

Country Report: Malta



2022
Update

Acknowledgements & Methodology

This report was 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 Jobsplus and the Ministry for Home Affairs for their cooperation in providing the requested data and information.

We would like to thank all those organisations that shared information and observations.

The information in this report is up to date as of 31 December 2022, 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, Türkiye 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.



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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
CEO	Chief Executing Officer
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
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
PD Form	Personal Details Form
PIO	Principal Immigration Officer
PQ	Preliminary Questionnaire
SAR	Search and Rescue
SRA	Specific Residence Authorisation
TCN	Third Country National
THP	Temporary Humanitarian Protection
TP	Temporary 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. In 2022, requests for information were sent to the following public authorities: International Protection Agency (including the Dublin Unit), the International Protection Appeals Tribunal, the Ministry for Home Affairs, Security, Reforms and Equality, the Malta Police Force, Jobsplus, the Superintendent for Public Health, and the Agency for the Welfare of Asylum-Seekers. Information was provided by Jobsplus whilst the Ministry provided statistics following a Freedom of Information Request.

UNHCR Malta regularly publishes information on arrivals, asylum applications, decisions and reception of asylum seekers. In 2022 the total number of decisions taken was 2,626.¹

Applications and granting of protection status at first instance: 2022²

	Applicants in year	Pending at end of year	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	973	1,730	15	172	783	0.6%	6.5%	30%

Breakdown by countries of origin of the total numbers

Syria	243	376	0	89	2	0%	3.4%	0.1%
Eritrea	93	180	0	76	6	0%	2.9%	0.2%
Bangladesh	78	40	0	0	0	0%	0%	0%
Ukraine	92	90	0	0	0	0%	0%	0%
Libya	63	122	6	0	79	0.2%	0%	3%
Egypt	58	9	0	0	0	0%	0%	0%
Nigeria	36	66	0	0	115	0%	0%	4.4%
Somalia	27	167	0	7	30	0%	0.3%	1.1%
The Gambia	24	37	0	0	23	0%	0%	0.9%
Sudan	32	165	1	0	269	0.04%	0%	10.2%

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

² Information provided by the Ministry for Home Affairs, Security, Reforms and Equality via a Freedom of Information Request, on 24 March 2023.

Malta recognised refugees status for the following applicants: Libya (6), Palestine and Cameroon³ (2), Ivory Coast, Ethiopia, Iran, Russia and Sudan (1).

* Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.

* "Rejection" only covers negative decisions on the merit of the application. It should *not* cover inadmissibility decisions.

* "Applicants in year" refers to the total number of applicants, and not only to first-time applicants.

Gender/age breakdown of the total number of applicants: 2022⁴

	Number	Percentage
Total number of applicants	916	
Adult Men	567	62%
Adult Women	175	19%
Children (accompanied)	144	16%
Unaccompanied children	32	3%

Source: Ministry for Home Affairs, Security, Reforms and Equality

³ These were recognised as refugees at second instance.

⁴ These figures refer to first-time applicants and do not include subsequent applications.

Overview of the legal framework

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

Title (EN)	Abbreviation	Web Link
Chapter 36, Prevention of Disease Ordinance, Ordinance VIII of 1908		https://bit.ly/2E9u73v (EN)
Chapter 217, Immigration Act, Act IX of 1970 <i>Amended by: Act XXXVI of 2015</i> <i>Amended by: Act XV of 2022</i>	Immigration Act	http://bit.ly/1ee7pa9 (EN) https://bit.ly/3VVBU3e (EN) https://bit.ly/3vFZoVr (EN)
Chapter 420, International Protection Act, Act XX of 2000 <i>Amended by: Act VI of 2015</i> <i>Amended by: Act VII of 2015</i> <i>Amended by: Act XX of 2017</i> <i>Amended by: Act XL of 2020</i> <i>Amended by: Act XIX of 2022</i>	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) https://bit.ly/3GawdyM (EN)
Chapter 465, Public Health Act, Act XIII of 2003	Public Health Act	https://bit.ly/3X5mWyW (EN)
Chapter 602, Minor Protection (Alternative Care) Act, Act XXIII of 2019 <i>Amended by: Act XXXIX of 2020</i> <i>Amended by: Act XXIII of 2021</i>	Minor Care Act	https://bit.ly/3bX5Z54 (EN) https://bit.ly/3Ze2X2D (EN) https://bit.ly/3WP7A1A (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
Subsidiary Legislation 217.03, Places of Detention Designation Order, Legal Notice 30 of 1995 <i>Amended by: Legal Notices 65 and 152 of 2002</i>		https://bit.ly/3CIAZrV (EN)
Subsidiary Legislation 217.05, Status of Long Term Residents (Third Country Nationals) Regulations, Legal Notice 278 of 2006		https://bit.ly/3XaVZtJ (EN)

Amended by: Legal Notice 370 of 2010 Amended by: Legal Notice 197 of 2014 Amended by : Legal Notice 366 of 2015 Amended by: Act XXIX of 2019 Amended by: Legal Notice 84 of 2021		
Subsidiary Legislation 217.06, Family Reunification Regulations, Legal Notice 150 of 2007 Amended by: Legal Notice 148 of 2017 Amended by: Legal Notice 166 of 2018	Family Reunification Regulations	https://bit.ly/2FQ0N33 (EN) https://bit.ly/3jVbibH (EN) https://bit.ly/3vC8fro (EN)
Subsidiary Legislation 217.07, Permission to Reside for Victims of Trafficking or Illegal Immigration who co-operate with the Maltese Authorities Regulations, Legal Notice 175 of 2017		https://bit.ly/3Zef5Rd (EN)
Subsidiary Legislation 217.08, Monitoring Board for Detained Persons Regulations, Legal Notice 266 of 2007 Amended by: Legal Notices 251 of 2012 Amended by: Legal Notices 425 of 2015	MBDP Regulations	http://bit.ly/1GURBTA (EN)
Subsidiary Legislation 217.11, Agency for the Welfare of Asylum-seekers Regulations, Legal Notice 205 of 2009	AWAS Regulations	http://bit.ly/1GURCHj (EN)
Subsidiary Legislation 217.12, Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011 <i>Amended by:</i> Legal Notice 15 of 2014 Amended by: Legal Notice 410 of 2020 Amended by: Legal Notice 43 of 2021	Returns Regulations	https://bit.ly/2U5VQXR (EN) https://bit.ly/3Z7GnsN (EN) https://bit.ly/3igREGw (EN) https://bit.ly/3jV5sqs (EN)
Subsidiary Legislation 217.13, Immigration Appeals Board (Division) Regulations, Legal Notice 246 of 2011	IAB Divisions Regulations	https://bit.ly/3WOO7OK (EN)
Subsidiary Legislation 217.19, Detention Service Regulations, Legal Notice 16 of 2016 Amended by: Legal Notice 330 of 2020	Detention Service Regulations	https://bit.ly/2R5z5RN (EN)
Subsidiary Legislation 420.01, International Protection Appeals Tribunal (Procedures) Regulations, Legal Notice 252 of 2001 <i>Amended by Legal Notice 426 of 2007</i>	IPAT Regulations	https://bit.ly/30UbZVE (EN)

<i>Amended by Legal Notice 426 of 2012</i>		
Subsidiary Legislation 420.04, International Protection Appeals Tribunal (Chambers) Rules, Legal Notice 47 of 2005	IPAT Chambers Regulations	http://bit.ly/1GHgCyh (EN)
Subsidiary Legislation 420.06, Reception of Asylum-seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005 <i>Amended by: Legal Notice 417 of 2015</i> <i>Amended by: Legal Notice 487 of 2021</i>	Reception Regulations	https://bit.ly/3rdvDqu (EN) https://bit.ly/3CqxccX (EN) https://bit.ly/3X8ZmkC (EN)
Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015 <i>Amended by: Act XL of 2020</i> <i>Amended by: Legal Notice 488 of 2021</i> <i>Amended by: Legal Notice 273 of 2022</i>	Procedural Regulations	https://bit.ly/3ltkbpI (EN) https://bit.ly/3Qix8BV (EN) https://bit.ly/3GhjH0o (EN) https://bit.ly/3QjelGx (EN)
Subsidiary Legislation 318.16, 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)
Subsidiary Legislation 465.13, Period of Quarantine Order, Legal Notice 40 of 2020 Repealed by Legal Notice 134 of 2022	Quarantine Order	https://bit.ly/3WOPhtA (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)
Strategy for the Reception of Asylum Seekers and Irregular Immigrants (2015)	2015 Strategy Document	https://goo.gl/FFz7qJ (EN)

Overview of the main changes since the previous report update

The report was previously updated in **May 2022**.

International protection

Asylum procedure

- ❖ **Key asylum statistics:** The top three nationality groups of applicants in 2022, representing 44% of all applicants, were persons fleeing armed conflict or undemocratic regimes: Syrians (243, 25%), Eritreans (93, 10%) and Ukrainians (92, 9%). At the end of 2022, the majority of pending applications were from applicants who would, at least *prima facie*, be eventually granted international protection by Malta: Syrians (359), Eritreans (178) and Somalis (166). Looked at in conjunction with figures of new applications, it is clear that many of these applications have been pending at first instance for at least 1 year. It is also noted that all decisions relating to applicants from Egypt, Bangladesh and Senegal were based on the safe country of origin concept, as no substantive rejections were issued in relation to any of these applicants.
- ❖ **Access to Territory:** The substantial drop in arrivals is reported to be a direct consequence of Malta's involvement in pushbacks incidents and its reluctance to carry out rescues at sea. More than 7000 people in distress at sea are reported to have been ignored by the authorities and Malta was accused of being directly involved in at least 14 pushback incidents.
- ❖ **Asylum procedure:** The asylum procedure in Malta is still characterised by long waiting times and differential treatments based on nationality. The unlawful accelerated procedure implemented by the International Protection Agency (IPA) and the International Protection Appeals Tribunal (IPAT) was severely criticised by the European Court of Human Rights in a recent Judgement. The quality of the assessment is reportedly very low across all nationalities and the credibility assessment is reported to be excessively relied upon the determination process. Appeals before the IPAT remain pending for years with no prospect of success for appellant. A new trend of automatic, template-based rejections was noted in relation to Libyan nationals and Non-Arab Darfuri from Sudan. The independence and impartiality of the Tribunal remains an issue of concern which has yet to be addressed by the Government. The same concerns were expressed in relation to age assessment appeals before Division II of the Immigration Appeals Board (IAB).

Reception conditions

- ❖ **Reception capacity:** With the decrease in arrivals, consequential to the reported increase in pushbacks, the reception system is not under pressure anymore and space is largely available in across all open centres. Despite this, non-vulnerable asylum seekers must exit the open centre at 6 months and this also terminates material reception conditions. Some positive improvements were noted with regard to the reception of unaccompanied minors, but the legal guardianship system is still plagued by unjustifiable delays and lack of independence of the guardians.

Detention of asylum seekers

- ❖ **Detention upon arrival:** Newly arrived asylum seekers are not subjected to a mandatory COVID quarantine since May 2022, but all asylum seekers, including vulnerable applicants and unaccompanied minors, rescued at sea are still automatically detained for several weeks after arrival in terms of the Prevention of Disease Ordinance. During this detention period, no entity is permitted to visit them.

- ❖ **Detention for the purpose of returns:** The Principal Immigration Officer (PIO) continued to implement a detention policy based on the nationality of the applicants, ordering the automatic detention of all applicants coming from countries of origin where returns are feasible. Unaccompanied minors from these countries of origin are still detained pending age assessment for several weeks or months until they are released, or their claim is rejected.
- ❖ **Procedural safeguards:** The ineffective judicial review of the Detention Order carried out by Division II of the Immigration Appeals Board (IAB) reportedly happens in the general indifference of the Board members and the legal aid lawyers appointed by the Ministry for Home Affairs, under which all entities fall, including the Board. The Board is reported to carry out mass hearings where it confirms the detention of all applicants taken before it without any individual assessment.
- ❖ **Detention conditions:** Refurbishments are reportedly under way in the Safi Detention Centre but the authorities have refused to share any detailed information on the matter. Applicants continued to complain of the detention conditions which are reported to have insufficiently improved since the damning CPT report of March 2021.
- ❖ **Access to detention centres:** Access to detention remains an issue for all actors in the field, including the UNHCR, which is the only entity allowed to enter the living quarters of the detention centre and provide information sessions.

Temporary protection

The information given hereafter constitute a short summary of the 2022 Malta Report on Temporary Protection, for further information, see [Annex on Temporary Protection](#).

- ❖ **Key temporary protection statistics:** As of March 2022, the International Protection Agency started to provide specific information regarding applications to Ukrainian Nationals who wish to apply for the Temporary Protection under the Temporary Protection Directive (2001/55/EC). On 4 April 2022, the IPA indicated that it received 247 requests for Temporary Protection and issued 193 decisions to grant protection. Persons who left Ukraine before 24 February 2022 are not eligible for Temporary Protection yet are able to apply for International Protection. As of 2 April 2023, 1,842 persons had been granted temporary protection since 24 February 2022.

Temporary protection procedure

- ❖ **Registration for temporary protection:** Applicants for TP were required to make an appointment with the International Protection Agency, and to subsequently present the documentation showing their eligibility for TP. Eligibility was determined quite speedily, with eligible persons being granted TP within days of their application. Malta applied the eligibility criteria established in the EU Council Decision. Following receipt of TP, holders could obtain a residence permit from Identity Malta.⁵ However, those denied temporary protection were not provided with a written decision outlining the reasons in fact and law for the rejection.
- ❖ **Information provision:** the main challenges related to the absence of information in Ukrainian, limited availability of interpreters/translators and what seemed to be an uncoordinated approach by Government entities as to content of protection and related procedures.

⁵ International Protection Agency, Frequently Asked Questions Temporary Protection, available at <https://bit.ly/3UJKZmX>.

Content of temporary protection

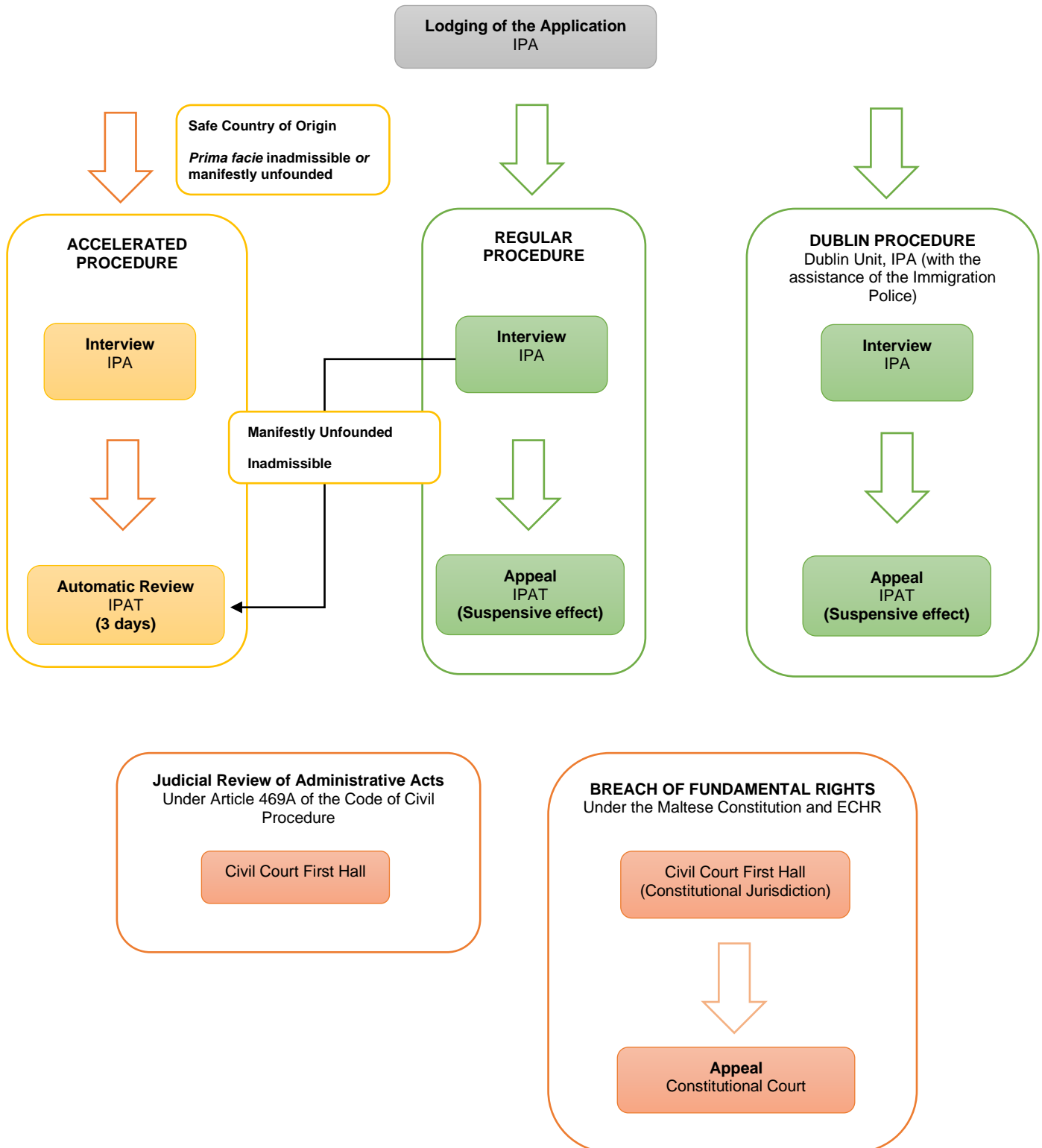
- ❖ **Rights connected to temporary protection:** TP holders are entitled to: residence permits; access to the labour market and accommodation; social and welfare assistance on the same level as beneficiaries of subsidiary protection; medical care (including, as a minimum essential emergency care and essential treatment of illness); and access to education for children and teenagers.⁶
- ❖ **Pendular movement to Ukraine:** although no issues are reported by temporary protection beneficiaries who wished to travel to Ukraine temporarily, the IPA has stated that a return to Ukraine, regardless of duration or purpose, could result in a withdrawal of temporary protection, although without preventing the person from applying again upon their return.

⁶ International Protection Agency, Frequently Asked Questions Temporary Protection, available at <https://bit.ly/3UJKZmX>.

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: ⁷ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ⁸ | <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: ⁹ | <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)	21 ¹⁰	Ministry for Home Affairs, National Security and Law Enforcement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The International Protection Agency (IPA) is the authority responsible for examining and determining applications for international protection at first instance.¹¹ 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 the European Union Agency for Asylum. In 2021, the IPA had only 5

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

⁸ Accelerating the processing of specific caseloads as part of the regular procedure.

⁹ Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

¹⁰ Information provided by the Ministry for Home Affairs via a Freedom of Information Request, on 24 March 2023.

¹¹ Article 4 International Protection Act.

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. At the end 2022, IPA had a total staff of 21 persons: 2 conducting first instance interviews and 4 taking decisions or making final recommendations.¹²

EUAA'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.¹³

In a report published in July 2021, the National Audit Office noted that the IPA was lacking the capacity to expediently address the high number of outstanding applications for international protection and that EUAA's input in this regard had been a critical factor to minimise application processing time.¹⁴

The Agency has been supporting the Government of Malta since 2019 with significant increases in support every year. The provided support included registration of asylum applications, vulnerability assessments, and first instance interviews and recommendations. It also included structural components, seeking to support the establishment of protocols, SOPs, and units in various entities.

On 16 December 2021, a new plan was agreed for the period 2022-2024. EUAA 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 would remain similar to that registered in 2021, the plan also foresees that the Agency may initiate a phasing out exercise from specific support areas (such as decreasing direct support to asylum processing) towards the end of 2022.¹⁵ 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.¹⁶

Malta has received operational support by the EASO/EUAA since 2019. The 2022-2024 plan was amended in April 2022 to take into account the changes in the operational context in light of the invasion of Ukraine.¹⁷

In 2022, the EUAA deployed 101 different experts in Malta Operations,¹⁸ mostly temporary agency workers (70). The majority of deployed experts were caseworker assistants (21), registration support (15), caseworkers (14) followed by vulnerability assessors (10), training support officers (3), quality assurance support officers (8) and other support staff (e.g. info providers, COI researchers, Dublin staff).¹⁹

As of 20 December 2022, there were a total of 54 EUAA experts in Malta, mainly administrative assistants (10) and caseworker assistants (7).²⁰

¹² Information provided by the Ministry for Home Affairs via a Freedom of Information Request, on 24 March 2023.

¹³ Information provided by the International Protection Agency, March 2022.

¹⁴ National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum seekers, 7 July 2021, p. 72, available at <http://bit.ly/3CT0VeK>.

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

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

¹⁷ EUAA, *Operational Plan 2022-2024 agreed by the European Union Agency for Asylum and Malta*, April 2022, available at: <https://bit.ly/3T7tCvB>

¹⁸ EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

¹⁹ Information provided by the EUAA, 28 February 2023. In the figures above, the same persons may have been included under different profiles, if a change of profile took place in the course of 2022.

²⁰ Information provided by the EUAA, 28 February 2023.

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 and Temporary Humanitarian Protection (THP)²¹ being undertaken by the International Protection Agency (IPA) within the context of the same procedure. The language of the procedure is English. 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 the EUAA across asylum and reception-related activities.

The registration process – whether undertaken by the IPA or EUAA – consists of collecting personal details and issuing a unique IPA number as well as the Asylum Seeker Document/Certificate. The lodging of applications consists of completing 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 immediately placed in detention on health grounds, and subsequently fingerprinted and photographed.

Once applicants are medically cleared by the Superintendent of Public Health, the Principal Immigration Officer (PIO) issues Detention Orders under the Reception Regulations to applicants from countries of origin where returns are feasible. Those applicants generally spend the whole procedure in detention.

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 schedules an appointment for an interview with the applicant. After 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.²²

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.²³ However, most

²¹ THP is a form of national protection regulated by Article 17A of the International Protection Act and awarded to applicants 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. 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. See aditus foundation, Comments on Bill No. 133: Refugees (Amendment) Bill, July 2020, available at <https://bit.ly/3HNvJ3C>.

²² ECRE, *Asylum authorities: an overview of internal structures and available resources*, October 2019, available at: <https://bit.ly/2Ut8QIK>, 55.

²³ Regulation 6(6) Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

of the decisions by the IPA are, in practice, not taken before the period of time established by the Regulations.

The International Protection Act provides for a right of appeal against a negative decision, within a two-week time period from the day of the notification of the decision.²⁴ This procedure is referred to as “normal procedure” as opposed to the “accelerated procedure” below.

Appeals are to be filed before the International Protection Appeals Tribunal (IPAT), an administrative tribunal which is currently operating in a one-chamber composition of three members and a secretary. Appeals to the Tribunal have suspensive effect, which guarantees that an asylum seeker may not be removed from Malta prior to a final decision being taken on his or her appeal.²⁵ The Tribunal is empowered to regulate its own procedure and its decisions are binding on the parties and the Tribunal will not remit it back to IPA to take a new decision.²⁶ By law, the Tribunal must decide within 6 months of the appeal and this can only be extended for a further 6 months in exceptional circumstances.²⁷ In practice however, the IPAT takes on average more than two years to decide on appeals. It is noted that the IPAT is housed within the Home Affairs Ministry and its members are all appointed by the Prime Minister.

The International Protection Act specifies that no appeal is possible from the decision of the IPAT,²⁸ although it is possible to submit a judicial review application to the Civil Court (First Hall).²⁹ Notwithstanding this, no appeal lies on the merits of the decision except for the possibility of filing a human rights claim to the Civil Court (First Hall) in its Constitutional jurisdiction 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.

Accelerated procedures are also foreseen in national law for applications that appear to be *prima facie* inadmissible or manifestly unfounded.³⁰ 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 and the decision of the IPA is automatically transmitted to the IPAT which must assess and review the decision of the IPA within three-days.³¹

Within the scope of this procedure, applicants are not entitled to appeal against the decision and no provision provides for the right to express their views by way of written submissions. No hearing is held and the decision is generally taken before applicants are notified of their first instance rejection. The decision generally consists of a one-page document confirming the IPA’s decision. The law provides that when the IPAT does not confirm the decision, the case must be remitted back to IPA for a new decision to be issued, however this is a scenario that rarely happens. In the few instances this happens, the IPA generally amends its decision to issue a simple rejection which allows for an onward appeal according to the normal procedure mentioned above.

Applicants from countries of origin where returns are deemed feasible are systematically detained and their cases are generally fast-tracked within the accelerated procedure; the outcome of such procedure, in all cases registered in recent years, resulted in a rejection decision. Overall, these applicants are

²⁴ Article 7(2) of the International Protection Act, Chapter 420 of the Laws of Malta

²⁵ Regulation 12 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

²⁶ Articles 7(9) and 7(11) of the International Protection Act, Chapter 420 of the Laws of Malta

²⁷ Article 7(7) of the International Protection Act, Chapter 420 of the Laws of Malta

²⁸ Article 7(10) International Protection Act, Chapter 420 of the Laws of Malta

²⁹ 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>.

³⁰ Articles 23 and 24 of the International Protection Act, Chapter 420 of the Laws of Malta

³¹ Articles 23(3) and 24(2) of the International Protection Act, Chapter 420 of the Laws of Malta

registered and interviewed within the first 3 months of their arrival and issued with the IPA's rejection decision, the IPAT's review, a return decision, and a removal order a couple of weeks after. Nearly all asylum seekers coming from countries listed as safe in the Schedule of the International Protection Act³² will see their application automatically rejected as manifestly unfounded on the ground that they are from a safe country of origin.

The asylum procedure and return procedures are not automatically linked. In practice however, it can be said that the accelerated procedure is linked to the return procedure since applicants are generally issued with a return decision and a removal order at the same time as the IPAT's review and the entity notifying them is generally the PIO.

Applicants granted subsidiary protection or THP at first instance have the right to appeal this decision according to the normal procedure.³³ Additionally, rejected asylum seekers can apply to THP within a separated procedure at any time³⁴ and their status will be considered as rejected asylum seekers until a decision is issued. In that context, the law provides that no appeal lies against a decision of the IPA not to grant THP.³⁵

The law foresees the possibility to file a subsequent application. Few subsequent applications pass the stage of admissibility and most are rejected as inadmissible. Inadmissible subsequent applications are channelled through the accelerated procedure as presented above and the review of the IPAT generally confirms the IPA's decisions.

In 2022, the International Protection Agency continued to massively discontinue applications as implicitly withdrawn³⁶, significantly reducing its backlog in the process. Asylum seekers who miss a call for an interview or fail to renew a document on time see their application systematically discontinued by the Agency. While it is true that many applicants absconded from Malta or abandoned their applications, mostly due to the length of the asylum procedure and the lack of any prospect in the country, the asylum seekers who remained in Malta are also impacted by this policy. NGOs noted that this policy disproportionately affects asylum seekers who are employed and work long hours and those who are doing jail time as the IPA tends to notify people by phone call during working hours. According to NGOs, applications which were discontinued and subsequently reopened are treated as fresh applications as if they were lodged the year of the decision to reopen the application.

Asylum seekers in detention were reportedly 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 for being detained without any information or access to a lawyer. The PIO generally issues a return decision and a removal order shortly after the decision to discontinue the application.

UNHCR reports that 2,637 decisions were issued at first instance in 2022, including 140 positive decisions (6% of the total). Out of these, 15 were recognitions of refugee status, 119 of subsidiary protection status and 16 of THP (although THP is not a form of international protection). There were 899 rejections (34%). The rest were 1,587 'closed' cases (60% 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 913 first time applications were made in 2022.

³² Schedule (Article 24) of the International Protection Act, Chapter 420 of the Laws of Malta.

³³ Article 17A (3) of the International Protection Act, Chapter 420 of the Laws of Malta.

³⁴ Article 17A (1) of the International Protection Act, Chapter 420 of the Laws of Malta.

³⁵ Ibidem.

³⁶ Regulation 13 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

In 2022, protection was mainly granted to Eritreans (31%), Syrians (50%) and Libyans (6%) followed by Sudanese and Palestinians (2% each).³⁷

In 2022, the IPA rejected Sudanese applicants *en masse*. According to the UNHCR, the IPA issued 602 decisions: 342 were 'otherwise closed', 258 were rejected, and 2 were granted refugee status for a recognition rate of 0.3%.³⁸

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

2022 saw a dramatic decrease in the number of arrivals by sea, due to issues flagged below.

1.1. Arrivals by boat

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 Malta's failure to provide prompt assistance to migrants in distress in the central Mediterranean.³⁹

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 2022,⁴⁰ 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 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.⁴¹

A few months later, in April, Sea-Watch and FragDenStaat filed to sue Frontex at the EU's general court for refusing to provide documents related to its working relations with the Libyan coast guard in Malta's search and rescue zone in relation to a specific incident in July 2021.⁴² Towards the end of the year, in November 2022, The European Center for Constitutional and Human Rights (ECCHR) and Sea-Watch filed a Communication to the International Criminal Court (ICC) calling for an investigation of Prime Minister Robert Abela and his predecessor Joseph Muscat, among others, of the commission of crimes

³⁷ UNHCR, Malta Fact Sheet, December 2022, available at: <https://bit.ly/3lZf2Ai>.

³⁸ Information provided by the UNHCR, January 2023.

³⁹ OHCHR, Report: A call to safeguard migrants in central Mediterranean Sea, 25 May 2021, available at <https://bit.ly/3KvOEPA>.

⁴⁰ Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at <https://bit.ly/3lnhWhS>.

⁴¹ Newsbook, Malta accused of crimes against humanity in The Hague, 18 January 2022, available at: <https://bit.ly/3Heamow>.

⁴² The Shift News, Sea rescue group claims Frontex complicit in violating human rights in Malta search and rescue zone operation, 28 April 2022, <https://bit.ly/3WY679j>

against humanity against migrants and refugees who have been intercepted at sea and systematically returned to and detained in Libya.⁴³

Between January and December 2022, the UNHCR recorded 444 sea arrivals to Malta (12 persons were airlifted by AFM, at least 23 persons arrived spontaneously, whilst 409 persons were rescued by AFM at sea). This is a 48% decrease in arrivals compared to the same period last year. In a new trend during 2022, two boats that departed from Lebanon were rescued by the AFM in the Maltese SAR zone and disembarked in Malta. The top five nationalities arriving by sea to Malta were from Syria (26%), Bangladesh (53%), Egypt (8%), and Lebanon (7%). The average age of those arriving by sea was 26. As with previous years, arrivals are mostly adult males 83%.

It is estimated that Malta ignored calls of distress and failed to rescue around 7,459 people in distress at sea in its SAR zone. Malta was also accused of being involved in 14 pushbacks for a total of 789 people. These numbers are an estimation based on incidents reported by rescue NGOs and news agencies.

In January 2022, Malta was allegedly responsible for the pushbacks of 2 boats of more than 69 people. Malta refused to reply to repeated distress calls from 1 boat with approximately 100 total passengers. The outcome of 2 people from 1 boat in the Maltese SAR in January remains unknown.⁴⁴

The following month, Malta allegedly refused to reply to repeated distress calls from 1 boat with 90 total passengers and instructed a merchant vessel not carry out the rescue.⁴⁵

This was followed in March by allegations that Malta was responsible for the pushback of 1 boat of 150 people. Malta reportedly refused to reply to repeated distress calls from 1 boat with 26 total passengers.⁴⁶

In May 2022, Malta was allegedly responsible for 2 pushbacks of 2 boats of 195 people. Malta reportedly refused to reply to repeated distress calls from 6 boats with 800 total passengers.⁴⁷ It was reported that the AFM refused to communicate information to Frontex Fundamental Rights Officer who filed a “serious incident report” in relation to incidents that occurred between 12 and 13 May 2022. The AFM reportedly declared that “*Maltese authorities consider that the Fundamental Rights Office or Frontex do not have the right to demand feedback on issues that fall outside the Agency’s mandate*” and that “*allegations of boats sinking, being left adrift or hindering rescue are false*”.⁴⁸ NGO Doctors without Borders, who responded to the incidents from 11th of May to 17th of May declared being “*appalled by the fact that the Maltese Armed Forces who were primarily responsible for the rescues in the area were informed but remained silent and inactive, neglecting their legal obligation to provide or coordinate assistance.*” The Maltese Home Affairs Minister Byron Camilleri responded to the allegations and denied that Malta was refusing to rescue migrants declaring that “*over the years the AFM always carried out its duties in the best way possible and this attack on the AFM is unjust and coming from who expects Malta to become a migration hub in the Mediterranean*”.⁴⁹

⁴³ ECCHR, Interceptions at sea and returns of migrants and refugees to Libya constitute a crime against humanity, 30 November 2022, available at <https://bit.ly/3vOZ86B>

⁴⁴ Sea-Watch, Airborne Monthly Factsheet, January 2022, available at <https://bit.ly/3IDf0kj>

⁴⁵ The Independent, AFM told merchant vessel not to rescue migrants in distress in Malta’s search and rescue zone – NGO, 14 February 2022, available at <https://bit.ly/3GsYvoa>

⁴⁶ Sea-Watch, Airborne Monthly Factsheet, March 2022, available at <https://bit.ly/3iviWZH>.

⁴⁷ ECRE, Central Med: Malta Continues to Ignore Distress Alerts Leaving People at the Mercy of So-called Libyan Coast Guard, Civilian SAR Operators Save Lives as Crackdown is Ongoing, 25 May 2022, available at <https://bit.ly/3Cyx7Uy>

⁴⁸ The Shift News, AFM goes on the offensive with Frontex when asked to explain last May’s Sea Eye migrant rescue, 7 September 2022, available at <https://bit.ly/3GQVEa8>

⁴⁹ The Malta News Agency, Migration, Maltese Minister Accused Ngos Of “Attacking” The Armed Forces, 18 May 2022, available at <https://bit.ly/3vPbRXe>

In June 2022, Malta was allegedly responsible for 4 pushbacks of 4 boats of more than 200 people. Malta reportedly refused to reply to repeated distress calls from 24 boats with more than 500 total passengers. The outcomes of 272 people from 11 boats in the Maltese SAR remain unknown.⁵⁰

In July 2022, Malta was allegedly responsible for 3 pushbacks of 3 boats of approximately 62 people. Malta reportedly refused to reply to repeated distress calls from 7 to 8 boats estimated at 300 passengers. The outcomes of 163 people from up to 8 boats in the Maltese SAR remain unknown. Frontex reportedly facilitated at least 1 pullback by the so-called Libyan Coast Guard from the Maltese SAR zone.⁵¹

In August 2022, Malta allegedly refused to reply to repeated distress calls from an estimated 22 boats with around 700 total passengers. The Tunisian Coast Guards reportedly intercepted 1 boat with around 20 people onboard in the Maltese SAR zone.⁵² The German vessel Sea-Eye 4, carrying 87 migrants was denied entry to Malta after waiting several days outside of Malta following a rescue.⁵³ A group of 40 people was rescued in the Maltese search and rescue area by the Armed Forces of Malta. The group was reportedly flagged by Alarm Phone on 28 July 2022 and the operation came after the people were left out at sea for over 6 days, despite Alarm Phone repeatedly calling on the authorities to intervene.⁵⁴

In September 2022, Malta reportedly refused to reply to repeated distress calls from 5 boats with 633 total passengers. The outcome of 152 people from 2 boats in the Maltese SAR remains unknown.⁵⁵ Malta is allegedly responsible for the death of two children as a result of its inaction.⁵⁶ Malta was furthermore accused of coordinating one pushback of one boat.⁵⁷ A group of 80 migrants who departed by boat from Lebanon and had been left adrift in Maltese waters after their distress calls were ignored by authorities were finally rescued and disembarked in Malta.⁵⁸

In October 2022, Malta was allegedly responsible for 2 pushbacks of 2 boats, with more than 90 people onboard. Malta reportedly refused to reply to repeated distress calls from 11 boats with approximately 1700 total passengers. Malta could be responsible for at least three deaths at sea as a result of its inaction.⁵⁹ Sea-Watch accused the Libyan coast guard of threatening to shoot down their monitoring plane that helps the group document the interception of migrants in the Mediterranean Sea.⁶⁰

⁵⁰ Sea-Watch, Airborne Monthly Factsheet, June 2022, available at <https://bit.ly/3Grz6LM>; Sea-Eye, Sea rescuers criticize unequal treatment of refugees, available at <https://bit.ly/3vTwBg8>;

⁵¹ Sea-Watch, Airborne Monthly Factsheet, July 2022, available at <https://bit.ly/3GQX8kP>

⁵² Sea-Watch, Airborne Monthly Factsheet, August 2022, available at <https://bit.ly/3vO2t69>

⁵³ The Independent, Rescue ship carrying 87 migrants refused entry to Malta, 8 August 2022, available at <https://bit.ly/3CzUZaA>

⁵⁴ Newsbook, 40 people rescued in Maltese SAR by AFM, 2 August 2022, available at <https://bit.ly/3vRtLZo>

⁵⁵ Times of Malta, Malta would rescue people at sea if they were European, sea rescue NGO says, 7 September 2022, available at <https://bit.ly/3VVkkCv>; The Independent, 207 asylum seekers in Malta's SAR zone have been rescued, 14 September 2022, available at <https://bit.ly/3vPbNXI>; Alarm Phone on Twitter, <https://bit.ly/3VZ8dVd>

⁵⁶ Times of Malta, 60 people drifting in Malta SAR, two children dead, emergency hotline told, 5 September 2022, available at <https://bit.ly/3GPGWQx>; Loveinmalta, Loujin, young girl who died of thirst after delayed rescue buried in Crete, available at <https://bit.ly/3XyObIN>; aditus foundation, Malta Refugee Council demands and official inquiry into the death of a young girl, 19 September 2022, available <https://bit.ly/3Xi53go>

⁵⁷ Alarm Phone, Malta instructs merchant ship SHIMANAMI QUEEN to take 23 people to Egypt rather than to closer ports in Europe, 19 October 2022, available at <https://bit.ly/3GR7t07>

⁵⁸ Times of Malta, 80 migrants drifting in distress reach Malta, 2 September 2022, available at <https://bit.ly/3W6ytNw>

⁵⁹ The Independent, Over 1,300 migrants were rescued in Malta and Italy's SAR zone – NGO, 26 October 2022, available at <https://bit.ly/3QuWigz>; Alarm Phone on Twitter, <https://bit.ly/3VZ8dVd>

⁶⁰ The Independent, NGO: Libyan Coast Guard threatened to shoot down plane allegedly in Malta's search and rescue zone, 27 October 2022, available at <https://bit.ly/3VTOE0s>

In November 2022, Malta is estimated to have ignored distress calls and refused disembarkation of around 1500 people while the outcome of around 160 people from the Maltese SAR remains unknown.⁶¹ Three NGO rescue ships (Doctors without borders, SOS Mediterranee, and SOS Humanity) carrying nearly 1000 people were reportedly denied disembarkation in Italy or Malta. SOS Humanity's ship carried more than 100 unaccompanied minors and a 7 month-old, and Doctors without borders' ship carried an 11 month old and 3 pregnant women.⁶² Alarm Phone reported around 500 people in distress in the Maltese SAR zone on 6 November 2022, and declared that the authorities were informed but did not act. On 7th of November a large rescue mission took place near Sicily, Alarm Phone assumes it was a rescue of this boat.⁶³ A group of 36 asylum seekers were rescued by the AFM and disembarked in Malta.⁶⁴

In December 2022, Malta is estimated to have ignored distress calls and refused disembarkation of around 1200 people who were in distress in its SAR zone⁶⁵. Notably, between the 7 and the 9th of December, a boat with 90 people on board was rescued by Geo Barents, one woman was pregnant and gave birth on Geo Barents and the AFM insisted that only the woman and her newborn could be medically evacuated, while her other three children (all under 11 years old) should stay on board. The woman and all of her children were eventually evacuated to Italy. Another pregnant woman (9 months pregnant) was evacuated to Malta. Geo Barents was not allowed to disembark the remainder of the passengers (around 249 people) in Malta, and eventually moved North to try to disembark in Italy⁶⁶. In a separate incident which happened between 17th of 19th of December, Sea-Eye accused Malta of urging merchant ships to ignore distress at sea of a group of 45 people⁶⁷. Two groups of 29 and 88 people were reportedly rescued by the AFM.

The main 2022 case regarding criminalisation of rescue at sea was the El Hiblu case going on since 2019.

El Hiblu

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.⁶⁸

⁶¹ See for instance, EU Observer, Ocean Viking mentally preps for another Italian standoff, 15 November 2022, available at <https://bit.ly/3CyP5q8>; The Independent, Over 100 people in distress in Malta's SAR zone on Sunday, 14 November 2022, <https://bit.ly/3XiiLQ9>

⁶² Al Jazeera, Nearly 1,000 migrants stranded on board NGO ships as storm hits, 5 November 2022, available at <https://bit.ly/3QvOl5r>

⁶³ Alarm Phone, 6 November 2022, available at <https://bit.ly/3GyBbWp>

⁶⁴ Newsbook, 36 asylum seekers saved in Maltese SAR, 19 November 2022, available at <https://bit.ly/3Gsyh5n>

⁶⁵ The Independent, Around 450 people in distress in Malta's SAR zone, 5 December 2022, available at <https://bit.ly/3W1RKzF>; Newsbook, Over 200 people in distress in Malta's SAR, 19 december 2022, <https://bit.ly/3GyDt0t>.

⁶⁶ MSF, Newborn Ali and his family are safe, but the future of the other 249 survivors remains uncertain, 9 December 2022, available at <https://bit.ly/3CCyYaZ>

⁶⁷ Malta Today, Migrant rescue NGO says Malta urged merchant ships to ignore distress at sea, 19 December 2022, available at <https://bit.ly/3vQ8yif>

⁶⁸ 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).

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. Throughout 2022 several hearings were held, with the prosecution repeatedly declaring that it had no further evidence to submit.

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".⁶⁹ This case was taken up by Amnesty International as part of their international campaigning,⁷⁰ as well as by several other Maltese and international NGOs.⁷¹

On 29 September 2022, an open letter was addressed to Malta's Attorney General Dr. Victoria Buttigieg by members of the Free the El Hiblu 3 campaign asking the Attorney General to drop the charges. Almost 1000 people signed the letter with more than ten members of the European Parliament including Tineke Strik from the Dutch Green Left (GroenLinks) party and Pietro Bartolo, the Italian doctor from Lampedusa who is now also an MEP; as well as academics from various universities and founders and members of NGOs.⁷²

1.2. Criminalisation of asylum seekers arriving by air

Concerns have been raised regarding the criminalisation by the authorities of the use of false documentation by asylum-seekers in their attempt to enter Malta⁷³. 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 189⁷⁴ and the Immigration Act in its Article 32 (d),⁷⁵ 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. The person is generally remanded in custody at the **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 the proceedings. The accused are entitled to request the appointment of a legal aid lawyer, or to hire a private lawyer should they 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

- 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).

⁶⁹ 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>.

⁷⁰ Amnesty International, 'Demand justice for the El Hiblu 3', available at: <https://bit.ly/3lq3jQu>.

⁷¹ For more information see 'The El Hiblu 3!' at: <https://bit.ly/3s02nVr>.

⁷² InforMigrants, Campaign to free the El Hiblu 3 urges Malta's Attorney General to 'drop charges', 30 September 2022, available at <https://bit.ly/3CNggFa> and <https://elhiblu3.info/openletter>

⁷³ Times of Malta, Refugees should not be prosecuted for using false documents, say NGOS, 1 July 2016, available at <http://bit.ly/3Hfr7mx>; Maltatoday, Man fled Iran on fake passport to escape death sentence for renouncing Islam, court told, 26 March 2019, available at <http://bit.ly/3wnzLsN>; Maltatoday, Man fled Iran on fake passport to escape death sentence for renouncing Islam, court told, 26 March 2019, available at <http://bit.ly/3wnzLsN>

⁷⁴ "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".

⁷⁵ "Any person who [...] forges any document or true copy of a document or an entry made in pursuance of this Act".

some individuals have also been sentenced to imprisonment yet with a suspended sentence for a number of years.

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.⁷⁶ 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.

It is difficult to assess how many asylum seekers are currently held in prison on the basis of such convictions as these cases rarely mention whether the accused attempted to enter or to leave Malta and whether they expressed their will to apply for asylum and it is likely that the number of asylum seekers entering Malta on fake documents is significantly lower than the number of people attempting to abscond from Malta. In 2020, approximately 250 people were serving a sentence for passport related offenses, a "*quarter to a third*" of the total prison population.⁷⁷ In 2021, 34 migrants were convicted to prison sentences of the above-mentioned articles at law while only 14 migrants were convicted in 2022. This number however does not include minors, as information on this regard is not made public.⁷⁸ In 2022, the majority of convicted adults were sentenced to an affective term of imprisonment of six months, provided that in cases where the individuals were convicted of multiple offences a longer term of imprisonment was imposed. 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 before the end of their term.

On 8 February 2022, the Court of Criminal Appeal in its Inferior Jurisdiction decided to revoke the Court's initial sentence whereby the 17-year-old appellant was sentenced to one year imprisonment. The court found that since the appellant was a minor, he was considered more vulnerable and susceptible to trafficking and exploitation, and hence invoked a one-year probation period rather than an effective jail sentence.

On 27 October 2022, the Court of Criminal Appeal in its Inferior jurisdiction stated that, in certain cases, although the entry into the territory of a country is deemed to be illegal, the circumstance of the case would deem it to be justified. The court highlighted that when faced with cases falling within the ambit of Article 189 of the Maltese Criminal Code, the court must decide on a case-by-case basis, taking into account the United Nations Convention Relating to the Status of Refugees, to which Malta is a signatory. The Court provided that according to the most recent jurisprudence, in cases relating to Refugees, the accused were normally sentenced with a six-month jail term, which is the minimum sentence stipulated at law. The court confirmed that although under Maltese law court precedence does not find application, this has over time developed as a form of sentencing policy. The Court of Appeal therefore amended the judgment of the first court and reduced the penalty from a nine-month imprisonment sentence to six months.⁷⁹

On 18 December 2022, an Iranian asylum seeker aged 35 was sentenced to six months in jail after he pleaded guilty to using a false document to enter Malta.⁸⁰

⁷⁶ Aditus foundation, Blogpost: Prosecution and imprisonment of refugees entering Malta using false documents, 29 July 2021, available at: <https://bit.ly/3rcqt00>.

⁷⁷ Maltatoday, Court worried over high number of false passport cases, 7 December 2020, <http://bit.ly/3ZTksGa>

⁷⁸ Information available on Malta's 'ecourt' online system at: <https://bit.ly/3toni7J>.

⁷⁹ IL-PULIZIJA vs NAYAN RAHMAN HANIF ET, Court of Criminal Appeal (Inferior), 27/10/2022, ref no. 275/2022/1

⁸⁰ TVMNews, Man sentenced to six months jail for coming to Malta on a fake passport, 19 December 2022, available at <https://bit.ly/3kwBYQh>

Whilst a 'not guilty' verdict is difficult to secure due to the legal situation created by local legislation, in certain cases, the court has decided to implement suspended sentences rather than effective imprisonment convictions. However, the provision of suspended sentences is not the norm, and highly depends on the accused's circumstances, vulnerabilities and motivations in the past. Furthermore, suspended sentences are nonetheless added to the person's criminal conduct certificate, potentially affecting future employment possibilities.

1.3. Relocation

On 22 June 2022, Member States agreed to start implementing a voluntary solidarity mechanism by offering relocations, financial contributions and other measures of support to Member States in need however it is unknown if it affected Malta in any way.⁸¹

In 2022, IOM facilitated the relocation of 14 asylum-seekers as part of a project financed by the EU Commission and Malta.⁸²

Legal access to the territory

No incoming relocation scheme, resettlement or humanitarian visa exist in the case of Malta. In practice, 2022 saw Malta hosting over 50,000 third country nationals, being holders of a Single Work Permit.⁸³ 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 and failed to find a new employer within 10 days. The Single Work Permit procedure has been criticised for its length and many abuses have been reported to happen, including corruption and exploitation.⁸⁴

No refugees were resettled in Malta in 2022.

Due to the excessive delays of the asylum procedure and the high rejection rate, it is not uncommon for asylum seekers to drop their application and attempt to secure a Single Work Permit by exiting Malta and applying from their country of origin or a third country outside the Schengen space. NGOs reported that the PIO is usually keen on facilitating the process, including for rejected asylum seekers and generally promise the prospective applicant that they will not object to their return to Malta. However, NGOs underlined that the decision to issue a Single Work Permit is ultimately taken by Identity Malta and the PIO is not bound by this promise so there is no guarantee that the process would be successful. Division I of the Immigration Appeals Board agreed that a simple promise by an immigration inspector that the PIO will not object to the individual coming back to Malta is not a sufficient guarantee since the PIO can very well change its mind.⁸⁵

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

⁸¹ EC, Migration and Asylum: Commission welcomes today's progress in the Council on the New Pact on Migration and Asylum, 22 June 2022, available at <http://bit.ly/3w4EFeb>

⁸² Information provided by IOM on 11 February 2023.

⁸³ Ministry for Finance and Employment, Reply to Parliamentary Question No. 4960, 30 December 2022, available at: <https://bit.ly/3mlmizZ>

⁸⁴ See for instance, Times of Malta, Workers promised application 'fast-track' if they pay thousands, 24 October 2022, available at <http://bit.ly/3w4H5cG> and Times of Malta, Work permit delays can last months. This businessman has had enough, 21 November 2022, available at <http://bit.ly/3iNHWeR>

⁸⁵ Immigration Appeals Board, Div. I, Bouchaib Hamou vs. The Principal Immigration Officer, IAB/RO/15/22,

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application?
❖ If so, what is the time limit for lodging an application? ☐ Yes ☒ No
2. Are specific time limits laid down in law for lodging an application?
❖ If so, what is the time limit for lodging an application? ☐ Yes ☒ No
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 International Protection Agency (IPA). The IPA is also the authority responsible for taking decisions at first instance on asylum applications as well as for granting Temporary Humanitarian Protection (see: [Number of staff and nature of the determining authority](#)).⁸⁶

The law no longer establishes time limits for an asylum seeker to apply for international protection, and it specifies that the Agency 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.⁸⁷ However, an application may be determined to be manifestly unfounded where “*the applicant 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.*”⁸⁸

EUAA has been providing support to the IPA since 2019.⁸⁹ In 2021, EUAA registered 1,190 of 1,281 applicants for international protection, mainly from **Syria**, **Sudan** and **Eritrea**.⁹⁰

In 2022, the EUAA carried out a total of 888 registrations, of which 77% related to the top 10 citizenships, mainly of nationals from Syria (242), Eritrea (91) and Bangladesh (73).⁹¹

In 2022, the EUAA carried out 1,264 registrations for temporary protection in Malta.⁹²

With respect to potential asylum seekers who arrive regularly 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 in Ħamrun.⁹³ 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.

⁸⁶ Article 4(3) International Protection Act.

⁸⁷ Regulation 8(1) Procedural Regulations.

⁸⁸ Article 2, International Protection Act.

⁸⁹ EUAA, 2021 *Operating plan agreed by EUAA and Malta*, 11 December 2020, available at: <https://bit.ly/3tpXLIW>.

⁹⁰ Information provided by EUAA, 28 February 2022.

⁹¹ Information provided by the EUAA, 28 February 2023.

⁹² Information provided by the EUAA, 28 February 2023.

⁹³ See the International Protection Agency's website, <https://bit.ly/3ko82G0>

Unaccompanied children need a legal guardian to submit an asylum application. The 2020 Minor Protection (Alternative Care) Act⁹⁴ 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 Juvenile Court is now in charge of appointing a legal guardian from AWAS. The act was not fully implemented until the end of 2021 and the vast majority of minors were not appointed legal guardians in 2020 and 2021 resulting in asylum applications being put on hold. While delays are still reported to happen, temporary care orders are now issued during the age assessment procedure and unaccompanied minors have reportedly been able to lodge their asylum application throughout 2021 and 2022. Recent amendments to the International Protection Act and the Procedural Regulations⁹⁵ added specific provisions on the right of unaccompanied minors to apply for asylum and NGOs observed that towards the end of 2022, unaccompanied minors were called for their asylum interview in the presence of their legal guardian.

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 2022: | N/A |

In 2022, IPA received 913 new applications, where in 2021 it received 1,281 applications. No information is available on the backlog of pending cases at the end of 2022.

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.⁹⁶ The examination procedure must in any case not exceed the maximum time limit of twenty-one months from the lodging of the application.⁹⁷

The Regulations further provide that 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.⁹⁸ In practice however, this provision is not applied and applicants and lawyers seeking updates on pending cases are generally replied a generic message indicating that the IPA is unfortunately unable to provide a timeframe of when a decision will be taken and that the person will be notified in due time.

⁹⁴ Article 21 of the Minor Protection (Alternative Care) Act, Chapter 602 of the Laws of Malta

⁹⁵ See Article 13(3) of International Protection Act, Chapter 420 of the Laws of Malta as amended by Act XIX of 2022, International Protection (Amendment Act), 20 December 2022 and Regulation 18 of Subsidiary Legislation 420.07 of the Laws of Malta as amended by Legal Notice 488 of 2021.

⁹⁶ Regulation 6(4) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta,

⁹⁷ Regulation 6(6) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta,

⁹⁸ Ibid., Regulation 6(7).

In a report published in July 2021, the National Audit Office confirmed that the IPA lacked the administrative capacity to be able to keep up with the number of applications lodged and that “*given the complexities involved and the thoroughness of the asylum procedure, RefCom’s shortage of officials transcended in processing delays – which in cases surpassed legal requirements*” highlighting that applicants remain uninformed on the status of their case.⁹⁹ NGOs further reported that in one case, a Yemeni applicant who filed a formal written complaint to the IPA saw his application rejected within a few days following the complaint.

Most decisions in the regular procedure 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 IPA reported that the average length of the asylum procedure was of 94 days in 2021. This relatively low number must however be read carefully, since it only refers to applications which were lodged in 2021.

The IPA and the Government have been widely criticized for the lack of resources and expertise in processing asylum applications, resulting in lengthy delays (up to 4 years), and a negative bias towards applicants.¹⁰⁰ In a recent judgement, the ECtHR identified various failures of the Maltese asylum system and found that the IPA deprived the applicant of rigorous individual assessment of his asylum claim, highlighting that “*general measures could be called for*”.¹⁰¹

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. Detained applicants channelled through the accelerated procedure now see their asylum procedure being decided within a few weeks or months. They generally go through the procedure unrepresented and are unable to access any form of legal assistance before they receive a rejection decision. In 2021, the IPA indicated that it does not keep records of detained applicants. For more, see [Accelerated Procedure](#).

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

In 2022, EUAA caseworkers carried out interviews concerning 957 applicants, of which 70% related to the top 10 citizenships of applicants interviewed by EUAA, mainly concerning nationals from Syria (154), Sudan (101) and Eritrea (72).¹⁰²

In 2022, the EUAA drafted 950 concluding remarks, of which 71% related to the top 10 citizenships of applicants in concluding remarks drafted by the EUAA, mainly concerning Syrians (157), Sudanese (109), and Eritreans (80).¹⁰³

1.2. Prioritised examination and fast-track processing

The Procedural Regulations provide that 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.¹⁰⁴

⁹⁹ National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum seekers, 7 July 2021, p. 72, available at <http://bit.ly/3CT0VeK>

¹⁰⁰ FRA, Migration: Key fundamental rights concerns, quarterly bulletin October – December 2021, available at <https://bit.ly/3H5R8oe>, 14.

¹⁰¹ ECtHR, *S.H. v. Malta*, 37241/21, 20 December 2022, available at <https://bit.ly/3KKz7OH>

¹⁰² Information provided by the EUAA, 28 February 2023.

¹⁰³ Information provided by the EUAA, 28 February 2023.

¹⁰⁴ Regulation 6(8) of the Procedural Regulations, Subsidiary Legislation 420.07.

The IPA confirmed that priority was given to vulnerable applicants or those in need of special procedural guarantees (see [Special Procedural Guarantees](#)).

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.¹⁰⁵

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 EUAA personnel on behalf of the IPA, the EUAA caseworker who conducted the interview is generally in charge of drafting a recommendation and the decision is ultimately taken by IPA staff. 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.¹⁰⁶

Asylum seekers are generally informed by phone by the IPA a couple days in advance, lawyers reported that they are rarely notified and must usually rely on their clients to informing them. Interviews can be held in the IPA's premises in Hamrun and at the EUAA premises in the Safi Detention Centre, independently of whether or not the applicant is detained in Safi.

In July 2021, the National Audit Office of Malta published the report "*Performance Audit: Fulfilling obligations in relation to asylum seekers*", which assesses the efficacy of each asylum process. The report identified inadequacies, including a lack of resources at first instance, and proposed strategic and operational recommendations.¹⁰⁷

In its 2022 annual asylum report,¹⁰⁸ the EUAA reported that for the first time the IPA held reflective meetings on the quality of the international protection procedure, whereby lessons learned are captured and included in bulletins shared with case officers. Furthermore, regular meetings are held with the Quality Control Unit to discuss and identify solutions to issues faced by case officers. The IPA reportedly introduced confidential psychological services to case workers during working hours, which require the written approval of the supervisor and a confirmation of attendance.

¹⁰⁵ Regulation 10 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

¹⁰⁶ Information provided by the IPA, April 2021.

¹⁰⁷ EUAA, Annual Asylum Report (2022), p. 138, available at: <https://bit.ly/3YgYL0q>

¹⁰⁸ EUAA, Annual Asylum Report (2022), p. 138, available at: <https://bit.ly/3YgYL0q>

The EUAA further reported that Malta introduced a new practice to optimise case management, a so-called 3+3 principle, whereby each case officer has a weekly quota of interviewing three applicants and submitting three draft decisions (not corresponding to the interviews performed in the same week), with exceptions for case officers who may need to engage in other tasks or by extension by the line manager.

IPA drafted guidelines on the involvement and conduct of legal representatives (NGOs or private lawyers) during an asylum interview, allowing lawyers to intervene at certain parts of the interview and limiting their presence in cases of disruptive behaviour. According to the new rules, a lawyer can submit supplementary statements within 5 days of the interview¹⁰⁹.

On the other hand, NGOs and lawyers reported not having witnessed any improvement in the asylum procedure and reported that the quality of the assessments are generally very poor, even when undertaken by EUAA caseworkers. The recent ECtHR decision seems to confirm this for assessments carried out between 2020 and 2021. The Court found the assessments to be “*disconcerting*” and plagued by “*rampant incongruence*”¹¹⁰. While the Court did not refer to the entity which was in charge of the applicant’s assessments, the applicant’s lawyers later reported that the first assessment was carried out by an EUAA caseworker as indicated in the applicants file.

Furthermore, data is not available on the rate of confirmation/overturning by IPA of recommendations made by EUAA.

1.3.1. Interpretation

The presence of an interpreter during the personal interview is required according to national legislation.¹¹¹ 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.

The quality of interpretation largely depends on the interpreter with some EUAA interpreters providing excellent interpretation services. Complaints on the quality of the interpretation are at times raised by legal representatives within the context of the interview or at appeal stage.

Applicants are allowed to request an interpreter of a specific gender or nationality.¹¹² Requests to this end must be made either by the applicant themselves, or by their legal adviser before the interview is carried out.

1.3.2. Transcription

In practice, the interview transcript is taken by the caseworker in charge of the interview during the interview itself. Lawyers assisting applicants during their interviews noted that the caseworker oftentimes abruptly stops applicants or interpreters in the middle of a sentence in order to write down their answers which generates frustration and anger for applicants and interpreters alike. The fact that caseworkers are also in charge of typing the transcript means that they are more prone to inappropriate behaviour such as not listening to the applicant, ignoring a distressful situation when going over a traumatic memory, or letting their frustration and fatigue impacting the way they carry out the interview. Some applicants and lawyers reported witnessing such behaviours. Interviews carried out without an interpreter are reportedly more impacted by this issue since the caseworker usually uses the interpretation time to type the answers of the applicant.

¹⁰⁹ EUAA, Annual Asylum Report (2022), available at: <https://bit.ly/3LrbVVE> p.140.

¹¹⁰ ECtHR, *S.H. v. Malta*, 37241/21, 20 December 2022, cited above.

¹¹¹ Regulations 4(2)(c) and 5(3) Procedural Regulations.

¹¹² Regulation 10(10)(d) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

Interviews are generally carried out by EUAA staff who are not native English speakers and have various levels of proficiency in English. It was reported by lawyers that this oftentimes leads to transcription issues where the caseworker does not understand the applicant (if the interview is in English) or the interpreter. Lawyers reported having to sometimes spell words for the caseworkers or request a readback of the transcript during the interview. The quality of the written transcript is generally impacted by this lack of proficiency in English with some transcript being full of mistakes, truncated sentences, and not faithful to the applicant's statements.

Applicants channelled through the regular procedure generally have access to the written transcript of the interview before any decision is taken, provided a request is made to that effect by the applicant or their legal adviser. It is however not possible for the applicant to make any comments at this stage since transcription issues can only be raised at the appeal stage.¹¹³

The law provides for the possibility of audio or audio-visual recording of the personal interview and interviews are generally recorded.¹¹⁴ The applicant is informed of such at the beginning of the interview; however their consent is not requested. The IPA will only provide the audio recording for cases at the appeals stage in accordance with the Procedural Regulations.¹¹⁵ The recording can only be consulted at the IPA's premises and applicants and their legal representatives cannot get copies of it. The audio recording of the interview will be accepted as evidence by the IPAT if a request is made to that effect.

Interviews can be 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 available in order to proceed with the interview of an asylum seeker. In 2020, a limited number of personal interviews were conducted remotely.¹¹⁶ Videoconferencing was also used on a few occasions to lodge an application, when physical interpretation was not feasible.¹¹⁷ 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 receive the assessment report explaining in detail the motivation of the decision along with the decision and the interview notes.

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:¹¹⁸ Over 6 months.

1.4.1. Appeal before the International Protection Appeals Tribunal

¹¹³ Regulation 11(5) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

¹¹⁴ Regulation 11(2) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

¹¹⁵ Regulation 11(9) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

¹¹⁶ Information provided by the IPA, April 2021.

¹¹⁷ Information provided by the Office of the Refugee Commissioner, April 2020.

¹¹⁸ Article 5(1) of the International Protection Act, Chapter 420 of the Laws of Malta.

An appeal mechanism of the first instance decision is available before the International Protection Appeals Tribunal (IPAT). The appeal is an administrative review and involves the assessment of facts and points of law. It has a suspensive effect.

Concerns over the independence and impartiality of the Tribunal

The IPAT falls under the Ministry for Home Affairs and consists of one Chairperson on a full-time basis and two or more members on a part-time basis.¹¹⁹ Members of the Tribunal are appointed for a period of three years and are eligible for reappointment.¹²⁰

Originally composed of three Chambers, the Home Affairs Ministry increased the Tribunal's capacity by adding an additional Chamber in 2019. Each Chamber was composed of a chairperson and two other members, all appointed by the President acting on the advice of the Prime Minister.¹²¹

Since 2021, the Tribunal is composed of only one chamber appointed until 22 August 2023.

The Act provides that members must be of known integrity and be qualified “*by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose*”. The Act further provides that one of the members of the Tribunal must be a person who has practised as an advocate in Malta for a period amounting to not less than seven years and that one of the members must be a person representing the disability sector.¹²² Little is known on the actual selection process, there is no public call for applications or interested parties, the process is not made public or reviewed by any independent body, and there is no possibility for any member of the public to question a Ministerial appointment made under the Act. The appointment of a member is only made public through the Government Gazette and the Tribunal's actual composition is not available on any of the Government's websites. Tribunal members are appointed by the Prime Minister.

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 appointments of the members where the Prime Minister directly appoints members of a tribunal that is supposed to be independent and impartial.¹²³

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 Tribunal's Members. These concerns were confirmed by the National Audit Office in a report published in 2021 where it was reported that Chairs themselves deemed selection criteria not amenable to the expertise essential to rule on such technical and life-changing matters since there was no onus or requirements for the members to possess any direct educational or legal preparation or experience in asylum matters. The National Audit Office added that “*this lack of familiarity shown by the members in legal interpretation of the appellants' cases resulted in the chairpersons or members from the legal profession within the Chambers to practically decide the outcome of the appellants' cases on their own, with the rest of the Chamber simply endorsing the decisions.*”¹²⁴

The report goes on stating that some of the Board members allegedly received training in asylum legislation and procedures through the European Asylum Support Office (EUAA) and the United Nations High Commissioner for Refugees (UNHCR), specifically on the Dublin III legislation in 2017, attendance

¹¹⁹ Art 5 International Protection Act.

¹²⁰ Article 5(3) of the International Protection Act, Chapter 420 of the Laws of Malta.

¹²¹ Art 5.5 International Protection Act.

¹²² Art 5 International Protection Act, Chapter 420 of the Laws of Malta.

¹²³ aditus foundation, JRS Malta, Comments on Bill No.133 Refugees (Amendment) Bill, July 2020, available at: <https://bit.ly/2P2xUr6>.

¹²⁴ National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum seekers, 7 July 2021, pp. 73-83, available at <http://bit.ly/3CT0VeK>

for which was voluntary. However, the Board chairpersons did not provide concrete evidence of the attendance, the frequency and efficacy of the training and they made it clear that more training was required especially for new members and those who were not legal professionals. It is noted that Malta's appeal system is not included in the EUAA Operating Plan.

The audit also noted a critical shortage of administrative and support staff, including interpreters, research assistants and/or officers that could qualitatively assist the Tribunal in its hearings or in researching and drafting decisions.

Stakeholders, including the Chamber of Advocates, have expressed concerns regarding specialised tribunals such as the IPAT.¹²⁵ In the 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 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.

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.¹²⁶

¹²⁵ 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.

¹²⁶ 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.

In its 2022 Rule of Law Report, the European Commission echoed such concerns and indicated that the Government has committed in the Maltese Recovery and Resilience Plan to carry out a review of the independence of specialised tribunals such as the IPAT in communication with the Venice Commission. This review will include a study, to be completed by end 2024, as well as legislative amendments to enter into force by 31 March 2026.¹²⁷

In their submissions for the 2023 Rule of Law Report, aditus foundation and the Daphne Caruana Galizia Foundation stated that although aware of the review of the system, they expressed their concerns at the deadline of the implementation, 3 years from now, highlighting that in the meantime, the boards are deciding on crucial issues relating to detention, refoulement and asylum, which have clear implication on fundamental rights in the implementation of European Union law. They further reported that the independence of the tribunals, specifically of the IPAT was also raised in pending Commission Complaint CHAP(2021)02127 - Systematic breach of EU law in accelerated procedures, breach of Charter (Asylum Unit).¹²⁸

Procedure to lodge an appeal before the Tribunal

An appeal can be made within 15 days from the notification on the applicant of the decision of the International Protection Agency for appeals lodged within regular procedure.¹²⁹ A recent amendment reduced this deadline to 1 week for appeals lodged against a decision of the IPA withdrawing a refugee status or subsidiary protection (see [Withdrawal of Protection](#)).¹³⁰

The decision of the IPA is issued in English and mentions the deadlines for appeal. The IPA generally also provides a document in several languages briefly mentioning the appeal procedure and its deadlines along with a document providing the address and contact of the Tribunal and relevant organisations. 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 under any circumstances.

Once the appeal is lodged, the application is forwarded to the Ministry for Home Affairs and the IPA, the latter must then forward the applicant's file to the Tribunal¹³¹. Within the context of this procedure, the application takes the form of a letter addressed to the Tribunal with the personal details of the appellant. In cases where the appellant is being represented by an NGO lawyer or a private lawyer, the letter is generally drafted by the lawyer or NGO. When the appellant appeals with legal aid, the letter is provided by the Tribunal and a lawyer is later appointed by the Ministry for Home Affairs. NGOs such as aditus and JRS provide template letters to the appellants indicating whether the appellant is represented by a lawyer or wishes to request legal assistance.

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. No data for 2022 is available.

There are no established rules or procedures for appeals filed by asylum seekers who are detained or in prison. They face significant obstacles to appeal and generally rely on NGOs to liaise with the competent authorities. Standard appeal forms are not available to asylum seekers in the premises where they are detained or imprisoned, the whole process being carried out on an ad hoc basis in complete opacity.

¹²⁷ EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 13 July 2022, pp. 5-6, available at <https://bit.ly/3XRYs2D>

¹²⁸ Information provided by aditus foundation and Daphne Caruana Galizia Foundation, January 2023.

¹²⁹ Article 7(2) of the of the International Protection Act, Chapter 420 of the Laws of Malta and Regulation 5(1) (a) of the IPAT (Procedure) Regulations, Subsidiary Legislation 420.01 of the Laws of Malta.

¹³⁰ Articles 10(6) and 22(6) of the International Protection Act, Chapter 420 of the Laws of Malta, as amended by Act XIX of 2022.

¹³¹ Regulation 5(1) (b) of the IPAT (Procedure) Regulations, Subsidiary Legislation 420.01 of the Laws of Malta.

Detainees can hardly communicate with the Tribunal themselves since they have limited access to phones and generally rely on their legal representative calling or visiting them to inform them of their rejection.

Interpreters are not available in the detention centre and only individuals who are fluent in English seem to be able to communicate their intention to appeal to the Detention Services (DS). NGOs visiting the detention centres will take upon themselves to refer the appellant to the IPAT's registry, the Detention Services (DS) and the Legal Aid Agency, when the appellant requests a legal aid lawyer. This requires the NGOs to be aware of the appellant, which is not always the case considering their limited access to detention (see [Access to Detention](#)).

Since the appeal must be lodged in person, the appellant must be brought by the DS to the IPAT's premises within the prescribed deadline. The whole process is characterised by a general state of apathy on the part of DS and the IPAT's registry since both entities refuse to endorse responsibility for ensuring the appeal is lodged within the deadline. NGOs reported that it takes several reminders and calls to finally have appellants brought to the Tribunal to file their appeals.

For asylum seekers who are in prison, the Correctional Service Agency must be informed instead of DS and while they are reportedly more organised than DS they lack the understanding of the whole asylum procedure and unless a lawyer or an NGO informs them it is likely the appeal will not be filed.

The overall appeal system for detained asylum seekers cruelly lacks in every aspect. Ironically, the damage is somehow contained since detainees are generally channelled through the accelerated procedure which does not provide for an appeal procedure (see [Accelerated Procedure](#)).

Proceedings before the Tribunal

The Act provides that the IPAT can regulate its own procedure.¹³² Specific rules of procedures were adopted in Subsidiary Legislation 420.01, entitled "*International Protection Appeals Tribunal (Procedure) Regulations*". The Regulations add the obligation for all members to swear an oath that "*they will faithfully and impartially perform the duties of their office or employment, and that they will not divulge any information acquired by them under the Act*".¹³³

However, the regulations remain superficial in nature and do not formalise the decision process of the Tribunal. The National Audit Office found that there were no written procedures that guide the Tribunal's Chambers which reportedly worked differently to determine decisions. The audit found that some Chambers claimed that they met and actually discussed files together and agreed upon a decision while other Chambers distributed cases and then agreed on decisions. The Audit Office found that the latter point showed that such practice meant that not all four members would have viewed the files deeply but relied on each other's opinions. According to the Audit Office, the current Chair of the Tribunal contended that this is a practice which is used even by the Court of Appeal and the ECHR and that it is legitimate for one member or two to look into the details of the case and report findings to their colleagues.¹³⁴

Once the appeal is filed, appellants and their lawyers must present written submissions within no more than 15 days following the registration of the appeal.¹³⁵ The IPAT does not accept late submissions.

Upon lodging the appeal, the parties are issued with a Decree providing for clear deadlines for their respective submissions. The IPA must file its submission within 15 days following the expiry of the deadline given to the appellant to file its own submissions. The Decree states that the IPA must present

¹³² Article 7(9) of the International Protection Act, Chapter 420 of the Laws of Malta.

¹³³ Regulation 4 of the IPAT (Procedure) Regulations, Subsidiary Legislation 420.01 of the Laws of Malta.

¹³⁴ National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum seekers, 7 July 2021, pp. 73-83, available at <http://bit.ly/3CT0VeK>

¹³⁵ Art 7.6 International Protection Act.

its submissions even if the appellant failed to do so and that if the IPA does not wish to file submissions, it must inform the Tribunal and motivate such a decision.

In practice, the IPA largely ignores the Tribunal's Decree 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. However, this is without prejudice to the right of the IPA to file oral submissions during any hearing appointed by the Tribunal. It remains unclear if counter-observations submitted by the appellant are permitted *de jure* but this is generally accepted by the IPAT and considered to be the final note of submissions with the possibility for the IPA to reply with its own final note of submissions. Parties are therefore generally allowed to file two notes of submissions each.

Appellants are further allowed to file new evidence beyond the 15 days initially awarded to them provided this new evidence was not available when the submission was made.¹³⁶ The fact that appeals remain pending for several years means that new facts are likely to emerge within the proceedings. In practice further submissions on new points of fact are allowed and the IPA is generally given 2 weeks to provide a written reply.

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 reported that on some occasions, the registry of the IPAT failed to print the lawyer's submissions on file, therefore leading the IPAT to reject the case on the presumption that no submissions were filed. While it is possible to file a request to reopen the case, the IPAT generally rejects such requests on the basis that the law does not provide for it. 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 on 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.¹⁴⁰ The law 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

The National Audit Office reported that it was not in a position to establish if and how many times the relevant Chamber would have met with the appellant for an oral hearing. It noted that the current Chair of the IPAT contends that the Board would hold an appeal worthy of a hearing when there was a particular point of law or fact which needed clarification, or where there was a specific request by the appellant for an oral hearing. The Audit Office expressed concerns that that "such difference in procedures raises the question as to whether appellants are being given an equal opportunity to present their case".¹⁴²

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 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 representative to reply. The law provides that the Tribunal should normally hear only new evidence regarding which it is satisfied that such evidence was previously unknown or could not have

¹³⁶ Article 7(6) of the International Protection Act, Chapter 420 of the Laws of Malta.

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 National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum seekers, 7 July 2021, p. 77, available at <http://bit.ly/3CT0VeK>

been produced earlier.¹⁴³ As such, the Tribunal rarely shows any interest in the case beyond any new evidence or point of law which needs clarification.

The hearing is generally held in the presence of the Chairperson and the secretary only and the written transcript does not make any mention of the oral submissions made by the appellant or the IPA beyond the mention “the appellant made his submissions”.¹⁴⁴ Hearings are always attended by a representative of the IPA.

The UNHCR is entitled by law to attend the hearings held by the Tribunal.¹⁴⁵ It will consider doing so if the appellant requests it and so far, has been attending hearings whenever requested. It also has the possibility to file observations in the appeal and did so for one case in 2021, where it made written and oral observations on the application of Article 1D of the 1951 Convention in a case concerning a Palestinian appellant.¹⁴⁶ In 2022 UNHCR agreed to examine the negative decisions of a group of Sudanese applicants and attended a number of asylum interviews.

Time limits and decisions

The Act provides that an appeal must be concluded within three months of the lodging of the appeal and that 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.¹⁴⁷

In practice, the vast 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 an appellant can challenge the fact that appeal decisions are not taken in time.

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. In 2022, the IPAT resumed its activity as pre-COVID.

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.¹⁴⁸

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.

¹⁴³ Regulation 5(1)(h) of the IPAT Procedures Regulations, Subsidiary Legislation 420.01 of the Laws of Malta.

¹⁴⁴ Information provided by JRS and aditus, January 2022.

¹⁴⁵ Article 7(8) of the International Protection Act, Chapter 420 of the Laws of Malta.

¹⁴⁶ Information provided by aditus foundation, November 2021.

¹⁴⁷ Art 7.7 International Protection Act, Chapter 420 of the Laws of Malta.

¹⁴⁸ Information provided by the secretary of the IPAT, January 2022.

The past few years have shown a certain improvement in the quality of the decision issued with an increased number of references 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). However, the concerns over the Tribunal's independence remain and with 0% recognition rate in 2021, the Tribunal's reputation was seriously damaged.

The Tribunal is under the obligation to carry out a full and ex nunc examination of both facts and points of law,¹⁴⁹ the expression "*full and ex nunc*" being introduced by amendment XIX of 2022. The Tribunal's decisions are final and conclusive and cannot be challenged and no appeal may lie before any Court of Law¹⁵⁰ except for human rights complaint before the First Hall Civil Court (FHCC)¹⁵¹ or within the context of a subsequent application.¹⁵² 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.

With respect to constitutional proceedings before the FHCC, the eCtHR considers that this remedy does not provide applicants with an automatic suspensive effect and therefore falls short of this effectiveness requirement. In coming to this conclusion, the Court noted that it is possible to seek a provisional measure from the FHCC but that such a request does not itself have an automatic suspensive effect either, and the relevant decision depends on an assessment on a case-by-case basis.¹⁵³ This means that applicants alleging a breach of Article 3 ECHR on the basis of the principle of non refoulement are not required to exhaust the remedy offered by the FHCC.

The decisions of the Tribunal are not published or publicly available.

1.4.2. Judicial review

Although the International Protection Act stipulates that the IPAT's 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 the Refugee Appeals Board's decisions are final and that therefore the Courts should decline from taking cognisance of the case.¹⁵⁴

The Civil Court's competence to review the decision of any administrative tribunal to ensure "firstly that the principles of natural justice are observed and secondly, to ensure that there is not any wrong or incomplete statement of the law" is a longstanding principle established by jurisprudence.¹⁵⁵

Even where the law stipulates that certain decisions are final and may not be challenged or appealed, Maltese Courts 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."¹⁵⁶

¹⁴⁹ Article 7(1A) of the International Protection Act, Chapter 420 of the Laws of Malta as amended by Act XIX of 2022.

¹⁵⁰ Article 7(10) of the International Protection Act, Chapter 420 of the Laws of Malta.

¹⁵¹ Article 46 of the Constitution of Malta.

¹⁵² Article 7A of the International Protection Act, Chapter 420 of the Laws of Malta.

¹⁵³ ECtHR, *S.H. v. Malta*, no 37241/21, 20 December 2022, § 53.

¹⁵⁴ 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.

¹⁵⁵ Civil Court (First Hall), *Anthony Cassar pro et noe vs Accountant General*, 667/1992/1, 29 May 1998; Court of Appeal, *Dr. Anthony Farrugia vs Electoral Commissioner*, 18 October 1996.

¹⁵⁶ *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.

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?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts	<input checked="" type="checkbox"/> Legal advice
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Regulation 10(4) of the Procedural Regulations provides that a legal adviser shall be allowed to assist the applicant in accordance with procedures laid down by the International Protection Agency and, “where entitled to free legal aid shall be provided to the applicant”.¹⁵⁷ However, Regulation 12(1) provides that an applicant is allowed to consult a legal adviser “at their own expense” in relation to their application for international protection “at all stages of the procedure” provided that, in the event of a negative decision at first instance, free legal aid shall be granted under the same conditions applicable to Maltese nationals.¹⁵⁸

In practice, free legal assistance is limited to the appeal stage and NGOs reported that they are not aware of any legal aid lawyer intervening at the first instance stage and that applicants who request the assistance of a lawyer at first instance are generally referred to the NGOs by the IPA which usually provides them with a document containing the contact details of the NGOs and the UNHCR. This is further confirmed by the calls for legal aid lawyers issued by the Ministry for Home Affairs, which do not include any fees awarded for assistance at the first instance (see below).

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. 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 is then scheduled. To date, legal aid in Malta for asylum appeals has been financed through the State budget.¹⁵⁹

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 for Home Affairs in 2019. As a result, legal lawyers providing assistance to asylum seekers and migrants before the Immigration Appeals Board (IAB) and the International Protection Appeals Tribunal (IPAT) are selected from a pool of lawyers which is different from the one provided for civil and criminal cases and fall directly under the Ministry for Home Affairs. Legal aid lawyers are generally chosen on the basis of an open call issued by the Ministry

¹⁵⁷ Regulation 10(4) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

¹⁵⁸ Regulation 12(1) Procedural Regulations.

¹⁵⁹ Ibid.

for Home Affairs to provide specific migration and asylum related legal services. The contracts of service are awarded after interviews conducted by Ministry officials.¹⁶⁰

Legal aid lawyers must undertake to represent appellants to the best of their ability and submit an appeal on their behalf to the relevant body at law. They must undertake to examine the grounds of appeal and present, in writing, the appellant's case before the relevant Board or Tribunal as well as attending hearings to explain case submissions and provide other general assistance to the respondents during their appeal. The legal aid lawyer must submit the appeal within the prescribed deadlines and failure to do so might lead to MHSE to terminate the contract.¹⁶¹

The contract is a fee-based service contract where lawyers are paid per completed appeals and upon presentation of an attendance sheet.¹⁶² The fees are paid according to the below;

- Asylum Appeals: 100 euro (inc. VAT) for every appeal submission.
- Dublin Appeals: 80 euro (inc. VAT) for every appeal submission.

According to some legal aid lawyers, the fee perceived is not enough to cover the work involved in preparing and submitting an asylum appeal, including attending the oral hearing. Additionally, some practical and logistical obstacles may arise during the procedure such as appellants not showing at their appointments with the legal aid lawyer either because they are unaware they are required to so or simply because they missed the call or message. In such instances, it has happened that the legal aid lawyer does not file submissions for the appeal leading, resulting in the appeal being decided negatively without an assessment on the merits of the case.

It must also be noted that very few lawyers apply to be legal aid lawyers with the Ministry, presumably due to insufficient fees and a lack of interest or specialisation in this field. The length of the appeal procedure and the lack of any prospect of success is also likely to demotivate lawyers to involve themselves more than the minimum required. In 2022 10 legal aid lawyers were available.

Furthermore, the mere fact that legal aid lawyers are employed by the Ministry for Home Affairs, under which IPA and the IPAT also fall, raises serious concerns with regard to the level of independence enjoyed by legal lawyers assisting applicants.

State sponsored legal aid in asylum cases being restricted to the appeal stage, free legal assistance at first instance is only provided by lawyers working with NGOs¹⁶³ and the Legal Clinic of the Faculty of Laws of the University of Malta.¹⁶⁴

The assistance provided by the NGOs are provided as part of their on-going services and are funded either through project-funding or through other funding sources and therefore subject to funding limitations which could result in the services being reduced due to prioritisation. NGO 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 and appeals.

The Procedural Regulations provide that the IPA must allow applicants to bring with them a legal adviser for the interview. It further provides that the legal adviser can only intervene at the end of the interview and that the absence of the legal adviser does not prevent the IPA to carry out the interview. The Regulations empower the IPA to draft further rules covering the presence of legal advisers during the interview.¹⁶⁵

¹⁶⁰ Ministry for Home Affairs, Call for Legal Aid Services, available at: <https://bit.ly/3ZF9LWL>

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ These are Aditus Foundation, JRS Malta, the Migrants Commission, and the Women's Rights Foundation.

¹⁶⁴ See <https://bit.ly/41JSugE>

¹⁶⁵ Regulation 12(2) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

These rules were drafted in 2021 and cover the presence of any third parties at the interview, including the UNHCR.¹⁶⁶

The UNHCR is entitled to have access to information on individual applications, be present during personal interviews and submit their views in writing during the first instance and at appeal stage, provided the applicant has consented to it.¹⁶⁷

According to the new rules, legal advisers are allowed to make comments or ask questions to the applicant only at the end of the interview, which will be recorded and included in the interview transcript. The rules provide that third parties (including the UNHCR and legal adviser) may not intervene directly during the questioning of the applicant and if they do so, they will be given a warning to desist from such interventions by the case officer. The guidelines further state that the interview will be suspended in case if the interventions continue and that the IPA reserves the right not to authorise the attendance of the legal adviser when the interview is subsequently rescheduled. It must be noted that the guidelines fail to mention that legal advisers are legally entitled to intervene at any point in the interview on matters of procedure, however this is generally confirmed by the case officers at the beginning of the interviews in accordance with EUAA standards. Finally, the new rules provide for a stringent 5 days deadline from the interview to submit a supplementary statements.¹⁶⁸

NGOs have consistently raised concerns about the lack of or insufficient access to legal assistance and representation during the asylum procedure, especially for those placed in detention and in prison and the ECtHR found against Malta in several cases.¹⁶⁹

On the 20th of December 2022, the ECtHR found a violation of Article 3 ECHR taken in conjunction with Article 13 after highlighting the numerous shortcomings of the asylum procedure in Malta. The Court noted that “the applicant had not had the benefit of any legal assistance in the preparation of his asylum application, during his interview and all throughout the process until a few days before the first decision” and did not accept the argument of the Government that the applicant had not claimed he had asked for such assistance and had been denied, noting that, “during the processing of his first asylum claim the applicant had been in detention (between September 2019 until December 2020) and the Court has repeatedly expressed its concerns in the Maltese context about concrete access to legal aid for persons in detention”. The Court found that the situation of the applicant was further exacerbated by the COVID-19 pandemic and held that it “had no reason to doubt the applicant’s submission, supported by the CPT report that, due to increased limitations following the outbreak, detained asylum-seekers were even less likely to obtain any form of access to legal aid, or of NGO lawyers, or any other lawyer of choice”.¹⁷⁰

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. Interpreters are not always available, especially in detention and only one boardroom shared with all actors is available for visits at the Safi Detention Centre (see [Access to Detention](#)).

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

¹⁶⁶ EUAA, Annual Asylum Report (2022), p. 194, available at: <https://bit.ly/3EU7fUn>

¹⁶⁷ Regulation 21 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

¹⁶⁸ The guidelines are not publicly available, this information was provided by the IPA upon request on the 20th of January 2022.

¹⁶⁹ See, *Aden Ahmed v. Malta*, no. 55352/12, § 66, 23 July 2013; *Mahamed Jama v. Malta*, no. 10290/13, § 65, 26 November 2015; *Abdi Mahamud v. Malta*, no. 56796/13, § 46, 3 May 2016; *Feilazoo v. Malta*, no. 6865/19, § 58, 11 March 2021; *S.H. v. Malta*, no 37241/21, § 82, 20 December 2022 in the immigration context and *Yanez Pinon and Others v. Malta*, nos. 71645/13 and 2 others, § 6, 19 December 2017 in the prison context.

¹⁷⁰ ECtHR, *S.H. v. Malta*, no 37241/21, § 82, 20 December 2022.

person to whom the information relates.¹⁷¹ Moreover, access to the applicants by the legal advisers or lawyers can be subject to limitations necessary for the security, public order or administrative management of the area in which the applicants are kept.¹⁷² In practice, however, these restrictions are rarely, if ever, implemented.

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

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.¹⁷³

EUAA 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. This support was increased to 1 administrative support, and 3 Dublin procedure assistants for the period covering 2022-2024 and until the end of the second quarter of 2023.¹⁷⁴

The EUAA 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.¹⁷⁵

Regarding relocation operations, in addition to the same tasks as the ones for the outgoing cases, EUAA 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.¹⁷⁶

According to NGOs' experience, there is no clear rule on the application of the family unity criteria as it usually depends on the particular circumstances of the applicant. The Maltese Dublin Unit does not require DNA tests and tends to rely on the documents and information immediately provided by the applicant. It will take into account DNA results from another member state. 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.

¹⁷¹ Regulation 7(2) Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

¹⁷² Regulation 7(3) Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

¹⁷³ Information provided by the Dublin Unit, February 2021.

¹⁷⁴ EUAA, 2022-2024 Operational plan agreed by EUAA and Malta, Amendment 1, April 2022, available at: <https://bit.ly/3ZqIEiX>, p. 4.

¹⁷⁵ Information provided by the Dublin Unit, January 2022.

¹⁷⁶ Information provided by the Dublin Unit, January 2022.

NGO observations note that visa and residence permit criterion is the most frequently used for outgoing requests whilst, for incoming requests, the most frequently used criteria are either the first EU Member State entered or the EU Member State granting a Schengen visa.

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.

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*.¹⁷⁷ 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 the only relevant case on the matter, 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.¹⁷⁸

¹⁷⁷ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

¹⁷⁸ 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

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.¹⁷⁹ 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 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 and 2022 as well.

Applicants pending an appeal decision are provided with an asylum seeker document issued by the IPAT. When a Dublin decision is confirmed at appeal, applicants will therefore lose the asylum seeker document provided by the IPAT and the IPA will not issue a new document since the Agency considers 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.¹⁸⁰

The number of outgoing transfers implemented in 2020 was 320 and 249 in 2021, the vast majority of them to Germany or France.

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?
❖ If so, are interpreters available in practice, for interviews?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> 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 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. Starting in May 2020, interviews were carried out again in a face-to-face format.¹⁸¹

¹⁷⁹ Information provided by the Dublin Unit, January 2022.

¹⁸⁰ Information provided by the IPA Legal Unit, November 2020.

¹⁸¹ Information provided by the Dublin Unit, February 2020.

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?

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☐ Judicial

☒ Yes

☐ No

☒ Administrative

☐ No

The responsibility to hear and determine appeals filed against a decision taken under the Dublin Regulation was shifted from the Immigration Appeals Board to the IPAT in 2017.¹⁸²

Dublin appeals are heard by the IPAT in a similar manner as appeals filed against a decision of the IPA taken under the Regular Procedure and the comments made therein are also relevant for Dublin appeals (see [Regular 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?

☐ 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 Dublin decision in practice?

☒ Yes

☐ With difficulty

☐ No

❖ Does free legal assistance cover

☒ Representation in courts

☒ Legal advice

Following the transfer of jurisdiction from the Immigration Appeals Board to the International Protection Appeals Tribunal, applicants appealing a Dublin transfer are entitled to legal assistance in the same manner as for appeals filed under the Regular Procedure (see [Regular Procedure](#)).

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*,¹⁸³ 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.

¹⁸² Article 7(1) of the International Protection Act, Chapter 420 of the Laws of Malta, as amended by Act XX of 2017.

¹⁸³ ECtHR, *M.S.S. v. Belgium and Greece*, Application 30696/09, Judgment of 21 January 2011.

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 2019.¹⁸⁴

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 their asylum application has been implicitly withdrawn leaving them susceptible to be detained and potentially returned by immigration authorities under the Immigration Act. Furthermore, persons stopped at the airport with forged documents run the risk of facing criminal charges (see [Access to Territory](#)).

As of 2021, there is no clear policy regarding Dublin returnees in Malta and NGOs are unable to confirm whether Dublin claimants are systematically detained following their return to Malta. However, the observations made in relation to the detention policy of the Government are applicable and individuals from these countries of origin (Morocco, Egypt, Algeria, Bangladesh, Ghana, Ivory Coast, Lebanon, Nigeria, Serbia) are at risk of being detained (see [Detention](#)).

Applicants who will not be detained will face tremendous obstacles to access dignified reception conditions as they are likely to be impacted by the eviction policy of the Government and will have difficulties securing employment (see [Reception Conditions](#)).

Regarding the first instance procedure, applicants will not be provided with state sponsored legal assistance for the first instance procedure and are likely to undergo their whole procedure without any legal assistance considering the limited capacity of the few NGOs providing this service (see [Legal Assistance](#)).

Applicants from countries of origin listed as safe¹⁸⁵ will be automatically channelled through the accelerated procedure and barred from filing an appeal against their negative decision. It must be noted that while the IPA does not automatically process applicants from Ivory Coast, Nigeria and Lebanon through the accelerated procedure, the risk remains significant. In this context, the conclusions of the ECtHR in *S.H. v. Malta* will be applicable (see [Accelerated Procedure](#)).

Furthermore, applicants from Libya, Sudan and South-Sudan are likely to be rejected without an individual assessment of their claim considering the high rejection rate these nationalities face (see [Statistics](#)). According to the UNHCR, the IPA issued 602 decisions to Sudanese nationals in 2022, 342 were 'otherwise closed', 258 were rejected, and 2 were granted Refugee Status. This makes the recognition rate at 0.3% while the European average is 40%.¹⁸⁶

The concerns expressed in relation to the effectiveness of the appeal remedy within the regular procedure are applicable to Dublin returnees (see [Regular Procedure](#)).

On 15 December 2021, the Dutch Council of State (highest administrative court) ruled that the Dutch immigration authorities can no longer rely on the principle of mutual trust for Dublin transfers to Malta. If

¹⁸⁴ Information provided by Dublin Unit January 2022.

¹⁸⁵ Article 24 of the International Protection Act, Chapter 420 of the Laws of Malta.

¹⁸⁶ Information provided by the UNHCR, January 2023.

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.¹⁸⁷

On 7 April 2022, The Tribunal of Rome annulled a Dublin transfer to Malta for a Bangladeshi applicant. The applicant claimed that during his stay in Malta, he was detained for 16 months and, due to inhumane and degrading conditions of the detention centre, he fell ill and spent two months in hospital. The Tribunal of Rome noted that the risk of inhumane and degrading treatment upon transfer to Malta is well-founded, taking into consideration reports from the European Council for Refugees and Exiles (ECRE), Amnesty International, the US Department of State, and UNHCR. The Tribunal noted that the transfer was in violation of Articles 3.2, 4, 5 and 17 of the Dublin III Regulation and ruled to annul the decision.¹⁸⁸

On 14 November 2022, the Austrian Constitutional Court quashed a decision of the Federal Administrative Court regarding a Dublin return to Malta of a Syrian national. In its decision, the Constitutional Court looked at living conditions of applicants returned to Malta and ordered a reconsideration of the decision based on a closer assessment of the applicant’s situation should he be returned to Malta.¹⁸⁹

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:¹⁹⁰

- (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.

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

Admissibility decisions generally concern applicants who are beneficiaries of international protection in another EU Member State and applicants who file a subsequent application where no new elements were presented (see [Subsequent Applications](#)).

The principles of Safe Third Country and First Country of Asylum are generally not applied by the IPA.

Due to its close proximity to Italy, Malta has always seen individuals granted protection in Italy come and work in the country. However, these individuals generally do not lodge applications for international

¹⁸⁷ Dutch Council of State, 15 December 2021, available in Dutch at: <https://bit.ly/3JPAFUz>.

¹⁸⁸ Italy, Civil Court [Tribunali], Applicant v Dublin Unit of the Ministry of the Interior (Unità di Dublino, Ministero dell'Interno), R.G. 4597/2022, 07 April 2022, available at <https://bit.ly/3kKXOzy>.

¹⁸⁹ Austrian Constitutional Court, Decision Number E622/2022, 14 November 2022, available at: <https://bit.ly/3MDkU73>

¹⁹⁰ Article 24 International Protection Act.

protection. Malta however regularly receives applications from individuals who were granted international protection in Greece, mostly Syrian nationals who moved in order to join relatives or simply due to the language, which is very accessible for arabic speakers.

The IPA's current position on Greece is that beneficiaries of international protection enjoy sufficient guarantees in Greece and therefore all applications lodged by those applicants are generally rejected on admissibility. Following the lodging of their application, applicants are generally not called for an interview and received an inadmissibility decision. The application is therefore processed through the accelerated procedure at the appeal stage and there is no possibility for the applicant to file an appeal. In this context, the concerns expressed in relation to the accelerated procedure are applicable to the admissibility procedure and the conclusions of the ECtHR in *S.H. v. Malta* will be applicable (see [Accelerated Procedure](#)).

A case alleging violations of Article 3, Article 6 and Article 13 of the ECHR was recently filed before the First Hall Civil Court for a Syrian national who was granted protection in Greece.¹⁹¹

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.¹⁹²

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

The International Protection Act provides that the IPA shall allow applicants to present their views before a decision on the admissibility of an application is conducted.¹⁹³ It is assumed that applicants coming from a first country of asylum or a safe third country would be heard during an interview, however as stated above, the IPA generally does not apply these principles. Interviews for applicants already granted protection in another Member State are generally limited to a preliminary interview (i.e., the lodging of the application).

Despite the International Protection Act clearly stating that a personal interview on the admissibility of the application shall be conducted before a decision on the admissibility of an application has been taken,¹⁹⁴ applicants submitting a subsequent application where no new elements were presented are not given the opportunity to be heard during a personal interview. The procedure is in writing only, with the ability for the applicant to present submissions along with the application. In the (rare) event where the subsequent application is deemed admissible, the IPA will interview the applicants on the merits of their case with further questions on the new evidence provided (See [Subsequent Applications](#)).

3.3. Appeal

¹⁹¹ Information provided by the Daphne Caruana Galizia Foundation, January 2023.

¹⁹² Information provided by the IPA, March 2022.

¹⁹³ Article 24 (3) of the International Protection Act, Chapter 420 of the Laws of Malta.

¹⁹⁴ Ibid.

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
- | | | |
|----------------------------|---|--|
| ❖ If yes, is it | <input type="checkbox"/> Yes | <input checked="" 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 |

The International Protection Act provides that the provisions of the accelerated procedure “*shall apply mutatis mutandis*” to inadmissible applications (see [Accelerated Procedure](#)).¹⁹⁵

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?
- | | | |
|------------------------------|--|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|------------------------------|--|--|
- ❖ Does free legal assistance cover:
- | |
|--|
| <input type="checkbox"/> Representation in interview |
| <input type="checkbox"/> Legal advice |
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
- | | | |
|------------------------------|--|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|------------------------------|--|--|

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 inadmissible applications are automatically referred to the Tribunal in accordance with the accelerated procedure, the appellant is not able to participate in the review or to be represented (See [Accelerated Procedure](#)).

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 (1) of the International Protection Act provides that a person seeking international protection in Malta interns *shall* be examined under accelerated procedures in accordance with this article when his application appears to be manifestly unfounded and as previously stated Article 24 (2) of Act provides that applications decided as inadmissible *shall* also be examined under accelerated procedures (see [Admissibility Procedure](#)).¹⁹⁶

¹⁹⁵ Art. 24(2) of the International Protection Act, Chapter 420 of the Laws of Malta.

¹⁹⁶ Article 23(1) and 24 (2) of the International Protection Act, Chapter 420 of the Laws of Malta.

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:¹⁹⁷

- (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;
- (f) Has introduced a subsequent application for international protection that is not inadmissible in accordance with article 24(1)(d);
- (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) of the Act provides that when the IPA is of the opinion that an application is manifestly unfounded, it shall examine the application within three working days and *shall, where applicable*, decide that the application is manifestly unfounded.

Article 23(7) of the Act further provides that where the application is considered not to be manifestly unfounded such application shall be examined under normal procedures. As an exception, regulation 7(3) of the Procedural Regulations provides that whenever 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, the accelerated procedure shall not be applied. However, this requires the IPA to promptly identify and recognise the vulnerability of the applicant which is unlikely considering the lack of appropriate referral mechanisms between Agencies and the fact that the IPA does not appear to consider itself to be bound by the conclusions of AWAS on the vulnerability of the applicant. NGOs confirmed that survivors of violence were still channelled through the accelerated procedure despite mentioning these episodes of violence during their interview and that no apparent effort was made to ensure these individuals are not channelled through the accelerated procedure, adding that ultimately the claim that they have suffered ill-treatment is likely to be rejected as non credible (see [Procedural Guarantees](#)).

NGOs noted that the Act makes a confusion between inadmissible applications, manifestly unfounded applications and accelerated procedures. According to the APD, the consideration that an application is manifestly unfounded does not entail procedural consequences. However, in the Act, the qualification “*manifestly unfounded*” entails very serious consequences which concretely means that there will be no personal interview, no full assessment of the application and no effective remedy. At no point the applicant will be allowed to present his/her claim. They furthermore consider that this constitutes a clear and serious

¹⁹⁷ Article 2 of the International Protection Act, Chapter 420 of the Laws of Malta.

breach of the APD which foresees an obligation for Member States to lay down reasonable time limits for the adoption of a decision in accelerated procedures. Such time limits should not only be reasonable, but also proportionate. They should provide for a realistic opportunity for both the applicant to present the case as well as for the determining authority to assess the application. Moreover, the APD provides for the possibility to exceed the time limits necessary in order to ensure an adequate and complete examination of the application.¹⁹⁸

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.¹⁹⁹

Most applications deemed to be manifestly unfounded are from individuals coming from countries listed as safe in the Act.²⁰⁰ The IPA indicated it rejected 303 applications 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 generally receive the rejection decision, the review of the IPAT and a return decision and a removal order at the same time.

All rejected applications from individuals coming from a country of origin listed as safe will be considered to be manifestly unfounded on above ground (b), independently of the claim raised by applicants. In the past and until 2022, the IPA generally refrained to make this finding when applicants from a safe country of origin claimed to be LGBTI, thus offering them the possibility to file an appeal against the first instance rejection in accordance with the regular procedure. However, it seems like IPA changed this policy and the IPA now strictly applies this determination to all applications, including those made by individuals claiming to be LGBTI. Article 23 (1) of the Act provides that the application “*shall*” be examined under accelerated procedures where the application appears to be manifestly unfounded. Therefore all applicants coming from a country listed as safe are channelled though the accelerated procedure and their application is automatically decided as manifestly unfounded if rejected. This is the case despite the provision which states that applications may only be determined to be manifestly unfounded if the applicant is found not to be in need of international protection.

In 2022, the IPA increasingly resorted to accelerated procedures and found a substantial number of applications to be manifestly unfounded for any of the above reasons.

NGOs reported that applications from Nigerians Ivorians and Lebanese nationals are likely to be deemed manifestly unfounded on above grounds (a) or (e). In at least one case, the IPA rejected the application of a Sudanese non Arab Darfuri as manifestly unfounded on ground (a) despite the applicant raising the risks of persecutions in relation to his ethnicity.

Furthermore, applications from individuals who applied for asylum following the expiry of their visa are generally found to be manifestly unfounded independently of their claim for international protection. In one case, the IPA rejected the application of a Chinese national who raised risks of persecution on grounds of religion as manifestly unfounded on above grounds (g) and (h). In another case, the IPA

¹⁹⁸ Aditus foundation and JRS Malta, Comments on Bill No. 133: Refugees (Amendment) Bill, July 2020, available at <https://bit.ly/3SNgMSQ>

¹⁹⁹ Information provided by the IPAT, February 2022.

²⁰⁰ Article 24 of the International Protection Act, Chapter 420 of the Laws of Malta.

rejected the application of a Turkish national who raised a claim of persecution on the basis of his political affiliation with the Ghulenist movement as manifestly unfounded on above ground (g).

In November 2022, aditus foundation launched the #Safe4All legal initiative advocating for the removal of countries of origin which criminalise LGBTIQ+ identities and/or behaviour from the safe countries list of the International Protection Act. The NGO gathered data on the designation of safe countries of origin across all EU member states and found that Malta ranks second in terms of the percentage of its designated safe countries that criminalise LGBTIQ+ identities and/or behaviour which means that Malta designates as 'safe' a relatively high number of countries that are dangerous for LGBTIQ+ persons. The NGO found that 45% of the countries listed in the International Protection Act criminalise LGBTIQ+ identities and/or behaviour against a European average of 21%. aditus also found that only a couple of other EU MS include the countries of origin Malta designates as safe, in their own lists of safe countries which means that other EU Member States do not consider these countries to be safe countries of origin.²⁰¹

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?
 - ❖ If so, are questions limited to nationality, identity, travel route? Not available
 - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

All applicants are interviewed according to the regular procedure (see [Regular Procedure](#)) and no substantial difference was noted with regard to the way the interview is conducted although it can arguably be said that the case officer would presume the applicant not to be worthy of protection and this may affect the way the interview is carried out.

NGOs reported that when applicants raise a material fact which would require careful examination on the needs for international protection, this is systematically dismissed as non credible.

The quality of the credibility assessment conducted within the accelerated procedure was severely criticised by the ECtHR in *S.H. v. Malta* which found that the first instance assessment of the IPA was "disconcerting". The Court considered that "From an examination of the interview of the applicant, during which he was unrepresented, it is apparent that the inconsistencies and lack of detail highlighted in the report are not flagrant, as claimed by the Government. For example, it would appear that the authorities expected the applicant, a 20-year-old Bangladeshi who claimed to be a journalist and whose journalistic academic studies consisted of two trainings of three days and three months respectively, to cite the titles of relevant laws, as the reference to the relevant provisions and their content had been deemed insufficient. Also, the authorities seem to have expected the applicant to narrate election irregularities which were mentioned in COI documents, despite the applicant not having witnessed them. Normally detailed descriptions were repeatedly considered brief and superficial and even the applicant's replies about his very own articles (concerning other matters of little interest) were deemed insufficient. Clearly spelled out threats were also considered not to be detailed enough".²⁰²

²⁰¹ Aditus foundation, Safe4All legal initiative – practice in other EU Member States, November 2022, available at <https://bit.ly/3ZzRD0j>

²⁰² ECtHR, *S.H. v. Malta*, application no 37241/21, 20 December 2022, § 84.

Additionally, any evidence which would be provided to substantiate a material fact is generally dismissed without any assessment in a clear violation of the principles established by the ECtHR in *M.A. v. Switzerland*. In *S.H. v. Malta*, the Court noted that “no reasoning was provided as to why the evidence presented by the applicant (press card, copies of articles, and other evidence of the applicant performing as a journalist) had not been taken into account. Importantly, at no point did the authorities express the view that the material was false, they limited themselves to noting that their authenticity had not been established as they were only copies”. The Court further noted that “the authorities did not proceed to a further verification of the materials or give the applicant the possibility of dispelling any doubts about the authenticity of such material (compare, *Singh and Others v. Belgium*, no. 33210/11, § 104, 2 October 2012, and *M.A. v. Switzerland*, cited above, § 68). Indeed, they had not questioned the applicant’s identity or nationality (which had also been based on copies of identity documents), or the fact that the applicant, who was present before them, was the person in the pictures”.²⁰³

As was the case for S.H., almost all applicants channelled through the accelerated procedure see their application rejected as manifestly unfounded on the basis that the applicant 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” and that the applicant is from a safe country of origin.

Applicants from countries of origin where returns are carried out are generally detained for the whole duration of the first instance procedure. At the moment this includes applicants from Bangladesh, Ivory Coast, Ghana, Egypt, Morocco, Nigeria, Algeria and Lebanon (See [Fast Tracking](#)). The IPA generally prioritises these applications and interviews are carried out within the EUAA facilities in the Safi Detention Centre. Those applicants are not informed in advance of the date of their interview and generally come unprepared. Detained asylum seekers 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 the support from NGOs to obtain documentation and any other information that might be required (see [Detention](#)).

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

At the stage of the appeal, two types of applications are channelled through the accelerated procedure, manifestly unfounded applications, as per Articles 23(2) and 23(3) of the International Protection Act, and inadmissible applications, as per Article 24(2) of the Act. Rejections channelled through the accelerated procedure are referred immediately to the Chairperson of the International Protection Appeals Tribunal, who shall examine and review the decision of the International Protection Agency within three working days.

The decision of the Chairperson of the International Protection Appeals Tribunal on whether the application is manifestly unfounded or inadmissible is final and conclusive and no appeal or form of judicial review lies before the Tribunal or before any other court of law.²⁰⁴

²⁰³ Ibid., § 86.

²⁰⁴ Article 23(4) of the International Protection Act, Chapter 420 of the Laws of Malta.

This is without prejudice to the right of the applicant to file a human rights complaint or an application for judicial review (see [Judicial Review](#)) before the Civil Court (First Hall).

It is to be noted that the term “*shall immediately*” in itself lacks precision and it appears and practice shows that some first instance rejections are taken months before the IPAT actually carries its review while some other are issued within a few days of the rejection. It is assumed that detained applicants and applicants are prioritised as they tend to receive their rejections faster than the others.

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.²⁰⁵ Nevertheless, the 2017 amendment of the Refugees Act confirmed by the amendments in the new International Protection Act and included a provision which specifies that “the review conducted by the Chairperson of the IPAT shall be deemed to constitute an appeal”.²⁰⁶

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.²⁰⁷

The manifestly unfounded or inadmissible decisions of the IPA do not contain any information on, or reference to, the possibility to participate in the appeal nor the right to free legal assistance. In some cases, applicants receive the IPA decision and the IPAT confirmation of the decision on the same day. In other cases, the confirmation from IPAT is received within a few days from receiving the IPA's decision.

Legal practitioners observed that since the IPAT review is carried out within 3 days from receipt of the IPA decision and that the applicant cannot submit any pleas, the obligation to provide free legal assistance at appeal stage under the Directive and the right to participate in appeals although mandated by law is legal fiction.²⁰⁸

The majority of the decisions taken by the IPAT are review decisions (contrary to appeal decisions) made within the accelerated procedure which consist of a mere confirmation of the decisions made in the first instance without any further assessment. 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.

IPAT decisions on manifestly unfounded or inadmissible ‘appeals’ are not motivated and generally only contain a simple statement confirming the IPA decision. It is argued by commentators²⁰⁹ that this does not constitute a *full and ex nunc* examination of both facts and law before a court or tribunal of first instance, as required by the Procedures Directive despite the recent introduction of this mention in the Act.²¹⁰

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.²¹¹ 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

²⁰⁵ Information provided by UNHCR, January 2019.

²⁰⁶ Article 7(1A) (a)(ii) International Protection Act, Chapter 420 of the Laws of Malta.

²⁰⁷ Regulation 22 (1) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁰⁸ Carla Camileri, Accelerated procedures in Maltese asylum law: Making Violations of Fundamental Rights the order of the day, Id-Dritt XXXII (2022), available at <https://bit.ly/3IP8y8d>

²⁰⁹ Carla Camileri, Accelerated procedures in Maltese asylum law: Making Violations of Fundamental Rights the order of the day, Id-Dritt XXXII (2022), cited above.

²¹⁰ Article 7(1A) of the International Protection Act, Chapter 420 of the Laws of Malta as amended by Act XIX of 2022.

²¹¹ Information provided by UNHCR, January 2019.

and 4 of which were remitted to the IPA for a new decision. In all these cases, the IPA did not further investigate the case and amended the decision to issue a “simple” rejection which was then appealed by the applicant in accordance with the normal procedure.

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 inadmissibility decision in *Chehade Mahmoud vs L-Avukat Ġenerali et* filed in 2018.²¹² In this case, the applicant claimed that Malta’s asylum legislation violates the recast Asylum Procedures Directive and that, as a consequence, his procedural rights were violated. This being one of Malta’s first cases regarding state liability for incorrect transposition of EU asylum law, the court (as well as the Government) was unsure how to proceed, inviting the parties to explain whether the case was 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. 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.

In *Parsons Mariama Ngady vs L-Aġenzija Għal Protezzjoni Internazzjonali et*,²¹³ filed on 28 December 2020 and decided on 1 March 2022 by the Civil Court (First Hall), Ms Parsons was handed down a decision that her application was manifestly unfounded by the IPA, followed by a confirmation of such decision by the IPAT 7 days later. The applicant claimed a breach of the right to a fair trial under Article 32(a) and Article 39(2) of the Constitution Malta, a violation of Article 47 of the Charter of Fundamental Rights, and of Articles 6 and 13 of the European Convention for Human Rights. The Court observed that the Appeals Tribunal’s role in the accelerated procedures is not that of an appeal *stricto iure*, as an appeals process is one where there is equal access to both parties in a case. The Court noted the lack of further appeal and the “*strange and byzantine*” decisions which lack motivation, and concluded by stating that the denomination of ‘Appeals Tribunal’ in these circumstances is a “*misnomer*”.²¹⁴ The Court found that Article 23 of the International Protection Act breaches the rights protected in Article 39(2) of the Constitution and Article 6 of the European Convention on Human Rights. It therefore ordered the International Protection Tribunal to re-examine the decision relating to the applicant in accordance with the principles guaranteed by the Directive. On 25 January 2023 the Constitutional Court, following an appeal filed by the Maltese authorities, overturned the first decision. In its decision, the Constitutional Court relied on ECtHR jurisprudence stating that asylum procedures are not covered by Article 6 of the Convention.²¹⁵

In *S.H. v. Malta*,²¹⁶ filed before the ECtHR on 28 July 2021 and decided on 20 December 2022, the Bangladeshi applicant was channelled through the accelerated procedure despite providing evidence that he was a journalist persecuted by the ruling party in his country of origin and could therefore not appeal his rejection decision which was confirmed by the IPAT within 1 day. The applicant then filed a subsequent application with further evidence of his claim, which was rejected as inadmissible and channelled again through the accelerated procedure and again confirmed by the IPAT. In the meantime, he had appealed his removal order before the Immigration Appeals Board on the basis of the risks of inhuman or degrading

²¹² Civil Court (First Hall), *Chehade Mahmoud vs L-Avukat Ġenerali et*, 909/2018, 28 January 2020, available at: <https://bit.ly/2Vqn2CT>.

²¹³ Civil Court (first Hall), *Parsons Mariama Ngady vs L-Aġenzija Għal Protezzjoni Internazzjonali et*, 318/2020, 1 March 2022.

²¹⁴ Carla Camileri, Accelerated procedures in Maltese asylum law: Making Violations of Fundamental Rights the order of the day, *Id-Dritt XXXII* (2022), cited above.

²¹⁵ Constitutional Court, *Parsons Mariama Ngady vs L-Aġenzija Għal Protezzjoni Internazzjonali et*, No. 18, 5 January 2023, available at: <https://bit.ly/3ApAL1l>

²¹⁶ ECtHR, *S.H v. Malta*, application no. 37241/21, 20 December 2022.

treatment he would face upon return to Bangladesh. Following the rejection of the appeal and confirmation of the removal order, the aditus foundation filed a request for interim measure to the ECHR on the basis of Article 3.

On 10 August 2021, the ECtHR 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 subsequently released from the Safi Detention Centre where he had been held for two years. The case was communicated to Malta on 20 January 2022.

The applicant argued that he fears return to Bangladesh and complained 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 ECHR Article 3. He further argued 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.

On 20 December 2022, the ECtHR found in favor of the applicant. With regard to the accelerated procedure, the Court noted that it took seven months for the authorities to render a first-instance decision following the applicant’s interview, but a mere twenty-four hours for the Tribunal to reassess the claim and while the Court reiterated that there exists a legitimate interest in maintaining a system of accelerated procedures in respect of abusive or clearly ill-founded applications, the Court found “it hard to believe that anything but a superficial assessment of all the documentation presented could have been undertaken by the Tribunal within such a time-frame. The brief stereotype decision, confirming the incongruous conclusions reached at first instance and providing no further reasoning, support such a conclusion.”

The ECtHR further observed that the Government was able to rely on only one situation (three decisions in respect of different family members affected by the same situation) whereby the Tribunal overturned the Agency’s decision and, referring to the AIDA report, noted that in the remaining 478 reviews undertaken in 2021 the Tribunal confirmed the first-instance decision. The Strasbourg Court therefore found it reasonable to conclude that at the time relevant to the case, the Tribunal tended to automatically confirm the Agency’s decision within a short timeframe. The Court concluded that “the first asylum procedure undertaken by the applicant and examined under the accelerated procedure, ab initio, did not offer effective guarantees protecting him from an arbitrary removal.” and found a violation of Article 3 taken in conjunction with Article 13.²¹⁷

Furthermore, the ECtHR considered that “the present case has identified various failures in the domestic procedures, in particular in relation to the failures in the communication system, the provision of legal assistance and particularly the procedure and scope of the Tribunal’s review in accelerated procedures, in the light of which general measures could be called for. However, bearing in mind that this is the first of such cases and that the parties have referred to legislative amendments in process, which may improve the system and ensure the existence and effectiveness, in practice, of a remedy for the purposes of Article 13 in conjunction with Article 3 in the context of asylum requests, the Court will stop short of indicating general measures at this stage.”²¹⁸

²¹⁷ ECtHR, *S.H v. Malta*, application no. 37241/21, § 90-93.

²¹⁸ ECtHR, *S.H v. Malta*, application no. 37241/21, § 108.

With respect to constitutional proceedings before the FHCC, the ECtHR considers that this remedy does not provide applicants with an automatic suspensive effect and therefore falls short of this effectiveness requirement. In coming to this conclusion, the Court noted that it is possible to seek a provisional measure from the FHCC but that such a request does not itself have an automatic suspensive effect either, and the relevant decision depends on an assessment on a case-by-case basis.²¹⁹ This means that applicants alleging a breach of Article 3 on the basis of the principle of non refoulement are not required to exhaust the remedy offered by the FHCC.

On 10 August 2022, an appellant assisted by aditus foundation filed a request for a preliminary reference before the CJEU to the IPAT in the context of an appeal filed following the rejection of his application as manifestly unfounded. The appellant contends that Article 23 of the International Protection Act is contrary to EU law and that therefore he should be allowed to appeal according to the normal procedure. In view of such claim which raises issues of interpretation of EU law, the appellant requested the IPAT to file a request for a preliminary reference before the CJEU. A hearing was held on 11 October 2022 and the request is still pending, more than 6 months after it was filed.

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?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input checked="" type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input type="checkbox"/> Representation in courts
<input type="checkbox"/> 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 manifestly unfounded, and inadmissible applications are automatically referred to the Tribunal in accordance with the accelerated procedure, the appellant is not able to participate in the review or to be represented.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> For certain categories	<input type="checkbox"/> No
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 - ❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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In terms of the Reception Regulations, vulnerable individuals include minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been

²¹⁹ ECtHR, *S.H v. Malta*, application no. 37241/2, § 53.

subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.²²⁰

The Regulations provide that the identification of vulnerable applicants must be carried out by the Agency for the Welfare of Asylum Seekers (AWAS) in conjunction with other authorities as necessary and that the vulnerability assessment must be initiated within a reasonable period of time after an application for international protection has been lodged.²²¹

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

Vulnerability assessments and age assessments are carried out by the Assessment Team (AT) of AWAS. The AT will carry out assessments on referral from other governmental entities and NGOs, including for people in detention.

Considering that all asylum-seekers arriving irregularly in Malta are automatically and systematically detained on health grounds on the first weeks of their arrival – save for persons who are manifestly and visibly vulnerable (e.g. families with young children) – without any form of assessment, the AT is likely to intervene at a later stage, after clearance from the health authorities and the transfer of those who are to be detained to the Safi Detention Centre.

The AT will undertake an assessment whenever a person who potentially falls within the vulnerable profiles referred to in the Regulation is referred to them.

These referrals can be done by the IPA, the PIO or NGOs visiting people in detention or reception centres. A referral form is made available to NGOs.

Since 2020, EUAA 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. EUAA 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 support of the Maltese authorities towards enhanced compliance with reception standards, EUAA personnel conducted 810 vulnerability assessments of asylum applicants during 2021.²²² As of January 2023, the AT is only composed of AWAS staff as the EUAA support in that area ended in December 2022 (see [Number of staff and nature of the determining authority](#)).

The team operates both in reception centres and in detention centres. It uses new and updated tools created by the EUAA.

Vulnerability is assessed on 4 levels:

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

²²⁰ Regulation 14(1) (a) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

²²¹ Ibid.

²²² Information provided by EUAA, 28 February 2022.

Following the assessment, a report is produced, and recommendations are made. If the assessment concludes the person is vulnerable, they should be automatically released from detention and transferred to the IRC. They are eventually transferred to an open centre. AWAS usually accommodates them close to the Administration Block so that they can receive better support.

Lawyers and NGOs reported facing challenges to obtain the vulnerability assessments from AWAS, this can take several weeks, 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 the authorities in implementing the recommendations of the reports.

NGOs and lawyers reported that the assessments 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 above.

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. 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.

As previously mentioned, all applicants rescued at sea and disembarked in Malta are automatically detained on health grounds. Therefore, vulnerable applicants, including minors, are *de facto* detained at least for the weeks of their arrival and this can be prolonged if the PIO decides to issue a Detention Order to the applicant.

The referral system between governmental entities is generally lacking in all aspect and characterized by a state of generalised apathy and neglect, with individuals regularly falling through the gaps. Minors can remain detained with adults for months before the competent authorities act, oftentimes on the request of an NGO or following a Court procedure.

On 21 January 2022, five children were released following a Court application. They had been detained with adults for approximately 58 days and three of them were confirmed as minors by AWAS the day before the hearing before Court of Magistrates, 57 days after their arrivals.²²³

On 12 January 2023, following an application filed by aditus foundation, the ECtHR issued an interim measure ordering Malta to ensure that six applicants claiming to be minors are provided “with conditions that are compatible with Article 3 of the Convention and with their status as unaccompanied minors”. The six minors had been detained with adults in the so-called China house since their arrival on 18 November 2022, some 50 days after their arrival and AWAS was not aware of their existence before they were referred by aditus foundation in January 2023 and despite a disconcerting decision of the Immigration

²²³ aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

Appeals Board, dated 6 December 2022, confirming the detention of the minors but ordering the PIO to refer these applicants to AWAS.²²⁴

In another case, AWAS failure to act in a timely manner resulted in a minor LGBTI applicant being physically abused and humiliated by his co-detainees. On another occasion, an applicant suffering from Tuberculosis claiming to be minor was kept in detention despite a vulnerability report mentioning that he was exhibiting clear signs of mental distress and that detention had a detrimental impact on his health. The report was only shared with his lawyers following his release, some 4 months after the initial assessment, despite the lawyers numerous request to be provided with it.²²⁵ In yet another case concerning a LGBTI applicant, the PIO claimed that AWAS failed to inform them that a report had concluded that the applicant should be transferred to an open centre on account of his vulnerability as an LGBTI individual.²²⁶

Asylum seekers arriving regularly, and therefore not accommodated in the IRC, may never be assessed and their vulnerability may never be identified.²²⁷

A further concern is that, following their identification as vulnerable, individuals receive little or no support other than psycho-social services from the AWAS Therapeutic Team. There is no facilitated or supported access to public services.

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 asylum procedure are referred to AWAS for age assessment. Persons claiming to be adults but who, in the opinion of AWAS on first encounter, appear to be children are also referred to the age assessment procedure. The Minor Protection (Alternative Care) Act²²⁸ 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 and the minor will be put in the care of social workers of the UMAS Protection Unit at AWAS.

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, 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.

Until recently, age assessments were carried out by the UMAS Protection Unit at AWAS and the unit was also in charge of the care of all minors, those confirmed to be minors by the Unit, those awaiting the Unit's assessment, and those assessed to be adults by the Unit but pending appeal, provided referrals were made in a timely manner and a care order was issued by the Juvenile Court. This created a major conflict of interest and confusion since social workers of the team were both assessors and carer of the minors, including those they rejected, while the team leader was also the appointed legal guardian.

AWAS however recently reviewed the age assessment procedure in order to take the above into account. Age Assessments were shifted to the Assessment Team (AT) who is in charge of vulnerability

²²⁴ Aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 Janaury 2022, available at <http://bit.ly/3j3aVeM>

²²⁵ See ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at: <https://bit.ly/3mjiOOB>

²²⁶ Immigration Appeals Board (Div.II) in *Reagan Jagri v. the Principal Immigration Officer*, 7 April 2022 (unpublished).

²²⁷ *A.D. v. Malta*, No. 12427/22, communicated on 24 May 2022, available at: <https://bit.ly/3mjiOOB>

²²⁸ Minor Protection (Alternative Care) Act, Chapter 602 of the Laws of Malta.

assessments and the UMAS Protection Unit is now strictly responsible for the care of minors confirmed as such by the AT and those who are pending age assessment decision either from the AT or appeal, the team leader of the UMAS Protection Team is the appointed legal guardian for all minors with each minor being also appointed a social workers of the team.

The age assessment consists of an interview conducted at the Marsa IRC by three social workers of the AT team of AWAS and an interpreter, if required. 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. If the age assessment is inconclusive, the minor may be referred for a medical examination which is a bone density test of the wrist by X-Ray carried out by the Ministry for Health according to the Greulich and Pyle method. If the panel recommends that the person is a minor, the minor is referred to the Director responsible for child protection who will file an application before the Juvenile Courts for the issuance of a care order.

AWAS stated that they take into account any documentation provided by the applicant or third parties, including the PIO.

In *of K.J. and K.B.D.*, the Bangladeshi appellants challenged AWAS decision which reversed a previous decision of the Agency to declare the appellants as minors, following the submission of a “*photo of documentation*” by the PIO which allegedly showed that the appellants were adults. The Immigration Appeals Board declared both appeals closed noting that the Principal Immigration Officer has no locus standi in age assessment procedures and that AWAS has no competence to review its own decisions on age assessment. The Board concluded that the appellants are minors, as originally concluded by the AWAS and that they must be released and returned to the Dar Il-Liedna open shelter for unaccompanied children.²²⁹

Since this decision, the PIO systematically submits pictures of passports which are found in the confiscated phone of the applicants before AWAS decides on the age assessment procedure and AWAS appears to give significant weight to this evidence.

The Age Assessment Tool filled by the panel and the transcript of the interview is not provided to applicants unless they file an appeal against the decision declaring them as adults. The decision provided to applicants is a one page document in English mentioning the date of birth the panel decided to attribute to the applicant.

The ECtHR criticised the length of the age assessment procedure in *Abdullahi Elmi 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.²³⁰ The initial procedure is still plagued by delays with NGOs reporting that minors have to wait on average at least 2 months until they receive a decision, with a substantial number of them being kept in detention in the meantime (see [Identification](#)). To this must be added the duration of a potential appeal which is likely to last at least 3 months.

NGOs reported the following shortcomings in the age assessment procedure;

- Conflict of interest within AWAS, the Agency being both assessor and carer.
- No best interest assessment is carried out before the age assessment procedure;
- Minors are not informed of the procedure prior the interview;

²²⁹ Immigration Appeals Board, Div. II., *K.J. and K.B.D. (Bangladesh) vs. the PIO and AWAS (AA/11/22/DO)*, 14 July 2022, available at <https://bit.ly/3U2UVGf> and the press release from aditus foundation at <http://bit.ly/3Ess4Fm>

²³⁰ ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Application Nos 25794/13 and 28151/13, Judgment of 22 November 2016.

- Minors are not asked for their full and informed consent to undertake the age assessment prior the interview or the bone test;
- Lack of legal representation and legal assistance during the age assessment process;
- The age assessment process is undertaken while minors are detained and no consideration is given to such for the purpose of the assessment;
- The age assessment interview only consists of a 30min to 1h interview where basic questions are asked to the minor;
- The benefit of the doubt is not applied to the minor;
- The margin of error is not indicated in the conclusions of the panel of the doctor in charge of the bone test.
- The decision is mostly based on the physical appearance of the minor

It appears that AWAS has recently changed the procedure to take into account some of the above remarks. After being referred by for age assessment, a social worker from the UMAS Protection Team is appointed to the minor following the issuance of the provisional care order. The social worker reportedly meets with the minors before the age assessment interview in order to provide information on the procedure and gather the consent of the applicant and will attend any interview with the minor.

NGOs however reported that lawyers are not allowed to be present during the age assessment interview as “they are not the legal representative” of the minor.²³¹

NGOs further pointed out that the UMAS Protection Team and the Assessment Team still report to the same Senior managers and that ultimately AWAS still falls under the Ministry for Home Affairs, interference is inevitable.

Moreover, a substantial number of applicants are kept in detention by the PIO for the whole duration of the procedure (see [Detention of vulnerable applicants](#)).

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.²³²

Age Assessment Appeals before the Immigration Appeals Board

The Receptions Regulations provide that applicants who feel aggrieved by a decision in relation to age assessment in accordance with regulation 17 of the Procedural Regulations, shall be entitled to an appeal to the Immigration Appeals Board in accordance with the provisions laid down in the Immigration Act.²³³

The Immigration Appeals Act provides that appeals must be filed within 3 days of the notification of the decision²³⁴ and this stringent deadline is strictly adhered to by the Board. Age assessments appeals are generally heard by Division II of the Board since the Chairperson of Division I has declared a conflict of interest in relation to her position of Chairperson of the Minor Care Review Board.²³⁵

However, it must be noted that Division II also has a conflict of interest when the appellant is detained since they also hear appeals and reviews of Detention Order issued under the Reception Regulations (see [Judicial review of the detention order](#)). Division II recognised that a conflict of interest may arise

²³¹ Information provided by AWAS, January 2022.

²³² Information provided by AWAS, January 2022.

²³³ Article 16(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

²³⁴ Article 25A(7) of the Immigration Act, Chapter 217 of the Laws of Malta.

²³⁵ See <https://bit.ly/3KXft28>

when they are also responsible to decide on the legality of the appellant's detention and confirmed that appellants are entitled to raise an objection.²³⁶

Such objection was raised in a recent case and Division II recognised there was a conflict of interest and therefore ordered the case to be heard before Division I which has not yet pronounced itself on its own potential conflict of interest at the time of writing.²³⁷

No clear procedure is 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.²³⁸

According to NGOs, minors have a limited understanding of the possibility to appeal the age assessment decisions and do not receive any legal advice prior to the appeal stage. The short deadline to appeal makes this remedy difficult to access, especially for minors who are detained. Until 2022, AWAS generally notified the two NGOs providing free legal aid aditus and JRS of negative age assessment results since legal aid was rarely provided, the NGOs would distribute the cases according to their capacity. The NGOs lack of access to detention remained an obstacle to file appeals on time (See [Access to detention](#)).

Lawyers reported that the Immigration Appeals Board lacks the necessary expertise to evaluate appeals on age assessment with no member having any background on the matter. Despite this, the Board refuses to appoint or consult independent experts which must be brought at the own cost of the appellants if they so wish. This has never been attempted since NGOs do not have the capacity and financial means to bring these experts and this obviously falls outside the remit of legal aid lawyers who also have limited capacity to deal with numerous appeals.²³⁹ According to both aditus and JRS, the Board either waits until the person comes of age to throw the case or, when a decision cannot be avoided, systematically rejects the appellant on dubious grounds after several months of procedure. Both NGOs criticised the Board for issuing stereotyped 2 pages decisions which do not address any of the arguments raised by the appellant and make no reference to any law, jurisprudence or standards, only referring to the initial age assessment decision. Both NGOs declared that their lawyers usually filed several pages of submissions generally highlighting the shortcomings reported above.

The NGOs reported that this situation leads AWAS to make no effort to address the appellant's pleas during the proceedings. According to them, the Agency's lawyer usually files a one page note of submissions generally stating that the arguments put forth by the appellant "have been amply responded to in the course of the proceedings" and declaring "we remit ourselves to the wise and superior judgement of this Board".

Aditus foundation reported that none of the 21 age assessments appeals filed between 2021 and the beginning of 2022 were successful. The NGO reported that only 11 decisions were issued, 4 were decided inadmissible since they were filed beyond the 3 days deadline and 7 were rejected on the merits. 7 appeals which had been pending for more than 6 months were put sine die as the lawyers lost contact with the client. 1 appeal was withdrawn by the appellant. The NGO indicated that the appellants were Bangladeshi (11), Ghanaians (6), Gambians (2) and Ivorians (2).

JRS reported that none of its appeals were successful with most appeals filed in 2021 still pending or put sine die in 2022.

²³⁶ Immigration Appeals Board (Div.II), *R.M v. the Principal Immigration Officer*, 24 March 2022, available at <https://bit.ly/3KVfl36>

²³⁷ Information provided by aditus foundation, January 2022.

²³⁸ Information provided by the Immigration Appeals Board, January 2022.

²³⁹ Information provided by the Immigration Appeals Board, January 2022.

According to the data gathered by aditus, it takes on average 134 days for the Board to decide on an age assessment appeal, the fastest one having been decided in 71 days and a substantial number of them are kept in detention by the PIO for the whole duration of the proceedings.

In February 2022, aditus foundation made the difficult choice to discontinue its assistance for age assessment appeals as its lawyers refused to take part in appeals proceedings which offer no chances of success to young and vulnerable appellants. JRS continued to offer this service.

The Ministry for Home Affairs, under which the Board falls, has consistently refused to provide any data pertaining to the decisions of the Board, including through a Freedom of Information Request (FOI) filed by aditus foundation in mid-2022. NGOs could confirm that 129 appeals were lodged between the 1st of January 2021 and the 31st December 2022 (104 in 2021 and 25 in 2022). It appears that the Board has not issued any positive decision on any of these appeals, save for two cases which were won on a point of procedure after AWAS unilaterally decided to amend its previous positive decision and to decide the minors were adults.²⁴⁰

Additionally, concerns have been expressed in relation to the independence of specialised tribunals such as the Board²⁴¹, as its members are appointed through a procedure involving the executive power and do not enjoy the same level of independence as that of the ordinary judiciary (see [Composition of the Board](#)).

As per the Immigration Act, the decisions of the Board are final and cannot be challenged before any Court of law, save for human rights complaints before the Civil Court (First Hall). The Decisions of the Board are not published and not publicly available.

Legal Assistance

As previously mentioned, lawyers are not allowed to be present during the interview carried out by AWAS and the appointed legal guardians are mostly absent from the procedure, beyond having a clear conflict of interest since they are employed by AWAS.

The procedure generally happens while the minor is being detained and the observations made on the access to legal assistance in detention are applicable to age assessment procedures (see [Legal Assistance](#)). As such, unaccompanied minors are deprived of legal assistance during the initial age assessment procedure.

With regard to the appeal, the Reception Regulations provide that appellants who lack sufficient resources to appeal from an age assessment decision are entitled to free legal assistance and representation which must entail free legal assistance and representation, the preparation of the required procedural documents and participation in the hearing before the Immigration Appeals Board.²⁴²

Until 2022, legal aid for these cases was almost always provided by aditus foundation, JRS and the Legal Clinic of the Faculty of Laws since the provision was not fully implemented. NGOs are aware of 104 appeals lodged in 2021 with only one of them undertaken by a legal aid lawyer. Aditus foundation indicated that it filed 19 appeals and the Legal Clinic and JRS filed the rest of the appeals, with most appeals being filed by JRS. NGOs indicated being aware of 25 appeals lodged in 2022, most of them being followed by a legal aid lawyer.

²⁴⁰ Immigration Appeals Board (Div.II), *Applicant v, the Agency for the Welfare of Asylum Seekers*, 14 July 2022, available at <http://bit.ly/3U2UVGf> ; Aditus foundation, immigration Police arrests two minors hosted in shelter for children, 26 July 2022, available at <http://bit.ly/3JdLOk4>

²⁴¹ EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 13 July 2022, pp. 5-6, available at <https://bit.ly/3XRYs2D>

²⁴² Article 16(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

As such, 2022 has seen some positive improvements and minors have now full access to the legal aid lawyers provided by the Ministry for Home Affairs.

According to the Ministry for Home Affairs²⁴³, legal aid lawyers are to provide the following assistance:

- Prepare procedural documents and participate in any hearing before the Immigration Appeals Board.
- Examine the grounds of appeal and present, in writing, the appellant's case before the Immigration Appeals Board.
- Attend, if required, sessions of the Immigration Appeals Board to explain the case submissions and provide other general assistance to respondents during their appeal.
- Carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by MHSE.
- Report on the outcomes of interviews held with appellants and bring to MHSE's attention any pertinent matters which may arise.
- Make sure to file the appeal within the deadline prescribed at law (3 days) and failure to do so might lead to the termination of the contract.

Legal Aid lawyers perceive a fee of 80 euro (inc. VAT) per case submission.

However, it must be noted that very few lawyers apply to be legal aid lawyers in this field, presumably due to insufficient fees and a lack of interest or specialisation in this field. It is worth noting that the rejection rate of age assessment appeals further demotivates lawyers to involve themselves more than the minimum required. As a result, at the moment only one legal aid lawyer appears to be currently working on age assessment appeals.

The mere fact that legal aid lawyers are employed by the Ministry for Home Affairs, under which AWAS and the Immigration Appeals Board also fall, raises serious concerns with regard to the level of independence enjoyed by legal aid lawyers assisting applicants and very limited safeguards exist against direct interference from the Ministry.

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:

See below

2.1. Adequate support during the interview

The law does not define the notion of “adequate support” contained in Article 24(3) of the recast Asylum Procedures Directive. The Procedural Regulations provide that the IPA must assess within a reasonable period of time after an application for international protection is made whether the applicant is in need of special procedural guarantees and lay down a procedure with a view to determining whether a person is in need of special procedural guarantees.²⁴⁴

The Regulations further provide that the IPA must ensure that where an applicant has been identified as an applicant in need of special procedural guarantees, such applicant will be provided with adequate support throughout the whole procedure²⁴⁵ and that the need for special procedural guarantees shall also be addressed even if such need becomes apparent at a later stage and even without the necessity of initiating new procedures.²⁴⁶

²⁴³ See <https://bit.ly/3mn9zx0>

²⁴⁴ Regulation 7(1) of the Procedural Regulations, Subsidiary Legislation 420.07 of the laws of Malta.

²⁴⁵ Regulation 7(2) of the Procedural Regulation, Subsidiary Legislation 420.07 of the laws of Malta.

²⁴⁶ Regulation 7(4) of the Procedural Regulation, Subsidiary Legislation 420.07 of the laws of Malta.

Fast Tracking Procedure

The IPA established 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 accordingly.²⁴⁷

According to the IPA guidance note on the procedure, 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.

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 EUAA, 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 limits indicated in the policy. For 2021 and 2022, the IPA indicated that it does not keep records of this procedure and therefore cannot provide data on it.

²⁴⁷ IPA, Guidance Note on the Fast-tracking of Applications Submitted by Vulnerable Persons, 2 September 2020 (unpublished).

Survivors of Female Genital Mutilation (FGM)

On the 8 March 2021, the IPA and AWAS signed a Memorandum of Understanding on procedures regarding medical referrals of applicants for international protection with FGM-based claims. The MOU establishes an automatic referral mechanism whereby the IPA can refer female asylum applicants, who base their protection claim on FGM grounds, to AWAS for onward referral to national health authorities. According to the IPA, the aim is to obtain a medical assessment resulting in a certificate documenting whether or not FGM has been performed on the applicant.

Referrals shall only be made if the applicant gives her consent in writing to be referred to AWAS and the national health service for the purposes of a medical examination related to FGM and the applicant may withdraw her consent at any time during the referral procedure.

If the applicant gives her consent the IPA refers the case by email to the AWAS Care Team Units Leader and the Senior Manager Services. Upon receipt of the referral, AWAS will liaise with the applicant and facilitate the applicant's access to a medical doctor at the respective health centre in order to obtain a Ticket of Referral for the Department of Obstetrics and Gynaecology at Mater Dei Hospital (MDH). Where required, AWAS will subsequently liaise with the Department of Obstetrics and Gynaecology at MDH in order to facilitate and explain to the medical consultant what is required, including the importance of using the standard form certificate provided by the IPA. The medical certificate is to be given to the applicant in original format, and it is be the responsibility of the applicant to present this medical certificate to the IPA for the purposes of the examination of her application for international protection. Should the applicant not provide the IPA with the medical certificate, this will of course be taken into account during the examination of the application. IPA will only accept medical certificates in the prescribed format and signed by a medical professional from the Dept of Obstetrics and Gynaecology at MDH.

The number of referrals is unknown. NGOs indicated that very few women claim to be survivors of FGM as they generally escaped their country of origin before being subjected to it. According to lawyers, the credibility assessment is extremely difficult to pass and such claims are generally rejected.

Victims of Human Trafficking

The IPA also has a referral mechanism with Agenzija Appogg²⁴⁸ for applicants who are identified as potential victims of human trafficking. However, various stakeholders, including Appogg reported that the IPA rarely makes use of this referral mechanism.

Unaccompanied Minors

Recent amendments to the Act and the Procedural Regulations aimed to enhance the guarantees for minors. The Act now provides that any child or young person below the age of 18 years falling within the scope of the Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for international protection, and for the purposes of this Act, shall be assisted by a representative appointed by the Chief Executive Officer of AWAS. The International Protection Agency shall immediately inform the competent authorities once an unaccompanied minor makes an application for international protection.²⁴⁹

The Regulations now provide that the following actions must be taken as soon as possible, and no later than thirty days from the issuance of the care order by the Juvenile Court;²⁵⁰

²⁴⁸ See <https://bit.ly/3SPm2FB>

²⁴⁹ Article 13(3) and 13(4) of the International Protection Act, Chapter 420 of the Laws of Malta as amended by Act XIX of 2022.

²⁵⁰ Regulation 18(1) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta as amended by Legal Notice 273 of 2022.

- ❖ The unaccompanied minor shall be represented and assisted by a person appointed by the CEO of AWAS, during all the phases of the asylum procedure;
- ❖ The unaccompanied minor must be informed immediately of the appointment of the representative who shall perform their duties in the best interests of the child and shall also have the necessary knowledge of the special needs of minors. The representative shall be changed only when necessary.
- ❖ The representative must be given the opportunity to inform the minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself for the personal interview. The representative must be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview;
- ❖ The minors shall be provided with legal and procedural information, free of charge, in accordance with the general rules on legal assistance;
- ❖ The asylum interview must be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.

NGOs expressed concerns on AWAS' ability to carry out its mission with sufficient independence from the other State entities falling under the Ministry for Home Affairs and its capacity to cater for the minors, considering the Agency's other responsibilities (see [Identification](#) and [Legal Representation of Minors](#)).

With respect to the 2022 amendment, NGOs also questioned whether AWAS enjoys sufficient technical capacity in asylum matters to assist UAMs throughout the procedure.²⁵¹

2.2. Exemption from special procedures

According to the Procedural Regulations, 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.²⁵²

In practice, this provision is largely ignored and individuals claiming to have suffered such treatments will be channelled through the accelerated procedure if possible.

The International Protection 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.²⁵³

In practice, asylum applications of unaccompanied minors were not processed until the end of 2022. AWAS confirmed that unaccompanied minors were called for their interviews and that the social worker appointed as the representative attends the interviews with them. NGOs are unaware of any decision issued by the IPA but it is likely that the IPA will apply the above provision to all unaccompanied minors coming from countries of origin listed as safe by the Act.²⁵⁴

This means that unaccompanied minors will likely be deprived of the possibility to appeal their rejection according to the normal procedure and will instead see their application automatically forwarded to the

²⁵¹ Aditus foundation, Technical Comments on Bill No. 2 of 2022, June 2022, p.11, available at <https://bit.ly/3IHYZBy>

²⁵² Regulation 7(3) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁵³ Article 23A of the International Protection Act, Chapter 420 of the Laws of Malta.

²⁵⁴ Article 24 of the International Protection Act, Chapter 420 of the Laws of Malta.

IPAT for the so-called review, which is likely to confirm the first instance decision as practice indicates (see [Accelerated Procedure](#)).

It is worth mentioning that the Regulations under the Immigration Act provides for the possibility to carry forced return of unaccompanied minors if sufficient guarantees exist²⁵⁵ but it is unknown whether the PIO will take such risk.

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 assist asylum seekers at first instance reported 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 consideration in the evaluation of the applicant's need for protection. Asylum applicants do not routinely provide medical reports documenting torture and other violence. The above observations are valid insofar as the source of the medical report is sufficiently trusted and the original document is provided. As such only reports from Maltese practitioners will be duly taken into account.

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 2018,²⁵⁶ while no information is available since 2019.

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

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

The 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".

²⁵⁵ Regulation 8 of the Return Regulations, Subsidiary Legislation 217.12 of the Laws of Malta.

²⁵⁶ Information provided by the Refugee Commissioner, January 2019.

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 amendments to the Reception Regulation of December 2021 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”.²⁵⁷

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.²⁵⁸ The assigned legal guardian is an AWAS social worker from the UMAS Protection Team who must 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.

In practice, AWAS is the entity responsible for referring the minor to the Child Protection Services which would then request the issuance the temporary care order to the Court. Upon confirmation by AWAS that the individual was assessed as an UAM, then it would inform the Child Protection Services of its conclusions for it to request the Court to issue a Care Order and confirm a care plan.

In 2021, the vast majority of minors were not appointed a legal guardian, 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.

Whilst 2022 saw some positive improvements, with some care orders issued within the appropriate time-frame following a positive decision by AWAS and some minors being called for their asylum interview towards the end of the year, the issuance of provisional care orders is still plagued by delays due to the lack of diligence on the part of the competent authorities. This is mostly due to a referral system between governmental entities which is characterised by a generalised state of apathy and neglect, with individuals regularly falling through the gaps. Minors can remain detained with adults for months before the competent authorities act, oftentimes on the request of an NGO or following a Court procedure.

By way of example, on 21 January 2022, five children were released following a Court application. They had been detained with adults for approximately 58 days and three of them were confirmed as minors by AWAS the day before the hearing before Court of Magistrates, 57 days after their arrivals.²⁵⁹

²⁵⁷ Regulation 14(1)(b) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

²⁵⁸ Regulation 18 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁵⁹ aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

On 12 January 2023, following an application filed by aditus foundation, the ECtHR issued an interim measure ordering Malta to ensure that six applicants claiming to be minors are provided “with conditions that are compatible with Article 3 of the Convention and with their status as unaccompanied minors”. The six minors had been detained with adults in the so-called China house since their arrival on 18 November 2022, some 50 days after their arrival and AWAS was not aware of their existence before they were referred by aditus foundation in January 2023 and despite a disconcerting decision of the Immigration Appeals Board, dated 6 December 2022, confirming the detention of the minors but ordering the PIO to refer these applicants to AWAS.²⁶⁰

In another case, AWAS’ failure to act in a timely manner resulted in a minor LGBTI applicant being physically abused and humiliated by his co-detainees. On another occasion, an applicant suffering from Tuberculosis claiming to be minor was kept in detention despite a vulnerability report mentioning that he was exhibiting clear signs of mental distress and that detention was detrimental to his mental health.. The report was only shared with his lawyers following his release, some 4 months after the initial assesment, despite the lawyers numerous request to be provided with it.²⁶¹ In yet another case concerning a LGBTI applicant, the PIO claimed that AWAS failed to inform them that a report had concluded that the applicant should be transfered to an open centre on account of his vulnerability as an LGBTI individual.²⁶²

NGOs expressed their disagreement with a system whereby AWAS is entrusted with the guardianship of unaccompanied minors, stating that “the multiple roles and responsibilities of persons currently working as representatives for UAMs coupled with limited capacity and resources may result in conflict of interest issues to the detriment of the minors”, adding that “It is clear that it’s involvement in so many aspects of the child’s life do not only pose a huge strain on the Agency’s capacity but, in particular, positions it in several situations of conflict of interest. We have encountered several such instances in our work with UAMs and, inevitably, the burden of these short-comings is borne by the children themselves.” NGOs exhorted the Government to commit to exploring alternative guardianship options that will ensure a quality and independent service with the child’s best interests in mind, including with the support of entities such as the European Guardianship Network.²⁶³

AWAS is the assessor, the legal guardian and the entity responsible to accommodate and provide protection and care to the UMAS, which raises concerns regarding the agency’s ability to ensure that no interference exist between these activities and with the Ministry for Home Affairs, under which AWAS falls.

Despite recent improvements in the age assessment procedure (see [Identification](#)), the legal representative’s position as an employee of AWAS and the Leader of the UMAS Protection Unit raises serious concerns as to the level of independence enjoyed from other State Entities. JRS and aditus reported that the legal representative 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 unaccompanied minors pending age assessment appeal procedures.²⁶⁴

²⁶⁰ Aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 Janaury 2022, available at <http://bit.ly/3j3aVeM>

²⁶¹ See *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3ZCq86j>

²⁶² Immigration Appeals Board (Div.II), *Reagan Jagri v. the Principal Imigration Officer*, 7 April 2022 (unpublished).

²⁶³ aditus foundation, Technical Comments on Bill No. 2 of 2022, June 2022, p.11, available at <https://bit.ly/3EVTSTM>

²⁶⁴ Immigration Appeals Board (Div.I), *A.M. v. The Principal Immigration Officer*, 5 November 2021, available at <https://bit.ly/3jba8bL>; Immigration Appeals Board (Div.I), *Y.M.O. v. The Principal Immigration Officer*, available at <https://bit.ly/3j070zE>

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.²⁶⁵ A person may apply for a subsequent application if they can provide elements or findings that were not presented before – subject to strict interpretation – at first instance. The applicant is required to submit evidence of which they were either not aware, or which could not have been submitted at an earlier instance.

Act XIX of 20 December 2022 removed the requirement to present new facts or evidence within 15 days of becoming aware of such information. This brought the Act in line with the CJEU judgement *in XY v Bundesamt für Fremdenwesen und Asyl*.²⁶⁶

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.

Despite the International Protection Act clearly stating that a personal interview on the admissibility of the application shall be conducted before a decision on the admissibility of an application has been taken.²⁶⁷ Applicants submitting a subsequent application where no new elements were presented are not given the opportunity to be heard during a personal interview. The procedure is only in writing, with the ability for the legal representative to present submissions along with the application. In the (rare) event where the subsequent application is deemed admissible, the IPA will interview the applicants on the merits of their case with further questions on the new evidence provided.

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.

²⁶⁵ Articles 7A of the International Protection Act, Chapter 420 of the Laws of Malta.

²⁶⁶ CJEU (Third Chamber), *XY v Bundesamt für Fremdenwesen und Asyl*. Request for a preliminary ruling from the Verwaltungsgerichtshof. Case C-18/20, 9 September 2021.

²⁶⁷ Article 24 (3) of the International Protection Act, Chapter 420 of the Laws of Malta.

In practice, asylum seekers filing a first 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 to employ people with such a limited right to remain.

For asylum seekers who filed a second or more subsequent application, the Asylum Seeker Document will only be provided if the application is deemed admissible. The Procedural Regulations provide 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 or after a final decision to reject that application as unfounded.²⁶⁸

The Procedural Regulations 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.

As a practice, the PIO generally refrains from removing any individual with a pending subsequent application independently of the number of applications filed but is likely to detain the applicant on the basis of the Reception Regulations.

Processing time is similar to first-time applicants with the exception of detained applicants who are prioritised. Asylum seekers who filed a second or more subsequent application are likely to remain undocumented for more than 6 months before they can hope to have a decision on the admissibility of their application.

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 (See [Regular Procedure](#)).²⁶⁹ However, the IPA may also reject the application as manifestly unfounded even if the application was admissible. NGOs reported that this happened in at least 2 cases in 2022. Both applications were remitted back to the IPA by decision of the the IPAT thanks to the intervention of a lawyer right before the IPAT decided.²⁷⁰

In case the subsequent application is deemed inadmissible, the decision is immediately forwarded to the IPAT for a review in accordance with the accelerated procedure, which does not allow for the applicant to file an appeal, and be heard and will likely be confirmed by the IPAT as practice indicates (see [Accelerated Procedure](#)). The IPA is well aware of this fact and does not hesitate to abuse of this procedure, even when applicants provide new evidence of their claims.

As with first applications, concerns as to the quality of the assessments remain, with nearly all subsequent applications deemed inadmissible despite applicants providing new evidence of their claim.

In *S.H. v. Malta*, the applicant filed two subsequent applications, both rejected as inadmissible by the IPA. The ECtHR noted that the first subsequent application was deemed inadmissible despite the IPA concluding that the applicant had presented new elements and noted that “despite the rampant incongruence, the Tribunal’s review confirmed the decision, without any reasoning”. With regard to the second subsequent application which was filed on the basis of the Court’s order for interim measure, which in the Court’s own words “had precisely referred to the absence of an adequate assessment”, the Court noted “with no surprise” that the Tribunal confirmed the decision. The Court ultimately concluded

²⁶⁸ Article 16(3) of the international Protection Act, Chapter 420 of the Laws of Malta.

²⁶⁹ Article 7(1A) (2) International Protection Act.

²⁷⁰ ECtHR, *S.H. v. Malta*, application no 37241/21, 20 December 2022, § 92-97.

that the applicant did not have access to an effective remedy under Article 13 for the purposes of his claim under Article 3.²⁷¹

NGOs reported that the IPA tends to systematically reject subsequent applications of LGBTIQ+ applicants without carrying out an interview, even when the applicant provides evidence of his involvement with the LGBTIQ+ community, including reports from LGBTIQ+-supporting NGOs, letters and personal statements of friends, relatives and partners who are in Malta and are willing to present themselves as witnesses. The IPAT almost always confirms the rejections and the appellants are left with no further means to challenge the IPA's assessment.

Aditus foundation reported that the IPA rejected at least one Palestinian national on two occasions, his second application being remitted back to IPA by decision of the IPAT. The UNHCR intervened in this case by submitting their written observations and being present during the interview. The case is still pending. Several subsequent applications from Sudanese non Arab Darfuri were also rejected as inadmissible by the IPA.

Lawyers and NGOs now refrain from filing new applications since according to a new policy from Jobsplus, applicants who see their applications rejected as inadmissible are barred from accessing legal employment.²⁷²

In 2022, 57 subsequent applications were lodged, 20 of which were from Ukrainians. 9 were filed by Egyptian nationals, 8 by Sudanese, 4 by Moroccans and Ivorians and the remaining were filed by applicants from various countries.

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 type="checkbox"/> Yes | <input checked="" 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 |

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. It is not clear how the second limb of this definition is applied in practice, as the designation of a country as safe for all nationals of that country seems to be an automatic and irrebuttable presumption.

The Act also provides, by way of a Schedule,²⁷³ the list of countries of origin considered safe. The last amendment to the list is dated from 2020 and included Bangladesh and Morocco. Currently the countries designated as 'safe' are: Algeria, Australia, Bangladesh, Benin, Botswana, Brazil, Canada, Cape Verde, Chile, Costa Rica, Egypt, Gabon, Ghana, India, Jamaica, Japan, Morocco, New Zealand, Senegal,

²⁷¹ ECtHR, *S.H. v. Malta*, application no 37241/21, 20 December 2022, § 92-97.

²⁷² Information provided by Jobsplus, September 2022.

²⁷³ Schedule (Article 24) of the International Protection Act, Chapter 420 of the Laws of Malta.

Tunisia, 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 Act provides that the Minister for Home Affairs may amend the list of countries specified in the Schedule by regulations, provided that only countries which in his opinion are countries of safe origin may be listed in the said Schedule. The Minister shall remove from the said Schedule any country which in his opinion is no longer a safe country of origin.²⁷⁴

Legal Notice 488 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.”²⁷⁵ The Agency has not made any Declaration so far and it remains to be seen how this amendment will be implemented in practice.

The concept of safe country of origin is used to consider an application manifestly unfounded and trigger the automatic application of the controversial accelerated procedure (see [Accelerated Procedure](#)).

In *S.H. v. Malta*, the applicant noted that his claim had been rejected on the basis that Bangladesh was a safe country despite providing a large amount of evidence to dispel this presumption that Bangladesh was a safe place for him based on his specific situation, including his work as a journalist. The applicant further argued that the decision of the Minister to designate Bangladesh as safe was not in compliance with Article 31(8) of the EU Asylum Procedures Directive and evidently arbitrary, particularly. As the Government had failed to provide any information on the decisional process, including any information on the evidence relied upon to conclude that Bangladesh is a safe country of origin. The ECtHR declared that it did need to enter into the ministerial decision designating Bangladesh as a safe country, considering that the exceptions highlighted throughout the case went to show that a full individual assessment is nonetheless called for in certain circumstances, despite such designation.²⁷⁶

In 2022, 161 applications were rejected as manifestly unfounded on the basis that the applicants were coming from a safe country of origin. These were mainly applications submitted by nationals of Egypt (58), Senegal (33), Bangladesh (32) and Ghana (18).

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.

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.²⁷⁷

²⁷⁴ Article 24(4) of the International Protection Act, Chapter 420 of the Laws of Malta.

²⁷⁵ Regulation 23(2) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁷⁶ ECtHR, *S.H. v. Malta*, no 37241, 20 December 2022, § 62 and 91.

²⁷⁷ Articles 8(1)(g), 23 and 24(1)(c) of the International Protection Act, Chapter 420 of the Laws of Malta.

According to IPA, depending on the particular circumstances of the case, it could be determined that the concept of safe third country could apply.²⁷⁸ 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, 2021 or 2022. 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.²⁷⁹

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 and no further update in 2022.

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 Procedural Regulations provide 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. The Regulations also state 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.²⁸⁰

The Regulations also cover the information about the consequences of an explicit or implicit withdrawal of the application, and information on how to challenge a negative decision. However, the law does not state in which form such information has to be provided except for the first instance decision which has to be provided in a written format.²⁸¹

Newly arrived applicants are detained on health grounds and the very basic document provided to them does not mention any kind of information on the procedure and is generally not provided in a language the applicant can understand (see [Detention](#)).

Due to their limited access to detention, NGO are not able to inform all newly arrived asylum seeker and most of them never get the chance to access a lawyer before their asylum interview. The UNHCR provides information sessions but has not been able to do so for all asylum seekers due to their limited capacity. It reported having carried out only 4 information sessions in 2022.²⁸²

²⁷⁸ Information provided by the Refugee Commission, 12 January 2018.

²⁷⁹ Article 24(1)(b) Refugees Act.

²⁸⁰ Regulations 4 and 5 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁸¹ Regulation 14 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁸² Information provided by the UNHCR, November 2022.

NGOs reported they received consistent testimonies of asylum seekers who arrived in 2022 claiming that the first people they met were individuals from the Returns Unit from the Ministry for Home Affairs, who reportedly tried to coerce them into signing declarations of voluntary departure by telling them that if they apply to asylum, they will remain in detention for 2 years before they are sent back to their country of origin. Asylum seekers also claimed that they were later given the same options by inspectors of the Immigration Police which they could identify by name. This, they claimed would happen weeks or months before they could access a lawyer or apply for international protection. The UNHCR confirmed having received such testimonies as well.

NGOs also reported meeting some individuals who were visibly minors who nonetheless opted for voluntary return for fear of staying 2 years in detention.

Unless they are visited by the UNHCR or NGOs, detained applicants will not be provided with information on the asylum procedure prior to the lodging of their application, during which they receive information about the asylum procedure and are given a leaflet on the Dublin procedure. The IPA's ability to process applicants and inform them in a prompt manner largely depends on the number of arrivals by boat. The lodging of the application can happen several weeks or months after the arrival.

Legal Notice 488 of December 2021 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".²⁸³ However, these provisions were not followed by any meaningful change in practice.

The EUAA 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".²⁸⁴ It seems this material has not been produced, or is not accessible to detained applicants and no information was shared with NGOs in relation to this.

There is no systematic and structured way to provide comprehensive information to asylum seekers outside detention and they have consistently raised their lack of awareness about the procedure to NGOs assisting them. 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.

However, it must be noted that recent years saw some positive improvement with the creation of the Migrant's Advice Unit (MAU) by AWAS staffed with welfare officers who provide information on employment, housing, education and health. The Unit reportedly gives group sessions on services and activities to assist with integration into the community. Each open centre has a member of the team operating as a focal point for referrals to other stakeholders. AWAS reported that a total of 2947 information sessions were delivered by Migrants Advice Unit in 2021.

NGOs welcomed this improvement and aditus foundation's lawyers met with the team in June 2022 to exchange on the needs of residents and answer questions from the MAU members. An informal referral system was put in place, where the MAU can call or send an email to aditus' lawyers to inquire about a more complex issue and refer the person appropriately.

Alternative sources of information are available mostly through NGOs and the UNHCR.

2. Access to NGOs and UNHCR

²⁸³ Regulation 5A of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

²⁸⁴ EUAA Operating Plan 2020, December 2019, available at: <https://bit.ly/2XxYx9K>.

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.²⁸⁵ Moreover, the law also states that a person seeking asylum in Malta shall be informed of his right to contact UNHCR.²⁸⁶ 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.²⁸⁷ 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.

Applicants who are detained on health grounds or under the Reception Regulations have limited to no access to NGOs and the UNHCR (See [Access to Detention](#)).

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?²⁸⁸ ☒ Yes ☐ No
❖ If yes, specify which: Algeria, Australia, Bangladesh, Benin, Botswana, Brazil, Canada, Cape Verde, Chile, Costa Rica, Egypt, Gabon, Ghana, India, Jamaica, Japan, Morocco, New Zealand, Senegal, Tunisia, United States of America, Uruguay,

1. Syria, Libya and Eritrea

In 2022, no Syrian applicant was recognised as a refugee, whilst 89 applicants were granted subsidiary protection. Two Syrian applicants were rejected.

Syrians constituted the larger nationality group of applicants in 2022, with 243 applications. Notably, 64 Syrians applicants were found to be inadmissible, probably on the basis that they already enjoyed international protection in another EU Member States..

²⁸⁵ Regulation 16(a) Procedural Regulations.

²⁸⁶ Regulation 3(3)(c) Declaration Regulations.

²⁸⁷ Regulation 7(3) Procedural Regulations.

²⁸⁸ Whether under the “safe country of origin” concept or otherwise.

63 applications were received from Libya nationals, with 6 persons recognised as refugees, no persons granted subsidiary protection and 79 rejected applicants. This reverses the trend in earlier years whereby the vast majority of Libyan applicants were systematically granted international protection. Three applicants were granted Temporary Humanitarian Protection following a rejection on their asylum application.

While no data was provided by IPA regarding Eritrean applicants in 2019 and 2020, in 2022 93 applications were received from Eritrean nationals. Six applications were processed under accelerated procedures. No Eritreans were recognised as refugees whilst 76 were granted subsidiary protection. Six Eritrean applicants were rejected whilst one was granted Temporary Humanitarian Protection.

2. Bangladesh, Ghana, Ivory Coast, Egypt, Lebanon

NGOs reported that applications from individuals from Bangladesh, Ivory Coast, Ghana, Egypt, Morocco, Nigeria, Algeria and Lebanon are processed expediently from detention and applicants from these countries are likely to see their applications for asylum channelled through the accelerated procedure and decided as manifestly unfounded with a return decision and a removal order being issued a few months after arrival (see [accelerated procedure](#)).

As these nationalities are not all listed as safe countries of origin and do not necessarily present a lower recognition rate than other applicants who are not prioritised, it is assumed that their application is fast-tracked due to the fact that they are all considered to be “*returnable*” individuals.

Forced returns of Bangladeshi and Ivorian nationals have been regularly carried out since 2021 on the basis of the non-binding readmission agreements concluded with the EU in 2017 and 2018 respectively.²⁸⁹ A lack of cooperation of the Bangladeshi authorities hampered the return process until 2021, the first identification mission to Malta took place between 10th and 15th June 2021 to determine the nationality of roughly 160 potential Bangladeshi nationals.²⁹⁰ The readmission of Ghanaians, Moroccans, Egyptians and Algerians are carried out on the basis of ongoing negotiations (Morocco) and readmissions clauses (Egypt, Algeria, Lebanon, Ghana).²⁹¹

Applications from those countries which are listed as safe by Malta²⁹² (Bangladesh, Morocco, Egypt, Algeria, Ghana) are reportedly automatically rejected as manifestly unfounded while it is oftentimes the case for applications from the other countries above. Faced with the arrival of Lebanese nationals in 2022, the authorities have adopted a hardline approach to these applicants by also fast tracking the few appeals filed on the normal procedure. The IPAT was able to deliver rejection decisions within a few weeks despite the average duration of an appeal being 2 to 4 years. As of January 2022, nearly all of Lebanese nationals who arrived in Malta in September 2022 were returned to their country of origin after applying to voluntary return, all those who had applied for asylum were rejected.²⁹³

According to the data provided by the IPA since 2019, the international protection recognition rate for the applicants from the above countries of origin is 1%, with 7 status granted between 2019 and 2022.

Statements from the Prime Minister confirm that Bangladeshi nationals are especially targeted: in 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

²⁸⁹ See EC, Migration and Home Affairs, Return and readmission, <http://bit.ly/3QM5Bcj>

²⁹⁰ EC, Proposal for a Council implementation decision on the suspension of certain provisions of Regulation (EC) 810/2009 of the European Parliament and of the Council with respect to Bangladesh, 15 July 2021, available at <https://bit.ly/3H9USoM>

²⁹¹ European Court of Auditors, Special report - EU readmission cooperation with third countries: relevant actions yielded limited results, 2021, available at <https://bit.ly/3w9eeEc>

²⁹² International Protection Act, Chapter 420 of the Laws of Malta, Article 24.

²⁹³ Information provided by PIO, 17 January 2023.

expedient return, after due process.²⁹⁴ In 2021, the Prime Minister posted on social media about a 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”.²⁹⁵

This practice is likely to continue despite the recent decision of the ECtHR where the Court found that the asylum procedure undertaken by the Bangladeshi applicant and examined under the accelerated procedure did not offer effective guarantees protecting him from an arbitrary removal.²⁹⁶

²⁹⁴ 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>.

²⁹⁵ The Times of Malta, ‘Migrants returned to their country after asylum applications are rejected’, 12 January 2021, available at: <https://bit.ly/30Rl1mu>.

²⁹⁶ ECtHR, *S.H. v. Malta*, 37241/21, 20 December 2022.

Reception Conditions

Short overview of the reception system

The Agency for the Welfare of Asylum-Seekers (AWAS) is in charge of the open elements 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 regulated by the 2015 Strategy for the Reception of Asylum-seekers and irregular migrants.²⁹⁷ 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 was suspended during 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.

However, despite the drastic decrease in arrivals since 2021 and a low rate of occupancy in the open centre, the Government still automatically detains all asylum seekers arriving by boat on health grounds, and the Immigration Police still detains all individuals coming from Bangladesh, Egypt, Morocco, Lebanon, Ghana, Ivory Coast and Nigeria.

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 which can be extended if the applicant is considered to be vulnerable. 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.

Six months remain 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 asylum seekers from countries deemed safe barred from accessing regular employment for the first 9 months of their stay. As a result many asylum seekers have to resort to irregular, unstable work positions. Homelessness was reported to be on the rise, with informal settlements cropping up around open centres to cater for those who have been evicted and do not have

²⁹⁷ AWAS, Migration Policy, 'Strategy for the reception of asylum seekers and irregular migrants' available at: <https://bit.ly/3f4YE5s>.

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.

A report published in December 2021 by JRS and aditus foundation entitled “In Pursuit of Livelihood: An in-depth investigation of asylum-seekers’ battle against poverty and social exclusion in Malta” concluded “that asylum seekers face poverty and social exclusion from the very start of their life in Malta. The interviews painted a picture of a reception system that fails to act as a stepping stone towards self-sufficiency due to the absence of a language and/ or vocational programme that is intrinsically linked to the reception stage and the meagre per diem allowance. Participants left the open centre with the same deficiencies in skills, competencies, savings and job prospects they had when they entered.”. The report draws on data collected by interviewing the head of household on income and health indicators, deprivation and dwelling conditions from 116 households.²⁹⁸

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 “*applicants*”, defined as a person who has made an application for international protection.²⁹⁹ No reference is made to the duration of entitlement to reception conditions, the 6 months deadline being a policy implemented by AWAS.

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”.³⁰⁰ 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, keeping in mind that the vast majority of applicants in Malta arrive irregularly by boat and do not have any resources.

²⁹⁸ JRS and aditus foundation, In Pursuit of Livelihood: An in-depth investigation of asylum-seekers’ battle against poverty and social exclusion in Malta, December 2021, available at <https://bit.ly/3INSF1W>

²⁹⁹ Regulation 2 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁰⁰ Regulation 11(4) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

Applicants arriving regularly, or who were already present in Malta are entitled to reception conditions in the same manner as those coming irregularly by boat, they rarely request a space in an open centre but can always access this service in the event where they would not be able to maintain themselves in the community.

The Reception Regulations provide 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 Act³⁰¹. However, no such cases were filed the Board presumably 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.

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.³⁰²

To complement state-provided reception, the civil society organisation MOAS piloted an initiative where families in Malta can host asylum applicants in their homes.³⁰³

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 2022 (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”.³⁰⁴

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 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. 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. Asylum seekers in detention enjoy free state health services, 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

³⁰¹ Regulation 16 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁰² Information provided by AWAS, January 2019.

³⁰³ EUAA, Annual Asylum Report (2022), available at: <https://bit.ly/3yd3OVi> p. 164.

³⁰⁴ Article 2 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

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 limited 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.

According to AWAS, any applicant duly registered with the IPA and holding the asylum-seeker certificate can apply to receive the financial allowance, this is granted following an assessment of the applicant’s situation, taking into account vulnerability and financial incomes. As such, applicants who are employed full-time generally will not be granted the financial allowance. The per diem is generally tied to residence in an open centre, yet it is possible for applicants to request to receive the per diem if living in the community.

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.

AWAS indicated that 350 applicants at the end of 2020 were receiving such *per diem*.³⁰⁵ 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.

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 seekers abandon their established place of residence without providing information or consent or where they do not comply with reporting duties, request 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.³⁰⁶

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.

The decision to reduce or withdraw material receptions conditions is taken by AWAS or DS, if the applicant is detained. by the Detention Services (DS) or 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.

³⁰⁵ Information provided by AWAS, January 2021.

³⁰⁶ Regulation 13 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

According to AWAS, if a resident has not signed for 3 weeks, their place is reclaimed at the centre.³⁰⁷ 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.

Asylum seekers may appeal these decisions before the Immigration Appeals Board, in accordance with the Receptions Regulations and the Immigration Act.³⁰⁸ However, this remedy is inaccessible in practice due to the lack of information and the stringent deadlines to file the appeal (3 days). This was highlighted by the ECtHR several cases against Malta.³⁰⁹

Evictions

Single men are 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.³¹⁰

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.³¹¹ This continued in 2021 and 2022. 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.³¹² Informal settlements continued to crop up in different areas of the island in 2021 and 2022, with access to housing remaining a serious problem. 2022 saw a rise in the number of migrants renting substandard accommodation spaces, including stables.³¹³

³⁰⁷ Information provided by AWAS, January 2021.

³⁰⁸ Regulation 16(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta, taken in conjunction with Article 25A(7) of the Immigration Act, Chapter 217 of the Laws of Malta.

³⁰⁹ 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.

³¹⁰ Information provided by JRS Malta 2020.

³¹¹ Times of Malta, 'Migrants end up homeless as centres overflow', 2 July 2020, available at: <https://bit.ly/3tDzPkS>.

³¹² 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>.

³¹³ Lovin Malta, Electricity and water cuts for people who rent horse stables or migrants to live in, Minister pledges, 24 September 2022, available at: <https://bit.ly/3mu5oje>

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.

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.³¹⁴ 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.³¹⁵

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 further 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

³¹⁴ Information provided by JRS Malta, 2020.

³¹⁵ 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>.

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.³¹⁶ 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.

Asylum seekers arriving irregularly by boat are automatically *de facto* detained under health grounds, until medically cleared by health authorities. In terms of the law, the Government considers this situation not to amount to detention but to a restriction on the freedom of movement necessary to safeguard public health (See [Detention](#)).

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ³¹⁷	7
2. Total number of places in the reception centres:	around 2,638 + 500 ³¹⁸
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. However, even the two centres run by NGOs 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
 - Section C: single female adults
- ❖ Hangar Open Centre
 - Section A: single male adults,
 - Section B: families and single female 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.
- ❖ 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
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³¹⁶ Regulation 13 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³¹⁷ Both permanent and for first arrivals.

³¹⁸ A 500 beds emergency shelter was completed in the 1st quarter of 2021.

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

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.³¹⁹

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 three sections, with the larger part dedicated to adult men and the smaller separate sections reserved for single women and 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.

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.

³¹⁹ Information provided by AWAS, February 2022.

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? 6 months
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No³²⁰

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.

Around 200 AWAS staff are currently working in several reception centres, which represents a significant increase compared to past years.³²¹

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 Advice Unit in order to provide information to residents. EUAA indicated to be supporting this initiative by providing information material and interpreters.³²² 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.

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 2020,³²³ by increasing its capacity and setting up a quality assurance department, introducing Internet access in all AWAS centres, and initiating two pilot community projects.³²⁴ In 2021, actors working on the field confirmed that internet access is available in all centres, through residents complain that in some of them access points are inconveniently placed.

³²⁰ This reply refers to accommodation in open reception centres, as unaccompanied children are detained with adults for a period of time.

³²¹ Information provided by AWAS, January 2021.

³²² Information provided by EUAA, September 2021.

³²³ FRA, Migration: key fundamental rights concerns, Quarterly bulletin, 2020, available at: <https://bit.ly/3tIH6jt>.

³²⁴ Ibid.

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.³²⁵ 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.³²⁶ 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. No major changes to this situation were seen in 2022.

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.³²⁷ 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. 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.

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.³²⁸

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
- EUAA Module - Reception for Vulnerable Persons: 13 individuals

³²⁵ Information provided by JRS social workers who visit reception centres on a regular basis, 2020.

³²⁶ Information provided by JRS Malta 2021.

³²⁷ 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>.

³²⁸ Commissioner’s report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3lnhWhS>.

- EUAA Module - Management in Reception: 1 Unit Leader and 8 coordinators
- EUAA Module - Trafficking of Human Beings: 33 reception staff (social Workers, therapeutic services unit and migrant advice unit staff)
- EUAA Thematic Session - Sexual Orientation & Gender Identity: 7 reception staff
- EUAA Thematic Session - Torture & Other Cruel, Inhumane or Degrading Treatment or Punishment: 33 reception staff.

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
 ❖
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.

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 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.³²⁹

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.

³²⁹ Malta Refugee Council, A New Policy to Drive People Into Poverty and Marginalisation, 11 June 2021, available at: <https://bit.ly/3KkYC6y>.

The 2021 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.

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.

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.³³⁰

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.³³¹ Furthermore, applicants are not permitted to obtain a driving licence.

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 several AMIF projects targeting asylum-seekers and protection beneficiaries and focusing on language training and job placement. Organisations such as Integra Foundation, KOPIN or Hal Far Outreach try to offer support with CV Writing and Job Search support.³³² JRS also organised an empowerment workshop in 2020, specifically looking at skills for employability. The Migrant Advice Unit (MAU) at AWAS assists residents with updating a CV and looking for work and JRS also offers this service.

A report published in December 2021 by JRS and aditus foundation entitled "In Pursuit of Livelihood: An in-depth investigation of asylum-seekers' battle against poverty and social exclusion in Malta" investigated the phenomenon of poverty among asylum seekers in an in-depth manner, with a focus on exploring the causes and maintaining factors of asylum seekers' livelihood difficulties. The report draws on data collected by interviewing the head of household on income and health indicators, deprivation and dwelling conditions from 116 households.

In relation to employment, the report comments on the challenges faced by migrants in securing regular and stable employment. The research participants underlined the jobs available to them, being generally low-skilled jobs in the construction or services industries, were often unsafe, strenuous, and seasonal. They also flagged how these sectors tend to treat employees as disposable workers rather than part of a regular workforce. For asylum-seekers, the system granting employment licences in employers' names limited employment opportunities to those employers willing to undergo the documentation procedure, and in all cases created situations dependency that often gave rise to risks of exploitation and abuse.

³³⁰ 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>.

³³¹ Ibid.

³³² See Hal Far Outreach, available at: <https://bit.ly/3cadCFp>.

The report further highlights how, due to these structural issues, most migrants preferred seeking irregular employment as it secured quick payment and side-stepped administrative obstacles relating to status and documentation.

It concluded that “The combined impact of a steep rise in cost of living, including an exponential surge in rent prices, on one hand, and stagnant wages on another, emerged clearly as one of the main factors. Another significant factor appears to be the reality that most asylum seekers, due to a mix of poor English or Maltese, basic levels of education, racial discrimination and low transferability of job-related skills and competencies, are restricted to a very limited section of the employment market. At best, participants could aim for jobs slightly above the minimum wage, with no or little chances of progression. In this regard, in Malta’s current economic climate, the best they can aim for may still not be enough to lift them out of poverty, especially if they need to support a family. Furthermore, limited access to financial services appears to act as another barrier towards financial stability for this population”.³³³

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Article 13(2) of the International Protection 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”.³³⁴ 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.

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 present with their families 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.³³⁵

Access to education for unaccompanied children is a longstanding issue, with major delays to scholarise the minors due to various administrative obstacles, in particular delays in issuing a care order and appointing a legal guardian to the minor (see [Legal Representation of Unaccompanied Minors](#)).

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

³³³ JRS and aditus foundation, In Pursuit of Livelihood: An in-depth investigation of asylum-seekers’ battle against poverty and social exclusion in Malta, December 2021, available at <https://bit.ly/3ZCiicS>

³³⁴ Regulation 9(2) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³³⁵ Neil Falzon, Maria Pisani and Alba Cauchi, *Research Report: Integration in Education of Third Country Nationals*, aditus foundation, 2012, available at: <http://bit.ly/1Kue6M>.

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, 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 societal orientation as part of an integration process, generally targeting applicants of long-term residence but open to anyone. It is open to all persons of migrant background, meaning asylum-seekers are able to benefit from it. The courses continue to run.

In 2020, JRS offered two trainings courses on Gender Based Violence prevention and protection in collaboration with Migrant Women Association Malta,³³⁶ to women living in Hal Far Open Centre.³³⁷ JRS repeated the programme with a group of women in HFO in 2021 and 2022.

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.³³⁸

Asylum seekers outside of detention centres may access the state health services, with the main obstacles being linked to language difficulties. However, institutional obstacles also prevent effective access to the mainstream health services when required, including in cases of emergencies.

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 who wished to be vaccinated could drop-in at the University of Malta without any need to pre-

³³⁶ See Migrant Women Association Malta, available at: <https://bit.ly/3tCaqlq>.

³³⁷ Info provided by JRS Malta 2021.

³³⁸ Regulation 11(2) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

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. 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 faced 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”.³³⁹

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”.³⁴⁰

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

Specific measures provided by law for vulnerable persons are as follows: the maintenance of family unity where possible;³⁴¹ and particular, yet undefined, attention to ensure that material reception conditions are such to ensure an adequate standard of living.³⁴²

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. Despite some positive improvements in 2022, delays and oversights in the identification procedure remain regular with a system barely able to cope even with the decrease in arrivals (see [Identification](#)).

In practice, nearly all applicants are de facto detained under health grounds, including unaccompanied minors and other manifestly vulnerable persons. Furthermore, applicants coming from countries where removals take place are likely to be detained under the Reception Regulations once they are medically cleared, this includes persons claiming to be minors and other vulnerable individuals (See [Detention of vulnerable applicants](#)).

³³⁹ Regulation 14 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁴⁰ Regulation 14 (b) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁴¹ Regulation 7 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁴² Regulation 11(2) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

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).

In Malta in 2022, EUAA personnel identified 273 persons presenting vulnerability indicators through vulnerability assessment for residents of reception facilities.³⁴³

The psychologists working in the therapeutic unit at AWAS provide psychosocial support to applicants following a referral from the Assessment Team. The support provided includes regular sessions and referral to psychiatric care if required. The psychologist will draft a report which can be requested by the applicant’s lawyer. However, delays in receiving the report oftentimes precludes lawyers from raising the vulnerability of their client before the competent authorities and appeal bodies (see [Identification](#)).

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.

Despite recent improvements in the guardianship system, with the appointment of a social worker from AWAS to each minor after a care order is issued, the system appears to struggle to cope due to limited staff capacities and various administrative obstacles. The qualifications of the social workers of this unit is reported to be adequate, however it appears that each social worker is in charge of a substantial number of minors and therefore unable to provide specific and targeted care to them. As a consequence some minors are at risk of being neglected, be more vulnerable to exploitation and trafficking. Unfortunately, a significant number of minors eventually go missing, in the relative indifference from the competent authorities.

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.³⁴⁴

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 EUAA’s support) but also education, employment, health, and housing. Some leaflets are distributed, and some info sessions were organised early in the year. However, these activities were discontinued due to COVID-19³⁴⁵ and resumed in 2022.

³⁴³ Information provided by the EUAA, 28 February 2023.

³⁴⁴ Regulation 4 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁴⁵ Information provided by JRS Malta 2021.

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. The Migrant's Advice Unit (MAU) has an office in each centre and someone from AWAS is present on site on a daily basis.

The MAU is staffed with welfare officers who provide information on employment, housing, education and health. The Unit reportedly gives group sessions on services and activities to assist with integration into the community. Each open centre has a member of the team operating as a focal point for referrals to other stakeholders. AWAS reported that a total of 2947 information sessions were delivered by Migrants Advice Unit in 2021.

NGOs welcomed this improvement and aditus foundation's lawyers met with the team in June 2022 to exchange on the needs of residents and answer questions from the MAU members. An informal referral system was put in place, where the MAU can call or send an email to aditus' lawyers to inquire about a more complex issue and refer the person appropriately.

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 only access work 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 (see [Access to labour market](#)).

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

3. Total number of asylum seekers detained in 2022: ³⁴⁶	415, excl. <i>de facto</i> detainees ³⁴⁷
4. Number of asylum seekers in detention at the end of 2022:	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 and currently includes *de facto* detention under health grounds in terms of the Prevention of Disease Ordinance³⁴⁸ and detention under the Reception Regulations.³⁴⁹

In 2018 Malta reintroduced automatic and mandatory detention, relying on public health legislation that does not, in fact, offer public authorities a legal basis to detain migrants or asylum-seekers.

Throughout 2022, All applicants arriving by boat were held for at least two weeks in the Hal Far Initial Reception Centre (HIRC), the so-called “China House”, on the basis of the above-mentioned Prevention of Disease Ordinance for several weeks, pending a medical clearance by the Public Health authorities. In terms of this Ordinance, the restriction of movement can be enforced for 4 weeks which can be extended to 10 weeks for the purpose of finalising such microbiological tests as may be necessary.³⁵⁰ The so-called “*Restriction of Movement Order*”, issued in terms of this legislation, is in fact a document briefly mentioning the reasons for and basis at law for the measure in a single paragraph with the immigration number of the applicant and the date of issuance at the top of it. No individual assessments were conducted prior to issuing this document, and it is issued to all arrivals by sea. Furthermore, it is only issued to arrivals by sea, and to no other person entering Malta.

The Government claims that detention under the Ordinance does not amount to a situation of deprivation of liberty but merely to a restriction on the freedom of movement of the applicant.³⁵¹ Nevertheless, all applicants reaching Malta by sea are systematically detained, either in the Hal Far Initial Reception Centre (‘China House’) or at the Marsa IRC, the former being a designated detention facility in national legislation.³⁵² In both situations, applicants are not permitted to exit the premises or to receive any visitors, including service-providers, save for medical emergencies. The CPT considers that this situation amounts to a situation of deprivation of liberty likely to be in violation of Article 5 ECHR³⁵³, a position also reflected by the Court of Magistrates of Malta, whose decisions repeatedly emphasized that this was unlawful detention, save for one controversial case decided in January 2022.³⁵⁴

Once applicants are “*medically cleared*”, the Public Health authorities inform the Principal Immigration Officer (PIO) who carry out an assessment as to whether grounds exist to detain in terms of the Reception Regulations³⁵⁵. The PIO invariably and systematically concludes that all applicants coming from countries

³⁴⁶ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³⁴⁷ 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.

³⁴⁸ Prevention of Disease Ordinance, Chapter 36 of the laws of Malta, 10 August 1908.

³⁴⁹ Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁵⁰ Article 13 of the Prevention of Disease Ordinance, Chapter 36 of the Laws of Malta.

³⁵¹ ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3SP3I4Y>

³⁵² Places of Detention Regulations, Subsidiary Legislation 217.03 of the Laws of Malta.

³⁵³ 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>.

³⁵⁴ Cases are not published online but several cases filed by aditus foundations are available at <https://bit.ly/3ybVXLx>

³⁵⁵ Regulation 6(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

where removals are regularly carried out should be detained under any (or all) of the grounds listed in the Reception Regulations, save for the one related to the Dublin Regulation. There have been reported cases of persons being released by the health authorities, yet nonetheless kept in detention.

2022 saw both the duration of detention under health grounds and under the Reception Regulations substantially decreasing and applicants were generally not detained beyond the prescribed limits. However this positive improvement is likely to be linked only to the decrease in arrivals, consequential to the increase in pushbacks or failures to intervene. Overall, the Government's reception policy remains unchanged and no particular change to the *modus operandi* has been observed.

The PIO claims that minors and other vulnerable applicants are not detained. However, since all applicants arriving irregularly are automatically detained in terms of the Prevention of Disease Ordinance without any form of assessment, vulnerable applicants and minors can be detained for weeks or months before an assessment is conducted.

Malta operates three official detention centres: Safi Barracks, (which include several blocks), Lyster (Hermes) Barracks, and the HIRC, commonly referred to as “*China House*”. The Lyster Barracks are closed for refurbishment since 2021 and the current progress of the renovations is unknown. The Detention Centres are managed by the Detention Services (DS), which is a governmental agency established and regulated by the Detention Services Regulations³⁵⁶ in accordance with the immigration Act.³⁵⁷

The Marsa Initial Reception Centre (MIRC) operated by AWAS 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 under the above-described public health legislation.

Despite some efforts to refurbish some blocks of Safi Detention Centre, detention conditions still have a carceral setting offering substandard living arrangements. Access to legal assistance remains a long standing issue, with no proper means of communication and restricted access to lawyers, NGOs and UNHCR. Interferences from the Ministry or the PIO are reported to be frequent and private and privileged information is reported to be freely shared between governmental entities.

In March 2021, the CPT published a report following its visit to Malta in September 2020.³⁵⁸ 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”. The CPT is set to visit Malta again in 2023.³⁵⁹

During her visit to Malta in October 2021, Council of Europe Commissioner for Human Rights 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

³⁵⁶ Detention Services Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

³⁵⁷ Article 34(3) of the Immigration Act, Chapter 217 of the Laws of Malta.

³⁵⁸ 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>.

³⁵⁹ See CoE Council of Europe anti-torture committee announced periodic visits to eight countries in 2023, at: <http://bit.ly/3kMx6Xk>

need to ensure independent monitoring of places of detention as well as unhindered access for NGOs to provide support and assistance to those detained.³⁶⁰

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 and urged the authorities to take immediate action to ensure dignified conditions for all those currently held there.³⁶¹ This was again underlined in her report published in January 2022.³⁶²

Access to effective remedies to challenge detention is reported to be limited to non-existent with serious concerns over the level of independence and impartiality enjoyed by the Immigration Appeals Board (IAB). State-sponsored legal assistance is provided only for the initial review of detention under the Reception Regulations before the IAB, and subsequent reviews are rarely carried out. Applicants entirely rely on NGOs to provide legal assistance to challenge their detention under the Prevention of Disease Ordinance.

In 2021, 838 migrants, that is all those who arrived by sea, were held under the Prevention of Disease Ordinance.³⁶³ In 2022, all sea arrivals were held under the Prevention of Disease Ordinance. 124 applicants (all adults) were issued with Detention Orders in terms of the Reception Regulations, with the top 5 countries of origin of which nationals were issued such an Order being Egypt (48), Morocco (21), Bangladesh (18), Ghana (11) and Ivory Coast (11). In the first 6 months of 2022, the immigration authorities issued Detention Orders to 65 applicants: Bangladeshis (20), Egyptians (18), Nigerians (11), Ivorians (6).³⁶⁴

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained:
❖ on the territory: ☒ Yes ☐ No
❖ at the border: ☐ Yes ☒ No
2. Are asylum seekers detained in practice during the Dublin procedure?
☒ Frequently ☐ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice?
☒ Frequently ☐ Rarely ☐ Never

Detention of asylum seekers is regulated by national law and currently includes *de facto* detention under health grounds in terms of the Prevention of Disease Ordinance³⁶⁵ and detention under the Reception Regulations³⁶⁶ which transpose the recast Reception Conditions Directive.

Persons found to be entering Malta irregularly, via the airport are detained at the airport's holding space pending their immediate return. If they express an intention to seek asylum, they are referred to the IPA and no longer detained.

³⁶⁰ 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>.

³⁶¹ Ibid.

³⁶² Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3lnhWhS>.

³⁶³ Information provided by the Infectious Disease Prevention and Control Unit, January 2022.

³⁶⁴ Information provided by the Malta Police Force by way of reply to a Freedom of Information request, FOI Request Reference 274220413144.

³⁶⁵ Prevention of Disease Ordinance, Chapter 36 of the laws of Malta.

³⁶⁶ Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

Detention under the Prevention of Disease Ordinance

Article 13 of the Prevention of Disease Ordinance³⁶⁷ provides that 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”.

No form of assessment is conducted, and the so-called “*Restriction of Movement Order*” issued to applicants is a template document which lacks any individualised information and does not provide for any remedies by which applicants could challenge the lawfulness and length of their continuing detention under the Ordinance. According to the Government, this situation does not amount to a situation of detention but merely to a restriction on the freedom of movement. However, the CPT and the Court of Magistrates of Malta confirmed that this qualifies as a situation of deprivation of liberty in the sense of Article 5 ECHR.³⁶⁸

In *Frank Kouadioané v. the Detention Services*,³⁶⁹ decided on 29 October 2020, the Court of Magistrates went as far as to state that it is extremely worrying that, although there is a significant number of illegally detained asylum applicants in Malta, only seven similar requests for release have been lodged before the court over the last year, and that in a democratic society based on the rule of law, persons such as the present applicant remain illegally detained without a legal basis.

The Prevention of Disease Ordinance does not empower the Superintendent of Public Health to detain individuals. The wording of the law is clear and unambiguous: the Superintendent, being a public officer, is not authorised to detain a person but merely to restrict his/her movements, which is in essence what Article 13 of the Ordinance states. This is confirmed by other Articles contained in the Public Health Act and the Ordinance: all rest the decision to detain persons in order to protect public health on the authority of the Courts.³⁷⁰ Various sources, including the CPT, confirm that the Ordinance has been consistently and exclusively applied to asylum-seekers reaching Malta by sea which suggests that the Ordinance has been relied upon as a tool of migration management rather than an instrument to protect public health, in breach of Article 5 ECHR.

NGOs emphasized that the suspicion that a disease may be spread is not a valid ground for detaining asylum-seekers under international, EU and national law. They further noted that the place of detention in no way conforms to the intended purpose of a public health regime and that the government has not provided any evidence that the health authorities explored less severe alternatives in order to protect public health. They further observed that no effective legal remedy is available to challenge the Restriction of Movement Order and that applicants do not have access to legal assistance.

In its report published in March 2021, the CPT called on the Maltese authorities to urgently review the legal basis for detention on public health grounds as its current application “*may well amount to hundreds of migrants being de facto deprived of their liberty on unlawful grounds*”. The CPT noted that over 90% of the persons held in detention were detained on public health grounds and that this was the case despite the fact that the Maltese courts had declared this form of detention unlawful on account of, inter alia, the

³⁶⁷ Prevention of Disease Ordinance, Chapter 36 of the Laws of Malta.

³⁶⁸ 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>.

³⁶⁹ Court of Magistrates of Malta, *Frank Kouadioané (Ivory Coast) v Detention Services*, 29 October 2020 available at: <https://bit.ly/3Jckpii>

³⁷⁰ Article 29 (3) of the Public Health Act, Chapter 465 of the Laws of Malta; Articles 25 and 26 of the Prevention of Disease Ordinance, Chapter 36 of the Laws of Malta.

vagueness of the legislation relied on by the authorities, the lack of assessment of the concerned persons' specific situations and of individualised detention orders issued to them, and the lack of clear remedies.³⁷¹

The UNHCR condemned this 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.³⁷²

The Superintendent of Public Health confirmed that all asylum seekers who arrived by boat to Malta in the past years were issued the Restriction of Movement Order in terms of the Ordinance.

In *A.D. v. Malta* filed in February 2022, the applicant complains about the lawfulness and arbitrariness, as well as about the dismal conditions, of his different periods of detention under both the Prevention of Disease Ordinance and the Reception Regulations, and claims that he had no effective remedies in this respect. The applicant arrived in Malta in November 2021 and claimed to be a minor upon arrival, he was later diagnosed with Tuberculosis. He was detained for 16 days under the Period of Quarantine Order and 62 days under the Prevention of Disease Ordinance, the Court of Magistrates of Malta confirmed his detention under the Prevention of Disease Ordinance. The case was communicated on 24 May 2022 and is still pending.³⁷³

In *Ayoubah Fona vs. L-Avukat tal-Istat* filed on 12 July 2022 before the Civil Court of Malta (First Hall), the applicant complains of his conditions of detention and the unlawfulness of his detention under the Prevention of Disease Ordinance. The minor applicant arrived in Malta in November 2021 and remained in detention for 58 days, with a substantial amount of time spent with adults in the HIRC, the so-called “China House”.³⁷⁴

Detention under the Reception Regulations

According to the Reception Regulations,³⁷⁵ the Principal Immigration Officer may order the detention of an applicant for the same grounds foreseen in the Reception Conditions Directive, namely:

1. In order to determine or verify his or her identity or nationality;
2. 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;
3. 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;
4. 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 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.

In *Rana Ghulam Akbar*,³⁷⁶ the Court of Magistrates of Malta examined Regulation 6(1)(b) in an application filed in terms of Article 409A of the Criminal Code (Habeas Corpus). It assessed that, since “the guiding principles are that detention is only a measure of last resort and that less coercive measures should

³⁷¹ 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, para. 34, 47-50, available at: <https://bit.ly/3mPtelf>.

³⁷² The Times of Malta, ‘1400 migrants detained illegally at Marsa and Safi - UNHCR’, January 2020, available at: <https://bit.ly/2JbWIXp>.

³⁷³ ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3IRZr6R>

³⁷⁴ Civil Court (First Hall), *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022.

³⁷⁵ Regulation 6 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta

³⁷⁶ Court of Magistrates of Malta, *Rana Ghulam Akbar v Kummissarju tal-Pulizija*, 26 February 2018.

always be sought before going for detention”, and concluded that his detention was in breach of Maltese law, as the “declaration that the applicant’s “risk of absconding” is one that is not sustainable within the strict parameters of Regulation 6(1)(b)”. The Court ordered the applicant’s immediate release from detention.

In *Jovica Kolakovic v. Avukat Generali*, the Constitutional Court of Malta 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.”³⁷⁷

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.³⁷⁸ After a period of nine months, any person detained, if they are still an applicant for international protection, shall be released.³⁷⁹

Legal Notice 487 of 2021 amended the Reception Regulations and introduced the requirement to carry out an individual assessment and only order detention if it proves necessary and if other less coercive measures cannot be applied effectively.³⁸⁰ It also introduced a provision which states that administrative procedures relevant to the grounds for detention set out in the Regulations shall be executed with due diligence.

However, no change was observed and the PIO still automatically detains all applicants from countries of origin where returns are feasible (Bangladesh, Egypt, Morocco, Ghana, Ivory Coast, Nigeria, Lebanon), including applicants who claim to be minors.³⁸¹ NGOs reported that this practice has been confirmed by several immigration inspectors during hearings held before the Immigration Appeals Board whereby it was declared that the PIO would proceed to the release of the detained applicant since it transpired that he was not from one of these countries.

It was reported by NGOS that applicants are not always provided with a copy of their Detention Order, which is moreover only available in English. The information provided by the PIO is reported to be very limited and aimed at obtaining consent for voluntary returns rather than inform applicants of their rights.

NGOs reported that the PIO does not always use the services of interpreters to deliver information to detainees and would often use detainees who have some knowledge of English as interpreters. This was confirmed during proceedings before the Immigration Appeals Board. NGOs further reported that several detainees complained that representatives of the PIO and the Returns Unit of the Ministry for Home Affairs attempted to coerce them into signing voluntary returns, telling them that they would remain in detention for 2 years if they dared apply for asylum.

³⁷⁷ QORTI KOSTITUZZJONALI, *Jovica Kolakovic v. Avukat Generali*, 26/2010/1, 14 February 2011.

³⁷⁸ Regulation 6(3) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁷⁹ Regulation 6(7) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁸⁰ Regulation 6 (1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁸¹ See IAB, Div. II, *R.M. (Bangladesh) v. The PIO*, (DO/35/2022), 24 March 2022, available at <http://bit.ly/3V5vPHU>; IAB, Div. II, *F.B. (Ghana) v. The PIO* (DO/2021), 4 October 2021 available at <http://bit.ly/3gzB83w>; IAB, Div. II, *W.K.A. (Ghana) vs. The PIO* (DO/2021), 4 October 2021, available at <http://bit.ly/3gzB83w>; IAB, Div. II., *R.M. (Bangladesh) v. The PIO* (DO/35/2022), 24 March 2022, available at <http://bit.ly/3V5vPHU>; aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 January 2022, available at <http://bit.ly/3j3aVeM>

Information about the asylum procedure is provided by the EUAA and IPA, but only during the registration of asylum applications, often several weeks after arrival (see [Information on the procedure](#)). Access to NGOs which provide information on the detention procedure remains severely limited (see [Access to detention](#)). UNHCR visits the detention centres to also provide information, but in 2022 these visits were limited due to staffing limitations. Throughout the year, the Agency was able to engage with approximately 91 persons for information counselling sessions.

While data was not provided by the PIO, NGOs could confirm that it issued around 220 Detention Orders in 2022.

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. No data was provided by the PIO in 2022 but NGOs reported that at least 220 Detention Orders were issued in 2022. Most of the Detention Orders were taken on the two first grounds foreseen by the Reception Regulations.³⁸²

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.³⁸³

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.³⁸⁴ 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.³⁸⁵

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.³⁸⁶ The wording of the legislation 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.

Practice shows most asylum seekers released from detention are imposed “*alternatives to detention*” arrangements, even though there was never any ground to detain them in the first place. They are usually provided with a document in English stating the obligations and the grounds at law for ordering the alternatives to detention. According to this document, the alternatives to detention can be imposed for a

³⁸² Information provided by the Immigration office of the Malta Police Force, January 2022.

³⁸³ ECRE, Malta Charges Five Rescued Migrants with ‘Terrorist Activities’ while Facts Remain Unclear, 5 April 2019, available at: <https://bit.ly/33HDTVD>.

³⁸⁴ Strategy Document, November 2015, 26.

³⁸⁵ Regulation 6(8) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁸⁶ 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>.

maximum period of 9 months. This means that in practice asylum seekers could be detained for the maximum period of 9 months prescribed in the law and then issued with alternatives to detention for 9 more months. It is unclear whether legal challenges on the nature and duration of alternatives to detention actually exist in law or in practice.

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.³⁸⁷

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 often face difficulties in retrieving their possessions that are confiscated by the Immigration Police following their arrival. These possessions may 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

The law prohibits the detention of vulnerable applicants. The Reception Regulations provide 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”.³⁸⁸ However, in practice, detention of vulnerable persons continues.

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 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”.³⁸⁹ In practice, the PIO will detain those minors who come from countries where returns are being carried out and release the others with no other form of assessment.

³⁸⁷ Information provided by Immigration Office of Malta Police Force, January 2022.

³⁸⁸ Regulation 14(3) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

³⁸⁹ Regulation 14(1) (b) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta

NGOs reported that unaccompanied minors are detained pending age assessments. 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”. 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.³⁹⁰ These practices continued throughout 2021, as the CoE Commissioner for Human Rights noted in October 2021.³⁹¹ The UNHCR also reiterated concerns in February 2021, stating that “children are (still) being held in closed centres”.³⁹²

In early 2022 a specific area in Safi Barracks was designated as a space for detaining children pending their age assessments. No information is available on the layout of this space or on activities/services organised therein (if at all), as access to UNHCR and NGOs is prohibited.

In *Ali Camarra* filed in January 2022, five children were released following an *Habeas Corpus* application before the Court of Magistrates of Malta in terms of Article 409A of the Criminal Code. They had been detained with adults for approximately 58 days and three of them were confirmed as minors by AWAS the day before the hearing, 57 days after their arrival.³⁹³

In *A.D. v. Malta* filed in February 2022, the applicant complains about the lawfulness and arbitrariness, as well as about the dismal conditions, of his different periods of detention under both the Prevention of Disease Ordinance and the Reception Regulations, and claims that he had no effective remedies in this respect. The applicant arrived in Malta in November 2021 and claimed to be a minor upon arrival, he was later diagnosed with Tuberculosis. He was detained for 16 days under the Period of Quarantine Order and 62 days under the Prevention of Disease Ordinance, the Court of Magistrates of Malta confirmed his detention under the Prevention of Disease Ordinance. He was then issued a Detention Order and remained in Detention in complete isolation in a container in the Safi Detention Centre for 147 days, the Division II of the Immigration Appeals Board confirmed his detention on two occasions and rejected his age assessment appeal. The case was communicated on 24 May 2022 and is still pending.³⁹⁴

In *Ayoubah Fona vs. L-Avukat tal-Istat* filed on 12 July 2022 before the Civil Court of Malta (First Hall), the applicant complains of his conditions of detention and the unlawfulness of his detention under the Prevention of Disease Ordinance. The minor applicant arrived in November 2021 and remained in detention for 58 days, with a substantial amount of time spent with adults in the HIRC, the so-called “China House”.³⁹⁵

In *J.B. and Others v. Malta* filed in February 2023, the six minors applicants complain that they have been detained with adults in the so-called China House since their arrival on 18 November 2022. AWAS was not aware of their existence before they were referred by aditus foundation in January 2023 despite a decision of the Immigration Appeals Board, dated 6 December 2022, confirming the detention of the

³⁹⁰ 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>.

³⁹¹ 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>.

³⁹² The Times of Malta, *Migrant detention numbers shrink, fears about child detainees remain*, 7 February 2021, available at: <https://bit.ly/3cP8Mwj>.

³⁹³ aditus foundation, *Three Children Released from Illegal Detention Following Court Action*, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

³⁹⁴ ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3SO2uBJ>

³⁹⁵ *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022.

minors but ordering the PIO to refer these applicants to AWAS³⁹⁶. On 12 January 2023, the ECtHR issued an interim measure ordering Malta to ensure that the six applicants are provided “with conditions that are compatible with Article 3 of the Convention and with their status as unaccompanied minors”. The case is still pending at the time of writing, The applicants complain of their detention conditions, their age assessment procedure and the unlawfulness of their detention under both the Prevention of Disease Ordinance and the the Reception Regulations.³⁹⁷

The Immigration Appeals Board has ordered the released of several minor applicants pending their age assessment procedure,³⁹⁸ however, this should not be interpreted as a set case law since the Board regularly confirms the detention of minor applicants (see [Judicial review of detention](#)).

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? | On average, around 7 months |

The Reception Regulations specify a time limit for the detention of asylum seekers, which is limited to nine months. According to the 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”.³⁹⁹

The PIO indicated that the average duration of detention for asylum-seekers was 65 days in 2021.⁴⁰⁰ This only takes into account individuals issued with a Detention Order. As such, people detained under the public health legislation are not accounted for by the PIO. Applicants detained under the Prevention of Disease Ordinance used to remain in detention for several months even though they have been medically cleared. 2022 saw some positive improvements with a reduced period spent under the Ordinance, lasting on 2 to 3 weeks on average.

The duration of detention under health grounds and under the Reception Regulations has substantially decreased and applicants are generally no longer detained beyond the prescribed limits. However this positive improvement is likely to be linked only to the decrease in arrivals, consequential to the increase in pushbacks and refusals to intervene.

³⁹⁶ Aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 January 2022, available at <http://bit.ly/3j3aVeM>

³⁹⁷ ECtHR, *J.B. and Others v. Malta*, no. 1766/23.

³⁹⁸ See IAB, Div. II, R.M. (Bangladesh) v. The PIO, (DO/35/2022), 24 March 2022, available at <http://bit.ly/3V5vPHU>; IAB, Div. II, F.B. (Ghana) v. The PIO (DO/2021), 4 October 2021 available at <http://bit.ly/3gzB83w>; IAB, Div. II, W.K.A. (Ghana) vs. The PIO (DO/2021), 4 October 2021, available at <http://bit.ly/3gzB83w>; IAB, Div. II., R.M. (Bangladesh) v. The PIO (DO/35/2022), 24 March 2022, available at <http://bit.ly/3V5vPHU>;

³⁹⁹ Regulation 6(7) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta

⁴⁰⁰ Information provided by the Immigration Office of the Malta Police Force, February 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

The Places of Detention Regulations⁴⁰¹ provide for a list of the places to be used for the purpose of immigration detention by way of a Schedule, which can be amended on the decision of the Minister for Home Affairs.⁴⁰² In practice, the current list has not been amended since 2002 and includes, among a few others, the lock-up at the Police Headquarters at Floriana, the approved place of police custody at the Malta International Airport, the approved place of police custody at the Seaport of Valletta, the Lyster Barracks, the Hal Far Immigration Reception Centre (HIRC) and the Safi Barracks.

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. 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, 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.
- ❖ The Hal Far Initial Reception Centre (HIRC), commonly referred to as "*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.

Safi Detention Centre and the temporarily closed Hermes Block (Lyster Barracks) are detention facilities run by the Detention Services, located on operational bases of the Armed Forces of Malta (AFM), nearby the International Airport. The HIRC or "*China House*" is an additional detention facility run by the Detention Services. 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 House supposedly had a capacity of approximately 350 people in 2020.⁴⁰³

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

⁴⁰¹ Schedule (Article 2) of the Places of Detention Regulations, Subsidiary Legislation 217.03 of the Laws of Malta.

⁴⁰² Article 34 (1) of the Immigration Act, Chapter 217 of the Laws of Malta.

⁴⁰³ 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>.

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-19.⁴⁰⁴

According to NGOs, the Marsa IRC is still used as detention facilities for families and children pending their medical clearance under the Prevention of Disease Ordinance. They also reported that asylum seekers who arrive regularly by plane and are not from countries of origin where removals are feasible would also be detained pending the medical clearance. Considering the very low number of arrivals of families and young children, the detention is likely to last a couple of days only.

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. Legal Framework

The policy document published at the end of 2015⁴⁰⁵ following the transposition of the Reception Regulations 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 for interviews with the IPA and NGOs, facilities for leisure, and the delivery of education programmes as well as a place of worship.

According to the Reception Regulations,⁴⁰⁶ 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 detention centres are managed by the Detention Service (DS), a government body which falls under the Ministry for Home Affairs. 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.⁴⁰⁷ The DS is made up of personnel seconded from the armed forces and civilians specifically recruited for the purpose. 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.

According to publicly available sources, prospective applicants must satisfy the following (exhaustive) list of criteria to be hired as a detention officer; be able to communicate in the Maltese and English languages;

⁴⁰⁴ Ibid.

⁴⁰⁵ Ministry for Home Affairs and National Security, Strategy for the Reception of Asylum Seekers and Irregular Immigrants, 2015, available at <https://goo.gl/FFz7qJ>

⁴⁰⁶ Regulation 6A of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

⁴⁰⁷ For more information see Ministry for Home Affairs, *Detention services*, available at: <http://bit.ly/1M7HMkS>.

be in possession of at least a Secondary School Leaving Certificate or comparable, preferably with passes in Maltese and English; be in possession of a clean driving license in categories B; be declared physically and mentally fit following examination.⁴⁰⁸

The Detention Services Regulations of 2016 provide the necessary framework for adequate receptions conditions to asylum seekers and migrants detained under the Receptions Regulations or the Immigration Act. Part II of the Regulations provide for rules of conduct for Detention Services officers, Part III concerns the rights of detained persons, Part IV establishes rules on maintenance of security and safety and in particular rules concerning the confinement of a detained persons for safety reasons, medical reasons or due to a violent behaviour, Part V regulates access to the detention centres and Part VI the discharge of detainees.

According to the Regulations, the “purpose of the detention centres shall be to provide for the secure but humane accommodation of detained persons in a regime allowing as much freedom as possible, consistent with maintaining a safe and secure environment.”⁴⁰⁹ Accordingly, female detained persons shall be provided with sleeping accommodation separate from male detained persons.⁴¹⁰

The Regulations provide that every detainee must be provided with a document (known as the "compact") setting out certain rights to be enjoyed and responsibilities to be undertaken by detained persons during their stay at the detention centres in a language they understand, and a copy of the regulations must be made available to any detained person who requires it.⁴¹¹

The Regulations provide that a personal record for each detained person shall be prepared and maintained⁴¹² and the Head Detention Services must provide a detained person enquiring on his case, with an update on the progress of any relevant matter relating to him as follows when this is made available, this includes asylum applications and applications made under the Immigration Act and any judicial proceedings pending before the Immigration Appeals Board or the Maltese Courts.⁴¹³

Detained persons are entitled to retain all their personal property, other than cash, for their own use at the detention centre save where such retention is contrary to the interests of safety or security or is incompatible with the storage facilities provided at the centre.⁴¹⁴ Furthermore, detained persons may wear clothing of their own insofar as it is suitable and clean and are permitted to arrange for the supply of sufficient clean clothing to them from outside the detention centre. Where necessary, all detained persons shall be provided with clothing adequate for warmth and to ensure the detained persons' health in accordance with arrangements approved by the Minister. Non-governmental organisations shall be permitted to distribute clothing to all detained persons in accordance with arrangements approved by the Head Detention Services. Facilities for the washing and drying of items of clothing shall be provided.⁴¹⁵

With respect to the food provided to detainees, the Regulations provide that the food must be “wholesome, nutritious, well prepared and served, reasonably varied, sufficient in quantity” and insofar as possible “meet all religious, dietary, cultural and medical needs. The officer in charge of a centre must furthermore inspect the food at regular intervals and must report any deficiency or defect to the Head Detention Services.”⁴¹⁶

⁴⁰⁸ See <https://bit.ly/3Zl7Vuc>

⁴⁰⁹ Regulation 10 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹⁰ Regulation 17 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹¹ Regulation 11 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹² Regulation 12 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹³ Regulation 16 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹⁴ Regulation 13 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹⁵ Regulation 19 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

⁴¹⁶ Regulation 20 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

The Regulations provide that accommodation must have adequate lighting, heating, ventilation and fittings adequate for health. Every detained person shall have proper regard for personal hygiene, including toilet articles, separate facilities for females and males, access to facilities to shave and have their hair cut.⁴¹⁷

All detained persons must be provided with recreational, educational, and physical activities and a library should be provided in every centre. Detainees must be allowed at least 1 hour in the open air every day. Moreover, the practice of religion in detention centres shall take account of the diverse cultural and religious background of detained persons.⁴¹⁸

All detained persons shall have access to public telephones at the detention centres.⁴¹⁹

Regarding healthcare, the Regulations provide that every detained person must be given a medical examination by the medical officer or another registered medical practitioner as soon as possible after his admission to the detention centre. Furthermore, the medical officer must report to the officer in charge on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention, especially in case of suicidal thoughts. The medical officer shall pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements including counselling arrangements which appear necessary for his supervision or care. The Head Detention Services must render a monthly report to the Minister on any incidents arising.⁴²⁰

2.2. Overall living conditions

Despite the commitments made in the 2015 Strategy Document and the Detention Regulations, the Maltese detention centres have time and time again been reported to offer substandard living conditions likely to amount to inhuman and degrading treatment contrary to Article 3 ECHR.

NGOs lost access to the living quarters in 2020 and are now only able to visit detainees in a Boardroom on the margin of the Safi Detention Centre. They are therefore unable to provide accurate and detailed information regarding detention conditions. The UNHCR, which reported still having access to the living quarters, has not provided any comprehensive update on the current situation, remaining largely silent despite the concerns expressed by NGOs and applicants. Requests for information to the Head of the Detention Services have consistently been ignored.

The Monitoring Board for Detained Persons is currently the only entity monitoring detention conditions. It is established by the Monitoring Board for Detained Persons Regulations⁴²¹ and falls under the Ministry for Home Affairs. The Board is composed of a Chairman, a minimum of two and a maximum of four members, including the secretary appointed by the Minister for Home Affairs. According to the Regulations, the Board reports and monitors on conditions of detention. It is also empowered to investigate complaints from detainees and decide on such complaint. Its opinions are not binding to the Head of the Detention Services. There is limited information on the activity of the Board, which rarely engages with NGOs and detainees and has no published any recent report.

The last report published in 2019 highlights several shortcomings in the reception system, including the lack of leisure activities in the detention centre, the lack of information provided to detainees, the lack of staff and their lack of training, the quality of the food provided, the absence of any leisure room or prayer room, lack of access to the outside world including lack of access to mobile phones, lack of access to

⁴¹⁷ Regulations 22 and 23 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴¹⁸ Regulations 24, 25 and 27 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴¹⁹ Regulation 34 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴²⁰ Regulations 38 and 39 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta

⁴²¹ Monitoring Board for Detained Persons Regulations, Subsidiary Legislation 217.08 of the Laws of Malta

mental health support staff in the premises and a the need to refurbish the blocks of the centre.⁴²² The Board's reports for 2020, 2021 and 2021 have not been made public by the Home Affairs Ministry.

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".⁴²³ The newspaper also highlighted that concerns about 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.⁴²⁴

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. 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".⁴²⁵

The Malta Chamber of Psychologists reacted also on the detention condition in September 2020 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".⁴²⁶

An OHCHR report covering the period from January 2019 to December 2020, published in May 2021 underlines the failure 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."⁴²⁷

In *Feilazoo v. Malta*, decided in March 2021,⁴²⁸ the ECtHR found violations of articles 3, 5(1), and 34 ECHR in the case of a Nigerian national placed in immigration detention pending deportation for fourteen months. 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.

⁴²² Annual Report of the Monitoring Board for Detained Persons, 2019, available at <https://bit.ly/3Ymu9e6>

⁴²³ The Times of Malta, 'Watch: Migrants in covert video beg to be sent back home', 6 September 2020, available at: <https://bit.ly/3f4ebSJ>.

⁴²⁴ The Times of Malta, 'Watch: Migrants in covert video beg to be sent back home', 6 September 2020, available at: <https://bit.ly/3f4ebSJ>.

⁴²⁵ Times of Malta, 'UN slams "shocking" conditions for migrants in Malta', 2 October 2020, available at: <https://bit.ly/3cZeRGj>.

⁴²⁶ Times of Malta, 'Human rights cannot be ignored, Chamber of Psychologists insists', 10 September 2020, available at: <https://bit.ly/3si3i3O>.

⁴²⁷ OHCHR, Report: A call to safeguard migrants in central Mediterranean Sea, 25 May 2021, available at: <https://bit.ly/3KvOEPA>.

⁴²⁸ ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, Judgment 11 March 2021.

The most recent report publicly available remains the CPT report published in March 2021 following its visit to Malta in September 2020. The CPT reported a catastrophic situation, it found an immigration system that was “struggling to cope: a system that purely “contained” migrants who had essentially been forgotten, within poor conditions of detention and regimes which verged on institutional mass neglect by the authorities.” The CPT urged the Maltese authorities to “change their approach towards immigration detention and to ensure that migrants deprived of their liberty are treated with both dignity and humanity.”⁴²⁹

In January 2022, the Government of Malta provided the Committee of Ministers of the Council of Europe with information on initiatives taken within the framework of the execution of the judgement of *Feilazoo v. Malta*.⁴³⁰ The Government submitted that refurbishment works in the block where the applicant was held as well as in the other two blocks of the centre were under way with improved sanitary conditions. According to the government, at the time of writing, 86% of all persons residing in Safi Detention Centre were living in refurbished or brand-new compounds, making the accommodation more comfortable, modernised and resistant to vandalism.

The Government reported it increased outdoor activities and improved communication with families outside and with officers who are stationed inside the facility. According to the Government, at the time of writing, all persons residing at Safi Detention Centre had at least three hours access to outdoor space and a large number of residents have continuous access to outdoor space from sunrise until sunset. It further reported that professional football coaches provide weekly football sessions which are available to all residents. Furthermore, capoeira sessions are also being offered to female residents by a professional capoeira coach, adding that further projects are envisaged for 2022 to include literacy and life skills.

The Government further reported the launch of the Migrant Health Service within the Detention Service in 2021 and the creation of a new clinic, which resulted in a reduction of around 80% of referrals to local health centres and of around 85% to the Accident and Emergency Department at the national hospital. It further reported the introduction of a Close Monitoring Unit (CMU) in 2021 to provide separate accommodation for high-risk persons, for persons with specific medical conditions or for persons who require separate accommodation for their mental wellbeing.

The Government reported the introduction of a Welfare Officer in 2020 to maintain contact with persons held in detention centres and to deal with any complaints or issues they may have. A complaints system was reportedly in place since 2021 and complaint forms and envelopes were disseminated in every compound.

In September 2022, the Committee of Ministers of the European Council took the Government’s observations under consideration.⁴³¹ It noted that the authorities have taken a number of measures to improve the material conditions of detention at the Safi Detention Centre “which was, in 2021, the only official, closed detention centre for migrants in use in Malta”. However, the Committee observed that “in order to allow the Committee an overall assessment on whether these measures are sufficient to remedy all the different aspects of the inadequate conditions of detention exposed in the Court’s judgment, more detailed and extensive information is needed. In particular, as the shortcomings found by the Court are also supported by the recent report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its findings during its 2020 visit”.

⁴²⁹ 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>.

⁴³⁰ Council of Europe, Communication from Malta concerning the case of *Feilazoo v. Malta* (Application No. 6865/19), 18 January 2022, available at <https://bit.ly/3SSja10>

⁴³¹ Council of Europe, 1443rd meeting, 20-22 September 2022 (DH), available at <https://bit.ly/3kWjb17>

The Committee of Minister further invited the Maltese authorities “to inform the Committee whether other centres than Safi are in practice used as detention centres or intended for such use, for example, Hermes Block (Lyster Barracks) (which, according to publicly available data, was closed for renovation), China House in Hal Far or the Marsa Initial Reception Centre (in which according to the CPT migrants can be de facto deprived of their liberty during lengthy medical clearances).”

In May 2022, Politico published a series of pictures and testimonies of former detainees who had been held in the Maltese detention centres in 2020. The pictures and testimonies confirm the conclusions of the CPT with specific references to some of its observations.⁴³²

In July 2022, aditus foundation released a series of testimonies from detainees who had been held for 18 to 25 months in both China House and Safi between December 2019 and April 2022. The testimonies confirmed the living conditions had not improved sufficiently since the CPT’s visit.⁴³³

Aditus foundation and JRS gathered further testimonies of minor applicants who were detained between November 2021 and June 2022 within the context of proceedings before the ECtHR⁴³⁴ and the Civil Court of Malta (First Hall),⁴³⁵ all confirming that the situation has not improved sufficiently. One of the applicants claims he was detained in complete isolation for 147 days in a container in the so-called CMU unit due to being diagnosed with tuberculosis.

Accordingly, NGOs report that detention conditions are still substandard with little improvement since the CPT’s visit, beyond the overcrowding linked to the decrease in arrivals and the increase in pushbacks (see [Access to territory](#)).

NGOs noted recent positive improvements in some blocks of Safi which appear to have been refurbished but are unable to comment on the quality of the improvement since they have no access to the areas and the government has so far refused to provide any information which would indicate that the living conditions have significantly improved since *Feilazoo v. Malta*. NGOs therefore consider that the conditions of detention as reported by CPT are still relevant for the most part.

As such and despite what the Detention Regulations provide, the Maltese detention centres still offer substandard and undignified living conditions in poorly maintained buildings designed in a carceral setting characterized by the following conditions;

- Large rooms crammed with beds offering no privacy;
- Limited to no contact with the outside, all personal belonging being confiscated including mobile phones;
- Little to no access to daily outdoor exercise and purposeful activities except a few football games and a TV;
- A systematic lack of information on detention, the so-called compact being nowhere to be found
- Lack of heating or ventilation in the blocks exposing detainees to the cold of the winter and the heat of the summer;
- Lack of appropriate clothes for the winter;
- Lack of common space, religious space or library providing reading material;
- Insufficient personal hygiene products and cleaning materials and an inability to obtain a change of clothes;

⁴³² Politico, In pictures: Inside Malta's crowded migrant detention centers, 18 May 2022, available at <https://politi.co/3EYeQkKW>

⁴³³ Aditus foundation, Detained Narratives, July 2022, available at <https://bit.ly/3ygs3BK>

⁴³⁴ ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3yfjqc6>

⁴³⁵ Civil Court (First Hall), *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022

- Lack of appropriate health care, detainees ironically referring to Panadol as the one and only remedy that will ever be provided to them by the medical staff in the Centre.
- Inappropriate and racist behaviour of some DS officers with some detainees being reported to be threatened, pushed or insulted.

Additionally, NGOs reported that there is no dedicated space for minors in China House, one zone being dedicated to them in the Safi Detention Centre, offering the same living conditions as the other blocks.

2.3. Health care in detention

The creation of the Migrants Health Service in 2021 and a new clinic, operating in Safi Detention Centre, saw some positive improvements in the provision of health care to asylum seekers and migrants.

In its communication to the Council of Europe in relation to the execution of *Feilazoo v. Malta*, the Government reported the creation of the Migrant Health Service resulted in a drastic improvement in the healthcare that was being provided to all persons residing in Detention Centres. According to the Government, the launch of such service has resulted in a reduction of around 80% of referrals to local health centres and of around 85% to the Accident and Emergency Department at the national hospital.

According to the Government, specialist clinics are also being held in the main clinic. Ophthalmic, Infectious Disease, Dermatology and Sexual Health Specialists are doing in-house clinics, which has resulted in enhanced screening and treatment of the persons residing in Detention Centres.

NGOs reported that in 2022, asylum seekers appeared to be systematically screened upon arrival and referred to the appropriate services. However, this must be read within the context of a substantial drop in arrivals with little to no pressure on the system and it remains to be seen how the Migrant Health Service would perform in case of an increase in arrival.

NGOs observed that while asylum seekers may have been screened, little to no information is provided to them in relation to the support that is to be provided, reportedly due to a lack of interpreters available to nurses and doctors both at the Migrant Health Service and the mainstream health services offered at Mater Dei Hospital (MDH).

NGOs reported that some applicants reported that their treatment was stopped for no apparent reason and resumed following their intervention. Numerous applicants suffering from serious conditions reported that they are just given paracetamol when they complain of their conditions.

That said, the Migrant Health Service appears to be aware of the medical condition of the detainees and usually refers them to the mainstream healthcare system, albeit with substantial waiting times. The issue therefore lies in the follow-up and the level of care afforded to applicants in between the medical appointments, which is reported to be insufficient by NGOs. Applicants with a potential serious condition must generally wait several months before being seen by a specialist and a diagnosis on their condition is reached. Meanwhile, their detention may have a detrimental impact on their health.

Third parties, including NGOs, can refer cases to the Migrant Health Service by email and feedback is usually provided when requested. However, the feedback provided is only factual and the Migrant Health Service does not provide their views on the vulnerability of the detainees and whether detention is considered to be harmful in their case. Furthermore, access to medical files being subject to the approval of the Head of DS, NGOs reported that their requests are generally ignored or granted several months after.

NGOs reported that whilst detainees' suffering from physical conditions are generally referred for treatment, albeit with considerable delays during which they remain in detention, the screening of mental

health problems remains an issue, with many detainees falling through gaps, until they attempt suicide and are referred to Mount Carmel Hospital (MCH).

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.⁴³⁶ 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.⁴³⁷

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 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.⁴³⁸ No psychological support is provided in detention, with detained persons referred to Mount Carmel Hospital.

As previously mentioned, the Superintendent of Public Health implements a mandatory screening of all applicants arriving by sea within the context of the Prevention of Disease Ordinance⁴³⁹ and the Restriction of Movement Order. This screening happens within the first weeks of arrival, where asylum seekers are de facto detained in the HIRC or "China House". In the past, asylum seekers could remain in detention for weeks or months pending the conclusion of this screening or due to delays in informing the PIO that the person was cleared. The situation has now improved due to the decrease in arrival.

The COVID-related Period of Quarantine Order was repealed in May 2022 and no incident was reported during 2022.

2.4. Use of excessive force by the authorities

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. No information is available as to the situation in this regard in relation to 2022.

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.⁴⁴⁰ 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".⁴⁴¹

⁴³⁶ Times of Malta, 'Union claims migrants are "purposely self-harming" to enter Mount Carmel', 29 January 2021, available at: <https://bit.ly/3scNOOQ>.

⁴³⁷ 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>.

⁴³⁸ Times of Malta, 'More detainees treated for self-harm, suicide attempts', March 2021, available at: <https://bit.ly/3abuYjt>.

⁴³⁹ Article 13 of the Prevention of Disease Ordinance, Chapter 36 of the Laws of Malta

⁴⁴⁰ Lovin Malta, '19 People Arrested in Late Night Protest At Hal Safi Detention Centre', 7 January 2020, available at: <https://bit.ly/3rjYYjf>.

⁴⁴¹ The Independent, Safi detention centre, available at: <https://bit.ly/2Jes67C>.

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.⁴⁴²

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.⁴⁴³

Several migrants tried to escape the detention centres.⁴⁴⁴ 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.⁴⁴⁵

In the 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.⁴⁴⁶ 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”.⁴⁴⁷ The Magisterial inquiry remained open throughout 2022.

It was also reported in the media that migrants in detention might have been mistreated and/or tortured. EUAA 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, EUAA 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.⁴⁴⁸

⁴⁴² Press Statement available at: <https://bit.ly/2UfVpx7>.

⁴⁴³ Lovin Malta, ‘Five Migrants Sentenced to Jail for Rioting At Safi Detention Centre’, 19 February 2021, available at: <https://bit.ly/2QwVvkV>.

⁴⁴⁴ Newsbook, ‘Asylum seekers escape from Safi detention centre’, 25 July 2020, available at: <https://bit.ly/3scKoew>.

⁴⁴⁵ Malta Today, ‘Safi detention centre riot: Private security guard shot migrant who tried to escape’, 18 September 2020, available at: <https://bit.ly/3c7fNtc>.

⁴⁴⁶ Times of Malta, ‘Man dies after trying to escape migrant detention centre’, 2 September 2020, available at: <https://bit.ly/31av9a5>.

⁴⁴⁷ 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>.

⁴⁴⁸ The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/318IX64>.

It was also reported anonymously by a source within the European agency, that its personnel often received 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.⁴⁴⁹

UNHCR Malta also indicated that the Agency received reports of some physical and verbal abuse against detained asylum seekers as well as suicide attempts in closed centres.⁴⁵⁰

In reply to these allegations, 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”. He 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”.⁴⁵¹

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to:

❖ Lawyers:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ UNHCR:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No

The Reception Regulations provide 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.⁴⁵²

The Detention Services Regulations provide that detained persons are entitled to visits from, or communications with, authorised persons and representatives of non-governmental organizations, save to the extent necessary in the interests of security or safety.⁴⁵³ Representatives of international organisations and non-governmental organisations have access to detained persons after obtaining the authorisation of the Head Detention Services or the Principal Immigration Officer acting on the advice of the Minister.⁴⁵⁴

The legal adviser or representative of any detained person in any legal proceedings shall be afforded reasonable facilities for interviewing him in confidence, save that any such interview maybe in the sight of an officer.⁴⁵⁵

Religious organizations may request access to detention centres to the Head Detention Service who may grant such access on a case-by-case basis in consultation with the Principal Immigration Officer.⁴⁵⁶

⁴⁴⁹ Ibid.

⁴⁵⁰ The Times of Malta, ‘Migrant detention numbers shrink, fears about child detainees remain’, 7 February 2021, available at: <https://bit.ly/3vPfwD4>.

⁴⁵¹ The Times of Malta, ‘Detained migrants have reported being tortured in Malta’, 31 January 2021, available at: <https://bit.ly/3f5rZMX>.

⁴⁵² Regulation 6A Reception Regulations.

⁴⁵³ Regulation 30 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴⁵⁴ Regulation 49(2) of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴⁵⁵ Regulation 34 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴⁵⁶ Regulation 29 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

The Regulations also provide that all detained persons shall have access to public telephones at the detention centres and that the Head Detention Services may bear the expense of any telephone calls, within reasonable limits, by providing phone cards to all detained persons.⁴⁵⁷

Access to Family Members and Friends

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 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 or 2022.

Access to Journalists

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 were repeatedly denied access to Safi detention centre.⁴⁵⁸ In 2020 a prominent blogger and activist filed a court application claiming that the Government's refusal to grant him access to prison and to detention centres amounted to a violation of his fundamental rights. The case continued in 2022, with the Court rejecting attempts by the Ministry to have the case thrown out⁴⁵⁹.

In 2021, a journalist went on a controlled visit for the tour of a detention centre, for the first time in 8 years.⁴⁶⁰ 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.⁴⁶¹ 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. No similar visits were permitted in 2022.

There is no published policy position regarding visits by politicians, but politicians have visited the detention centres on occasion.

Access to the UNHCR

Together with EUAA accessing detention in order to register asylum applications and conduct first instance interviews, the UNHCR is the only organisation granted access to the Maltese detention centres, since 2021. According to the Government, the UNHCR's presence in detention is enough to ensure that relevant information on asylum is provided, and that NGO access is not required. Regarding the need for legal assistance, the Government consider that the UNHCR is able to refer applicants to NGOs when necessary and there is no need for NGOs to be present to provide information sessions.

However, UNHCR staff visiting the detention centres reported facing issues in accessing detention during the second half of 2021 where they did not have access to the list of detainees and were not granted access to them. During the first half of 2022, the UNHCR carried only one visit to detention in February due to limited staffing capacity. It only resumed its visits in August and September where it carried out 3

⁴⁵⁷ Regulation 35 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

⁴⁵⁸ 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>.

⁴⁵⁹ The Malta Independent, Constitutional case filed by Manuel Delia over prison visit can continue, judge rules, 2 April 2022, available at: <https://bit.ly/3ydc1Zt>

⁴⁶⁰ Times of Malta, Inside the Safi migrant detention centre, 5 July 2021, available at: <https://bit.ly/3qdeCPk>.

⁴⁶¹ Information provided by aditus foundation and JRS Malta, January 2022.

visits. Overall, in 2022 UNHCR met approximately 91 persons for information counselling sessions in detention centres.

Furthermore, and according to the UNHCR itself, only actual applicants can be visited by the Agency. This means that newly-arrived persons, individuals on removal orders or who opted for voluntary return are not provided with information on the asylum procedure unless and until they are registered as applicants. These people are relying entirely on NGOs to provide information to them.

No information on the content of the presentations given by the UNHCR is available.

Access to NGOs and Lawyers

Throughout 2022, only persons providing legal services are granted access to applicants, and with several practical obstacles explained below. As such, access is only viewed within the scope of the lawyer-client relationship and not within the broader aim of information or service provision to detainees irrespectively of whether they are represented by the lawyer of the NGO. JRS Malta reported that its psychologists and social workers are not allowed to provide their services to detainees. Practice shows that the EUAA or the UNHCR does not refer cases to NGOs and the contact details of the NGOs are generally not provided to the detainees, who in any case are likely to be unable to access a working phone.

Lawyers are only allowed to visit named clients, yet are not allowed access to newly-arrived groups or to lists of names in order to identify clients. This means that, in practice, for applicants to have access to legal information and services, NGOs must call regularly each block of the detention centres and request personal information of groups of people over the phone. Police numbers, exact names, detention grounds, and countries of origins have to be continuously registered and updated in order for the lawyers to specify which individual applicants they would like to visit as clients. With this information, generally quite randomised and superficial, NGO lawyers are required to submit a visit request to the Detention Services in order to reserve a slot in the centre 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 several limitations with the current system. Each block of the Detention Centres is equipped with a phone which can only receive calls so detainees cannot use it to call lawyers, NGOs, family members, friends or anyone else. Some blocks may have the possibility to ask the guards to access a mobile phone, but this requires to be able to be able to communicate with the guards and NGOs rarely receive calls by this means.

This lack of access is particularly problematic due to the fact that 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 in detention. The actual deadlines amount more or less to the actual time needed to get the approval for a visit the following week.

Interferences from the Ministry for Home Affairs or other state entities are recurrent. For instance, access was revoked after NGOs filed *Habeas Corpus* cases leading to the release of several applicants in October 2019. Complaints were also filed with the Malta Chamber of Advocates. 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.⁴⁶² 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

⁴⁶² Times of Malta, 'NGOs denied access to Safi migrant centre since August', 11 September 2020, available at: <https://bit.ly/3tFmgBm>.

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.⁴⁶³

This policy of heavily restricted access results in the absence of provision of basic information on the asylum procedure, identification of vulnerable persons including persons requiring specialised legal advice/information relating to their asylum claims such as LGBTIQ+ applicants and victims of sexual or other forms of violence, information on the available legal support for detainees, or the possibility to appeal decisions within the legal deadlines. Applicants 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 at an increased risk of refoulement.

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 type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | 7 days, then every 2 months | |

1.1. Review of asylum detention under the Reception Regulations

The Reception Regulations provide for an *ex officio* review of the lawfulness of the detention to be automatically conducted by the Immigration Appeals Board (IAB) after seven working days from the issuance of the detention order, which may be extended by another seven working days.⁴⁶⁴ If the applicant is still detained, a new review would be conducted after periods of two months thereafter. If the IAB rules the detention is unlawful, the applicant should be released immediately. Free legal assistance is provided for the first review.

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”.⁴⁶⁵

The image of the Board and its ability to act and appear as an independent entity has been seriously undermined by various independent commentators who pointed out that all members of the Board are directly connected to the executive⁴⁶⁶ and cumulatively sit on a dozen other specialised tribunals, including

⁴⁶³ FRA, ‘Migration: Key fundamental rights concerns, Quarterly Bulletin, Nov 2020’, available at: <https://bit.ly/3cblrdC>.

⁴⁶⁴ Regulation 6(3) Reception Regulations.

⁴⁶⁵ Article 25A of the Immigration Act, Chapter 217 of the Laws of Malta.

⁴⁶⁶ The Shift Team, ‘Foreign Minister Evarist Bartolo picks individuals from his district to serve as ambassadors’ *The Shift News* (Malta, 6 December 2021) <https://bit.ly/41OTbFK>; The Shift Team, ‘Labour-linked lawyer Maria Cardona chairs four government boards at the same time’ *The Shift News* (Malta, 20 November 2021) <https://bit.ly/3KZPVkW>; Julian Bonnici, ‘Prison Lawyer Defending Wardens In Inmate’s Negligent Death Is An Army Officer, Magistrate’s Brother, And Represents Controversial Blogger’ *Lovin Malta* (Malta, 21 September 2021) <https://bit.ly/3yakT29>; Manuel Delia, ‘UPDATED: More iced buns’ (*Truth be Told*, 3

the Chair who sits on at least others.⁴⁶⁷ All members who are lawyers are also practising as private lawyers in diverse civil and criminal matters.

Stakeholders, including the Chamber of Advocates, have expressed concerns regarding specialised tribunals such as the Board.⁴⁶⁸ 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 conducts its proceedings is not publicly available through published guidelines. There is a lack of procedural transparency: proceedings are not appropriately 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.⁴⁶⁹

In its 2022 Rule of Law Report, the European Commission expressed concerns over the independence of specialised tribunals like the Board and indicated that the Government has committed in the Maltese Recovery and Resilience Plan to carry out a review of their independence in communication with the Venice Commission. This review will include a study, to be completed by end 2024, as well as legislative amendments to enter into force by 31 March 2026.⁴⁷⁰

November 2017) <https://bit.ly/3kJZZDZ> ; ‘The Rule of Law in Malta: An overview of rule of law failings in Malta’ (4 February 2018) <https://bit.ly/3BWci4v> ; Manuel Delia, ‘What she would have written’ (*Truth be told*, 3 November 2017) <https://bit.ly/3IVOQb0> .

⁴⁶⁷ This includes the Corradino Correctional Facility Monitoring Board, <http://bit.ly/3XrZKM7> ; the Minor Care Review Board, <http://bit.ly/3ibfCSU> ; the ad-hoc Review Board of Community Malta Agency, <http://bit.ly/3XpYF7B> ; the Grant Review Board, <http://bit.ly/3F5rsr7> ; the Sentencing Advisory Policy Board, <http://bit.ly/3U6uz61> ; the Arbiters on the Consumer Claims Tribunal, <http://bit.ly/3i6qzW5> ; the Commissioner for Justice, <https://bit.ly/3E3U9V2> ; and, the Building and Construction Agency, <https://bit.ly/3ZjzPqu> .

⁴⁶⁸ 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.

⁴⁶⁹ Ibid.

⁴⁷⁰ EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 13 July 2022, pp. 5-6, available at <https://bit.ly/3XRYs2D>

In their submissions for the 2023 Rule of Law Report, aditus foundation and the Daphne Caruana Galizia Foundation stated that although aware of the review of the system, they expressed their concerns at the deadline of the implementation, 3 years from now, highlighting that in the meantime, the boards are deciding on crucial issues relating to detention, refoulement and asylum, which have clear implication on fundamental rights in the implementation of European Union law. They further reported that the independence of the tribunals, specifically of the IPAT was also raised in pending Commission Complaint CHAP(2021)02127 - Systematic breach of EU law in accelerated procedures, breach of Charter (Asylum Unit).⁴⁷¹

While the review of detention is usually carried out after the first seven days, NGOs report that hearings with the IAB are extremely short, lasting between 5 and 15 minutes and that the several detainees are often seen at the same time. The Board has no written or published procedural rules, particularly on oral or written submissions. This means applicants are rarely heard.

The Board rarely questions detention legality in terms of the Directive's and Regulations' requirements. Decisions generally take the form of unsigned hearing transcripts, 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:

- ❖ If less coercive measures were not requested to the PIO prior to the hearing, the Board will require the applicant to first make a formal request to the PIO before it decides on the legality of the detention, thus prolonging the stay of the applicant in detention;
- ❖ Despite the above, the Board considers that ordering less coercive measures are outside of its remit and therefore offers full discretion to the PIO to implement these when it decides the detention to be lawful.
- ❖ The Board will not challenge the PIO's declarations with regard to the detention on grounds of threat to public order and always confirm detention to be legal without any assessment of the actual threat posed by the applicant. 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 grant release of an individual who tried to abscond in the past, and was condemned to a prison sentence for such. This 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;
- ❖ Despite some positive decisions on the matter, 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 order.

In *M. A. R. (Lebanon) vs. the PIO* decided on 3 November 2022, the Board considered that the minority claim of the appellant was not manifestly unfounded despite the fact that he declared being an adult upon arrival. The Board ordered the release of the appellant in the care of AWAS and instructed the Agency to carry out an age assessment as soon as possible and to appoint a legal guardian and ensure that the appellant is kept in appropriate accommodation given his declaration of minority. The appellant was then declared to be a minor by AWAS on 15 November 2022.⁴⁷²

⁴⁷¹ Information provided by aditus foundation and Daphne Caruana Galizia Foundation, January 2023.

⁴⁷² Immigration Appeals Board (Division II), *M. A. R. (Lebanon) vs. the PIO*, (DO/134/22), 3 November 2022; See also IAB, Div. II, *R.M. (Bangladesh) v. The PIO*, (DO/35/2022), 24 March 2022, available at <http://bit.ly/3V5vPHU>; IAB, Div. II, *F.B. (Ghana) v. The PIO* (DO/2021), 4 October 2021 available at <http://bit.ly/3gzB83w>; IAB, Div. II, *W.K.A. (Ghana) vs. The PIO* (DO/2021), 4 October 2021, available at <http://bit.ly/3gzB83w>;

In *R.M. (Bangladesh) vs. the PIO*,⁴⁷³ the Board noted that the case was initially to be heard before Immigration Appeals Board, Division I, but that a conflict of interest was registered by Division I due to the role of one of its members in the Minors Care Review Board. The appellant's representative questioned whether there was a similar conflict of interest before Division II given that the same Division also decides the Age Assessment Appeals. The Board advised the appellant that an objection should be registered if the appellant's representative felt that Division II had a conflict of interest to hear both cases. The appellant declared that he wished to proceed with the hearing as this would delay his detention. The Board relied on the fact that the appellant rectified his date of birth during the asylum procedure to deem the detention to be lawful. However, the Board decided that until the Age Assessment Appeal is decided, the appellant is to be transferred to the Buffer Zone within the AWAS Open Centre under those conditions that are considered appropriate and necessary by AWAS.

In the cases of *K.J. and K.B.D. (Bangladesh) vs. AWAS and the PIO*⁴⁷⁴, the challenged AWAS decision reversed a previous decision of the Agency to declare the appellants as minors, following the submission of a "photo of documentation" by the PIO which allegedly showed that the appellants were adults. The Board declared both appeals closed noting that the Principal Immigration Officer has no locus standi in age assessment procedures and that AWAS has no competence to review its own decisions on age assessment. The Board concluded that the appellants are minors, as originally concluded by the AWAS and that they must be released and returned to the Dar Il-Liedna open shelter for unaccompanied children. Following this decision, the PIO systematically submits pictures of passports which are found in the confiscated phone of the applicants before AWAS decides on the age assessment procedure and AWAS appears to give significant weight to this evidence.

While the above decisions indicate that Division II tends to show awareness to minority claims, Division II does not appear to consider itself to be bound by its own precedents and has shown itself to be able to ignore the minority claim of some applicants despite their case being similar to the above-cited cases.

In *A.D. (Ivory Coast) vs. the PIO*,⁴⁷⁵ the appellant was rescued and disembarked in Malta in November 2021. He declared that he is a minor upon arrival and was directly detained by the health authorities after disembarkation. The appellant was initially rejected following an age assessment procedure in January 2022 but filed an appeal in front of the Immigration Appeals Board, Division II. He then appealed the detention order issued to him in February 2022 and appeared in front of the Immigration Appeals Board, Division II, for a first hearing on 17 February 2022. The appellant complained that despite being an asylum seeker, he was being detained solely on the basis of his nationality since he is from a country where Malta carries out forced returns. He further complained that there was no individual assessment of the need to detain him and that alternatives to detention were never considered. Finally, he complained that as a minor he should be detained as a measure of last resort which was not the case in his situation.

Division II considered detention to be lawful and ordered that the appellant is kept in a lodging adequate for minors. The Board decided that it would review the detention of the appellant two months after unless a decision on his age assessment is given before such date or unless the PIO offered an alternative to detention. The PIO later refused to implement alternatives to detention and the appellant was kept in detention until he was released in July 2022.

Division II held 3 other hearings during which it concluded that the detention was lawful. This case is currently before ECtHR where the applicant complains, inter alia, that the Board does not satisfy the

⁴⁷³ Immigration Appeals Board (Division II), *R.M. (Bangladesh) v. The PIO* (DO/35/2022), 24 March 2022, available at <http://bit.ly/3V5vPHU>

⁴⁷⁴ Immigration Appeals Board (Division II), Div. II., *K.J. and K.B.D. (Bangladesh) vs. the PIO and AWAS* (AA/11/22/DO), 14 July 2022, available at <http://bit.ly/3U2UVGf> and the press release from aditus foundation at <http://bit.ly/3Ess4Fm>

⁴⁷⁵ Immigration Appeals Board (Division II), *A.D. v. the Principal Immigration Officer* (DO/37/2022), 17 February 2022, available at <https://bit.ly/3kS5d0n>

definition of a “*tribunal*” in the sense of the Convention due to its lack of independence and impartiality and that the Board failed to provide carry out an assessment of the legality of his detention and provide reasons for its decisions, in breach of Article 5 ECHR.⁴⁷⁶

In *J.B. and others* decided on 6 December 2022, concerned the legality of the detention of 47 applicants assisted by legal aid lawyers, including 6 applicants claiming to be minors. Division II decided that the detention of the 47 applicants was lawful with no apparent assessment, issuing a single decision for all applicants. On 12 January 2023, following an application filed by aditus foundation, the ECtHR issued an interim measure ordering Malta to ensure that the 6 applicants claiming to be minors are provided “*with conditions that are compatible with Article 3 of the Convention and with their status as unaccompanied minors*”. The 6 minors had been detained with adults in the so-called China house since their arrival on 18 November 2022, some 50 days after their arrival and AWAS was not aware of their existence before they were referred by aditus foundation in January 2023.⁴⁷⁷

With regard to LGBTI applicants, in *K.K. (Ghana) vs. the PIO* decided on 24 September 2021, the appellant, detained on a removal order, had filed a subsequent application with IPA on the basis of his LGBTIQ+ identity, and therefore at risk of persecution if returned. The PIO issued a Detention Order based on Regulation 6(1)(b) and 6(1)(d) of the Reception Regulations, which the appellant appealed before the Immigration Appeals Board with the assistance of aditus foundation lawyers. The UNHCR was present at the hearing. The Board noted that the mere fact that the appellant was found guilty by the Court of Magistrates for trying to leave Malta with forged documents in the past was already a basis to consider there is a risk of absconding and that from the evidence produced, the Board did not believe that the second ground had been rebutted substantially. Notwithstanding this, the PIO was directed to assess the possibility of alternatives to detention after the appellant provides the details for an alternative accommodation. Furthermore, the Board directed the IPA to decide the appellant’s subsequent asylum application as expediently as possible. The appellant was released under alternatives to detention.

The Immigration Appeals Board failed to provide any statistics in 2021 and 2022 and the Government rejected a Freedom of Information Request filed by aditus foundation in mid-2022. However, NGOs and lawyers confirmed that nearly all reviews carried out in 2021 and 2022 confirmed the detention to be lawful.

The decisions of the Board are not published. Some decisions are available online on the EUAA case law database, the International Commissions of Jurist “CADRE” database and aditus foundation’s website.⁴⁷⁸ Lawyers reported that the reviews that are required by the Regulations to be carried out two months after the first one is 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. According to the Malta Police Force, in the first 6 months of 2022, no applicants issued with a Detention Order were detained for longer than 9 months.⁴⁷⁹

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.⁴⁸⁰ In practice, it is nearly

⁴⁷⁶ ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3ZuqlsM>

⁴⁷⁷ Immigration Appeals Board (Division II), *J.B. and others* (DO/174-220/2022), 6 December 2022, available at aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 January 2023, available at <http://bit.ly/3j3aVeM>

⁴⁷⁸ EUAA Case Law Database, <https://bit.ly/3XQZJ4c>; CADRE Database, <http://bit.ly/3HaA932>; aditus foundation, Our Cases, <https://aditus.org.mt/publications/>

⁴⁷⁹ Information provided by the Malta Police Force by way of reply to a Freedom of Information request, FOI Request Reference 274220413144.

⁴⁸⁰ Article 16 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta and Article 25A of the Immigration Act, Chapter 217 of the Laws of Malta

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. The restrictions on access put in place since June 2021 still seriously hinder information provision and the lawyers' possibility to file appeals (see [Access to Detention](#)).

A significant number of migrants are detained under the Prevention of Disease Ordinance. 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 before the Criminal Courts, provided they have access to a lawyer, which is rarely the case (see below).

1.2. Other remedies

Although there are a number of remedies available to detainees to challenge their detention. Yet some do not meet the ECHR requirements of being “*speedy, judicial remedies*” in terms of Article 5(4) ECHR.⁴⁸¹

Human rights complaints before the Civil Court (First Hall)

This remedy, which allows detainees to challenge the lawfulness of their 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.

In *Ayoubah Fona vs. L-Avukat tal-Istat* filed on 12 July 2022 before the Civil Court of Malta (First Hall), the applicant complains of his conditions of detention and the unlawfulness of his detention under the Prevention of Disease Ordinance. The minor applicant arrived in November 2021 and remained in detention for 58 days, with a substantial amount of time spent with adults in the HIRC, the so-called “China House”.⁴⁸²

Application under Article 409A of the Criminal Code (*Habeas Corpus*)

This remedy also allows a detainee to challenge the lawfulness of on-going detention before the Court of Magistrates (Criminal Jurisdiction) and is based on an assessment of the legality of the person's detention. Several successful applications were brought before the Courts since 2019, resulting in the immediate release of the applicants. All the cases challenging the *de facto* detention of applicants under the Prevention of Disease Ordinance filed before the Court of Magistrates were successful except for one case decided in January 2022.⁴⁸³

In this case, *A.D. v. the Superintendent for Public Health*⁴⁸⁴ decided on 21 January 2022, the Court rejected the petition by finding that he was not actually being detained. The Court decided that “it cannot

⁴⁸¹ 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.

⁴⁸² Civil Court (First Hall), *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022.

⁴⁸³ See aditus foundation, our cases, <https://bit.ly/3kP38Ch>

⁴⁸⁴ Court of Magistrates of Malta, *A.D. v. the Superintendent for Public Health*, 21 January 2022, summary available at <https://bit.ly/3yxemyN>

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." Aditus foundation 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.⁴⁸⁵ The decision of the Court of Magistrate will be scrutinized by the ECtHR in *A.D. v. Malta*, filed in February 2022.⁴⁸⁶

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.⁴⁸⁷

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.

The law provides that reviews should be carried ex-officio by the PIO at regular intervals of 3 months and supervised by the Board for people detained after 6 months.⁴⁸⁸ However, lawyers and NGOs reported that the PIO reviews do not follow any formal procedures.

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.

Unless successfully challenged, Malta applies the maximum permitted detention duration for persons detained pending removal. Furthermore, NGOs report cases where this maximum period is exceeded either due to delays in the required medical clearance or in situations where the detained person is unable to provide a verifiable address.

⁴⁸⁵ aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

⁴⁸⁶ ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3ygf7fc>

⁴⁸⁷ Times of Malta, 'Six asylum seekers successfully challenge unlawful detention', 8 June 2021, available at: <https://bit.ly/33ZQacp>.

⁴⁸⁸ Regulation 11(8) of the Return Regulations, Subsidiary Legislation 217.12 of the Laws of Malta.

Most people coming from countries designated as safe were detained in the last years and have seen their asylum applications 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.

In *Feilazoo v. Malta* decided in March 2021, the ECtHR found a violation of article 5(1) of the Convention (right to liberty and security).⁴⁸⁹ 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.

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 first review of the lawfulness of detention.⁴⁹⁰ Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board.

According to the calls issued by the Ministry for Home Affairs, legal aid lawyers must provide legal assistance and representation entailing preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. They must undertake to examine the grounds of appeal and present, in writing, the appellant's case before the Immigration Appeals Board to attend, if required, to sessions of the Immigration Appeals Board to explain case submissions and provide other general assistance to respondents during their appeal. They must carry out administrative work related to the preparation and presentation of the cases as well as in relation to the overall management of the caseload indicated by the Ministry. They must report on the outcomes of interviews held with appellants and bring to the Ministry's attention any pertinent matters which may arise. The appointment of legal aid and first hearing shall be carried out within 7 working days of the issuance of detention order. Payment fee in detention appeals is €40 (inc. VAT) per case submission.⁴⁹¹

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 fee awarded per cases. The aforementioned case of *J.B. and others v. the Principal Immigration Officer* goes to show that Legal Aid lawyer are either unaware or unwilling to provide adequate assistance to detainees, including minor detainees (see [Detention of vulnerable applicants](#)).

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.

⁴⁸⁹ ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, 11 March 2021.

⁴⁹⁰ Regulation 6(5) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

⁴⁹¹ See <https://bit.ly/3mtaWKw>

E. Differential treatment of specific nationalities in detention

All applicants are *de facto* detained in terms of the Prevention of Disease Ordinance for the first weeks, at times months, after their arrival. As previously mentioned, individuals coming from countries of origin where returns are deemed possible will be probably detained under the Reception Regulations after they are medically cleared by the Superintendent of Public Health. 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 (See [Differential treatment of specific nationalities](#)).

It was noticed that detainees are usually kept together based on their nationalities. They are also regularly moved from one zone or section 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”.⁴⁹²

⁴⁹² Information provided by Detention Service, January 2021.

Content of International Protection

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.⁴⁹³

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.

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 or 2022.⁴⁹⁴

⁴⁹³ Regulation 20 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta
⁴⁹⁴ Information provided by Identity Malta, April 2022.

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. Applicants are not permitted to marry.

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. Problems are reported in situations where persons present personal details in a manner that differs from those on their asylum documentation. This includes spelling mistakes but also incorrect information relating to civil status. Rectification of these errors is often problematic and burdensome, with most entities relying on the first statements provided by applicants.

3. Long-term residence

Indicators: Long-Term Residence

- | | |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2022: | Not available |
|---|---------------|

National legislation provides for the possibility for third-country nationals residing regularly in Malta to access long-term residence.⁴⁹⁵ 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 list of requirements:⁴⁹⁶

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”.⁴⁹⁷ 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 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, via Identity Malta. The law provides for a time limit of six months after an application is

⁴⁹⁵ Status of Long-Term Residents (Third Country Nationals) Regulations, Subsidiary Legislation 217.05.

⁴⁹⁶ Also explained in this checklist, provided by Identity Malta: <https://bit.ly/3YhL6GA>

⁴⁹⁷ Regulation 5 of the Long-Term Residence Regulations, Subsidiary Legislation 217.05 of the Laws of Malta

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.⁴⁹⁸

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 €140.

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.⁴⁹⁹ No data is available for 2022.

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).⁵⁰⁰ 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 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.⁵⁰¹

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

⁴⁹⁸ Regulation 7 of the Long-Term Residence Regulations, Subsidiary Legislation 217.05 of the Laws of Malta
⁴⁹⁹ Information provide by Identity Malta, April 2022.

⁵⁰⁰ Ministry for Home Affairs, National Security and Law Enforcement, *Policy regarding Specific Residence Authorisation*, November 2018, available at: <https://bit.ly/2Svq8qA>.

⁵⁰¹ Information provided by ID Malta, January 2021.

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.⁵⁰²

Numerous NGOs promptly reacted to this unexpected new policy and expressed their “shock and disappointment”.⁵⁰³ 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. In the two years since the discontinuation of the SRA policy, further attempts were made by Identity Malta to reduce the number of SRA holders, largely by refusing to renew permits on the basis of past criminal convictions.

This led to a several applicants challenging the Agency’s decisions before the Immigration Appeals Board and the Court of Appeal, with the Government insisting that, being a policy, negative SRA decisions were not appealable. Division I of the Board recognised itself to be competent to hear appeals from the refusal to renew or grant SRA and found in favour of the appellants. In a series of appeals filed by Identity Malta, the Court of Appeal upheld the decision Division I and declared that the refusal to renew the residence permit was unlawful, basing the judgements on principles of natural justice, best interests of the child and legal certainty.⁵⁰⁴

Due to the termination of the SRA policy, rejected asylum-seekers who are not returned to their countries of origin have little hope for regularisation. Various demonstrations were organised by migrant communities, urging Malta to look at the situation of migrants who have been living in Malta for several years, paying taxes and social security contributions and who had effectively made Malta home.⁵⁰⁵

5. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	10 years
2. Number of citizenship grants to beneficiaries in 2022:	N/A

⁵⁰² Identity Malta, ‘Updating of the Policy regarding Specific Residence Authorisation’, 24 November 2020, available at: <https://bit.ly/3vTrImq>.

⁵⁰³ 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>.

⁵⁰⁴ Court of Appeal (Inferior), *Patrick Acheampong vs Identity Malta Agency*, 40/2022, 30 November 2022; Court of Appeal (Inferior), *Jamilla Abdulkadir Mohammed vs Identity Malta Agency*, 60/2022, 18 January 2023.

⁵⁰⁵ PICUM, Malta: Migrants call for decent regularisation mechanism, 6 December 2021, available at: <https://bit.ly/41LXEsJ>

The Citizenship Act foresees that foreigners or stateless persons may apply for citizenship in Malta, making no specific mention of beneficiaries of international protection.⁵⁰⁶ Their access to naturalisation, although technically falling under the broader category of 'foreigners' is further regulated by an internal Government policy that requires a minimum 10-year residence period for refugees and a 20-year period for 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 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.⁵⁰⁷

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.

The fact that there are no public guidelines on how to satisfy these broad requirements makes it difficult for TCNs to apply. There is no time limit foreseen for a decision and the law does not require the authorities to provide reasons for rejections of applications. Furthermore, the law does not grant the right of appeal in any court for the refusal of an application for citizenship.

Although there are no public guidelines, TCNs and refugees are in practice only considered for naturalisation after 10 years of residence, whilst persons with subsidiary protection are only considered after 18 or 20 years, if at all. Furthermore, the laws do not grant any form of citizenship entitlements to children born or raised in Malta. The difficulties in accessing citizenship results in TCNs, and their children, that have been living in Malta for years to continue to live precariously. They also limit integration efforts as they fail to provide a sufficiently realistic incentive.⁵⁰⁸

As an additional obstacle, a new amendment to the Citizenship Regulations increased the fee from €34.94 to an exorbitant €450 for applications for naturalisation.⁵⁰⁹

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.⁵¹⁰

⁵⁰⁶ Citizenship Act, Chapter 188 of the Laws of Malta, September 1964, available at: <http://bit.ly/2lz5z8H>.

⁵⁰⁷ Article 10(1) Citizenship Act, Chapter 188 of the Laws of Malta

⁵⁰⁸ Aditus foundation, Documentation = Employability: Support Services for the Documentation of Various Communities, August 2022, available at <https://bit.ly/3JfslIE>

⁵⁰⁹ Citizenship Regulations, S.L. 188.01 <https://bit.ly/3Jc90il>

⁵¹⁰ Information provided by Identity Malta, April 2022.

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**.⁵¹¹ 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.⁵¹² 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 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”.⁵¹³

Reconsiderations of subsidiary protection are to be notified in writing to the protection holder, providing reasons therefor. The protection holder is permitted to present reasons in an interview or in writing, as to why subsidiary protection should not cease. Appeals against decision to cease subsidiary protection are to be submitted within one week from the notification of the decision, and the regular appeal procedures apply.⁵¹⁴

There is no systematic review of protection status in Malta. In 2022, the IPA revoked, ended or refused to renew international protection in terms of Articles 10 and 22 of the Act for two persons: one Libyan national and one Palestinian national.

⁵¹¹ Article 9 International Protection Act, Chapter 420 of the Laws of Malta

⁵¹² Article 9(2) International Protection Act, Chapter 420 of the Laws of Malta.

⁵¹³ Article 21 International Protection Act, Chapter 420 of the Laws of Malta.

⁵¹⁴ Article 22 International Protection Act, Chapter 420 of the Laws of Malta.

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.⁵¹⁵

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 their 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 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.

Act XIX of December 2022 amended the International Protection Act and reduced the deadlines to appeal to 1 week. Accordingly, beneficiaries of international protection in whose regard the IPA has revoked, ended or refused to renew their refugee status or subsidiary protection status are entitled to appeal against this decision before the IPAT within one (1) week from when the notification of the decision has been served to them and the appeal will be heard according to the regular procedure.⁵¹⁶

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.⁵¹⁷

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

⁵¹⁵ Article 10 of the International Protection Act, Chapter 420 of the Laws of Malta.

⁵¹⁶ Articles 10(6) and 22(6) of the International Protection Act as amended by Act XIX of 20 December 2022.

⁵¹⁷ Article 17A(2) of the International Protection Act, Chapter 420 of the Laws of Malta.

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.

As mentioned above, in 2022, the IPA revoked, ended or refused to renew international protection in terms of Articles 10 and 22 of the Act for two persons: one Libyan national and one Palestinian national. Furthermore, IPA also withdrew the Temporary Humanitarian Protection of 3 persons: one from Libya, one from Morocco and one from Ukraine.

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.

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. 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.

In an appeal filed by aditus foundation in August 2022 before the IPAT, the applicant requested the Tribunal to refer a preliminary question to the CJEU regarding the legality of provision 13A of the Act. The case is still pending and a decision on the request for preliminary ruling has yet to be issued.

In the meantime, Act XIX of December 2022 amended the International Protection to provide that no appeal shall lie against decisions of the Agency taken in pursuance to Article 13A.⁵¹⁸

NGOs reported that the IPA started to use this provision whenever possible in 2021. The Agency reported having issued 96 of such these 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.

⁵¹⁸ Article 7(1A)(c) of the International Protection Act, Chapter 420 of the Laws of Malta.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
☒ Yes ☐ 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 ☒ Yes ☐ No
❖ If yes, what is the time limit? 3 months
3. Does the law set a minimum income requirement? ☒ Yes ☐ No

Recognised **refugees** may apply for family reunification in Malta according to national legislation.⁵¹⁹ “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...”.⁵²⁰ The exclusion of subsidiary protection beneficiaries from family reunification was raised as a major concern by the Council of Europe Commissioner for Human Rights.⁵²¹

In November 2018, JRS Malta, aditus foundation, and Integra foundation, supported by UNHCR Malta, published a report titled *Family Unity: a fundamental right*.⁵²² 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.

Applications must be addressed to Identity Malta, which 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.⁵²³

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

⁵¹⁹ Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

⁵²⁰ Regulation 3 of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

⁵²¹ 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>.

⁵²² “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>.

⁵²³ Regulation 12 of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta

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.⁵²⁴

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 application. 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,⁵²⁵ 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.⁵²⁶

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 Maltese representation. Family members must then stay in this country until the visa is issued, inducing further costs for the family.

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.⁵²⁷

Since 2016, reunited family members are, in practice, granted a residence permit of three years, indicating "Dependant family member".⁵²⁸

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

⁵²⁴ Information provided by Identity Malta, 2017.

⁵²⁵ Regulation 20(2)(a) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

⁵²⁶ Information provided by Identity Malta, April 2022.

⁵²⁷ Regulation 14(2) of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

⁵²⁸ Information provided by Mr Ryan Spagnol, Director of Identity Malta, 29 September 2016.

to such assessment for the first 12 months following their arrival. They also have access to vocational guidance, initial and further training, and retraining.⁵²⁹

Family members coming to Malta are barred from applying for international protection in their own name.

NGOs have reported that there are instances whereby a beneficiary of international protection in Malta has a child after being granted protection by the IPA. In these cases, the IPA does not issue a protection certificate for that child, but issues a letter stating that that child is a family member of a protection beneficiary.

This would result in the child having a different status noted on the residence card to his or her parents and siblings born before arrival to Malta. This is also the case when one of the applicants in a family unit is granted a different status to that of his or her spouse, either due to an appeal or different times of application or arrival. The result is that in a family unit there could be members who have different statuses, as the IPA does not grant protection to the family as a unit but on an individual basis.

Furthermore, NGOs reported that children who are granted protection as a family member of a protection beneficiary, lose that protection on reaching majority. That person would then have to apply to the IPA for protection as an independent adult. According to NGOs, this exposes them to a risk of becoming undocumented, as the nexus to their parent's claim may have become weaker with the passing of time between arrival in Malta and becoming an adult.⁵³⁰

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.⁵³¹

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.⁵³²

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 **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 document is recognised and valid for travel to the country they intend to visit, as it is not an internationally

⁵²⁹ Regulation 15 of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

⁵³⁰ Aditus foundation, Documentation = Employability: Support Services for the Documentation of Various Communities, August 2022, available at <https://bit.ly/3JhqJFk>

⁵³¹ Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

⁵³² Information provided by Mr Ignatius Ciantar, Senior Principal, Passport Office and Civil Registration Directorate, 19 September 2016.

recognised travel document.⁵³³ 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).⁵³⁴

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 2022: | Not available |

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 for social housing, provided they have been residing in Malta for 12 months and have limited income and assets.⁵³⁵ Refugees and beneficiaries of subsidiary protection may also apply for a housing benefit if they are renting from private owners.⁵³⁶

In a December 2021 report published by JRS Malta and aditus foundation, flag obstacles faced by migrants in accessing decent housing. Interviewees, who included applicants, protection beneficiaries as well as other migrants, commented on exorbitant rent prices and their impact on persons living on a minimum wage, social benefits or less. They flagged discrimination in being denied private rentals due to their immigration status as well as exploitation at being forced to live in substandard conditions, having no alternatives and largely unable to rely on a private rental regime with little monitoring or regulation.⁵³⁷ Although there is no updated research for 2022, the situation remains generally similar.

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.⁵³⁸ They 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

⁵³³ Ibid.

⁵³⁴ Information provided by Identity Malta, April 2022.

⁵³⁵ Housing Authority, available at <https://bit.ly/3F0ntvo>

⁵³⁶ Housing Authority, available at <https://bit.ly/41OW1uo>

⁵³⁷ JRS and aditus foundation, In Pursuit of Livelihood: An in-depth investigation of asylum-seekers' battle against poverty and social exclusion in Malta, December 2021, available at <https://bit.ly/3kKu7z4>

⁵³⁸ Regulation 20(c), Procedural Regulations, Subsidiary Legislation 420.7 of the Laws of Malta

licence in their own name. Obstacles in this area include the application costs. A new application costs €58, while annual renewal costs €34.⁵³⁹

They are eligible for all positions, saving those reserved for Maltese and/or EU nationals, thereby excluding the vast majority of positions within the public service. They also have access to employment training programmes at JobsPlus.

A report published in December 2021 by JRS and aditus foundation entitled “*In Pursuit of Livelihood: An in-depth investigation of asylum-seekers’ battle against poverty and social exclusion in Malta*” investigated the phenomenon of poverty among asylum seekers in an in-depth manner, with a focus on exploring the causes and maintaining factors of asylum seekers’ livelihood difficulties. The report draws on data collected by interviewing the head of household on income and health indicators, deprivation and dwelling conditions from 116 households. It concluded that “The combined impact of a steep rise in cost of living, including an exponential surge in rent prices, on one hand, and stagnant wages on another, emerged clearly as one of the main factors. Another significant factor appears to be the reality that most asylum seekers, due to a mix of poor English or Maltese, basic levels of education, racial discrimination and low transferability of job-related skills and competencies, are restricted to a very limited section of the employment market. At best, participants could aim for jobs slightly above the minimum wage, with no or little chances of progression. In this regard, in Malta’s current economic climate, the best they can aim for may still not be enough to lift them out of poverty, especially if they need to support a family. Furthermore, limited access to financial services appears to act as another barrier towards financial stability for this population.”⁵⁴⁰

Jobsplus indicated that in 2021 it delivered 200 work permits to refugees, 805 permits to subsidiary protection beneficiaries and 89 for beneficiaries of THP. For 2022, JobsPlus indicated that it issued 248 employment licences for refugees and 963 for subsidiary protection holders.

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.

Refugees who are enrolled at higher education institutions (minimum Bachelor level), are entitled to apply for the Malta Government Undergraduate Scheme. The Scheme provides eligible persons with a one-time grant, a yearly grant and ten fixed-rate four-weekly stipends.⁵⁴¹ The entitlements to stipends or other forms of support (e.g. exemption from fees) for beneficiaries of subsidiary protection remain unclear.

The Migrant Learners Unit⁵⁴² within the Ministry for Education oversees 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.

⁵³⁹ European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016.

⁵⁴⁰ JRS and aditus foundation, *In Pursuit of Livelihood: An in-depth investigation of asylum-seekers’ battle against poverty and social exclusion in Malta*, December 2021, available at <https://bit.ly/3IPkoPT>

⁵⁴¹ Ministry for Education, Sport, Youth, Research and Innovation, Malta Government Undergraduate Scheme, 2022-2023, available at <https://bit.ly/3IPqjUZ>

⁵⁴² Info on Migrant Learners’ Unit available here: <https://bit.ly/3L8bwr7>

In 2018, Malta introduced the 'I Belong' Programme which is also available to beneficiaries of international protection. 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. The programme is run by the Human Rights Directorate, within the Home Affairs Ministry.

Additionally, the Human Rights Directorate entered into an agreement with the Directorate for Research, Lifelong Learning and Employability to provide literacy courses in the Maltese and English languages from January to June 2022. The completion of these courses was intended to facilitate students' admission into the Stage 1 I Belong Programme.

Jobsplus, the Maltese Public Employment Service, administers an AMIF-funded project Employment Support Services for Migrants. The project aims to improve employment services for migrants by providing courses in basic Maltese, business English, cultural awareness, life skills and work ethics. An addendum was approved for a new initiative aimed at increasing participation in training activities. Thus, in the first quarter of 2022, a training grant of € 4.50 per hour was provided as an incentive to attract more participants for training.⁵⁴³

In a recent report, NGOs reported that entitlement to tertiary education is not specified in existing law or publicly available policy for any of the asylum-seeking groups. In practice however, all may apply to follow a course at the University of Malta or MCAST and for all groups, students may apply for a fee waiver. Students at tertiary level may also apply for a student maintenance grant, but this is only granted to individuals with international protection who have been residing in Malta for 5 years or more. Moreover, should the individual with international protection be receiving Social Assistance, this cannot be supplemented with the maintenance grant. Finally, there is once again no specified entitlement for migrants to life-long learning courses in existing law and policy. However, in practice, all migrant groups, regardless of protection status, may apply to follow such courses, as well as for an exemption from payment.⁵⁴⁴

In 2020, 3,456 people applied for the 'I Belong Programme', among them, 364 were beneficiaries of international protection and 191 were asylum-seekers.⁵⁴⁵ 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.⁵⁴⁶

F. Social welfare

The Procedural Regulations provide for access to social welfare for beneficiaries of international protection.⁵⁴⁷ 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

⁵⁴³ EMN, Quarterly Bulletin, (January - March 2022), p. 17, available at <https://bit.ly/3SPkZp8>

⁵⁴⁴ JRS and aditus foundation, In Pursuit of Livelihood: An in-depth investigation of asylum-seekers' battle against poverty and social exclusion in Malta, December 2021, available at <https://bit.ly/3kPt80>

⁵⁴⁵ Information provided by the Human Rights Directorate, January 2021.

⁵⁴⁶ Information provided by the Human Rights Directorate, March 2022.

⁵⁴⁷ Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

Malta's Contributory Scheme since they are not present in Malta for a sufficient number 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.⁵⁴⁸ This is a form of limited unemployment support. 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 various agencies within the Foundation for Social Welfare Services.⁵⁴⁹ For benefits, beneficiaries may apply to their local social security office or online.

According to NGOs, for an individual to receive the social benefits they are entitled to, they must be able to provide relevant authorities with a rent contract, residence permit (ID card) and protection certificate issued by the International Protection Agency (IPA). Specific benefits and support schemes might require additional evidence/documentation to be presented for eligibility. In practice, stringent requirements for the issuing of residence permits often result in obstacles to accessing benefits to which beneficiaries of protection are otherwise entitled.⁵⁵⁰

Recent law changes stipulate that THP holders should have access to non-contributory benefits similarly to beneficiaries of subsidiary protection. However, up to mid-2021, JRS reported not being aware of any case where this change was implemented in practice.⁵⁵¹

Difficulties arise in practice, as entitlements are not clear and beneficiaries of international protection are usually ill informed regarding benefits they are entitled to. Other persisting obstacles include lack of information in languages understood by refugees, and a lack of cultural mediators and/or interpreters across all public services.

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,⁵⁵² as defined in the Procedural Regulations.⁵⁵³ 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 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

⁵⁴⁸ 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>.

⁵⁴⁹ See <https://bit.ly/3EYCuxU>

⁵⁵⁰ JRS and aditus foundation, *In Pursuit of Livelihood: An in-depth investigation of asylum-seekers' battle against poverty and social exclusion in Malta*, December 2021, cited above.

⁵⁵¹ JRS and aditus foundation, *In Pursuit of Livelihood: An in-depth investigation of asylum-seekers' battle against poverty and social exclusion in Malta*, December 2021, cited above.

⁵⁵² Social Security (U.N. Convention Relating to the Status of Refugees) Order, Subsidiary Legislation 318.16, 2001, available at: <http://bit.ly/2kvolaz>.

⁵⁵³ Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

authorities.⁵⁵⁴ Furthermore, NGOs report that all third-country nationals are entitled to full access to public health services if they are able to present at least 3 most recent payslips to the hospital payment desk.

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 national mental health services and to the psychiatric hospital for in-depth support. The NGO Richmond Foundation provides mental health support, on a referral basis. Since the organisation's services are largely based on a public service agreement with the Government, referrals need to be of persons having access to social support. Nonetheless, NGOs report that free services are occasionally also provided by the NGO. JRS Malta also provides psychological support to persons referred to the organisation, whilst in 2022 the Migrant Women Association (Malta) started offering support to women. NGOs report coming across several people who have suffered torture and various forms of extreme violence, including sexual violence. Long-term support is extremely difficult to secure and where the impact impedes access to employment, victims tend to struggle due to the limited available financial and other support.

Incidents of neglect have been reported to happen, including in 2022. The African Media Association Malta reported the death of a 22-year-old migrant after she was allegedly refused hospital treatment. Her relatives testified to her repeated experience of negligence at the Mater Dei emergency room, and the police opened an investigation to determine the exact cause of her death. MaltaToday reported that a Somali man who was reported missing had died in a hospital after suffering serious injuries at work. His identity had not been established until nurses identified him from a photo issued by the police. When the police issued the missing person report, social media were flooded with racist jokes and abusive comments celebrating the man's disappearance, according to Lovin Malta, which were condemned by the Minister for Inclusion and the Equality Minister.⁵⁵⁵

⁵⁵⁴ Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

⁵⁵⁵ FRA, Migration: Key fundamental rights concerns, quarterly bulletin October – December 2021, available at: <https://bit.ly/3ENks1k>, 30.

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)