

A.L. 243 ta' l- 2008

**ATT DWAR IR-RIFUĠJATI
(KAP. 420)**

**Regolamenti ta' l-2008 dwar l-Istandards ta' Proċedura fl-Eżami ta'
l-Applikazzjonijiet għal Status ta' Rifugjat**

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 25(h) ta' l-Att dwar ir-Rifugjati, il-Ministru responsabbli għall-immigrazzjoni għamel ir-regolamenti li ġejjin:-

1. It-titolu ta' dawn ir-regolamenti huwa **Regolamenti ta' l- 2008 dwar l-Istandards ta' Proċedura fl-Eżami ta' l-Applikazzjonijiet għal Status ta' Rifugjat.** Titolu.

2. Dawn ir-regolamenti jittrasponu d-disposizzjonijiet tad-Direttiva tal-Kunsill 2004/83/KE tad-29 ta' April 2004 dwar livelli stabbiliti minimi għall-kwalifika u l-istat ta' ċittadini nazzjonali ta' pajjiżi terzi jew persuni mingħajr stat bħala refuġjati jew bħala persuni li nkella jeħtieġu protezzjoni internazzjonali u l-kontenut tal-protezzjoni mogħtija u d-Direttiva tal-Kunsill 2005/85/KE ta' l- 1 ta' Dicembru 2005 dwar standards minimi għal proċeduri fl-Istati Membri għall-ghoti u l-irtirar ta' l-istatus ta' rifugjat. Għan.

3. F'dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'ohra: Tifsir.

“Att” tfisser l-Att dwar ir-Rifugjati;

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“applikant” tfisser l-applikant għal asil;

“awtoritajiet kompetenti” tfisser il-Kummissarju għar-Rifugjati jew ir-rappreżentanti tiegħu;

"Konvenzjoni" tfisser il-Konvenzjoni ta' l-1951 dwar l-Istatus ta' Rifugjati magħmula f'Ġinevra fit-28 ta' Lulju, 1951, li Malta aderiet għaliha fis-17 ta' Ġunju, 1971, u l-Protokoll ta' l-1967 dwar l-Istatus ta' Rifugjati tal-31 ta' Jannar, 1967 li Malta aderiet għalih fil-15 ta' Settembru, 1971, bla ħsara għad-dikjarazzjonijiet u rriservi magħmulin minn Malta;

“protezzjoni internazzjonali” tfisser status ta' rifugjat jew protezzjoni sussidjarja;

“persuni vulnerabbli” jinkludu nisa tqal, persuni b'dizabilità, persuni li ikunu ġarrbu tortura, stupru jew forom oħra serji ta' vjolenza psikoloġika, fiżika jew sesswali, jew minuri li kienu vittmi

ta' kull xorta ta' abbuż, nuqqas, sfruttament, tortura, trattament krudili, inuman jew degradanti jew li ikunu batew fil-konflitti bl-armi.

Applikazzjoni
għal status ta'
rifugjat.

4. (1) Persuna li tkun tixtieq tagħmel applikazzjoni għal asil għandha tagħmel applikazzjoni lill-Kummissarju fil-formola preskritta li, safejn possibbli, għandha tkun f'isem li l-applikant jifhem.

(2) L-applikant għandu jiġi:

(a) mgħarraf:

(i) bl-lingwa li huwa raġonevolment mistenni li jifhem bil-proċedura li għandha tithares u bid-drittijiet u dmirijiet tiegħu matul il-proċedura;

(ii) bil-konsegwenzi possibbli f'każ li ma josservax id-dmirijiet tiegħu u ma jikkoperax mal-awtoritajiet;

(iii) bil-perjodu ta' żmien kif ukoll bil-mezzi għad-disposizzjoni tiegħu sabiex jaqdi d-dmir li jagħti l-aspetti meħtieġa;

(iv) bid-dritt tiegħu li jikkonsulta mal-Kummissarju Għoli u li jkollu assistenza legali matul l-istadji kollha tal-proċedura ta' l-asil:

Izda dan it-tagħrif għandu jingħata fiż-żmien sabiex l-applikant ikun jista' jeżerċita d-drittijiet garantiti u sabiex josserva l-obbligi preskritti bil-liġi;

(b) mogħti parir dwar kif u fejn jista' jagħmel dik l-applikazzjoni kif ukoll l-għajnuna, fejn meħtieġ, fil-presentazzjoni ta' l-applikazzjoni lill-Kummissarju;

(ċ) mogħti s-servizzi ta' interpretu għas-sottomissjoni tal-każ tiegħu lill-awtoritajiet kompetenti kull meta meħtieġ;

(d) jingħata avviż, fi żmien raġonevoli, tad-deċiżjoni dwar l-applikazzjoni tiegħu għall-asil u dak l-avviż għandu jiġi notifikat lill-applikant jew lill-konsulent legali tiegħu;

(e) jiġi mgħarraf bir-riżultat tad-deċiżjoni, bl-lingwa li huwa raġonevolment mistenni li jifhem, meta ma jkunx assistit jew rappreżentat minn konsulent legali u meta ma tkunx disponibbli l-assistenza legali mingħajr hlas.

(3) Applikant għall-asil għandu jippreżenta l-applikazzjoni tiegħu f'ismu propju, u skond il-każ, f'dak tad-dipendenti tiegħu.

(4) Applikazzjoni ma tkunx valida sakemm ma tkunx magħmula fi żmien sittin jum minn meta l-applikant jasal Malta:

Iżda l-applikazzjoni tista' tigi milqugħa mill-Kummissarju, għal raġunijiet speċjali u straordinarji, wara li jgħaddu is-sittin jum.

5. (1) Il-Kummissarju jista', minn żmien għal żmien, jistabilixxi r-regoli u linji gwida applikabbli sabiex ikun hemm deċiżjoni fuq l-applikazzjoni. Eżami ta' l-applikazzjoni u l-intervista.

(2) Il-Kummissarju għandu jeżamina l-applikazzjoni kemm jista' jkun malajr u għandu jagħmel hiltu biex jiġbor it-tagħrif kollu relevanti li jagħmilha possibbli għalih biex jagħmel rakkomandazzjoni u jieħu kunsiderazzjoni tal-koperazzjoni ta' l-applikant fil-proċeduri fil-valutazzjoni tal-kredibilità ta' l-allegazzjonijiet ta' applikant.

(3) L-applikant għandu jiġi intervistat, fejn meħtieġ, bl-għajnuna ta' interpretu u x-xieħda kollha tinzamm mill-Kummissarju jew mir-rappreżentant tiegħu sakemm ikun meħtieġ.

(4) Konsulent legali għandu jithalla jgħin lill-applikant skond il-proċeduri stabbiliti mill-Kummissarju u, meta jkun hemm jedd għaliha, għajnuna legali mingħajr hlas għandha tingħata lill-applikant.

(5) L-intervista personali imsemmija fis-subregolament (3) tista' tithalla barra meta:

(a) il-Kummissarju ikun jista' jagħmel rakkomandazzjoni pożittiva fuq bażi tax-xieħda disponibbli; jew

(b) il-Kummissarju ikun diġà kellu laqgħa ma' l-applikant bil-għan li jgħinu biex jimla l-applikazzjoni tiegħu u biex jissottomenti t-tagħrif essenzjali f'dak li għandu x'jaqsam ma' l-applikazzjoni; jew

(c) il-Kummissarju, fuq bażi ta' eżami tat-tagħrif provdut, iqies l-applikazzjoni infondata meta:

(i) l-applikant, fis-sottomissjoni ta' l-applikazzjoni tiegħu u fil-preżentazzjoni tal-fatti, ikun qajjem biss kwistjonijiet li ma humiex relevanti jew ta' relevanza minima għall-eżami dwar jekk jikkwalifikax

bhala rifugjat; jew

(ii) l-applikazzjoni għall-asil titqies infondata minhabba l-kuncett ta' pajjiż sigur ta' oriġini jew pajjiż terz sigur; jew

(iii) l-applikant ikun għamel sottomissjonijiet inkonsistenti, kontradittorji, inverosimili jew mhux biżżejjed li b'mod ċar ikunu ssottomettew l-applikazzjoni tiegħu mhux konvincenti fir-rigward li huwa kien sofra persekuzzjoni; jew

(iv) il-persuna tkun ssottomettiet applikazzjoni sussegwenti li ma tqajjem ebda aspetti godda rilevanti fir-rigward taċ-ċirkostanzi partikolari tiegħu jew tal-qagħda fil-pajjiż tiegħu ta' oriġini; jew

(v) meta l-applikant ikun qed jissottometti applikazzjoni sempliċement sabiex itawwal jew ifixkel l-infurzar ta' deċiżjoni imminenti jew ta' qabel li kieku kienet twassal għat-tneħħija tiegħu; jew

(d) meta ma jkunx raġonevolment prattikabbli, b'mod partikolari, meta l-Kummissarju jkun tal-fehma li l-applikant mhux kapaci jew ma jistax jiġi intervistat minhabba ċirkostanzi li ssoktaw mhux fil-kontroll tiegħu; b'dan, li meta ikollu dubju, il-Kummissarju jista' jitlob għal ċertifikat mediku jew psikologiku.

(6) Mingħajr hsara għad-disposizzjonijiet tar-regolament 14, il-Kummissarju, meta jiddeċiedi dwar l-applikazzjoni għall-asil, jista' jikkunsidra l-fatt li l-applikant naqas milli jidher għall-intervista personali sakemm ma kellux raġuni valida għal dak in-nuqqas.

(7) Intervista personali tista' ssir mingħajr il-presenza tal-membri tal-familja sakemm il-Kummissarju ma jqiesx neċessarju għal eżami xieraq li membri oħra tal-familja jkunu preżenti:

Izda intervista personali tgħandha ssir f'kondizzjonijiet li jiżguraw kunfidenzjalità xierqa.

(8) Intervista personali titwettaq f'kondizzjonijiet li jhallu lill-applikant jissottometti r-raġunijiet għall-applikazzjoni tiegħu b'mod komprensiv u għandha:

(a) tiżgura li min qed imexxi l-intervista huwa kompetenti biżżejjed sabiex jikkunsidra ċ-ċirkostanzi personali jew generali li għandhom x'jaqsmu ma' l-applikazzjoni inkluż l-

origini kulturali ta' l-applikant jew il-vulnerabbiltà tiegħu, safejn huwa possibbli li hekk isir; u

(b) tiżgura l-presenza ta' interpretu li kapaċi johloq kuntatt xieraq bejn l-applikant u min ikun qed imexxi l-intervista, iżda l-kuntatt mhux neċessarjament li jsehh fl-ilsien ippreferut mill-applikant jekk ikun hemm ilsien ieħor li raġonevolment huwa mistenni li jifhem u jikkomunika bih.

6. (1) Il-Kummissarju għandu jiżgura li jsir rapport bil-miktub ta' kull intervista personali li jkollu ta' l-anqas it-tagħrif essenzjali dwar l-applikazzjoni kif magħmula mill-applikant. Rapport bil-miktub.

(2) Applikant għandu jkollu, fuq talba tiegħu, aċċess fi żmien xieraq għar-rapport ta' l-intervista personali li jagħmilha possibbli li jsir appell u li jiġi ppreżentat fiż-żmien dovut.

7. (1) Applikant jithalla jikkonsulta, bl-ispejjeż tiegħu, b'mod effettiv, ma' konsulent legali fir-rigward ta' l-applikazzjoni tiegħu għall-asil: Assistenza legali.

Iżda f'każ ta' deċiżjoni negattiva, tingħata għajjnuna legali b'xejn taht l-istess kondizzjonijiet li japplikaw għaċ-ċittadini Maltin.

(2) Konsulent legali li jassisti applikant wara deċiżjoni ikun intitolat għall-aċċess għal dak it-tagħrif fil-fajl ta' l-applikant li jista' jiġi eżaminat mill-Bord ta' l-Appelli dwar ir-Rifugjati safejn it-tagħrif ikun relevanti għall-eżami ta' l-applikazzjoni:

Iżda meta l-kxif ta' dak it-tagħrif jista' jipperikola s-sigurtà nazzjonali, is-sigurtà tal-għaqdiet jew persuni li jagħtu t-tagħrif jew is-sigurtà tal-persuni li għalihom jirreferi dak it-tagħrif, jew meta l-interessi ta' l-istħarriġ marbuta ma' l-eżami tat-talbiet għall-asil mill-Kummissarju jew ir-relazzjonijiet internazzjonali ta' Malta jistgħu isofru preġudizzju, ma jithallix isir dak l-aċċess.

(3) Il-konsulent legali li jassisti applikant għal asil ikollu aċċess għall-inhawi magħluqa bħal ma huma l-faċilitajiet ta' detenzjoni u zoni ta' tranżitu bil-għan li jikkonsulta ma' l-applikant, bla ħsara għal dawk il-limitazzjonijiet meħtieġa għas-sigurtà, l-ordni pubbliku jew tmexxija amministrattiva ta' l-inhawi.

(4) Il-Kummissarju jista' jaħseb sabiex l-applikant jithalla jgħib miegħu konsulent legali fl-intervista personali:

Iżda n-nuqqas ta' konsulent legali ma jzommx lill-Kummissarju milli jmexxi jew jissokta bl-intervista personali ma' l-applikant.

Limtu ta' zmien ghad-deċiżjoni.

8. Il-Kummissarju għandu jiżgura li, meta rakkomandazzjoni ma tistax issir fi zmien sitt xhur, l-applikant in kwistjoni għandu jew:

(a) jiġi infurmat bid-dewmien; jew

(b) jirċevi, fuq talba tiegħu, tagħrif dwar il-perjodu ta' zmien li fih id-deċiżjoni dwar l-applikazzjoni tiegħu mistennija tingħata:

Iżda dak it-tagħrif m'għandux jikkostitwixxi dmir fuq il-Kummissarju lejn l-applikant in kwistjoni sabiex jieħu deċiżjoni f'dak il-perjodu ta' zmien.

Deċiżjoni tingħata bil-miktub.

9. (1) Id-deċiżjoni dwar l-eligibilità għall-istatus ta' rifuġjat jew status ta' protezzjoni sussidjarja tingħata bil-miktub.

(2) Id-deċiżjoni imsemmija fis-subregolament (1) għandha tindika bil-miktub ir-raġunijiet fil-fatt u fid-dritt għaċ-ċaħda ta' l-applikazzjoni u għandha tinkludi t-tagħrif għall-applikant dwar il-dritt tiegħu li jikkontesta d-deċiżjoni skond ir-regolament 7.

Kunfidenzjalità.

10. (1) It-tagħrif kollu dwar it-talbiet għall-istatus ta' rifuġjat jibqa' kunfidenzjali hlief li r-rapport ta' l-intervista personali, wara ir-rakkomandazzjoni mill-Kummissarju, ikun aċċessibbli għall-applikant għall-asil u għall-Ministru.

(2) L-ebda tagħrif ma dwar applikazzjoni ma għandu, taħt ebda ċirkostanzi, jiġi żvelat lill-awtoritajiet tal-pajjiż ta' oriġini ta' l-applikant lanqas ma għandu ebda tagħrif jintalab minn dawk l-awtoritajiet f'dak li għandu x'jaqsam ma' l-applikant.

Tagħrif marbut ma' l-istatus.

11. Persuna rikonoxxuta bħala li jeħtiegielha l-protezzjoni internazzjonali għandha, kemm jista' ikun malajr wara li tkun ingħatat l-istatus rispettiv ta' rifuġjat jew l-istatus ta' protezzjoni sussidjarja, jkollha aċċess għal tagħrif dwar id-drittijiet u dmirijiet marbuta ma' dak l-istatus f'islen li x'aktarx tiftiehem minnhom.

Trattament ta' l-applikanti għall-asil.

12. (1) Minkejja d-disposizzjonijiet ta' xi ligi oħra kuntrarja, u minbarra fejn applikazzjoni sussegwenti mhux sejra tiġi aktar eżaminata, jew meta applikant sejjer jintradd lura jew jiġi estradit kif xieraq lejn Stat Membru iehor in segwitu għall-obbligi skond Mandat Ewropew ta' Arrest jew xorta' oħra, jew lejn pajjiż terz jew lejn qrati jew tribunali kriminali internazzjonali, applikant ma għandux jitneħħa minn Malta qabel ma l-applikazzjoni tiegħu tiġi finalment deċiża u dak l-applikant għandu jithalla jidhol jew jibqa' Malta sakemm tingħata deċiżjoni finali dwar l-applikazzjoni tiegħu.

(2) Applikant għall-asil għandu –

(a) ma jfittix li jimpjega ruħu jew jagħmel negozju jekk mhux bil-kunsens tal-Ministru;

(b) sakemm ma ikunx taħt kustodja, jirrisjedi u jibqa' fil-postijiet li jistgħu jiġu indikati mill-Ministru;

(c) jirraporta fi żmenijiet speċifikati lill-awtoritajiet ta' l-immigrazzjoni skond kif jista' jindika l-Ministru;

(d) jikkonsenja d-dokumenti kollha fil-pussess tiegħu;

(e) ikun soġġett għal tfittxija u d-dikjarazzjonijiet bil-fomm tiegħu jistgħu jiġu registrati sakemm qabel l-applikant jiġi mgharraf b'dak;

(f) jittieħdu ritratti u jittieħdu l-impronti diġitali tiegħu:

Izda jekk xi applikant bħal dak ikun kiser xi waħda mid-disposizzjonijiet tal-paragrafi (a), (b) jew (c) ikun ħati ta' reat u jista' jeħel, meta jinsab ħati, prigunerija ta' mhux aktar minn sitt xhur.

13. (1) Meta applikant jirtira b'mod ċar l-applikazzjoni tiegħu, il-Kummissarju għandu jiddeċiedi jekk iwaqqafx l-eżami jew jiċċadax l-applikazzjoni.

Meta l-applikazzjoni tiġi rtirata.

(2) Meta applikant ikun ta x'jifhem li rtira l-applikazzjoni tiegħu, il-Kummissarju għandu jiżgura li tittieħed deċiżjoni jew li l-eżami ma jissoktax inkella li l-applikazzjoni tiġi miċhuda għar-raġuni li l-applikant ma jkunx ipprova li huwa intitolat għall-istatus ta' rifuġjat:

Izda l-Kummissarju jista' jassumi li l-applikant ikun ta x'jifhem li rtira l-applikazzjoni tiegħu għal asil meta ikun instab li:

(a) ma jkunx aċċetta n-notifika ta' xi dokument marbut mal-proċedura ta' l-asil; jew

(b) ikun naqas li jagħti tagħrif essenzjali dwar il-applikazzjoni tiegħu jew ma jkunx resaq għal intervista personali sakemm l-applikant ma jurix, fi żmien raġonevoli, li n-nuqqas tiegħu kien minħabba ċirkostanzi mhux fil-kontroll tiegħu; jew

(ċ) ikun inheba jew telaq mingħajr awtorizzazzjoni mill-post fejn kien jgħix jew kien miżmum, mingħajr ma għamel kuntatt ma' l-awtoritajiet kompetenti fi żmien raġonevoli jew ma jkunx, fi żmien tletin jum, osserva d-dmirijiet li jirraporta jew dmirijiet oħra li jikkomunika.

(3) Applikant li jerga jirraporta lill-Kummissarju wara deċiżjoni li l-eżami ma jissoktax ikollu d-dritt li jitlob li l-każ tiegħu jinfetaħ mill-ġdid fi żmien tliet xhur minn dik id-deċiżjoni, sakemm l-applikazzjoni ma titqiesx bħala applikazzjoni sussegwenti. Dik l-applikazzjoni issir bil-miktub u għandha issemmi r-raġunijiet b'appoġġ għal dik l-applikazzjoni.

(4) In-notifika ta' xi dokument marbut mal-proċedura ta' l-asil issir permezz tal-kunsinna personali lill-applikant għall-asil, hlief li, meta dan ma jkunx possibbli, dik il-kunsinna issir fl-aħħar indirizz magħruf tiegħu jew titħalla mal-konsulent legali jew rappreżentant tiegħu.

Drittijiet tar-rifuġjati u tal-persuni mogħtija status ta' protezzjoni sussidjarja.

14. (1) (a) Minkejja d-disposizzjonijiet ta' xi liġi oħra kuntrarja, u minkejja xi ordni ta' deportazzjoni jew tneħħija, persuna dikjarata li hija rifuġjat jkollha d-dritt –

(i) mingħajr hsara għad-disposizzjonijiet ta' l-artikoli 9 u 10 ta' l-Att, li tibqa' f'Malta bid-dritt ta' moviment hieles, u li tingħata, kemm jista' jkun malajr, dokumenti personali, inkluż permess ta' residenza għal żmien tlett snin, li jistgħu jiggeddu:

Izda permess ta' residenza li għandu jingħata lil membru tal-familja jista' ikun validu għal anqas minn tliet snin u jista' jiggedded;

(ii) sakemm ma tkunx taħt f'kustodja waqt li għaddejja minn proċeduri ġudizzjarji għax wettqet reat kriminali, jew tkun qed tiskonta perjodu ta' prigunerija, li tingħata Dokument ta' Ivvjaġġar tal-Konvenzjoni li jagħtiha l-jedd li tħalli u tiġi lura Malta mingħajr l-htieġa ta' visa;

(iii) li jkollha aċċess għall-programmi ta' impieg, għajjnuna soċjali, akkomodazzjoni xierqa u ta' integrazzjoni, għall-edukazzjoni u taħriġ ta' l-Istat, u li tingħata kura medika ta' l-Istat speċjalment fil-każ ta' gruppi vulnerabbli ta' persuni;

(b) Persuna li tgawdi minn protezzjoni sussidjarja ikollha d-dritt –

(i) mingħajr ħsara għad-disposizzjonijiet ta' l-artikoli 21 u 22 ta' l-Att, li tibqa' Malta bid-dritt ta' moviment hieles u li tingħata dokumenti personali, inkluż permess ta' residenza għal żmien ta' sena, li jiġgedded;

(ii) li tingħata dokumenti li jagħtuha l-possibilità li tivvjagġa speċjalment meta jinqalgħu raġunijiet gravi umanitarji li jinħtiegu l-presenza tagħha fi Stat ieħor, sakemm ma jitolbux xort'ohra r-raġunijiet qawwija tas-sigurtà nazzjonali jew l-ordni pubbliku;

(iii) li jkollha aċċess għall-programmi ta' impieg, bla ħsara għal konsiderazzjonijiet tas-suq ta' l-impiegi, benefiċċji bażiċi ta' għajjnuna soċjali, akkomodazzjoni xierqa u ta' integrazzjoni, għall-edukazzjoni u taħriġ ta' l-Istat, u li tingħata kura medika bażika ta' l-Istat speċjalment fil-każ ta' gruppi vulnerabbli ta' persuni;

(2) (a) Il-membri dipendenti tal-familja ta' persuna mogħtija status ta' rifuġjat, jekk ikunu Malta meta tingħata d-deċiżjoni jew jekk jingħaqdu magħha f'Malta, igawdu mill-istess drittijiet u benefiċċji bħar-rifuġjat b'mod li tista' tinzamm l-għaqda tal-familja.

(b) Il-membri dipendenti tal-familja ta' persuna mogħtija protezzjoni sussidjarja, jekk ikunu Malta meta tingħata d-deċiżjoni, igawdu mill-istess drittijiet u benefiċċji bħal-persuna li tgawdi mill-istatus tal-protezzjoni sussidjarja b'mod li tista' tinzamm l-għaqda tal-familja.

(3) Il-persuni mogħtija l-istatus ta' rifuġjat jew il-protezzjoni sussidjarja u li jitqiesu bħala persuni vulnerabbli għandhom, safejn possibbli, jingħataw kura xierqa ta' saħħa.

15. (1) Fir-rigward ta' minuri mhux akkumpanjat li jaqa' fi ħdan d-disposizzjonijiet ta' l-artikolu 13(3) ta' l-Att, kemm jista' jkun malajr, u mhux aktar tard minn tletin jum minn meta tinhareg ordni għall-ħarsien skond dak l-artikolu:

Minuri mhux akkumpanjati.

(a) għandu jiġi żgurat li r-rappreżentant mahtur tal-minuri mhux akkumpanjat jingħata l-opportunità li jgħarraf lill-minuri mhux akkumpanjat dwar it-tifsira u l-konsegwenzi possibbli ta' l-intervista personali u, skond il-każ, kif jista' jhejji lilu nnifsu għall-intervista personali. Ir-rappreżentant għandu jkun preżenti għall-intervista u jista' jagħmel mistoqsijiet jew

jagħmel il-kummenti tiegħu fi hdan il-qafas iffissat minn min imexxi l-intervista;

(b) meta minuri mhux akkumpanjat ikollu intervista personali dwar l-applikazzjoni tiegħu għall-asil, dik l-intervista titmexxa u d-deċiżjoni tithejja minn xi hadd li jkollu l-għarfien meħtieġ tal-htigiet speċjali ta' minuri;

(2) Jistgħu jitwettqu l-eżamijiet mediċi sabiex tinstab l-età tal-minuri mhux akkumpanjati fi hdan il-qafas ta' kull applikazzjoni possibbli għall-asil.

Izda:

(a) il-minuri mhux akkumpanjati jigu mgħarrfa qabel l-eżami ta' l-applikazzjoni tagħhom għall-asil, u f'isjen li huma raġonevolment mistennija li jifhmu, bil-possibilità li l-età tagħhom tista' tigi stabbilita permezz ta' eżami mediku. Jidhol f'dan it-tagħrif dwar il-metodu ta' l-eżami u l-konsegwenzi possibbli tar-rizultat ta' l-eżami mediku għall-eżami ta' l-applikazzjoni għall-asil, kif ukoll bil-konsegwenzi tar-rifjut tal-minuri mhux akkumpanjat li jsirli eżami mediku li fihom tista' tidhol iċ-ċaħda ta' l-allegazzjoni tiegħu li huwa minuri;

(b) il-minuri mhux akkumpanjati u r-rappreżentanti tagħhom jagħtu l-kunsens li jitwettaq l-iffissar ta' l-età tal-minuri in kwistjoni;

(c) id-deċiżjoni li tigi miċhuda applikazzjoni minn minuri mhux akkumpanjat li irrifjuta li jsirli dan l-eżami mediku m'għandhiex tkun ibbażata biss fuq dak ir-rifjut;

Izda il-minuri mhux akkumpanjat li jkun irrifjuta li jsirli dak l-eżami mediku ma jzommx lill-awtorità li tiddeciedi milli tiegħu deċiżjoni dwar l-applikazzjoni għall-asil u li l-aħjar interessi tal-minuri jkunu konsiderazzjoni primarja f'kull deċiżjoni bħal dik.

Il-Kummissarju
Għoli.

16. Il-Kummissarju Għoli:

(a) ikollu aċċess għall-applikanti għal asil, inkluż dawk f'żoni ta' detenzjoni u f'żoni ta' transitu fil-mitjar u fil-port;

(b) ikollu aċċess għal tagħrif dwar l-applikazzjonijiet individwali għal asil, dwar it-tmexxija tal-proċedura u dwar id-deċiżjonijiet mehuda, meta l-applikant għall-asil jaqbel għaldaqstant;

(c) jista' jkun prezenti matul xi intervista u, li jagħti l-fehmiet tiegħu bil-miktub, fil-qadi tad-dmirijiet tiegħu taħt l-Artikolu 35 tal-Konvenzjoni, lejn xi awtoritajiet kompetenti fir-rigward ta' talbiet individwali għall-asil f'kull stadju tal-proċedura kif stabbilit mill-Kummissarju:

Iżda dawk id-drittijiet japplikaw għal organizzazzjoni li tkun qed topera f'Malta f'isem l-UNHCR bħala riżultat għal ftehim ma' Malta.

17. (1) Fid-deċiżjoni ta' l-applikazzjoni bħala inammissibbli minhabba li pajjiż jitqies bħala pajjiż terz sigur għall-applikant, skond l-artikolu 24 ta' l-Att, il-Kummissarju għandu:

Valutazzjoni ta' pajjiż terz bħala sigur.

(a) jiżgura li ma hemm ebda konnessjoni bejn l-applikant u l-pajjiż terz b'mod li l-applikant jista' raġonevolment jitqies li jista' jmur lejn dak il-pajjiż;

(b) jiżgura li n-nuqqas ta' periklu tal-pajjiż terz jiġi valutat fuq bażi individwali, meta titqies xi analiżi magħmula minn għaqdiet internazzjonali ta' fama li jistgħu jkunu disponibbli minn żmien għal żmien, inkluż l-uffiċċju tal-Kummissarju Għoli tan-Nazzjonijiet Uniti għar-Rifugjati:

Iżda l-applikant ikun jista' jappella mill-inammissibilità ta' l-applikazzjoni fuq bażi tal-pajjiż terz sigur jekk jista' juri li, jekk jintradd lura lil dak il-pajjiż, huwa jgarrab tortura, trattament jew kastig krudili, inuman jew degradanti.

(2) Fit-teħid tad-deċiżjoni imsemmija fis-subregolament (1), il-Kummissarju għandu:

(a) jgħarraf lill-applikant bid-deċiżjoni tiegħu;

(b) jagħtih dokument li jgħarraf lill-awtoritajiet tal-pajjiż terz, f'isem ta' dak il-pajjiż, li l-applikazzjoni ma gietx eżaminata fis-sustanza.

(3) Meta l-pajjiż terz ma jhallix lill-applikant jidhol fit-territorju tiegħu, il-Kummissarju għandu jiżgura li l-applikant ikollu aċċess għall-proċedura għall-eżami ta' l-applikazzjoni tiegħu skond l-Att jew dawn ir-regolamenti.

18. Meta jikkunsidra applikazzjoni għal status ta' rifugjat, fil-valutazzjoni tal-biża' tal-persekuzzjoni, il-Kummissarju għandu jikkunsidra l-aspetti li ġejjin:

Valutazzjoni tar-raġunijiet tal-persekuzzjoni għall-ghoti ta' status ta' rifugjat.

(a) il-kunċett tar-razza b'mod partikolari, għandu jidhhol fih konsiderazzjonijiet ta' kulur, nisel, jew shubija f'xi grupp etniku partikolari;

(b) jidhhol b'mod partikolari fil-kunċett tar-religjon, it-thaddin ta' twemmin tejistiku, mhux tejistiku u ta' ateu, is-sehem fi jew nuqqas mill-adorazzjoni formali fil-privat jew fil-pubbliku, kemm wiehed waħdu jew f'komunità ma oħrajn, atti oħra religjużi jew espressjonijiet ta' fehma, jew forom ta' agir personali jew ta' komunjoni msejsa fuq jew ordnati minn xi twemmin religjuż;

(ċ) il-kunċett ta' nazzjonalità m'għandux ikun limitat għaċ-ċittadinanza jew in-nuqqas tagħha iżda b'mod partikolari għandu jidhhol fih is-shubija fi grupp stabbilit bl-identità tiegħu kulturali, etnika, jew lingwistika, oriġini komuni ġeografika jew oriġini politika jew ir-rabta tiegħu mal-poplu ta' Stat ieħor;

(d) grupp jitqies li jagħmel parti minn grupp soċjali partikolari meta b'mod partikolari:

(i) il-membri ta' dak il-grupp jaqsmu karatteristika sa mit-twelid, jew sfond komuni li ma jistax jinbidel, jew jaqsmu karatteristika jew twemmin li jkunu tant fundamentali għall-identità jew kuxxjenza li persuna m'għandhiex tigi imġiegħelha tirrinunzja għaliha, u

(ii) dak il-grupp ikollu identità distinta fil-pajjiż rispettiv, għaliex iħarsu lejha bħala differenti mis-soċjetà ta' madwaru; u

(iii) skond iċ-ċirkostanzi fil-pajjiż ta' oriġini, jaf jidhhol f'grupp soċjali partikolari grupp ibbażat fuq karatteristika komuni jew tendenza sesswali. It-tendenza sesswali ma tistax tiftiehem bħala li jidhlu fiha atti meqjusa bħala kriminali f'Malta; l-aspetti marbuta massess jistgħu jitqiesu mingħajr ma fihom innfushom biss joħolqu preżunzjoni sabiex japplika dan is-subparagrafu;

(e) jidhlu b'mod partikolari fil-kunċett tal-fehma politika t-thaddin ta' fehma, ħsieb jew twemmin dwar xi haġa marbuta ma' l-atturi potenzjali tal-persekuzzjoni li jinkludu l-Istat, partiti jew għaqdiet li jikkontrollaw l-Istat jew parti konsiderevoli tat-territorju ta' l-Istat u atturi mhux ta' l-Istat jekk jista' jintwera li l-atturi l-oħra ma jistgħux jew ma jridux jagħtu protezzjoni kontra l-persekuzzjoni jew dannu gravi, u mal-politika jew metodi tagħhom, kemm jekk dawk il-fehma,

ħsieb jew twemmin ikunux ġew ipprattikati jew le mill-applikant.

(2) Fil-konsiderazzjoni ta' jekk applikant għandux biża' fondata tajjeb li jiġi persegwit, huwa immaterjali jekk l-applikant fil-fatt ikollux il-karatteristika razzjali, religjuża, nazzjonali, soċjali jew politika li tiġbed lejha il-persekuzzjoni, b'dan, li dik il-karatteristika tiġi attribwita lill-applikant mill-attur tal-persekuzzjoni.

L.N. 243 of 2008

**REFUGEES ACT
(CAP. 420)**

**Procedural Standards in Examining Applications for Refugee Status
Regulations, 2008**

IN exercise of the powers conferred by article 25(h) of the Refugees Act, the Minister responsible for immigration has made the following regulations:-

Title and . **1.** The title of these regulations is Procedural Standards in Examining Applications for Refugee Status Regulations, 2008.

Purpose. **2.** These regulations transpose the provisions of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Interpretation. **3.** In these regulations, unless the context otherwise requires:

Cap. 420. “Act” means the Refugees Act;

“applicant” means applicant for asylum;

“competent authorities” means the Refugee Commissioner or his representatives;

“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;

“international protection” means refugee status or subsidiary protection;

“vulnerable persons” include pregnant women, persons with disabilities, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence, or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatment or who have suffered from

armed conflict.

4. (1) A person who wishes to apply for asylum shall make an application to the Commissioner on the prescribed form which, as far as possible, shall be in a language that the applicant understands.

Application for
refugee status.

(2) The applicant shall be:

(a) informed:

(i) in a language which he may reasonably be supposed to understand of the procedure to be followed and of his rights and obligations during the procedure;

(ii) about the possible consequences of not complying with his obligations and not cooperating with the authorities;

(iii) of the timeframe as well as the means at his disposal for fulfilling the obligation to submit the elements required;

(iv) of his right to consult the High Commissioner and to have legal assistance during all the phases of the asylum procedure:

Provided that this information shall be given in time to enable the applicant to exercise the rights guaranteed and to comply with the obligations prescribed by law;

(b) advised on how and where he may make such application as well as assistance, where necessary, in the forwarding of the application to the Commissioner;

(c) granted the services of an interpreter for submitting his case to the competent authorities whenever necessary;

(d) given notice, in a reasonable time, of the decision on his application for asylum and such notice shall be served on the applicant or his legal advisor;

(e) informed of the result of the decision, in a language that he may reasonably be supposed to understand, when he is not assisted or represented by a legal adviser and when free legal assistance is not available.

(3) An applicant for asylum shall file his application in his own name, and where applicable, that of his dependants.

(4) An application shall not be valid unless made within sixty days of the arrival of the applicant in Malta:

Provided that an application may be allowed by the Commissioner, for special and exceptional reasons, after the lapse of sixty days.

Examination of application and the interview.

5. (1) The Commissioner may, from time to time, lay down the rules and guidelines applicable to the procedure for the determination of an application.

(2) The Commissioner shall examine the application as soon as possible and shall endeavour to gather all relevant information that will enable him to make a recommendation taking due account of the applicant's cooperation in the proceedings in the assessment of the credibility of an applicant's allegations.

(3) The applicant shall be interviewed, where necessary, with the assistance of an interpreter and all evidence shall be retained by the Commissioner or his representative for as long as is necessary.

(4) A legal adviser shall be allowed to assist the applicant in accordance with procedures laid down by the Commissioner and, where entitled to, free legal aid shall be provided to the applicant.

(5) The personal interview referred to in subregulation (3) may be omitted where:

(a) the Commissioner is able to make a positive recommendation on the basis of evidence available; or

(b) the Commissioner has already had a meeting with the applicant for the purpose of assisting him with completing his application and submitting the essential information regarding the application; or

(c) the Commissioner, on the basis of an examination of the information provided, considers the application to be unfounded where:

(i) the applicant, in submitting his application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he qualifies as a refugee; or

(ii) the application for asylum is considered to be unfounded due to the notion of safe country of origin or safe third country; or

(iii) where applicant has made inconsistent, contradictory, improbable or insufficient representations which made his claim clearly unconvincing in relation to his having been the object of persecution; or

(iv) the person has submitted a subsequent application which does not raise any relevant new elements with respect to his particular circumstances or to the situation in his country of origin; or

(v) where the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal; or

(d) where it is not reasonably practicable, in particular, where the Commissioner is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control; provided that when in doubt, the Commissioner may require a medical or psychological certificate.

(6) Without prejudice to the provisions of regulation 14, the Commissioner, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview unless he had a valid reason for such failure.

(7) A personal interview shall take place without the presence of family members unless the Commissioner considers it necessary for an appropriate examination to have other family members present:

Provided that a personal interview shall take place under conditions which ensure appropriate confidentiality.

(8) A personal interview shall be conducted under conditions which allow the applicant to present the grounds for his application in a comprehensive manner and must:

(a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application including the applicant's cultural origin or vulnerability, in so far as it is possible to do so; and

(b) ensure the presence of an interpreter who is able to give appropriate communication between the applicant and the person who conducts the interview, but communication need not necessarily take place in the language preferred by the applicant if there is another language which he may reasonably be supposed to understand and communicate in.

Written report.

6. (1) The Commissioner shall ensure that a written report is made of every personal interview containing at least the essential information regarding the application as presented by the applicant.

(2) An applicant shall have, upon request, timely access to the report of the personal interview allowing an appeal to be prepared and lodged in due time.

Legal assistance.

7. (1) An applicant shall be allowed to consult, at his own expense, in an effective manner, a legal adviser in relation to his asylum application:

Provided that in the event of a negative decision, free legal aid shall be granted under the same conditions applicable to Maltese nationals.

(2) A legal adviser who assists an applicant following a decision shall enjoy access to such information in the applicant's file as is liable to be examined by the Refugee Appeals Board in so far as the information is relevant to the examination of the application:

Provided that where disclosure of such information would jeopardize national security, the security of the organisations or persons providing information or the security of the persons to whom the information relates, or where the investigative interests relating to the examination of applications for asylum by the Commissioner or the international relations of Malta would be compromised, such access shall be precluded.

(3) The legal adviser who assists an applicant for asylum shall have access to closed areas such as detention facilities and transit zones for the purpose of consulting the applicant, subject to such limitations necessary for the security, public order or administrative management of the area.

(4) The Commissioner may provide that the applicant is allowed to bring with him to the personal interview a legal adviser:

Provided that the absence of a legal adviser shall not prevent the Commissioner from conducting or continuing the personal interview with the applicant.

8. The Commissioner shall ensure that, where a recommendation cannot be made within six months, the applicant concerned shall either:

Time limit for the decision.

(a) be informed of the delay; or

(b) receive, upon his request, information on the time frame within which the decision on his application is to be expected:

Provided that such information shall not constitute an obligation for the Commissioner towards the applicant concerned to take a decision within that timeframe.

9. (1) The decision on the eligibility for refugee status or subsidiary protection status shall be made in writing.

Decision to be made in writing.

(2) The decision referred to in subregulation (1) shall indicate in writing reasons in fact and in law for a rejection of the application and shall include information for the applicant on his right to challenge the decision in terms of regulation 7.

10. (1) All information concerning applications for refugee status shall remain confidential saving that the report of the personal interview, following the recommendation by the Commissioner, shall be accessible to the applicant for asylum and to the Minister.

Confidentiality.

(2) Any information concerning an application shall, under no circumstances, 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.

11. A person recognised as being in need of international protection shall, as soon as possible after the respective refugee status or subsidiary protection status has been granted to him, have access to information on the rights and obligations relating to that status in a language likely to be understood by them.

Information relating to status.

12. (1) Notwithstanding the provisions of any other law to the contrary, and except where a subsequent application will not be further examined, or where an applicant is to be surrendered or extradited as appropriate to another Member State pursuant to obligations in accordance with a European Arrest Warrant or otherwise, or to a third country or to international criminal courts or tribunals, an applicant shall not be removed from Malta before his application is finally determined and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application.

Treatment of applicants for asylum.

(2) An applicant for asylum shall –

(a) not seek to enter employment or carry on business unless with the consent of the Minister;

(b) unless he is in custody, reside and remain in the places which may be indicated by the Minister;

(c) report at specified intervals to the immigration authorities as indicated by the Minister;

(d) hand over all documents in his possession;

(e) be subject to search and his oral statements may be recorded subject to the applicant being previously informed thereof;

(f) be photographed and have his fingerprints taken:

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

Withdrawal of
the application.

13. (1) When an applicant explicitly withdraws his application, the Commissioner shall decide either to discontinue the examination or reject the application.

(2) When an applicant has implicitly withdrawn his application, the Commissioner shall ensure that a decision is taken to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status:

Provided that the Commissioner may assume that applicant has implicitly withdrawn his application for asylum when it is ascertained that:

(a) he has refused notification of any document relating to the asylum procedure; or

(b) he has failed to provide information essential to his application or has not appeared for a personal interview unless the applicant demonstrates, within a reasonable time, that his failure was due to circumstances beyond his control; or

(c) he has absconded or left without authorisation the place where he lived or was held, without contacting the competent authorities within a reasonable time or he has not, within thirty days, complied with reporting duties or other obligations to communicate.

(3) An applicant who reports again to the Commissioner after a decision to discontinue the examination is entitled to request his case to be re-opened within three months of such decision, unless the request is considered as a subsequent application. Such application shall be made in writing stating the reasons supporting such a request.

(4) Service of any document relating to the asylum procedure shall be made by delivery to the applicant for asylum in person, saving that, where this is not possible, such delivery shall be made to his last known address or with his legal advisor or representative.

14. (1) (a) 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 and persons granted subsidiary protection status.

(i) without prejudice to the provisions of articles 9 and 10 of the Act, to remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable:

Provided that a residence permit to be granted to a family member may be valid for less than three years and shall be renewable;

(ii) 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 a visa;

(iii) to have access to employment, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care especially in the case of vulnerable groups of persons;

(b) A person enjoying subsidiary protection shall be entitled –

(i) without prejudice to the provisions of articles 21 and 22 of the Act, to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of one year,

which shall be renewable;

(ii) to be provided with documents which enable him to travel especially when serious humanitarian reasons arise that require his presence in another State, unless compelling reasons of national security or public order otherwise require;

(iii) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programmes, State education and training, and to receive core State medical care, especially in the case of vulnerable groups of persons.

(2) (a) Dependant members of the family of a person granted refugee status, if they are in Malta at the time of the decision or if they join him in Malta, enjoy the same rights and benefits as the refugee so that family unity may be maintained.

(b) Dependant members of the family of a person granted subsidiary protection, if they are in Malta at the time of decision, enjoy the same rights and benefits as the person enjoying subsidiary protection status so that family unity may be maintained.

(3) Persons granted the status of refugee or subsidiary protection and who are considered as vulnerable persons shall, as far as possible, be provided with adequate health care.

Unaccompanied
minors.

15. (1) In relation to an unaccompanied minor falling within the provisions of article 13(3) of the Act, as soon as possible, and not later than thirty days from the issue of the care order under that article:

(a) it shall be ensured that the appointed representative of the unaccompanied minor is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself for the personal interview. The representative shall be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview;

(b) where an unaccompanied minor has a personal interview on his application for asylum, that interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.

(2) Medical examinations to determine the age of unaccompanied minors within the framework of any possible application for asylum may be carried out.

Provided that:

(a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination which may include the rejection of his claim that he is a minor;

(b) unaccompanied minors and their representatives consent to carry out the determination of the age of the minors concerned;

(c) the decision to reject an application from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal:

Provided that an unaccompanied minor who has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for asylum and that the best interests of the minor shall be a primary consideration in any such decision.

16. The High Commissioner:

The High
Commissioner.

(a) shall have access to applicants for asylum, including those in detention and in airport or port transit zones;

(b) shall have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, when the applicant for asylum agrees thereto;

(c) may be present during any interview and, to present his views in writing, in the exercise of his responsibilities under Article 35 of the Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure as determined by the Commissioner:

Provided that such rights shall apply to an organisation which is working in Malta on behalf of the UNHCR pursuant to an agreement with Malta.

Assessing a third country as safe.

17. (1) In determining an application as inadmissible on the basis that a country is considered as a safe third country for the applicant, in accordance with article 24 of the Act, the Commissioner shall:

(a) ensure that there is a connection between the applicant and the third country so that the applicant can reasonably be considered as able to go to that country;

(b) ensure that the safety of the third country is assessed on an individual basis, taking into account any analysis made by reputable international organizations that may be available from time to time, including the office of the United Nations High Commissioner for Refugees:

Provided that the applicant shall be able to appeal against the inadmissibility of the application on the basis of the safe third country if he can show that, should he be returned to such country, he will be subjected to torture, cruel, inhuman or degrading treatment or punishment.

(2) In taking the decision referred to in subregulation (1), the Commissioner shall:

(a) inform the applicant of his decision;

(b) provide him with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

(3) Where the third country does not permit the applicant to enter its territory, the Commissioner shall ensure that the applicant has access to the procedure for the examination of his application in accordance with the Act or these regulations.

Assessing the reasons for persecution for the granting of refugee status.

18. When considering an application for refugee status, in assessing the fear of persecution, the Commissioner shall take account of the following elements:

(a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) a group shall be considered to form a particular social group where in particular:

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society; and

(iii) depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic or sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in Malta; gender related aspects might be considered without by themselves alone creating a presumption for the applicability of this subparagraph;

(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution which include the State, parties or organizations controlling the State or a substantial part of the territory of the State and non-State actors if it can be demonstrated that the other actors are unable or unwilling to provide protection against persecution or serious harm, and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

(2) When assessing if an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.