

Country Report: Malta



2021
Update

Acknowledgements & Methodology

This report was jointly researched and written by aditus foundation and was edited by ECRE.

This report draws on the information gathered by the authors' practice, statistical data and other information provided by the Maltese authorities, as well as other available sources.

We would like to thank the International Protection Agency, the International Protection Appeals Tribunal, the Agency for the Welfare of Asylum Seekers (AWAS), the Malta Police Force and UNHCR Malta for their cooperation in providing the requested data and information.

The information in this report is up to date as of 31 December 2021, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey and the UK) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



Table of Contents

Glossary & List of Abbreviations	6
Statistics	7
Overview of the main changes since the previous report update.....	11
Asylum Procedure.....	11
A. General.....	14
1. Flow chart.....	14
2. Types of procedures.....	15
3. List of authorities intervening in each stage of the procedure.....	15
4. Number of staff and nature of the determining authority	15
5. Short overview of the asylum procedure	17
B. Access to the procedure and registration	20
1. Access to the territory and push backs.....	20
2. Registration of the asylum application.....	31
C. Procedures.....	33
1. Regular procedure.....	33
2. Dublin.....	44
3. Admissibility procedure.....	51
4. Border procedure.....	53
5. Accelerated procedure.....	53
D. Guarantees for vulnerable groups	58
1. Identification	58
2. Special procedural guarantees	62
3. Use of medical reports.....	64
4. Legal representation of unaccompanied children	65
E. Subsequent applications.....	67
F. The safe country concepts.....	68
1. Safe country of origin.....	69
2. Safe third country	69
3. First country of asylum.....	70

G. Information for asylum seekers and access to NGOs and UNHCR	70
1. Provision of information on the procedure	70
2. Access to NGOs and UNHCR.....	72
H. Differential treatment of specific nationalities in the procedure	73
Reception Conditions.....	75
A. Access and forms of reception conditions.....	76
1. Criteria and restrictions to access reception conditions	76
2. Forms and levels of material reception conditions	77
3. Reduction or withdrawal of reception conditions.....	78
4. Freedom of movement.....	80
B. Housing.....	81
1. Types of accommodation.....	81
2. Conditions in reception facilities.....	83
C. Employment and education.....	86
1. Access to the labour market.....	86
2. Access to education	88
D. Health care	89
E. Special reception needs of vulnerable groups.....	90
F. Information for asylum seekers and access to reception centres	91
1. Provision of information on reception	91
2. Access to reception centres by third parties	92
G. Differential treatment of specific nationalities in reception	92
Detention of Asylum Seekers	93
A. General.....	93
B. Legal framework of detention	95
1. Grounds for detention.....	95
2. Alternatives to detention	98
3. Detention of vulnerable applicants	99
4. Duration of detention	101
C. Detention conditions	102

1. Place of detention.....	102
2. Conditions in detention facilities.....	103
3. Access to detention facilities.....	110
D. Procedural safeguards	113
1. Judicial review of the detention order	113
2. Legal assistance for review of detention.....	119
E. Differential treatment of specific nationalities in detention	119
Content of International Protection	120
A. Status and residence	120
1. Residence permit.....	120
2. Civil registration.....	121
3. Long-term residence.....	121
4. Naturalisation	123
5. Cessation and review of protection status	124
6. Withdrawal of protection status	125
B. Family reunification	127
1. Criteria and conditions	127
2. Status and rights of family members	128
C. Movement and mobility	129
1. Freedom of movement.....	129
2. Travel documents	129
D. Housing.....	130
E. Employment and education.....	131
1. Access to the labour market.....	131
2. Access to education	132
F. Social welfare.....	133
G. Health care	133
ANNEX I - Transposition of the CEAS in national legislation	135

Glossary & List of Abbreviations

AAT	Age Assessment Team
ATD	Alternatives to Detention
AFM	Armed Forces of Malta
AWAS	Agency for the Welfare of Asylum Seekers
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DS	Detention Service, Ministry for Home Affairs, National Security and Law Enforcement
DVB	Monitoring Board for Detained Persons
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EEPO	European Employment Policy Observatory
EUAA	European Union Agency for Asylum
FAV	Further Age Verification
FSM	Foundation for Shelter and Support to Migrants
IAB	Immigration Appeals Board
IOM	International Organization for Migration
IPAT	International Protection Appeals Tribunal
IPA	International Protection Agency
IRC	Initial Reception Centre
MMA	Malta Migrants' Association
MQF	Malta Qualifications Framework
MQRIC	Malta Qualifications Recognition Information Centre
NCFHE	National Commission for Further Higher Education
OHCHR	Office of the United Nations High Commissioner for Human Rights
PHP	Provisional Humanitarian Protection
PIO	Principal Immigration Officer
PQ	Preliminary Questionnaire
SAR	Search and Rescue
SRA	Specific Residence Authorisation
THP	Temporary Humanitarian Protection
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees
VAAP	Vulnerable Adult Assessment Procedure

Statistics

Overview of statistical practice

Regular statistics are not published by the authorities. UNHCR Malta regularly publishes information on arrivals, asylum applications, decisions and reception of asylum seekers.¹

Applications and granting of protection status at first instance: 2021

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	1,281	3,265	14	153	477*	2%	24%	74%

Breakdown by countries of origin of the total numbers

Sudan	198	681	5	1	2	71%	14%	25%
Syria	186	411	0	45	37	0%	55%	45%
Eritrea	163	301	0	69	3	0%	95%	5%
Somalia	113	272	0	3	3	0%	50%	50%
Libya	70	227	4	32	13	8%	65%	27%
Bangladesh	53	0	1	0	130	1%	0%	99%
Egypt	45	0	0	0	79	0%	0%	100%
Gambia, THE	42	104	-**	-	-	-	-	-
Nigeria	40	195	0	0	34	0%	0%	100%
Cote d'Ivoire	36	92	0	0	29	0%	0%	100%
Guinea	-	106	-	-	-	-	-	-
Mali	-	104	-	-	-	-	-	-
Morocco	-	-	1	0	63	1	0%	99%

Source: International Protection Agency, March 2022.

* This does not include inadmissibility decisions. The total number of rejections including inadmissibility decisions is 521 with a rejection rate of 76%.

** Data not provided.

¹ UNHCR Malta, *Figures at a glance*, available at: <https://bit.ly/3bgXj6a>.

Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
Total number of applicants	1,281	-
Men (incl. children)	1,054	82%
Women (incl. children)	232	18%
Children	156	12%
Unaccompanied children	5	-

Source: International Protection Agency, March 2022.

Comparison between first instance and appeal decision rates: 2021

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	647	-	765	-
Positive decisions	170	26%	0	0%
• <i>Refugee status</i>	14	2%	0	0%
• <i>Subsidiary protection</i>	153	24%	0	0%
• <i>Temporary Humanitarian Protection</i>	3	-	0	0%
Negative decisions	477	74%	765	99*%

Source: International Protection Agency, March 2022; International Appeals Tribunal, January 2022.

* 4 decisions were remitted back to the IPA.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Abbreviation	Web Link
International Protection Act, Chapter 420 <i>Amended by:</i> Act VI of 2015 <i>Amended by:</i> Act VII of 2015 <i>Amended by:</i> Act XX of 2017 <i>Amended by:</i> Act XL of 2020	IPA Act	https://bit.ly/30XOgUt (EN) http://bit.ly/1LQjEov (EN) http://bit.ly/1Npu2Vg (EN) http://bit.ly/2DKUu18 (EN) https://bit.ly/38PosP3 (EN)
Immigration Act, Chapter 217	Immigration Act	http://bit.ly/1ee7pa9 (EN)
Prevention of Disease Ordinance, CAP 36, 1908		https://bit.ly/2E9u73v (EN)
Minor Protection (Alternative Care) Act, CAP 602		https://bit.ly/3bX5Z54 (EN)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Abbreviation	Web Link
Reception of Asylum-seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005 <i>Amended by:</i> Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015 <i>Amended by:</i> Legal Notice 487 of 2021	Reception Regulations	https://bit.ly/3rdvDqu . (EN) http://bit.ly/1HpyUcd (EN)
Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015 <i>Amended by:</i> Act XL of 2020 <i>Amended by:</i> Legal Notice 488 of 2021	Procedural Regulations	https://bit.ly/3ltkbpI (EN)
Social Security (UN Convention relating to the Status of Refugees) Order, Legal Notice 291 of 2001	Refugees Social Security Regulations	http://bit.ly/1eUcuVZ (EN)
International Protection Appeals Tribunal (Procedures) Regulations, Legal Notice 252 of 2001	IPAT Regulations	https://bit.ly/30UbZVE (EN)

Board of Visitors for Detained Persons Regulations, Legal Notice 266 of 2007	DVB Regulations	http://bit.ly/1GURBTA (EN)
Agency for the Welfare of Asylum-seekers Regulations, Legal Notice 205 of 2009	AWAS Regulations	http://bit.ly/1GURCHj (EN)
International Protection Appeals Tribunal (Chambers) Rules, Legal Notice 47 of 2005	RAB Chambers Regulations	http://bit.ly/1GHgCyh (EN)
Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011 <i>Amended by: Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals (Amendment) Regulations, Legal Notice 15 of 2014</i>	Returns Regulations	https://bit.ly/2U5VQXR (EN)
Family Reunification Regulations, Legal Notice 150 of 2007	Family Reunification Regulations	https://bit.ly/2FQ0N33 (EN)
Strategy for the Reception of Asylum Seekers and Irregular Immigrants (2015)	2015 Strategy Document	https://goo.gl/FFz7qj (EN)
Detention Service Regulations, Legal Notice 16 of 2016	Detention Service Regulations	https://bit.ly/2R5z5RN (EN)
Migrant Integration Strategy & Action Plan - Vision 2020	Integration Strategy	https://bit.ly/2FWLF4x (EN)
Policy regarding Specific Residence Authorisation – Updated policy October 2020	Specific Residence Authorisation	https://bit.ly/2OZBQJ9 (EN)

Overview of the main changes since the previous report update

The report was previously updated in **May 2021**.

Asylum procedure

- ❖ **Pushbacks at sea:** Since May 2020 and throughout 2021, the Armed Forces of Malta (AFM) drastically decreased its rescues at sea. NGOs report that Malta is not conducting rescue operations in the Maltese SAR zone south of Lampedusa, and instead relies on merchant vessels and the Libyan coastguard to push boats back to Libya. The authorities are accused of preventing boats entering the island's SAR zone and multiple incidents of pushbacks were reported by NGOs.
- ❖ **Access to the territory:** In 2021, the Maltese Government continued to deny disembarkation to individuals rescued at sea in particular where the rescue was conducted by NGO vessels. In the latter cases, the official position is that these rescues constitute 'interceptions' and should be regulated by the ship's flag state.
- ❖ **Key asylum statistics:** In 2021, 1,281 first time applications were lodged, and 3,265 applications were still pending at the end of the year. The International Protection Agency (IPA) issued 691 first instance decisions, the vast majority of which (477) were rejected as manifestly unfounded or inadmissible and thus channelled through the accelerated procedure with no possibility to appeal. The Agency issued 170 positive decisions, which puts the recognition rate at first instance at 25%. However, the Agency also issued 1,729 decisions to discontinue applications, 72% of all the total amount of decisions taken in 2021. This therefore brings down the recognition rate at first instance to an historical low 8%. The International Protection Appeals Tribunal (IPAT) issued 765 decisions, including 482 reviews under the accelerated procedure. All of them were rejections.
- ❖ **Response to the crisis in Ukraine as of 20 April 2022:** At the moment, there is no coordinated effort at Government level to implement the Directive and limited information on the matter is available. Pre-approval to travel to Malta is no longer required from Ukraine, since the country lifted the COVID-19 restrictions that still applied for persons coming from said country; quarantine at an alternative accommodation is currently allowed. Ukrainians do not need a visa to access Malta and are automatically granted a 90-day visa upon entry. In February 2022, a Community Crisis Centre was created with the help of the Honorary Consulate of Ukraine in Malta, to better coordinating reception efforts.² As of March 2022, the International Protection Agency started to provide specific information regarding applications to Ukrainian Nationals that wish to apply for the Temporary Protection under the Temporary Protection Directive (2001/55/EC).³ On 4 April 2022, the IPA indicated that it received 247 requests for Temporary Protection and issued 193 decisions to grant protection.⁴ Persons who left Ukraine before 24 February 2022 are not eligible for Temporary Protection yet are able to apply for International Protection.
- ❖ **Prioritisation of manifestly unfounded cases:** In 2021, the International Protection Agency (IPA) significantly reduced its backlog by massively discontinuing applications as implicitly withdrawn and prioritising manifestly unfounded cases. The accelerated procedure, which does not offer the possibility to appeal the rejection, continued to be resorted to by the Agency. Individuals served with rejections in the accelerated procedure then face protracted detention in squalid conditions and limited judicial safeguards until their return is executed or they reach the

² Information distributed by the centre can be found at: <https://bit.ly/3wPKGgA>.

³ Information available on the Home Affairs Ministry of Malta at: <https://bit.ly/3qPUIdx>.

⁴ Information provided by IPA, 4 April 2022.

maximum amount of time in detention allowed under the Return Directive. The IPA therefore prioritises applications likely to be manifestly unfounded to the detriment of other asylum seekers, whose applications are left pending far beyond the deadlines foreseen by law for obtaining a decision. Some individuals have reportedly been waiting for 4 years, while applications from newly arrived asylum seekers are rejected as manifestly unfounded in a matter of months. As a result of this policy, the recognition rate dropped to an all-time low of 8%.

- ❖ **Second instance procedures:** In 2021, most of the Tribunal's decisions were the three-days' reviews carried out within the scope of the accelerated procedure. The Tribunal issued an important number of rejections due to a failure to file submissions on the part of the appellant, which automatically leads the IPAT to reject the case without going into the merits. For cases in which an appeal may be filed, appellants reportedly wait several years at the second instance stage, far above the deadlines foreseen by law. 2021 also marked a record low in terms of IPAT decisions, given that the Tribunal only issued rejections, which meant a 0% recognition rate for applicants at second instance.

Reception conditions

- ❖ **Refurbishment of the open centres:** Living conditions have reportedly marginally improved; in particular, refurbishments were carried and a new space was built in the open centres. Life in these centres continues to be challenging, despite an occupancy rate close to 26% of their full capacity at the end of the year, an historical low for Malta. This is also due to the fact that only 838 new arrivals in the centres were registered in 2021.
- ❖ **Eviction of non-vulnerable asylum seekers:** Despite the availability in terms of space, the policy of eviction of non-vulnerable asylum seekers after 6 months continues to be applied by AWAS. The number of settlements created by evicted asylum seekers continued to grow, as many are unable to afford housing. This situation worsened significantly since the emergence of the new work policy which forbids access to the labour market to asylum seekers hailing from safe countries of origin for the first 9 months after they registered their asylum application. These individuals are therefore evicted from open centres before being legally able to work and sustain themselves.

Detention of asylum seekers

- ❖ **Detention upon arrival:** The policy of detaining asylum seekers automatically upon arrival continued in 2021, with the use of de facto detention for the first months, either as a measure of quarantine against COVID-19 or on the basis of the Prevention of Disease Ordinance. During this period of detention, all asylum seekers except families and young children are detained, including individuals claiming to be minors.
- ❖ **Detention and returns:** Only asylum seekers from countries of origin where return is feasible were officially detained by the Principal Immigration Officer (PIO), yet without any individual assessment being carried out. For these cases, detention coupled with being channelled in the accelerated procedure, ensures that the individual will be issued with a removal order and a return decision in a matter of months.
- ❖ **Legal assistance in detention:** Despite some positive improvements in the possibility to provide legal aid, which is now correctly implemented for the initial automatic review of detention, challenging the detention of asylum seekers remains particularly difficult as the main remedy foreseen by the law, i.e. the Immigration Appeals Board, is perceived to be mostly ineffective due to its lack of independence and expertise within the field of asylum and human rights. Legal assistance is mainly provided by the two major NGOs in the field, aditus foundation and JRS

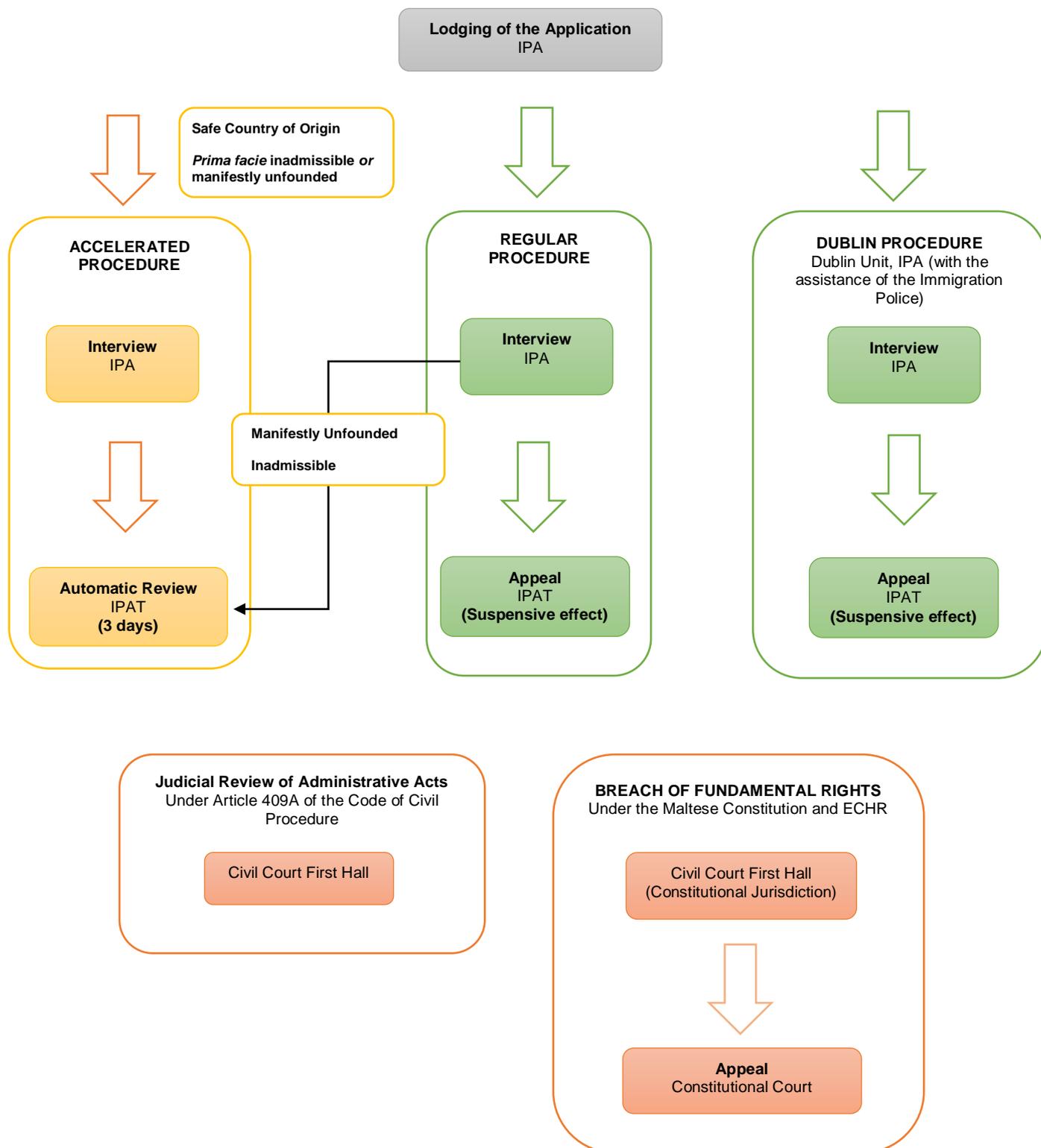
Malta. State sponsored legal aid is available only for the first 7-days' review of detention, which leaves most asylum seekers with limited means to challenge their detention past this initial review. Access to detention in the living quarters is now forbidden to NGOs and lawyers, creating tremendous difficulties in providing legal services to detainees due to the lack of access to phones inside and the necessity to meet their clients in a unique board room on the margin of the detention centre.

- ❖ **Detention conditions:** Detention conditions remained an issue in 2021, despite two reports – published by the Council of Europe and the United Nations – denouncing the alarming situation. While the limited access to detention makes it difficult for lawyers and NGOs to report on detention conditions, detainees have been regularly complaining of substandard living arrangements. These complaints reflect the reports' findings, whereby it was found that detainees were held in the following detention conditions: partial to no access to outdoor areas; partial to no access to common areas; no access to any prayer room or private space; limited access to a phone to make any calls, including to lawyers; no access to any leisure activities; sharing rooms of 3m² to 5m² with 3 to 8 people; minors detained with adult men; no ventilation, lights or heating in any of the rooms; no access to drinkable water; lack of appropriate clothes and bedsheets for the weather; no proper means of cleaning themselves and their clothes; no information provided regarding their detention, or the procedure; lack of access to healthcare.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|---|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ⁶ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: ⁷ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: | | |

Are any of the procedures that are foreseen in the law, not being applied in practice? Yes No

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)
Application	International Protection Agency
Dublin (responsibility assessment)	Dublin Unit, (within the International Protection Agency)
Refugee status determination	International Protection Agency
Accelerated procedure	International Protection Agency and International Protection Appeals Tribunal (joint procedure)
Appeal	International Protection Appeals Tribunal
Subsequent application (admissibility)	International Protection Agency

4. Number of staff and nature of the determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
International Protection Agency (IPA)	23	Ministry for Home Affairs, National Security and Law Enforcement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Malta amended its Refugees Act in August 2020, transforming the Office of the Refugee Commissioner (RefCom) into the International Protection Agency (IPA) without changing its mandate. The IPA is the authority responsible for examining and determining applications for international protection at first instance.⁸ The IPA is a specialised authority in the field of asylum. However, it falls under the Ministry also responsible for Police, Immigration, Asylum, Correctional Services and National Security.

The IPA is still far from being able to carry its mission autonomously and, up to the moment, heavily relies on the support provided by European Asylum Support Office (EASO, currently European Union Agency

⁵ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

⁶ Accelerating the processing of specific caseloads as part of the regular procedure.

⁷ Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

⁸ Article 4 International Protection Act.

for Asylum).⁹ At the end of the year, the IPA had only 5 caseworkers in charge of conducting interviews and 3 officials drafting decisions out of the 23 staff total staff employed. This is less than previous years, in 2020, the IPA employed 28 staff, among them 19 are caseworkers. Out of these, 5 were in charge of drafting decisions on asylum applications.

EASO's support in asylum application determination amounted to the deployment of 45 staff responsible for examining asylum applications, out of which 17 were conducting interviews and drafting recommendation to the IPA.¹⁰

In 2019, due to a large increase in sea arrivals, the Maltese authorities requested support from EASO in several areas, including the registration and lodging of applications, the interview and assessment of applications and support to increase the capacity and efficiency of the Dublin Unit. An operational and technical assistance plan was therefore signed on 24 June 2019. Up to 20 staff were deployed, including 8 caseworkers and 8 registration assistants for a period of 6 months.¹¹

Given the continued increase in sea arrivals, a new plan for 2020 was signed between Malta and EASO in December 2019.¹² This plan foresaw that EASO would strengthen and increase the support already provided but also add additional support in the field of reception. The new plan included the creation of a Country of Origin Information (COI) unit and support for a quality control mechanism through the deployment of quality control officers and research officers. Additionally, EASO gradually increased support for the Agency for the Welfare of Asylum Seekers (AWAS) in the management of reception capacity/facilities, vulnerability screening and referral and age assessment.

On 11 December 2020, a new operation plan was signed with Malta for the year 2021.¹³ It foresaw to strengthen the support already provided and identifies two priority needs to be addressed: firstly, improve the access to the asylum procedure and increase capacity to manage the asylum backlog at first instance determination; secondly, enhance the capacity of the Maltese authorities to implement reception standards in line with the CEAS.

In order to achieve the first objective, EASO continued to support the IPA and AWAS with information provision, screening of vulnerable cases, document analysis, registration, interview, drafting of evaluation reports but also the Agency supported the creation of a Quality Control Unit and a COI Unit. The Quality Control Unit is in charge of checking first instance evaluation reports and, in case a quality issue is noticed, the Unit sends back the report to the caseworker that drafted it for review.¹⁴ EASO also offered support in terms of interpretation and training. These objectives were to be achieved with the deployment of 10 registration personnel and 2 Member States experts, 10 clerical personnel, 2 flow management support officers, 1 document analysis expert, 15 case workers, 3 team leaders, up to 5 Member States experts to complement the case workers and team leaders, 2 Dublin assistants, 2 quality assurance support officers, and 2 COI researchers.

In order to meet the second priority for reception, the Plan foresaw to support AWAS in creating an information provision package, delivering information provision sessions. EASO also supported the national referral mechanism, the identification of vulnerable cases and the age assessment procedure. The Agency also developed guidelines, guidance, SOPs, and any other necessary tool. Training and

⁹ It should be noted that Regulation 2021/2023 entered into force on 19 January 2022, transforming EASO into the EU Agency for Asylum (EUAA). The Agency will be mainly referred to as European Asylum Support Office throughout the report, as its updates refer to 31 December 2021, unless otherwise stated.

¹⁰ Information provided by the International Protection Agency, March 2022.

¹¹ 2019 Operational and Technical Assistance Plan Agreed by EASO and Malta, 24 June 2019, available at: <https://bit.ly/3b8FQ00>.

¹² 2020 Operational and Technical Assistance Plan Agreed by EASO and Malta, 12 December 2019, available at: <https://bit.ly/3abiYfn>.

¹³ EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

¹⁴ Information provided by EASO, 22 September 2021.

interpretation were also included in the Plan. In order to achieve these objectives, EASO deployed some personnel, including 5 information providers, 2 quality assurance support officers, 5 information providers, 2 quality assurance support officers and 20 vulnerability assessment officers, 1 or 2 vulnerability focal points, 6 Care Team officers, up to 9 social workers and up to 3 Member States experts on vulnerability assessment, 1 flow management support officer as well as interpreters.

In total, EASO deployed 144 different experts in Malta across asylum and reception-related activities throughout 2021. The majority of them were caseworker assistants (22) and vulnerability assessors (22), followed by caseworkers (17), registration support staff (16) and other support staff (e.g. administrative staff, operations staff, Dublin staff). As of 13 December 2021, there were a total of 70 EASO experts in Malta, mainly caseworker assistants (12), registration support staff (6) and vulnerability assessors (6).¹⁵

On 16 December 2021, a new plan was agreed for the period 2022-2024. EASO and the Maltese authorities identified the same needs as for the previous plans, namely, improve the access to asylum procedures, manage the case backlog and improve reception conditions in open centres. Assuming that the number of arrivals will remain similar to those registered in 2021, EASO also foresees it may initiate a phasing out exercise from specific support areas (such as decreasing direct support to asylum processing) towards the end of 2022.¹⁶ For the first 18 to 24 months, the plan foresees the deployment of up to 82 staff. It includes 10 registration and front desk personnel, 15 caseworkers, 9 vulnerability assessment officers, 3 social workers and several quality control support officers and team leaders.¹⁷

5. Short overview of the asylum procedure

The procedure in place is a single procedure with the examination and determination of eligibility for subsidiary protection being undertaken by the International Protection Agency (IPA) within the context of the same procedure. The IPA is the only entity authorised by law to receive applications for international protection. Should the individual express a need for international protection at the border, this information is passed on to the IPA for the necessary follow-up. Since 2019, the IPA has been supported by EASO across asylum and reception-related activities.

The registration process – whether undertaken by the IPA or EASO – consists of collecting personal details and issuing a unique IPA number as well as the Asylum Seeker Document/Certificate. The lodging of applications consists in filling and signing an application form stating the basic reasons for seeking protection.

Immigration and asylum procedures only commence following confirmation by the Health Authorities that applicants have been screened and found not to suffer from any contagious disease (namely COVID-19 and tuberculosis). All those who apply for asylum are systematically fingerprinted and photographed by the immigration authorities for insertion into the Eurodac database. Those who enter Malta irregularly are now immediately placed in detention, and subsequently fingerprinted and photographed.

Dublin assessments are conducted for all cases and if necessary, an interview with the Dublin Unit is scheduled. If required, the examination of the application for protection is suspended pending the outcome of the Dublin procedure. The director of the IPA is designated as the head of the Dublin Unit.

Following the initial collection of information in the application form, and if Malta is deemed responsible for processing the application, the IPA scheduled an appointment for an interview with the applicant. After

¹⁵ Information provided by EUAA, 28 February 2022.

¹⁶ EASO, 2022-2024 Operating plan agreed by EASO and Malta, 16 December 2021, available at: <https://bit.ly/3LUHhJ>.

¹⁷ EASO, 2022-2024 Operating plan agreed by EASO and Malta, 16 December 2021, available at: <https://bit.ly/3LUHhJ>, 15-19.

the recorded interview takes place, the applicant is informed that he or she will be notified of the decision in due course.

A more experienced officer or manager reviews the caseworkers' decision on the application and the IPA makes the final decision.¹⁸

According to the amended Procedural Regulations, the IPA shall ensure that the examination procedure is concluded within six-months of the lodging of the application. The examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.¹⁹ However, most of the decisions by the IPA are, in practice, not taken before the period of time established by the Regulations.

National law specifies a two-week time period from when an applicant is notified of the decision of the IPA during which he or she may appeal to the International Protection Appeals Tribunal (IPAT). This administrative tribunal, whose function is enshrined in the International Protection Act and currently operating in a one-chamber composition, is entrusted to hear and determine appeals against decisions issued by the IPA. An appeal to the Tribunal has suspensive effect, which entails that an asylum seeker may not be removed from Malta prior to a final decision being taken on his or her appeal.²⁰ In the majority of cases, the decision given by the IPAT is binding on the parties and the Tribunal will not remit it back to IPA to take a new decision.

The International Protection Act specifies that no appeal is possible from the decision of the IPAT, although it is possible to submit a judicial review application to the First Hall of the Civil Court.²¹ Notwithstanding this, no appeal lies on the merits of the decision except the possibility of filing a human rights claim to the Constitutional Court alleging a violation of fundamental human rights in terms of the European Convention on Human Rights (ECHR) and/or the Maltese Constitution, should the rejected appellant be faced with a return that is prejudicial to his or her rights.²²

Accelerated procedures are also foreseen in national law for applications that appear to be *prima facie* inadmissible or manifestly unfounded. In practice, most applicants are interviewed by the IPA although their case might be classified as being inadmissible or manifestly unfounded following an evaluation of their asylum claim.

In such cases, the accelerated procedure commences at the appeal stage. The decision of the IPA is transmitted to the IPAT with the Tribunal having a three-day time limit, specified in law, during which an examination and review of the IPA's decisions to be carried out.²³

Applicants whose application is rejected as manifestly unfounded or inadmissible, are not entitled to appeal against such decision. The IPA's decision is automatically transferred to the IPAT for the three days review. Such reviews do not allow the applicant to express his/her views or to be heard. The decision generally consists of a one-sentence document confirming the IPA's decision.

Applicants from countries of origin where returns are deemed feasible are systematically detained and their cases are usually processed through the accelerated procedure; the outcome of such procedure, in all cases registered in recent years, equalled to a reject decision. Overall, these applicants are registered

¹⁸ ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2Ut8QIK>, 55.

¹⁹ Regulation 6(6) Procedural Regulations.

²⁰ Regulation 12 Procedural Regulations.

²¹ This is the Chamber of general jurisdiction. For further information on the First Hall of the Civil Court see the website of Malta's judiciary, available at: <http://bit.ly/1ds58HF>.

²² Article 7(9) International Protection Act.

²³ Articles 23 and 24 International Protection Act.

and interviewed within the first 3 months of their detention and issued with the IPA's rejection, the IPAT's rejection a return decision and a removal order a couple of weeks after.

The asylum procedure and return procedures are not automatically linked. In practice, only detained applicants channelled through the accelerated procedure whose application is rejected are issued a return decision and a removal order at the same time as the IPAT review.

The amendments to the Refugees Act in 2020 also formalised the Temporary Humanitarian Protection (THP) status into legal norms. This status was before granted by the IPA to failed asylum-seekers who, for personal and specific reasons unrelated to international protection needs, were unable to return to their countries of origin. It was only a policy-based approach granting regularisation and a set of rights to the persons. Over the years, THP was granted to hundreds of people, including elderly persons, unaccompanied minors, and persons suffering from chronic illness. Being only policy-based, there was a broad margin of discretion and the set of rights attached to such status was not fully clear.

THP is now included in the International Protection Act, and it is granted to "an applicant for international protection who does not qualify for refugee status or subsidiary protection status, but who is deemed to qualify for protection on humanitarian grounds".²⁴ The law is listing several categories of persons eligible for such status: an accompanied minor who cannot return to his country of origin pursuant to the principle of the best interest of the child; a terminally ill applicant or one who suffers from a severe or life-threatening medical condition not treatable in his country of origin; and an applicant who cannot be returned for other humanitarian reasons which can include serious disability affecting the applicant's normal life. Applicants who committed crimes as defined in the International Protection Act are excluded from this status.

The decision concerning the granting of THP is now given in conjunction with the determination that the applicant does not meet the criteria of a refugee or a subsidiary protection beneficiary. THP may also be considered in respect of applicants whose application has been rejected through a final decision who make the request and fall within the grounds foreseen in the Act. The Act also clearly mentions that no appeal shall be made following a decision by the IPA not to grant THP. The set of rights granted by the THP are similar to those attached to the subsidiary protection status.²⁵

NGOs reacted positively to the legalisation of such status but denounced the fact that the assessment of THP is now included in the interview for asylum, as the assessments of eligibility to these distinct statuses require entirely different approaches and a different set of elements, information, and documents to examine. The lack of possibility to appeal was also negatively highlighted, as it gives complete discretion to the IPA regarding the decision. The status can be withdrawn at any time by the IPA when it deems the beneficiary does not meet the requirements anymore, or can enjoy another status, for instance through family reunification. Until June 2021, the IPA would notify the withdrawal without giving any possibility to contest it. Subsequently, the IPA started to accord 10 days for the beneficiary of THP to submit his or her submissions explaining why the status should not be withdrawn.

In 2021, the International Protection Agency significantly reduced its backlog by massively discontinuing applications as implicitly withdrawn through a applying a very strict approach of the concept. Anybody who missed a call for an interview or a renewal of document saw his or her application systematically discontinued. Asylum seekers purging a sentence in prison also saw their application discontinued as the IPA could not reach them for the interview or an appointment.

Asylum seekers in detention were also impacted by this policy and many of them saw their application discontinued due to various miscommunication issues and their misunderstanding of the procedure or their refusal to carry the interview due to their health condition or simply due to the frustration and anger

²⁴ Art 17A International Protection Act.

²⁵ Art 17A (1) International Protection Act.

for being detained without any information or access to a lawyer. When this happens, the IPO directly issues a removal order and return decision and starts the process of removal.

These individuals then have to file a request to reopen their application with the help of a lawyer; however, it is unknown how many of them actually did find a way to file this request.

UNHCR reports that 2,400 decisions were issued at first instance in 2021, including 180 positive decisions (8% of the total). Out of these, 14 were recognitions of refugee status, 145 of subsidiary protection status and 21 of THP. There were 491 rejections (20%). The rest were 1,729 'closed' cases (72% of the total), referring to applications that resulted in an administrative closure, Dublin closure, or applications that are explicitly withdrawn, implicitly withdrawn or inadmissible. A total of 1,190 first time applications were made in 2021.

In 2021, protection was mainly granted to Eritreans (37%), Syrians (30%) and Libyans (26%) followed by Sudanese and Palestinians (5% each).²⁶

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring system in place? Yes No
 - ❖ If so, who is responsible for border monitoring? National authorities NGOs
 - ❖ If so, how often is border monitoring carried out? Frequently Rarely Never

Between 2015 and 2018, the authorities implemented the policy envisioned in the “Strategy for the Reception of Asylum Seekers and Irregular Migrants”,²⁷ whereby all migrants were first taken to the Initial Reception Centre (IRC) for a pre-screening by the Police and Health authorities. They could be kept in the centre for up to seven days, unless health-related considerations dictated otherwise. Migrants were provided with information about their right to apply for international protection, assigned a caseworker, and interviewed by Immigration Police. An assessment of the need to detain the applicant was then carried out by the Principal Immigration Officer based on the list of detention grounds foreseen in the national legislation transposing the recast Reception Directive.²⁸

This procedure changed in mid-2018, when the new Italian government withdrew from the informal agreement concluded between Italy and Malta in 2014.²⁹ Consequently, people rescued within Maltese territorial waters and its Search and Rescue (SAR) zone are now disembarked in Malta.

Therefore, the number of arrivals significantly increased and led the authorities to revise their 2015 reception policy, resorting once more to the systematic and automatic detention of all applicants entering

²⁶ UNHCR, Malta Fact Sheet, December 2021, available at: <https://bit.ly/3lZf2Ai>.

²⁷ Ministry for Home Affairs, National Security and Law Enforcement, *Strategy for the reception of asylum seekers and irregular migrants* (hereafter “Strategy Document”), November 2015, available at: <http://bit.ly/2kPVI3A>, 9-10.

²⁸ Regulation 6(1) Reception Regulations.

²⁹ Following an informal agreement between Italy and Malta in 2014, almost all persons rescued at sea, including persons rescued by the Armed Forces of Malta, and those rescued in Maltese territorial waters or Malta’s Search and Rescue Zone, were disembarked in Italy. Consequently, very few persons arrived in Malta by boat between 2014 and mid-2018, all of whom were medical evacuations.

Malta irregularly, as was the case pre-2015. This new detention regime was imposed in 2019 and was justified by indicating that “reasonable grounds” led to believe that arrivals carry contagious diseases and need to be medically screened (see [Detention](#)).

On 20 November 2020, Greece, Italy, Malta and Spain signed a joint declaration calling for more EU solidarity. The group also stressed the need to boost agreements with third countries to tackle irregular immigration.³⁰

1.1. Arrivals by boat

In 2020, Malta toughened its stance on search and rescue, with multiple events where the Maltese authorities were accused of coordinating returns to Libya with the assistance of the Libyan Coast Guards.³¹ In November 2020, fifty asylum seekers filed constitutional proceedings against the Maltese authorities, calling for an effective remedy for the alleged breach of rights they suffered in a pushback to Libya in April of the same year.³²

In April 2020, Malta effectively shut its sea borders to those arriving by sea and in need of international protection. The government issued a statement indicating that, in light of COVID-19 and the logistical and structural problems for health services associated with the pandemic, Malta could no longer “guarantee the rescue of ‘prohibited immigrants’ on board of any boats, ships or other vessels, nor to ensure the availability of a ‘safe place’ on Maltese territory to any persons rescued at sea”.³³

Malta then started to use private vessels just outside Malta’s territorial waters in order to detain people rescued at sea. The Prime Minister justified it by the need “to protect those migrants who were at the time in the open centres from the risk of contracting the infectious disease”.³⁴

NGOs, and even UNHCR were prevented from accessing the people on said boats,³⁵ despite relentlessly calling on the government to disembark people and stop the *de facto* detention of asylum seekers in inhumane conditions.³⁶ On 6 June 2020, the Maltese government finally announced that the 425 persons detained were authorised to disembark. It is reported that the bad weather and rough conditions at sea, linked with the exasperation of the detained people, convinced the authorities to disembark them, even though the Prime Minister claimed that the disembarkation occurred because the quarantine elapsed.³⁷ Migrants disembarked were detained upon arrival.

In October 2021, a case was filed in front of the Constitutional Court by aditus foundation and JRS Malta on behalf of 32 asylum seekers that were detained on these boats. The applicants claim breaches of the Maltese Constitution, the ECHR and the EU Charter on Human Rights.³⁸

³⁰ Euractiv, ‘Mediterranean axis’ calls for EU solidarity on migration, 26 November 2020, available at: <https://bit.ly/3rbbjIn>.

³¹ See for instance the Dar Es Salam pushback when Malta coordinated the return of 51 people rescued in the Maltese SAR zone and handed over to the so-called Libyan Coast Guards, UNHCR Libya on Twitter, 15 April 2020, available at: <https://bit.ly/2P6nuXi>.

³² Times of Malta, Migrants claim breach of rights, demand damages after Libya pushback, 4 November 2020, available at <https://bit.ly/34wGvtM>.

³³ Statement by the Government of Malta, 9 April 2020, available in Maltese at: <https://bit.ly/2VreEnP>.

³⁴ Times of Malta, ‘128 migrant relocation pledges yet to materialise’, Malta tells EU in letter, 1 May 2020, available at: <https://bit.ly/2OlilFd>.

³⁵ See Aditus, ‘JRS and Integra submissions to the UN Special Rapporteur on the Human Rights of Migrants and to the UN Working Group on Arbitrary Detention’ at: <https://bit.ly/3luk10X> and <https://bit.ly/3tvidHP>.

³⁶ JRS, Integra, Aditus, Our open letter to EU Commissioner Johansson regarding the detention of rescued migrants on private vessels just outside our territorial waters, 16 May 2020, <https://bit.ly/38QzseG>.

³⁷ Malta Today, ‘Update 4: All four boats carrying 425 asylum seekers to dock in Malta’, 6 June 2020, available at: <https://bit.ly/2QbpwWN>.

³⁸ Times of Malta, Migrants claim rights breach when they were detained on boats for weeks, 14 October 2021, available at <https://bit.ly/3zPUNRK>.

Since May 2020 and throughout 2021, the AFM drastically decreased its rescues at sea. NGOs report that Malta is not conducting rescue operations in the Maltese SAR zone south of Lampedusa, and instead relies on merchant vessels and the Libyan coastguard to push boats back to Libya. The authorities are accused of doing their utmost to prevent boats entering the island's SAR zone in line with the Malta-Libya deal concluded in May 2020 and foreseeing the creation of a coordination unit in each country to assist in operations against illegal migration.³⁹ The AFM's definition of 'distress' is also a reason behind the decrease in rescues, as it considers that "any boat that is still moving is not in distress, despite it being overcrowded, and people not having life vests".⁴⁰

An OHCHR report published in May 2021, covering the period from January 2019 to December 2020, confirmed numerous incidents of pushbacks orchestrated by the AFM and the Malta's failure to render prompt assistance to migrants in distress in the central Mediterranean.⁴¹

The Council of Europe Commissioner for Human Rights made the same observations following her visit to Malta in October 2021. In her report published in January 2022,⁴² the Commissioner stresses the need to step up Malta's capacities and ensure effective co-ordination of search and rescue operations, stating that "Disagreements with other member states about disembarkation responsibilities should never be allowed to put human rights – including the right to life – at risk or exempt the authorities from their non-refoulement obligations."

In her report, the Commissioner once more underlined that Libya is not a safe place for disembarkation and called on the Maltese authorities to review their co-operation with the Libyan authorities to curb irregular migration, which is of grave concern in so far as it leads to returns of refugees and migrants to Libya or contributes to other human rights violations. On the topic, the Commissioner stated that "Such co-operation activities must be suspended until clear guarantees of their human rights compliance are in place. Moreover, accountability must be ensured for any returns to Libya occurring as a result of action by the Maltese authorities."

In January 2022, three international organisations accused Libyan militias of committing war crimes against migrants in detention centres and included Malta and Italy in their complaint for their support to Tripoli's coast guard. Denouncing a pocket of impunity "at the gates of Europe," the three NGOs accused Malta and Italy of denying migrants their right to claim asylum in Europe.⁴³

Between 1 January and 31 December 2021, UNHCR recorded 832 sea arrivals to Malta. This is a 63% decrease compared to the same period last year (2,281 sea arrivals to Malta from January to December 2020). Of the 832 persons that arrived in Malta, 63 landed on Malta spontaneously in February and 49 in November. The AFM rescued 14 persons in April, 68 persons in May, 164 persons in July, 48 persons in August, 143 persons in October, 42 in November and 117 in December. Following NGO rescue, 2 persons in February and 8 in August were brought to Malta for medical reasons. In June, 97 persons were rescued by a private boat, and later transboarded onto an AFM boat and brought to Malta. 17 persons were rescued by a merchant vessel and transboarded onto an AFM boat in December. There were no arrivals in January, March or September 2021. Most of the persons arriving by sea were adult men (65%), followed by unaccompanied and separated children (25%), adult women (5%) and accompanied children (5%).

³⁹ Government of Malta, Statement by the Office of the Prime Minister, 28 May 2020, available at <https://bit.ly/34FOcy2>.

⁴⁰ Times of Malta, Drastic drop in asylum seekers reaching Malta, 23 May 2021, available at <https://bit.ly/3qPVN4s>.

⁴¹ OHCHR, Report: A call to safeguard migrants in central Mediterranean Sea, 25 May 2021, available at <https://bit.ly/3KvOEPA>.

⁴² Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at <https://bit.ly/3InhWhS>.

⁴³ Newsbook, Malta accused of crimes against humanity in The Hague, 18 January 2022, available at: <https://bit.ly/3Heamow>.

The main countries of origin for newly arrived individuals were Eritrea (26%), Syria (16%), Sudan (12%) and Egypt (10%).⁴⁴

This section provides a chronological overview of the different arrivals and relevant developments in 2021.

In January 2021, Alarm Phone slammed the AFM for refusing to rescue 90 people in the Maltese SAR zone. The NGO reports that the RCC Malta either doesn't pick up or hangs up their calls immediately.⁴⁵ The same happened in February 2021, when Alarm Phone accused Malta of refusing to rescue 77 migrants at risk of drowning spotted on 20 February. The same had happened on the 19 February for a group of 173 people in two dinghies, which were in Maltese territorial waters.⁴⁶

In March 2021, NGO Sea Watch reports that around 20 persons were intercepted by the Libyan Coast Guards in the Maltese SAR Zone and pulled back to Libya. The NGO reports that after it spotted around 20 persons in distress in the Maltese SAR zone, it overheard an unknown aircraft on the radio, naming itself "European aircraft in the area", exchanging with the merchant vessel Saint George (flying the Liberian flag) which had been ordered by RCC Malta to change its course and monitor the people. An unknown source, allegedly the same unknown aircraft, relayed positions of the people in distress via radio to the Libyan Coast Guard, therefore coordinating a pushback to Libya, according to the NGO.⁴⁷

In April 2021, after it was reported that a group of 110 people may be unaccounted for, the emergency hotline NGO Alarm Phone accused the Armed Forces of Malta of ordering a rescue vessel to leave the scene of the drifting boat the migrants were in. Following these developments, thirty-seven civil society organisations issued a statement over the fate of the 100 persons in distress. The 37 organisations noted that these people were "in distress in Malta's search and rescue zone" in the past days and that a ship that was willing to rescue them "was prevented from doing so by Malta". The AFM later issued a statement that all migrants reportedly stranded at sea had safely reached Italian territory. The AFM insisted that all allegations of boats sinking, left adrift or rescues being hindered were "false and unfounded". The group of NGOs responded that the incident further underlined the lack of information sharing from Maltese authorities, which seemed to have known about the location of the boat since the start. Alarm Phone claimed that the AFM had already been caught in the past providing fuel to vessels in distress, for them to be able to reach the Italian territory.⁴⁸

On 1 May 2021, rescuers retrieved 97 people who had been drifting on a wooden boat in Malta's SAR zone without fuel and food, many crammed below decks. The rescue ship Sea Watch, which carried out the operation, said Maltese authorities had informed them they were keeping the boat under observation, but had not deemed it necessary to intervene and invited the NGO to carry the rescue in cooperation with their flag State.⁴⁹

On 14 and 15 June 2021, six nautical miles off Malta's search and rescue zone, some 270 migrants were rescued by the merchant vessel Vos Triton in international waters and handed over to the Libyan coastguard. IOM and UNHCR condemned the operation and reiterated that no one should be returned to Libya after being rescued at sea. They stressed that, under the international law of the sea, rescued individuals should be disembarked at a place of safety.⁵⁰

⁴⁴ UNHCR, Malta Fact Sheet, December 2021, available at: <https://bit.ly/3lZf2Ai>

⁴⁵ Times of Malta, Editorial: Not in a position to respond, 9 January 2021, available at <https://bit.ly/3G8UGDe>.

⁴⁶ Times of Malta, AFM refusing to rescue drowning migrants - Alarm Phone, 21 February 2021, available at: <https://bit.ly/3qUajbr>.

⁴⁷ Sea Watch, Airborne Monthly Factsheet March 2021.

⁴⁸ Times of Malta, AFM says 110 migrants have reached Italian territory, 6 April 2021, available at: <https://bit.ly/3zAba4U>.

⁴⁹ Times of Malta, 97 rescued from wooden boat drifting in Malta's SAR, 1 May 2021, available at: <https://bit.ly/3G8wjWI>.

⁵⁰ IOM, IOM and UNHCR Condemn the Return of Migrants and Refugees to Libya, 17 June 2021, available at: <https://bit.ly/3r1juqo>.

On 16 June 2021, 97 migrants rescued by a Turkish cargo ship were disembarked in Malta following "intense" talks between the Maltese and Turkish foreign ministries. The migrants were rescued by the Marshall Islands-flagged cargo vessel, M/V Ugur Dadayli.⁵¹

On 17 June 2021, a group of 86 migrants narrowly avoided being taken back to Libya when the charity boat Nadir which picked them up in Malta's SAR zone refused to hand them over to the Libyan coastguard. Malta's Rescue Coordination Centre told the Nadir that a merchant vessel was in the vicinity and on its way to support it, but the vessel never arrived, and the Libyan Coastguard showed up instead. The Libyan Coastguard vessel eventually left, and the Maltese RCC instructed Nadir to take the migrants to the closest port. However, the 19-metre sailing boat could not handle 86 people, and it continued to request support from Maltese authorities. The migrants were later transferred to an Italian patrol vessel which took them to Italy.⁵²

In July 2021, the Sea Watch identified 741 people in distress in the Maltese SAR Zone. 44 were rescued by the NGO vessel Ocean Viking and disembarked in Italy, 312 persons arrived to Europe independently or were rescued by Italian authorities and disembarked in Italy, 30 persons were intercepted within the Maltese SAR zone by the Libyan Coast Guard and pulled back to Libya and 1 boat of 81 persons was rescued by the Armed Forces of Malta and disembarked in Malta. The sort reserved to 13 other boats, carrying around 274 persons, remain unknown.

On 2 July 2021, authorities in Malta allegedly did not respond to a call to rescue a group of migrants in distress at sea, that included a child with a disability.⁵³

On 14 July 2021, the Armed Forces of Malta rescued 81 migrants stranded in a boat in Malta's search and rescue area, including three who were found dead, probably due to dehydration, exhaustion and a possible heatstroke. Sea-Watch says it first raised the alarm about the drifting migrant boat early on the day before. It said that although it had located three ships near the boat in distress, Malta ordered at least one of the ships not to intervene and to await further instructions.⁵⁴

On 26 and 28 July 2021, two groups of 46 and 37 asylum seekers were rescued by the AFM and brought to Malta.⁵⁵

In August 2021, Sea Watch identified 332 people in distress in the Maltese SAR Zone, 26 persons were rescued by the NGO vessel Sea-Watch 3 and disembarked in Italy, and 115 persons were rescued by the Italian authorities or arrived independently in Lampedusa, Italy. The outcome for 9 boats in distress, with around 191 persons, remains unknown. The AFM participated in one rescue operation in Libyan SAR zone, rescuing 43 people. 6 boats in distress, with around 302 persons, in the Libyan SAR zone were intercepted and pulled back to Libya by the Libyan Coast Guard.

On 2 August 2021, around 400 migrants, among which were women, children and people with medical conditions, drifting on three wooden boats in Malta's SAR, were left out at sea for at least 24 hours. Alarm Phone reported having attempted to contact Malta's Rescue and Coordination Centre to alert them of the distress cases since 1 August, without being answered.⁵⁶

⁵¹ Times of Malta, Malta accepts 97 migrants rescued by Turkish cargo ship, 16 June 2021, available at <https://bit.ly/3HHrEeh>.

⁵² Times of Malta, Charity boat refuses to hand asylum seekers in Malta's SAR to Libyan Coastguard, 17 June 2021, available at <https://bit.ly/3n6GyTD>.

⁵³ EU Observer, Malta refuses to help rescue involving disabled children, 2 July 2021, available at: <https://bit.ly/3tpeRcu>.

⁵⁴ Times of Malta, three people found dead as AFM rescues 81 migrants at sea, 14 July 2021 available at: <https://bit.ly/3tlw9HR>.

⁵⁵ Times of Malta, 37 migrants rescued and brought to Malta, 28 July 2021, available at: <https://bit.ly/3n7bi6S>.

⁵⁶ Times of Malta, 'People can be heard screaming' – AFM urged to save 400 in Malta's rescue zone, 2 August 2021, available at: <https://bit.ly/3F3P384>.

Eventually on 3 August 2021, one of the boats, with 41 asylum seekers on board, was rescued and brought to Malta along with two people in critical condition, evacuated from a charity boat during the night.⁵⁷ Sea Watch reported that for what concerned the rest of the 6 boats identified, carrying an estimated 537 people, one was rescued by the NGO vessel Sea-Watch 3 and disembarked in Italy, three were rescued by Italian authorities and disembarked in Italy and one was intercepted by the Libyan Coast Guard and pulled back to Libya.⁵⁸

On 23 August 2021, Sea Watch reported having identified 28 people in distress in the Libyan SAR zone, the Libyan Coast Guard heading towards their position. The NGO vessel Nadir attended to the boat in distress, stabilizing the situation – and hence possibly managed to avoid an interception by the Libya Coast Guard. In the end, Italian authorities rescued the people on board.⁵⁹

On 27 August 2021, Sea Watch identified a wooden boat that had capsized, with around 20 persons sitting on the hull and several persons with life vests in the water. A mayday relay was immediately sent out. The closest merchant vessels in the vicinity, Asso Venticinque and Asso Trenta, both flying the Italian flag, as well as the oil platform Sabratha, were unresponsive. A Turkish military aircraft notified via radio to the Sea Watch that the Maltese RCC was informed about the situation. One and a half hours after the first sighting, a Libyan Coast Guard patrol boat, with around 150 persons already on its deck, was heading to the position, and ordered the merchant vessel Asso Venticinque to proceed towards the people. While the Libyan Coast Guard started intercepting people involved in the shipwreck, the Asso Venticinque changed course towards people in distress in the water. The merchant vessel agreed to the transshipment of the 2 rescued people to the Libyan ships due to an alleged need for “medical assistance”. 34 persons brought back to Libya by the Libyan Coast Guard.⁶⁰

Throughout the month of September, the NGO SeaWatch estimated that 311 persons happened to be in distress in the Maltese SAR zone. Four boats, around 240 persons were rescued by the Italian authorities or arrived independently and disembarked in Italy, two boats, with 71 persons, were rescued by NGOs and disembark in Italy. Maltese authorities did not participate in any rescue operation.

SeaWatch reported that, on 13 September 2021, Frontex likely coordinated an interception and pushback to Libya carried out by the Libyan Coast Guard. The NGO observed the track of Frontex’s drone and noticed that it was orbiting in the Libyan SAR zone near the Maltese SAR competence area. Around one hour later, SeaWatch found the Libyan Coast Guard’s patrol boat in the vicinity with around 200 persons on the deck, heading at full speed towards Tripoli. People on the boat were hence likely pushed back to Libya.⁶¹

In October 2021, SeaWatch reported that 87 people were rescued by the Italian Coast Guard in the Maltese SAR zone, while 137 others were intercepted and pulled back by the Libyan Coast Guard before reaching the Maltese SAR zone.⁶² No rescues were carried out by the AFM.

On 2 November 2021, a group of 49 people was rescued after being stranded on rocks on Maltese shore. The AFM gave assistance to the group of 39 men, 4 women and 6 children and took a pregnant woman to hospital. The group appeared to have reached the shore without assistance and was waiting for help on the rocky coastline.⁶³

⁵⁷ Times of Malta, Boat of asylum seekers, two seriously ill migrants, brought to Malta, 3 August 2021, available at: <https://bit.ly/3q2DYzM>.

⁵⁸ Sea Watch, Airborne Monthly Factsheet August 2021, available at: <https://bit.ly/3t6MYpQ>.

⁵⁹ Ibidem.

⁶⁰ Ibidem.

⁶¹ Sea Watch, Airborne Monthly Factsheet September 2021, available at: <https://bit.ly/3eWOXEO>.

⁶² Sea Watch, Airborne Monthly Factsheet October 2021, available at: <https://bit.ly/3rxZNaH>.

⁶³ Times of Malta, 49 migrants, including pregnant woman, rescued from Għar Lapsi rocks, 2 November 2021, available at: <https://bit.ly/3HJmTB3>.

On 3 November 2021, the Sea-Eye and Mission Lifeline aid organisations on their vessels Sea-Eye 4 and Rise Above rescued around 400 people from on a sinking boat in Malta's SAR zone. Alarm Phone first raised the alarm and said the authorities in Malta had failed to respond to any of their calls for assistance.⁶⁴

On 24 November 2021, a woman died after a group of 43 migrants were rescued at sea by the AFM. The group of 43 people reportedly were stranded at sea in the Maltese SAR zone for 10 days and suffered from ill health and exhaustion when they were rescued by the AFM. Twelve women and two children were among the group.⁶⁵ Survivors reported that 12 people died before the AFM arrived.

On 25 November 2021, a group of 430 people facing shipwreck off Tunisia, but in Malta's search and rescue area, were taken in by Tunisia, at least 3 people died.⁶⁶ The same day, Alarm Phone reported the illegal pushback of a boat carrying 85 people to Libya from Malta's SAR zone. After being shot by the Libyan Coastguard 20nm within Malta's SAR zone, the boat was illegally forced back to Libya.⁶⁷

On 21 December 2021, Alarm Phone alerted Maltese authorities about 25 migrants stranded at sea in Malta's search and rescue zone. The NGO said Maltese authorities refused responsibility or were not reachable. The Church in Malta appealed to the government not to abandon these migrants, as well as 70 more who Alarm Phone reported to be stranded at sea on 20 December, and even offered them shelter in homes of its property. The AFM turned down the migrants' request for assistance and declared: "Malta is not in a position to provide you with a place of safety." On 23 December, 214 migrants were offered a port of safety in Sicily after they were denied access to Malta.⁶⁸

The criminalisation of people rescuing migrants at sea by Maltese authorities has also been a source of concern in recent years. Two significant cases were reported in 2019:

The Police vs Claus Peter Reisch (2018)

Claus-Peter Reisch was the Captain of the MV Lifeline, the rescue vessel of the German NGO Mission Lifeline, when it rescued 234 migrants in the Mediterranean in June 2018, leading to an international dispute and days-long stand-off as EU Member States could not agree over who would be the responsible State to take in the migrants. After an agreement was reached, Malta accepted the disembarkation but immediately charged the captain by accusing him of entering Maltese waters with a ship that had not been appropriately registered and impounded the ship.

In May 2019, the Court of Magistrates in Malta concluded that the registration "was not to the satisfaction of the Dutch authorities" when the vessel entered Maltese waters and fined the Captain €10,000 for registration irregularities.⁶⁹ Nevertheless, the magistrate also strongly reiterated that saving the lives of migrants out at sea was not a crime. The Court turned down a request by the authorities for the boat to be confiscated, on the basis that the vessel was not the property of the accused.⁷⁰

⁶⁴ Times of Malta, Rescue ship saves 400 people from leaking boat in Malta's search area, 4 November 2021, available at: <https://bit.ly/3JRu2kP>.

⁶⁵ Times of Malta, Woman dies after army rescues 43 migrants at sea, 24 November 2021, available at: <https://bit.ly/3qVExL7>.

⁶⁶ Times of Malta, 430 people facing shipwreck being taken in by Tunisia, 25 November 2021, available at: <https://bit.ly/3G9RsPZ>.

⁶⁷ Information provided by alarm phone, 15 November 2021, available at: <https://bit.ly/3KmNiqI>.

⁶⁸ Times of Malta, Silent Night: AFM tight-lipped as 25 people await rescue at sea, 24 December 2021, available at: <https://bit.ly/3f1gCo4>.

⁶⁹ Court of Magistrates, IL-PULIZIJA vs CLAUD PETER REISCH, 20/2019, 14 May 2019, available at: <https://bit.ly/2VtrfWo>.

⁷⁰ European Database of Asylum Law, Malta: Judgment in case against Captain of MV Lifeline, 14 May 2019, available at: <https://bit.ly/2UxTVx3>.

Claus Peter Reisch immediately appealed the decision and the Court of Criminal Appeal finally cleared him of all charges in January 2020.⁷¹

Amnesty International welcomed the final decision but stated that such “criminal prosecution against a human rights defender initiated in highly politicised circumstances was defeated, but not before having caused the lifesaving activities of a small NGO to stop for some 18 months and having put considerable financial strain on the accused and the NGO”.⁷²

El Hiblu

The second case is still on-going. In March 2019, a group of 108 migrants escaping Libya were rescued by the merchant vessel “El Hiblu 1” within the Libya SAR zone, but outside its territorial waters. At first, the ship continued towards Libya but changed its course shortly before reaching the Libyan coast, and headed instead towards Europe. A Maltese special operation unit boarded the ship and disembarked the migrants in Malta. Upon arrival, the authorities arrested five asylum-seekers and subsequently charged three of them – all teenagers - on suspicion of having hijacked the ship which had rescued them, so as to prevent the captain from returning them to Libya. The three teenagers were immediately detained in the high-security section of prison for adults and charged with very serious offences, some falling under anti-terrorism legislation and punishable with life imprisonment.⁷³

The three teenagers were released on bail in November 2019 and remain in Malta, pending their criminal proceedings. The case is still at pre-trial stage, with the three individuals still awaiting the final bill of indictment to be filed by Malta’s Attorney General, they could be charged with terrorism-related offences and face up to 30 years of imprisonment. The Platform of Human Rights Organisations in Malta stated that the treatment received by the three boys was disrespectful and undignified and that their vulnerability as minors and young men was never taken into account by the authorities.⁷⁴ Although two of them were unaccompanied minors, all steps of the criminal proceedings were taken without the issuing of the required Care Order and, hence, without the appointment of a legal guardian.

The case is followed closely by the Office of the UN High Commissioner for Human Rights which urged Malta to reconsider the severity of the charges, and by Amnesty International which publicly stated that “the severity of the nine charges currently laid against the three youths appears disproportionate to the acts imputed to the defendants and do not reflect the risks they and their fellow travellers would have faced if returned to Libya. The use of counter-terrorism legislation is especially problematic”.⁷⁵ This case

⁷¹ Court of Criminal Appeal, IL-PULIZIJA vs REISCH CLAUS PETER, 150/2019, 07 January 2020, available at: <https://bit.ly/3esqsOm>.

⁷² Amnesty International, *Europe: Punishing compassion: solidarity on trial in fortress Europe*, March 2020, available at: <https://bit.ly/2JaUfMX>. One aged 15 at the time from Ivory Coast, and two aged 16 and 19 at the time from Guinea.

⁷³ Pending a formal indictment, the three teenagers have been charged with: - Act of terrorism, involving the seizure of a ship (Art.328A(1)(b), (2)(e), Criminal Code). - Act of terrorism, involving the extensive destruction of private property (Art.328A(1)(b), (2)(d), (k) Criminal Code). - “terrorist activities”, involving the unlawful seizure or the control of a ship by force or threat (Art.328A(4)(i) Criminal Code). - Illegal arrest, detention or confinement of persons and threats (Artt.86 and 87(2) Criminal Code). - Illegal arrest, detention or confinement of persons for the purpose of forcing another person to do or omit an act which if voluntary done, would be a crime (Art. 87(1)(f) Criminal Code). - Unlawful removal of persons to a foreign country (Art.90 Criminal Code). - Private violence against persons (Art. 251(1) and (2) Criminal Code). - Private violence against property (Art.251(3) Criminal Code). - Causing others to fear that violence will be used against them or their property (Art.251B Criminal Code).

⁷⁴ Platform of Human Rights Organisations in Malta, Submissions to the Committee on the Rights of the Child, 81st session, 2019, available at: <https://bit.ly/2JeiWlg>.

⁷⁵ Amnesty International, *Malta: The El Hiblu 1 Case: Three Teenagers in the Dock for Daring to Oppose Their Return to Suffering in Libya*, 23 October 2019, available at: <https://bit.ly/34T5dRi>; UN High Commissioner for Human Rights, *Press briefing note on Malta*, 7 May 2019, available at: <https://bit.ly/2XUEbY8>.

was taken up by Amnesty International as part of their international campaigning,⁷⁶ as well as by several other Maltese and international NGOs.⁷⁷

In March 2021, on the second anniversary of the of the three young migrants' arrival in Malta, the coalition launched several advocacy initiatives, including a letter of 26 MEPs,⁷⁸ addressed to the Attorney General of Malta, demanding a termination of the proceedings. The campaign also counted statement by the European Democratic Lawyers,⁷⁹ signed by 21 international legal associations, a press release from the Migrants Commission, JRS Malta and the Justice and Peace Commission,⁸⁰ and a statement requesting the immediate termination of prosecuting the #ElHiblu3 signed by 29 international Human Rights Groups.⁸¹ Several reports were written in Times of Malta, DER SPIEGEL, BBC, Aljazeera.⁸²

A hearing was held on 21 May 2021, where two of the seven witnesses who were among the more than 100 people aboard the El Hiblu 1 at the time of the alleged offence presented their testimonies. According to the witnesses, the role of the three accused was to act as translators and – in coordination with the captain of the vessel – to calm down the hungry and cold people aboard, some of whom were panicking over their possible return to Libya and considering jumping overboard. The defence team requested the removal of the translator, Dr Anthony Licari, as the lawyers claimed he was not translating the version of events given by the witness in a faithful manner and the witnesses struggled to understand him.⁸³

During a following hearing held on 24 June 2021, another witness told the court that the accused helped calm rescued migrants who were 'screaming and crying' and wanted to jump into the water when they realised that they were being returned to Libya. He denied claims that the youths had been carrying weapons when they went to speak to the captain. Translation remained an issue, as several witnesses who were appointed a francophone translator declared not being completely fluent in French their preference for speaking Bambara. Since the interpreter confirmed under oath that the witness was "fully understanding the interpreter's French and was replying consistently in French, and was confirming with the interpreter repeatedly that he understands French, is duly convinced that the witness is capable of testifying in French" however, the court ordered that the witness continue to provide information in such language.⁸⁴

During the hearing held on 13 October 2021, the wife of one of the accused told the court she did not hear any fighting between the three accused and the captain. At the same time, she was fined for contempt of Court as she was asked a question multiple times by the court but did not reply. One of the accused was also fined for contempt because he arrived late to the hearing.⁸⁵

On 18 November 2021, the Court ordered officials to update the list of people rescued at sea by the tanker El Hiblu including their current whereabouts. This was after representatives of AWAS and the Ministry for Home Affairs, National Security and Law Enforcement testified that they were not able to provide comprehensive information relating to the list of those rescued, together with their contact details. The

⁷⁶ Amnesty International, 'Demand justice for the El Hiblu 3', available at: <https://bit.ly/3lq3jQu>.

⁷⁷ For more information see 'The El Hiblu 3' at: <https://bit.ly/3s02nVr>.

⁷⁸ The letter from the MEPs is available at: <https://bit.ly/3Hj9Ohk>.

⁷⁹ AEUR, Justice for El Hiblu 3, 28 March 2021, available at <https://bit.ly/3HYsHa4>.

⁸⁰ Migrants Commission, Authorities asked to drop terrorism charges against the El Hiblu teenagers, 27 March 2021, available at <https://bit.ly/3GkVchR>

⁸¹ Common Statement, Free the ElHiblu3! End the Trial!, available at: <https://bit.ly/3BR7EEEn>.

⁸² For more information, see: <https://bit.ly/3shTXLN>.

⁸³ Maltatoday, El Hiblu three: Court told accused were a calming influence on rescued migrants, 21 May 2021, available at <https://bit.ly/3zObWeG>.

⁸⁴ Maltatoday, El Hiblu hijack: rescued migrant tells court he saw no weapons, 24 June 2021, available at <https://bit.ly/3FjrtVc>.

⁸⁵ Maltatoday, El Hiblu 3: Witness and accused fined for contempt, 13 October 2021, available at <https://bit.ly/3MM7Fia>.

court is trying to hear the testimony of every migrant involved in the 2019 sea rescue, even if it involved more than 100 people in total.⁸⁶

During another hearing held on 3 February 2022, a witness declared that it was the captain of the oil tanker El Hiblu who approached the three men accused of hijacking it, calling them into his cabin after seeing them calming down the panicking migrants it had rescued. A delegation from Amnesty International also attended. The delegation had reportedly asked for a meeting with the Attorney General, to push for dropping the terrorism charges against the men, but told the press that they had not yet received a reply.⁸⁷

In October 2021, a new initiative called the “ElHiblu 3 Freedom Commission” was launched. It aims at strengthening the action demanding freedom for the ElHiblu3 which was started by a coalition of activists, legal practitioners, and human rights advocates, the “Free the El Hiblu 3-Campaign”.⁸⁸

1.2. Criminalisation of asylum seekers arriving by air

Concerns have been raised in recent years in Malta regarding the criminalisation by the authorities of the use of false documentation by asylum-seekers in their attempt to enter Malta. Asylum seekers entering Malta with fake documents are brought before the Magistrates Court (Criminal Judicature) and in most cases condemned to serve a prison sentence. The prosecutions are based on the Maltese Criminal Code in its Article 189⁸⁹ and the Immigration Act in its Article 32 (d),⁹⁰ which foresee the use of false or forged documents as invariably constituting a criminal offence, with no exception for refugees in law, practice or jurisprudence. In the past years, several cases of applicants for international protection imprisoned and convicted for that reason have been reported, including cases of very young individuals. NGOs expressed their concern over the situation as this criminalisation goes against the provisions of the 1951 Geneva Convention and penalises persons opting not to risk their lives at sea.⁹¹ Unless a lawyer or an NGO assists them, it is unlikely these individuals will be given the chance to lodge their international protection application before the end of their sentence.

In 2021, 34 migrants were convicted to prison sentences on the basis of these Articles. This number however does not include minors, as information on this regard is not made public.⁹² People arrested are brought before the Court of Magistrates (Criminal Jurisdiction) to face charges. During this time, pending the case, the person would be remanded in custody at **Corradino Correctional Facility** for the entire duration of the criminal proceedings, which generally last for about one to two months from the date of institution of proceedings. The accused will be entitled to request the appointment of a legal aid lawyer, or to avail him or herself of a private lawyer should he or she have access to one. If found guilty, the Court may sentence the asylum seeker to either a fine of not more than around €12,000 or a maximum imprisonment term of two years, or for both the fine and imprisonment. It is noted that decisions are largely unpredictable, as some individuals have also been sentenced to imprisonment yet with a suspended sentence for a number of years.

⁸⁶ Maltatoday, Court cannot locate all witnesses rescued in El Hiblu ‘hijack’ case, 19 November 2021, available at: <https://bit.ly/3HZNNUW>.

⁸⁷ Maltatoday, El Hiblu captain approached the accused, court told as controversial hijack case continues, 3 February 2022, available at: <https://bit.ly/365lgPC>.

⁸⁸ See: <https://bit.ly/3qfYVaK>.

⁸⁹ “Whosoever shall commit any other kind of forgery, or shall knowingly make use of any other forged document, not provided for in the preceding articles of this Title, shall be liable to imprisonment for a term not exceeding six months”.

⁹⁰ “Any person who [...] forges any document or true copy of a document or an entry made in pursuance of this Act”.

⁹¹ Aditus foundation, Blogpost: Prosecution and imprisonment of refugees entering Malta using false documents, 29 July 2021, available at: <https://bit.ly/3rcqt00>.

⁹² Information available on Malta’s ‘ecourt’ online system at: <https://bit.ly/3toni7J>.

On June 2021, thirteen Bangladeshi nationals were jailed for six months each after they were caught trying to enter Malta with fake passports they had purchased from Greece.⁹³

On 28 July 2021, two Turkish mothers were sentenced to 6 months in jail after admitting to using forged travel documents. They were separated from their children who were put in the care of the State. This judgement quickly sparked the outrage of the public opinion,⁹⁴ which probably contributed in seeing the sentence overturned in appeal, where the judge upheld the 6 months sentence but suspended it for two years. The appeal Court refused to pronounce itself on the first argument raised by the defence attorney, based on article 31 of the 1951 Convention which prohibiting member States to impose penalties on a refugee entering a country without authorization as the Court “does not have jurisdiction to decide whether the two women are eligible for asylum or refugee status”. The judge followed the second argument raised, namely the presence of young children and the excessive punishment of their mothers and decided to suspend the sentence declaring that “true equal treatment does not always mean treating everyone in the same way”.⁹⁵

On 7 October 2021, criminal sanctions against a Syrian man found in possession of forged travel documents were annulled on appeal after it was found by the Court that principal immigration officer had no power to prosecute even if in the rank of inspector,⁹⁶ thus shedding a new light on the requirements to prosecute such individuals but not stopping the practice. However, it appeared that many asylum seekers previously convicted of similar offences were prosecuted in the same manner and therefore should not have been jailed.

On 15 November 2021, an Afghan mother, hoping to join her family in Germany in search of a better future for herself and her 10-year old son, was spared jail after she was caught travelling with forged documents. The prosecution itself suggested a suspended sentence in view of the fact that the woman was the mother of a young child. The judge confirmed the woman’s guilt upon her own admission but handed her an eight-month jail term suspended for three years.⁹⁷

It is difficult to assess how many asylum seekers are currently held in prison on the basis of such convictions. NGOs and lawyers reported that several individuals, mostly from countries of origin listed as safe in the IPA Act, are sent to detention in Hal Safi directly after they finish their prison sentence due to their asylum claim not being processed at all beforehand.

1.3. Relocation

Relocations from Malta happen on an *ad hoc* basis since 2019, involving non-binding, informal agreements with other EU Member States. This practice prevented many asylum seekers from having access to the asylum procedure and even to the territory of Malta for the time needed to secure the agreement of other EU Member States to take in a number of rescued persons on an *ad hoc* basis. Moreover, COVID-19 and applicable travel restrictions hindered the possibility to carry out relocations in 2020.

To illustrate, those to be relocated to other Member States were not allowed to lodge an asylum application in Malta and were not given any information on how to do so, even though some Member

⁹³ Times of Malta, Fake passport holders get jail sentence, 26 June 2021, available at: <https://bit.ly/33rZMfi>.

⁹⁴ aditus foundation, This is not Justice! Statement on the prosecution and imprisonment of two Turkish women for use of false documents, 5 August 2021, available at: <https://bit.ly/3zX9Ucj>.

⁹⁵ Times of Malta, Appeal court frees Turkish mothers who were separated from their children, 28 July 2021, available at: <https://bit.ly/3Fk1VXI>.

⁹⁶ Times of Malta, Appeal sheds new light on prosecution of forged travel document charges, 7 October 2021, available at: <https://bit.ly/3qhm6l3>.

⁹⁷ Times of Malta, Afghan mother spared jail over fake passports, wants to join family in Germany, 15 November 2021, available at: <https://bit.ly/3qffh3q>.

States' authorities have deployed officers to interview them in the Initial Reception Centre Marsa (IRC).⁹⁸ This also meant that Dublin procedures could not be initiated. Moreover, having no access to the procedure, these potential asylum seekers were systematically (*de facto*) detained (at times for prolonged periods of time) in detention centres, without any individual assessment of the legality of their detention being conducted. They also had limited access to assisting NGOs and lawyers and lacked information regarding the rights and obligations of asylum seekers prescribed by Maltese and EU law. Instances were noted of some asylum seekers being left in a form of limbo and, despite being channelled into the relocation route, were never actually selected, or taken up by the Member States participating in the specific relocation exercise.

In 2020, IOM Malta supported the voluntary relocation of 270 people from Malta, including 28 children under the age of 12.⁹⁹ In 2021, 238 people were relocated from Malta to other European Countries.¹⁰⁰

Legal access to the territory

No incoming relocation scheme, resettlement or humanitarian visa exist in the case of Malta. In practice, a significant number of migrants benefit from a Single Work Permit, which authorizes third-country nationals to legally reside and take up employment in Malta for a defined period, which may be further renewed. Applications for a residence permit have to be endorsed by the employer and the permit would cease to apply if the applicant was to leave the previously specified employment.

Family members of beneficiaries of refugee status can apply to family reunification (See section on [Family reunification](#)).

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? Yes No
 ❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? Yes No
 ❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? Yes No
4. Is the authority with which the application is lodged also the authority responsible for its examination? Yes No
5. Can an application be lodged at embassies, consulates or other external representations? Yes No

The authority responsible for registering asylum applications in Malta is the former Office of the Refugee Commissioner (RefCom) now known as the International Protection Agency. The IPA is also the authority responsible for taking decisions at first instance on asylum applications (see: [Number of staff and nature of the determining authority](#)).¹⁰¹

⁹⁸ Le Monde, 'Pour les 58 migrants débarqués de l'« Aquarius » à Malte, l'île est « comme une prison »', 2 October 2018, available in French at: <https://bit.ly/3v8ppuy>.

⁹⁹ IOM, EU Voluntary Relocations from Malta Top 270 People in 2020 amid COVID-19, 22 December 2020, available at: <https://bit.ly/3clk9Gb>.

¹⁰⁰ Information provided by the Policy Development and Programme Implementation Directorate, Ministry for Home Affairs, National Security and Law Enforcement, January 2022.

¹⁰¹ Article 4(3) International Protection Act.

The law no longer provides for time limits for an asylum seeker to apply for international protection and it also specifies that the Commissioner shall ensure that applications are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.¹⁰²

Since 2019, the registration process was severely affected due to an increase in new arrivals and the vast majority of applicants for international protection being detained upon arrival. This created major delays whilst asylum-seekers remained detained in the IRC or Safi barracks for up to several weeks or months pending the registration of their applications. The situation further deteriorated in 2020 due to the systematic detention of all asylum-seekers arriving irregularly in Malta and the IPA's closure from 12 March 2020 and 25 May 2020 due to the pandemic. As arrivals decreased in 2021, the IPA was able to register applicants within faster timeframes.

EASO has been providing support to the IPA since 2019.¹⁰³ In 2021, EASO registered at total of 1,190 applicants for international protection, mainly from **Syria, Sudan and Eritrea**.¹⁰⁴ This indicates that EASO plays a crucial role in registering the large majority of applicants in Malta and is due to the fact that most applicants are detained upon arrival, i.e. registration mainly takes place in detention centres where only EASO is operating under the supervision of the IPA.

In 2020, asylum-seekers who arrived regularly and who expressed a wish to apply for protection when the IPA was closed due to COVID-19 were requested to send an email indicating basic information (name, surname, date of birth, arrival in Malta, nationality, family situation, address in Malta). They were later contacted and given an appointment to formally register their application. In the meantime, confirmation by the IPA by email could be used as a proof of an asylum-seeker status.¹⁰⁵

For the registration and lodging phases, support is given through the deployment of experts. In particular, IPA is supported by EASO to register applicants within the premises of the detention centre at Safi barracks. EASO also assists IPA with the implementation of *ad hoc* relocation through the matching process and it appears that asylum-seekers to be relocated are prioritised for registration.

With respect to asylum seekers who arrive documented but who do not express a wish to apply for asylum to the immigration officials present or who become refugees *sur place*, problems may arise as a result of the fact that they could not readily know how or where to apply for asylum.

Applications must be made at the IPA premises. Any person approaching any other public entity, particularly the Malta Police Force, expressing his or her wish to seek asylum, will be referred to the IPA.

Unaccompanied children need legal guardians to submit an asylum application. The 2020 Minor Protection (Alternative Care) Act replaced earlier legislation on the protection of children in need of care and support, including unaccompanied and/or separated children. It introduced a judicial procedure where the Court is now in charge of appointing a legal guardian and a child advocate. So far, the act is not fully implemented the vast majority of minors were not appointed legal guardians. This results in minors having their asylum procedure put on hold for months.

No data was provided recently, but as of 31 October 2020, 1,350 persons were awaiting the registration of their asylum application.¹⁰⁶

¹⁰² Regulation 8(1) Procedural Regulations.

¹⁰³ EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

¹⁰⁴ Information provided by EUAA, 28 February 2022.

¹⁰⁵ Information provided by the IPA, June 2020.

¹⁰⁶ EASO, 2021 *Operating plan agreed by EASO and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance at the end of 2021: | 3265 |

In 2021, the IPA received 1,281 applications, nearly half than in 2020 (2,419 applications) and close to one quarter if compared to 2019 (4,021 applications).

EASO reported that, at the end of June 2021, around 3,500 cases were awaiting a first-instance decision, while 4,200 cases were reported as pending at all instances. The higher outflow in 2021 reversed the backlog increase of late 2020, reaching the springtime levels of the year before. The top 5 nationalities in terms of pending cases at first instance coincided to a large extent with those lodging applications (Sudan 24%, Syria 10%, Eritrea 9%, Somalia 8%, and Libya 7%). Despite the decreasing caseload, these five nationalities still accounted for more than half of all pending cases (58%). While decreasing in volume, the age of the backlog continued to grow in 2021, with every four out of five cases (82%) at first instance pending for 6 months or more. The nationalities with the highest proportions of old cases and counting at least 100 pending cases at the end of June 2021 were Mali (95%), Ivory Coast (91%) and Nigeria (90%). At the end of the year, 3,265 cases were still pending¹⁰⁷.

According to the Procedural Regulations, the IPA shall ensure that the examination procedure is concluded within six-months of the lodging of the application. The director may extend this time limit for a period not exceeding nine months for limited reasons: when complex issues are involved, when a large number of third-country nationals simultaneously apply for international protection or when the delay can clearly be attributed to the failure of the applicant to comply with his obligations.¹⁰⁸

The examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.¹⁰⁹

When a decision cannot be made by the IPA within six months, the applicant concerned shall be informed of the delay and receive information on the time frame within which the decision on his application is to be expected. However, such information does not constitute an obligation for the Agency to take a decision within that time frame.¹¹⁰

Most of the IPA's decisions are, in practice, not taken before the lapse of six months. According to the IPA, the average length of the asylum procedure was 263 days in 2020 (from the date of the lodging which can take place months after arrival). Moreover, asylum procedures were suspended due to COVID-19 between 12 March and 25 May 2020. During that period, cases were not processed and interviews were not carried out. The average length of the asylum procedure in front of the IPA was of 94 days in 2021.

¹⁰⁷ EASO, 2022-2024 Operating plan agreed by EASO and Malta, 16 December 2021, available at: <https://bit.ly/3LUHhJ>, 15-19.

¹⁰⁸ Regulation 6(4) Procedural Regulations.

¹⁰⁹ Regulation 6(6) Procedural Regulations.

¹¹⁰ Regulation 6(7) Procedural Regulations.

This relatively low number must however be read carefully, since it only refers to applications which were made in 2021.

Applicants channelled through the regular procedure and free from detention may wait for more than a year just to be called to a personal interview. Those in detention and channelled through the accelerated procedure, mainly due to their country of origin, can receive a decision within six months. However, due to a decrease in arrivals, detained applicants channelled through the accelerated procedure now see their asylum procedure being decided within a few weeks and are generally unable to seek any legal aid before they receive a rejection decision. The IPA indicated that it does not keep records of detained applicants; it is therefore common for the IPA to simply be unaware that an applicant is being detained, which consequently creates additional delays in the procedure.

Since June 2019, EASO supports the IPA in the examination of asylum applications by conducting the interviews and preparing opinions recommending a first instance decision. Claims are processed on both admissibility and merits. In 2021, EASO caseworkers carried out a total of 973 interviews and drafted a total of 911 concluding remarks. The main three nationalities interviewed and processed by EASO staff were **Sudan**, **Eritrea** and **Nigeria**.¹¹¹

Interviews and opinions, as well as decisions taken by the IPA, are written in English.

1.2. Prioritised examination and fast-track processing

The IPA may decide to prioritise an examination of an application for international protection only when the application is likely to be well-founded and when the applicant is vulnerable or is in need of special procedural guarantees, in particular unaccompanied children.¹¹²

The IPA confirmed that applications lodged by applicants claiming to be **Bangladeshi** nationals or Moroccan nationals have been prioritised in 2019.¹¹³ No official information is available for 2020 but lawyers assisting asylum-seekers report that it is still the case in 2020 for **Bangladeshis**, **Moroccans**, and **Ghanaians**, as these cases are processed when applicants are still in detention. As of 2021, new nationalities seem to be prioritised, such as Ivorians and Egyptians.

Such cases are generally rejected as manifestly unfounded, despite having been examined after a personal interview and a full assessment of the claim on the merit. When channelled through the accelerated procedure, applicants are not entitled to appeal and are usually immediately issued a return decision together with a detention order. Therefore, in 2021, applicants to which this procedure was applied were not released from detention after the final decision on their asylum application and remained in detention awaiting a possible return.

Moreover, applicants who applied for protection after being issued a removal order by Immigration Police are also prioritised.¹¹⁴

Following the crisis of December 2018, when the vessels operated by the NGOs Sea-Watch and Sea-Eye were stranded off the Maltese coast, the Prime Minister of Malta issued a statement announcing that Bangladeshi nationals shall face an expedient return, after due process.¹¹⁵

In January 2021, more than two years after this announcement, dozens of Bangladeshis were returned to their country of origin. They had entered Malta irregularly by boat in 2018, 2019, and 2020. They spent

¹¹¹ Information provided by EUAA, 28 February 2022.

¹¹² Regulation 6(8) Procedural Regulations.

¹¹³ Information provided by the Office of the Refugee Commissioner, January 2019.

¹¹⁴ Information provided by the Office of the Refugee Commissioner, April 2020.

¹¹⁵ Department of Information, 'Statement by Prime Minister Joseph Muscat about the situation of Seawatch3 and Albrecht Penck', PR190025, 9 January 2019, available at: <http://bit.ly/2RXXc5i>.

the duration of their stay in Malta in detention. Their applications were processed through the accelerated procedure and declared manifestly unfounded, so they were never entitled to appeal their negative decision. Despite being the second main country of origin in Malta in 2020, the statistics of the IPA confirm that all of them were rejected and that not a single protection status was granted to them (see the statistical table at the beginning of the report), except for 1 THP status granted. The same can be said of 2021, with only 2 protection status granted out of 303 applications lodged.

The Prime Minister himself posted on social media about this return operation stating that “Following months of intensive work, a number of migrants without an authorisation to stay have been returned home. Malta is committed to prevent irregular arrivals, share the responsibility with other EU countries and return migrants who are not truly in need of protection”.¹¹⁶

Three more returns of Bangladeshi nationals were carried out in September, November and December 2021. Most of them had arrived in 2020 and had remained in detention for more than 16 months on average.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? Yes No
 - ❖ If so, is this applied in practice, for interviews? Yes No

The Procedural Regulations provide for a systematic personal interview of all applicants for international protection but foresee a few restrictive exceptions. The grounds for omitting a personal interview are the same as those contained in the recast Asylum Procedures Directive, namely: (a) when the Commissioner is able to make a positive recommendation on the basis of evidence available; or (b) when the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control.¹¹⁷

In practice, all asylum seekers are interviewed, except when their application is declared inadmissible because they already benefit from the protection of another Member State.

The interviews are mainly conducted by EASO personnel on behalf of the IPA, which means that the interviews are conducted by the same authority that takes the decision on the application.

The new interview and assessment template established in 2020 with the support of EASO is shorter, clearer, and clearly differentiate the establishment of material facts and the legal analysis. It leaves more space for the caseworker to develop a reasoned individual assessment.

¹¹⁶ The Times of Malta, ‘Migrants returned to their country after asylum applications are rejected’, 12 January 2021, available at: <https://bit.ly/30RI1mu>.

¹¹⁷ Regulation 10 Procedural Regulations.

As mentioned above, interviews were not conducted between 12 March and 25 May 2020 as a result of COVID-19. No significant changes in interview techniques due to health restrictions were noticed in 2020 or 2021, but the IPA indicated that a limited number of interviews were conducted remotely.¹¹⁸

The IPA indicated that it does not keep records of the number of interviews carried out, and therefore could not provide such data for 2021.

Interpretation

The presence of an interpreter during the personal interview is required according to national legislation.¹¹⁹ Interpreters for **Sudanese, Bangladeshis, Somalis, Eritreans, Syrians, or Libyans** – which are amongst the main nationalities of asylum seekers in Malta - are largely available. However, interpreters for other languages are not always readily available.

Complaints as to the quality and conduct of the first instance interpreters are at times raised with legal representatives at the appeal stage, with the possibility of these being included in the appeal submissions. It is possible for interview procedures to be gender sensitive by appointing an interpreter and interviewer of the gender preferred by the applicant.¹²⁰ However, this is not automatic, and requests to this end must be made either by the applicant themselves, or by their legal advisor before the interview is carried out.

Recording and report

In practice, interview notes are taken during the personal interview whilst the interviewer is asking the questions, as well as the responses provided by the interpreter, if any. However, there is no indication that the consent of the asylum seeker is obtained for the audio recording of the interview and it appears, from several case files of applicants, that asylum seekers are simply informed of the fact that the interview will be audio recorded. For applications channelled through the regular procedure, the IPA will usually provide the written transcript of the interview before any decision is taken, if a request is made to that effect by the applicant or his or her legal advisor. It is however not possible for the applicant to make comments on and provide clarification of the transcript as the audio recording is allegedly admissible at the appeal stage.¹²¹

The law indeed provides for the possibility of audio or audio-visual recording of the personal interview.¹²² As a matter of standard practice, all interviews are recorded. The IPA will however only provide the audio recording for cases at the appeals stage in accordance with the Procedural Regulations.¹²³

The audio recording of the interview will be accepted as evidence by the IPAT if a request is made to that effect. The lawyers can only consult the audio transcript at the IPA's premises and cannot get copies of it. It is unknown to what extent the IPAT actually takes into account the recording for its decision.

The above would in any case only apply to applicants channelled through the regular procedure, as those channelled through the accelerated procedure are unable to file any request for the purpose of the review conducted by the IPAT. Those applicants are therefore unable to raise any interpretation or transcription issues after their interview.

Interviews can and have been conducted through video conferencing. According to the IPA, interviews through video conferencing are considered to be essential in situations where there is a lack of interpreters

¹¹⁸ Information provided by the IPA, April 2021.

¹¹⁹ Regulations 4(2)(c) and 5(3) Procedural Regulations.

¹²⁰ Regulation 10(10)(d) Procedural Regulations.

¹²¹ Regulation 11(5) Procedural Regulations

¹²² Regulation 11(2) Procedural Regulations.

¹²³ Regulation 11(9) Procedural Regulations

available in order to proceed with the interview of an asylum seeker. In 2020, a limited number of personal interviews were conducted remotely.¹²⁴ However, videoconferencing was used in few occasions to lodge an application, when physical interpretation was not feasible.¹²⁵ The IPA indicated that it does not keep data on the method of interview used and it is therefore unable to provide information on how many were conducted by remote methods in 2021.

Asylum seekers automatically receive, along with the decision and the interview notes, the evaluation report explaining in detail the motivation of the decision.¹²⁶ This constitutes a real improvement in the applicants' rights to access their file and access to an effective remedy. The importance to access to the evaluation report for the right to a fair hearing has also been highlighted by the case law of the Court of Appeal.¹²⁷

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

2. Average processing time for the appeal body to make a decision:¹²⁸ Not available

1.4.1. Appeal before the International Protection Appeals Tribunal

An appeal mechanism of the first instance decision is available before a board formerly known as the Refugee Appeals Board (RAB) and now called the International Protection Appeals Tribunal (IPAT) following the amendment made to the Refugees Act, now the International Protection Act. The appeal is an administrative review and involves the assessment of facts and points of law. It has a suspensive effect.

Composition and nature

The IPAT consists of one Chairperson on a full-time basis and two or more members on a part-time basis.¹²⁹ Originally composed of three Chambers, the Home Affairs Ministry increased the Tribunal's capacity by adding an additional Chamber in 2019. Each Chamber is made of a Chairperson and two other members,¹³⁰ all appointed by the President acting on the advice of the Prime Minister. In 2021, the Tribunal was composed of only one chamber.

The Act only specifies that the IPAT shall regulate its own procedure. Yet the Act does not stipulate a timeline within which this procedure must be adopted by the Tribunal. According to NGOs, the fact that the Act also does not require that the procedure be publicly available, and that it also conforms to national, European, and international standards on asylum procedure best practice, remains an issue.

NGOs assisting applicants at appeal stage have called for a reform of the appeal procedure for years. Even if the establishment of a full-time Chairperson was welcome, they criticised the modalities of

¹²⁴ Information provided by the IPA, April 2021.

¹²⁵ Information provided by the Office of the Refugee Commissioner, April 2020.

¹²⁶ The evaluation report is a very long template used for all the cases. The new Commissioner is currently reviewing it.

¹²⁷ Court of Appeal, *Teshoome Tensae Gebremariam v Refugee Appeals Board and the Attorney General*, 65/10 RCP, 30 September 2016.

¹²⁸ Information provided by the Refugee Appeals Board, January 2020.

¹²⁹ Art 5 International Protection Act.

¹³⁰ Art 5.5 International Protection Act.

appointments of the members where the Prime Minister directly appoints members of a tribunal that is supposed to be independent and impartial.¹³¹

One of the main concerns expressed by NGOs over the years regarding the appeal stage remains the lack of asylum-related training and capacity of the Board Members. The Act foresees that Chairpersons shall be chosen amongst “persons of known integrity” and be qualified “by reason of having had experience of, and shown capacity in matters deemed appropriate for the purpose”.¹³² The law also requires for at least one member of the Tribunal shall be a person who has practised as an advocate in Malta for at least seven years. NGOs promptly criticised the reform for not listing any specific qualification for eligibility for all members of the Tribunal.

Stakeholders, including the Chamber of Advocates, have expressed concerns regarding specialised tribunals such as the IPAT.¹³³ In the feedback to DG Justice on the Malta Country Chapter for the Rule of Law Report, the aditus foundation highlighted the following shortcomings regarding the Board:

- Although the basic principles of natural justice apply to the Tribunal, its members are not part of the judiciary and are not bound by any code of ethics that applies to members of the judiciary. The only requisite for the Tribunal to be validly constituted is that its members are “*persons of known integrity who appear to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose*” and that at least one of the members of the Tribunal “*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(7) years*”. The appointment of persons who lack any specific qualification and experience on a Board that examine particularly sensitive issues such as the detention of migrants and asylum seekers might deny individuals the right to an effective remedy.
- Most members of the IPAT are part-time members. This means that they often have full-time jobs, usually in the private sector, and perform their Board functions for a limited number of hours during the week. This can raise serious conflict of interest issues, besides affecting the Board’s efficiency.
- Members of the IPAT are appointed by the Prime Minister. Whilst it is not possible to automatically assume that such an appointment would lead to political interference, it is clear that the system could have an impact on independence and impartiality of the body and could play a part in strengthening the Government’s agenda on migration and asylum, as the Board examine decisions taken by Government bodies.
- The manner in which the IPAT conducts its proceedings is not publicly available through published guidelines. It was noted that there is a lack of procedural transparency: proceedings are not appropriately recorded the minutes of the hearing are poorly done (if done at all). The decisions are not published and are not publicly available.
- The IPAT’s decision is final, and no further appeal is possible on substantive issues. Whilst judicial review on administrative action might be possible, as well as a Constitutional case alleging human rights violations could be opened, there is rarely the possibility to bring substantive elements before the Courts of law.

¹³¹ aditus foundation, JRS Malta, Comments on Bill No.133 Refugees (Amendment) Bill, July 2020, available at: <https://bit.ly/2P2xUr6>.

¹³² Art 5.1 International Protection Act.

¹³³ See EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion 993/2020, 8 October 2020, available at <https://bit.ly/3Kwh7nS> and European Commission, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, available at: <https://bit.ly/3vBtXN9>, 4-5.

These concerns were shared by the Venice Commission which considered that specialised tribunals such as the IPAT do not enjoy the same level of independence as that of the ordinary judiciary and reiterated in October 2020 its recommendations in that respect.¹³⁴

Procedure to file an appeal

In 2021, 691 appeals were filed before the IPAT. This includes 482 “reviews” of applications deemed manifestly unfounded or inadmissible and 283 decisions on the merits.

An asylum seeker has two weeks to appeal, which in practice is interpreted as being a written intention to file an appeal, and these two weeks start to run from the day the asylum seeker receives the written negative decision of the International Protection Agency.¹³⁵ Decisions are issued in English along with a document in several languages briefly mentioning the appeal procedure and its deadlines. However, this letter is a standard one and the number of languages is limited. The appeal is to be lodged in person by the appellant at the IPAT premises in Valetta. Appellants are then issued with their identity document (Asylum Seeker Document) which they have to renew at the IPAT every three or six months. The IPAT does not accept late appeals.

Asylum seekers in detention can face obstacles in appealing because there are no clear and established procedures in place to lodge an appeal in these cases. Standard appeal forms are not available to asylum seekers in detention as these forms are mostly provided by NGOs who are not present in detention facilities on a daily basis. Some parts of detention centres are not equipped with phones so applicants may not reach legal assistance in time. UNHCR visits detainees on a regular basis and may refer applicants wishing to appeal to NGOs, but this remains random and not comprehensive.

Moreover, access to detention centres was denied for several months in 2020 due to COVID-19, as a result many applicants were not in capacity to exercise their right to appeal. Access for NGOs slightly resumed in June 2021, albeit with limitations that do not ensure every detainee can file their appeal on time. Rejected applicants channelled through the accelerated procedure are deprived of the chance to appeal their case.

Proceedings and hearings

Appellants and their lawyers have to present written submissions within no more than 15 days following the registration of the appeal.¹³⁶ The IPAT does not accept late submissions. In the past, the IPA was granted 6 weeks to submit its own observations, and the lack of clear rules of procedure led to cases where the appellants received the IPA’s submissions after the hearing, in breach of the principle of equality of arms.

The procedure seems now more structured, upon lodging the appeal the parties are provided with a document giving the clear deadlines for their respective submissions. The IPA is now invited to file its submission within 2 weeks following the deadline given to the appellant to file its own. The IPA must present its submissions even if the appellant failed to do so: if the IPA does not wish to file submissions, it must inform the Tribunal and motivate such decision. In practice, the IPA largely ignores the Tribunal’s rules and only submits written observations on selected cases, usually very late after the deadline. The Tribunal will however generally uphold a request to strike out the IPA’s late submissions, if it is made. It remains unclear if counter-observations submitted by the appellant are permitted *de jure*.

¹³⁴ Venice Commission, CDL-AD(2020)019-e, para. 98; see also CDL-AD(2020)006 paras. 97-98; and CDL-AD(2018)028 paras. 80-83.

¹³⁵ Article 7 International Protection Act.

¹³⁶ Art 7.6 International Protection Act.

For the appellant, failure to file submissions will automatically lead the IPAT to reject the case on the basis that the appellant “did not indicate on which ground the appeal was made”.¹³⁷ The number of rejections linked to the absence of submissions filed by the appellant is substantial, amounting to 139 out of 283 decisions (49%) in 2021.¹³⁸ NGOs report that most of these cases were handled by legal aid lawyers. Oddly enough, these cases are considered to be rejections “on the merits” by the IPAT.

There is no obligation for the IPAT to hold hearings. However, it can decide to hold one of its own initiative or following a request from the appellant.¹³⁹ As a result, asylum seekers can be heard in practice at the appeal stage but only on a discretionary basis. The past few years have shown an increase in the number of oral hearings held by the Board, and lengthier decisions referring to EU and national legal norms, country of origin information and jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Hearings of the IPAT are not public and its decisions are communicated only to the applicant concerned, their legal representative, if known, the IPA, the Minister concerned, and UNHCR.¹⁴⁰ However, the International Protection Act foresees the possibility for the Tribunal to authorise the hearing to be public after the request by one of the parties or if the Tribunal so deems fit.¹⁴¹

In practice, the IPAT seems to be holding hearings whenever the appellant requests it. The data provided is limited to cases that were heard from November 2021, with 16 hearings held so far.

The hearings held by the Tribunal are very informal and mostly unprepared. They will usually last less than 15 minutes, with a time allocated to the appellant to summarise the case and the relevant arguments, and a time for the IPA's lawyer to reply. The Tribunal's members will rarely have specific or in-depth questions and will usually only consider information subsequent to the negative decision.

In 2019, the IPA started to attend oral hearings. Some caseworkers attended hearings and provided some comments on the cases. No information is available for 2020. For the hearings held since November 2021, all were attended by the IPA lawyer.

The UNHCR is entitled by law to attend the hearings held by the Tribunal. It will consider doing so if the appellant requests it. It also has the possibility to file observations in specific cases. It did so for one case in 2021, and made written and oral observations on the application of Article 1D of the 1951 Convention in a case concerning a Palestinian appellant.¹⁴²

Time limits and decisions

The International Protection Act provides for time limits to take a final decision on the appeal. Each case shall now be concluded within three months of the lodging of the appeal. In cases involving complex issues of fact or law, the time limit may be further extended under exceptional circumstances, but cannot exceed a total period of six months.¹⁴³

In practice, the majority of cases are examined under the accelerated procedure, which provides for a three-day review for all decisions deemed inadmissible or manifestly unfounded by IPA. The decisions taken through the regular procedure following a hearing and assessment can take up to several years. So far, the time limits provided by the new Act do not show any effect in practice, with some cases pending for more than 3 years. Moreover, it is not clear how one can challenge the fact that appeal decisions are not taken in time.

¹³⁷ Information reported by aditus foundation, January 2022.

¹³⁸ Information provided by the Secretary of the IPAT, January 2021.

¹³⁹ Regulation 5(1)(h) RAB Procedures Regulations.

¹⁴⁰ Regulation 5(1)(n) RAB Procedures Regulations.

¹⁴¹ Art 7.5 International Protection Act.

¹⁴² Information provided by aditus foundation, November 2021.

¹⁴³ Art 7.7 International Protection Act.

In 2020 and 2021, applicants channelled through the regular procedure saw their waiting times seriously increase due to the COVID-19 pandemic and the related shut down of the IPAT for several months, between March and July 2020.

As already mentioned, applicants whose application is rejected as manifestly unfounded or inadmissible, are not entitled to appeal against such decision. The IPA's decision is automatically transferred to the IPAT for the three days review. Such reviews do not allow the applicant to express his/her views or to be heard. The decision generally consists of a one-sentence document confirming the IPA's decision. In 2021, the IPAT carried 368 reviews of manifestly unfounded applications, 366 of which were confirmed, and 114 reviews on inadmissible decisions, 112 of which were confirmed. This brings the total number of reviews carried in 2021 to 482 reviews, with 478 confirmed reviews and 4 cases remitted back to IPA.¹⁴⁴

As such, a substantial number of IPAT decisions in 2021 were reviews, with 482 reviews on 765 decisions. Decisions on the normal procedure amount to 283, which includes the 139 rejections due to a failure to file submissions. This leaves 144 decisions taken on the merits of the application (including Dublin appeals), namely 18% of the decisions taken by the IPAT in 2021, **all of which were rejections**. In 2019, less than 1% of the decisions taken by the IPAT granted refugee status and less than 3% granted subsidiary protection, while no data is available for 2020.

IPAT follows the practice of the IPA to split all the applications by individuals, even when families have the same claim. This leads the IPAT to issue decisions for the same families months apart, even issuing decisions for minor children before their parents, despite the absence of any individual claim or application made on behalf of the children.

The quality of the decisions varies substantially amongst Chambers, with some being more effective than others and little coordination amongst them all. The consequences include inconsistency in procedures, process, and decisions, as well as the lack of coherent case law.¹⁴⁵ While some decisions include a comprehensive examination of the elements of fact and law of the case, others do not include any reasoning at all, rejecting the case on the basis of one sentence. In the majority of cases, the decision given by the IPAT is binding on the parties and they will not remit it back to the IPA to take a new decision.

1.4.2. Judicial review

Although the International Protection Act stipulates that RAB decisions are final, it is possible to submit an application under Article 469A of the Code of Organization and Civil Procedure to the Civil Courts in order to review decisions that allegedly breach principles of natural justice or that are manifestly contrary to the law. This application can be filed within 6 months of the decisions issued by the IPAT. In a number of cases, Maltese Courts have rejected the plea presented by the government that RAB decisions are final and that therefore the Courts should decline from taking cognisance of the case.¹⁴⁶

Article 469A of the Code of Organization and Civil Procedure provides the following:

“Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

(a) where the administrative act is in violation of the Constitution;

¹⁴⁴ Information provided by the secretary of the IPAT, January 2022.

¹⁴⁵ UN General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crepeau*, December 2014.

¹⁴⁶ See for instance, *Paul Washimba v Refugee Appeals Board, the Attorney General and the Commissioner for Refugees*, 65/2008/1, 28 September 2012; *Saed Salem Saed v Refugee Appeals Board, the Commissioner of Police as Principal Immigration Officer and the Attorney General*, 1/2008/2, 5 April 2013; *Abrehet Beyene Gebremariam v Refugee Appeals Board and the Attorney General*, 133/2012, 12 January 2016.

(b) when the administrative act is *ultra vires* on any of the following grounds:

- (i) When such act emanates from a public authority that is not authorised to perform it; or
- (ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or
- (iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or
- (iv) when the administrative act is otherwise contrary to law”

Maltese Courts, even where the law stipulates that certain decisions are final and may not be challenged or appealed, have held that “not even the legislator had in mind granting such unfettered immunity to the Board as would make it unaccountable for breaches which, in the case of other administrative tribunals, ground an action for judicial review.”¹⁴⁷ In the Sadek Mussa Abdalla judgement, the Civil Court (First Hall) went so far as to say that breaches of any of the recognized rules of natural justice are, in essence, breaches of a right to a fair hearing as upheld in the relative provisions of Chapter IV of the Constitution as well as Article 6 of the European Convention on Human Rights (ECHR).¹⁴⁸

Judicial review is a regular court procedure, assessing whether administrative decisions comply with required procedural rules such as legality, nature of considerations referred to and duty to give reasons. Applicants could be granted legal aid if eligible under the general rules for legal aid in court proceedings. Unfortunately, judicial reviews do not deal with the merits of the asylum claim, but only with the manner in which the concerned administrative authority reached its decision. Moreover, the lack of suspensive effect and the length of the procedure, which can take several years before any decision is reached, tend to discourage lawyers and rejected asylum seekers to file cases.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
❖ Does free legal assistance cover:
 - Yes
 - With difficulty
 - No
 - Representation in interview
 - Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
❖ Does free legal assistance cover:
 - Yes
 - With difficulty
 - No
 - Representation in courts
 - Legal advice

National legislation states that at first instance an applicant is allowed to consult a legal adviser at his or her own expense. However, in the event of a negative decision at first instance, free legal aid shall be granted under the same conditions applicable to Maltese nationals.¹⁴⁹ In the case of Maltese nationals, legal aid is available for all kinds of cases. However, legal aid for civil cases is subject to a means test whilst legal aid for criminal cases is not.¹⁵⁰ According to the office responsible for the provision of free legal assistance within the relevant Ministry, such legal assistance is usually not subject to a means test for asylum seekers. In practice, the appeal forms the applicants fill in and submit to the IPAT contain a request for legal aid. Unless an applicant is assisted by a lawyer working with an NGO or a private lawyer, this request is forwarded to the Ministry for Home Affairs, National Security and Law Enforcement which will distribute the cases amongst a pool of asylum legal aid lawyers. One appointment with the applicant

¹⁴⁷ Saed Salem Saed v Refugee Appeals Board, the Commissioner of Police as Principal Immigration Officer and the Attorney General, 1/2008/2, 5 April 2013.

¹⁴⁸ Sadek Mussa Abdalla v Refugee Appeals Board and the Attorney General, 511/2013, 22 October 2013.

¹⁴⁹ Regulation 7(1)-(2) Procedural Regulations.

¹⁵⁰ The Judiciary Malta, *Frequently Asked Questions*, available at: <http://bit.ly/1FJWCug>.

is then scheduled. To date, legal aid in Malta for asylum appeals has been financed through the State budget.¹⁵¹

In 2018, responsibility for legal aid for appellants was shifted to Legal Aid Malta, who assigned legal aid lawyers from the government pool, but this shifted back to the Ministry in 2019. The reason for this shift is not known. According to lawyers assisting migrants, such shift was seen as a negative move due to the large caseloads that the lawyers have, generally consisting of criminal and civil cases. The legal aid pool of lawyers is not specifically trained or knowledgeable in migration or refugee issues, whereas the legal aid lawyers chosen by the Ministry is usually chosen on the basis of an open call to provide specific migration and asylum related legal services. The contracts of service are awarded after interviews conducted by Ministry officials. Therefore, the legal aid pool from the Ministry is focused on the provision of asylum and migration related legal services.

The free legal assistance available to asylum seekers at first instance is mainly that provided by lawyers working with NGOs. These services are regularly provided by a small group of NGOs as part of their on-going services and are funded either through project-funding or through other funding sources. It is to be noted that funding limitations could result in the services being reduced due to prioritisation. Generally, such lawyers provide legal information and advice both before and after the first instance decision, including an explanation of the decision taken and, in some cases, interview preparation. They can also attend personal interviews whenever the asylum seeker requests their presence. However, this is at the discretion of the Refugee Commissioner and their contribution throughout the interview is limited.¹⁵² The main obstacle regarding access to this kind of assistance is that there are a limited number of NGO lawyers who are able to provide such a service in relation to the number of asylum seekers requiring it. However, the Faculty of Laws, University of Malta, has a Law Clinic where supervised law students offer *pro bono* legal assistance and where asylum seekers could benefit from the assistance provided.

Legal assistance at the appeal stage is not restricted by any merits test or considerations, such as that the appeal is likely to be unsuccessful. There are, however, some practical and logistical obstacles involved in effectively representing asylum seekers at the appeal stage.

According to a local legal aid lawyer, the annual allowance paid to legal aid lawyers as per the general legal aid system, is not enough to cover the work involved in preparing and submitting an asylum appeal, including attending the oral hearing. Furthermore, meetings with appellants who are in detention can be particularly problematic for practical and logistical reasons that can be of detriment to both the appellants and the lawyers. For instance, at the entrance of the detention centres, legal aid lawyers have to show their identity cards and be given a pass. Sometimes this is a cumbersome procedure because the lawyer's name could not be on the list of people authorised to enter the detention centre. The provision of interpreters for legal aid lawyers is also problematic, as this needs to be organised and paid for by the lawyer, if at all available. As a result, the financial remuneration does not compensate the amount of work provided. Inadequate remuneration remained an issue in 2020 and 2021.

A recurring problem is also the inadequate space for the legal aid lawyers to discuss the case with his or her client in detention, a problem that persisted throughout 2020 and 2021, exacerbated by COVID-19 related measures.

The law states that access to information in the applicants' files may be precluded when disclosure may jeopardise national security, the security of the entities providing the information, and the security of the person to whom the information relates.¹⁵³ Moreover, access to the applicants by the legal advisers or lawyers can be subject to limitations necessary for the security, public order or administrative

¹⁵¹ *Ibid.*

¹⁵² Regulation 7(4) Procedural Regulations.

¹⁵³ Regulation 7(2) Procedural Regulations.

management of the area in which the applicants are kept.¹⁵⁴ In practice, however, these restrictions are rarely, if ever, implemented. Usually, the appeal takes the form of written submissions to the Board by a stipulated time. Thus, it is not a very complicated procedure in practice. Nevertheless, the assistance of a lawyer is essential for an effective appeal.

In 2021, 142 requests for legal aid were filed at the appeal stage on a total of 212 filed appeals. As such, appellants are heavily relying on the services of a legal aid lawyer, often lacking the necessary understanding of asylum qualification.

NGOs noticed that the IPAT systematically rejects appeals where no submissions are filed. Several of these cases result from the failure of the legal aid lawyer to file any submissions, despite having met with the appellant. In 2021, the IPAT rejected 139 appeals for this reason.

2. Dublin

2.1. General

Dublin statistics: 1 January – 31 December of 2021

Outgoing procedure		Incoming procedure	
	Requests		Requests
Total	631	Total	1,947
Take charge	412	Take charge	1,198
Germany	141	Greece	68
France	112	France	61
Spain	81	United Kingdoms	28
Ireland	16	Germany	15
Italy	14	Belgium	15
Take back	219	Take Back	749
Italy	147	France	354
Germany	21	United Kingdoms	198
Greece	21	Germany	72
France	11	Netherlands	37
Netherlands	3	Ireland	7

Source: Dublin Unit, January 2022.

Outgoing procedure		Incoming procedure	
	Transfers		Transfers
Total	249	Total	43
Germany	122	Greece	14
France	96	France	11
Italy	9	Germany	6
Luxembourg	6	Netherlands	3
Romania	4	Belgium	3

¹⁵⁴ Regulation 7(3) Procedural Regulations.

Source: Dublin Unit, January 2022.

Outgoing Dublin requests by criterion: 2021	
Dublin III Regulation criterion	Requests sent
“Take charge”: Articles 8-15:	398
Article 8 (minors)	1
Article 9 (family members granted protection)	1
Article 10 (family members pending determination)	2
Article 11 (family procedure)	-
Article 12 (visas and residence permits)	20
Article 13 (entry and/or remain)	8
Article 14 (visa free entry)	-
“Take charge”: Article 16	-
“Take charge” humanitarian clause: Article 17(2)	364
“Take back”: Article 18	219
Article 18 (1) (b)	214
Article 18 (1) (c)	-
Article 18 (1) (d)	5
Article 20(5)	-

Source: Dublin Unit, January 2022.

Incoming Dublin requests by criterion: 2021	
Dublin III Regulation criterion	Requests received
“Take charge”: Articles 8-15	231
Article 8 (minors)	58
Article 9 (family members granted protection)	16
Article 10 (family members pending determination)	6
Article 11 (family procedure)	9
Article 12 (visas and residence permits)	39
Article 13 (entry and/or remain)	95
Article 14 (visa free entry)	-
“Take charge”: Article 16	-
“Take charge” humanitarian clause: Article 17(2)	8
“Take back”: Articles 18 and 20(5)	340
Article 18 (1) (b)	307
Article 18 (1) (c)	3
Article 18 (1) (d)	30
Article 20(5)	-

Source: Dublin Unit, January 2022.

Average duration of the procedure from the outgoing request			
<3 YEARS	<2 YEARS	<1 YEARS	>1 YEAR
3	9	28	249

Average duration of the procedure from the acceptance of the request	
<1 YEAR	> 1 YEAR
18	244

Source: Dublin Unit, January 2022.

There is no specific legislative instrument that transposes the provisions of the Dublin Regulation into national legislation. The procedure relating to the transfers of asylum seekers in terms of the Regulation is an administrative procedure, with reference to the text of the Regulation itself. The IPA is the designated head of the Dublin Unit and, since 2017, is implementing the procedure in practice. This brought positive changes in terms of organisation, access to information and procedural safeguards. The Immigration Police is in charge of the Eurodac checks and the rest of the procedure, including transfer arrangements, is handled by the Dublin Unit.¹⁵⁵

EASO started providing support to IPA in the Dublin procedure in October 2019 in the form of Member State expert deployment within the Dublin Unit. In 2021, the support consisted of 2 Dublin procedure assistants and was upgraded to 1 administrative support, 1 Member state expert and 2 Dublin procedure assistants for the period covering 2022-2024.

The EASO deployed staff is in charge of examining which asylum applications are subject to a Dublin procedure or not, drafting take charge/back requests or info requests for applications in a Dublin procedure and drafting the decision documents or office note following the final reply from Member States. The staff is also in charge of drafting submissions at the appeal stage.¹⁵⁶

Regarding relocation operations, in addition to the same tasks as the ones for the outgoing cases, EASO personnel deployed at the Dublin Unit is also responsible for notifying the applicant of the Dublin transfer decision, drafting the transfer exchange form, creating their *laissez passer*, and updating the internal records.¹⁵⁷

Application of the Dublin criteria

According to NGOs' experience, there is no clear rule on the application of the family unity criteria as it usually depends on the particulars of the individual case. The Maltese Dublin authorities do not apply DNA tests but tends to rely on the documents and information immediately provided by the applicant. In some cases that regard children, the authorities can request additional information from UNHCR, IOM or AWAS when no documents are provided. All of the information available is usually put together as evidence. Matching information between members of the family can be relied on and may be enough for determining family links.

The visa and residence permit criterion is the most frequently used for outgoing requests (20 requests in 2021). For incoming requests, the most frequently used criteria are either the first EU Member State entered (95 requests),¹⁵⁸ or the EU Member State granting a Schengen visa (39 requests).¹⁵⁹

¹⁵⁵ Information provided by the Dublin Unit, February 2021.

¹⁵⁶ Information provided by the Dublin Unit, January 2022.

¹⁵⁷ Information provided by the Dublin Unit, January 2022.

¹⁵⁸ Article 13 Dublin III Regulation.

¹⁵⁹ Article 12 Dublin III Regulation.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
 Yes No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?
>1 year

All those who apply for asylum are systematically fingerprinted and photographed by the Immigration authorities for insertion into the Eurodac database. Those who enter Malta irregularly are immediately taken to detention and they are subsequently fingerprinted and photographed. Asylum seekers who are either residing regularly in Malta or who apply for international protection prior to being apprehended by the Immigration authorities, are also sent to the Immigration authorities to be fingerprinted and photographed immediately after their desire to apply for asylum is registered.

When migrants make attempts to avoid their fingerprints being taken using various means (such as applying glue to the fingertips), a note is taken and the migrant is recalled for fingerprinting at a later stage when the effects of the glue would have subsided. When persons have damaged fingerprints, measures, such as repeated attempts, are taken to ensure that a viable copy is available.

In registering their intention to apply for international protection, asylum seekers are also asked to answer a “Dublin questionnaire” wherein they are asked to specify if they have family members residing within the EU. Should this be the case, the examination of their application for protection is suspended until further notice. It is up to the IPA to then contact the asylum seeker to request further information regarding the possibility of an inter-state transfer, such as the possibility of providing documentation proving familial links.

Information is usually provided to the lawyer representing the applicant upon request. Where an applicant is detained, it is inherently more difficult for the individual to follow up on the Dublin case with information being obtained solely through the lawyer.

Individualised guarantees

No information is provided by the Dublin Unit on the interpretation of the duty to obtain individualised guarantees prior to a transfer, in accordance with the ECtHR’s ruling in *Tarakhel v. Switzerland*.¹⁶⁰ Yet lawyers report that since 2018 there were a number of cases wherein the IPAT commented that it is not its duty to explore the treatment the appellant would be subjected to following the Dublin transfer.

In September 2019, an asylum-seeker filed an application for a warrant in front of the Civil Court to stop a Dublin transfer to **Italy** before individual guarantees are actually provided by the Italian authorities. The Court declared itself competent to review the application without entering into the merits of the case. It did not find there was an obligation for the Italian authorities to present individual guarantees before executing an accepted transfer. It held that the socio-economic conditions of the applicant in Italy are irrelevant to the matter of the case and that in case of further issues to be raised in Italy, the applicant could address them to the Italian judicial system. Consequently, the Court rejected the application.¹⁶¹

¹⁶⁰ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

¹⁶¹ Civil Court First Hall, *EnasMhana vs Hon Prime Minister, Minister for Home Affairs and National Security, Attorney General and the Office of the Refugee Commissioner*, 2019/118742, 18 October 2019, available at: <https://bit.ly/2XE0t06>.

Transfers

In practice, no official statistics are available regarding the length of time it takes for a transfer to be effectuated after another Member State would have accepted responsibility. According to the authorities, the transfer arrangements start immediately if the person accepts to leave and most of the transfers are carried out within a year, with a few cases requiring more than a year.¹⁶² In the case of appeals, the transfer is implemented when a final decision is reached. NGOs have reported that in practice transfers can be implemented several weeks or several months after the final decision taken by the IPAT.

The length of the Dublin procedure remains an issue since applicants are kept waiting for months, sometimes more than a year, before receiving a decision determining which Member State is responsible for their application. In 2018, there were a number of cases where Malta was required to assume responsibility for applicants due to delays in processing the transfer, including in cases of possible chain *refoulement*.¹⁶³ In 2020, there were applicants who were not transferred within the Regulation's deadlines, yet who were not taken up by the IPA as falling under its responsibility and left without any documentation or information about their status. NGOs encountered a few individuals in this situation in 2021 as well.

Moreover, asylum seekers in a Dublin procedure are not informed of delays in receiving responses from the responsible Member State. The number of outgoing transfers implemented in 2020 was 320 and 249 in 2021, the vast majority of them to Germany or France.

Dublin transfers were suspended in Malta for three months between mid-March and mid-June 2020 as a result of COVID-19. During this period, Malta continued to issue and send requests. The responsibility of applicants shifted back to Malta in cases where the transfer was not carried out within six months unless the applicant was recorded as having absconded.¹⁶⁴

It is important to mention that when a Dublin decision is confirmed in appeal, applicants usually see their Asylum-Seeker document withdrawn since a transfer to another Member State is to be conducted. However, as already mentioned, such transfers can take some time to be carried out. In case of delayed transfer, IPA does not extend the documentation, stating that following a final Dublin decision (either because the time limit to appeal the Dublin transfer decision has lapsed, or because the IPAT upholds the decision taken by the Dublin Unit), the person is no longer to be considered as an applicant for international protection in Malta, seemingly contradicting legislation and CJEU jurisprudence in this regard.¹⁶⁵

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?
 Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Upon notification that an asylum seeker might be eligible for a Dublin transfer, he or she will be called by IPA operating the Dublin Unit to verify the information previously given and will be advised to provide

¹⁶² Information provided by the Dublin Unit, January 2022

¹⁶³ *HavvalGamshid v the Commissioner of Police and the Attorney General*, 15/2013, 27 January 2016.

¹⁶⁴ Information given by the Dublin Unit, February 2021.

¹⁶⁵ Information provided by the IPA Legal Unit, November 2020.

supporting documentation to substantiate the request for transfer. These interviews always take place at the Dublin Unit premises.

Dublin interviews are always carried out in person. They were suspended for two months from 18 March until 18 May 2020 as result of COVID-19. As of May 2020, interviews were carried out again in a face-to-face format.¹⁶⁶

2.4. Appeal

Indicators: Dublin: Appeal
 Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> No
---	---	--

Following an amendment to the Refugees Act in April 2017, appeals against decisions taken under the Dublin Regulation are now possible through the filing of an appeal before the Refugee Appeals Board -¹⁶⁷ now IPAT -, which has taken over responsibility from the Immigration Appeals Board.

The provisions of the amended Refugees Act, now International Protection Act, indicate that the appeal must be filed within two weeks from notification of the decision.¹⁶⁸ The Act does not specify whether such appeals have suspensive effect or otherwise. In practice, such appeals do have a suspensive effect.

There is no specific appeal procedure for Dublin cases, leaving such applications pending for several months or years with the Tribunal. NGOs report it is not rare to encounter individuals that have been waiting on a final decision on their Dublin appeal for more than 3 years. Another issue is that family cases are split, with family members receiving individual decisions months apart from each other, creating further delays in implementing transfers. Moreover, access to the files is problematic as NGOs assisting applicants report difficulties accessing the different documents, such as the transfer requests or Eurodac documents, because of the lack of clarity as to the authority in charge. The Tribunal has a very limited understanding of the procedure and will generally uphold the Dublin Unit's decisions; hearings are rarely held. The Unit itself usually files submissions for these cases in the first weeks of the procedure.

Furthermore, the concerns expressed with regards to the IPAT's composition in [Appeal before the International Protection Appeals](#) are also valid for what concerns the Dublin procedure.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
 Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<ul style="list-style-type: none"> ❖ Does free legal assistance cover: 	<input type="checkbox"/> Yes <input type="checkbox"/> Representation in interview <input type="checkbox"/> Legal advice	<input type="checkbox"/> With difficulty <input checked="" type="checkbox"/> No
---	---	--

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

<ul style="list-style-type: none"> ❖ Does free legal assistance cover 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Representation in courts <input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> With difficulty <input type="checkbox"/> No
--	---	---

¹⁶⁶ Information provided by the Dublin Unit, February 2020.

¹⁶⁷ Article 7(1) International Protection Act.

¹⁶⁸ Article 7(2) Refugees Act, as amended by 4(c) Act XX of 2017.

Following the transfer of jurisdiction from the Immigration Appeals Board to the Refugee Appeals Board, now International Protection Appeals Tribunal, applicants appealing a Dublin transfer are now entitled to legal assistance. According to the International Protection Act, legal assistance is provided under the same conditions applicable to Maltese nationals,¹⁶⁹ although the modalities, eligibility assessment, and application procedure are not publicly available. In practice, a legal aid lawyer is always provided to the appellant that express the wish to be assisted when filing his or her appeal at the Tribunal's office in Valetta. However, it must be noted that legal aid lawyers often have a very limited understanding of the procedure, and will generally file very short submissions with few to no references to case law or the Dublin criteria.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? Yes No
❖ If yes, to which country or countries?

Following the ECtHR's judgment in *M.S.S. v. Belgium and Greece*,¹⁷⁰ Malta suspended the transfers of asylum seekers to **Greece** although the police will still assist with the transfer should an asylum seeker voluntarily ask to be returned to Greece. When transfers are suspended, Maltese authorities then assume responsibility for the examination of the application and the asylum seeker is treated in the same way as any other asylum seeker who would have lodged the asylum application in Malta.

However, as of 15 December 2018, Dublin procedures to Greece of non-vulnerable asylum seekers were resumed. It appears that no transfers were carried out since 2019.¹⁷¹

Apart from this, Malta has not suspended transfers as a result of an evaluation of systemic deficiencies in any EU Member State.

2.7. The situation of Dublin returnees

The main impact of the transfer on the asylum procedure relates to the difficulties in accessing the procedure upon return to Malta. If an asylum seeker leaves Malta without permission of the Immigration authorities, either by escaping from detention or by leaving the country irregularly, the IPA will usually consider the application for asylum to have been implicitly withdrawn, in pursuance of Regulation 13 of the Procedural Regulations, transposing the provisions of the recast Asylum Procedures Directive. Consequently, an asylum seeker who is transferred back will, in almost all cases, find that his or her asylum application has been implicitly withdrawn leaving him susceptible to return, and detention, by immigration authorities.

Indeed, in 2019 and 2020, NGOs assisting migrants such as aditus Foundation and JRS reported that most Dublin returnees who flee Malta were detained upon return, being usually detained under the Reception Conditions Directive as the authorities consider that elements of their claim could not be gathered without enforcing detention due to the risk of absconding.

As of 2021, there is no clear policy regarding Dublin returnees in Malta. NGOs are not currently in a position to comment regarding detention of Dublin claimants following their return to Malta due to their inability to monitor the situation of detention centres, due to severe access restrictions. What can be said is that if detention of Dublin returnees occurs, such individuals are likely detained in the same facilities as

¹⁶⁹ Article 7(5) International Protection Act.

¹⁷⁰ ECtHR, *M.S.S. v. Belgium and Greece*, Application 30696/09, Judgment of 21 January 2011.

¹⁷¹ Information provided by Dublin Unit January 2022.

other asylum seekers, and that Malta probably follows the same detention policy applied to first-time applicants. Hence, it is likely that detention will be based on the returnees' countries of origin and the feasibility of their return in case of rejection rather than on other objective criteria. Some returnees from countries with a higher recognition rate such as Syria or Libya might therefore not be detained. On paper, the detention is likely to be based on the ground that elements of their claim cannot be gathered without enforcing detention due to the risk of absconding.

The Dutch Council of State (highest administrative court) ruled on 15 December 2021 that the Dutch immigration authorities can no longer rely on the principle of mutual trust for Dublin transfers to Malta. If immigration authorities wish to proceed with Dublin transfers to Malta, they are required to prove that the transfer will not result in a breach of article 3 ECHR. The court specifically mentions the structural detention of Dublin 'returnees' and finds these detention conditions to be a breach of article 3 ECHR and article 4 of the EU Charter. The court also specifically mentions the lack of effective remedy against detention because of the lack of access to justice, which is deemed a breach of article 18 of the RCD and article 5 of the ECHR. It is expected that this judgment will bring a halt to Dublin transfers to Malta from the Netherlands.¹⁷²

Furthermore, persons stopped at the airport with forged documents run the risk of facing criminal charges, on the basis of the Immigration Act.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

The International Protection Act provides for a new definition of "inadmissible applications". The following grounds allow for deeming an asylum application inadmissible:¹⁷³

- (a) Another Member State has already granted the applicant international protection;
- (b) The applicant comes from a [First Country of Asylum](#);
- (c) The applicant comes from a [Safe Third Country](#);
- (d) The applicant has lodged a [Subsequent Application](#) presenting no new elements;
- (e) A dependant of the applicant has lodged a separate application after consenting to have his or her case made part of an application made on his or her behalf; and
- (f) The applicant has been recognised in a third country and can avail him or herself of that protection or otherwise enjoys sufficient protection from *refoulement*, and can be readmitted to that country.

It is important to note that coming from a safe country of origin is no longer a ground for the application to be deemed inadmissible. The definition of inadmissible in national legislation is now in line with the Asylum Procedure Directive.

According to the International Protection Act, inadmissibility is a ground for an application to be processed under the [Accelerated Procedure](#).

As the law mentions the inadmissibility of an application for recognition of refugee status, only the International Protection Agency can decide upon the admissibility of the application.¹⁷⁴ Applications submitted by individuals having lodged a subsequent application presenting no new elements or already benefiting from the protection of another MS are considered inadmissible and usually processed under the accelerated procedure.

NGOs started to express concerns over the application of inadmissibility procedures in 2018, since it procedure does not provide for an effective remedy but only a three-day review with the International

¹⁷² Dutch Council of State, 15 December 2021, available in Dutch at: <https://bit.ly/3JPAFUz>.

¹⁷³ Article 24 International Protection Act.

¹⁷⁴ Court of Appeal, *Paul Washimba v Bord tal-Appell dwar ir-Rifugjati*, 28 September 2012: <https://bit.ly/36zTpbr>.

Protection Appeals Tribunal which does not allow the applicant to provide written submissions or to be heard. The decisions are found to be a mere confirmation of the first administrative decision without any examinations of points of facts or law (see below).

In 2020, 196 applications were considered inadmissible (172 on the basis that applicants had already a protection in another Member State and 22 in the context of subsequent applications where no new elements were provided).¹⁷⁵ By way of comparison, 388 applications were deemed inadmissible in 2019.

In 2021, 123 applications were deemed inadmissible by the IPA, 57 on the basis that applicants were already beneficiaries of protection in another Member State and 66 in the context of subsequent applications where no new elements were provided. During the year, 41 new subsequent applications were filed.¹⁷⁶

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? Yes No
 - ❖ If so, are questions limited to identity, nationality, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

According to Article 24.3 of the new International Protection Act, the IPA shall allow applicants to present their views before a decision on the admissibility of an application is conducted. In practice, applicants coming from a first country of asylum or a safe third country are usually heard during an interview. Interviews for applicants already granted protection in another MS are usually limited to a preliminary interview. Applicants submitting a subsequent application with no new elements are usually not given the opportunity of a personal interview. In the (rare) case in which the subsequent application is deemed admissible, the IPA will interview the applicants on the merits of their cases with further questions on the new evidence provided.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure? Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ If yes, is it suspensive Yes No

The International Protection Act foresees that inadmissible applications are channelled through the accelerated procedure, the relevant provisions of the Act regarding inadmissible applications all send back to the provisions for manifestly unfounded applications which “shall apply mutatis mutandis” (see [Accelerated Procedure](#)).¹⁷⁷ In terms of appeal, it means that the decision “shall immediately be referred to the Chairperson of the IPAT who shall examine and review the decision of the IPA within three working days”.¹⁷⁸

¹⁷⁵ Information provided by the IPA, April 2021.

¹⁷⁶ Information provided by the IPA, March 2022.

¹⁷⁷ Art. 24(2) of the International Protection Act

¹⁷⁸ Art 23.3 and 24 International Protection Act.

In 2021, the IPAT carried 114 reviews on inadmissible applications, 112 of which were confirmed. When the decision of the IPA is not confirmed by the IPAT, the case is remitted back to the IPA for “further examination”. In practice, the IPA seems to consider this as confirmation that the application is admissible and will proceed with an interview on eligibility.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

Yes With difficulty No

❖ Does free legal assistance cover:

Representation in interview
 Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?

Yes With difficulty No

❖ Does free legal assistance cover

Representation in courts
 Legal advice

Article 7(3) of the International Protection Act provides for the right to free legal aid for all appeals submitted to the IPAT. However, as the recommendation deeming an application inadmissible is automatically and systematically referred to the Tribunal, the appellant is not able to effectively participate in the review or to be represented.

4. Border procedure

There is no border procedure in Malta.

5. Accelerated procedure

5.1. General (scope, grounds for accelerated procedures, time limits)

Article 23 and 24 of the International Protection Act provides that applications should be examined under accelerated procedures when the application is manifestly unfounded.¹⁷⁹

The definition of “manifestly unfounded applications” reflects the grounds for accelerated procedures laid down by Article 31(8) of the recast Asylum Procedures Directive. An application is considered manifestly unfounded where the applicant:¹⁸⁰

- (a) In submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination as to whether such applicant qualifies as a beneficiary of international protection;
- (b) Is from a safe country of origin;
- (c) Has misled the authorities by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision;
- (d) Is likely, in bad faith, to have destroyed or disposed of an identity or travel document that would have helped establish his identity or nationality;
- (e) Has made clearly inconsistent, contradictory, false, or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making the claim clearly unconvincing in relation to whether they qualify as a beneficiary of international protection;

¹⁷⁹ Article 23(1), (8) and (9) Refugees Act.

¹⁸⁰ Article 2(k) Refugees Act.

- (f) Has introduced a subsequent application for international protection that is not inadmissible in accordance with article 24(1)(e);
- (g) 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;
- (h) Has entered Malta unlawfully or prolonged his stay unlawfully and, without good reason, has either not presented himself to the authorities or has not made an application for international protection as soon as possible, given the circumstances of his entry;
- (i) Refuses to comply with an obligation to have his or her fingerprints taken in accordance with the relevant legislation;
- (j) May, for serious reasons, be considered a danger to the national security or public order, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

Article 23(2) provides that if the IPA is of the opinion that an application is manifestly unfounded, they shall examine the application within three working days and the recommendation shall immediately be referred to the International Protection Appeals Tribunal, who will then also examine this within three working days.

Comprehensive statistical information is not available, as the IPA does not keep statistical data in relation to applications that have been processed under the accelerated procedure. However, NGOs assisting asylum seekers reported an increase in the number of cases processed under the accelerated procedure since 2018.

In 2020, 196 applications were deemed inadmissible and therefore channelled through the accelerated procedure and 238 cases were rejected as manifestly unfounded. For 2021, the IPA indicated that it does not keep statistical data pertaining to applications for international protection that are processed under the accelerated procedure, but the IPAT indicated that it carried out reviews for 482 applications, 114 inadmissible applications and 368 manifestly unfounded applications.¹⁸¹

Most applications deemed to be manifestly unfounded are from individuals coming from countries considered safe by the IPA Act. The IPA indicated it rejected 303 application on this basis in 2021. These number includes nearly all applicants from Bangladesh (127 applications out 130), Morocco (61 rejection out of 63 rejections), Ghana (12 rejections) and Egypt (77 rejections out of 79 rejections). These cases are channelled through the accelerated procedure while the applicants are held in detention, and receive at the same time the rejection decision, the confirmation by the IPAT and a return decision comprising of a removal order.

In 2021, the IPA started to evaluate as manifestly unfounded applications of some individuals from other countries of origin, such as Nigeria and the Ivory Coast.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker - in most cases - conducted in practice in the accelerated procedure?

	Not available
❖ If so, are questions limited to nationality, identity, travel route?	Not available
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

¹⁸¹ Information provided by the IPAT, February 2022.

No information is available regarding the IPA policy on personal interviews in case of accelerated procedures. However, applicants deemed to be coming from listed safe countries of origin are usually interviewed on the merits.

However, NGOs reported that applications tend to be systematically rejected on credibility issues rather than assessed on the merits. It is only mentioned in conclusion of the assessment that the case is manifestly unfounded as the applicant is coming from a safe country of origin and he has made “clearly inconsistent and contradictory, clearly false or obviously improbable representation which contradict sufficiently verified country-of-origin information, thus making the claim clearly unconvincing in relation to whether he qualifies as a beneficiary of international protection”.

Detainees who apply for asylum from detention are subject to the same asylum procedure as those who apply from the community. The IPA will proceed to examine the application of the detained asylum seeker in the same manner as those who are not deprived of their liberty. The main difference lies in that detainees are escorted to the IPA’s offices in Safi and are not informed in advance of the date of their interview. They are usually informed on the day that their presence is required. Detained asylum seekers do, however, face considerable difficulties in obtaining documents and compiling all the information which they might want to present in support of their application, as their means of communication are severely restricted. Very often, detained asylum seekers rely on support from NGOs to obtain documentation and any other information that might be required.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

❖ If yes, is it

❖ If yes, is it suspensive

Yes

Judicial

Yes

No

Administrative

No

At the stage of the appeal, two types of applications are channelled through the accelerated procedure, manifestly unfounded applications (Articles 23(2) and 23(3) of the International Protection Act) and inadmissible applications (Article 24(2) of the Act). Rejections channelled through the accelerated procedure are referred immediately to the International Protection Appeals Tribunal, which is provided three working days to examine the application. No further appeal is allowed.

The procedure is foreseen under the national law, which incorrectly transposes the recast Asylum Procedures Directive when it comes to the right to an effective remedy. As a consequence, practitioners and the UNHCR do not consider this review to constitute an effective remedy as laid out in Article 46 of the recast Asylum Procedures Directive.¹⁸² Nevertheless, the 2017 amendment of the Refugees Act confirmed by the amendments in the new International Protection Act included a provision which specifies that “the review conducted by the Chairperson of the IPAT shall be deemed to constitute an appeal”.¹⁸³

Yet, under Regulation 22 of the Procedural Regulations the applicant is able to appeal against a decision of inadmissibility on the basis of the safe third country if he or she is able to show that return would subject him or her to torture, cruel, inhuman or degrading treatment or punishment. In practice, this provision is not implemented.

Applicants do not have the possibility to send any submissions to the IPAT or raise any arguments to support an appeal. Moreover, applicants sometimes receive two simultaneous rejections (i.e., the IPA

¹⁸² Information provided by UNHCR, January 2019.

¹⁸³ Article 7(1A)(a)(ii) International Protection Act.

decision dismissing the application as inadmissible and the IPAT's decision confirming the IPA decision) or receive the rejections within a timeframe that makes an appeal against the decision impossible.

Furthermore, the term "shall immediately" in Article 23(3) lacks legal precision, so the actual mandatory duration of the procedure is unclear. Some first instance rejections are taken months before the IPAT actually carries its review while some other are issued within 1 week of the rejection.

The majority of decisions taken by the IPAT are review decisions (contrary to appeal decisions) made in the accelerated procedure which consist of a mere confirmation of the decisions made in the first instance without any further assessment. In 2019, the amount of these decisions amounted to 55% of the total number. No data was provided for 2020. In 2021, the reviews amounted to more than 63% of the total number of decisions taken by the IPAT, with 482 reviews on 765 decisions.

Serious concerns exist regarding the actual quality of the review conducted by the IPAT and most commentators agree that this is not a full and *ex nunc* examination of both facts and points of law. Decisions are not motivated and consist of a simple statement confirming the IPA's recommendation, signed only by the Chairperson. The UNHCR observed in 2019 that the Tribunal tends to automatically confirm the IPA's recommendation.¹⁸⁴ This has been the case ever since, as confirmed by the statistics provided by the IPAT. In 2021, 482 reviews were carried out by the IPAT, 478 of which were confirmed and 4 of which were remitted to the IPA for a new decision. As such, even when it does not confirm the decision of the IPA, the IPAT does not take a decision on the merits of the case on its own.

The incorrect transposition of the recast Asylum Procedures Directive in respect of an effective remedy was subject to a legal challenge before the civil court in the case of a Palestinian asylum seeker who was not allowed to appeal his inadmissible decision. In this case, the applicant claimed that Malta's asylum legislation violates the recast Asylum Procedures Directive and that, as a consequence of this, his procedural rights were violated.¹⁸⁵ This being one of Malta's first ever cases relating to state liability for incorrect transposition of EU asylum law, the court (and Government) was unsure how to proceed, inviting the parties to explain whether this case is one of judicial review or one of damages.

The civil court finally rejected the case on the basis that it concluded it was a judicial case, and, therefore, time-barred, as opposed to an action for damages on the basis of an incorrect transposition of EU law.¹⁸⁶ An appeal was filed and remains pending. In the course of the proceedings, the Office of the Attorney General confirmed that the Ministry was in dialogue with the EU Commission with a view to revising the accelerated procedure. The 2020 amendments to the Act did nothing to bring this procedure in line with the Directive.

On 2 March 2021, the Civil Court First Hall (Constitutional Jurisdiction) ruled that there is an infringement of human rights in the accelerated procedures at appeal stage when an application is deemed as manifestly unfounded. The Court ordered for the case to be heard anew by the IPAT with the defendant given the minimum rights laid down in the Directive.¹⁸⁷

On 28 July 2021, aditus foundation filed a case in front of the ECtHR for a rejected Bangladeshi applicant. The application concerns the procedure and the refusal of the applicant's asylum requests. The applicant was a journalist in Bangladesh, who claims to have been the subject of persecution after he observed electoral irregularities carried out by the Awami League (currently the governing party) in the 2018 elections. In particular, he claims that he and his family had been beaten and threatened as a result of his reporting and that no action was taken by local authorities in fear of the ruling party.

¹⁸⁴ Information provided by UNHCR, January 2019.

¹⁸⁵ Case no. 909/2018GM filed on 16 February 2018.

¹⁸⁶ Civil Court, First Hall, CHEHADE MAHMOUD vs L-AVUKAT GENERALI E, 909/2018, 28 January 2020, available at: <https://bit.ly/2Vqn2CT>.

¹⁸⁷ Information provided by Avv. Edward Camilleri, March 2022.

He was channelled through the accelerated procedure and could therefore not appeal this decision since the International Protection Act provides only for a 3 days automatic review at the stage of the appeal. The applicant then filed a subsequent application with further evidence of his claim, which was rejected as manifestly unfounded and channelled again through the accelerated procedure. His lawyers appealed his removal order on the basis of the risks of inhuman or degrading treatment he would face upon return to Bangladesh. Following the rejection of the appeal and confirmation of the removal order, the applicant's lawyers filed a request for interim measure to the ECHR on the basis of Article 3.

On 10 August 2021, the Court decided that, “*in the absence of an adequate assessment, by the domestic authorities, of the applicant’s claim that he would risk ill-treatment if returned to Bangladesh based on his activity as a journalist, it was in the interests of the parties and the proper conduct of the proceedings before it to indicate to the Government of the Malta, under Rule 39, that he should not be removed to Bangladesh.*” The applicant was then released from Safi Detention Centre after spending two years in detention.

The applicant fears return to Bangladesh and complains that the Maltese authorities failed to properly assess his claims, in particular, the risk he, as a journalist, would face upon being returned to Bangladesh, in violation of Article 3 of the Convention. He further considers that he had no effective remedy under Article 13 of the Convention, taken in conjunction with Article 3, in so far as the asylum procedure was lacking in various respects namely, he had no access to relevant information and legal services; there had been excessive delays in the decision-making process; there had been no serious examination of the merits and the assessment of the risk incurred; he had not been informed of the relevant decisions while he was in detention, nor had there been any interpretation of such decisions, and he had had no access to a proper appeal procedure. He further noted that the reviews by the International Appeals Tribunal and the Immigration Appeals Board had not been effective remedies in his case and that constitutional redress proceedings were also not effective in so far as they had no suspensive effect.

The case was communicated to the Court on 20 January 2022.¹⁸⁸

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

Yes With difficulty No

❖ Does free legal assistance cover:

Representation in interview

Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

Yes With difficulty No

❖ Does free legal assistance cover

Representation in courts

Legal advice

Article 7(5) of the International Protection Act provides for the right to free legal aid for all appeals submitted to the IPAT. However, as the recommendation channelling an application to the accelerated procedure is automatically and systematically referred to the IPAT, the appellant is not effectively able to participate in the review or to be represented.

¹⁸⁸ S.H v. Malta, application no. 37241/21, available at <https://bit.ly/3Ide96P>.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes For certain categories No
❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children? Yes No

National legislation literally transposes the recast Reception Conditions Directive regarding the definition of vulnerable applicants and provides that “an evaluation by the entity responsible for the welfare of asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible”.¹⁸⁹

The amendments of December 2021 (Legal Notice 487 of 2021) introduced new provisions for vulnerable applicants to the Reception Regulations, which now transposes the Directive more faithfully, as they include a more comprehensive implementation of provisions related to the material reception conditions of vulnerable individuals and the guardianship and care of minors (see [Special Reception Needs of Vulnerable People](#) and [Legal Representation of Unaccompanied Minors](#)).

1.1. Screening of vulnerability

The screening of vulnerability was previously conducted upon arrival when asylum-seekers were disembarked in Malta and accommodated at the Initial Reception Centre. According to the current practice, all asylum-seekers arriving irregularly in Malta are automatically and systematically detained without any form of assessment.¹⁹⁰ The screening of any vulnerability will happen at a later stage, several weeks or months after the individual’s placement in detention. At disembarkation, only persons who are manifestly and visibly vulnerable (e.g. families with young children) are identified and flagged by AWAS.

AWAS is the agency in charge of conducting such screenings. They accept referrals for assessment from any and all the entities that come in contact with migrants. Referrals could be made on various grounds, including:

- Serious chronic illness;
- Psychological problems, stemming from trauma or some other cause;
- Mental illness;
- Unaccompanied minors (UAMs),
- Physical disability; and
- Age (where the individual concerned is over 60).

These referrals are done mainly by IPA or NGOs visiting people in detention or reception centres, by filing a form (basic information, reason for referral, type of vulnerability) to send to AWAS.

Since 2020, EASO deployed experts in order to support AWAS with vulnerability screenings. The ‘vulnerability assessment response team’ assesses potential vulnerable applicants both in reception and detention centres. EASO deployed a total of 22 vulnerability assessors throughout 2021, out of which 6 were still present on 13 December 2021. According to information provided by the Agency, in line with the

¹⁸⁹ Regulation 14 Reception Regulations.

¹⁹⁰ Only women and obvious minors will not be taken to detention centres.

support of the Maltese authorities towards enhanced compliance with reception standards, EASO personnel conducted 810 vulnerability assessments of asylum applicants during 2021.¹⁹¹

The team operates both in reception centres and in detention centres, under the supervision of AWAS, and uses new and updated tools created by EASO.

Vulnerability is assessed on 4 levels:

- 1 being a very urgent support needed,
- 2 being in need of medical support,
- 3 being in need of medical but not urgent,
- 4 being a need in terms of housing and education.

Following the assessment, a report is produced, and a recommendation is made. If the assessment concludes the person is vulnerable, he/she should be automatically released from detention (if applicable) and transferred to the IRC where he/she is seen by the Therapeutic Unit. They are eventually transferred to an open centre. AWAS usually accommodates them close to the Administration Block so that they can receive better support. However, NGOs working with asylum seekers indicated that the assessments lack the necessary depth and often remain superficial in their identification. Lawyers reported that some assessment mentioned torture or inhuman and degrading treatment in Libya and concluded that “these events do not seem to impact the health of the PoC”, without further assessment.

Lawyers and NGOs also reported facing challenges to obtain the vulnerability assessments, that need to be requested from AWAS, which can take several weeks before sharing the report, usually right after the individual is provided with the appropriate care. As such, NGOs and lawyers are unable to monitor or assess the effectiveness of AWAS’ interventions in implementing the recommendations of the reports, as the date at which the conclusions are shared with the management of the Agency is unknown.

NGOs and lawyers reported that the assessment do not always mention clearly whether the individual is considered to be vulnerable and AWAS is generally reluctant to clarify. This leads to situations where vulnerable individuals are kept in detention despite clearly belonging to one of the categories recognised as vulnerable.

In 2021, the agency conducted 823 assessments, including 610 in open centres, 174 in closed centres and 39 in private accommodation. 159 individuals were considered as vulnerable: 29 were deemed “very urgent” (level 1) and 130 “urgent” (level 2).

The Vulnerability screening is not regulated by clear and publicly available rules. Where a referral is rejected, the individual concerned is not always informed of the decision; where the decision is communicated, it is rarely communicated in writing and no reasons are given to the individual concerned. Where the case is being followed by a social worker, it is usually possible for the said professional to request and obtain information regarding the reasons for rejection on the client’s behalf.

It is unclear whether a possibility to challenge such assessments exist in law and in practice.

The length of time taken to conclude assessment procedures varies. As a rule, cases concerning referrals on grounds of mental health or chronic illness are likely to take longer to determine than cases where vulnerability is immediately obvious, e.g., in the case of physical disability.

Since 2019, all applicants rescued at sea and disembarked in Malta have been automatically detained without any form of assessment on the need to detain them under the Reception Conditions Directive. Therefore, vulnerable applicants, including minors, are still *de facto* detained. Referrals to AWAS are

¹⁹¹ Information provided by EUAA, 28 February 2022.

possible by NGOs visiting detention and vulnerability assessments can be conducted by the AWAS/EASO team. Even when there is space in the open centres, NGOs reported that AWAS is known to be particularly slow in transferring vulnerable applicants to open centres. Due to severe overcrowding in 2019 and 2020, AWAS was only transferring people depending on the availability of space in open centres.

Asylum seekers arriving regularly, and therefore not accommodated in the IRC, may never be assessed and their vulnerability may never be identified.

A further concern is that, following their identification as vulnerable, individuals receive little or no support as they are required to access mainstream, and, therefore, non-specialised, support services as a matter of national policy.

1.2. Age assessment of unaccompanied children

Unaccompanied asylum seekers who declare that they are below the age of 18 upon arrival or during the completion of their Application Form are referred to AWAS for age assessment. The Minor Protection (Alternative Care) Act provides that, upon their identification, minors should be referred to the Head of the Child Protection Services who is responsible for filing a request for a provisional care order to the Maltese Courts which should be issued within 72h. The care order will generally provide that the Head of AWAS should be the legal guardian.

The age assessment procedure was developed and implemented with a view to assess claims of children. Although there are some references to this procedure in legal and in policy documents, the procedure itself is not regulated by law.

The only references to age assessment procedures in law are found in Regulation 17 of the Procedural Regulations, which deals with the use of medical procedures to determine age, within the context of an application for asylum and Article 21(5) of the Minor Protection Act,¹⁹² wherein the Director responsible for child protection may refer the minor to appropriate agencies to verify whether the person is in fact an unaccompanied minor.

According to the policy, irregular migrants who are undoubtedly children shall immediately be treated as such without recourse to any age assessment procedures. Age assessment shall be undertaken in all other cases.¹⁹³

The age assessment procedure was reviewed in late 2014, introducing a number of positive improvements by focusing on a holistic approach. It includes a greater integration of the benefit of the doubt in decision-making and reduces the timeframe of the procedure.¹⁹⁴ However, lawyers and NGOs confirm that the procedure is still plagued by a lack of adequate procedural guarantees, including a lack of information about the procedure.

The first age assessment phase consists of an interview conducted jointly by an AWAS staff member and a transcultural counsellor.¹⁹⁵ For persons visibly under the age of 14, AWAS begins this first phase on the day immediately following their arrival. For other claims, AWAS begins two working days later and this phase must be completed by the sixth working day. Under the new procedure, there is no obligation to take into consideration any documentation provided by the person. At the end of the first phase, if the

¹⁹² Minor Protection (Alternative Care) Act, CAP 602 of the Laws of Malta, 2020, available at: <https://bit.ly/3tweeUJ>.

¹⁹³ Strategy Document, November 2015, 11.

¹⁹⁴ Information provided by AWAS, 24 January 2017.

¹⁹⁵ The transcultural counsellors consist of a team of recent university graduates trained by JRS. They are not official AWAS employees but fall under its supervision and responsibility.

panel recommends that the person is a minor, the minor is referred to the Director responsible for child protection for a legal guardianship application to be filed before the Courts.

If the assessment is not conclusive at the end of the first phase, the person is referred for a further age assessment. This second phase consists of a more-in-depth interview with a team of social workers. This interview must be completed by the eighth working day after referral. Following the interview, the panel submits its recommendations, which are then presented to a Chairperson. The last phase consists of the decision taken by the Chairperson, after an examination of the recommendations and a reasoned analysis of the team. This determination must come by the tenth working day after referral.

At the end of this last phase, if the assessment is still not conclusive, the Chairperson can either refer the person for a second age assessment or for a bone density test, conducted by the Ministry of Health.¹⁹⁶

Under the amended procedure, a 'Social Report' is prepared by AWAS including the findings and the outcome of the assessment, this document is shared with the Department of Social Welfare Standards and then sent to the Ministry for Family and Social Solidarity.

The AA procedure now takes place in the **Marsa** Centre.

The Age Assessment Procedure has been improved but it is still plagued by a lack of adequate procedural guarantees, including a lack of information about the procedure. Moreover, since all people disembarked in Malta are automatically detained, minors who are not undoubtedly children are also detained pending age assessment which can be conducted months after their arrival. Minors receive very little information about the procedure and they are not supported by anyone during the process. NGOs reported that the legal guardian, or representative is never present at any stage the age assessment procedure and lawyers are not allowed to assist the minor as "they are not the legal representative" of the minor.¹⁹⁷

In 2017, UNHCR confirmed that authorities failed to apply the benefit of the doubt to persons declaring to be minors upon arrival (with very few exceptions), resulting in them being treated as adults until the age assessment outcome, which entailed detention together with other adult asylum seekers.¹⁹⁸ The UNHCR Representative in Malta reiterated her concerns in February 2021, stating that "children are (still) being held in closed centres".¹⁹⁹

The ECtHR criticised the length of the age assessment procedure in *AbdullahiElmi v. Malta*, holding that the number of alleged minors per year put forward by Malta does not justify an age assessment procedure duration of more than seven months; in this case, the applicants were detained for eight months pending the outcome of the procedure.²⁰⁰

Appeal

Minors have limited understanding of the possibility to appeal the age assessment decisions and do not receive any legal support to appeal. Additionally, such appeals are to be filed before the Immigration Appeals Board (IAB), Division II, within three days. Such conditions usually do not allow the use of this legal remedy. AWAS started notifying the two NGOs providing free legal aid (aditus and JRS Malta) of

¹⁹⁶ aditus foundation, *Unaccompanied minor asylum-seekers in Malta: a technical report on age assessment and guardianship procedures*, October 2014, available at <http://bit.ly/1W5M0Pq>.

¹⁹⁷ Information provided by AWAS, January 2022.

¹⁹⁸ UNHCR - Left in Limbo, UNHCR study on the implementation of the Dublin III Regulation, August 2017, available at: <https://bit.ly/2TQRLas>, 68.

¹⁹⁹ The Times of Malta, Migrant detention numbers shrink, fears about child detainees remain, 7 February 2021, available at: <https://bit.ly/3cP8Mwj>.

²⁰⁰ ECtHR, *AbdullahiElmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

the age assessment results. However, both NGOs reported difficulties to file appeals on time, as their access to detention centres is limited as also their available resources.

The procedure also raises a conflict of interest as age assessments are carried out by AWAS, which is also the responsible authority for providing accommodation and support to unaccompanied minors.²⁰¹ As such, the very same social workers in charge of the assessments are the ones that are also in charge of the follow-up and care of the minors they identified as such. This creates confusing situations for the UAMs, especially those that are in an age assessment appeal and receive support from AWAS. Additionally, lawyers and NGOs working with minors are required to challenge the decisions of the same social workers that are following other of their clients, regardless of their age.

Furthermore, lawyers reported that the Immigration Appeals Board lacks the necessary expertise to evaluate appeals on age assessment. Despite that, the Board refuses to appoint or consult independent experts.²⁰² The duration of age assessment appeals is significant, with nearly all cases filed in 2021 still pending in January 2022. This leads to situations where the appellants abandon their appeals or simply turn 18 before any decision is issued. Lawyers reported that so far, the only decisions taken by the IAB were rejections. Hearings are not always held, and the Board will not always see the appellants in person before it gives a decision. Moreover, the Board has at times issued decisions in the absence of the appellant.

There is no clear procedure established: the first stage of the proceedings includes questions to be sent by lawyers to AWAS about the age assessment report. Then, unless the appellant's lawyer requires to ask further questions, they will be invited to send their final notes of submissions. The appellant's lawyer may request the IAB to hold a hearing with the appellant and the social worker in charge of the assessment.²⁰³

In 2021, AWAS issued 228 decisions on age assessment. 111 applicants were declared to be adults, 117 as minors and 9 were still in the procedure at the end of the year.²⁰⁴

Reports were received by lawyers that persons claiming to be minors were told by Government officials to declare themselves as adults during the age assessment, in order to enter or facilitate the relocation scheme.

In 2020, AWAS established a UAM Protection Service in order to better assist UAMs in reception centres. Little is known about this unit and little information was given by AWAS since its creation.²⁰⁵ Minors seem to be allocated each a dedicated social worker, who will then act as a legal guardian and cater for their needs.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

Yes For certain categories No

❖ If for certain categories, specify which:

²⁰¹ Information provided by JRS, January 2019.

²⁰² Information provided by the Immigration Appeals Board, January 2022.

²⁰³ Information provided by the Immigration Appeals Board, January 2022.

²⁰⁴ Information provided by AWAS, January 2022.

²⁰⁵ Information provided by AWAS, February 2021.

2.1. Adequate support during the interview

According to the law, the IPA shall assess applications from those in need of special procedural guarantees within a reasonable period of time and ensure that such applicants are provided with adequate support throughout the whole procedure.²⁰⁶

As mentioned above, the IPA put in place a special fast-track procedure for applicants identified as vulnerable and in need of special procedural guarantees. Substantiated referrals may be made by any entity, following which the IPA will assess the alleged vulnerability and proceed accordingly²⁰⁷

The purpose of this fast-track process is to have the possibility to prioritise and quickly process applications for international protection submitted by particularly vulnerable individuals, who may be at risk of further psychological or other harm if their asylum determination procedure is protracted for a period of time.

According to IPA, a vulnerable applicant can be a minor, an elderly person, a pregnant woman, single parents with minor children, victims of human trafficking, persons with serious illnesses or medical conditions, persons with disabilities, persons with mental health issues or mental disorders, survivors of torture or rape, female genital mutilations survivors, persons who have been subjected to other serious forms of psychological, physical or sexual violence, and LGBTIQ persons.

To be considered vulnerable and to benefit from this fast-track procedure, an asylum-seeker must be referred to IPA by AWAS or by external entities such as EASO, UNHCR, NGOs or lawyers. Such referrals must be accompanied by a medical, social, psychological, or psychiatric report signed by a professional attesting the applicant's vulnerability.

Approval for the fast-tracking must be given by the Chief Executive Officer, who reserves the discretion not to grant approval and process the case through the regular procedure.

If the case is fast-tracked, the applicant will:

- Receive information in a manner which is sensitive and relevant to his/her needs;
- Be offered referral for free legal assistance to relevant NGOs or lawyers;
- Be offered the possibility for a support person to accompany them and be present during the personal interview;
- Be informed of the personal interview date well in advance;
- Be interviewed over more than one time if needed;
- Be assessed by a case worker and an interpreter duly briefed about the applicant's individual situation;
- Be offered the possibility to choose the gender of the case worker and interpreter whenever possible;
- In the event that the applicant is an unaccompanied minor, the interview will be conducted in a child-friendly manner taking into account the individual experiences and circumstances of the applicant;
- In case of an unaccompanied minor under 16 years old, effort shall be made to fast-track the processing of the application after a legal representative is formally appointed;
- The personal interview shall be prioritised and the examination of the application shall be concluded within two weeks from the date of the personal interview, the decision shall be taken within four weeks following the personal interview.

The IPA indicated that 8 persons were fast-tracked through this internal procedure in 2020. However, lawyers assisting asylum-seekers in these cases noticed that decisions were not taken within the time

²⁰⁶ Regulation 7 Procedural Regulations.

²⁰⁷ Information provided by the IPA, October 2020.

limits indicated in the policy. For 2021, the IPA indicated that it does not keep records of this procedure and therefore cannot provide data on it.

2.2. Exemption from special procedures

The accelerated procedure shall not be applied in case it is considered that an applicant requires special procedural guarantees as a consequence of having suffered torture, rape, or other serious form of psychological, physical, or sexual violence.²⁰⁸

Special guarantees are also foreseen for unaccompanied children. For example, it shall be ensured that minors are provided with legal and procedural information, free of charge on their application for international protection, and the interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.²⁰⁹

Moreover, the Refugees Act provides that unaccompanied children may only be subject to the accelerated procedure where:

- (a) they come from a safe country of origin;
- (b) have introduced an admissible subsequent application; or
- (c) present a danger to national security or public order or have been forcibly expelled for public security or public order reasons.²¹⁰

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 Yes No

The law does not mention the submission of medical reports in support of an asylum seeker's claim. When these are presented, the IPA treats them as documentary evidence presented by the applicant. Practitioners who have assisted a number of asylum seekers at first instance note that medical reports are taken into consideration, especially with regard to applicants with mental health problems. In these cases, reports provided by medical professionals are given considerable weight in the evaluation of the applicant's need for protection. Asylum applicants do not routinely provide medical reports documenting torture and other violence.

The Refugee Commissioner noted in 2018, that it has very rarely requested an applicant to undergo a medical examination. Where it does occur, the examination is paid for from public funds. No such request was made in 2018,²¹¹ while no information is available for 2019, 2020 or 2021.

Medical or professional reports are nonetheless necessary for a referral to the fast-track procedure for vulnerable applicants.

²⁰⁸ Regulation 7 Procedural Regulations.

²⁰⁹ Regulation 18 Procedural Regulations.

²¹⁰ Article 23A International Protection Act.

²¹¹ Information provided by the Refugee Commissioner, January 2019.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

Significant delays in the transfer to open centres of persons found to be minors and in the issuance of 'Care Orders' were observed already in 2019.²¹² One of the main issues in 2021, beyond the waiting time to conduct an age assessment, was the delay in appointing legal guardians.

The new Minor Protection (Alternative Care) Act came into force in July 2021 replacing earlier legislation on the protection of children in need of care and support, including unaccompanied minors and/or separated children. The Act establishes the position of the Director (Protection of Minors) within the Foundation for Social Welfare Services, Malta's welfare entity, who is responsible for protecting minors. It introduces the duty for all persons to report any minor who is at risk of suffering or being exposed to significant harm and establishes various forms of protection orders the Juvenile Court may impose, including care orders.

In terms of Article 21 of the Act, "*any person who comes in contact with any person who claims to be an unaccompanied minor shall refer that minor to the Principal Immigration Officer who shall thereupon notify the Director (Child Protection) so that the latter registers such minor and issues an identification document for such minor within seventy-two (72) hours*".

The Act provides that immediately after the registration of the minor and the issuing of appropriate identification documents, the Director (of Child Protection) shall request the Court to provide any provisional measure in regards to the care and custody of the minor according to the circumstances of the case and in the best interests of the minor and shall appoint a representative to assist the minor in the procedures undertaken in terms of the International Protection Act. AWAS is identified by the Act as being the entity responsible for the care of unaccompanied minors and will act as the legal guardian.

The December amendments of the Reception Regulation also reflect these changes. The Regulations now provide that "*entity for the welfare of asylum seekers shall as soon as possible take measures to ensure that the unaccompanied minor is represented and assisted by a representative*".²¹³

After receiving the conclusions of the investigations and evaluations from the competent authority (AWAS) that establish that the applicant is in fact an unaccompanied minor, the Director (Child Protection) shall, by application, request the Court to issue a protection order according to this Act and shall prepare a care plan. In practice, the Court will entrust the UMAS to the care of AWAS.

The Procedural Regulations provide that, as soon as possible and no later than 30 days from the issue of the 'Care Order', unaccompanied minors shall be represented and assisted by a representative during all the phases of the asylum procedure.²¹⁴ The assigned legal guardian is an AWAS staff member, usually a social worker, and the Regulations provide that he shall have the necessary knowledge of the special needs of minors.

On the contrary, if the investigations and evaluations from the competent authority establish that the applicant is not an unaccompanied minor, the Director (Child Protection) shall request the Court to revoke its first decree and to provide according to the circumstances of the case.

²¹² Information provided by JRS, January 2019.

²¹³ Reception Regulations, Regulation 14(1)(b).

²¹⁴ Regulation 18 Procedural Regulations.

In practice, AWAS is the entity in charge to refer the minor to the Child Protection Services, which would then Child Protection Services request the issuance the temporary care order to the Court and, upon confirmation by AWAS that the individual was assessed as an UAMs then inform again the Child Protection Services of its conclusions.

However, NGOs reported that the temporary care orders are rarely issued and that they actually have to refer the minor themselves to the Child Protection Services after noting that AWAS failed to refer the UMAS to the Child Protection Services. NGOs therefore assume that AWAS actually refer UAMs only if it confirms them to be minors after the first assessment. It means that UMAS are effectively deprived of any level of care and protection before the conclusion of the assessment, which usually happens several weeks or months after their arrival.

In January 2022, lawyers from aditus foundation secured the release of 5 UMAS from their illegal detention at Safi Barracks. They were detained for 2 months without any legal basis, waiting for the conclusion of their age assessment, which happened at about the same time as the Court case. They had arrived in November 2021 and were only seen by AWAS for the age assessment in mid-January 2022.²¹⁵

Moreover, the backlog of pending care orders is reported to be significant and some UMAS, identified for more than 6 months were not yet referred to the Child Protection Unit at the end of 2021.

AWAS being the assessor, the legal guardian and the entity responsible to accommodate and provide protection and care to the UMAS, raises concerns regarding the agency's ability to ensure that no interference exist between these activities.

In particular, the panel for age assessment is composed of social workers who also care for recognised minors within the UMAS Protection Unit of AWAS. The current representative's position as an employee of AWAS and the Leader of this UMAS Protection Unit raises serious concerns as to the level of independence enjoyed from other State Entities, not to mention the direct hierarchical link with the social workers in charge of the assessments. JRS and aditus reported that the legal guardian is not present at any stage of the age assessment procedure and has already acted against the best interest of the child on several instances, including refusing to facilitate the release of UMAs pending age assessment appeal procedures.

However, the vast majority of minors in 2021 did not have any legal guardian appointed to them, mainly due to shortcomings in the new judicial procedure. This resulted in minors having their asylum procedures put on hold, as well as the issuing of documentation attesting their status as asylum-seekers. However, even when a care order was issued, and a legal guardian was actually appointed, little to no change was actually observed with regards to access to the procedure or other services.

²¹⁵ Ibidem.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

An asylum seeker whose claim has been rejected may submit a subsequent application to the International Protection Agency.²¹⁶ A person may apply for a subsequent application if he or she can provide elements or findings that were not presented before – subject to strict interpretation – at first instance. This evidence would have to be evidence of which the applicant was either not aware of or which could not have been submitted earlier. Such new elements need to be presented within 15 days of receiving the information.

The IPA will first assess the admissibility of the subsequent application and if the application is deemed admissible, the applicant may be called for an interview, at the discretion of the Agency. Once the application is evaluated, a decision on the case is communicated to the appellant in writing. Since there is no free legal aid at this stage of the proceedings, asylum seekers are almost entirely dependent on NGOs.

There is no limit as to the number of subsequent applications lodged, as long as new evidence is presented every time. Second, third, and other subsequent applications are generally treated in the same manner.

The International Protection Agency created a standard form that applicants or their representatives need to fill in order to file a subsequent application. This form is meant to facilitate the filing of such applications by exempting applicants to draft submissions.

Removal orders are only suspended once the applicant has formally been confirmed to be an asylum seeker by the IPA, since this confirmation triggers the general protection from *non-refoulement* guaranteed to all asylum seekers.

In practice, asylum seekers filing subsequent application are entitled to an Asylum Seeker Document and all the rights attached to it. However, they usually will have to renew the document every month, hence limiting their ability to apply for a work permit as employers are reticent in employing people with such a limited right to remain.

In the eventuality that a subsequent application is deemed admissible but is not accepted on the merits, there is the possibility of appealing this decision to the International Protection Appeals Tribunal within 15 days, in the same way as with the regular procedure.²¹⁷

In case the subsequent application is deemed inadmissible when no new elements were found, the decision is immediately forwarded to the IPAT for a review in accordance with the accelerated procedure (see relevant chapter), which does not allow for the applicant to appeal properly as provided by the Asylum Procedures Directive. This is particularly problematic due to the risk of misuse of the inadmissibility criteria

²¹⁶ Articles 7A and 4 International Protection Act.

²¹⁷ Article 7(1A)-(2) International Protection Act.

by the IPA. Indeed, the IPAT will almost all the time confirm the decision of the IPA. In 2021, only two inadmissible cases on 114 were remitted back to the IPA by the IPAT.²¹⁸

There are two main obstacles faced by asylum seekers in respect of subsequent applications. The first is a lack of information. Information on the possibility to lodge a subsequent application is never communicated to asylum seekers whose appeal at the IPAT has been rejected. The second obstacle is the lack of free legal assistance when submitting a subsequent application. The only alternative for asylum seekers is to approach JRS, which is the main NGO offering a free legal service in the field of asylum.

Moreover, Article 16(3) of the Procedural Regulations provides that an exception from the right to remain in the territory may be made where a person makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to article 24 of the Act or after a final decision to reject that application as unfounded. In practice, this is understood by the IPA as a refusal to issue an Asylum Seeker Document to people that have filed a second subsequent application or more.

The Procedural Regulations do mention that this exception may be lifted if the International Protection Agency or the International Protection Appeals Tribunal indicate, by means of a notice in writing, that the return decision in respect of the person in question would constitute direct or indirect refoulement. However, no such case was encountered and it was indicated by the IPA that this cannot be requested by the applicant itself.

This is particularly problematic as even the procedure to determine the admissibility of the application can take up to 6 months. Applications that have been deemed admissible have similar waiting time as first-time applicants.

Until January 2022, the IPA was refusing to issue an ASD for second or more subsequent applications even after they were deemed as admissible. Lawyers from aditus foundation reported that the IPA reviewed its position and finally issued an ASD for their clients but it is unknown if this change in policy will also affects other individuals.

In 2020, 60 applicants had lodged a subsequent application (out of which 17 applications were lodged by Syrian nationals, 9 by Libyan nationals, 5 by Pakistani nationals and 5 by Nigerian nationals).

In 2021, 41 applicants lodged a subsequent application, out of which 9 were lodged by Egyptians, 6 by Bangladeshis, 4 by Pakistanis, 4 by Afghans and 3 by Libyans. Data provided is however incomplete, since NGOs reported filing subsequent applications for Ivorians, Ghanaians and Palestinians as well. They also reported that the chances of seeing a subsequent application passing the admissibility test are very low, and will generally be limited to LGBTI cases.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

²¹⁸ Information provided by the IPAT, January 2021.

1. Safe country of origin

According to Article 2 of the International Protection Act, a safe country of origin means a country of which the applicant is a national or, being a stateless person, was formerly habitually resident in that country and the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances.

The Act also provides, by way of a Schedule, the list of countries of origin considered as safe. The Minister responsible for Home Affairs is competent to amend the list of countries and may review the list whenever necessary by means of an administrative act. The last amendment to the list is dated 2020 when it included Bangladesh and Morocco. Currently the list of safe country of origin includes: Australia, Benin, Botswana, Brazil, Canada, Cape Verde, Chile, Costa Rica, Gabon, Ghana, India, Jamaica, Japan, New Zealand, Senegal, United States of America, Uruguay, Member States of the European Union and EEA countries. The criteria as to which countries are listed/removed is unclear.

The concept of safe country of origin can be used to consider an application manifestly unfounded. This would, in turn, render the accelerated procedure applicable.²¹⁹

As already mentioned, it looks like this concept is now implemented speedily to reject applications, especially from nationals of **Bangladesh, Morocco, Ghana and Egypt**. It also concerns applicants having claims within scope of the refugee or subsidiary protection definition who might see their applications deemed manifestly unfounded and, as a consequence, denied the possibility to appeal. On the basis of application of this principle, they would immediately receive a return decision/removal order once the IPAT confirms the application as being manifestly unfounded.

The amendments of December 2021 introduced a new provision in the Procedural Regulations which establishes that “the concept of safe country of origin can only be applied to those countries which have been designated as safe countries by the International Protection Agency and included in the Schedule to the Act.”²²⁰ It has yet to be seen how this amendment will be implemented in practice.

In 2020, 210 applications were rejected as manifestly unfounded on the basis that the applicants were coming from a safe country of origin.

In 2021, 303 applications were rejected as manifestly unfounded on the basis that the applicants were coming from a safe country of origin. This concerns nearly all applications made by Bangladeshis, Egyptians and Moroccans (265 out of 272 rejections).

2. Safe third country

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

- (a) Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) The principle of non-*refoulement* in accordance with the Convention is respected;
- (c) The prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;
- (d) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;
- (e) The applicant had resided in the safe country of origin for a meaningful period of time prior to his entry into Malta.

²¹⁹ Articles 8(1)(h) and 23 International Protection Act.

²²⁰ Regulation 23(2) of the Procedural Regulations.

Under the International Protection Act, the concept of a safe third country can be used to determine if an application should be considered under the accelerated procedure as inadmissible.²²¹

According to IPA, depending on the particular circumstances of the case, it could be determined that the concept of safe third country could apply.²²² However, no specific information was provided as regards the actual interpretation and application of the safe third country concept by the IPA. The latter confirmed that no decision has been taken on the basis of this concept in 2020 and 2021. NGOs and lawyers confirmed that, in their experience, the principle is never used.

3. First country of asylum

The concept of first country of asylum is defined as a country where the applicant has been recognised as a refugee or otherwise enjoys sufficient protection, including respect of the *non-refoulement* principle, and maybe readmitted thereto. This is also mentioned as a ground for inadmissibility.²²³

No information is available about the application of this concept. According to the IPA this provision may apply “on a case-by-case basis”. The IPA reported that no decision has been taken on the basis of this concept in 2021; on the contrary, NGOs reported having met applicants in this situation. They indicated that the IPA actually refuses applications from these individuals and therefore assume that no such records are kept by the Agency. Most of the cases encountered by NGOs in 2021 concerned people who had been granted protection in Greece, arriving by plane from Athens.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
- ❖ Is tailored information provided to unaccompanied children? Yes No

The provisions in the law regarding information to asylum seekers are contained in Regulation 3(3) of the Declaration Regulations and Regulations 4 and 5 of the Procedural Regulations. The former states that asylum seekers have to be informed, in a language that they understand, or they may reasonably be supposed to understand, of, among other things, the procedure to be followed and their rights and obligations during the procedure. It also states that asylum seekers have to be informed of the result of the decision in a language that they may reasonably be supposed to understand, when they are not assisted or represented by a legal adviser and when free legal assistance is not available. The amended provision also covers the information about the consequences of an explicit or implicit withdrawal of the application, and information on how to challenge a negative decision. This provision does not, however, state in which form such information has to be provided except for the decision that, by virtue of Regulation 14 of the Procedural Regulations, has to be provided in a written format. In practice, information is provided by both the Immigration Police and personnel working for the Refugee Commissioner. In the case of the Immigration Police, information on the rights and obligations of asylum seekers is provided almost immediately in the form of a booklet that is available in English, French, and Arabic.

²²¹ Articles 8(1)(g), 23 and 24(1)(c) Refugees Act.

²²² Information provided by the Refugee Commission, 12 January 2018.

²²³ Article 24(1)(b) Refugees Act.

Since 2019, information is no longer provided by the IPA to detained applicants, i.e. all applicants who entered Malta irregularly. The only information provided to applicants in detention was delivered by UNHCR Malta, which visits detention centres regularly, and by NGOs on a case-by-case basis. When applicants are registered and interviewed by EASO operating on behalf of the IPA, they do receive information about the asylum procedure and are given a leaflet on the Dublin procedure. However, this appointment can happen months after their arrival.

Consequently, most applicants detained upon arrival are not informed about the ground for their detention, nor about their rights as asylum-seekers. Some applicants are detained under the Health Regulation and the very basic document provided to them does not mention any kind of information and is generally not provided in a language the applicant can understand. The vast majority was *de facto* detained without being provided with any document and thus did not receive any information for months.

It is worth noting that the EASO operating plan with Malta for 2020 foresaw the development of information material “covering the various procedural steps with simple and clear content, appropriate for the age and level of understanding of the applicants, in a language that the applicant is reasonably supposed to understand and using appropriate dissemination tools”.²²⁴ It seems this material has not been produced, or is not accessible to detained applicants.

Moreover, both NGOs and UNHCR were denied access to detention for several months in 2020 and 2021 due to the COVID-19 pandemic, leaving hundreds of asylum-seekers with no information or assistance. Visits from NGOs resumed in May 2021, albeit strictly limited to pre-identified individuals that have to be seen in a boardroom. As such, living quarters are not visited anymore by NGOs and individuals that lawyers do not know about can go through their entire procedure without receiving any information on it.

Information provided to persons who are not detained is also a concern as the asylum system is not structured for asylum seekers arriving regularly and, therefore, those who are not taken to the IRC within a controlled environment. There is no systematic and structured way to provide comprehensive information to asylum seekers outside detention. They only receive basic information about the asylum procedure but not about their rights regarding reception. For example, they do not have access to information about access to healthcare or education, while asylum seekers in detention see their basic needs covered.

Alternative sources of information are available in practice mostly through NGOs and UNHCR. At the moment, only JRS visits the open centres to provide information. However, NGO staff are strictly limited to a specific area.

The December amendments to the Procedural Regulations introduced provisions for applicants held in detention facilities or present at border crossing points whereby “the relevant authorities shall provide them with information on the possibility to do so and shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure”. It is too early to say whether practice will actually be impacted by these changes.

Information on the Dublin procedure

With respect to the Dublin Regulation, some information is provided to asylum seekers with a document that is given to each person by the Immigration authorities upon their arrival. The information is contained in a few short paragraphs and is written in English. It does not include information on the consequences of continuing to travel to another EU Member State or absconding from a transfer. As a result, the information provided cannot be considered sufficient for asylum seekers to fully understand the way in which the Dublin system functions as well as its consequences. Dublin-related information leaflets for

²²⁴ EASO Operating Plan 2020, December 2019, available at: <https://bit.ly/2XxYx9K>.

adults and unaccompanied children, as included in Annexes X and XI of the Commission Implementing Regulation No 118/2014, are distributed to asylum seekers, including those in detention.²²⁵

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

National legislation provides that UNHCR shall have access to asylum applicants, including those in detention and in airport or port transit zones.²²⁶ Moreover, the law also states that a person seeking asylum in Malta shall be informed of his right to contact UNHCR.²²⁷ There is no provision in the law with respect to access to asylum applicants by NGOs, however, it states that legal advisers who assist applicants for asylum shall have access to closed areas such as detention facilities and transit zones for the purpose of consulting the applicant.²²⁸ Thus, NGOs have indirect access to asylum applicants through lawyers who work for them. In practice, however, asylum seekers located far from the centre or in closed centres do not face major obstacles in accessing NGOs and UNHCR.

Access to the IRC is regulated by AWAS and is not granted to family members or NGOs on grounds of the medical clearance conducted in this facility. However, access to the open section of the IRC is granted to UNHCR and NGOs requesting access in order to provide services.

Since all applicants arriving irregularly in Malta are detained, access to detention became a priority for UNHCR and NGOs. In 2019, access was revoked after two leading NGOs filed *Habeas Corpus* cases which led to the acknowledgment of the unlawfulness of detention and the release of several applicants.²²⁹ Access was subsequently denied for NGOs for several weeks without any explanation. In 2020, access was denied again for several months to NGOs but also UNHCR, officially as a result of the COVID-19 pandemic. Access was authorised again in July 2020, before being denied once more from August to October 2020. Very few visits occurred in the following year due to COVID-19 restrictions in place in the country; partial access for NGOs was finally restored only since June 2021. Currently, they do not have access to the living quarters of detention centres and are not permitted to organise group sessions with detained persons. Only UNHCR is granted such access. NGOs are only permitted to visit clients and by appointment despite having repeatedly requested such access from the responsible Ministry, access that had consistently been denied.

In practice, NGOs receive daily calls from detained persons requesting legal aid. Police numbers, exact names and countries of origins of these individuals have to be registered in order to be granted a visit by the Detention Services and reserve a slot for the only available boardroom. NGOs are usually allocated

²²⁵ See Commission Implementing Regulation (EU) No 118/2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2014 L 39/1.

²²⁶ Regulation 16(a) Procedural Regulations.

²²⁷ Regulation 3(3)(c) Declaration Regulations.

²²⁸ Regulation 7(3) Procedural Regulations.

²²⁹ Court of Magistrates, 7 October 2019, Mohammed Abdallah Mohammed 19O-030, available at: <https://bit.ly/2V6lVcs>; Court of Magistrates, Zeeshan Saleem 19N-24, 8 October 2019, available at: <https://bit.ly/3b7iLea>.

up to four hours, during which the lawyers (accompanied by an interpreter, as needed) are able to talk to between six to eight persons. There are weeks when NGOs visit a detention centre twice, whilst there are times when weeks pass without any slot being allocated.

NGOs repeatedly flagged a number of limitations with the current system. Presently, detained persons rely on the availability of a functioning telephone in order to call them and this is not always available. For the second half of the year, no telephone has been operational in any living area at Safi. Persons who need to call NGOs or other persons/organisations, are required to request this from the on-duty Detention Service personnel in order for them to use the office phone.

The authorities seem to assume that detained persons – including newly arrived asylum-seekers – are aware of the existence of NGOs, the nature of their services and how to get in touch with them. Invariably, the most vulnerable persons and often those most in need to be identified as such and be provided with information, assistance and referrals are not the ones calling.

This lack of access is particularly problematic due to the deadlines stipulated in Maltese legislation for the filing of appeals against Detention Orders (3 days), Removal Orders (3 days), age assessment decisions (3 days), and negative asylum decisions (15 days) are extremely stringent and template application forms are not provided. The actual deadlines amount more or less to actual time needed to get the approval for a visit the following week.

NGOs also report that legal aid lawyers provided by the State do not visit the detention centres on a regular basis.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which: Syria, Libya, Eritrea
2. Are applications from specific nationalities considered manifestly unfounded?²³⁰ Yes No
❖ If yes, specify which: Bangladesh, Ghana, Ivory Coast, Egypt

1. Syria, Libya and Eritrea

In 2020, a total of 209 decisions on Syrian cases were taken. This refers to 45 refugee status, 107 subsidiary protection and 57 rejections (among them 53 were inadmissible). This means that the majority of **Syrians** continue to receive subsidiary protection in Malta.

By way of comparison, 429 Syrian nationals had applied for international protection in Malta in 2019. The vast majority were granted subsidiary protection (261) while 24 were recognised as refugees. 77 applications were rejected but that number includes implicit and explicit withdrawals.

In 2021, 186 Syrians applied for protection and 45 were granted subsidiary protection (26% of the total amount of positive decisions), while 411 applications were still pending at the end of the year.

In 2019, the Refugee Commissioner received 258 applications from **Libyan** nationals. 50 were granted subsidiary protection while 12 were recognised refugees. 24 applications were rejected but that also includes explicit and implicit withdrawals.

²³⁰ Whether under the “safe country of origin” concept or otherwise.

The IPA did not share statistics on Libyan nationals in 2020, but according to Eurostat the large majority of them obtained subsidiary protection (70 persons), none of them received a refugee status, and only 5 Libyan applicants were rejected. This confirmed that, where nationality was established, Libyan national continue to be systematically granted international protection.

This changed towards the end of 2021 and beginning of 2022, NGOs and lawyers noted a new trend to reject application of Libyan who do not have any personal circumstances which would increase the likelihood to be targeted by violence in the country. Still, 4 decisions to grant refugee status and 32 decisions to grant subsidiary protection were issued (19% of the total amount of positive decisions) while 13 applications were rejected. In 2021, 65 Libyans applied for International Protection, while 227 applications were still pending at the end of the year.

While was no data was provided by IPA regarding Eritrean applicants in 2019 and 2020, it reported that 69 Eritreans were granted subsidiary protection (40% of the total amount of positive decisions) and only 3 were rejected in 2021. This confirmed that, where nationality was established, Eritrean nationals are systematically granted international protection. In 2021, 163 Eritreans applied for International Protection, while 301 applications were still pending at the end of the year.

The decisions issued on cases regarding these 3 nationalities represent 86% of the total number of positive decisions issued by the IPA.

2. Bangladesh, Ghana, Ivory Coast, Egypt

As previously stated, nearly all applications from asylum seekers coming from Ghana, Bangladesh and Egypt are considered manifestly unfounded. NGOs report this practice has been ongoing since 2019 and has been expanded to other nationalities such as Ivory Coast and, to some extent, Nigeria.

According to NGOs, this practice is linked to the feasibility of returns for these applicants, also considering that they will be automatically detained upon arrival and kept in detention throughout their procedure, up until they are forcibly removed or convinced to opt a for voluntary return. The IPAT reviews automatically confirm the rejection, and the procedure is therefore concluded within a very short timeframe. NGOs report that new arrivals from these countries saw their applications rejected as manifestly unfounded within 1 or 2 months, most of them before they could even meet a lawyer for the first time. Individuals are often served with the IPA rejection, the IPAT review and the removal order at the same time.

In 2021, 127 applications from Bangladeshi nationals were rejected as manifestly unfounded (24% of all rejections), while 3 were granted protection. 53 new applications were lodged and the number of pending applications at the end of the year is unknown.

45 Egyptians applied for international protection in 2021 and 79 applications were rejected as manifestly unfounded (15% of all rejections).

Moroccans, Nigerians, Ivorians and Ghanaians were issued with a total of 139 rejections (26% of all rejections).

Rejection decisions concerning these nationalities amount to 66% of all the rejections issued in 2021.

Reception Conditions

Short overview of the reception system

The Agency for the Welfare of Asylum-Seekers (AWAS) is in charge of the reception system for asylum-seekers in Malta. The Agency manages the reception centres and provides welfare services to asylum-seekers and some beneficiaries of international protection (since protection beneficiaries are entitled to access mainstream services).

Officially, the reception system in Malta is still governed by the 2015 Strategy for the Reception of Asylum-seekers and irregular migrants.²³¹ This policy is based on the transposition into national legislation of the Reception Conditions Directive and the Return Directive. According to the policy, all applicants arriving irregularly by boat are sent to an Initial Reception Centre where checks and assessments (age assessment, vulnerability assessment, need to detain) are conducted before being referred to detention or reception centres.

However, this policy suddenly stopped from being applied in the summer of 2018 due to a significant increase in the number of asylum-seekers arriving by boat. The whole Maltese reception system, not sufficiently equipped to deal with such high numbers, was put under extreme pressure. Due to lack of space available in overcrowded reception centres, the authorities decided to automatically detain all applicants arriving irregularly in Malta or rescued at sea.

Therefore, the reception procedure currently depends on the space available to accommodate applicants. AWAS regularly informs the authorities and Detention Services about how many places are available.

Families, UAMs, and vulnerable applicants are prioritised and, according to the authorities, should not be detained. However, applicants may stay for prolonged periods of time in detention before they undergo an assessment and it is established that they are a minor or vulnerable.

Applicants are usually released in chronological order depending on date of arrival. A place in a reception centre does not depend on the status of their application but only on the space available.

Once admitted, families and vulnerable applicants can be accommodated for one year while single males are given a six-month contract. People are asked to leave at the end of their contract irrespective of their status and even if their application for international protection is still pending.

The Maltese reception system consists of several reception facilities, divided mainly between one large scale area in **Hal Far** (composed of several centres), an Initial Reception Centre in **Marsa**, and several apartments.

In 2020, overcrowding, poor conditions, and shortages of trained staff in reception facilities were reported. Homelessness is increasing because asylum applicants are required to leave open centres after a short period of time as space for quarantining is needed, and as a result of job losses and difficulties in finding stable work. Delays in providing asylum-seekers with documentation have also impacted access to employment, education, and basic social support. In 2021, many of these challenges remain. The six-month contract remains in place, although extensions are granted based on vulnerability. Six months are, however, an extremely limited amount of time for asylum-seekers to acquire language skills, find a regular employment and save what is sufficient to make front to regular rent payments. Access to formal employment remains an issue, with many having to resort to irregular, unstable work positions. There is also an increase in the number of people who are left homeless, with informal settlements cropping up

²³¹ AWAS, Migration Policy, 'Strategy for the reception of asylum seekers and irregular migrants' available at: <https://bit.ly/3f4YE5s>.

around open centres to cater for those who have been evicted and do not have a place to stay. Upon intervention of social workers, extensions of contracts in open centres were granted to those asylum-seekers who were identified. NGOs report that, following individual interventions, AWAS often agrees to continue granting the per diem to applicants when they leave – freely or forcibly – the open reception centres.

The construction of a new Emergency Arrival centre was completed in the first quarter of 2021 and has a capacity of 500. Refurbishment in open centres began, but was not finalised at the time of writing.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------

Maltese law does not distinguish between the various procedures to determine entitlement to reception conditions, nor does it establish any distinction in the content of such conditions linked to the kind of procedure. Relevant legislation simply refers to “applicant”, defined as a person who has made an application for international protection.²³² No reference is made to the duration of entitlement to reception conditions.

Material reception conditions shall be available for applicants from the moment they make their application for international protection. According to the law, reception conditions are available for “applicants [who] do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence”.²³³ Applicants with sufficient resources or who have been working for a reasonable amount of time may be required to contribute to the cost of material reception conditions. However, no specific indication is provided as to the level of personal resources required, and it is unclear how this is determined, and by whom. It is also unclear as to whether an assessment of the risk of destitution is actually carried out. Asylum seekers are not formally required to declare any resources. The vast majority of applicants in Malta arrive irregularly by boat and do not have any resources. Applicants arriving regularly, or who were already present in Malta, can ask for a space in a reception centre which can only be afforded upon availability.

Regulation 16 of the Reception Regulations states that asylum seekers who feel aggrieved by a decision relating to the Regulations may be granted leave to appeal before the Immigration Appeals Board, established by the Immigration Act. However, according to lawyers assisting asylum seekers in at the IAB, no cases are taken to the Board due to the lack of information about this remedy and the short deadline (3 days) to appeal. In practice, issues are settled between NGOs and AWAS through informal requests.

²³² Regulation 2 Reception Regulations.

²³³ Regulation 11(4) Reception Regulations.

Whilst the Reception Regulations apply to all asylum seekers, in practice, reception conditions may not be offered to asylum seekers who might have benefitted from them earlier and subsequently departed from the open centre system. This would apply, then, to persons who have submitted subsequent applications. As a matter of policy, persons departing from the open centre system are not generally authorised to re-enter it, consequently leading to a lack of provision of reception modalities. However, AWAS has indicated that some individuals may be authorised to return to reception centres, although this is rarely the case. Usually, those persons are asked to come to AWAS' office to apply for accommodation. An assessment is then made by a social worker who first tries to refer the person to the mainstream services. No formal criteria exist to decide on why certain persons can be reintegrated in reception centres, but AWAS indicated that vulnerability is taken into account as a priority.²³⁴

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2021 (in original currency and in €): €130

The Reception Regulations cover the provision of “material conditions”, defined as including “housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance”.²³⁵

In practice, asylum seekers in open centres are provided with accommodation and a daily food and transport allowance whereas asylum seekers in detention are provided with accommodation, food, and clothing in kind.

The Reception Regulations generally specify that the level of material reception conditions should ensure a standard of living adequate for the health of the asylum seekers, and capable of ensuring their subsistence. However, legislation neither requires a certain level of material reception conditions, nor does it set a minimum amount of financial allowance provided to detained asylum seekers. Asylum seekers living in open centres are given a small food and transport allowance, free access to state health services and in cases of children under sixteen, free access to state education services. They are not entitled to social welfare benefits. Asylum seekers in detention enjoy free state health services, clearly within the practical limitations created by their presence within a detention centre.

Asylum seekers living in open centres experience difficulties in securing an adequate standard of living. The daily allowance provided is barely sufficient to provide for the most basic of needs, and the lack of access to social welfare support exacerbates these difficulties. Social security policy and legislation precludes asylum seekers from social welfare benefits, except those benefits which are defined as “contributory”. With contributory benefits, entitlement is based on payment of a set number of contributions and on meeting the qualifying conditions, which effectively implies that only a tiny number of asylum seekers would qualify for such benefits, if any.

AWAS provides different amounts of daily allowance, associated with the asylum seeker's status:

- € 4.66 for asylum seekers; € 130.48 per 28 days
- € 2.91 for persons returned under the Dublin III Regulation; and
- € 2.33 for children (including unaccompanied minors) until they turn 17.

People living outside of reception centres are usually not entitled to any form of allowance. However, in 2019, due to the lack of space in overcrowded reception centres and the impossibility to accommodate new arrivals, AWAS decided to also provide this allowance to people left outside of the reception system upon request. According to AWAS, any applicant duly registered with IPA and holding the asylum-seeker

²³⁴ Information provided by AWAS, January 2019.

²³⁵ Article 2 Reception Regulations.

certificate can apply to receive the allowance. NGOs indicated that all people referred to AWAS were provided with the allowance. However, since no information is provided to applicants about this possibility, and since NGOs have limited resources, many applicants were left outside of the reception system and did not benefit from allowances for lack of information or documentation. Moreover, due to major delays in the registration process with IPA, applicants often waited weeks or even months for their certificate and, therefore, to receive the *per diem*. At the end of the year, it was noticed that applicants registered with the IPA, but not yet holding the Asylum Seeker Document provided by IPA when the application is finally registered, were still granted the *per diem*.

AWAS indicated that 350 applicants at the end of 2020 were receiving such *per diem*.²³⁶ No data was provided for 2021. AWAS also indicated that failed asylum-seekers residing in centres and considered vulnerable might still be entitled to the *per diem*. The same applies to rejected asylum-seeker pending removal if considered vulnerable. This remains to be confirmed in practice.

Asylum seekers in detention receive less favourable treatment than nationals with regard to material support, due to the fact that they are detained. Persons living in open centres are treated less favourably than nationals in relation to access to social welfare support, as they are denied access.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
 Yes No
2. Does the legislation provide for the possibility to withdraw material reception conditions?
 Yes No

The Reception Regulations state that reception conditions may be withdrawn or reduced where the asylum seeker abandons their established place of residence without providing information or consent or where they do not comply with reporting duties, requests to provide information, or to appear for personal interviews concerning the asylum procedure, and finally when an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.²³⁷

The Regulations state that such decisions shall be taken “individually, objectively and impartially and reasons shall be given” with due consideration to the principle of proportionality.

According to AWAS, cases of termination when failing to comply with rules are very rare and implemented in extreme cases. AWAS indicated that less than 5 persons were evicted in 2020 for such reason. AWAS indicated that there were no decisions reducing or withdrawing reception conditions during 2021.

If a resident has not signed for 3 weeks, their place is reclaimed at the centre.²³⁸

Asylum seekers may appeal these decisions before the Immigration Appeals Board, in accordance with the Immigration Act. When these decisions are taken regarding reception conditions in detention, it is the Detention Service taking them, whilst AWAS would take these decisions in relation to residents of its open centres. It is unclear how reception conditions of asylum seekers living in the community, and not in any AWAS-coordinated centre, are regulated because relevant legislation does not provide this information and no such situation has ever arisen.

²³⁶ Information provided by AWAS, January 2021.

²³⁷ Regulation 13, Reception Regulations.

²³⁸ Information provided by AWAS, January 2021.

Appeals to the Immigration Appeals Board are particularly problematic for asylum seekers who are detained, as no information is provided on how to access the Board and its procedures. This was also highlighted by the ECtHR in its Article 5 ECHR cases against Malta.²³⁹

Evictions

In order to deal with the afflux of applicants and the lack of capacity of the reception system, the authorities revised their policy regarding length of stay in the reception system.

Single men are now allowed to remain in the reception centres for no more than six months, while families still benefit from a one-year contract. AWAS indicated that it is working closely with the communities to find alternative accommodation for applicants.

Residents receive a written reminder to leave, six weeks before the end of their contract. AWAS indicated that the list of people evicted is always reviewed by the psychosocial team.

People are entitled to challenge that eviction with AWAS, and the decision shall be reviewed by a care team, although no formal procedure is in place. According to NGOs, AWAS might reconsider such decisions on a case-by-case basis depending on the vulnerability of the applicant.²⁴⁰

Families are requested to leave after a year and upon assessment and if needed they can receive financial assistance for the first three more months.

Upon arrival, applicants are briefed about the reception rules and the length of their stay in the reception centre.

Nevertheless, such evictions remain a major problem in Malta where accommodation is very hard to secure due to high prices in a largely unregulated private rental market and due to the fact that landlords are usually extremely reluctant to rent accommodation to asylum-seekers. Moreover, in 2020, the COVID-19 crisis also made the situation more difficult with many applicants not being able to work for several months. Thus, these evictions often result in homelessness.²⁴¹ This continued in 2021. However, there have been cases where AWAS have extended contracts of those who were identified as vulnerable in some way. This includes homelessness as a vulnerability.

Several media outlets reported in 2020 that people were sleeping in the streets outside of the capital city following evictions from reception centres.²⁴² Informal settlements continued to crop up in different areas of the island in 2021.

Moreover, due to the delays in processing asylum applications, individuals are usually evicted while they are still considered applicants for international protection holding only a three-month renewable asylum-seeker document. This makes it difficult for them to find employment and accommodation, with the monthly € 134 allowance not being sufficient to find a place to rent. The introduction of the new policy restricting access to the labour market for asylum seekers hailing from countries listed as safe has caused new difficulties for asylum seekers whose contracts in the open centres end, but are not allowed to find regular employment before they have been in the country for 9 months.

²³⁹ ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, Judgment of 27 July 2010; *Aden Ahmed v. Malta*, Application No 55352/12, Judgment of 23 July 2013; *Suso Musa v. Malta*, Application No 42337/12, Judgment of 23 July 2013.

²⁴⁰ Information provided by JRS Malta 2020.

²⁴¹ Times of Malta, 'Migrants end up homeless as centres overflow', 2 July 2020, available at: <https://bit.ly/3tDzPKS>.

²⁴² Manuel Delia Blog, 'Evicted Hal Far residents sleeping rough without money for food', 24 June 2020, available at: <https://bit.ly/2NEjPQg>; See also, African Media Association Malta, 'Migrants' beds in open air Valetta', 15 July 2020, available at: <https://bit.ly/3vInlu6>.

Moreover, NGOs reported that it is now difficult for asylum-seekers to have access to shelters and centres run by Appoġġ, the National Agency for children, families, and the community. Appoġġ offers services to children, families, and adults in vulnerable situations and/or at risk of social exclusion, and communities. They also run several shelters and centres to accommodate people in need. In the past, some vulnerable asylum-seekers could be accommodated in such places when no other solution was available for them. NGOs noticed that, due to the current situation, Appoġġ no longer appears to accept asylum-seekers.²⁴³ This changed in 2021, and as it stands, the policy is that once their contract in the open centre is exhausted, asylum seekers can be referred to a shelter through Appoġġ.

In 2020, authorities have constantly and publicly stated that Malta has no more capacity to welcome migrants. The Foreign Affairs minister stated in May 2020 that “centres are full and we have no place for more migrants”. However, it was pointed out by NGOs on several occasions that Malta failed to build the expected new centre mainly funded by the EU.²⁴⁴

In December 2021, however, the open centres run by AWAS were accommodating 696 individuals on a capacity of 2,638 beds (around 26% of the total capacity), not including the newly constructed emergency centre that has a capacity of 500 beds.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

Asylum seekers residing in open centres enjoy freedom of movement around the island(s). All persons living in an open centre are required to regularly confirm residence through signing in three times per week. These signing procedures also confirm eligibility for the *per diem* (see [Forms and Levels of Material Reception Conditions](#)) and to ensure the continued right to reside in the centre. Residents who are employed, and who, therefore, might be unable to sign three times a week, are not given the *per diem* for as long as they fail to sign. However, JRS reported that people who are working seem not to be eligible to the *per diem* anymore.

AWAS indicated that they are currently working on a new entry/exit system to manage access to the centres using cards that residents could scan on a daily basis. No more information is available at this stage.

Malta does not operate any dispersal scheme, since residence in open centres remains voluntary. Nonetheless, placement in a particular open centre generally implies a limited possibility to change centre, although such decisions could be taken on a case-by-case basis. Moreover, legislation foresees that transfers of applicants from one accommodation facility to another shall take place only when necessary, and applicants shall be provided with the possibility of informing their legal advisers of the transfer and of their new address.²⁴⁵ Beyond individual situations, movement between centres is sometimes affected by space considerations. Asylum seekers might be moved from one centre to another in order to maintain security and order within particular centres, however this is rare.

²⁴³ Information provided by JRS Malta, 2020.

²⁴⁴ The Shift, ‘Malta risks losing €5 million EU funds for “unbuilt” migrant centre, PM to detain migrants offshore’, 4 September 2020, available at: <https://bit.ly/3vOplf4>.

²⁴⁵ Regulation 13 Reception Regulations.

Residing in an open centre brings with it entitlement to a financial *per diem*, intended to cover food and transportation costs. Persons living outside the open centres did not usually receive this *per diem*. However, given the current situation and the difficulty to accommodate asylum-seekers due to the lack of space in reception centres, AWAS is now granting this *per diem* to applicants living outside of the reception system upon request.

As already mentioned, asylum seekers arriving irregularly are now automatically detained until medically cleared by health authorities, and until AWAS greenlight the transfer, which can take up to 3 months.

Due to the COVID-19 pandemic, residents of open centres were forcibly quarantined for several weeks in **Hal Far**. The decision was taken to quarantine the centre after 8 persons were found positive in April 2020. The residents who positive were put in self-isolation and those who were in a medically vulnerable state were transferred out of the centre to be cared for in a more controlled environment.²⁴⁶ The army was called to ensure such quarantine was adhered to.²⁴⁷ This incident did not repeat itself and as far as known. Since individuals found positive and those residing in close quarters with them were isolated from the rest of the centre for quarantine there was no repetition of a centre-wide quarantine.

Cooking areas were also closed because of the pandemic and remained closed at the beginning of 2021.²⁴⁸ No additional information on the state of such areas was available at the time of writing.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ²⁴⁹	7
2. Total number of places in the reception centres:	around 2,638 + 500 ²⁵⁰
3. Total number of places in private accommodation:	around 200
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

There are seven reception centres in Malta (down from eight in 2017). Of these, five are run by AWAS and the remaining two by NGOs. The latter do, however, fall within AWAS' overall reception system.

- Hal Far Tent Village:
 - Section A: UMAS between the ages of 16 years to 18 years
 - Section B: single male adults
- Hangar Open Centre
 - Section A: single male adults,
 - Section B: families and single females adults
- Hal Far Open Centre: Families
- Dar il-Liedna: UMAS under 16 years old
- Initial Reception Centre Marsa: Families, single female adults, UMAS and Vulnerable adults.

²⁴⁶ Malta Today, 'Coronavirus: Hal Far migrant open centre placed under quarantine', 5 April 2020, available at: <https://bit.ly/3cWQpFF>.

²⁴⁷ Malta Today, 'Hal Far migrant open centre under lockdown', 6 April 2021, available at: <https://bit.ly/3f4DCnI>.

²⁴⁸ Information provided by JRS Malta, February 2021.

²⁴⁹ Both permanent and for first arrivals.

²⁵⁰ A 500 beds emergency shelter was completed in the 1st quarter of 2021.

- Emergency Arrival Zone
- Balzan Open Centre (Church-run open centre): Families and single women
- Migrants Commission (Church-run open centre): Families

Since the revision of the reception system in Malta, the IRC is now used partly as a closed centre for newly arrivals. The other part remains an open centre.

The 7 open reception centres and their respective capacities are as follows:

Open centre	Maximum capacity
Tent Village Hal-Far	1,248
Hal-Far Open Centre	128
Hal Far Hangar	746
Migrants Commission (apartments)	140
Dar il-Liedna	56
Balzan Open Centre	150
Initial Reception Centre Marsa	460
Emergency Arrival	500
Total capacity	3,338

Source: AWAS, February 2022.

The total reception capacity of the centres is approximately 3338 places (up from 1,500 in 2018). A new Emergency Arrival centre was finished in the first quarter of 2021. At the end of 2021, despite the increased capacity, only 753 persons were accommodated in open centres.²⁵¹

At the end of 2021, the actual occupancy of each centre was the following:

- Dar il-Liedna: 16 UMAS in the process of applying for asylum
- Hal Far Tent Village: 254, including 82 UMAS or in the AAT procedure, 164 male adults applicants, 4 THPs and 4 rejected asylum seekers,
- Hangar Open Centre: 238 applicants for international protection
- Hal Far Open Centres: 102, including 101 applicants for international protection and 1 THP
- Initial Reception Centre: 84 in the process of applying for international protection
- Balzan Open Centre: 57, including 38 applicants for international protection, 3 refugee status, 5 Subsidiary protection, 1 THP and 10 rejected asylum seekers.

Hal Far Tent Village, the largest reception centre, is divided into two sections, with the larger part dedicated to adult men and a smaller separate section reserved for UAMs. The latter section is not accessible to adults who cannot enter without authorisation and includes a zone for UMAS confirmed as minors and another called “Buffer zone” for those that are in the AAT procedure. In 2021, AWAS completed refurbishment of a space in the minors’ section, with the intention of using it as a classroom and for other activities. A library was installed, as well as a play station. The room is not accessible to residents all day long; instead, they need to request to use it at the centre office. However, it can be booked by NGOs to run activities.

Hal Far Open Centre has two sections, one for adult men and the other for single women without children and for families. These two sections of the centres are separated, and men cannot enter the section for women and families.

²⁵¹ Information provided by AWAS, February 2022.

Unaccompanied children are generally accommodated alone in the designated part of HTV or at **Dar il-Liedna**. Regulation 15 of the Reception Regulations specifies that unaccompanied children aged 16 years or over may be accommodated with adult asylum seekers, and, in practice, this has been the case for UAMs living in **Hal Far**.

AWAS indicated that vulnerable applicants and UAMs are usually accommodated near the Administration Block of each centre in order for them to have an easier access to the staff and services offered.

Apart from the above considerations (age, family composition), there are no clear allocation criteria on the basis of which persons are accommodated in specific centres.

AWAS reported that 323 people (321 applicants and 2 subsidiary protection) registered at their Head Office at the end of December 2021 resided in private accommodation.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? 9 months
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

Conditions in the open centres vary greatly from one centre to another. In general, the centres provide sleeping quarters either in the form of rooms housing between four (the centres for unaccompanied children) to 24 people (**Initial Reception Centre**), or mobile metal containers sleeping up to eight persons per container (**Hal-Far Hangar Open Centre [HOC]**, and **Hal Far Tent Village [HTV]**). Small common cooking areas are provided but already made meals are provided three times a day to all residents. Such areas were closed due to COVID-19 in 2020. In 2021, a cooking area was re-opened in the families' section of Hangar Open Centre. However, actors are not aware that such an area was opened in the men's section, or in Hal Far Tent Village. Common showers and toilets are also available.

Despite the large numbers of residents, the majority of open centres are run by small teams that are responsible for the centres' daily management and for the provision of information and support to residents. Individuals are also referred to AWAS' social welfare team as necessary.

Around 200 AWAS staff are currently working in several reception centres, which represents a significant increase compared to past years.²⁵²

According to the authorities, AWAS significantly increased its capacity by putting in place two coordinators in each centre, one being in charge of the welfare of residents. In the first quarter of 2021, 4 Welfare officers were recruited to follow the health care of vulnerable clients in tandem with Social Workers. These Welfare Officers operate in Centre Hotspots. Medical Doctors contracted by AWAS, started operating in the 1st quarter of 2021 and provide their services in the IRC, and the main Open Centres. AWAS also established a Migrant Advise Unit in order to provide information to residents. EASO indicated to be supporting this initiative by providing information material and interpreters.²⁵³ AWAS indicated that there is now an info point available in each centre (with interpreters) for people to go either by appointment or drop-in. AWAS reported that a total of 2947 information sessions were delivered by Migrants Advice Unit in 2021. 2021 was a pilot year for this team and the services provided seem to be in the process of developing. Actors in the field confirmed that each centre disposes of an information point, with a welfare officer and interpreters regularly present.

²⁵² Information provided by AWAS, January 2021.

²⁵³ Information provided by EASO, September 2021.

Despite this increased presence, most residents still report lack of information and access to services. They are accommodated in the centres after months spent in detention and are usually in need of assistance.

AWAS reported having improved the conditions in AWAS centres throughout 2020,²⁵⁴ by increasing its capacity and setting up a quality assurance department, introducing Internet access in all AWAS centres, and initiating two pilot community projects.²⁵⁵ In 2021, actors in the field confirmed that internet access is available in all centres, through residents complain that in some of them access points are inconveniently placed.

Despite these improvements, the living conditions in the open centres remain extremely challenging, save for a few exceptions. For example, among the issues most frequently registered are: poor hygiene levels; severe over-crowding; a lack of physical security; the location of most centres in remote areas of Malta; poor material structures; and the occasional infestation of rats and cockroaches are the main general concerns expressed in relation to the open centres. According to NGOs regularly visiting the centres, the situation has not improved in recent years and the living conditions in the reception centres remained deplorable in 2020, especially in the **Hal Far** centres.²⁵⁶ Sanitary facilities are run down and quickly become unsanitary due to the number of people. Cabins are very cold in winter and very hot in the summer. Residents are not allowed to have fridges in their cabin or cook their own food (except in HOC), which often leads to intense frustration. Food is provided daily, but residents often mention its poor quality and lack of variety.²⁵⁷ In 2021, conditions improved slightly with the reintroduction of cooking facilities in HOC, and the opening of the classroom in the minors' section of HTV. However, cabins remain poorly insulated and sanitary facilities have not increased. As already mentioned, severe over-crowding was no longer an issue in 2021.

The UN Working Group on Arbitrary Detention visited the **Hal Far** Open Centre in 2015 and expressed concerns about the situation in the prefabricated container housing units. It is reported that residents are suffering uncomfortable living conditions, given inadequate ventilation and high temperatures in the summer months and inadequate insulation from cold temperatures in the winter, in addition to the overcrowded conditions in each unit.²⁵⁸ Little has changed in the years since this visit.

The majority of centres offer limited options for activities for residents and it is largely NGOs providing certain activities, such as free language classes in English or Maltese. A positive development has been the refurbishment of spaces for this purpose in the open centres. However, due to the COVID-19 situation, such classes are difficult to organise. According to the Maltese NGO Kopin, which provides services in reception centres, parents had not received enough information about COVID-19-related restrictions and online teaching material. Due to a lack of volunteers, recreational activities run by NGOs for children were stopped.²⁵⁹ AWAS indicated that the Agency offers social, psychosocial, and mental health support upon request. The Agency also indicated working with JobPlus to offer basic English or Maltese courses in view of employment. It was also mentioned that music sessions and barber sessions are being organised as well as crafts for children and football in Marsa. Actors in the field confirmed that a number of recreational activities were organised by AWAS and NGOs in 2021, although the pandemic remained a serious obstacle to sustain these efforts. Notwithstanding, an effort to increase the number of recreational activities in open centres was noted.

²⁵⁴ FRA, Migration: key fundamental rights concerns, Quarterly bulletin, 2020, available at: <https://bit.ly/3tIH6jt>.

²⁵⁵ Ibid.

²⁵⁶ Information provided by JRS social workers who visit reception centres on a regular basis, 2020.

²⁵⁷ Information provided by JRS Malta 2021.

²⁵⁸ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its follow-up mission to Malta*, June 2016, available at: <http://bit.ly/25gRQ76>.

²⁵⁹ FRA, Migration: key fundamental rights concerns, Quarterly bulletin, 2020, available at: <https://bit.ly/319Dhrc>.

Recreational areas for UMAS have been upgraded. In 2022, AWAS should also be upgrading a space in Hangar Open Centre to be use for recreational/education purposes. The aim is to have parts of the common rooms set up with recreational games, where residents can spend some time playing games from the varied collection received during the festive season, collectively and equally.²⁶⁰

In January 2021, the CoE Commissioner for Human Rights published the report following her visit in October 2021. The report stated, when describing both the “Hal Far Tent Village” and “Hangar Open Centre”, that *“accommodation was provided in containers which appeared overcrowded and lacked air conditioning and heating. While the premises were clean, there was a lack of adequate hygiene conditions for residents, including as regards access to water and sanitation. Work was under way in the “Hangar”, however, to install additional showers and toilets. While playrooms had been set up for young children in the “Hangar” centre, the outside environment was stark, with no vegetation or furnishings in place for children’s open-air activities.”*

The Commissioner added that in the Hal Far Tent Village most of the unaccompanied minors she talked to stated that they were not attending school and were not involved in other meaningful activities. While the minors confirmed that they were being assisted by the social services, they had difficulties in understanding their situation at the time and their future prospects. Furthermore, contrary to the authorities’ obligations under Maltese legislation regarding protection of the rights of the child, no guardians had yet been appointed for these minors.²⁶¹

In 2021, AWAS indicated that it carried out several training initiatives for its staff working in reception centres

- Conflict Management: 12 senior management and coordinators
- Mental Health First Aid: 22 support workers and social workers
- EASO Module - Reception for Vulnerable Persons: 13 individuals
- EASO Module - Management in Reception: 1 Unit Leader and 8 coordinators
- EASO Module - Trafficking of Human Beings: 33 reception staff (social Workers, therapeutic services unit and migrant advice unit staff
- EASO Thematic Session - Sexual Orientation & Gender Identity: 7 reception staff
- EASO Thematic Session - Torture & Other Cruel, Inhumane or Degrading Treatment or Punishment: 33 reception staff.

²⁶⁰ Information provided by AWAS, February 2021.

²⁶¹ Commissioner’s report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3lnhWhS>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? Yes No
❖ If yes, when do asylum seekers have access the labour market? 9 months after submitting the application for people coming from countries listed as safe, directly after lodging the application for the others
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes No

Asylum seekers are entitled to access the labour market, without limitations on the nature of employment they may seek. In terms of the Reception Regulations, this access should be granted no later than nine months following the lodging of the asylum application. In practice, asylum-seekers are authorised to work immediately.

In May 2021, the Maltese Ministry of Home Affairs introduced a new policy that denies asylum seekers from countries included in the list of safe countries of origin the right to work for nine months from the lodging of their application. On 5 June 2021, 28 human rights organisations endorsed a statement issued by the Malta Refugee Council, expressing their concern about this new policy. The statement described the new policy as “discriminatory and inhumane”, claiming that it is aimed at denying people the possibility to work and earn a living.²⁶²

NGOs outlined that asylum-seekers from countries deemed safe are now deprived of the income necessary to secure a minimum level of human dignity and self-reliance. The NGOs deplored that the absence of any meaningful State support will leave these asylum seekers no other options than resorting to extreme labour exploitation or dependence on the material support provided by non-State entities such as NGOs, friends/social networks, and the Church. It also makes them infinitely more vulnerable to involvement in criminal or other irregular activity.

Jobsplus is the Agency in charge of delivering ‘employment licences’ for asylum seekers, the duration of which varies from three months for asylum seekers whose applications are initially rejected, up to six months for those whose applications are still pending. Fees are payable for new licences (€58) and for every renewal (€34).

In 2021, Jobsplus issued 3,723 employment licence, the countries of origin that received the most licences being Gambia (377), Mali (370), Nigeria (364), Ivory Coast (306) and Somalia (257). The number of licences issued do not correspond to the number of holders, since a person can apply for it more than once according to the length of the permit. Permits issued to people originating from countries of origin listed as safe amounted to 16% of the total number of licences issued. However, it must be noted that the policy came into force only in the second half of 2021.

²⁶² Malta Refugee Council, A New Policy to Drive People Into Poverty and Marginalisation, 11 June 2021, available at: <https://bit.ly/3KkYC6y>.

In practice, employers are deterred from applying for the permits because of their short-term nature and the administrative burden associated with the application, particularly in comparison to the employment of other migrants.²⁶³

Asylum seekers, even if not detained, face a number of difficulties, namely: language obstacles, limited or no academic or professional background, intense competition with refugees and other migrants, and limited or seasonal employment opportunities. Asylum seekers from sub-Saharan Africa or Asia are especially vulnerable to exploitation and abuse. Issues highlighted include low wages, unpaid wages, long working hours, irregular work, unsafe working conditions, and employment in the shadow economy.²⁶⁴

A 2019 report from UNHCR Malta highlighted the challenges encountered by migrants in employment. Up to the moment of writing, it can be said that the same issues have still been registered.²⁶⁵ The lack of clarity or information and administrative challenges when applying for work permits is said to constitute a significant obstacle, along with the difficulties associated with recognition of qualifications and skills, as well as language and cultural barriers. Furthermore, the report documented the situation of beneficiaries with protection in another Member State, especially Italy, who come to Malta and who are denied the possibility to work. The report also confirmed that, amongst beneficiaries of international protection, female participation in the labour market is considerably low.

UNHCR also noted that many service-providers such as unions, recruitment agencies, and employers' associations, are extending their services to refugees and have recognised the importance of reaching out to them.

A number of vocational training courses are available to asylum seekers, some also targeting this specific population group. In recent years JobsPlus, the national employment agency, implemented an AMIF project targeting asylum-seekers and protection beneficiaries and focusing on language training and job placement. Organisations such as KOPIN or Hal Far Outreach try to offer support with CV Writing and Job Search support.²⁶⁶ JRS also organised an empowerment workshop in 2020, specifically looking at skills for employability.²⁶⁷ In 2021, the Migrant Advice Unit (MAU) began assisting residents with updating a CV and looking for work. However, a number of residents still make use of the service offered by NGOs such as JRS and Integra.

Due to the COVID-19 crisis, many migrants lost their jobs or remained unable to work for several months.

The above-mentioned policy also introduced a new system whereby Jobsplus is obliged to request clearance from the Immigration Police for each employment licence issued. This led to an increase of rejections due to 'security issues', without provision of further information. NGOs reported difficulties obtaining access to the applicants' files to obtain the reason of the rejection from Jobsplus or the Police. People that had been issued several employment licences in the past saw their applications refused from one day to the other without any reason. Asylum seekers are not informed of their right to appeal the decision before the Immigration Appeals Board.

²⁶³ European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016, available at: <http://bit.ly/2kX5NsN>.

²⁶⁴ *Ibid.*

²⁶⁵ UNHCR Malta, Working together, a UNHCR report on the employment of refugees and asylum seekers in Malta, December 2019, available at: <https://bit.ly/3ajDk6P>.

²⁶⁶ See Hal Far Outreach, available at: <https://bit.ly/3cadCFp>.

²⁶⁷ Information provided by JRS Malta 2021.

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

Article 13(2) of the Refugees Act states that asylum seekers shall have access to state-funded education and training. This general statement is complemented by the Reception Regulations, wherein asylum-seeking children are entitled to access the education system in the same manner as Maltese nationals, and this may only be postponed for up to three months from the date of submission of the asylum application. This three-month period may be extended to one year “where specific education is provided in order to facilitate access to the education system”.²⁶⁸ Primary and secondary education is offered to asylum seekers up to the age of 15-16, as this is also the cut-off date for Maltese students. Access to state schools is free of charge. These rules apply to primary and secondary education.

Access to education for unaccompanied children was significantly hindered as a consequence of delays in the registration of asylum applications.²⁶⁹

Depending on the educational activity, UAMs need to have a legal guardian to get enrolled to courses offered to young people. This is problematic as, as already explained, very few minors are appointed a legal guardian. Despite some minors being appointed a legal guardian at the end of 2021, it is still early to measure the impact of this change on access to education.

The Ministry for Education and Employment established a Migrant Learners’ Unit which seeks to promote the inclusion of newly arrived learners into the education system. They provide guidance and information about the Maltese educational system to assist migrants.

In practice, children do attend school. Children with particular needs are treated in the same manner as Maltese children with particular needs, whereby a Learning Support Assistant (LSA) may be appointed to provide individual attention to the child. Yet it is noted that in the situation of migrant or refugee children, language issues are not appropriately provided for, with possible implications on the child’s long-term development.²⁷⁰

Adults and young asylum seekers are eligible to apply to be exempted from fees at state educational institutions - including the University of Malta - vocational training courses, language lessons, and other adult education classes. Vocational training courses offered by [JobsPlus](#), the State-run job placement service, are also accessible to asylum seekers.

It is to be noted, (see below) that beneficiaries of protection are increasingly making use of these educational services, primarily since information on their availability is becoming available to the various communities through NGO activities and increased openness by the relevant governmental authorities.

Several NGOs also offer free language classes in English or Maltese, but this service is not provided within reception centres.

Moreover, the government introduced, in 2018, the “I belong” Programme, an initiative run by the Integration Unit. The initiative consists of English and Maltese language courses and basic cultural and

²⁶⁸ Proviso to Regulation 9(2) Reception Regulations.

²⁶⁹ Information provided by JRS, January 2019.

²⁷⁰ Neil Falzon, Maria Pisani and Alba Cauchi, *Research Report: Integration in Education of Third Country Nationals*, aditus foundation, 2012, available at: <http://bit.ly/1Kuqe6M>.

societal orientation as part of an integration process. It is open to all persons of migrant background, meaning asylum-seekers are able to benefit from it.

In 2020, JRS offered two trainings courses on Gender Based Violence prevention and protection in collaboration with Migrant Women Association Malta,²⁷¹ to women living in Hal Far Open Centre.²⁷² JRS repeated the programme with a group of women in HFO in 2021.

D. Health care

Indicators: Health Care			
i. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
ii. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
iii. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input checked="" type="checkbox"/> No
iv. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

Article 13(2) of the International Protection Act states that asylum seekers shall have access to state medical care, with little additional information provided. The Reception Regulations further stipulate that the material reception conditions should ensure the health of all asylum seekers, yet no specification is provided as to the level of health care that should be guaranteed. The Regulations specify that applicants shall be provided with emergency health care and essential treatment of illness and serious mental disorders.²⁷³

Asylum seekers outside of detention centres may access the state health services, with the main obstacles being mainly linked to language difficulties. However, institutional obstacles also prevent effective recourse to the mainstream health services when required, including in cases of emergencies. These are: limited transport availability, the absence of full-time medical staff in the detention centres, and informal transactions for medicine, etc.

As with vulnerable persons, detained asylum seekers suffering from mental health problems face the practical difficulty of not being identified, owing to the absence of a formal identification process or of full-time specialists within the detention centres. Once identified, they are generally transferred to **Mount Carmel**, the main public mental health facility in Malta, for treatment.

No specialised services exist in Malta for victims of torture or trauma, primarily owing to the lack of such capacity on the island.

Decisions to reduce or withdraw material reception conditions would not affect access to health care.

Access to the COVID-19 vaccine was granted to asylum seekers without limitations from 1 July 2021. Those that wished to be vaccinated could drop-in at the University of Malta without any need to pre-register. An identity document such as an asylum-seeker's document or a police card was required. For some time, mobile teams were deployed at various locations to administer the vaccine, being staffed by medical students, civil servants, and civil society volunteers and were hugely successful particularly amongst the migrant communities.

²⁷¹ See Migrant Women Association Malta, available at: <https://bit.ly/3tCaqlq>.

²⁷² Info provided by JRS Malta 2021.

²⁷³ Regulation 11(2) Reception Regulations.

When person gets their vaccine, they also receive a health number, which they can use to download their COVID-19 certificate from the website of the Health Ministry. In practice, many asylum seekers face difficulties in accessing the certificate due to the language barrier, lack of phone or IT skills.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

National legislation literally transposes the recast Reception Conditions Directive regarding the definition of applicants with special needs and provides that “an evaluation by the entity responsible for the welfare of asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible”.²⁷⁴

The amendments of December 2021 (Legal Notice 487 of 2021) introduced new provisions for vulnerable applicants to the Reception Regulations, which now transposes the Directive more faithfully. The amendments include a more comprehensive implementation of provisions related to the material reception conditions of vulnerable individuals and the guardianship and care of minors.

In particular, the Reception Regulations now provide that “*the entity for the welfare of asylum seekers shall also ensure that support is being provided to applicants with special reception needs, taking into account their special reception needs throughout the duration of the asylum procedure, whilst conducting appropriate monitoring of their situation*” and that “*an unaccompanied minor shall be accommodated in centres specialised in accommodation for minors*”.²⁷⁵

The Regulations, however, still provide that unaccompanied minors aged sixteen years or over may be placed in accommodation centres for adult asylum seeker.

In practice, upon arrival, alleged unaccompanied minors and other manifestly vulnerable persons are immediately de facto detained either in pursuance of the Health Regulations or most of the time without any legal basis and without any form of assessment until they are released or detained under the Reception Regulations,

As mentioned in the section of the report on [Identification](#), AWAS is responsible for implementing government policy regarding persons with special reception needs and is in charge of these assessments that are now mainly conducted in detention. This raises important issues as to the level of independence of the Agency and the people in charge of the assessments as they are both assessors and caregivers.

When someone will be deemed to be vulnerable, he or she will be released and should be immediately accommodated in open centres or centres for unaccompanied minors, depending on availability. However, even if AWAS claims that age assessments are conducted immediately, practice shows that it can take weeks or months for assessments to be conducted, resulting in minors staying in detention for a long time pending their assessment. Moreover, if the assessment concludes the individual is an adult, he or she has the right to appeal but is not released or considered minor before a final decision is taken.

Such assessments are conducted by people deployed by EASO under the supervision of AWAS. As already mentioned, the team consists of 20 assessors, all deployed by EASO, and translators are also now available. The team operates both in the reception centres and the detention centres.

²⁷⁴ Regulation 14 Reception Regulations.

²⁷⁵ Reception Regulations, Regulation 14 (b).

In 2021, the agency conducted 823 assessments, including 610 in the open centres, 174 in closed centres and 39 in private accommodation. 159 were considered as vulnerable, 29 as “very urgent” (level 1) and 130 as “urgent” (level 2).

The assessment will generally be composed of a small narrative of the visit and complains of the individual and recommend actions to be taken, including access to legal aid, family tracing, psychosocial support or medical support. However, NGOs working with asylum seekers indicated that the assessment lack the necessary depth and remain very superficial in their identification. Some lawyers reported that some assessment mentioned torture or inhuman and degrading treatment in Libya and concluded that “these events do not seem to impact the health of the PoC”.

A therapeutic unit will also carry out sessions with identified individuals upon referral.

Beyond the general principle, specific measures provided by law for vulnerable persons are as follows: the maintenance of family unity where possible;²⁷⁶ and particular, yet undefined, attention to ensure that material reception conditions are such to ensure an adequate standard of living.²⁷⁷

Families are usually accommodated in **Hal Far** Hangar. Single women are accommodated at Hal Far Open Centre, and Hal Far Hangar, and unaccompanied minors are generally accommodated in a section of HTV, within the “buffer zone” or the UMAS zone, or in a dedicated reception centre (**Dar il-Liedna**) where they receive a higher level of support than that available in the other, larger centres. The centre has an official capacity of 58 persons and is staffed by care workers from AWAS.

There are no other facilities equipped to accommodate applicants with other special reception needs. All other vulnerable individuals are treated on a case-by-case basis by AWAS social workers, with a view to providing the required care and support.

With regard to ongoing monitoring, whilst no formal monitoring system exists within detention, vulnerable individuals may be referred to AWAS at any point of their stay in detention. Within open centres, no formal monitoring mechanism is established, yet vulnerable individuals may approach or be referred to open centre management and staff.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The Reception Regulations require that within 15 days from lodging the asylum application, the Principal Immigration Officer ensures that all applicants are informed of reception benefits and obligations, and of groups and individuals providing legal and other forms of assistance.²⁷⁸

In 2018, the Office of the Refugee Commissioner, now the International Protection Agency ceased its visits to the IRC to provide information on the right to apply for international protection. UNHCR Malta visits applicants at the IRC in both the closed and open sections in order to provide information, whilst JRS Malta provides such information to asylum-seekers in the open section of the IRC. AWAS also provides information about the reception conditions, such as rules of the centre, *per diem*, etc.

According to AWAS, information is provided regarding asylum procedures (based on material prepared with EASO’s support) but also education, employment, health, and housing. Some leaflets are distributed,

²⁷⁶ Regulation 7 Reception Regulations.

²⁷⁷ Regulation 11(2) Reception Regulations.

²⁷⁸ Regulation 4 Reception Regulations.

and some info sessions were organised early in the year. However, these activities were discontinued due to COVID-19.²⁷⁹

Information is also given by AWAS to residents regarding the rules of the centres. Information is given to residents entering the centres about their rights and rules of the centres. AWAS also established an information point at the end of 2020, a space for information, either by appointment or drop in. This MAU Advisory Unit has an office in each centre and someone from AWAS is present on site on a daily basis.

These arrangements were put in place at the end of 2020 and their effectiveness remains to be observed at this point. 2021 was a pilot year for this team and while some improvements have been registered, residents in some centres still find it difficult to access information.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes With limitations No

Access to the IRC is regulated by AWAS. Family members are not granted access and only a limited number of NGOs and the UNHCR are granted access.

Access to open centres is regulated by AWAS or MHAS, for which permission is also required. Criteria to be granted access to the centres are unclear. Permission is not easily granted to non-service-related visits, as is the case for academics, friends, research students, reporters, and so forth.

G. Differential treatment of specific nationalities in reception

NGOs have not observed any form of preference given to particular nationalities. In practice, however, the new work policy introduced in May 2021, whereby asylum seekers coming from listed safe countries of origin can work only 9 months after they apply for asylum, coupled with the eviction policy of AWAS at 6 months seriously puts these asylum seekers at risk of destitution and poverty.

²⁷⁹ Information provided by JRS Malta 2021.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

3. Total number of asylum seekers detained in 2021: ²⁸⁰	415, excl. <i>de facto</i> detainees ²⁸¹
4. Number of asylum seekers in detention at the end of 2021:	85 excl. <i>de facto</i> detention
5. Number of detention centres:	2 + IRC
6. Total capacity of detention centres:	Not available

Detention of asylum seekers is regulated by national law following the reform of the reception system in 2015. Since these changes, detention is now no longer mandatory or an automatic consequence of the decision to issue a Removal Order. The Reception Regulations provide for the possibility to detain asylum seekers on six limited grounds, which are the ones listed in the recast Reception Conditions Directive.

At the end of 2018, the number of arrivals by sea rose significantly. Because of the unpreparedness of the authorities to deal with the high numbers of arrivals, the reception system was quickly incapacitated. In reaction to the new context, from summer 2018 onwards, all migrants rescued at sea – including asylum applicants to be relocated to other Member States – were *de facto* detained, either in the closed area of the IRC in Marsa, in the Safi Detention Centre, Lyster Barracks, or China House.

The policy of detaining asylum seekers automatically upon arrival continued in 2021, with the use of *de facto* detention for the first months, first as a measure of quarantine against COVID-19 and then on the basis of the Prevention of Disease Ordinance.²⁸² During this period of detention, all asylum seekers except families and young children are detained, including individuals claiming to be minors.

Upon disembarkation and following immigration registration, asylum seekers that arrived by boat are all automatically detained. NGOs reported that, although the authorities stated that this detention is related to COVID-19 measures, no information or documentation on said measures is provided to detained persons. This *de facto* detention often continues way beyond acceptable quarantine time-frames, and the practice is not in conformity with established quarantine protocols.

In 2021, 838 migrants were held under such measures, with 134 migrants still detained at the end of year, amounting to the total number of arrivals by boat in 2021.²⁸³ NGOs reported that the duration of this detention is variable, with most people being detained between 1 to 3 months.

Following COVID-19 quarantine, applicants undergo a health screening consisting of a chest X-ray seeking to identify persons infected by tuberculosis. The testing and processing of results often takes several days or weeks. Following medical clearance by the Health authorities, the PIO will proceed to an assessment of the legal basis and need to detain and issue a Detention Order accordingly.

Detention will usually be ordered on the following grounds: “*in order to determine or verify his identity or nationality*”²⁸⁴ and “*in order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant*”.²⁸⁵

²⁸⁰ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

²⁸¹ The number does not include *de facto* detainees under the Health Regulation and those detained without any legal grounds which concerns the vast majority of the people rescued at sea in 2020.

²⁸² Chapter 36 of the laws of Malta, Prevention of Disease Ordinance, 10 August 1908.

²⁸³ Information provided by the Infectious Disease Prevention and Control Unit, January 2022.

²⁸⁴ Reception Regulations, Article 6(1)(a).

²⁸⁵ Reception Regulations, Article 6(1)(b).

Lawyers report meeting applicants in detention with no documentation confirming their detention, including applicants who had been medically cleared for release yet never actually released.

In practice, only asylum seekers from countries of origin where return is feasible were found to be officially detained by the Principal Immigration Officer, without any individual assessment. Hence, the detention coupled with the accelerated procedure (which does not provide for the possibility to file an appeal) ensures that the individual will be issued with a removal order and a return decision in a matter of months.

Officially, minors and vulnerable applicants are not supposed to be detained. However, since all applicants arriving irregularly were automatically detained without any form of assessment, vulnerable applicants and minors were detained for months before a proper assessment was conducted. As a result, hundreds of vulnerable applicants and minors were left in detention for months.

Malta has three official detention centres: Safi Barracks, (which include several facilities), Lyster (Hermes) Barracks, and China House. In 2021, Lyster Barracks was closed for refurbishment; the current progress of the renovations is unknown. The Marsa Initial Reception Centre is not formally categorised as a detention centre, since a section within the centre is open and allows the residents' free entry and exit. However, there is also a closed component to the IRC where persons are effectively deprived of their liberty.

In 2021, detention conditions remained an issue, with substandard living arrangements in most blocks of the two major detention centres of the country.

In March 2021, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report following its visit to Malta in September 2020.²⁸⁶ The report highlights the serious failures of the Maltese detention system in 2020, stressing that migrants are deprived of their liberty without any legal basis for arbitrarily long periods in conditions, which appear "to be bordering on inhuman and degrading treatment as a consequence of the institutional neglect". The CPT considered that "certain of the living conditions, regimes, lack of due process safeguards, treatment of vulnerable groups and some specific COVID-19 measures undertaken are so problematic that they may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights".

During her visit to Malta in October 2021, Council of Europe Commissioner for Human Rights Dunja Mijatović noted that, "*although the number of those detained, including children, was significantly reduced recently, the Commissioner observed that uncertainties remain about the legal grounds and the safeguards related to some detention measures*". She called on the authorities "*to focus on investing in alternatives to detention and to ensure that no children or vulnerable persons are detained*". The Commissioner also stressed the need to ensure independent monitoring of places of detention as well as unhindered access for NGOs to provide support and assistance to those detained.²⁸⁷

NGOs and other actors are unable to assess whether the situation within the living quarters has improved since the previous report was issued. However, they reported that telephones are not operational in most of the living area at Safi. Persons that to call their lawyers or other persons/organisations, are required to request this from the on-duty Detention Service personnel in order for them to use the office phone.

The CoE Commissioner for Human Rights noted that some efforts were made to improve living conditions in the centres, however she was struck by the deplorable situation in Block A in the Safi Detention Centre

²⁸⁶ CPT, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020*, March 2021, available at: <https://bit.ly/3mPtelf>.

²⁸⁷ CoE, *Reforms needed to better protect journalists' safety and the rights of migrants and women in Malta*, 18 October 2021, available at: <https://bit.ly/3levJqA>.

and urged the authorities to take immediate action to ensure dignified conditions for all those currently held there.²⁸⁸ This was again underlined in her report published in January 2022.²⁸⁹

Challenging the detention of asylum seekers remains particularly difficult in front of the Immigration Appeals Board, perceived to be mostly ineffective.

Applications under Article 409A of the Criminal Procedure Code remain the only possible remedy for people being de facto detained under the Prevention of Disease Ordinance or without any document. NGOs bringing such cases in front of the Court of Magistrates are usually successful, except for a recent case (See [Judicial Review of Detention](#)). The Court of Magistrate usually declares the detention to be unlawful and already condemned the policy of systematic detention due to the lack of reception space as “abusive and farcical”.²⁹⁰

Parallel to applications to the Court of Magistrates, NGOs try as much as possible to flag these individuals to the PIO by email requests. Such requests are generally successful for those asylum seekers that have been detained beyond the 9 months required by law.

Legal assistance is mainly provided by the two major NGOs in the field, aditus foundation and JRS Malta. State sponsored legal aid is available only for the first 7 days review of detention, which leaves most asylum seekers without any means to challenge their detention past this initial review.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

- In practice, are most asylum seekers detained:
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
- Are asylum seekers detained in practice during the Dublin procedure?
 - Frequently Rarely Never
- Are asylum seekers detained during a regular procedure in practice?
 - Frequently Rarely Never

According to the Reception Regulations,²⁹¹ the Principal Immigration Officer may order the detention of an applicant for the same grounds foreseen in the Reception Conditions Directive, namely:

- In order to determine or verify his or her identity or nationality;
- In order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant;
- In order to decide, in the context of a procedure, in terms of the Immigration Act, on the applicant's right to enter Maltese territory;
- When the applicant is subject to a return procedure, in order to prepare the return or carry out the removal process, and the Principal Officer can substantiate that there are reasonable grounds to

²⁸⁸ Ibidem.

²⁸⁹ Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3lnhWhS>.

²⁹⁰ Malta Today, 'Magistrate blasts 'abusive and farcical' migrant detention practice', 30 November 2020, available at: <https://bit.ly/3r9hjiz>.

²⁹¹ Regulation 6 Reception Regulations.

believe that the applicant is making the application merely in order to delay or frustrate the enforcement of the return decision;

5. When protection of national security or public order so require; or
6. In accordance with the Dublin III Regulation.

With regard to the second ground, the Court of Magistrates clarified in 2018 in the case of an asylum seeker returned to Malta under the Dublin Regulation, that a “risk of absconding” is not a self-standing ground for detention. Since the applicant had provided most of the elements needed for the determination of his asylum claim, his detention was deemed unlawful.²⁹²

The Constitutional Court of Malta also held that it “*subscribes to the view held recently by the Strasbourg Court to the effect that it is hard to conceive that in a small island like Malta, where escape by sea without endangering one's life is unlikely and fleeing by air is subject to strict control, the authorities could not have at their disposal measures other than the applicant's protracted detention (vide Louled Massoud v. Malta, ECHR 27th July 2010). Nor should the authorities' inability to adequately monitor movements into and out of Malta be shifted as a burden of denial of release from detention on a person accused of an offence, particularly if such a person is of foreign nationality.*”²⁹³

According to law, the individual detention order shall be issued in writing, in a language that the applicant is reasonably supposed to understand, and it shall state the reasons of the detention decision. Information about the procedures to challenge detention and obtain free legal assistance shall also be provided. Detention Orders may be appeal within 3 working days. Furthermore, a review by the Immigration Appeals Board shall be automatically conducted after seven days and every two months in case the individual is still detained.²⁹⁴

The December amendments introduced some positive changes to the Reception Regulations, with the introduction of the requirement to carry an individual assessment and only order detention if it proves necessary and if other less coercive measures cannot be applied effectively.²⁹⁵ It also provides that administrative procedures relevant to the grounds for detention set out in this regulation shall be executed with due diligence.

However, no change was reported in the PIO's policy since the introduction of these amendments.

After a period of nine months, any person detained, if they are still an applicant for international protection, shall be released.²⁹⁶

In 2020 and 2021, lawyers assisting people in detention noticed that asylum-seekers from **Bangladesh, Ghana, Egypt, Morocco and Ivory Coast**, were usually detained under the first two criteria of the Regulations. In most cases, such detention orders were issued several weeks or months after arrival, meaning that asylum-seekers were often detained irregularly for long periods of time. Moreover, such detention orders seem to be issued automatically, without any individual assessment, simply based on the nationality of the individual.

In relation to review or appeal possibilities, although these detention orders could be challenged, this rarely happened due to the lack of information available and the restrictions in access for NGOs and lawyers.

²⁹² Court of Magistrates, *Rana Ghulam Akbar v Kummissarju tal-Pulizija*, 26 February 2018.

²⁹³ QORTI KOSTITUZZJONALI, *Jovica Kolakovic v. Avukat Generali*, 26/2010/1, 14 February 2011.

²⁹⁴ Regulation 6(3) Reception Regulations.

²⁹⁵ Reception Regulations, Regulation 6 (1).

²⁹⁶ Regulation 6(7) Reception Regulations.

Moreover, in the majority of cases, the detention of asylum-seekers is not in line with the recast Reception Conditions Directive. Throughout 2020 and 2021, Malta relied on national health legislation to deprive asylum-seekers of their liberty, on the ground that there is a reasonable suspicion that they might spread contagious diseases – Article 13 of the Prevention of Disease Ordinance (CAP. 36).²⁹⁷ This article provides that “[w]here the Superintendent has reason to suspect that a person may spread disease he may, by order, restrict the movements of such person or suspend him from attending to his work for a period not exceeding four weeks, which period may be extended up to ten weeks for the purpose of finalising such microbiological tests as may be necessary”.

This article, therefore, authorises the Chief Medical Officer to restrict a person’s movements for up to four weeks, the period of which may be extended for up to ten weeks, on suspicion that a disease may be spread.

No form of assessment is conducted, and applicants are only provided with a document – often in a language they do not understand – stating that they are detained for a period of four weeks that might be extended up to ten weeks under the Health Regulations.

NGOs immediately condemned this new detention regime and expressed a series of concerns, namely:

- The suspicion that a disease may be spread is not a valid ground for detaining asylum-seekers under international, EU and national law. Health-related detention is also regulated by the Convention, requiring a series of procedural standards;
- Even in such situation, the authorities should not be entitled to deprive someone of his/her liberty, as the Health Regulations do not authorise detention, but merely a restriction of free movement;
- No effective legal remedy is available, and the applicants have no way to challenge such decision.

UNHCR also condemned this new policy, describing the reintroduction of automatic detention as a big “setback”, commenting on the very poor conditions of the detention centres and underlining the fact that UAMs were being unlawfully detained with adults.²⁹⁸

Furthermore, in 2020, the vast majority of people disembarked in Malta and immediately placed in detention were detained without any form of legal basis. People were simply placed in detention without any assessment and without being given any document or information on the reasons for their detention.

No data is available on the number of applicants detained under this new policy in 2020 or 2021. According to NGOs, the use of this practice appeared to decrease in 2021. Regardless, those who were detained on this basis, were kept in Safi for several months. Furthermore, due to the lack of access to detained individuals, NGOs might not be aware of a greater number of such individuals.

According to official data provided by the Immigration Police, 415 asylum seekers were issued detention orders in 2021, out of which 85 were still detained at the end of 2021. Most of the detention orders were taken on the two first grounds foreseen by the Reception Regulations.²⁹⁹ However, this number does not include the asylum seekers detained under the Health Regulation and those who are *de facto* detained.

Since 838 persons were disembarked in Malta in 2021, it can be assumed that the number of people detained is approximately the same, with the exception of specific cases such as those regarding women and children whose age cannot be disputed. Moreover, it was observed that applicants would not be released even after they were medically screened and cleared. Instead, individuals would only be released when a place is made available in the open centres.

²⁹⁷ Cap. 36 of the Laws of Malta, 1908, available at: <https://bit.ly/2E9u73v>.

²⁹⁸ The Times of Malta, ‘1400 migrants detained illegally at Marsa and Safi - UNHCR’, January 2020, available at: <https://bit.ly/2JbWIXp>.

²⁹⁹ Information provided by the Immigration office of the Malta Police Force, January 2022.

Detained persons do not receive information about their status. No information regarding the reason for their detention is provided, neither on the expected duration of the detention nor their rights. Information about the asylum procedure is provided by EASO and the IPA, but only during the registration of their application, often several weeks after arrival. In the meantime, applicants rely on UNHCR, the officials of which visit the centres regularly and provide general information as well as on NGOs, such as JRS Malta and aditus foundation, also visiting detention and providing information and legal advice. In 2020, access to detention was restricted for several months for NGOs and UNHCR, which prevented asylum seekers from receiving any information or legal support.

Over the course of 2019 and 2020, detainees held a number of demonstrations at **Safi** to protest against their indefinite incarceration (see [Conditions of detention](#)), the absence of information, and the conditions in which they were being kept.³⁰⁰

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
 - Reporting duties
 - Surrendering documents
 - Financial guarantee
 - Residence restrictions
2. Are alternatives to detention used in practice?
 - Yes No

According to the Reception Regulations, when a detention order of an asylum seeker is not taken, alternatives to detention may be applied for non-vulnerable applicants when the risk of absconding still exists.³⁰¹ These alternatives to detention foreseen in the Regulations are the same as the ones listed in the Directive, namely the possibility to report to a police station, to reside at an assigned place, to deposit or surrender documents or to place a one-time guarantee or surety. These measures would not exceed nine months.³⁰²

Following the transposition of the recast Reception Conditions Directive, concerns were expressed by NGOs that alternatives to detention could be imposed when no ground for detention is found to exist.³⁰³ The wording of the legislation and the Strategy Document seem to imply that alternatives to detention may apply in all those cases where detention is not resorted to, including those cases where there are no grounds for the detention of the asylum seeker. This goes against the letter and the spirit of the Directive where alternatives to detention should only be applied in those cases where there are grounds for detention. These concerns remained valid in 2020 and 2021 as most asylum seekers released from detention were imposed “alternatives to detention” arrangements, even though there was never any ground to detain them in the first place.

According to the authorities, 648 asylum seekers were released from detention and placed under alternatives to detention (ATD) in 2021. They were requested to reside at an assigned place, to notify the Principal Immigration in case of change of residence and to sign at the Police Headquarters in Floriana once every week.³⁰⁴

³⁰⁰ ECRE, Malta Charges Five Rescued Migrants with ‘Terrorist Activities’ while Facts Remain Unclear, 5 April 2019, available at: <https://bit.ly/33HDTVd>.

³⁰¹ Strategy Document, November 2015, 26.

³⁰² Regulation 6(8) Reception Regulations.

³⁰³ aditus foundation, et al., NGO *Input on the Draft Strategy Document: Strategy for the Reception of Asylum-Seekers and Irregular Migrants*, November 2015; available at: <http://bit.ly/2kX6K4j>.

³⁰⁴ Information provided by Immigration Office of Malta Police Force, January 2022.

NGOs reported that there is no clear pattern on the reason, when and why alternatives to detention are applied to asylum seekers. However, it transpires very clearly from the policy that alternatives to detention are seen by the authorities not as an alternative, but as a natural continuation of the status post-detention, with said detention often being ordered without legal basis.

Following release from detention, applicants face difficulties retrieving the possessions the Immigration Police would have confiscated from them immediately following their arrival. These possessions include money, jewellery, and mobile phones. Applicants are often required to rely on the intervention of NGOs to reclaim their possessions, at time months after their release from detention. The Police will inform that an investigation is conducted following every boat arrival, and that possessions can only be retrieved at the end of the said investigation, which can take more than a year.

Asylum-seekers are never informed or requested to consent that their phones and personal belongings will be searched and investigated and are never informed when items are ready for collection.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never

❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

With regard to vulnerable applicants, including minors and alleged unaccompanied minors, the amended legislation, along with the new policy, prohibit their detention. The Reception Regulations state that “whenever the vulnerability of an applicant is ascertained, no detention order shall be issued or, if such an order has already been issued, it shall be revoked with immediate effect”.³⁰⁵

On 22 November 2016, the European Court of Human Rights (ECtHR) delivered its judgment in *Abdullahi Elmi and Aweys Abubakar v. Malta* concerning the eight-month detention of two asylum-seeking children pending the outcome of their asylum procedure and, in particular, the age assessment procedure employed. The ECtHR found a violation of Article 3 of the Convention as the conditions complained of amounted to degrading treatment. The Court also found a violation of Article 5(4) of the Convention as the applicants did not have an effective and speedy remedy under Maltese law by which to challenge the lawfulness of their detention.³⁰⁶

Upon arrival at the border, families and children whose age is undisputed are taken to the closed section of the IRC for necessary checks before being accommodated in reception centres.

However, alleged unaccompanied minors and other vulnerable persons are immediately detained waiting for assessments to be conducted, despite the Reception Regulations providing that applicants identified as minors or shall not be detained, except as a measure of last resort. The same goes for applicants who claim to be minors unless their claim is evidently and manifestly unfounded.³⁰⁷ In practice, the PIO will detain those minors who come from countries where returns are being carried out and release the other with no other form of assessment.

³⁰⁵ Regulation 14(3) Reception Regulations.

³⁰⁶ ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

³⁰⁷ Reception Regulations, Regulation 14(1) (b).

According to the Regulations, whenever the vulnerability becomes apparent at a later stage, assistance and support is provided from that point onwards.

In order to give effect to this policy, two procedures are in place to assess 'vulnerability' in individual cases: the Age Assessment Procedure and the VAAP (see section on [Identification](#)). Both procedures are officially implemented by AWAS.³⁰⁸

UNHCR and NGOs regularly visiting detention facilities have the possibility to refer people for a vulnerability assessment. However, the restrictions implemented in 2021 significantly limit NGOs' possibilities to identify and refer vulnerable people.

As already mentioned, EASO deployed staff in 2021 to support AWAS with the vulnerability screening. The "vulnerability assessment response team" assesses potentially vulnerable applicants. The team consists of 20 assessors, all deployed by EASO, and translators are also available. The team operated both in the reception centres and the reception centres, under the supervision of AWAS. Assessors use new and updated tools created by EASO.

Vulnerability is assessed on 4 levels:

- 1 being a very urgent support needed;
- 2 being in need of medical support;
- 3 being in need of medical but not urgent;
- 4 being a need in terms of housing and education.

Following an assessment, a report is drawn up and a recommendation is made. If the assessment concludes the person is vulnerable, he/she is automatically released from detention in case she/he is detained and transferred to the IRC where he/she is seen by the Therapeutic Unit. They are eventually transferred to an open centre. AWAS usually accommodates them close to the Administration Block so that they can receive better support.

However, NGOs and lawyers reported that individuals assessed as vulnerable are not always automatically released and can remain in detention against the team's recommendations.

This team started to operate in September 2020 and conducted 136 assessments in detention: 84 assessments were conducted at the end of the year in the reception centres. No data was provided for 2021.

In practice, asylum seekers entering Malta irregularly by plane are also immediately detained and not sent to the open section of the IRC. There is, thus, the possibility that vulnerability will not be identified. Those that arrived with false documents are usually prosecuted and sentenced to prison for a minimum duration of 6 months in the CCF.

NGOs reported that unaccompanied minors are detained pending age assessments and, in many cases, following on from confirmation of their minor status where space for their accommodation is not available in any of the open centre spaces.

The CPT confirmed in its report that, "in practice, many children, including those awaiting age-assessment results, are being deprived of their liberty both in Marsa IRC and in Safi and Lyster".³⁰⁹

³⁰⁸ Strategy Document, November 2015, 15.

³⁰⁹ CPT, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020*, March 2021, available at: <https://bit.ly/3uXeCD1>.

The report highlights that “due to space constrictions, children were held in the same cramped space together with related and non-related adults. In Marsa IRC, children of all ages – including infants – were locked on all of the units in very poor conditions together with unrelated single male adults”.

The delegation mentioned that children have no access to any activities, education, or even the exercise yard to play games, and notes the lack of any psychosocial support or tailored programmes for children and other vulnerable groups.

UNHCR Malta and NGOs firmly condemned the detention of children. Furthermore, the University of Malta expressed its concerns that children waiting to have their age assessed are kept in detention with adults, reminding the authorities that “any decision to place children aged 16 and 17 with adults violates the legal obligation to consider children as persons under the age of 18.”³¹⁰

Moreover, at Marsa IRC, the CPT noticed that other vulnerable groups, including breast-feeding mothers and pregnant women, were also deprived of their liberty along with their other young children. They were being held in the same space as unrelated male adults, with no privacy, and had not seen a midwife or doctor for their pregnancies. According to the delegation, such persons were held at Marsa IRC for many months (for periods ranging from 3 to 7 months).

These practices continued throughout 2021, as the CoE Commissioner for Human Rights noted in October 2021.³¹¹

This was confirmed by a recent Habeas Corpus case filed by aditus foundation in January 2022 for 7 young men, including 3 confirmed minors, one at an age assessment appeal stage and 2 other that were confirmed to be minors at a later stage. All of them had been detained for more than 2 months in Safi Detention Centre.³¹²

Another case filed in March 2022 before the Immigration Appeals Board confirmed again that Malta still detains children with adults pending age assessment.³¹³

The Immigration Police officially reports that no minor or vulnerable people are detained in Malta and indicated that, in 2020 and 2021, no vulnerable or minor asylum-seekers were detained.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|----------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 9 months |
| 2. In practice, how long in average are asylum seekers detained? | 7 months |

National law specifies a time limit for the detention of asylum seekers, which is limited to nine months. According to the Reception Regulations “any person detained in accordance with these regulations shall, on the lapse of nine months, be released from detention if he is still an applicant”.³¹⁴

In the past, applicants formally detained in line with the grounds of the Reception Conditions Directive were usually released after two or three months and placed under alternatives to detention. However, this

³¹⁰ Open letter to the Social Solidarity Minister and the Child Commissioner, signed by 81 academics of the University of Malta, 24 October 2019, available at: <https://bit.ly/3a6aBBA>.

³¹¹ CoE, Reforms needed to better protect journalists’ safety and the rights of migrants and women in Malta, 18 October 2021, available at: <https://bit.ly/3levJqA>.

³¹² Aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3vRWLzR>

³¹³ Aditus foundation, Malta still detains children with adults in Safi Detention Centre, 10 April 2022, available at <https://bit.ly/3MjyGlz>

³¹⁴ Regulation 6(7) Reception Regulations.

policy changed since 2020, as most asylum-seekers detained under the RCD were those applicants coming from countries where returns are being carried out by Malta, including listed safe countries of origin such as **Bangladesh, Ghana, Egypt or Morocco**. Those were no longer released after the mandatory period of time. They remained in detention until their case was processed through the accelerated procedure since considered manifestly unfounded. In most cases seen by lawyers, these applicants ended up receiving their rejection from IPA, followed almost immediately by the automatic review from the IPAT, the removal order, and return decision. Therefore, they remain in detention awaiting potential return. As of 2021, people coming from **Ivory Coast and Nigeria** are also kept in detention, seemingly because as they are considered as more easily returned to their countries of origin.

Applicants detained under the Health Regulations and *de facto* detainees are kept in detention until there is space available in open centres. Therefore, applicants may remain in detention for several months even though they have been medically cleared and no valid grounds for their detention remains, or ever even existed.

The Immigration Police officially indicated that the average duration of detention for asylum-seekers is 65 days.³¹⁵ It is accurate only at the condition of following the PIO's position that only individuals issued with a detention order are to be considered as detained by the Immigration Police. As such, people *de facto* detained or detained under the health regulations (which will be the case for alleged minors or other vulnerable individuals) are not accounted for by the PIO. Moreover, the PIO as well as the IAB count the duration of detention from the date of the detention order and does not take into account the significant period of time spent in *de facto* detention prior to that.

Numerous reports by the CPT, NGOs, and lawyers assisting asylum seekers in detention mention that the duration of detention is much higher than the one reported by the PIO. In 2020, a UNHCR Representative also indicated that if "the length of time asylum seekers spent in detention varied in 2020, but many had been detained eight months or longer".³¹⁶ This remains accurate in 2021.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes No

At the time of writing Malta operates three detention centres:

- Safi, where the detained population is mainly composed of men (including unaccompanied minors pending their age assessment procedure). Asylum-seekers are detained automatically upon arrival, in the vast majority of cases with no documentation ordering their detention. NGOs encountered large groups of asylum-seekers detained for over 130 days with no documentation confirming or ordering their detention. Migrants pending removal are also detained at Safi;
- Marsa Initial Reception Centre (IRC), based in an old school, where the detained population is largely composed of family units and men. It is not formally categorised as a detention centre,

³¹⁵ Information provided by the Immigration Office of the Malta Police Force, February 2021.

³¹⁶ Times of Malta, 'Migrant detention numbers shrink, fears about child detainees remain', 7 February 2021, available at: <https://bit.ly/2NJkd00>.

since a section within the centre is open and allows the residents' free entry and exit. However, there is also a closed component to the IRC where persons are effectively deprived of their liberty. Their number is unknown.

- China House, set-up in March 2020 in order to cope with the large number of migrant arrivals and the COVID-19 pandemic. It is located in Hal Far and used mainly to detain newly arrived asylum seekers under quarantine until they are medically cleared by the Health Authorities.

No official data is available, but the capacity of detention has been increased regularly since 2018 to accommodate the new policy of systematic and automatic detention. The UNHCR reports that 333 migrants were being held in detention in October 2021.³¹⁷

Safi Detention Centre and the temporarily closed Hermes Block (Lyster Barracks) are detention facilities run by the Detention Service, located on an operational bases of the Armed Forces of Malta (AFM), nearby the International Airport. China House is an additional detention facility run by the Detention Service, with assistance from Malta Red Cross. At the time of the CPT's visit, the Safi Detention Centre was accommodating close to a 1000 people, while Lyster was holding 350 migrants. China supposedly had a capacity of approximately 350 people in 2020.³¹⁸

A section of the Initial Reception Centre in Marsa became a *de facto* detention centre in 2018 when the authorities decided to automatically detain all asylum seekers arriving irregularly in Malta. The IRC is not formally categorised as a detention centre, since a section within the centre is open and allows the residents' free entry and exit. However, there is also a closed component to the IRC where persons are effectively deprived of their liberty.

AWAS indicated that in 2020, the closed section of the IRC represents around 10% of the centre and is used to accommodate disembarked families for the necessary checks before accommodating them in reception centres. However, the CPT noted in their report that at the time of their visit in 2020, that the centre was mostly closed and accommodated 350 migrants, detaining families, UAMs, women and pregnant women, and persons with disabilities waiting to be transferred to an open centre but also those awaiting medical clearance and those tested positive with COVID-19.³¹⁹

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

2.1. Overall living conditions

According to Regulation 6A of the Reception Regulations, applicants for international protection shall be detained in specialised facilities and they shall be kept separate, insofar as possible, from third country nationals who are not asylum-seekers. They shall also have access to open-air spaces. Separate accommodation for families shall be put in place in order to guarantee adequate privacy as well as separate accommodation for male and female applicants. The policy document published at the end of 2015 following the transposition commits to improve the quality of living conditions in the detention centres. The document foresees that detention facilities shall comprise of, or have access to, a clinic, medical isolation facilities, telephone facilities, an office for the delivery of information by the IPA, rooms

³¹⁷ UNHCR, Malta Fact Sheet, October 2021, available at: <https://tinyurl.com/3xacpkf>.

³¹⁸ CPT, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020, March 2021, available at: <https://bit.ly/3mPtelf>.

³¹⁹ Ibid.

for interviews with the IPA and NGOs, facilities for leisure, and the delivery of education programmes as well as a place of worship.

The detention centres are managed by the Detention Service (DS), a government body that falls under the Ministry for Home Affairs, National Security and Law Enforcement. The DS was set up specifically “to cater for the operation of all closed accommodation centres; provide secure but humane accommodation for detained persons; and maintain a safe and secure environment” within detention centres.³²⁰ The DS is neither established nor regulated by a specific law. It is made up of personnel seconded from the armed forces and civilians specifically recruited for the purpose, many of whom are ex-security personnel. DS staff receive some in-service training, however people recruited for the post of DS officer or seconded from the security services are not required to have particular skills or competencies. The situation deteriorated further in 2020 with increased overcrowding. Asylum seekers were also left detained for months without being given any information, without the possibility to contact anyone, and without being supported by anyone since access to detention was restricted for UNHCR and NGOs for several months.

NGOs reported that access was partially re-established in May 2021, but with notable limitations and obstacles. The UNHCR is currently the only organisation allowed to have access to the living areas. As such, the gap in information provision still particularly high. Communication through phones remains the only mean for migrants to be in contact with lawyers or NGOs, however most of the phones were not operational for outgoing calls from June 2021 and detainees mostly have to wait for people to call in their block in order to identify themselves and request help or need to request for a call to the on-duty detention officer.

Asylum seekers and other third-country nationals, who have over-stayed their visa, are detained in the military barracks, which offer inadequate sanitation and hygiene facilities and allow no privacy for the detainees. Whilst detainees are provided with a bed each, there is little space in between the beds and no place where they may store their personal possessions. Detainees are provided with cleaning materials and are expected to take care of the cleaning of the centre. Although detainees are issued with basic items of clothing upon arrival, there is no systematic or consistent practice for the distribution of clothes which are weather-appropriate. Most of the clothing which is provided to detainees is donated on a charitable basis to the detention service management and is then distributed accordingly. Moreover, there is little to no heating or ventilation, exposing migrants to extreme cold and heat.

In 2020, NGOs visiting detention were not allowed to enter the living premises and could only meet with detainees in containers outside the buildings. This policy was maintained when the access to detention was re-established in 2021, NGOs are only allowed to visit detainees upon request in a container outside the living areas.

The Monitoring Board for Detained Persons is currently the only entity monitoring detention conditions. It was reported that it has however limited power and independence.

Detainees reported terrible living conditions with severe overcrowding and unsanitary conditions, caused by the limited availability of shared toilets and showers. Some buildings are known to have one shower for hundreds of detainees. In some buildings of the detention centres, detainees may enjoy limited time in the open, while in other parts - such as China House - detainees are simply not allowed to go out of the building and have no access to fresh air or sunlight.

Suicide attempts and self-harm cases are common and rose significantly during COVID with the lack of access to information, lawyers or NGOs and even the possibility to call outside.³²¹

³²⁰ For more information see Ministry for Home Affairs, *Detention services*, available at: <http://bit.ly/1M7HMkS>.

³²¹ Times of Malta, 'More detainees treated for self-harm, suicide attempts', 2 April 2021, available at: <https://bit.ly/3nKWmfq>.

Most detainees report the lack of appropriate clothes or shoes but also lack of sheets and blankets. Lawyers assisting detainees report seeing their clients only wearing underpants and open sandals even in winter. In 2021, detainees would typically be given only one t-shirt for the warm months and a tracksuit for the winter.

As previously mentioned, the CPT report of March 2021 highlights that living conditions in detention are overall deplorable, with migrants deprived of their liberty and kept in overcrowded units, with nothing to do and very minimal contact with the outside world for prolonged periods. Conditions have not improved in 2021. During her visit to Malta, the CoE Commissioner for Human Rights remarked the deplorable situation in Block A in the Safi Detention Centre and urged the authorities to take immediate action to ensure dignified conditions for all those currently held in such facility.³²²

The CPT reported after their visit of the different detention centres that shower facilities were filthy and did not always function; showerheads were missing; and the sanitary area would constantly flood. The delegation noticed that mould was present on the walls and ceilings and that detainees often used their lunchboxes to wash themselves from the wash basin tap due to the dysfunctional showers. They noted that detainees only possess one set of clothes (generally the ones that they had arrived in), so they must borrow clothes from other migrants when they wash their clothes.

In **Lyster**, which is now closed for renovation, the CPT noted that the material conditions in Zone D were “dilapidated”, with a lack of upkeep and walls covered in graffiti and mould. The dormitories were severely overcrowded with 20 to 30 persons held in 40m², leaving less than 2m² of living space to each detainee. They also mentioned that migrants had no access to outdoor space or to any activity of any kind. In China House, the delegation also noted that no activity was offered to detainees who are spending 24 hours per day locked in their units with nothing to do for several months.

The CPT delegation also shared concerns that the tap water was non-potable and that no bottled water was provided to remedy such situation.

In September 2020, local media shared a video seemingly shot by detainees themselves at the **Safi** detention centre. The video showed asylum-seekers detained for a year, begging to be sent home and sharing their experience “of living in overcrowded dormitories where they say a lack of hygiene, medical attention and nutritious food has led to deteriorating mental and physical health as well as suicide attempts”.³²³

The newspaper also highlighted that concerns of subnormal living conditions and human rights abuse are not a first for the **Safi** detention centre.

The Home Affairs Minister addressed the situation, simply stating that Malta is facing disproportionate pressure from irregular migration for years and that the prevention of migrant arrivals and the return of as many irregular migrants as possible remains the priority.³²⁴

Later that month, a delegation from the UN Human Rights Office visited Malta for a week-long mission. At the end of the visit, the delegation stated that migrants living in detention centre in Malta are reported to be held in severely overcrowded conditions with little access to daylight, clean water, and sanitation.

³²² CoE, Reforms needed to better protect journalists’ safety and the rights of migrants and women in Malta, 18 October 2021, available at: <https://bit.ly/3levJqA>.

³²³ The Times of Malta, ‘Watch: Migrants in covert video beg to be sent back home’, 6 September 2020, available at: <https://bit.ly/3f4ebSJ>.

³²⁴ The Times of Malta, ‘Watch: Migrants in covert video beg to be sent back home’, 6 September 2020, available at: <https://bit.ly/3f4ebSJ>.

The UN High Commissioner added that “the pressures on the reception system in Malta have long been known but the pandemic has clearly made an already difficult situation worse”.³²⁵

As already mentioned, unaccompanied minors are detained before an age assessment is conducted. This means that they are detained together with adults due to the fact that detention centres are overcrowded and very limited attention is given to them.

Moreover, reading and leisure materials are not provided, and detainees rely on NGO staff visiting detention, as well as friends and family on the outside, to bring them books, magazines, and other basic recreational items. Depending on the detention centre, detainees may not have access to phones, not to mention television or Internet access.

The Malta Chamber of Psychologists reacted to media reports on the detention condition by stating that “many residing in detention centres in Malta passed through traumatic experiences that made them deserving of the highest level of care”, adding that “being subjected to further undignified conditions in detention might be beyond what they could cope with”. They urged for detention centres to provide detainees with humane conditions”.³²⁶

In recent years there have been a number of incidents within the centres which have raised concerns because of allegations of excessive use of force, as well as the lack of any systematic review of DS conduct and of any effective remedies to provide redress wherever abuse or ill-treatment by DS staff is alleged.

The use of excessive force and other questionable forms of punishment remains an issue primarily in contexts such as protests or escapes from detention, when force is used in an attempt to assert control or, at times, to discipline detainees, as is evident from the protests in 2019 and 2020.

In January 2020, detainees started a protest which led to the intervention of the police who arrested 19 people who were believed to have planned it.³²⁷ Only a few days after the riot at Safi’s detention centre, twenty-two migrants were convicted to a nine-month prison sentence for having “insulted and threatened public officials, violently resisting arrest and slightly injuring five detention officers”. They were also accused of “taking part in a rioting mob and failing to disperse when ordered to, conspiracy to commit a crime, voluntary damage, disturbing the peace, disobeying lawful orders, threatening public officers and throwing stones at private property”.³²⁸

NGOs reacted in a press statement on the “shameful treatment of arrested migrants” by the Malta Police Force. NGOs exposed the way migrants were brought to Court, tied together in pairs and displayed to the general public, contrary to standard practice. They qualified this behaviour as inhumane treatment and prejudicial to the principle of presumption of innocence. Moreover, they emphasised that minors were among the accused and should therefore have been awarded specific protections throughout criminal proceedings.³²⁹

³²⁵ Times of Malta, ‘UN slams “shocking” conditions for migrants in Malta’, 2 October 2020, available at: <https://bit.ly/3cZeRGj>.

³²⁶ Times of Malta, ‘Human rights cannot be ignored, Chamber of Psychologists insists’, 10 September 2020, available at: <https://bit.ly/3si3i3O>.

³²⁷ Lovin Malta, ‘19 People Arrested in Late Night Protest At Hal Safi Detention Centre’, 7 January 2020, available at: <https://bit.ly/3rjYYjf>.

³²⁸ The Independent, Safi detention centre, available at: <https://bit.ly/2Jes67C>.

³²⁹ Press Statement available at: <https://bit.ly/2UfVpx7>.

In February 2021, five young migrants were sentenced to prison after pleading guilty to participating in a riot at the Safi detention centre which occurred in September 2020. Two were sentenced to 30 months imprisonment while the other three, minors at the time, received an 18-month sentence.³³⁰

Several migrants tried to escape the detention centres.³³¹ In September 2020, five migrants tried to escape Safi during a riot. A security guard then shot at one of the migrants who sustained light injuries. The escaping migrants were later caught and taken to Court together with 27 other detainees accused of causing damages. The Police stated that seven officers were injured during the riot. A spokesperson for the Home Affairs Ministry stated that guards are not allowed to carry firearms in closed centres.³³²

In the aforementioned CPT report, the Committee reported having received several allegations of excessive use of force by Detention Service staff and private security staff following riots. According to migrants reporting to the CPT, staff purposely shook the fence while some detainees were climbing it, causing them to fall to the ground where they were subjected to baton blows.

The CPT also reported the unwarranted use of pepper spray by custodial staff against detained migrants.

On 2 September 2020, a dramatic incident happened at **Lyster** detention centre where an asylum seeker died after he fell while trying to escape. The individual fell at 5am and received assistance by nurses on site but was only transferred to hospital hours later where he was certified dead at 11am. An inquiry is, as far as known, still on going.³³³ The CPT investigated said incident and “cannot reassure itself that staff, including health-care staff, had reacted sufficiently promptly when crucial help was needed to attempt to save this young man’s life from the effects of suspected internal bleeding over a period of at least three hours”.³³⁴

It was also reported in the media that migrants in detention might have been mistreated and/or tortured. EASO confirmed this in January 2021, having received several reports from migrants detained at Lyster and Safi detention centre, particularly mentioning physical torture, beatings, solitary confinement, denial or delay of medical care, and also electrocution. Addressing the issue, EASO stated that the Agency is taking such allegations very seriously and immediately brought them to the attention of the responsible Maltese authorities. It added that such issues are raised with the national authorities on several occasions.³³⁵

It was also reported anonymously from the European agency, that they receive reports of systematic abuse and violence, and that the agency noticed a high number of referrals to the psychiatric hospital because of frequent attempted suicide.³³⁶

The UNHCR Representative in Malta also indicated that her office received reports of some physical and verbal abuse against detained asylum seekers as well as suicide attempts in closed centres.³³⁷

³³⁰ Lovin Malta, ‘Five Migrants Sentenced to Jail for Rioting At Safi Detention Centre’, 19 February 2021, available at: <https://bit.ly/2QwVvkv>.

³³¹ Newsbook, ‘Asylum seekers escape from Safi detention centre’, 25 July 2020, available at: <https://bit.ly/3scKoew>.

³³² Malta Today, ‘Safi detention centre riot: Private security guard shot migrant who tried to escape’, 18 September 2020, available at: <https://bit.ly/3c7fNtc>.

³³³ Times of Malta, ‘Man dies after trying to escape migrant detention centre’, 2 September 2020, available at: <https://bit.ly/31av9a5>.

³³⁴ CPT, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020, March 2021, available at: <https://bit.ly/3mPtelf>.

³³⁵ The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/318IX64>.

³³⁶ Ibid.

³³⁷ The Times of Malta, ‘Migrant detention numbers shrink, fears about child detainees remain’, 7 February 2021, available at: <https://bit.ly/3vPfwD4>.

The Home Affairs Ministry stated that “no form of physical abuse is tolerated inside the detention centres, including scuffles between the detainees themselves. Detention Services officials are requested to report on each and every incident arising inside the centres. There have not been reports of torture and such instances would be referred to the police immediately”. They also admitted that “there have been instances where migrants had to be referred to a psychiatrist, however, only few of such cases were confirmed to be mental-health illnesses. In such cases, the migrants are provided the necessary care by Mount Carmel Hospital.”³³⁸

An OHCHR report issued in May 2021 and covering the period from January 2019 to December 2020 confirmed most of the above allegations. The report underlines the failures from the Maltese authorities “to ensure safe disembarkation and adequate reception of migrants, with rescued migrants being stranded aboard vessels that are unsuited for their accommodation, held in inadequate reception conditions upon disembarkation, including being at risk of arbitrary immigration detention, and facing obstacles to access immediate assistance such as medical care.”³³⁹ No improvement has been reported by actors in the field in 2021.

In March 2021, the ECtHR found violations of articles 3, 5(1), and 34 of the European Convention on Human Rights in the case of a Nigerian national placed in immigration detention pending deportation for fourteen months.³⁴⁰ The applicant’s complaints concerned the conditions of his detention; not being given the opportunity to correspond with the Court without interference by the prison authorities; and being denied access to materials intended to substantiate his application.

Regarding article 3, the Court considered several aspects of his detention and concluded, overall, that conditions were inadequate in particular because of the time spent in isolation without exercise (he was kept in a container seventy-five days without access to natural light or air). The Court also noted that he was later unnecessarily detained with individuals under COVID-19 quarantine, a measure that did not comply with basic sanitary requirements. The Court concluded unanimously that the conditions of his detention were a violation of the applicant’s article 3 rights.

The Court found a violation of article 34, considering that the Maltese authorities had not guaranteed the applicant’s right to apply before the Court since they tampered with his correspondence and did not guarantee adequate legal representation. Regarding the correspondence with the Court, it was concluded that, firstly, the applicant had not been provided with copies of documents he needed to substantiate his claim before the Court; and secondly, that the confidentiality of his correspondence was not respected. According to the Court, the authorities’ failures amounted to an unjustified interference with his right of individual petition. Regarding his right to legal representation, the Court considered that the legal aid lawyer appointed by the authorities failed to keep contact with the applicant and abandoned her mandate without informing him and without making any submissions when requested. Informed of the situation, the Government did not take any action to remedy the situation. In the circumstances, those failings had amounted to ineffective representation in special circumstances which incurred the State’s liability under the Convention.

Finally, the Court also held unanimously that there had been a violation of Article 5(1) since the authorities were not diligent enough in processing his deportation and that the applicant’s detention therefore ceased to be lawful.

This judgement did not improve the conditions in which migrants are being detained, despite their number being lower than in the past years due to the decrease in boat arrivals.

³³⁸ The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/3f5rZMX>.

³³⁹ OHCHR, Report: A call to safeguard migrants in central Mediterranean Sea, 25 May 2021, available at: <https://bit.ly/3KvOEPA>.

³⁴⁰ ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, Judgment 11 March 2021.

2.2. Health care in detention

All detainees are usually seen by a doctor in the first week after their arrival. The services of a doctor are available in the detention centres two to three mornings a week. However, there is no systematic medical screening in place for every newly arrived detainee, nor is there any screening to identify possible victims of torture. Communication with health professionals is very often difficult, if not impossible, as the services of a translator or cultural mediator are not provided. In emergencies, the detainees are usually taken to the nearest health centre. Migrants and asylum seekers requiring more specialised care are referred to the general hospital for an appointment.

Practical difficulties arise for asylum seekers who are detained, as the detention system seriously hinders their access to health services. Although health services are provided in the detention centres, these are not sufficient to meet the entirety of needs in the centres.

NGOs visiting detainees reported that migrants faced particularly long waiting times, up to several weeks, before having access to a doctor when requested.

Lawyers visiting the detention centre can refer cases for a health check through an email request. However, there is a lack of transparency as to what actually happens after the referral. Medical reports, or even updates, are rarely provided. Lawyers indicated that the few medical reports made available lacked any diagnosis or any description, only mentioning “seen for a problem”.

Asylum seekers detained under the Health Regulations or *de facto* detained must undergo a medical examination (consisting of X-rays) to check for tuberculosis. No other medical examination is carried out. However, even when medically checked and cleared, applicants might not be released. The reasons for the prolongation of the detention are multiple and can be linked to the late, or absence of, communication between the Health authorities and the entities responsible for the release, the lack of space in the open centres.

Lawyers assisting people in detention report that asylum seekers are very often in a poor state of health due to prolonged detention in atrocious conditions. It was noticed on several occasions that many detainees had scabies.

The medical team present in detention struggles to cope with the demands, and many detainees report that nurses only provide paracetamol.

As already mentioned, many detainees are regularly sent to the psychiatric hospital after suicide attempts. In January 2021, a nurses’ union claimed that detainees were “purposely self-harming to get themselves transferred out of detention centres” and asked for the hospital to refuse admissions of such people.³⁴¹

Such a statement left the NGOs shocked at this lack of sensitivity. They explained that their experience in detention confirmed the severe psychological harm caused by prolonged detention in undignified conditions. The NGOs stated that self-harm and suicide attempts were not abuses of the system but the “extremely worrying effects of a policy that entirely dehumanises people”. They stressed the need for all people to receive appropriate treatment for their mental health conditions without discrimination.³⁴²

It is reported that, in 2020, 93 detainees were taken to the psychiatric hospital (60 in 2019 and 17 in 2018) in order to be treated for self-harm or suicide attempts. Times of Malta, reporting about the issue in March

³⁴¹ Times of Malta, ‘Union claims migrants are “purposely self-harming” to enter Mount Carmel’, 29 January 2021, available at: <https://bit.ly/3scNO0Q>.

³⁴² aditus foundation, ‘Press statement from the Malta Refugee Council, network of Maltese NGOs working for the promotion of the fundamental human rights of persons in forced migration’, 29 January 2021, available at: <https://bit.ly/3tOrj2r>.

2021, spoke to a former employee of the **Safi** detention centre who claimed that migrants with mental health issues were deprived of adequate care. She told the newspaper that emergency services were called in none of the cases of attempted suicide she knew of.³⁴³

No specific information is available about how the authorities are managing the COVID-19 situation in detention, but lawyers visiting detention report that most DS staff do not wear facemasks, nor do they respect social distancing measures. No information is provided about the number of people infected with COVID-19, but people are regularly put in isolation in different parts of the detention centre.

The CPT noted that serious efforts were undertaken by the public health team to screen and detect COVID-19 in detention centres with swab testing programs. Nevertheless, during its visit, the delegation found several people who had tested positive and who were never separated from other detainees. In the IRC in Marsa in particular, the CPT found “an establishment in disarray, which has allowed a dangerous, and potential fatal, environment for detained migrants and its own staff to develop and is symptomatic of the institutional neglect referred to above. (...) [T]his situation of disarray, negligence and the dangerous environment created by knowingly locking COVID-19 positive migrants together with non-positive migrants for long periods of time, may well raise issues not only under Article 3 of the ECHR but also as regards Malta’s positive obligation to protect life under Article 2 of the ECHR”.³⁴⁴

It is important to mention that in 2020 migrants were regularly blamed for COVID-19 in the public discourse. For instance, the Prime Minister himself explained in August 2020 that the drastic spike of COVID-19 cases during the summer was due to the inclusion in official statistics of rescued migrants who had tested positive.³⁴⁵ The Medical Association of Malta promptly reacted and claimed the Prime Minister’s comments were unfair adding that “the government’s decision to allow mass events like parties, despite the expert advice of the superintendent for public health, was the only cause of this spike since migrants have been quarantined immediately.” The NGO Repubblika also condemned the Prime Minister’s use of language, suggesting it could incite racial prejudice.³⁴⁶ No such allegation seems to have been made throughout 2021.

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to:

- | | | | |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Legislation provides for the possibility for detainees to receive visits from family members and friends up to once per week. The Detention Service administration shall determine dates and times once the Principal Immigration Officer (PIO) approves such visits.³⁴⁷

In practice, no formal procedures exist for friends and family members to visit detained persons and practice is erratic and largely discretionary. People need to request permission to the Detention Service

³⁴³ Times of Malta, ‘More detainees treated for self-harm, suicide attempts’, March 2021, available at: <https://bit.ly/3abuYjt>.

³⁴⁴ CPT, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 22 September 2020, March 2021, available at: <https://bit.ly/3mPtelf>.

³⁴⁵ Times of Malta, ‘Isolated migrants to blame for spike in reported COVID-19 cases - Robert Abela’, 3 August 2020, available at: <https://bit.ly/3cXH9kD>.

³⁴⁶ FRA, ‘Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020’, available at: <https://bit.ly/3cblrdC>.

³⁴⁷ Regulation 6A Reception Regulations.

administration which does not always reply and grant appointments. When such visits are allowed, logistical modalities are also extremely erratic and discretionary with no clear procedures and rules. In 2020, such visits were not allowed. No information was provided on the matter for 2021.

Representatives of the media may be given access to Detention Centres subject to authorisation by the Minister for Home Affairs, National Security and Law Enforcement. However, no journalist was allowed to enter the premises in 2020. Times of Malta and independent journalists reported that its journalists have been repeatedly denied access to Safi detention centre.³⁴⁸

In 2021, a journalist went on a controlled visit for the tour of a detention centre, for the first time in 8 years.³⁴⁹ Lawyers visiting the centre however reported that the journalist's somewhat positive account of the situation inside contradicted greatly their own experience and the detainees' testimonies.³⁵⁰ The journalist reported that detainees had access to health services, that minors were kept apart from adults and that all detainees had access to an outdoor area and telephones to call their relatives. All of these statements were confirmed to be untrue by detainees and lawyers.

There is no published policy position regarding visits by politicians, but politicians have visited the detention centres on occasion.

In the past, UNHCR, legal advisers and NGOs were usually allowed access at any time in order for them to provide their services to detained persons. No specific criteria applied, except possibly the provision of services or support to detained asylum seekers. Persons in detention centres encounter difficulties communicating with legal advisers, UNHCR, and NGOs primarily due to the fact that little or no information is provided on the existence and means of contacting these entities, and actual contact is only possible to a limited extent and due to the limited means available to NGOs and UNHCR.

However, following the change in the detention policy and the tensions within the detention centre, access to detention was limited at times during 2019 and 2020.

For instance, access was revoked after NGOs filed *Habeas Corpus* cases leading to the release of several applicants in October 2019. Access was denied to NGOs for several weeks without any explanation before being resumed. Access was suspended in March 2020, when the pandemic first reached Malta. It was then authorised in July for a very limited 3 hours a week.³⁵¹ In September 2020, access was denied again for several weeks without any explanation. It was restored again in October 2020.

Due to COVID-19, access by NGOs and legal practitioners was strictly limited from March 2020 on, resulting in a lack of basic information on the asylum procedure as well on available legal support provided to applicants. Asylum-seekers were often left in detention for several months without any information on the reason for their detention, and without any access to the outside world.³⁵²

Despite the fact that the new Detention Services Director committed to granting full access to NGOs in early 2021, the limitation on access was later institutionalized and is now a policy.

Since June 2021, NGOs are permanently refused access to the living quarters in detention centres and are not permitted to organise group sessions with detained persons. Only UNHCR enjoys such access.

³⁴⁸ Times of Malta, 'UN slams "shocking" conditions for migrants in Malta', 2 October 2020, available at: <https://bit.ly/2NHS4qb>; Malta Today, 'Manuel Delia demands access to detention centres, prison', 21 February 2020, available at: <https://bit.ly/2NHSeOj>.

³⁴⁹ Times of Malta, 'Inside the Safi migrant detention centre', 5 July 2021, available at: <https://bit.ly/3qdeCPk>.

³⁵⁰ Information provided by aditus foundation and JRS Malta, January 2022.

³⁵¹ Times of Malta, 'NGOs denied access to Safi migrant centre since August', 11 September 2020, available at: <https://bit.ly/3tFmgBm>.

³⁵² FRA, 'Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020', available at: <https://bit.ly/3cblrdC>.

NGOs are only permitted to visit clients and by appointment. According to the government, since the UNHCR is present inside and can refer people in need of legal assistance to NGOs, there is no need for them to go in the living quarters.³⁵³ However, NGOs and lawyers reported that UNHCR rarely refers people to them and that they rely on detained people to establish contact with them.

In practice, NGOs receive daily calls from detained persons requesting legal aid. Police numbers, exact names and countries of origins of these individuals have to be registered in order to be granted a visit by the Detention Services and reserve a slot for the only available board room. NGOs are usually allocated up to four hours, during which the lawyers (accompanied by an interpreter, as needed) are able to talk to between six to eight persons. There are weeks when NGOs visit a detention centre twice, whilst there are times when weeks pass without any slot being allocated.

NGOs repeatedly flagged a number of limitations with the current system. Presently, detained persons rely on the availability of a functioning telephone in order to call them and this is not always available. For the second half of the year, no telephone has been operational in any living area at Safi. Persons who need to call NGOs or other persons/organisations, are required to request this from the on-duty Detention Service personnel in order for them to use the office phone.

The authorities seem to assume that detained persons – including newly-arrived asylum-seekers – are aware of the existence of NGOs, the nature of their services and how to get in touch with them. Invariably, the most vulnerable persons and often those most in need to be identified as such and be provided with information, assistance and referrals are not the ones calling.

This lack of access is particularly problematic due to the deadlines stipulated in Maltese legislation for the filing of appeals against Detention Orders (3 days), Removal Orders (3 days), age assessment decisions (3 days), and negative asylum decisions (15 days) are extremely stringent and template application forms are not provided. The actual deadlines amount more or less to actual time needed to get the approval for a visit the following week.

NGOs also report that legal aid lawyers provided by the State do not visit the detention centres on a regular basis.

This policy of heavily restricted access results in the absence of provision of basic information on the asylum procedure, information on the available legal support for detainees, or the possibility to appeal decisions within the legal deadlines. Individuals can therefore go through their entire asylum procedure without ever being given any legal advice or information. Most detainees are channelled through the accelerated procedure and are issued with the IPAT review, a removal order and return decision along with their rejection. As stated above, they cannot appeal their first instance decision and they usually would miss the short deadline (3 days) to appeal the removal order, which necessarily needs the intervention of an NGO lawyer or a private lawyer. This lack of procedural safeguards coupled with the lack of communication from Immigration Police regarding removal arrangements means that individuals are increasingly at risk of refoulement.

³⁵³ Information provided by the UNHCR, September 2022.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|--|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 7 days, then 2 months | |

1.1. Review of asylum detention under the Reception Regulations

The amended law foresees possibilities to review the lawfulness of the detention and this review would be automatically conducted by the Immigration Appeals Board (IAB) after seven working days from the detention order, which may be extended by another seven working days.³⁵⁴ If the applicant is still detained, a new review would be conducted after periods of two months thereafter. When the IAB would rule that detention is unlawful, the applicant would be released immediately. Free legal assistance would be provided for this review according to the Regulations.

Article 25A of the Immigration Act provides that the Board shall consist of “a lawyer who shall preside, a person versed in immigration matters and another person, each of whom shall be appointed by the President acting on the advice of the Minister. Provided that the Minister may by regulations prescribe that the Board shall consist of more than one division each composed of a Chairman and two other members as aforesaid”.

At the moment, the Board has two divisions, each composed of a Chairperson and two other members and a secretary in charge of the minutes. The presence of a secretary and hearing transcripts was a welcomed improvement that arrived in the second part of 2021. However, the very low quality of the transcript makes this improvement nearly obsolete.

Stakeholders, including the Chamber of Advocates, have expressed concerns regarding specialised tribunals such as the Board.³⁵⁵ In their feedback to DG Justice on the Malta Country Chapter for the Rule of Law Report, aditus foundation highlighted the following shortcomings regarding the Board:

- Although the basic principles of natural justice apply to the Board, the Board members are not members of the judiciary and are not bound by any code of ethics, differently from members of the judiciary. The only requisite for the Board to be validly constituted is for the Chairperson to be a lawyer and one member to be a “person versed in immigration matters”. The appointment of persons who lack any specific qualification and experience on a Board that examine particularly sensitive issues such as the detention of migrants and asylum seekers might deprive individuals of the right to an effective remedy.
- Members of the Board are part-time members. This means that they often have regular day jobs, usually in the private sector, and perform their Board functions for some hours during the week. This can raise serious conflict of interest issues, besides effecting the efficiencies of the Board.
- Members of the Board are appointed by the Prime Minister. Whilst not automatically assuming that such an appointment would lead to political interference, it is clear that the system could have an impact on independence and impartiality and could strengthen Government’s agenda on any particular issue as the Board examine decisions taken by Government bodies.
- The manner in which the Board conduct its proceedings is not publicly available through published guidelines. There is a lack of procedural transparency: proceedings are not appropriately

³⁵⁴ Regulation 6(3) Reception Regulations.

³⁵⁵ Venice Commission, CDL-AD (2020)019-e, para. 98; see also CDL-AD(2020)006 paras. 97-98; and CDL-AD(2018)028 paras. 80-83.

recorded, the minutes of the hearing are poorly done (if done at all), and the method of receiving submissions from parties is not formalised. The decisions are not published and are not publicly available.

- The Board's decision is final, and no further appeal is possible on substantive issues. Whilst judicial review on administrative action might be possible, as also a Constitutional case alleging human rights violations, there is rarely the possibility to bring substantive elements before the Courts of law.

These concerns were shared by the Venice Commission which considered that specialised tribunals such as the Board do not enjoy the same level of independence as that of the ordinary judiciary and reiterated in October 2020 its recommendations in that respect.³⁵⁶

While the review of detention is usually done after the first seven days, lawyers assisting report that hearings with the IAB are extremely short and the Board usually never questions the detention itself. Several detainees can be seen at the same time with different lawyers in the same room and there are no clear rules of procedure.

Decisions are standardized and rarely motivated by any principle or law. Some decisions run contrary to well established jurisprudence, including national case law from the Court of Magistrates and the Constitutional Court. The following policies have been reported by lawyers as being consistently applied by the Board:

- The Board does not assess whether less coercive measures could be imposed instead of detention and always presumes that detention is lawful. The Board will usually confirm the detention of the applicant and eventually give the opportunity to the PIO to implement alternatives to detention at its discretion;
- The Board will generally not order the release of an individual who tried to abscond in the past, was condemned to a prison sentence and then taken straight to detention after the end of the sentence, no matter the personal circumstances of the asylum seeker, the risk of absconding is therefore taken as a self-standing ground for detention, despite what higher Maltese Courts have said;
- The Board will generally not order the release of an individual detained because their identity, including their nationality, has yet to be verified and will agree with the PIO that, since the identity cannot be verified, the individual is potentially a threat to the public order despite no evidence of such.
- The Board will generally not order the release of an individual pending age assessment, at the first stage or at appeal stage and rather will confirm the detention.

The Immigration Appeals Board refused to provide any statistics, but NGOs and lawyers confirmed that nearly all reviews confirm the lawfulness of the detention.

Lawyers reported that the reviews that are required by the Regulations to be carried out two months after the first one are generally not automatically done and will only happen if requested by a lawyer. This is in part due to the fact that free legal aid is only provided for the first review. This results in large numbers of asylum seekers being detained without appropriate judicial oversight. This is confirmed by the numerous cases of asylum seekers being detained beyond the 9 months deadline, as will be discussed further below.

Parallel to this automatic review, the new Reception Regulations provide for the possibility to challenge the detention order before the IAB within three working days from the order. In terms of Article 25A(10) of the Immigration Act, the Board can;

³⁵⁶ Ibidem.

“[H]ear and determine applications made by persons in custody in virtue only of a deportation or return decision and removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation. The Board shall grant release from custody where the detention of a person is, taking into account all the circumstances of the case, not required or no longer required for the reasons set out in this Act or subsidiary legislation under this Act or under the Refugees Act, or where, in the case of a person detained with a view to being returned, there is no reasonable prospect of return within a reasonable time-frame”.

In reality, it is practically impossible to challenge the detention order itself as asylum seekers do not have the capacity to submit such an appeal on such short notice as there is not enough time to seek the assistance of a lawyer. In 2020, due to lack of access to detention for NGOs for several months, detainees did not receive legal support and were never able to challenge their detention orders. These difficulties were also highlighted by the European Court of Human Rights in the cases brought against Malta by detained asylum seekers.³⁵⁷ The restrictions on access put in place since June 2021 still seriously hinder information provision and the lawyers’ possibility to file appeals.

The CPT report highlights that no registers of detention orders are kept in any detention centre and that management is generally not informed of who is detained on which grounds. This situation prevents the management of ensuring any oversight of the safeguards related to detention.

A significant number of migrants are detained in application of Health Regulations or *de facto* detained. This is not a formal detention regime where applicants are issued with a detention order. Therefore, they do not benefit from effective remedies and are not entitled to appeal against the decision, in contravention of the Reception Conditions Directive. They may, however, challenge the lawfulness of their detention in front of other remedies (see below).

1.2. Other remedies

Although there are a number of remedies available to detainees to challenge their detention, in addition to the remedy introduced in 2014, the ECtHR clearly stated in *Louled Massoud v. Malta*, in *Abdullahi Elmi and Aweys Abubakar v. Malta* and in *Suso Musa v. Malta* that three of these remedies do not qualify as “speedy, judicial remedies” in terms of Article 5(4) ECHR.³⁵⁸

Human rights action before the national courts

This remedy, which allows a detainee to challenge the lawfulness of his or her detention in terms of the ECHR and the Constitution of Malta, has failed the Article 5(4) ECHR test as, although it is clearly judicial, it is far from speedy.

In addition to the length of time for the delivery of judgments, Constitutional proceedings are virtually inaccessible to detainees as in practice most asylum seekers do not have access to a lawyer who could file a court case on their behalf. In fact, to date most cases have been filed by lawyers working in collaboration with NGOs assisting asylum seekers. In such cases there is no waiver of court fees, as there would be if the applicant had been granted the benefit of legal aid.

³⁵⁷ ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, Judgment of 27 July 2010; ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgment of 9 December 2013; ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

³⁵⁸ ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, Judgment of 27 July 2010; ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgment of 9 December 2013 and ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

Application under Article 409A of the Criminal Code

This remedy also allows a detainee to challenge the lawfulness of on-going detention before the Court of Magistrates (Criminal) and is based on an assessment of the legality of the person's detention. Though this remedy is both speedy and judicial in nature, it had failed the test because it did not allow for an examination of the lawfulness of detention in terms of article 5 ECHR, since the Courts interpreted their remit under this article as being strictly limited to provisions of Maltese law.

With the provision of grounds for detaining asylum seekers in national law, this remedy is now, however, relevant. Several successful applications were brought before the Courts since 2019, resulting in the immediate release of successful applicants.

In October 2019, aditus foundation and JRS Malta assisted six migrants who had been detained for more than ten weeks under the above-mentioned Health Regulation to challenge their detention by filing *Habeas Corpus* proceedings. Lawyers raised several arguments to prove the detention unlawful:

- They indicated that these individuals, upon arrival, were only provided with a document titled 'Restriction of Movement for Public Health Reasons' signed by the Superintendent of Public Health. In this document applicants were not identified by their name but merely by their Immigration Number and no interpreter was present during their interview with the Malta Police Force to explain the contents of the document provided.
- Furthermore, at no stage were the applicants informed as to what elements pertaining to their specific individual situation led to the conclusion by the Superintendent that "they may spread disease" in terms of Health Regulations.
- The applicants were escorted to a Health Centre to undergo medical screenings almost immediately following their arrival in detention but were never provided with the results, even months after.
- On the basis of the fact that they are wholly impeded from any form of free movement, it cannot be said that their movements are being merely 'restricted'. On the contrary, they were entirely deprived of their personal liberty.
- These applicants had been detained for more than ten weeks.

The Court declared the ongoing deprivation of personal liberty unlawful and ordered their immediate release.³⁵⁹

The six asylum-seekers were released the same day but left with no support or accommodation provided by the authorities, relying entirely on NGOs and the community for immediate assistance. As a consequence, NGOs are cautious about initiating similar proceedings for other applicants.

However, several similar cases were filed in 2020 when applicants could be accommodated by friends or relatives.

On 29 October 2020, the Court of Magistrates ordered the immediate release of an Ivorian national on medical grounds, stating that his detention had no basis in law. The Court underlined that it had encountered several cases in which people were detained without a legal basis and expressed its concern regarding the impact of such detention on the rule of law.³⁶⁰

³⁵⁹ Court of Magistrates, 7 October 2019, Mohammed Abdallah Mohammed 19O-030, available at: <https://bit.ly/2V6lVcs>; Court of Magistrates, Zeeshan Saleem 19N-24, 8 October 2019, available at: <https://bit.ly/3b7iLea>.

³⁶⁰ EDAL, Malta: Court orders release of a migrant who was detained on the basis of medical reasons, 29 October 2020, available at: <https://bit.ly/3rbllR8>.

In November 2020, four men were released by a Maltese Court, with the magistrate declaring the detention unlawful. The magistrate also condemned the policy of systematic detention due to the lack of reception space as “abusive and farcical”. These four men were disembarked in Malta in June 2020 and were put in detention without being given any official document justifying their detention.³⁶¹

In June 2021, 5 asylum seekers were released after a Judge found their detention illegal since the legal limit of 9 months under the Reception Directive had elapsed months earlier. It transpired that their release had been green-lighted by the immigration authorities in September and October 2020 for three of them and in January for the others. While ordering the men’s immediate release, the Magistrate flagged the matter to local authorities to ensure that similar incidents “are not repeated”. A sixth migrant, possibly a minor, had apparently lied about his age upon arrival in Malta. He was served with a removal order and return decision earlier. The Magistrate ruled that the applicant’s detention was lawful but, taking note of the physical appearance of the migrant which posed significant doubts as to whether he was an adult at all, ordered an age assessment to be carried out. This had never been done in his 16 months of uninterrupted detention.³⁶²

In October 2021, another 3 asylum seekers were released as they were detained under the health regulations.³⁶³

In January 2022, lawyers from aditus foundation secured the release of six men from their illegal detention at Safi Barracks. Three of them were children, as also confirmed by AWAS. In a similar Court application filed the same day by another detained young man, also represented by aditus’ lawyers, the Court of Magistrates failed to require the Government to explain the legal basis for his detention at Safi Barracks.

The first application filed by the seven men was rejected on a pure formality, yet the immediate release of six of them was quickly confirmed by the same Government entities that, just a few minutes earlier, had denied having the legal authority to detain them. A second Court petition filed by the seventh man, also a teenager, was rejected on the basis of the claim that he suffers from a contagious illness. Despite previous judgement on the matter, the Court noted that “it cannot be said that any public authority ordered the applicant’s detention...because he is presently not under any detention order but limitedly under an order that restricts his movement in relation to which Article 409A of the Criminal Code does not apply.”³⁶⁴

The NGO reacted to the judgement by pointing out that it was incongruent to hear that the teenager was not being detained when he was actually accommodated in a place described by Maltese law as “a place of detention for the purposes of the Immigration Act”, a structure administered by a public entity called ‘Detention Services’, with the impossibility to leave the centre, limited communication with the outside world, and being under the constant supervision of a Government entity.³⁶⁵

1.3. Review of pre-removal detention under the Returns Regulations

Since the transposition of the Returns Directive, the law provides for the possibility to institute proceedings to challenge the lawfulness of detention before the Immigration Appeals Board.

In addition to the fact that the extent to which this Act applies to detained asylum seekers, who by definition cannot be subject to removal proceedings, is questionable, from the text of the law it would appear that

³⁶¹ Malta Today, ‘Magistrate blasts ‘abusive and farcical’ migrant detention practice’, 30 November 2020, available at: <https://bit.ly/3r9hjiz>.

³⁶² Times of Malta, ‘Six asylum seekers successfully challenge unlawful detention’, 8 June 2021, available at: <https://bit.ly/33ZQacp>.

³⁶³ Information provided by aditus foundation, January 2022.

³⁶⁴ aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

³⁶⁵ Ibidem.

migrants arriving by boat who are apprehended at sea or upon arrival and migrants who are refused admission into Malta are exempt from the benefits of this provision, as Regulation 11(1) states that:

“The provisions of Part IV shall not apply to third country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta”.

This said, in one case the Board held that the benefits of this provision are indeed applicable to detained asylum seekers; however, it ceases to apply once their application is no longer pending.

To date, the remedy has not proved particularly speedy, with few applications decided prior to the applicant’s release from detention in terms of Government policy. Moreover, the Board interpretation of the concept of “lawfulness” is particularly restrictive.

The law provides that reviews should be carried ex-officio by the PIO at regular intervals of 3 months for and supervised by the Board for people detained after 6 months.³⁶⁶ However, lawyers and NGOs reported that there are no traces of such reviews done by the PIO and that the Board only supervises the 6 months review.

Parallel to these reviews, the detained migrant can appeal the removal order in terms of Article 25A of the Immigration Act within 3 days of the notification of the removal order.

According to lawyers assisting migrants served with a removal and detention order, the IAB never questions the lawfulness of detention or its validity, as it considers the detention always necessary when a removal order is taken. The Board will take the police statements regarding the removal as sufficient to conclude that it is being executed with due diligence and that there is a prospect of removal despite a significant number of individuals being detained for more than 10 months.

Regarding the application of the principle of non-refoulement, the Board never questions the decisions of the IPA and will not carry its own risk assessment, even if the matter is raised during proceedings. Detention and removal will only be questioned when a subsequent application is filed.

Most people coming from safe countries of origin were detained in the last years and have seen their asylum application rejected as manifestly unfounded, denied appeal, and automatically served with a removal and detention order. These individuals have been detained for sometimes more than two years while awaiting a potential return.

As already mentioned, in 2021 the European Human Rights Court found a violation of article 5(1) of the Convention (right to liberty and security).³⁶⁷ The case was about a Nigerian national detained pending removal. The Court considered that the entire period of detention, fourteen months in total, cannot be justified for the purpose of deportation since the authorities insufficiently pursued concrete arrangements for his return. Therefore, the Court concluded that the ground for his detention could not be considered valid for the full duration of his detention.

³⁶⁶ Subsidiary Legislation 217.12, Common Standards and Procedures for returning Illegally Staying Third-Country Nationals Regulations, Regulation 11(8), available at: <https://bit.ly/3rUYdiS>.

³⁶⁷ ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, Judgment 11 March 2021.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

The Reception Regulations provide for the possibility for asylum seekers to be granted free legal assistance and representation only during the review of the lawfulness of detention.³⁶⁸ Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board.

The lack of expertise from legal aid lawyer has been reported by NGOs as being one of the major issues with the system, along with the very low salary they are paid by cases.

Regulation 11(5) of the Returns Regulations provides that within the context of an application to the Board to review decisions related to return, a legal adviser shall be allowed to assist the third-country national and free legal aid will be provided where the individual meets the criteria for entitlement in terms of national law. It is, however, questionable whether an application to the Board to review the lawfulness of detention would qualify as a request to review a decision relating to return, which is usually understood to include a decision to issue a removal order and/or a return decision.

E. Differential treatment of specific nationalities in detention

As already mentioned, the legal regime of persons detained depends significantly on their nationalities. Asylum seekers coming from countries of origin where returns are deemed possible are usually detained under the Reception Conditions Directive. These applicants usually remain in detention during the whole asylum procedure since the automatic review of their detention, when conducted, never questions the lawfulness of their detention.

Applicants coming from other countries of origin are usually *de facto* placed in detention and may be released when space is available in reception centres or when a lawyer files an *habeas corpus*.

It was noticed that detainees are usually kept together based on their nationalities. They are also regularly moved from one detention centre to another, without being given any information for such change, which creates anxiety among applicants. The Detention Service indicated that detainees are “housed according to their different protection and socio-political needs” and that moving is done “to prevent potential conflict between different cultures”.³⁶⁹

³⁶⁸ Regulation 6(5) Reception Regulations.

³⁶⁹ Information provided by Detention Service, January 2021.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

- | | |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? | |
| ❖ Refugee status | 3 years |
| ❖ Subsidiary protection | 3 years |
| ❖ Humanitarian protection | 1 year |

According to the law, persons who are granted refugee status and subsidiary protection in Malta are issued a three years' residence permit, which is renewable.³⁷⁰

Once international protection is granted by the IPA, the beneficiary is issued a residence permit by Identity Malta, the public agency in charge of matters relating to passports, identity documents, and work and residence permits for expatriates.

In practice, the issuance and renewal of the residence permits can raise some difficulties for many beneficiaries of protection, mainly due to the lack of provision of practical information, excessive administrative delays in processing applications, burdensome requirements, and a negative attitude by public officials towards beneficiaries.

Very little information is available for protection beneficiaries on the procedures and requirements relating to residence permits. Furthermore, the information provided by state officials is not always provided in a language understood by applicants. The procedure, including requirements, is not clearly indicated, written, or available online.

Usually, applicants are required to wait for a couple of months for their documentation (see below) to be provided. Although a receipt of their application form for residence is provided, this has no real legal value, resulting in persons being unable to access their basic rights due to a lack of possession of their residence papers.

Residence permit applicants are required to present evidence of their protection status, together with evidence of their current address. This latter requirement is particularly burdensome for protection beneficiaries as it is interpreted as requiring them to present a copy of their rent agreement together with a copy of the identification document of their landlords. In the majority of cases, Maltese landlords refuse to provide either rent agreements or personal documentation due to a fear of imposition of income tax on the income deriving for the rent.

Many protection beneficiaries report strong negative attitudes, comments, and behaviour towards them by public officials receiving and handling their residence permit applications. Many persons are ignored, rebuked, dismissed, or otherwise not handled respectfully.

The renewal of residence permits is automatic upon request.

In 2020, protection status documentation renewal was temporary suspended for several weeks with the IPA being closed for several weeks due to the COVID-19 pandemic. The IPA remained responsive over emails even when the office was closed for several weeks, providing standard information on all correspondence, providing guidance and practical information for beneficiaries. Upon request, the IPA would confirm status via email and would inform the relevant authorities including health authorities about

³⁷⁰ Regulation 20 Procedural Regulations.

entitlement of protection status so individuals could have access to relevant services. However, these temporary arrangements remained challenging for a number of beneficiaries who do not speak English and who are not in a capacity to access the Internet.

Throughout 2020, the Agency Identity Malta (ID) issued a total of 269 first-time residence permits to refugee holders and beneficiaries of subsidiary protection. No data was provided for 2021.³⁷¹

2. Civil registration

Individuals can register childbirth and marriage at the Public Registry office. There is only one location in the capital, **Valletta**, where such administrative requests can be made.

A child must be registered within 15 days following their birth. The person transmitting such notice has to present his or her identity card, and any documentation provided to him or her by the hospital.

The Marriage Registry, within the Public Registry office, receives requests for the Publication of Banns for marriages and civil unions taking place in Malta. Applications for the publication of Banns are received between three months and six weeks prior to the date of marriage or civil union. The Banns are published five to four weeks prior to the date of marriage or civil union.

Beneficiaries of international protection are also requested to inform the IPA about changes in their marital or parental situation.

In practice, beneficiaries of international protection may experience difficulties stemming from a lack of clear information on the procedure and documents required for civil registration.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2021:	1
---	---

National legislation provides for the possibility for third-country nationals residing regularly in Malta to access long-term residence.³⁷² The criteria are the same for all migrants: no special conditions are foreseen for beneficiaries of international protection.

To be able to apply for such permit, applicants must have to fulfil a long list of requirements:

1. They first need to have resided legally and continuously in Malta for five years immediately prior to the submission of the application;
2. Applicants are also requested to provide “evidence of stable and regular resources which have subsisted for a continuous period of two years immediately prior to the date of application and which are sufficient to maintain the applicant and his family without recourse to the social assistance system in Malta or to any benefits or assistance”.³⁷³ The law provides that these resources have to be equivalent to the national minimum wage with an addition of another twenty percent of the national minimum wage for each member of the family;
3. An appropriate accommodation, regarded as normal for a comparable family in Malta, a valid travel document and a sickness insurance are also requested to be entitled to apply;
4. In addition, Regulations require language (Maltese) and integration conditions, including courses of at least 100 hours about the social, economic, cultural, and democratic history and environment

³⁷¹ Information provided by Identity Malta, April 2022.

³⁷² Status of Long-Term Residents (Third Country Nationals) Regulations, Subsidiary Legislation 217.05, November 2006, available at: <http://bit.ly/2kX9hvu>.

³⁷³ Regulation 5 Long-Term Residence Regulations.

of Malta recognised by an examination pass mark. These courses are provided by the Human Rights and Integration Directorate, as part of the 'I Belong' integration programme.

The application for long-term residence has to be submitted in writing to the Director for Citizenship and Expatriate Affairs. The law provides for a time limit of six months after an application is lodged to receive an answer. If the Director fails to give a decision within this period specified, the application shall automatically be passed on for appeal to the Immigration Appeals Board.³⁷⁴

In practice, it is difficult for beneficiaries to access long-term residence as the threshold for income is high when people have families, and the language requirements are burdensome.

Long-term residence status applications cost around €130.

Despite the law being silent on the subject, SRA holders are not allowed to apply for LTR. Those who try to apply cannot even lodge an application.

Identity Malta indicated having issued only one long-term residence permit in 2021 issued to beneficiaries of international protection, and specifically that it was granted to a subsidiary protection holder.³⁷⁵

4. Specific Residence Authorisation Status

On 15 November 2018, Malta issued a policy regularising a selected group of failed asylum seekers, the Specific Residence Authorisation (SRA).³⁷⁶ SRA was introduced to replace the former Temporary Humanitarian Protection New (THPN) status. SRA recognised the needs of failed asylum seekers who have been residing in Malta for a period of five years and who were actively contributing to Maltese society. To be eligible to apply, applicants needed to fulfil the following criteria:

- Applicant must have entered Malta irregularly prior to 1 January 2016 and been physically present in Malta for a period of 5 years preceding the date of application;
- Applicant must have his or her application for international protection finally rejected by the competent asylum authorities;
- Applicant must be of good conduct. Persons who have been convicted of serious crimes or are a threat to national security, public order or public interest are excluded from being granted SRA;
- Applicant must demonstrate that he or she has been in employment on a frequent basis (minimum of 9 months per year during the preceding 5 years);
- Applicant must present his or her integration efforts.

The SRA was valid for two years. The individual assessment was carried out by the public entity Identity Malta. SRA holders are entitled to a residence permit valid for two years with the possibility of renewal, access to core welfare benefits similar to beneficiaries of subsidiary protection, employment licence, travel document, and access to state education and medical care.

Persons who held a valid Temporary Humanitarian Protection New (THPN) were to be granted an SRA automatically, without any individual assessment. Upon renewal, an individual assessment is conducted by Identity Malta and the immigration authorities based on the criteria outlined above.

In 2020, the authorities received 258 applications for SRA and delivered 234 residence permits. 62 persons saw their SRA renewed in 2020 for two more years.³⁷⁷

³⁷⁴ Regulation 7 Long-Term Residence Regulations.

³⁷⁵ Information provide by Identity Malta, April 2022.

³⁷⁶ Ministry for Home Affairs, National Security and Law Enforcement, *Policy regarding Specific Residence Authorisation*, November 2018, available at: <https://bit.ly/2Svq8qA>.

³⁷⁷ Information provided by ID Malta, January 2021.

In November 2020, Maltese authorities unexpectedly announced an update of the SRA policy. ID Malta confirmed that former THPN beneficiaries who were automatically granted SRA in 2018 will have their status renewed subject to the fulfilment of integration measures. Likewise, failed asylum seekers who were granted SRA on the basis that they entered Malta before 2016 and could prove stable employment would continue to be able to enjoy this status. The updated policy also foresees that the authorities shall provide to all unsuccessful SRA applicants assistance for voluntary return in their country of origin.

More importantly, the new policy specifies that new applications for the SRA would only be accepted until the end of December 2020, meaning that no new application were permitted after this date. Existing holders of the SRA were still able to renew their status in accordance with the revised policy but no new application was allowed.³⁷⁸

Numerous NGOs promptly reacted to this unexpected new policy and expressed their “shock and disappointment”.³⁷⁹ According to them, the revised SRA policy will result in people remaining undocumented and thus without access to basic services and the possibility to exercise basic rights.

They deplored the fact that contrary to the first policy which was the result of a “tense but rewarding” process of dialogue with the government, such revision was taken without any form of concertation. They stated that a one-month ultimatum to file such applications will leave many without the possibility to regularise their stay, that persons seeking removal will now run the risk of permanently reverting to an irregular immigration status. Moreover, the policy’s original family-oriented measures are now seriously restricted.³⁸⁰

The revised policy had a dramatic impact on many SRA holders who failed to renew their status on time but were still eligible. Despite attempts at finding a solution for these individuals with the Ministry in charge, NGOs pleas were ignored.

The impact of the COVID-19 on employment also left a significant number of individuals ineligible for a renewal as they did not work enough weeks in 2020, therefore ending their legal stay in Malta.

5. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	10 years
2. Number of citizenship grants to beneficiaries in 2021:	16

The Citizenship Act foresees that foreigners or stateless persons may apply for citizenship in Malta.³⁸¹ The law makes no difference between beneficiaries of international protection and other third-country nationals but in practice **subsidiary protection beneficiaries’** applications are not usually considered.

The conditions to be able to apply include a residence in Malta throughout the 12 months immediately preceding the date of application and a residence in Malta for periods amounting in the aggregate to a

³⁷⁸ Identity Malta, ‘Updating of the Policy regarding Specific Residence Authorisation’, 24 November 2020, available at: <https://bit.ly/3vTrImq>.

³⁷⁹ A new policy that will lead to increased social exclusion and poverty, Press statement by aditus foundation, African Media Association Malta, Allied Rainbow Communities, Anti-Poverty Forum Malta, Azzjoni Kattolika Maltija, Blue Door English, Christian Life Communities in Malta, The Critical Institute, Dean of the Faculty of Education, Drachma, Great Oak Malta Association, Integra Foundation, Jesuit Refugee Service (Malta), KOPIN, Malta Emigrants’ Commission, Malta Humanist Association, Migrant Women Association Malta, Millennium Chapel, MOAS, Moviment Graffiti, People for Change Foundation, Repubblika, SOS Malta, SPARK15, Women’s Rights Foundation, 25 November 2020, available at: <https://bit.ly/3ab0MVO>.

³⁸⁰ Ibid.

³⁸¹ Citizenship Act, Chapter 188, September 1964, available at: <http://bit.ly/2Iz5z8H>.

minimum of four years, during the six years preceding the above period of 12 months. Applicants must also be of good character and have an adequate knowledge of the Maltese or the English languages.³⁸²

Prior to submitting an application, the person has to present a residence certificate issued by the Principal Immigration Office to the Identity Malta Agency. Once the Office confirms the eligibility of the applicant, additional documents have to be produced, including a birth certificate, passport, and police conduct.

There is no time limit foreseen for a decision and the law does not require the authorities to provide reasons for rejections of applications.

In practice, it is close to impossible for refugees to access citizenship by naturalisation as the procedure is entirely at the discretion of the Minister. Moreover, while no written policy is available, refugees are, in practice, only allowed to apply for citizenship after ten years of regular residence in Malta.

Identity Malta indicated that in 2021, Komunita Malta (the agency responsible for citizenship) successfully processed the applications of 16 refugee status holders who managed to obtain Maltese citizenship and that no beneficiaries of subsidiary protection who obtained Maltese citizenship.³⁸³

6. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The International Protection Act provides for the possibility of cessation of **refugee status**.³⁸⁴ The grounds for cessation apply to cases where the refugee:

1. 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;
2. Has acquired a new nationality and enjoys the protection of this country;
3. Has voluntarily re-established him or herself in the country which he left or outside which he remained owing to fear of persecution;
4. Can no longer continue to refuse to avail himself of the protection of the country of his nationality because the circumstances in connection with which he has been recognised as a refugee have ceased to exist;
5. 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 former habitual residence.

The law provides for the possibility of an appeal against a cessation decision before the International Protection Appeals Tribunal within 15 days after notification.³⁸⁵ The rules regulating appeals for cessation decisions are the same as the ones applicable to regular appeals.

Regarding beneficiaries of **subsidiary protection**, the situation is different according to the EU recast Qualification Directive as the law states that such protection “*shall cease if the International Protection*

³⁸² Article 10(1) Citizenship Act.

³⁸³ Information provide by Identity Malta, April 2022.

³⁸⁴ Article 9 International Protection Act.

³⁸⁵ Article 9(2) International Protection Act.

Agency is satisfied that the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. Provided that regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.” The law further provides “that the provisions of this article shall not apply to a beneficiary of subsidiary protection who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence”.³⁸⁶

Appeals are possible against such decisions under the same conditions as the regular procedure.³⁸⁷

According to the authorities, cessation is not applied to individuals or specific groups of beneficiaries of international protection in Malta.³⁸⁸ Moreover, there is no systematic review of protection status in Malta. In 2021, the IPA issued 2 cessation decisions for Libyan nationals who were beneficiaries of subsidiary protection.

7. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice?
 Yes With difficulty No

According to the International Protection Act, a declaration of **refugee status** can be revoked by the International Protection Agency in the case where a person should have been excluded from being a refugee in accordance with the exclusions grounds laid down by the Asylum Procedures Directive and transposed in Article 12 of the International Protection Act or where his misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.³⁸⁹

Additionally, the IPA may also revoke or refuse to renew the protection granted to a refugee when there are reasonable grounds for regarding him or her as a danger to the security of Malta or if, having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta.

The refugee shall be informed in writing that his or her status is being reconsidered and shall be given the reasons for such reconsideration. The refugee shall also be given the opportunity to submit, in a personal interview or in a written statement, reasons as to why his or her refugee status should not be withdrawn.

Regarding **subsidiary protection** beneficiaries, the International Protection Agency shall revoke or refuse to renew such status if the person, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection or if that person’s misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status

The beneficiary of subsidiary protection will be informed in writing that his or her status is being reconsidered and will be given the reasons for such reconsideration. The beneficiary will also be given

³⁸⁶ Article 21 International Protection Act.

³⁸⁷ Article 9(2) International Protection Act.

³⁸⁸ Information provided by RefCom, 2 June 2016.

³⁸⁹ Article 10, International Protection Act.

the opportunity to submit, in a personal interview or in a written statement, reasons as to why his or her refugee status should not be withdrawn.

In cases where the Agency revoked or refused to renew a refugee or subsidiary protection status, the person is entitled to appeal against the revocation to the IPAT within seven days of the notification of the revocation.³⁹⁰

In the case the Agency issued a decision withdrawing the status, the person is entitled to appeal within 15 days.³⁹¹

Regarding beneficiaries of **Temporary Humanitarian Protection** (THP), the status may be revoked, ended or not renewed whenever the conditions under which it was granted no longer subsist, or if after being granted temporary humanitarian protection, the beneficiary should have been or is excluded from being eligible.³⁹²

The provisions applicable to the withdrawal of subsidiary protection apply mutatis mutandis to the for beneficiaries of THP. In practice, the IPA will inform the beneficiary that his protection is being reconsidered and given a couple of days to submit a written statement explaining the reasons to why his or her status should not be withdrawn. However, no appeal lies against the decision of the Agency.

In 2020, the IPA withdrew 4 refugee status and 10 subsidiary protection statuses. In 2021, the IPA withdrew 3 subsidiary protection status (the Agency includes the 2 cessations mentioned above) and 71 Temporary Humanitarian Protection status, including 55 protection statuses of Ukrainian nationals. Many of the Ukrainians that saw their status withdrawn subsequently returned to their country before the war broke out. At the moment of writing, their fate remains unknown.

8. Lapse of protection status

Act XL of 2020 amended Article 13 of the Procedural Regulations and added the possibility for the Agency to decide that international protection lapsed where the beneficiary of international protection has unequivocally renounced his protection or has become a Maltese national. Unequivocal renunciation of protection includes a written statement by the beneficiary confirming that they are renouncing their protection status; or failure to renew international protection within a period of twelve (12) months from the lapse of the validity of said protection or its renewal.

This provision is now included in Regulation 13A of the law since the December amendments. While the first ground is transposed from the Asylum Procedures Directive (Article 45(5)), the second ground was never foreseen by the Directive.

NGOs have expressed their concerns regarding the alleged unequivocal nature of such act and the consequences it might have on people. No procedural safeguards apply and no appeal can be lodged against the decision of the Agency on this second ground.

Article 13A further provide that beneficiaries who have unequivocally renounced their protection must subsequently makes a request in person to the Agency to have their international protection status reinstated, the IPA will review the request to determine whether international protection should once again be granted, provided that the person concerned still meets the eligibility criteria and is not excluded from international protection.

³⁹⁰ Article 10(6) and 22 (6) of the International Protection Act.

³⁹¹ Article 7 (1A) (c) of the International Protection Act

³⁹² Article 17A(2) of the International Protection Act.

In practice, the IPA treats this application as a new application to International Protection which then forces these individuals back into the lengthy asylum procedure.

NGOs reported that the IPA started to use this provision whenever possible in 2021. The Agency reported having issued 96 of such decisions, among which 19 lapse of refugee status and 77 lapse of subsidiary protection status.

This provision also applies to beneficiaries of Temporary Humanitarian Protection.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification	
1. Is there a waiting period before a beneficiary can apply for family reunification?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If yes, what is the waiting period?	12 months
2. Does the law set a maximum time limit for submitting a family reunification application? To be exempt from material conditions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If yes, what is the time limit?	3 months
3. Does the law set a minimum income requirement?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Recognised **refugees** may apply for family reunification in Malta according to national legislation.³⁹³ “Family members” include the refugee’s spouse and their unmarried minor children.

Only refugees may apply for family reunification, since the Regulations specify that **subsidiary protection** beneficiaries are excluded from this provision: “The sponsor shall not be entitled to apply for family reunification if he is authorised to reside in Malta on the basis of a subsidiary form of protection...”.³⁹⁴ The exclusion of subsidiary protection beneficiaries from family reunification was raised as a major concern by the Council of Europe Commissioner for Human Rights.³⁹⁵ In 2016, the Immigration Appeals Board ordered the competent authorities to allow a beneficiary of subsidiary protection to reunite with his wife on the basis of his work contract (with a public entity), granting employees such a right. This case remains an exception.

In November 2018, JRS Malta, aditus foundation, and Integra foundation, supported by UNHCR Malta, published a report titled *Family Unity: a fundamental right*.³⁹⁶ The report examines national law and policy on family reunification for beneficiaries of subsidiary protection in light of European and human rights law, and concludes that current law and policy in Malta is highly questionable when set against these standards. The report highlights that the current blanket ban on family reunification for beneficiaries of subsidiary protection raises serious human rights concerns. The organisations urge the Government to review the existing legislative framework and to grant beneficiaries of subsidiary protection the right to be reunited with their families in Malta under the same conditions as refugees or, as a minimum, under the same conditions as refugees who married post-recognition.

³⁹³ Family Reunification Regulations, LN 150 of 2007, Immigration Act Cap 217, 2007, available at: <http://bit.ly/2kC9tiH>.

³⁹⁴ Regulation 3 Family Reunification Regulations.

³⁹⁵ Council of Europe Commissioner for Human Rights, Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

³⁹⁶ “Family unity: a fundamental right”, a Project Integrated 2018 Policy Paper on the right to family reunification or beneficiaries of subsidiary protection, JRS Malta, aditus foundation, Integra Foundation, funded by UNHCR Malta, November 2018, available at: <https://bit.ly/3dtBlyX>.

Applications must be addressed to Identity Malta, who has to give a written notification of the decision no later than nine months after the lodging of the application.

In order to be able to apply, applicants need to provide evidence of their relationship with family members, and they need to have an accommodation regarded as normal for a comparable family in Malta as well as a sickness insurance. Moreover, applicants are requested to prove stable and regular resources that are sufficient to maintain the sponsor and the members of the family without recourse to the social assistance system in Malta which would be equivalent to, at least, the average wage in Malta with an addition of another 20% income or resources for each member of the family.³⁹⁷

In practice, refugees are not requested to fulfil the material conditions if they apply within three months of obtaining their status. Refugees who are applying to be joined by family members in Malta are only required to present the refugee status certificate; official documents attesting the family relationship; full copies of the passports of the family members; and the lease agreement.

Refugees whose family relationship post-dates the grant of their status, or whose application for family reunification has not been submitted within a period of three months after the grant of said status, are required to present additional documents such as an attestation by an architect confirming that the applicant's accommodation is regarded as normal for a comparable family in Malta and which meets the general health and safety standards of the country and a confirmation of stable and regular resources which have not been obtained by virtue of recourse to the social assistance of Malta and which shall be deemed to be sufficient if they are equivalent to the national minimum wage in Malta.³⁹⁸

This procedure also applies to family members who are already in Malta, including those who are here illegally. In such cases, ID Malta will request the applicant to get clearance from the PIO in order to process the applicant. If not, the applicant's only option is to leave the country to apply from abroad. This scenario was reported to be very common since the IPA tends to split family applications and reject one or more family members while still granting protection to some others.

Despite the law providing that family members of the refugee enjoy the same rights and benefits,³⁹⁹ this does not translate in any actual right to residence and the only way is to apply for family reunification.

The procedure is particularly long, and applicants have reported waiting for more than 2 years for a decision on the reunification. ID Malta's answer time to any queries, even on a simple update about the stage of the application was also reported to be one of the main obstacles to the procedure. In some cases, NGOs and lawyers reported that ID Malta requested the applicant to reapply after several months or years as documents were allegedly missing.

In 2021, Identity Malta accepted 10 applications for a total number of 12 people.⁴⁰⁰

2. Status and rights of family members

As soon as the application for family reunification has been accepted, family members will be authorised to enter Malta once they are granted a visa.

In practice, problems in issuing documentation may arise in countries with no Maltese embassies. This leads to scenarios where applicants must travel to another country in order to apply for the visa at the

³⁹⁷ Regulation 12 Family Reunification Regulations.

³⁹⁸ Information provided by Identity Malta, 2017.

³⁹⁹ Regulation 20(2)(a) Procedural Regulations.

⁴⁰⁰ Information provided by Identity Malta, April 2022.

Maltese representation. Family members must then stay in this country until the visa is issued, incurring further costs for the family.

The very strict COVID-19 quarantine rules implemented by Malta in 2021 were also a major obstacle to reunification since most of the countries where applicants were from were listed as “dark red” and a mandatory quarantine of 14 days had to be done, most of the time in a hotel for a 100€ per day.

However, applicants could apply to quarantine at their sponsor's place of residence, the acceptance of such request being at the discretion of the health authorities. A few applicants indicated being able to do so.

The Family Reunification Regulations provide that family members shall be granted a first residence permit of at least one year's duration and shall be renewable.⁴⁰¹

Since 2016, reunited family members are, in practice, granted a residence permit of three years, indicating “Dependant family member”.⁴⁰²

The family members of the sponsor have access, in the same way as the sponsor, to education, employment, and self-employed activity. While a refugee has access to employment and self-employment without the need for an assessment of the situation of the labour market, said family members are subject to such assessment for the first 12 months following their arrival. They also have access to vocational guidance, initial and further training, and retraining.⁴⁰³

Family members coming to Malta are barred from applying for international protection in their own name.

C. Movement and mobility

1. Freedom of movement

Beneficiaries have freedom of movement within the Maltese territory. No dispersal scheme is in place to allocate beneficiaries to specific geographic regions.

2. Travel documents

The Procedural Regulations provide that every beneficiary of international protection is to be granted a travel document entitling him or her to leave and return to Malta without the need of a visa.⁴⁰⁴

Travel documents for beneficiaries of international protection in Malta are issued by the Malta Passport Office following a request by the refugee or subsidiary protection beneficiary. They are valid for the duration of residence permits issued by the Expatriates Unit - three years.⁴⁰⁵

The Malta Passport Office issues a Convention Travel Document for people who are granted **refugee status** while persons holding **subsidiary protection** and **Temporary Humanitarian Protection** are issued an Alien's Passport. Beneficiaries of the new **SRA** status are also entitled to a travel document and they are also issued with an Alien's Passport. There are no geographical limitations imposed by the Passport Office or the Immigration Police, but holders of Aliens' Passports are bound to ascertain that the

⁴⁰¹ Regulation 14(2) Family Reunification Regulations.

⁴⁰² Information provided by Mr Ryan Spagnol, Director of Identity Malta, 29 September 2016.

⁴⁰³ Regulation 15 Family Reunification Regulations.

⁴⁰⁴ Regulation 20 Procedural Regulations.

⁴⁰⁵ Information provided by Mr Ignatius Ciantar, Senior Principal, Passport Office and Civil Registration Directorate, 19 September 2016.

document is recognised and valid for travel to the country they intend to visit, as it is not an internationally recognised travel document.⁴⁰⁶ There are no known obstacles to the recognition of these travel documents in other countries.

The travel documents issued to beneficiaries do not restrict the holder from travelling to the country of origin or any other country.

In 2021, the Passport Office issued 300 convention travel documents for refugee status holders and 2018 Alien's Passport (this includes other type of residence permits).⁴⁰⁷

D. Housing

Indicators: Housing

- | | |
|---|--------------------------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | Not entitled as a general rule |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2021: | 14 |

The main form of accommodation provided is access to reception centres, which are the Initial Reception Centre in **Marsa**, **Hal Far Tent Village**, **Hal Far Open Centre**, **Hal Far Hangar**. Two centres are especially dedicated to host minors and women and provide for smaller types of accommodation, namely **Dar il -Liedna** and **Balzan Open Centre**. However, beneficiaries of international protection are not allowed to stay in reception centres in. Exceptions can be made for vulnerable persons and families but on a case-by-case basis. AWAS reported that in 2021, a total of 13 beneficiaries were accommodated in open reception centre, mostly THP beneficiaries.

Refugees are entitled to apply to the Maltese Housing Authority program for alternative accommodation known as "Government Units for Rent", provided they have been residing in Malta for 12 months and have limited income and assets. Refugees are also entitled to all of the schemes that the Housing Authority offer, such as a rent subsidy scheme.

A study carried out among the migrant community in Malta (asylum-seekers and beneficiaries of international protection) evidenced that housing remains an issue for such populations as rental prices have increased greatly over the past few years. Most of the people interrogated for the survey qualified housing costs as a burden. Moreover, problems such as shortage of space and lack of light are common as the overall quality of the dwellings rented by the migrant population is usually poor and/or their size is not suited for the number of individuals living in them.⁴⁰⁸

In 2017, the Council of Europe Commissioner for Human Rights raised the issue of access to housing in correspondence with the Ministry for Home Affairs.⁴⁰⁹ This problem persisted throughout 2018, 2019, and even more in 2020 and 2021 due to the COVID-19 crisis, with NGOs working in the social sector commenting that access to private accommodation was increasingly challenging for several groups, including migrants and beneficiaries of international protection, resulting in higher numbers of homeless persons or of persons living in squalid conditions.⁴¹⁰

⁴⁰⁶ *Ibid.*

⁴⁰⁷ Information provided by Identity Malta, April 2022.

⁴⁰⁸ aditus foundation and JRS Malta, *Struggling to survive, an investigation into the risk of poverty among asylum seekers in Malta*, January 2017, available at: <http://bit.ly/2kVtuRz>.

⁴⁰⁹ Council of Europe Commissioner for Human Rights, Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

⁴¹⁰ Times of Malta, 'Number of officially homeless in Malta is "not a reality"', 6 October 2018, available at: <https://bit.ly/2SPesJV>.

In April 2020, 41 NGOs issued a press statement urging the authorities about the immediate and urgent need for shelter. They stated that they were receiving numerous alerts of people about to be evicted for not being able to pay their rent. They stressed that most people, especially the migrant population, might not be able to rely on the Government's support packages or simply not be aware of it. They added that community or NGO's initiatives are not enough to meet the escalating demand for assistance. They urged the authorities to implement an emergency food and shelter initiative.⁴¹¹

Following the press release, the Ministry for Social Accommodation engaged in a dialogue with NGOs. They indicated that evictions are strictly regulated, and all cases should be referred to the Housing Authority to verify such evictions are legal. They also announced that people struggling to pay rent may apply for housing benefit, which was increased due to COVID-19.⁴¹²

E. Employment and education

1. Access to the labour market

Beneficiaries of international protection have access to the labour market both as employees and self-employed workers.⁴¹³

Refugees are entitled to access the labour market under the same conditions as Maltese nationals. To do so, they need an employment licence issued by JobsPlus. The maximum duration of the employment licence is 12 months and is renewable. In such cases, the person is granted an employment licence in their own name. Obstacles in this area include the application costs. A new application costs €58, while annual renewal costs €34.⁴¹⁴

Refugees are eligible for all positions and have access to benefits including employment insurance and pension. They also have access to employment training programmes at JobsPlus.

Subsidiary protection beneficiaries may not be eligible for certain jobs e.g., police and military. Although they must pay tax on wages, legislation foresees that the social welfare benefits granted to beneficiaries of subsidiary protection may be limited to core social welfare benefits with no access to many employment benefits, including employment insurance and pensions. They have access to employment training programmes at JobsPlus.

In Malta, research findings by the European Network Against Racism indicate that non-EU qualifications are often not recognised.⁴¹⁵ Another obstacle is the difficulty in obtaining the necessary certificates from their country of origin. The Malta Migrants Association (MMA) argues that even when refugees are aware of the possibility of their qualifications being recognised, it is a protracted process, in some cases taking up to five or six months. The situation is even more laborious for those who require a warrant to practise their profession: once they have their qualifications recognised, they then need to start another process to be able to work in Malta.

In its 2019 "Working Together, a UNHCR report on the employment of refugees and asylum-seekers in Malta" report, UNHCR documents the difficulty for refugees to have their certificates or academic

⁴¹¹ Joint NGO Press Release, 'An immediate food and shelter initiative is urgently needed!', 3 April 2020, available at: <https://bit.ly/3rkSjoZ>.

⁴¹² Information provided by aditus foundation, 2021.

⁴¹³ Regulation 20c Procedural Regulations.

⁴¹⁴ European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016.

⁴¹⁵ European Commission, *Labour market integration of asylum seekers and refugees: Malta*, 2016, available at: <http://bit.ly/2lkMKc6>.

qualifications recognised.⁴¹⁶ It is reported that this process, in respect of recognising their qualifications, often results in a negative reply. Moreover, another burden is the cost incurred in translating certificates. In the report, UNHCR recommends several actions to be taken to address those shortcomings, such as the establishment of a special body to assess the skills of refugees; the promotion of vocational testing; the setting of a mechanism for refugees to access university; or a support to employers to pay the cost of translating certificates.

Jobsplus indicated that in 2021 it delivered 200 work permits to refugees, 805 permits to subsidiary protection beneficiaries and 89 for beneficiaries of THP.

2. Access to education

All beneficiaries of international protection are covered under compulsory and free of charge state education up to the age of 16. After secondary school, and after obtaining the relevant and necessary Ordinary Level examination passes, students may enrol for post-secondary education: two years of study in preparation for Advanced Level Examinations. All beneficiaries of protection may also apply to enrol at the University of Malta and, in principle, they are treated as all other third-country national applicants in terms of application procedures, fees, and stipends.

In 2014, the Ministry Education launched the policy document “National Strategy on Literacy for the period 2014-2019”.⁴¹⁷ The document acknowledges the need to support third-country nationals living in Malta and the necessity to review the education system with regard to the participation of migrant children in schools. In this context, the policy foresees a list of recommendations ranging from the provision of information about schooling options for migrant parents and the instauration of small language support classes to the implementation of assessment procedures and training courses for teachers and the active involvement of parents with literacy courses for adult migrants.

Regarding the integration of migrant children, this National Strategy is yet to be implemented at national level. Nevertheless, in practice, several initiatives to integrate migrant children are in place in Malta.

The Migrant Learners Unit within the Ministry for Education is in charge of promoting the inclusion of newly arrived learners into the education system and runs several projects which aim to provide migrant learners in school with further support in basic and functional language learning over and above the teaching provided by the class teacher.

Several projects have been implemented at local level in recent years in schools in Malta to help students to integrate in providing targeted language classes for children.

Skills Kit is a freshly introduced initiative by Malta College of Arts, Science and Technology (MCAST) that is available for free to refugees and beneficiaries of subsidiary protection. It includes various topics such as art, hairdressing, beauty, basic web design, caring for others, animal care, sport, installation of low voltage devices and cultures.⁴¹⁸

In 2018, the government also introduced the ‘I Belong’ Programme which is available for beneficiaries of international protection as well. The initiative consists of English and Maltese language courses and basic cultural and societal orientation as part of the integration process. It is important to note that integration requests are accepted from all persons of migrant background regardless of their grounds of residence.

⁴¹⁶ UNHCR, Working Together, a UNHCR report on the employment of refugees and asylum-seekers in Malta December 2019, available at: <https://bit.ly/34Wj0GH>.

⁴¹⁷ Ministry of Education, *Launch of the National Literacy Strategy*, available at: <https://bit.ly/3cfEUay>.

⁴¹⁸ MCAST, *Skills Kit*, available at: <https://bit.ly/3ccZpEI>.

In 2020, 3,456 people applied for the 'I Belong Programme', among them, 364 were beneficiaries of international protection and 191 were asylum-seekers.⁴¹⁹ In 2021, 1,909 individuals followed the course, including 102 asylum seeker, 95 failed asylum seeker, 85 beneficiaries of temporary humanitarian Protection, 75 beneficiaries of subsidiary protection and 51 refugees.⁴²⁰

F. Social welfare

The Procedural Regulations provide for access to social welfare for beneficiaries of international protection.⁴²¹ However, the law makes a difference between refugees and subsidiary protection beneficiaries since social welfare benefits granted to the latter “may be limited to core social welfare benefits”.

Refugees are entitled to the same benefits as Maltese nationals, under the same conditions. They are namely entitled to Children’s Allowance, Social Benefits, Pension Benefits, Rent Subsidy, Social Housing and Unemployment Assistance. However, like Maltese citizens, refugees must satisfy the established criteria for each benefit or assistance they apply for. In practice, refugees are rarely able to benefit for Malta’s Contributory Scheme since they are not present in Malta for a sufficient amount of years to be able to pay the minimum number of social security contributions required for some benefits.

Subsidiary protection beneficiaries are, for their part, only entitled to “core welfare benefits” which is interpreted as being limited to social assistance.⁴²² They are, however, eligible for contributory benefits if they are employed, pay social security contributions, and satisfy the qualifying conditions.

The provision of social welfare benefits is not conditioned on residence in a specific place in Malta.

Benefits entitlements fall within the remit of the Ministry for the Family, Children’s Rights, and Social Solidarity, whilst social protection and care is provided by the public agency Agenzija Appoġġ. For benefits, beneficiaries may apply to their local social security office or online.

Employment assistance is provided by the public agency **JobPlus**, and in 2017 this agency extended its services to beneficiaries of subsidiary protection.

Difficulties arise in practice, as entitlements are not clear and beneficiaries of international protection are usually very confused about which benefits they could be eligible for. Other persisting obstacles include lack of information and lack of communication with their job advisors.

G. Health care

Refugees have access to state medical services free of charge. They have equal rights compared with Maltese citizens and are, therefore, entitled to all the benefits and assistance to which Maltese citizens are entitled to under the Maltese Social Security Act,⁴²³ as defined in the Procedural Regulations.⁴²⁴ Access to medication and to non-core medical services is not always free of charge, in the same way as it is also not always free of charge for Maltese nationals. All low-income individuals may be given a Yellow

⁴¹⁹ Information provided by the Human Rights Directorate, January 2021

⁴²⁰ Information provided by the Human Rights Directorate, March 2022

⁴²¹ Regulation 20 Procedural Regulations.

⁴²² Council of Europe Commissioner for Human Rights, *Letter to the Minister for Home Affairs, National Security and Law Enforcement of Malta*, CommHR/NM/sf 043-2017, 14 December 2017, available at: <http://bit.ly/2o5Bwr6>.

⁴²³ Social Security (U.N. Convention Relating to the Status of Refugees) Order, Subsidiary Legislation 318.16, 2001, available at: <http://bit.ly/2kvolaz>.

⁴²⁴ Regulation 20 Procedural Regulations.

Card to indicate entitlement to free medication. The main public mental health facility, **Mount Carmel Hospital**, also offers free mental health services to refugees.

Beneficiaries of **subsidiary protection** are only entitled to core medical services according to national legislation and guidelines provided by the authorities.⁴²⁵ Beneficiaries have to lodge an application for Core Benefits at one of the Social Security branch offices. They are obliged to sign in once a week at the Social Security branch office on a fixed registration date.

The public health service provides interpreters on a roster basis. This service can be booked by anyone within the public health sector in order to aid a specific patient, although it appears that not all health professionals are aware of this support.⁴²⁶

In practice, specialised treatment for victims of torture or traumatised beneficiaries is not available. As no special referral system is in place, when officers come across someone who was tortured and is in need of assistance, they refer the individual to the mainstream mental health services and to the psychiatric hospital for in-depth support. Most cases are usually referred from the communities and are sent to polyclinics. Very few cases of victims of torture and violence have officially been noticed over the past few years.⁴²⁷

Beneficiaries of international protection who have their residence permit did not report facing any particular difficulties in getting the vaccine for the COVID-19. Those that did not dispose of a permit, usually would wait until they get it to get vaccinated, but it is not a requirement and the vaccine is accessible regardless.

⁴²⁵ Regulation 20 Procedural Regulations.

⁴²⁶ Nitktellmu, Refugee Integration Perspectives in Malta, December 2013, available at: <http://bit.ly/2lywmBc>.

⁴²⁷ Information provided by Ms Marika Podda Connor, Migrant Health Liaison Office, Primary Health Care Department, 2016.

ANNEX I - Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	3 March 2015 11 December 2015	Refugees (Amendment) Act, No VI of 2015 Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	http://bit.ly/1LQjEov . (EN) https://bit.ly/2ORQang . (EN)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	11 December 2015	Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	https://bit.ly/3ecdAwX . (EN)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	11 December 2015	Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	https://bit.ly/3x2SoRW . (EN)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	11 December 2015	Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	https://bit.ly/3uVZ9TM . (EN)