration officer, and upon any other information from individuals, organisations or other authorities concerned which they may independently consider necessary and expedient for the purposes of carrying out a proper examination of the case.

(6) Any interview with the applicant under the foregoing provisions shall, where necessary, be conducted in private and with the assistance of an interpreter, and, if so desired by the applicant, in the presence of the High Commissioner. The applicant shall also be informed of his right to obtain the services of a lawyer to assist him during proceedings.

(7) The applicant concerned and the High Commissioner may make further representations, verbally or in writing, to the Commissioner and, or the Chairman of the Refugee Appeals Board, as the case may be, in relation to an investigation being carried out by them in pursuance of an application considered by the immigration officer to fall under one of the categories specified under subarticle (1)(b) and (c) hereof if the applicant concerned claims on an individual and personal basis a serious risk to himself in a country otherwise considered as safe within the scope of the Convention, and the Commissioner and the Chairman of the Refugee Appeals Board shall consider any such representations.

(8) Subject to the foregoing provisions of this article, where in their decision the Commissioner and the Chairman of the Refugee Appeals Board independently of each other both come to the conclusion that the application falls under any one of the specific categories mentioned in subarticle (1)(a) to (c) of this article, the application shall be rejected and such decision shall be final and conclusive and notwithstanding the provisions of any other law no appeal or action for judicial review shall lie before the Refugee Appeals Board or before any other court of law. The decision, including the grounds therefor, shall be communicated by the Commissioner to the applicant orally, unless he requests its confirmation in writing.

- (9) (a) Where, following the procedures outlined in the previous provisions of this article, an application has been rejected, the Commissioner shall send a copy of the decision together with the grounds therefor to -
- (i) the Minister,
 - (ii) the Chairman of the Refugee Appeals Board,
 - (iii) the High Commissioner, and
 - (iv) the immigration officer.
- (b) Following a decision rejecting an application examined under accelerated procedures in accordance with this article, the Commissioner may, if he considers it necessary to do so, inform any third country authorities concerned that the said asylum application was not examined as to substance.

(10) Where the Commissioner and the Chairman of the Refugee Appeals Board, following an independent examination of an application referred to them in terms of the foregoing provisions of this article reach different conclusions or both disagree with the opinion of the immigration officer as to whether the application falls to be considered under any one of the categories specified in subarticle (1)(a) to (c) hereof, the applicant shall be entitled to have his application for asylum processed under normal procedures as provided for under this Act, including the right to appeal in terms of article 7, and the Commissioner shall accordingly orally inform the applicant and the High Commissioner in writing immediately.

(11) For the purposes of subarticle (1)(b) and (c) hereof, the Minister may in writing through administrative procedures declare a country to be safe from persecution within the terms and scope of the Convention. The Minister may, also in writing through administrative procedures, declare a country to be no longer safe if, in his opinion, changes in its political or legal situation show that the requirements of the Convention as to protection have ceased to exist or have become unsatisfactory.

(12) Without prejudice to the generality of the foregoing provisions of this article, if in the process of examining any application submitted in terms of article 8 of this Act, the Commissioner arrives at the conclusion that the application should be dealt with under accelerated procedures on the basis of its being manifestly unfounded or because the applicant has found or could have found safe protection elsewhere in terms of the Convention, the application shall be dealt with under accelerated procedures and the foregoing provisions of this article shall *mutatis mutandis* apply.

(13) For the purposes of subarticle (1)(c) hereof, if an applicant holds a travel document issued by a third safe country pursuant to the Convention, he shall be declared to have been safe from persecution in such state and his application shall be dealt with under accelerated procedures in accordance with the foregoing provisions of this article.

PART VI

Miscellaneous

Power to make regulations.

19. (1) The Minister may make regulations for the purpose of enabling this Act to have full effect and, in particular, but without prejudice to the generality of the foregoing, regulations under this article may make provisions-

- (a) regulating applications for a declaration and the procedure for and in relation to such applications;
- (b) regulating with the concurrence of the Refugee Appeals Board, appeals under this Act to the Refugee Appeals Board and the procedure for and in relation to such appeals and for providing that any person who contravenes or fails to comply with the provisions of any one or more of such regulations shall be guilty of an offence against the regulations and for establishing the penalty being not more than that to which such person shall on conviction be liable, a fine (*multa*) not exceeding five hundred Maltese liri or imprisonment not exceeding three months, or to both such fine and imprisonment;
- (c) regulating the provision of legal aid to asylum seekers;
- (d) extending, with the concurrence of the Minister responsible for social security, any of the provisions of the Social Security Act to persons falling under this Act;
- (e) regulating the assignment and allocation of responsibilities and duties appertaining to the Minister under this Act to a public officer;
- (f) regulating, with the concurrence of the Minister responsible for labour, the granting of work permits to recognised refugees;
- (g) for providing the means for facilitating the identification of applicants for refugee status and for communicating such information, when requested, to the competent authorities of the countries with which Malta has related bilateral agreement intended for such purposes or which are parties to international conventions related to refugees and to which Malta is also a party and which provide for such exchanges.

Cap. 318.

(2) Notwithstanding the provisions of any other law, the Minister may under this subarticle make regulations, making provisions adding to or derogating from the provisions of this Act, to enforce the provisions of any international convention or other treaty relating to refugees, their status and protection, to which Malta may become a party provided the ratification of such treaty has been approved by a Resolution of the House of Representatives.

Transitory provision.

20. (a) Where, before the commencement of this Act, a person has made an application for refugee status before the

High Commissioner but a decision in relation thereto has not been made, the application shall be deemed to be an application under article 8 of this Act and shall be dealt with in accordance with this Act.

- (b) Without prejudice to the provisions of any other law, a person in Malta who before the commencement of this Act had already been recognised as a refugee by the High Commissioner, shall upon his request continue to be regarded as such, and the provisions of this Act, where relevant, shall apply also to him.
 - (c) A person in Malta who before the commencement of this Act, although not recognised by the High Commissioner as a refugee, enjoys humanitarian protection granted to him by the said High Commissioner, or whose case is one classified by the High Commissioner as one of concern, shall upon his request continue to be regarded as such and shall enjoy humanitarian protection in Malta as defined under this Act.
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