

2023 UPDATE



**MALTA**



# COUNTRY REPORT

## 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.

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Unless otherwise specified, references to information provided by the authorities refers to the following dates:

- AWAS on 4 March 2024, in response to Freedom of Information Request 315240854262
- HRD on 30 May 2024;
- IPA on 4 March 2024, in response to Freedom of Information Requests 315240434264, 315240564265 (Dublin Unit) and on 3 April 2024 via email;
- IPAT on 4 March 2024, in response to Freedom of Information Request 315240104263;
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- Jobsplus on 29 January 2024;
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- PIO on 5 March 2024, in response to Freedom of Information Request 274240744259.

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 2023, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is managed by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). 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 Union's Asylum, Migration and Integration Fund (AMIF) and ECRE. The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of the European Commission.



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## Glossary & List of Abbreviations

<b>AAT</b>	Age Assessment Team
<b>ATD</b>	Alternatives to Detention
<b>AFM</b>	Armed Forces of Malta
<b>AWAS</b>	Agency for the Welfare of Asylum-seekers
<b>CEO</b>	Chief Executing Officer
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>DSA</b>	Detention Services Agency
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Law
<b>EEPO</b>	European Employment Policy Observatory
<b>EUAA</b>	European Union Agency for Asylum
<b>HRD</b>	Human Rights Directorate
<b>IAB</b>	Immigration Appeals Board
<b>IOM</b>	International Organization for Migration
<b>IPAT</b>	International Protection Appeals Tribunal
<b>IPA</b>	International Protection Agency
<b>IRC</b>	Initial Reception Centre
<b>MHSE</b>	Ministry for Home Affairs, Security and Employment
<b>MMA</b>	Malta Migrants' Association
<b>MQF</b>	Malta Qualifications Framework
<b>MQRIC</b>	Malta Qualifications Recognition Information Centre
<b>MRC</b>	Malta Refugee Council
<b>NCFHE</b>	National Commission for Further Higher Education
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PD Form</b>	Personal Details Form
<b>PIO</b>	Principal Immigration Officer
<b>PQ</b>	Preliminary Questionnaire
<b>SAR</b>	Search and Rescue
<b>SRA</b>	Specific Residence Authorisation
<b>TCN</b>	Third Country National
<b>THP</b>	Temporary Humanitarian Protection
<b>TP</b>	Temporary Protection
<b>UNGDAW</b>	United Nations Working Group on discrimination against women and girls
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestinian Refugees
<b>VAAP</b>	Vulnerable Adult Assessment Procedure

## Statistics

### Overview of statistical practice

Regular statistics are not published by the authorities. According to IPA, a total of 951 decisions were taken in 2023, of which 70 relate to applications dismissed as inadmissible\*.

### Applications and granting of protection status at first instance: 2023

	Applicants in year	Pending at end of year	Total decisions in year	Total in merit decisions	Total inadmissible	In merit rejection	Refugee status	Subsidiary protection	Temporary Humanitarian Protection (THP) <sup>1</sup>
<b>Total</b>	600 <sup>2</sup>	833	951	881	70	616	18	241	6

Breakdown by countries of origin of the total numbers

<b>Syria</b>	119	201	201	188	13	18	8	161	1
<b>Bangladesh</b>	116	N/A	109	109	0	108	1	0	0
<b>Sudan</b>	75	103	58	57	1	55	1	0	1
<b>Libya</b>	33	50	77	77	0	76	0	0	1
<b>Ukraine</b>	30	89	0	0	0	0	0	0	0
<b>Guinea</b>	27	37	22	22	0	22	0	0	0
<b>Colombia</b>	26	26	22	22	0	22	0	0	0
<b>Pakistan</b>	17	25	16	16	0	14	2	0	0
<b>Somalia</b>	15	60	85	81	4	52	1	28	0
<b>Nigeria</b>	13	26	37	37	0	36	0	0	1

Source: International Protection Agency.

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

<sup>1</sup> This is explained in more detail below at footnote 29.

<sup>2</sup> This figure includes first and subsequent applications as well as applications defined by IPA as 'new'. Such applications are "those instances where a previous application was discontinued as explicitly or implicitly withdrawn and the person concerned subsequently requests the application to be re-opened but the legal time limit for re-opening has lapsed."



### Applications and granting of protection status at first instance: rates for year 2023.

According to IPA, a total of 951 decisions were taken in 2023, of which 70 relate to applications dismissed as inadmissible. The rates in the table below were calculated on a total of 881.

	Overall protection rate	Refugee rate	Subsidiary protection rate	Temporary Humanitarian protection rate	Overall rejection rate
<b>Total</b>	29.4%	2%	27.4%	0.1%	69.9%
<b>Syria</b>	84.6%	4%	80.1%	0.5%	9%
<b>Bangladesh</b>	0.9%	0.9%	0%	0%	99.1%
<b>Sudan</b>	3.4%	1.7%	0%	1.7%	94.8%
<b>Libya</b>	1.3%	0%	0%	1.3%	98.7%
<b>Ukraine<sup>3</sup></b>	N/A	N/A	N/A	N/A	N/A
<b>Guinea</b>	0%	0%	0%	0%	100%
<b>Colombia</b>	0%	0%	0%	0%	100%
<b>Pakistan</b>	12.5%	12.5%	0%	0%	87.5%
<b>Somalia</b>	34.1%	1.2%	32.9%	0%	61.2%
<b>Nigeria</b>	2.7%	0%	0%	2.7%	97.3%

Source of the percentages: Based on calculations of the figures shared by the International Protection Agency. Protection and rejection rates per country of origin are calculated on the basis of total decisions taken on applications from those countries.

### Gender/age breakdown of the total number of applicants: 2023<sup>4</sup>

	Men	Women
<b>Number</b>	459	108
<b>Percentage</b>	81%	19%

	Adults	Children	
		Accompanied	Unaccompanied
<b>Number</b>	515	39	13 (11 males, 2 females)
<b>Percentage</b>	90.8%	6.9%	2.3%

Source: International Protection Agency.

<sup>3</sup> In 2023 no decisions were taken by IPA on international protection applications from Ukrainian nationals.

<sup>4</sup> Gender/age breakdown of the 33 'new' applications is not available. These tables are therefore based on the total number of first and subsequent applications, for a total of 567 applications.

**First instance and appeal decision rates: 2023**

	First instance		Appeal <sup>5</sup>	
	Number	Percentage	Number	Percentage
<b>Total number of decisions<sup>6</sup></b>	951	100%	563	100%
Positive decisions	265	27.9%	17	3%
• <i>Refugee status</i>	18	1.9%	4	0.7%
• <i>Subsidiary protection</i>	241	25.3%	5	0.9%
• <i>Temporary Humanitarian Protection</i>	6	0.6%	0	0%
• <i>Other<sup>7</sup></i>	/	/	8	1.4%
Negative decisions	686	72.1%	546	97%

Source: International Protection Agency, International Protection Appeals Tribunal.

**All types of application breakdown by country of Origin: 2023<sup>8</sup>**

Country of Origin	Count of all types of applications
Afghanistan	1
Algeria	2
Argentina	1
Bangladesh	116
Bosnia And Herzegovina	1
Brazil	1

<sup>5</sup> The IPAT also determines Dublin appeals, so the total number of decisions includes decisions on such appeals. The decisions upholding Dublin appeals are included under Other, below, whilst the negative decisions are included as such. Although the IPAT confirmed that it took 595 decisions, the 32 indicated as 'explicitly withdrawn' are not included in the total number.

<sup>6</sup> For this table, the total number of decisions includes decisions of inadmissibility, therefore presenting numbers and percentages different to those in previous tables

<sup>7</sup> In relation to the IPAT, this number refers to positive decisions in Dublin appeals (2) and applications returned to IPA (6).

<sup>8</sup> Information provided by International Protection Agency on 3 April 2024

Burkina Faso	1
Cameroon	7
Chad	1
China, including Hong Kong	1
Colombia	26
Congo	1
Ivory Coast	4
Egypt	11
Eritrea	12
Ethiopia	2
Gambia	4
Georgia	7
Ghana	8
Guinea	27
India	3
Indonesia	1
Iran	3
Iraq	2
Kenya	1
Lebanon	1
Libya	33
Mali	1
Morocco	2
Myanmar/Burma	1
Nepal	4

Nigeria	13
Pakistan	17
Palestine	5
Peru	4
Philippines	1
Russia	10
Senegal	3
Serbia	1
Sierra Leone	2
Somalia	15
South Sudan	1
Stateless	1
Sudan	75
Syria	118
Togo	5
Tunisia	1
Turkey	3
Ukraine	30
Venezuela	7
Zimbabwe	1
Grand Total	599

## Overview of the legal framework

**Main legislative acts and policies relevant to asylum procedures, reception conditions, detention, and content of protection.** The green-coloured rows indicate the principal Act, with the following rows including the subsidiary legislation adopted within these Acts. The yellow-colour rows include policy documents.

Title	Abbreviation	Link	Amendments with links
Cap. 420 International Protection Act	IP Act	<a href="https://legislation.mt/eli/cap/420/eng">https://legislation.mt/eli/cap/420/eng</a>	Amended by Act VIII of 2004 - <a href="https://legislation.mt/eli/act/2004/8">https://legislation.mt/eli/act/2004/8</a> Amended by Legal Notice 40 of 2005 - <a href="https://legislation.mt/eli/lv/2005/40">https://legislation.mt/eli/lv/2005/40</a> Amended by Legal Notice 426 of 2007 - <a href="https://legislation.mt/eli/lv/2007/426">https://legislation.mt/eli/lv/2007/426</a> Amended by Act VII of 2008 - <a href="https://legislation.mt/eli/act/2008/7">https://legislation.mt/eli/act/2008/7</a> Amended by: Act VI of 2015 - <a href="https://legislation.mt/eli/act/2015/6">https://legislation.mt/eli/act/2015/6</a> Amended by: Act XX of 2017 - <a href="https://legislation.mt/eli/act/2017/20">https://legislation.mt/eli/act/2017/20</a> Amended by: Act XXI of 2020 - <a href="https://legislation.mt/eli/act/2020/21">https://legislation.mt/eli/act/2020/21</a> Amended by Legal Notice 198 of 2020 - <a href="https://legislation.mt/eli/lv/2020/198">https://legislation.mt/eli/lv/2020/198</a> Amended by Act XL of 2020 - <a href="https://legislation.mt/eli/act/2020/40">https://legislation.mt/eli/act/2020/40</a> Amended by: Act XIX of 2022 - <a href="https://legislation.mt/eli/act/2022/19">https://legislation.mt/eli/act/2022/19</a> Amended by: Act XXXV of 2023 - <a href="https://legislation.mt/eli/act/2023/35">https://legislation.mt/eli/act/2023/35</a>
S.L. 420.01 International Protection Appeals Tribunal (Procedures) Regulations	IPAT Regulations	<a href="https://legislation.mt/eli/sl/420.1/eng">https://legislation.mt/eli/sl/420.1/eng</a>	Amended by Legal Notices 426 of 2007 and 426 of 2012.
S.L. 420.04 International Protection Appeals Tribunal (Chambers) Rules	IPAT Chambers Regulations	<a href="https://legislation.mt/eli/sl/420.4/eng">https://legislation.mt/eli/sl/420.4/eng</a>	Amended by Legal Notice 46 of 2014
S.L. 420.05 Temporary Protection for Displaced Persons (Minimum Standards) Regulations		<a href="https://legislation.mt/eli/sl/420.5/eng">https://legislation.mt/eli/sl/420.5/eng</a>	Amended by Legal Notice 188 of 2022
S.L. 420.06 Reception of Asylum-seekers Regulations	Reception Regulations	<a href="https://legislation.mt/eli/sl/420.6/eng">https://legislation.mt/eli/sl/420.6/eng</a>	Amended by Legal Notices 417 of 2015, 487 of 2021 and 2 of 2023 and 87 of 2024

S.L. 420.07 Procedural Standards for Granting and Withdrawing International Protection Regulations	Procedural Regulations	<a href="https://legislation.mt/eli/sl/420.7/eng">https://legislation.mt/eli/sl/420.7/eng</a>	Amended by Act XL of 2020 and Legal Notices 488 of 2021, 273 of 2022 and 104 of 2024
S.L. 420.08 Fees Payable for Lost or Destroyed Documents Regulations		<a href="https://legislation.mt/eli/sl/420.8/eng">https://legislation.mt/eli/sl/420.8/eng</a>	
Cap. 217 Immigration Act	Immigration Act	<a href="https://legislation.mt/eli/cap/217/eng">https://legislation.mt/eli/cap/217/eng</a>	Amended by Act VIII of 2004 - <a href="https://legislation.mt/eli/act/2004/8">https://legislation.mt/eli/act/2004/8</a> Amended by Legal Notice 248 of 2004 - <a href="https://legislation.mt/eli/ln/2004/248">https://legislation.mt/eli/ln/2004/248</a> Amended by Act XIII of 2005 - <a href="https://legislation.mt/eli/act/2005/13">https://legislation.mt/eli/act/2005/13</a> Amended by Act XVII of 2005 - <a href="https://legislation.mt/eli/act/2005/17">https://legislation.mt/eli/act/2005/17</a> Amended by Legal Notice 274 of 2007 - <a href="https://legislation.mt/eli/ln/2007/274">https://legislation.mt/eli/ln/2007/274</a> Amended by Legal Notice 411 of 2007 - <a href="https://legislation.mt/eli/ln/2007/411">https://legislation.mt/eli/ln/2007/411</a> Amended by Act VII of 2008 - <a href="https://legislation.mt/eli/act/2008/7">https://legislation.mt/eli/act/2008/7</a> Amended by Act XV of 2008 - <a href="https://legislation.mt/eli/act/2008/15">https://legislation.mt/eli/act/2008/15</a> Amended by Act XVIII of 2009 - <a href="https://legislation.mt/eli/act/2009/18">https://legislation.mt/eli/act/2009/18</a> Amended by Legal Notice 20 of 2013 - <a href="https://legislation.mt/eli/ln/2013/20">https://legislation.mt/eli/ln/2013/20</a> Amended by Act XXVI of 2015 - <a href="https://legislation.mt/eli/act/2015/36">https://legislation.mt/eli/act/2015/36</a> Amended by Act XV of 2022 - <a href="https://legislation.mt/eli/act/2022/15">https://legislation.mt/eli/act/2022/15</a> Amended by Act XXXV 2023 - <a href="https://legislation.mt/eli/act/2023/35">https://legislation.mt/eli/act/2023/35</a>
S.L. 217.01 Fees payable for Residence Permits and Employment Licences Regulations		<a href="https://legislation.mt/eli/sl/217.1/eng">https://legislation.mt/eli/sl/217.1/eng</a>	Amended by Legal Notices 32 of 1995, 233 of 1997, 267 of 2006, 254 of 2009 2 of 2013 and 84 of 2021; and Act XIII of 2015.
S.L. 217.02 Detention of a Person at Savio College Regulations		<a href="https://legislation.mt/eli/sl/217.2/eng">https://legislation.mt/eli/sl/217.2/eng</a>	
S.L. 217.03 Places of Detention Designation Order		<a href="https://legislation.mt/eli/sl/217.3/eng">https://legislation.mt/eli/sl/217.3/eng</a>	
S.L. 217.05 Status of Long-term Residents (Third Country Nationals) Regulations		<a href="https://legislation.mt/eli/sl/217.5/eng">https://legislation.mt/eli/sl/217.5/eng</a>	Amended by Legal Notices 370 of 2010, 197 of 2014, 366 of 2015 and 84 of 2021 and Act XXIX of 2019
S.L. 217.06 Family Reunification Regulations	Family Reunification Regulations	<a href="https://legislation.mt/eli/sl/217.6/eng">https://legislation.mt/eli/sl/217.6/eng</a>	Amended by Legal Notice 148 of 2017 and 166 of 2018
S.L. 217.07 Permission to Reside for Victims of Trafficking or Illegal		<a href="https://legislation.mt/eli/sl/217.7/eng">https://legislation.mt/eli/sl/217.7/eng</a>	

Immigration who co-operate with the Maltese Authorities Regulations			
S.L. 217.08 Monitoring Board for Detained Persons Regulations	MBDP Regulations	<a href="https://legislation.mt/eli/sl/217.8/eng">https://legislation.mt/eli/sl/217.8/eng</a>	Amended by Legal Notices 251 of 2012 and 425 of 2015
S.L. 217.11 Agency for the Welfare of Asylum-seekers Regulations	AWAS Regulations	<a href="https://legislation.mt/eli/sl/217.11/eng">https://legislation.mt/eli/sl/217.11/eng</a>	
S.L. 217.12 Common Standards and Procedures for returning Illegally Staying Third-Country Nationals Regulations	Returns Regulations	<a href="https://legislation.mt/eli/sl/217.12/eng">https://legislation.mt/eli/sl/217.12/eng</a>	Amended by Legal Notice 15 of 2014, 410 of 2020 and 43 of 2021
S.L. 217.13 Immigration Appeals Board (Division) Regulations	IAB Divisions Regulations	<a href="https://legislation.mt/eli/sl/217.13/eng">https://legislation.mt/eli/sl/217.13/eng</a>	Amended by Legal Notice 82 of 2023
S.L. 217.14 Minimum Standards on Sanctions and Measures against Employers of Illegally Staying Third-Country Nationals Regulations		<a href="https://legislation.mt/eli/sl/217.14/eng">https://legislation.mt/eli/sl/217.14/eng</a>	
S.L. 217.16 Immigration Appeals Board (Additional Jurisdiction) Regulations		<a href="https://legislation.mt/eli/sl/217.16/eng">https://legislation.mt/eli/sl/217.16/eng</a>	Amended by Legal Notice 133 of 2017
S.L. 217.17 Single Application Procedure for a Single Permit as regards Residence and Work and a Common Set of Rights for those Third-Country Workers legally residing in Malta Regulations		<a href="https://legislation.mt/eli/sl/217.17/eng">https://legislation.mt/eli/sl/217.17/eng</a>	
S.L. 217.18 Malta Residence and Visa Programme Regulations		<a href="https://legislation.mt/eli/sl/217.18/eng">https://legislation.mt/eli/sl/217.18/eng</a>	Amended by Legal Notices 189 of 2017, 122, 384 of 2021 and 56 of 2024
S.L. 217.19 Detention Service Regulations	Detention Service Regulations	<a href="https://legislation.mt/eli/sl/217.19/eng">https://legislation.mt/eli/sl/217.19/eng</a>	
S.L. 217.21 Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer Regulations		<a href="https://legislation.mt/eli/sl/217.21/eng">https://legislation.mt/eli/sl/217.21/eng</a>	

S.L. 217.22 Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Research, Studies, Training and Voluntary Service in the Mobility Project for Young People: Voluntary Projects Regulations		<a href="https://legislation.mt/eli/sl/217.22/eng">https://legislation.mt/eli/sl/217.22/eng</a>	
S.L. 217.24 Procedure for the Inspection of Illegally Staying and Illegally Employed Third-country Nationals and the Monitoring of Third Country Nationals enrolled in Educational Establishments Regulations		<a href="https://legislation.mt/eli/sl/217.24/eng">https://legislation.mt/eli/sl/217.24/eng</a>	
S.L. 217.25 Residence Status of United Kingdom nationals and their family members in accordance with the Agreement on the Withdrawal of the United Kingdom and Northern Ireland from the European Union and the European Atomic Energy Community Regulations		<a href="https://legislation.mt/eli/sl/217.25/eng">https://legislation.mt/eli/sl/217.25/eng</a>	
S.L. 217.26 Malta Permanent Residence Programme Regulations		<a href="https://legislation.mt/eli/sl/217.26/eng">https://legislation.mt/eli/sl/217.26/eng</a>	
S.L. 217.27 Conditions of the Entry and Residence of Third-Country Nationals for the Purpose of Highly Qualified Employment Regulations		<a href="https://legislation.mt/eli/sl/217.27/eng">https://legislation.mt/eli/sl/217.27/eng</a>	
Cap. 36 Prevention of Disease Ordinance		<a href="https://legislation.mt/eli/cap/36/eng">https://legislation.mt/eli/cap/36/eng</a>	
Cap. 465 Public Health Act		<a href="https://legislation.mt/eli/cap/465/eng">https://legislation.mt/eli/cap/465/eng</a>	
Cap. 602 Minor Protection(Alternative Care) Act	Minor Care Act	<a href="https://legislation.mt/eli/cap/602/eng">https://legislation.mt/eli/cap/602/eng</a>	Amended by Act XXXIX of 2020 - <a href="https://legislation.mt/eli/act/2020/39/eng/pdf">https://legislation.mt/eli/act/2020/39/eng/pdf</a> Amended by Act XXIII of 2021 - <a href="https://legislation.mt/eli/act/2021/23/eng">https://legislation.mt/eli/act/2021/23/eng</a> Amended by Act XI of 2023 - <a href="https://legislation.mt/eli/act/2023/11/eng">https://legislation.mt/eli/act/2023/11/eng</a>



S.L.602.01 Children's House Regulations		<a href="https://legislation.mt/eli/sl/602.1/eng">https://legislation.mt/eli/sl/602.1/eng</a>	
Cap. 595 Public Administration Act		<a href="https://legislation.mt/eli/cap/595/eng">https://legislation.mt/eli/cap/595/eng</a>	
S.L. 595.36 International Protection Agency (Establishment) Order	IPA Order	<a href="https://legislation.mt/eli/sl/595.36/eng">https://legislation.mt/eli/sl/595.36/eng</a>	
S.L. 595.45 Detention Services Agency (Establishment) Order	DSA Order	<a href="https://legislation.mt/eli/sl/595.45/eng">https://legislation.mt/eli/sl/595.45/eng</a>	
Cap. 318 Social Security Act		<a href="https://legislation.mt/eli/cap/318/eng">https://legislation.mt/eli/cap/318/eng</a>	
S.L. 318.16 Social Security (U.N. Convention relating to the Status of Refugees) Order	Refugees Social Security Regulations	<a href="https://legislation.mt/eli/sl/318.16/eng">https://legislation.mt/eli/sl/318.16/eng</a>	
Cap 188 Maltese Citizenship Act	Citizenship Act	<a href="https://legislation.mt/eli/cap/188/eng">https://legislation.mt/eli/cap/188/eng</a>	Amended by Act II of 1970, Act XXXI of 1972, Act LVIII of 1974, Act XXXI of 1975, Act IX of 1977, Act XIII of 1983 - <a href="https://legislation.mt/eli/act/1983/13/eng/pdf">https://legislation.mt/eli/act/1983/13/eng/pdf</a> Act XXIV of 1989 - <a href="https://legislation.mt/eli/act/1989/24/eng/pdf">https://legislation.mt/eli/act/1989/24/eng/pdf</a> Act IV of 2000 - <a href="https://legislation.mt/eli/act/2000/4/eng/pdf">https://legislation.mt/eli/act/2000/4/eng/pdf</a> Act X of 2007 - <a href="https://legislation.mt/eli/act/2007/10/eng/pdf">https://legislation.mt/eli/act/2007/10/eng/pdf</a> Legal Notice 410 of 2007 - <a href="https://legislation.mt/eli/ln/2007/410/eng/pdf">https://legislation.mt/eli/ln/2007/410/eng/pdf</a> Act XV of 2013 - <a href="https://legislation.mt/eli/act/2013/15/eng/pdf">https://legislation.mt/eli/act/2013/15/eng/pdf</a> Act XXIV of 2017 - <a href="https://legislation.mt/eli/act/2017/24">https://legislation.mt/eli/act/2017/24</a> Act XXVI of 2017 - <a href="https://legislation.mt/eli/act/2017/26/eng/pdf">https://legislation.mt/eli/act/2017/26/eng/pdf</a> Act XV of 2020 - <a href="https://legislation.mt/eli/act/2020/15/eng/pdf">https://legislation.mt/eli/act/2020/15/eng/pdf</a> Act XXXVIII of 2020 - <a href="https://legislation.mt/eli/act/2020/38/eng/pdf">https://legislation.mt/eli/act/2020/38/eng/pdf</a>

Anti-Racism Strategy 2021-2023	Anti-Racism Strategy	<a href="https://tinyurl.com/5yrphd5c">https://tinyurl.com/5yrphd5c</a>	
Policy regarding Specific Residence Authorisation	Specific Residence Authorisation	<a href="https://tinyurl.com/432x46m3">https://tinyurl.com/432x46m3</a>	
Strategy for the Reception of Asylum-seekers and irregular migrants (2015)	2015 Strategy Document	<a href="https://tinyurl.com/6ppyhw5k">https://tinyurl.com/6ppyhw5k</a>	
Integration=Belonging: Migrant Integration Strategy and Action Plan, Vision 2020		<a href="https://tinyurl.com/mtcknahr">https://tinyurl.com/mtcknahr</a>	

## Overview of the main changes since the previous report update

The report was previously updated in **April 2023**.

### International protection

#### *General*

Malta shaped its immigration policy based on three pillars: prevent, return, relocate. Continuing the trend of recent years, 2023 witnessed several incidents at sea with Malta either refusing to intervene or delaying interventions, whilst various attempts were made to further enhance Malta's relationship with Libya. Amongst the worrying published reports were allegations that Malta was selecting which boats to rescue based on the nationality of the persons in distress, with a preference for persons having lower chances of being granted protection and, therefore, a higher possibility of being forcibly or voluntarily returned.

In 2023, the Home Affairs Ministry shared information that the Chief Executive Officer of the International Protection Agency had been appointed to the role of the Home Affairs Ministry's migration coordinator whilst keeping his role at IPA. No public announcement was made of this appointment, and questions remain as to the coordinator's remit and management of possible issues of conflict of interest with the role of IPA CEO.

The UN Working Group on discrimination against women and girls (UNGDAW) published a report following its visit to Malta, dedicating a section to 'Migrant, asylum-seeking, refugee women and survivors of human trafficking'<sup>9</sup>. The report notes the particular impact on women of specific labour requirements and comments on the lack of transparency in relation to the naturalisation procedure. Specifically, the report flags the situation of asylum-seeker women living in open centres, commenting that "*the premises and living conditions were basic*" and urging "*gender-responsive changes in the laws pertaining to migrants, asylum-seekers and refugee women*".

#### *Asylum procedure*

- ❖ **Key asylum statistics:** In 2023, Malta received a total of 600 new applications (491 first, 76 subsequent and 33 new) whilst it ended the year with a backlog of 833 cases. Of the top five countries of origin with applications in Malta, four are countries experiencing conflict or serious instability: Syria, Sudan, Libya and Ukraine. Of the total 951 decisions taken at First Instance, 488 were taken without a personal interview. At First Instance, Malta had an overall protection rate of 27.9% (265 cases): 18 (1.9%) recognised as refugees, 241 (25.3%) granted subsidiary protection and 6 (0.6%) granted Temporary Humanitarian Protection. At Second Instance, the International Protection Appeals Tribunal recognised refugee status in four cases and granted subsidiary protection in five cases of the 595 decisions taken in the year. Of these 595 cases, 587 were decided with no oral hearing. The appeal procedure is estimated to have an average duration of 452 days.
- ❖ **Accelerated procedure:** Despite a 2022 (final in 2023) judgement on the quality of Malta's accelerated procedure by the European Court of Human Rights, Malta maintained the procedure, criticised by practitioners as violating the MS' obligation to provide an effective remedy against all negative decisions. 191 decisions were taken under Malta's accelerated procedure. Of these, two were recognised as refugees, one was granted subsidiary protection whilst 188 were rejected.

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<sup>9</sup> OHCHR, UN Working Group on discrimination against women and girls, End of Mission Statement, July 2023, at: <https://tinyurl.com/3rr53ddk>.

- ❖ **Subsequent applications:** A new policy dictates that persons filing a subsequent application deemed inadmissible are barred from accessing employment. NGOs commented that the major impact of this policy was to discourage applicants from filing subsequent applications.
- ❖ **Returns:** With obstacles to receiving independent information on the asylum procedure and increasing efforts at promoting voluntary return, 2023 saw a number of persons opting for voluntary return without consulting UNHCR, legal practitioners or NGOs regarding their persons situations.

#### *Reception conditions*

- ❖ **Conditions in open centres:** Despite the low number of asylum seekers reaching Malta in 2023, living conditions in the open reception centres remained challenging for most residents. The largest centre, also housing unaccompanied children, is composed of several rows of metal containers and shared facilities underlining the temporary nature of this accommodation.
- ❖ **Withdrawal of reception conditions:** The policy of withdrawing material reception conditions for all applicants, saving the most vulnerable, following six months of residence in the reception centres was maintained yet it is not formally described or treated as a withdrawal. In 2023, the reception agency, AWAS, strengthened its material support for applicants opting to live in the community yet this remains an exceptional approach and not a mainstream programme.
- ❖ **Access to information:** Access to information regarding vulnerable persons was repeatedly blocked or stalled by the authorities, in most cases refusing to grant lawyers access to files including assessment and conclusions.

#### *Detention of asylum-seekers*

- ❖ **Detention of newly arrived asylum-seekers:** Malta maintained administrative detention as the primary reception model for newly-arrived asylum-seekers. All persons, including children and vulnerable persons, were detained on public health grounds under a regime found to be illegal by Maltese Courts and the European Court of Human Rights. Following this public health regime, the Police authorities would determine whether to issue detention orders in line with the Reception Conditions Regulations.
- ❖ **Detention Services Agency:** Malta further formalised its approach to detention by establishing the Detention Services Agency as an entity within the Home Affairs Ministry. Towards the end of 2023, in an apparent response to a European Human Rights Court judgement, Malta reverted to the automatic detention of most newly-arrived applicants for up to two months.
- ❖ **Access to detention centres:** Access to detention centres and to detained asylum-seekers was a key challenge throughout 2023. In mid-2023 all organisations regularly visiting the centres, including UNHCR and IOM, boycotted the new Visitors Policy. NGOs argued that the new policy created unreasonable obstacles to their service-provision and impeded detained persons from obtaining independent information on their situations. Although the revised Visitors Policy was accepted by the NGOs, they remain concerned that detained applicants are being denied their rights to information and advice. Furthermore, with such a low level of access, independent monitoring of living conditions and treatment is virtually impossible.
- ❖ **Detention conditions:** Living conditions in the detention centres remained extremely poor, particularly for vulnerable persons and children. A European Court of Human Rights judgement had harsh words for Malta's shoddy treatment of young and unwell persons.

*Content of international protection*

- ❖ **Integration Policy and Action Plan:** The Human Rights Directorate launched a national consultation on Malta's second National Integration Policy and Action Plan.<sup>10</sup> A public consultation document was published containing a set of key principles that would underpin the second strategy and action plan, with a set of questions to guide input. The Malta Refugee Council provided detailed input in the name of its members.<sup>11</sup> At the time of writing, Malta had not yet adopted the Integration Policy.

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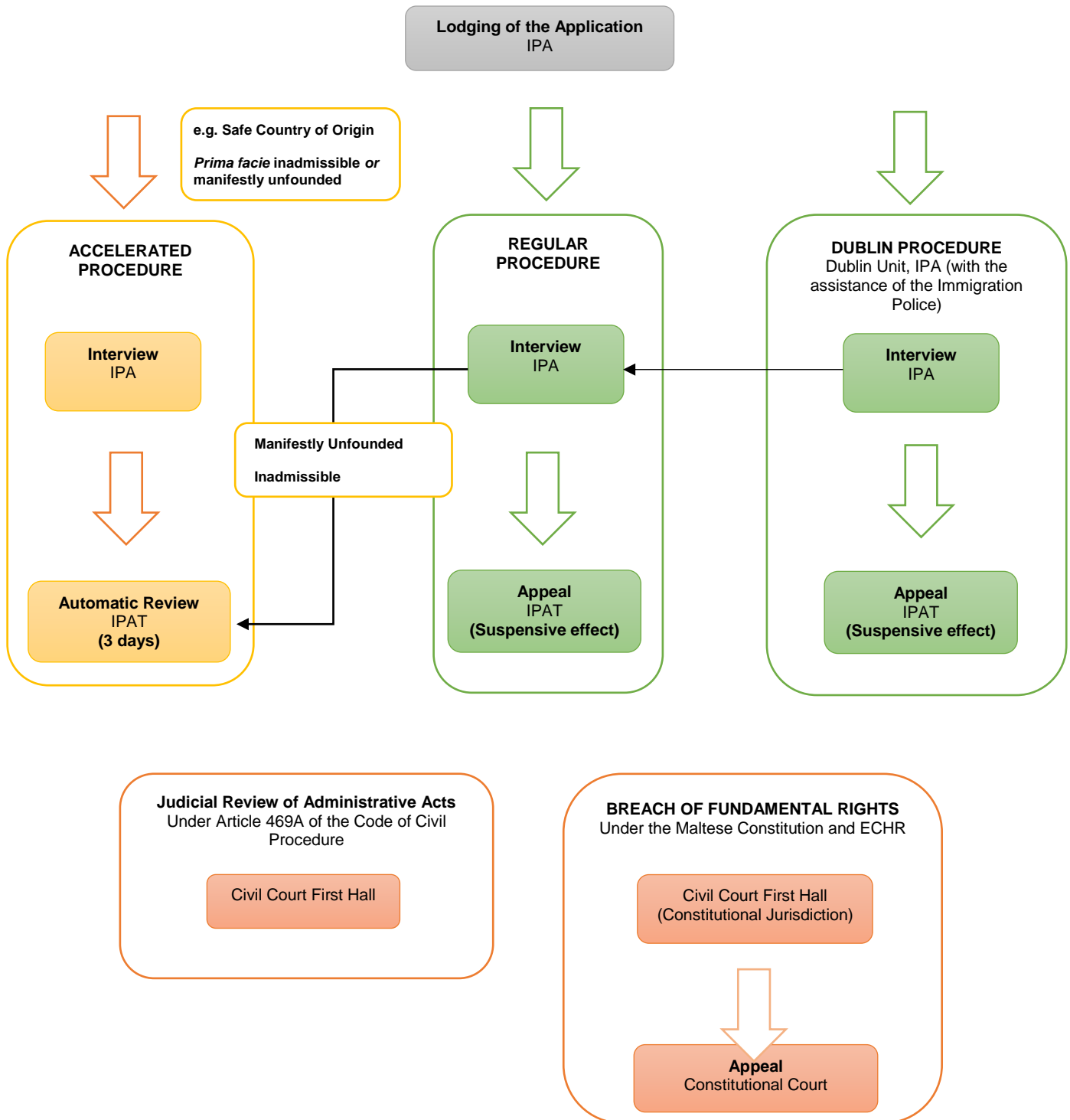
<sup>10</sup> Ministry for Home Affairs, Security, Reforms and Equality, Public Consultation in preparation for a second National Integration Policy and Action Plan, at: <https://tinyurl.com/3tt257nm>.

<sup>11</sup> Malta Refugee Council, Input on the National Integration Policy and Action Plan Consultation, June 2023, at: <https://tinyurl.com/3u6km49p>.

# Asylum Procedure

## A. General

### 1. Flow chart<sup>12</sup>



<sup>12</sup> According to IPA, the vast majority of applications deemed to be inadmissible are not subject to an interview, as also the majority of cases in the Dublin procedure. According to the Home Affairs Ministry, this is since the vast majority of inadmissible decisions are taken based on applicants already having international protection in another EU Member State, rendering them inadmissible to the substantive procedure.

## 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: <sup>13</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>14</sup>   | <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: <sup>15</sup>   | <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)	22 <sup>16</sup>	Ministry for Home Affairs, Security and Employment	<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.<sup>17</sup> The IPA is a specialised authority in the field of asylum. However, it falls under the Ministry also responsible for Police, Immigration, 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 2023, the IPA had 3 officials

<sup>13</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>14</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>15</sup> Labelled as “*accelerated procedure*” in national law. See Article 31(8) recast Asylum Procedures Directive.

<sup>16</sup> Information provided by the Ministry for Home Affairs via a Freedom of Information Request, on 4 March 2024.

<sup>17</sup> Article 4 International Protection Act.

drafting decisions out of the 22 staff total staff employed.<sup>18</sup> 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.<sup>19</sup> According to the Home Affairs Ministry, by the end of 2023, the IPA was in the process of recruiting 25 new protection officers, with several already in place by December 2023.<sup>20</sup>

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.<sup>21</sup> The Follow-up Audits Report 2023 welcomed the IPA's September 2023 call for 25 protection officers.<sup>22</sup>

Malta has received operational support by the EASO/EUAA since 2019. The 2022-2024 operational plan was amended in April 2022 and April 2023 to take into account the changes in the operational context and in light of the invasion of Ukraine and the decreased pressure to the Maltese asylum and reception systems.<sup>23</sup> 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.

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, which indeed did happen throughout 2022 and 2023.<sup>24</sup> 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.<sup>25</sup> Practitioners noted, however, that most first instance interviews and assessments they viewed or participated in were conducted by EUAA case-workers.

In 2023, the EUAA deployed 77 experts in Malta Operations,<sup>26</sup> mostly temporary agency workers (58). The majority of deployed experts were interim support caseworkers (13), caseworkers (11), interim support registration assistants (9), interim support team leader caseworkers (7) and other supporting staff (e.g. quality assurance officers, vulnerability assessors and registration experts).<sup>27</sup>

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<sup>18</sup> Information provided by the Ministry for Home Affairs via a Freedom of Information Request, on 4 March 2024.

<sup>19</sup> Information provided by the Ministry for Home Affairs via a Freedom of Information Request, on 24 March 2023.

<sup>20</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>21</sup> National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum-seekers, 7 July 2021, available at <http://bit.ly/3CT0VeK>, 72.

<sup>22</sup> National Audit Office, Follow-up Audits Report 2023, Volume II, November 2023, available at: <https://tinyurl.com/3et2zzpr>.

<sup>23</sup> EUAA, Operational Plan 2022-2024 agreed by the European Union Agency for Asylum and Malta, April 2023, available at: <https://bit.ly/3uVutb7>.

<sup>24</sup> EUAA, 2022-2024 Operating plan agreed by EUAA and Malta, 16 December 2021, available at: <https://bit.ly/3LUHhJ>.

<sup>25</sup> EUAA, 2022-2024 Operating plan agreed by EUAA and Malta, 16 December 2021, available at: <https://bit.ly/3LUHhJ>, 15-19.

<sup>26</sup> EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

<sup>27</sup> Information provided by the EUAA, 26 February 2024. 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 2023. By way of clarification, it is noted that these figures account for the total number of persons deployed, not the number of persons supposed to be deployed according to the operation plan.



As of 19 December 2023, there were a total of 21 EUAA experts in Malta, mainly interim support caseworkers (4) and interim support flow management support officers (3).<sup>28</sup>

The Agency's operations for Malta are set to end by the end of 2024, with the possibility of this happening earlier.

## 5. Short overview of the asylum procedure

The procedure in place is a single procedure with the examination and determination of eligibility for refugee status, subsidiary protection and Temporary Humanitarian Protection (THP)<sup>29</sup> being undertaken by the International Protection Agency (IPA) within the context of the same procedure and at the same time. 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.

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 reasons for seeking international protection, personal and family background information, memberships and affiliations and the travel route taken to reach Malta.

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. Applicants rescued at sea are immediately placed in detention (at either of the two Initial Reception Centres) on health grounds, and subsequently fingerprinted and photographed. Other applicants, namely persons who had entered Malta through other means than following a rescue operation, are directed to the health authorities following their initial contact with IPA, and in 2023 some applicants were detained following this initial contact on the basis of the Reception Regulations.

Once the Superintendent of Public Health medically clears applicants, the Principal Immigration Officer (PIO) decides whether the applicant should remain detained or be released, as described below in the relevant section on

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<sup>28</sup> Information provided by the EUAA, 26 February 2024.

<sup>29</sup> 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 lists several categories of persons eligible for such status: an unaccompanied 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.

## Legal framework of 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. No interviews are scheduled for applicants claiming to be unaccompanied children until an age assessment procedure is finalised and, if necessary, a guardian is appointed. JRS reported that, in certain individual cases, the appeals stage of the age assessment procedure lasted for more than two years.

A more experienced officer or manager reviews the caseworkers' decision on the application and the IPA makes the final decision.<sup>30</sup>

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.<sup>31</sup> However, most 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 in the regular procedure, within a two-week time period from the day of the notification of the decision.<sup>32</sup> Appeals against negative decisions in the accelerated procedure are generally not possible, although in 2023 IPAT accepted as admissible a small number of appeal applications against such negative decisions.

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.<sup>33</sup> The Tribunal is empowered to regulate its own procedure, and its decisions are binding on the parties. Although the Act states that the Tribunal will not remit cases back to IPA to take a new decision, in 2023 IPAT referred six cases back to the IPA.<sup>34</sup> By law, the Tribunal must decide within a total of six months of the appeal, and this can only be extended for a further 6 months in exceptional circumstances.<sup>35</sup> 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 effectively appointed by the Prime Minister.

The International Protection Act specifies that no appeal is possible from the decision of the IPAT<sup>36</sup>, and the Home Affairs Minister has not yet brought the IPAT under the provisions of the Administrative Justice Act.<sup>37</sup> Procedural issues could be the subject of an application before the Civil Court (First Hall). 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

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<sup>30</sup> ECRE, Asylum authorities: an overview of internal structures and available resources, October 2019, available at: <https://bit.ly/2Ut8QIK>, 55.

<sup>31</sup> Regulation 6(6) Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>32</sup> Article 7(2) of the International Protection Act, Chapter 420 of the Laws of Malta

<sup>33</sup> Regulation 12 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

<sup>34</sup> Articles 7(9) and 7(11) of the International Protection Act, Chapter 420 of the Laws of Malta

<sup>35</sup> Article 7(7) of the International Protection Act, Chapter 420 of the Laws of Malta

<sup>36</sup> Article 7(10) International Protection Act, Chapter 420 of the Laws of Malta

<sup>37</sup> Administrative Justice Act, Chapter 490 of the Laws of Malta, available at: <https://tinyurl.com/49j3d8nu>.

Constitution is available should the rejected appellant be faced with a return that is prejudicial to his or her rights. Finally, applications to the Civil Court (First Hall) for situations involving alleged breaches of the EU Fundamental Rights Charter should also be possible.

Accelerated procedures are also foreseen in national law for applications that appear to be *prima facie* inadmissible or manifestly unfounded.<sup>38</sup> 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 decision of the IPA is automatically transmitted to the IPAT which must assess and review the decision of the IPA within three-days.<sup>39</sup>

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 or oral submissions. No hearing is held and the IPAT 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 does not review the case for a second time; instead, it simply amends its decision to issue a simple rejection which allows for an onward appeal according to the normal procedure mentioned above.

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.<sup>40</sup> Additionally, rejected asylum-seekers can apply to THP within a separated procedure at any time<sup>41</sup> 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.<sup>42</sup>

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. Since 2021, applicants with a subsequent application deemed inadmissible are not entitled to access the labour market.

IPA reports that in 2023 it received 600 asylum applications, of which 491 were first applications, 76 were subsequent and 33 were new applications. 833 cases remained pending at the end of the year. The majority of applicants were Syrian nationals, and of the IPA decisions: 18 recognised refugee status; 241 cases of subsidiary protection; 6 granted THP; 70 dismissed as inadmissible; and 616 rejected.

In 2022, protection was mainly granted to Eritreans (31%), Syrians (50%) and Libyans (6%) followed by Sudanese and Palestinians (2% each).<sup>43</sup> In 2023, eight Syrians, two Pakistanis and one Bangladeshi, Sudanese and Somali were recognised as refugees, whilst 161 Syrians, 51 Eritreans and 28 Somalis were granted subsidiary protection.

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<sup>38</sup> Articles 23 and 24 of the International Protection Act, Chapter 420 of the Laws of Malta

<sup>39</sup> Articles 23(3) and 24(2) of the International Protection Act, Chapter 420 of the Laws of Malta

<sup>40</sup> Article 17A (3) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>41</sup> Article 17A (1) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>42</sup> *Ibidem*.

<sup>43</sup> UNHCR, Malta Fact Sheet, December 2022, available at: <https://bit.ly/3IZf2Ai>.



## 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

In 2023, the trend observed in 2022 of a decrease in the number of sea arrivals reaching Malta continued. UNHCR reports that there were 380 arrivals in Malta, compared to 444 in 2022, 832 in 2021 and 2,281 in 2020. The Agency also reported on the nationalities of those who reached Malta via sea: 62% were Bangladeshi, 9% were Syrian, 7% were Guinean, and the rest were composed of various nationalities.<sup>44</sup>

Access to the procedure was hindered to some applicants in 2023 through a speedy channelling to the Home Affairs Ministry's voluntary return procedure. Lawyers visiting detention reported that at least one group of Bangladeshi nationals voluntarily returned to Bangladesh without having been informed of the possibility of seeking asylum. This situation was made possible due to a number of factors, including: limited information to detained persons on the right to seek protection, challenges for NGOs and other information-providers to access and monitor detention centres, active presence in detention of Ministry officials promoting voluntary return including by informing particular nationalities of their limited chances of receiving international protection with the consequential detention for a number of months. See relevant section on

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<sup>44</sup> UNHCR Malta Fact Sheet.

Procedural safeguards in relation to detention.

In May 2023 a Maltese delegation visited Eastern Libya to hold diplomatic talks with representatives of Field Marshal Khalifa Haftar. Malta's delegation met with various entities, including representatives from the Armed Forces, the Coast Guard and the Interior Ministry. Talks included security and migration issues, including new cooperation possibilities following the renewal of the 2020 MOU.<sup>45</sup>

In relation to the latter MOU, although it contains reference to the establishment of two coordination centres funded by Malta (one in Libya and one in Tripoli), a Freedom of Information request revealed that no further information exists on these centres and their regulation. The request confirmed that three persons are engaged as coordinators with the Malta-Libya Coordination Centre.<sup>46</sup>

### 1.1. Arrivals by boat

Throughout 2023, it was reported on several occasions that Malta continued its policy of preventing access to its territory for persons arriving by sea. Furthermore, in 2023 the Home Affairs Ministry strengthened its negative rhetoric against NGOs rescuing people at sea, indirectly associating them with human trafficking networks and attributing to them the responsibility for deaths of people at sea.<sup>47</sup> The Government vehemently denied having adopted such an approach.<sup>48</sup>

This situation seems to be an escalation of practices adopted in previous years, within Malta's broader policy goal of reducing the numbers of arrivals by sea. A 2021 OHCHR report 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<sup>49</sup>, whilst the Council of Europe Commissioner for Human Rights made the same observations in her 2022 report on her visit to Malta.<sup>50</sup>

In 2022, the European Centre 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 against humanity against migrants and refugees who have been intercepted at sea and systematically returned to and detained in Libya.<sup>51</sup>

The main 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

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<sup>45</sup> MaltaToday, Maltese officials in first meeting with Eastern Libya military leader Khalifa Haftar, 31 May 2023, at: <https://tinyurl.com/yc4uvu7v>.

<sup>46</sup> Times of Malta, Persons of trust and missing documents: Malta's secretive migration project, 3 July 2023, at: <https://tinyurl.com/mr3vy7z8>.

<sup>47</sup> Times of Malta, 'NGO boats are a pull factor' - minister doubles down on comment on migration, 12 January 2023, available at <https://tinyurl.com/36t6wsk6>; Malta Today, Minister: Preventing migrant departures from Libya crucial to avoiding deaths at sea, 13 March 2023, available at: <https://tinyurl.com/4fne2haf>.

<sup>48</sup> The Malta Independent, 'Totally false': Home Affairs Minister denies claims of delayed rescue of migrants, 6 February 2023, available at <https://tinyurl.com/ybdahswd>.

<sup>49</sup> OHCHR, Report: A call to safeguard migrants in central Mediterranean Sea, 25 May 2021, available at <https://bit.ly/3KvOEPA>.

<sup>50</sup> Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3InhWhS>.

<sup>51</sup> 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>

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. The three teenagers were released on bail in November 2019 and remain in Malta, pending their criminal proceedings.

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”*.<sup>52</sup> This case was taken up by Amnesty International as part of their international campaigning,<sup>53</sup> as well as by several other Maltese and international NGOs.<sup>54</sup>

On 6 November the Office of the Attorney General filed Bill of Indictment No. 49/2023 before the Criminal Court, including the same list of nine accusations as defined in the preliminary charges, namely: committing acts and activities of terrorism; illegally arresting or detaining the ship’s Captain and crew; unlawfully removing the ship’s Captain and crew to another country; committing private violence; causing fear that violence will be used against the ship’s Captain and crew.

The case remains ongoing.

### **Reported incidents in Malta’s Search and Rescue Zone<sup>55</sup>**

On the basis of a policy of *“prevention, return and relocation”*,<sup>56</sup> many reports attested to the fact that people at sea attempting to reach safety were met with the same obstacles as in previous years: pushbacks and pullbacks, delayed assistance, and refused assistance. Additionally, these incidents remain shrouded in mystery as to their facts and decision-making processes since the authorities repeatedly refused to divulge relevant details or open investigations, including when the incidents involved deaths.

A Times of Malta Editorial highlighted the issue of transparency within the Armed Forces of Malta (AFM) regarding their operations related to migrant rescue in Maltese waters. The Editorial commented that, despite its responsibility for sea rescue missions and the use of public funds, the AFM has been reticent to divulge essential information, citing security concerns and potential exploitation by criminal elements. In the opinion of the Editorial, this lack of transparency raises questions about accountability and potential political influence. While the Home Affairs Minister provided partial data in a Parliamentary session, the AFM's reluctance to share comprehensive information perpetuates an atmosphere of secrecy, impeding public understanding and integration efforts while leaving room for narrative manipulation.<sup>57</sup>

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<sup>52</sup> 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>.

<sup>53</sup> Amnesty International, ‘Demand justice for the El Hiblu 3’, available at: <https://bit.ly/3lq3jQu>.

<sup>54</sup> For more information see ‘The El Hiblu 3!’ at: <https://bit.ly/3s02nVr>.

<sup>55</sup> The information in this section is collected from various publicly available sources, in each case reported in the corresponding footnote. Neither the authors of the report nor ECRE are able to verify the information, mainly since the reported incidents occur at sea. For the vast majority of incidents, there is no publicly available information from the Maltese authorities.

<sup>56</sup> The Malta Independent, Abela says that preventing people from leaving Africa is key principle of migration solution, 18 June 2023, available at: <https://tinyurl.com/5n6rd2dk>.

<sup>57</sup> Times of Malta, So many excuses to hide information about migrants, April 29 2023, available at: <https://tinyurl.com/yc7yahts>.

Throughout 2023, Sea-Watch reported that around 588 individuals on three boats were returned to Libya from the Maltese SAR zone, with alleged involvement of the Tareq Bin Zeyad vessel. There are suspicions of Frontex's involvement in one case. The Tareq Bin Zeyad brigade, connected to Haftar's son, has a history of international law violations.<sup>58</sup>

Between January and February of 2023, the following incidents were reported:

- 1 boat with 30 people rescued by NGO vessel Sea-Eye 4, 2 bodies recovered, disembarked in Naples, Italy;
- 2 boats with 54 people rescued by Italian authorities, disembarked in Italy;
- 1 boat with around 37 people, outcome unknown;
- European Border and Coast Guard Agency Frontex was involved in at least 3 boat sightings by Seabird 2. 1 boat was rescued by NGO vessel Sea-Eye 4, 2 by Italian authorities;
- 10 empty boats were sighted, and 1 was sighted twice. 1 was the likely remains of a rescue operation conducted by Italian authorities. The destiny of the passengers of the 9 other empty boats remains unknown.<sup>59</sup>

More specifically, on 19 and 20 February 2024, Maltese authorities instructed merchant vessels not to rescue or share information with NGOs.<sup>60</sup>

On 20 February, Seabird 2 found two distressed boats in the Maltese SAR zone. The merchant vessel Adarose initially approached but subsequently retreated, citing lack of instructions and fear of migrants. Seabird 2 found the boats with engines off and people in distress. The Maltese authorities claimed to have no information whilst Italian authorities initially did not provide assistance. The people involved were rescued by the Italian authorities on 21 February after two days of non-assistance, and disembarked in Pozzallo, Italy.<sup>61</sup>

In March, the following incidents were reported:

- Around 30 people on 1 boat in distress were intercepted by the Tunisian Coast Guard in the Maltese SAR zone;
- Italian authorities rescued 270 people on 6 boats and disembarked in Italy;
- NGO vessels Louise Michel and Life Support5 rescued 39 and 38 people respectively, who were disembarked in Italy;
- Outcomes for around 1,500 people on about 50 boats in distress are unknown;
- Frontex was likely involved in incidents involving 568 distressed persons on 14 boats sighted by Seabird 2. 13 were in the Maltese SAR zone: 3 rescued by Italian authorities, 1 by NGO vessel Louise Michel;
- 30 empty boats were sighted, the outcome for the passengers is unknown.<sup>62</sup>

On 11 March, 30 people in distress contacted the Alarm Phone, but European authorities failed to act. Despite immediate notification by Alarm Phone, Italian and Maltese authorities refused to assist, referring to Libyan authorities who claimed no available vessels. Eventually, on 12 March, the merchant vessel

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<sup>58</sup> Sea-Watch, Airborne Monthly Factsheet October 2023, 12 December 2023, available at: <https://tinyurl.com/afjshh7u>.

<sup>59</sup> Sea-Watch, Airborne Monthly Factsheet January and February 2023, 18 April 2023, available at: <https://tinyurl.com/wb5j25fs>.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Sea-Watch, Airborne Monthly Factsheet March 2023, 8 March 2023, available at: <https://tinyurl.com/5n6j3e56>.



Froland rescued 17 people, while 30 remained missing. The Italian authorities issued an Inmarsat Message on 13 March to all vessels to watch out for the missing persons.<sup>63</sup>

In April, the Times of Malta reported a boat with approximately 500 people facing severe weather conditions in Malta's SAR zone, following publication of information by Alarm Phone. Despite repeated attempts to contact Maltese and Italian authorities, there was no response. Distressed passengers have described dangerous circumstances, with Alarm Phone expressing relief that the vessel survived the night amidst the tumultuous weather. However, communication remained challenging, hindering rescue efforts. Two merchant vessels attempted to assist, but proper rescue operations were difficult due to the weather conditions.<sup>64</sup>

It was subsequently reported that 440 people, including 8 women and 30 children, were rescued by an NGO ship in the sea between Malta and Libya, within Malta's SAR zone, and taken to Italy after spending four days battling a storm in a boat lacking food and water, as reported by Doctors Without Borders (MSF). Despite difficulties due to heavy seas, MSF successfully completed the rescue operation. Alarm Phone had previously warned of 500 lives at risk within Malta's search and rescue zone, while two merchant vessels attempted to shield the boat from large waves. MSF dispatched boats to distribute life jackets and assess rescue feasibility. One survivor was airlifted to Malta by helicopter. Alarm Phone criticized EU inaction, praising non-state actors for their response. The Times of Malta sought comments from Armed Forces Malta (AFM) and the Home Affairs Ministry, receiving no response by the time it published its article on the situation. MSF later announced that Italian authorities planned to transfer 100 people to an Italian navy ship off Sicily, with 339 others to be disembarked in Brindisi.<sup>65</sup>

In the same month, the Times of Malta reported that four women were unconscious, and several migrants were on the verge of jumping overboard from a fishing boat carrying around 400 individuals adrift between Malta and Greece. Alarm Phone expressed concern over the authorities' response, alleging a violation of maritime law. The Maltese authorities reportedly directed a cargo ship to provide fuel instead of coordinating rescue efforts. The Armed Forces of Malta declined to comment on the situation. The migrants involved might have departed from Tobruk, Libya. Sea Watch International located the distressed boat and reported that two merchant ships were instructed not to conduct a rescue. Italy's Coast Guard then launched rescue operations, with assistance provided by the Coast Guard ship Diciotti and two merchant vessels, approximately 170 miles southeast of Sicily's Capo Passero, as confirmed by Italian authorities.<sup>66</sup>

Again in April 2023, Alarm Phone accused Malta of failing to initiate rescue operations for two distressed boats within its SAR zone. The organization claimed on Twitter that Malta's lack of assistance put the lives of approximately 60 individuals at risk. Despite offers of support from a nearby merchant vessel and the #LifeSupport organization, Malta reportedly declined to authorize a rescue operation. Alarm Phone emphasized the rapidly deteriorating weather conditions and stressed the immediate need for rescue efforts.<sup>67</sup>

April further saw the rescue of approximately 60 migrants by merchant vessels following orders from Maltese authorities, according to the migrant emergency hotline Alarm Phone. Alarm Phone had criticized

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<sup>63</sup> Ibid., Sea-Watch, Fatal Delays: 30 Lives Lost due to European Non-Assistance, 14 March 2023, available at: <https://tinyurl.com/2zyp4sbp>.

<sup>64</sup> Times of Malta, Boat carrying 500 people battles storm in Malta rescue zone, NGO says, 4 April 2023, available at: <https://tinyurl.com/ycu5f2re>.

<sup>65</sup> Times of Malta, 440 people rescued from Maltese rescue zone by NGO, 5 April 2023, available at: <https://tinyurl.com/yc7yahts>.

<sup>66</sup> Times of Malta, Four unconscious, others ready to jump in sea; NGO claims Malta stopped rescue, 10 April 2023, available at: <https://tinyurl.com/59tx5fba>.

<sup>67</sup> Times of Malta, Maltese authorities accused of refusing to order rescue operations, 16 April 2023, available at: <https://tinyurl.com/4447u2wj>.

Maltese authorities for initially refusing to order rescue operations for the two boats carrying the migrants, describing it as a concerning delay in humanitarian assistance. The incident underscored ongoing tensions between Italy and Malta regarding migrant rescue efforts. While Maltese authorities deny systematically ignoring rescue calls, criticisms from NGOs like Sea Watch highlight ongoing concerns about coordination and response in the region. Times of Malta reached out to both the Home Affairs Ministry and the Armed Forces of Malta (AFM) for further clarification.<sup>68</sup>

At the end of April the migrant rescue ship Ocean Viking, operated by the French charity SOS Mediterranee, saved 153 people in distress in Malta's search and rescue zone, with coordinated operations led by Italian maritime authorities. The rescues involved 59 and 65 individuals on two wooden boats and later 29 people on a fibreglass vessel, all severely dehydrated after being at sea for five days, enduring two days without food or water. Another 15 migrants were rescued in the same area the day before. The Ocean Viking was directed to disembark the migrants in Civitavecchia, approximately 1,000km away, with Maltese authorities largely disregarding calls for help from migrant rescue vessels. The new Italian government, focused on halting arrivals, asserted that charity vessels in the area flying the flags of specific countries, such as France and Germany, have a duty to take in some of those rescued.<sup>69</sup>

On 23 May, another incident unfolded in the maritime region near Malta. Approximately 500 individuals embarked on a perilous journey fleeing Libya, aiming to reach European shores aboard a fishing vessel. However, their voyage encountered a critical setback when the vessel's engine malfunctioned, leaving them stranded in the midst of the Maltese SAR zone, over 320 kilometres away from the Libyan coast.<sup>70</sup>

On 22 June 2023, a distress alert was received from a rubber boat carrying 14 individuals, who had departed from Libya the previous day and found themselves adrift within the Maltese SAR zone after running out of fuel. Despite immediate notification to the Maltese and Italian authorities, more than 38 hours passed before the MSF rescue vessel Geo Barents reached the scene. Regrettably, upon arrival, it was discovered that one individual had gone overboard and is presumed to have drowned.<sup>71</sup>

Civil society organisations and survivor testimonies gathered aboard the MSF rescue vessel have meticulously reconstructed the chronological sequence of events, painting a concerning picture of Malta's actions. Malta seemingly neglected its duty to coordinate rescue efforts, endangering the lives of those on board, and actively sought to evade responsibility for aiding the distressed vessel. Despite its legal obligation under maritime conventions, Malta instructed a merchant vessel not to intervene and dispatched its patrol boat twice to provide fuel, disregarding desperate pleas for assistance from those aboard the distressed dinghy, as recounted by survivors.<sup>72</sup>

In September and October 2023, the following incidents were reported:

- ❖ 70 people were rescued by Italian authorities from 1 distressed boat in the Maltese SAR zone;
- ❖ Outcome unknown for about 305 people on 6 other distressed boats;
- ❖ Frontex is possibly involved in rescuing 70 people from 1 distressed boat spotted by Seabird 2. Seabird 2 sighted 5 empty boats in September; outcomes unknown.<sup>73</sup>

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<sup>68</sup> Times of Malta, 60 people rescued from migrant boats on Malta's orders: emergency hotline, 17 April 2023, available at: <https://tinyurl.com/35453uuy>.

<sup>69</sup> Times of Malta, 153 migrants saved in Malta's rescue zone: French charity, 29 April 2023, available at: <https://tinyurl.com/mwtpjnht>.

<sup>70</sup> Sea-Watch, Italian penalties against Sea-Eye are state injustice! 26 June 2023, available at: <https://tinyurl.com/3mbcw92v>.

<sup>71</sup> Sea-Watch, Malta's deadly non-assistance in the Central Mediterranean Sea, 17 October 2023, available at: <https://tinyurl.com/bdhrpkp6>.

<sup>72</sup> Ibid.

<sup>73</sup> Sea-Watch, Airborne Monthly Factsheet September 2023", 12 December 2023, available at: <https://tinyurl.com/2t57kjur>.

- ❖ 225 persons, on board 8 boats, were rescued by 4 NGO vessels (4) and disembarked in Italy;
- ❖ 532 persons, on board 7 boats in distress, were rescued by the Italian authorities or arrived independently in Lampedusa, Italy;
- ❖ Around 40 persons, on board 1 boat in distress, were possibly rescued by the Armed Forces of Malta and disembarked in Malta;
- ❖ The outcome for 313 persons, on board 8 boats in distress, remain unknown;
- ❖ About 468 individuals on 5 boats were involved in Frontex narratives, with 63 rescued by NGO vessel Geo Barents, around 295 rescued by Italian authorities or arriving independently in Italy, and outcomes unknown for 110 individuals on 2 boats;
- ❖ 49 empty boats were sighted, without further information available on the outcomes of their passengers.<sup>74</sup>

On 1 October, two cases of distress at sea involved a number of between 40 and 50 persons. The Maltese authorities opted for requesting assistance to be provided by private vessels instead of launching a rescue operation, causing a delay of 2 days. Despite Alarm Phone's notification and an aircraft sighting by Italian military authorities, assistance was delayed. Seabird 2's crew, along with merchant vessels, responded to the distress cases. The Maltese authorities were unresponsive, and the situation escalated when the private vessels Traiguen and Darya Mira were advised against taking instructions from an aircraft and were told to stand by. Attempts to contact other EU MS for assistance were unsuccessful. Eventually, the Armed Forces of Malta rescued the individuals in one of the situations, while the Italian authorities likely rescued those in the other.<sup>75</sup>

On 20 October, the Tareq Bin Zeyad vessel, associated with Haftar's militia, allegedly intercepted distressed individuals in the Maltese SAR zone and pulled them back to Libya. Alarm Phone had notified authorities on 19 October about persons in distress, but on the following day, Seabird 2's crew could not locate them. The Nippon Princess, a merchant vessel, confirmed the interception by Tareq Bin Zeyad in the Maltese SAR zone.

On 26 October, a further case involving 18 persons was reported to Alarm Phone. Seabird 2's crew spotted the distressed individuals in the Maltese SAR zone the next morning. The merchant vessel Pan Mutiara, under orders from Maltese RCC, was instructed to wait without further information on a rescue operation. Despite the lack of deployment of rescue assets by European authorities, NGO vessel Ocean Viking intervened and rescued the 18 persons, relieving the merchant vessel from over 7 hours of being left alone at sea.<sup>76</sup>

In May, Alarm Phone reported losing contact with a boat carrying approximately 500 individuals fleeing from Libya with the last known position being within Malta's search and rescue (SAR) zone. Alarm Phone relayed information regarding the situation, revealing that the boat was taking on water, forcing occupants to seek refuge on the upper decks after water entered the lower deck. The boat, which encountered engine failure several days after departing Libya, was situated between Greece and Malta. Despite surviving the night, those aboard remained adrift, prompting urgent pleas for assistance from Alarm Phone. The Maltese authorities were notified of the distress situation, with appeals made for immediate rescue efforts.<sup>77</sup> In relation to this incident, the Armed Forces refuted NGO assertions alleging their involvement in forcibly returning the 500 individuals to Libya, citing a lack of evidence for such claims in the reported location. According to the AFM, despite conducting multiple searches, the vessel in question was not sighted, with Maltese authorities emphasizing their lack of jurisdiction in international waters. Various NGOs accused Maltese authorities of directing the vessel back to Libya, with allegations emerging

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Times of Malta, 500 people adrift in Maltese search and rescue zone - Alarm Phone, 24 May 2023, available at: <https://tinyurl.com/4ss99m7v>.

that its occupants are now detained in a prison in Benghazi. The Times of Malta could not independently verify claims of a pushback to Libya.<sup>78</sup>

Also in May, a distress call from a migrant emergency hotline urged European authorities to intervene and rescue 29 individuals stranded in perilous conditions in Maltese waters. Early Monday, Alarm Phone reported two boats in distress, one carrying 34 people, amidst deteriorating weather conditions. Regrettably, communication was lost with one boat, while the other, though having spotted nearby cargo ships, remained unaided by 4 pm. Alarm Phone underscored the critical nature of the situation, citing the presence of significant waves and emphasizing the immediate need for rescue, either by EU authorities or nearby vessels. Additionally, the Luqa Met Office issued a yellow warning for strong winds late Monday, with further adverse weather predicted for Tuesday in Malta. Times of Malta has sought comment from the Armed Forces of Malta and the Home Affairs Ministry for additional information.<sup>79</sup>

In August, a vessel carrying approximately 500 individuals was battling harsh weather conditions within Malta's search and rescue zone, according to a report by Alarm Phone. Despite multiple attempts to contact authorities in Malta and Italy, no response was received. Distressed passengers onboard reported perilous conditions, prompting concerns for their safety. Alarm Phone expressed relief that the vessel survived the night amid the challenging weather conditions. However, communication difficulties persisted, impeding rescue efforts. Although two merchant vessels endeavoured to assist, the adverse conditions made proper rescue operations challenging. The response to this crisis from Malta raised questions, with international observers calling for swift action to ensure the safety of those at sea.<sup>80</sup>

That same month, the Times of Malta published data regarding Malta's SAR activities following an in-depth investigation that included largely unsuccessful attempts at obtaining information through official channels<sup>81</sup>. According to The Times, the influx of migrants to Malta dwindled in recent years, contrasting with the consistent number of rescues within Maltese SAR waters in previous years, which averages around 2,900 annually. In 2022, only 444 migrants arrived in Malta, despite 2,926 individuals being rescued in Maltese SAR, according to data from Times of Malta. This represents a significant decline from 2021, which recorded 832 sea arrivals and 2,300 rescues, and from 2020, when 2,281 migrants reached Malta, with 3,377 being rescued at sea. The data on SAR rescues was provided by the Armed Forces of Malta following a decision by the Data Protection Commissioner, while information on migrant arrivals was obtained from UNHCR periodic reports due to authorities consistently declining direct requests for data, citing national security concerns.

The Times of Malta pursued data regarding Malta's response to migrants and potential international law violations. Despite initial denials, the news outlet continue presenting Freedom of Information requests and appeals to the Information and Data Protection Commissioner. While the Commissioner acknowledged requests for the number of people rescued, they declined to disclose specifics on their destinations. The Times of Malta contested this decision, emphasizing their interest solely was focused in obtaining statistical data. Despite government claims of cooperation with Libya, data shows a consistent number of rescues in Maltese SAR waters, alongside an increase in arrivals to Europe via the central Mediterranean route, indicating ongoing challenges in managing migration flows.

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<sup>78</sup> Times of Malta, AFM pushes back against NGO pushback claims: 'no boat was sighted', 29 May 2023, available at: <https://tinyurl.com/mwtpjnht>.

<sup>79</sup> Times of Malta, EU urged to rescue 29 people in deteriorating weather conditions in Malta waters, 8 May 2023, available at: <https://tinyurl.com/2uk4euet>.

<sup>80</sup> Times of Malta, Maltese authorities 'aware' of boat that was reportedly fired upon - Alarm Phone, 19 August 2023, available at: <https://tinyurl.com/nm32eaeu>.

<sup>81</sup> Times of Malta, Thousands rescued at sea, but only hundreds brought to Malta, 28 August 2023, available at: <https://tinyurl.com/2cxmybaa>.

In October another distressing situation unfolded in Malta's SAR zone as a group of 44 individuals urgently required assistance. Despite alerts to authorities and the presence of nearby merchant vessels, the survivors remained adrift without water, food, or medical aid. Concerns arose over potential delays in rescue efforts, with updates highlighting the precarious conditions faced by the distressed individuals amid rough seas and overcrowded conditions. Calls for action were directed towards Armed Forces Malta and the Home Affairs Ministry, prompting inquiries into the response protocol.<sup>82</sup>

Towards the end of December, Sea-Eye conducted a rescue effort in Malta's waters, saving over 100 individuals, including 40 children, from distress. The rescue unfolded south of Lampedusa, within Malta's SAR zone, involving minors as young as five and teenagers fleeing alone from countries like Guinea and Mali. Despite notifying the Maltese RCC, Sea-Eye reported a lack of response, leading to the Italian Rescue Coordination Centre directing their vessel, SEA-EYE 4, to the port of Brindisi for disembarkation. The rescued individuals hailed from various African states, originating their journey via Tunisia.<sup>83</sup>

## 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 Malta<sup>84</sup>. 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 189<sup>85</sup> and the Immigration Act in its Article 32 (d),<sup>86</sup> 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 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.<sup>87</sup> Although the prison authorities would generally refer to IPA anyone expressing a wish to seek asylum, in practice unless a lawyer or an NGO assists them, it is difficult for these individuals to effectively access the asylum procedure before the end of their sentence.

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<sup>82</sup> Times of Malta, 44 people on sinking boat in Maltese rescue zone, NGO claims, 2 October 2023, available at: <https://tinyurl.com/f3tchakj>.

<sup>83</sup> Times of Malta, 106 people, including 40 children, rescued in Malta waters to be taken to Italy, Times of 27 December 2023, available at: <https://tinyurl.com/yv858j35>.

<sup>84</sup> 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>

<sup>85</sup> "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".

<sup>86</sup> "Any person who [...] forges any document or true copy of a document or an entry made in pursuance of this Act".

<sup>87</sup> aditus foundation, Prosecution and imprisonment of refugees entering Malta using false documents, 29 July 2021, available at: <https://bit.ly/3rcqt00>.

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. Efforts by the aditus foundation urging amendments to Malta's legislation to reflect the provisions of the 1951 Convention have proved unsuccessful.

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, quality of legal assistance, 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

According to IOM, Malta is included in the list of five first-line Member States benefitting from relocation under the 2022 Solidarity Declaration and EU - funded Voluntary Solidarity Mechanism (VSM). In coordination with the European Commission, the respective national authorities involved and other stakeholders, such as the EUAA, IOM will ensure that people benefitting from this assistance are adequately prepared for and subsequently transferred to the Member State of Relocation (MSR) in safety and dignity and on a voluntary basis, receiving comprehensive support throughout the entire process.

Whereas in 2022, IOM facilitated the relocation from Malta of 14 asylum-seekers, as of September 2023 104 asylum-seekers were relocated from Malta to other EU MS<sup>88, 89</sup>. No information was provided on the Member States of relocation, or the criteria used in their selection.

In a statement welcoming the relocation programme, the Home Affairs Minister commented that, in the first half of 2023, Malta managed to reduce the number of arrivals and relocate the same number of people that had arrived.

#### Legal access to the territory

No incoming relocation scheme, resettlement or humanitarian visa exist Malta.

Throughout 2023, the growing numbers of third-country nationals in Malta were at the centre of the public debate. With over 50,000 Single Work Permits granted to third-country nationals to work in several sectors, concerns were often expressed about the structural impact of these relatively high numbers as well as the difficult living conditions faced by many non-Maltese workers. Often dominated by nationalistic, possibly racist, sentiment, this conversation resulted in various political statements on the need to dramatically reduce numbers of foreign workers and change the national economic model. This approach, and the conversation itself, was juxtaposed with Malta's harsh approach to persons seeking international protection, an approach based on the stated policy of 'prevent, return, relocate'.<sup>90</sup>

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<sup>88</sup> Ministry for Home Affairs, Security, Reforms and Equality, 32 more migrants relocated to other countries, 2 September 2023, available at: <https://tinyurl.com/4eu4p8hn>.

<sup>89</sup> Information provided by IOM on 11 February 2023.

<sup>90</sup> MaltaToday, A new economic model: Is it another way of saying 'go back to your country' politely?, August 2023, available at: <https://tinyurl.com/wz48ten4>; The Malta Independent, 68,755 third-country-nationals were registered as working in Malta in July 2023, January 2024, available at: <https://tinyurl.com/8jwfybcb>; Al Jazeera, Malta welcomes foreign workers to fill labour shortage, but repels refugees, December 2023, available at: <https://tinyurl.com/yc3xmkwk>; Times of Malta, The Sliema apartment shared by around 40 foreign workers, June 2023, available at: <https://tinyurl.com/4njxx886>.

An interesting case was decided in November 2022 by the Court of Appeal in its Inferior Jurisdiction. The case involved a Syrian national applying for a Single Work Permit in Malta, from Lebanon. Identity rejected his application, arguing that: *“(Y)our application is being refused on public policy grounds given the current situation in Syria. Malta does not provide legal avenues for persons to seek protection whilst residing in their own country and providing you with the facility to come to Malta, there is the possibility that once you are here you may eventually seek such protection. Furthermore, in view of this situation it is not possible to conduct due diligence on persons wishing to proceed to Malta for the purpose of residing here.”* The applicant appeal this decision before the Immigration Appeals Board and the Court of Appeal, both deciding against him<sup>91</sup>.

One refugee – a person with particular vulnerabilities - was resettled in Malta in 2023.

Refuges may apply for family reunification (see section [on Family reunification](#)).

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<sup>91</sup> Court of Appeal (Inferior Jurisdiction), Adnan Almahmoud vs. Identity Malta Agency, No. 26/2022, 16 November 2022, available at: <https://tinyurl.com/yufynwps>.

## 2. Registration of the asylum application

### Indicators: Registration

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

The authority responsible for registering asylum applications in Malta is the 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](#)).<sup>92</sup>

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.<sup>93</sup> 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.*”<sup>94</sup>

EUAA has been providing support to the IPA since 2019. 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).<sup>95</sup> In 2023, the EUAA carried out a total of 405 registrations, of which 81% related to the top 10 citizenships of applicants, mainly of nationals from Bangladesh (105) and Syria (88).<sup>96</sup> In 2023, the EUAA carried out 476 registrations for temporary protection in Malta.<sup>97</sup>

In respect to people who arrive regularly but then may need to seek asylum due, for example, to a change in the circumstances in the country of origin, in some cases, they may experience difficulties in accessing information on the asylum procedure and their related rights and obligations.

Whilst practitioners note that persons indicating a protection need at the Malta International Airport are generally referred to the IPA, it is unclear whether formal protocols or guidelines exist.

Applications must be made at the IPA premises in Blata l-Bajda.<sup>98</sup> 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.

<sup>92</sup> Article 4(3) International Protection Act.

<sup>93</sup> Regulation 8(1) Procedural Regulations.

<sup>94</sup> Article 2, International Protection Act.

<sup>95</sup> Information provided by the EUAA, 28 February 2023.

<sup>96</sup> Information provided by the EUAA, 26 February 2024.

<sup>97</sup> Information provided by the EUAA, 26 February 2024.

<sup>98</sup> See the International Protection Agency’s website, <https://bit.ly/3ko82G0>



Unaccompanied children do not need a legal guardian to submit an asylum application and be duly registered as asylum-seekers, yet a legal guardian is required to proceed with the lodging of the application and the personal interview.<sup>99</sup> The 2020 Minor Protection (Alternative Care) Act<sup>100</sup> 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. In 2023, where necessary, temporary care orders were issued either during the age assessment procedure or within hours of arrival, and unaccompanied minors have reportedly been able to lodge their asylum application throughout 2022 and 2023. Recent amendments to the International Protection Act and the Procedural Regulations<sup>101</sup> added specific provisions on the right of unaccompanied minors to apply for asylum and NGOs observed that unaccompanied minors were called for their asylum interview in the presence of their legal guardian. If they are found not to be in need of international protection, these applicants are granted Temporary Humanitarian Protection until they turn 18.

It is possible for a person to express a wish to file an asylum application when in prison, and the prison authorities regularly alert the IPA as to these cases. A small number per year do so, yet it is impossible to know if there were others who would have done so, had they had access to information and legal services.

## 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 2023:  | 833   |

In 2023, IPA received 600 new applications, of which 491 were first applications, 76 subsequent and 33 new applications.

833 cases remained pending at the end of 2023, of which 201 were Syrian nationals, 103 were Sudanese, 89 were Ukrainians, 60 were Somalians and 50 were Libyans.<sup>102</sup>

According to the Procedural Regulations, the IPA shall ensure that the examination procedure is concluded "*as soon as possible*", specifying a limit of 6 months from the lodging of the application. The IPA may extend this time limit for an additional period not exceeding nine months for limited reasons: when complex issues are involved; when a large number of third-country nationals simultaneously apply

<sup>99</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>100</sup> Article 21 of the Minor Protection (Alternative Care) Act, Chapter 602 of the Laws of Malta

<sup>101</sup> 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.

<sup>102</sup> Request for Information 315240434264 issued by the International Protection Agency

for international protection; or when the delay can clearly be attributed to the failure of the applicant to comply with his obligations.<sup>103</sup> The examination procedure must in any case not exceed the maximum time limit of twenty-one months from the lodging of the application.<sup>104</sup> The Act does not define “*complex issues of fact and, or law*”.

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.<sup>105</sup>

In practice however, this provision is not applied and applicants and lawyers seeking updates on pending cases normally receive a generic message indicating that the IPA is unfortunately unable to provide a timeframe regarding when a decision will be taken, and the applicant will be notified in due time.

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.<sup>106</sup>

On this specific observation, the NAO’s 2023 follow-up report notes that the IPA rejected the Audit’s recommendation to speed up the asylum procedure. According to the report, the IPA stated that the asylum procedure is regulated by law, and that individual circumstances should also be taken into account.<sup>107</sup>

Most decisions in the regular procedure are, in practice, not taken before the lapse of six months. The IPA reported that the average length of the regular asylum procedure in 2023 was as follows:

- First applications – 112 days;
- New applications – 175 days;
- Subsequent applications – 96 days.

It also reported the following duration for the accelerated procedure:

- First applications – 66 days;
- New applications – 87 days;
- Subsequent applications – 78 days.

In a 2022 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*”.<sup>108</sup>

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

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<sup>103</sup> Regulation 6(4) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta,

<sup>104</sup> Regulation 6(6) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta,

<sup>105</sup> Ibid., Regulation 6(7).

<sup>106</sup> National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum-seekers, 7 July 2021, p. 72, available at <http://bit.ly/3CT0VeK>

<sup>107</sup> National Audit Office, Follow-up Audits Report 2023, Volume II, November 2023, available at: <https://tinyurl.com/3tfbv386>.

<sup>108</sup> ECtHR, S.H. v. Malta, 37241/21, 20 December 2022, available at: <https://bit.ly/3KKz7OH>

In 2023, EUAA caseworkers carried out interviews concerning 593 applicants, of which 79% related to the top 10 citizenships of applicants interviewed by EUAA, mainly concerning nationals from Syria (138), Bangladesh (106) and Ukraine (60).<sup>109</sup>

In 2023, the EUAA drafted 544 concluding remarks, of which 79% related to the top 10 citizenships of applicants in concluding remarks drafted by the EUAA, mainly concerning applicants from Syria (140) and Bangladesh (109).<sup>110</sup>

Asylum interviews are generally conducted at Safi Barracks, the detention centre. This also includes interviews for applicants who had been detained and then released. Lawyers representing asylum-seekers reporting applicants being escorted to their interviews in handcuffs. NGOs report that this was repeatedly flagged with EUAA, being the Agency the main entity conducting interviews for IPA throughout 2023, yet it was confirmed that it remains Ministry and IPA policy to conduct interviews in detention.

## 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 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.<sup>111</sup> According to IPA, this clause does not limit its discretion to the two mentioned scenarios, allowing it to prioritise applications for other reasons.<sup>112</sup>

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

For 2023, the IPA prioritised the claims of three applicants due to their vulnerability. NGOs confirm it is possible to request fast-tracking cases due to vulnerability, yet also flag that such cases – including when the fast-track request is approved – could remain waiting for their interview for several months.

## 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

<sup>109</sup> Information provided by the EUAA, 26 February 2024.

<sup>110</sup> Information provided by the EUAA, 26 February 2024.

<sup>111</sup> Regulation 6(8) of the Procedural Regulations, Subsidiary Legislation 420.07.

<sup>112</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

The Procedural Regulations provide for a systematic personal and individual 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.<sup>113</sup>

In practice, most asylum-seekers are interviewed. All those who are issued with a substantive decision are interviewed. However, in 2023, 488 decisions were taken without a personal interview: 111 administrative closures, 80 explicitly withdrawn, 271 implicitly withdrawn, 20 inadmissible and 6 Temporary Humanitarian Protection. Family members are interviewed individually and privately. An interview is generally not carried out in relation to THP when the request for THP is filed by a rejected asylum-seeker.

Although practitioners are aware of internal IPA guidelines regarding specific procedures or applicants, these are not publicly available.

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. Towards the end of 2023, the EUAA commenced its exit procedures from its Malta operations, thereby reducing the number of caseworkers conducting interviews and providing first assessments.

Asylum-seekers are generally informed by phone by the IPA a couple of 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 Blata l-Bajda or at the EUAA containers 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 assessed the efficacy of the asylum process. The report identified inadequacies, including a lack of resources at first instance, and proposed strategic and operational recommendations.<sup>114</sup> The 2023 follow-up report noted that recommendations related to the change from RefCom to IPA were fully implemented, resulting in a reduction in the number pending applications. It also flagged as a positive development the fact that IPA signed its first Collective Agreement relating to personnel, which permitted the Agency to attract and retain the necessary human resources.

In its 2022 annual Asylum Report,<sup>115</sup> 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.

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.

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<sup>113</sup> Regulation 10 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>114</sup> EUAA, Annual Asylum Report (2022), p. 138, available at: <https://bit.ly/3YgYL0q>

<sup>115</sup> EUAA, Annual Asylum Report (2022), p. 138, available at: <https://bit.ly/3YgYL0q>

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 interview.<sup>116</sup>

Whereas NGOs and lawyers noted a marked improvement in the quality of interviews in terms of approach, structure and attitude, they also reported that the quality of the assessments is generally very poor, even when undertaken by EUAA caseworkers. A particular example relates to the almost exclusive reliance on ACLED statistics to determine national safety levels, giving consideration to other COI elements. ACLED was relied upon to determine that Libya and Sudan, or at least specific areas within the countries, were safe for applicants to return to.<sup>117</sup>

Furthermore, in *S.H. v. Malta*, the ECtHR decision seems to confirm these remarks, at least regarding assessments carried out between 2020 and 2021. The Court found the assessments to be “*disconcerting*” and plagued by “*rampant incongruence*”.<sup>118</sup> 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. In March 2024, the Committee of Ministers of the Council of Europe adopted a decision in relation to this judgement, requesting Malta to submit information on the redress measures against the shortcomings identified by the Court related to the accelerated procedure and to introduce an appropriate Convention-compliant remedy with automatic suspensive effect.<sup>119</sup>

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.<sup>120</sup> Interpreters for **Sudanese, Bangladeshi, Somali, Eritrean, Syrian, or Libyan**– which are amongst the main nationalities of asylum-seekers in Malta - are largely available. However, interpreters for other languages are not always easily available. EUAA has also provided interpreters as part of its support initiatives to IPA. According to the Government, remote interpretation is also provided when necessary.

The quality of interpretation largely depends on the. 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.<sup>121</sup> 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

English is the main language of asylum interviews. The interview transcript is taken by the caseworker in charge of the interview during the interview itself. Lawyers assisting applicants during their interviews

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<sup>116</sup> EUAA, Annual Asylum Report (2022), available at: <https://bit.ly/3LrbVVE> p.140.

<sup>117</sup> “*The Armed Conflict Location and Event Data Project (ACLED) collects real-time data on the locations, dates, actors, fatalities and types of all reported political violence and protest events around the world.*” See: <https://tinyurl.com/5emk8sec>.

<sup>118</sup> ECtHR, *S.H. v. Malta*, 37241/21, 20 December 2022, cited above.

<sup>119</sup> Council of Europe, Committee of Ministers, Decision CM/Del/Dec(2024)1492/H46-22, 14 March 2024, available at: <https://tinyurl.com/56s5c9p8>.

<sup>120</sup> Regulations 4(2)(c) and 5(3) Procedural Regulations.

<sup>121</sup> Regulation 10(10)(d) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

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.

In 2023, interviews were generally carried out by EUAA staff, who are often non-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 read back 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 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.<sup>122</sup> The Government indicated that, since confirmation of the correctness of the transcript is not currently required by EU and national law, it is not offered as a possibility.

In 2023, practitioners expressed concerns regarding the fact that detained applicants had no safe place to store their interview transcripts, leading to fears that these were read by other detained persons. Some applicants also mentioned that, due to these confidentiality issues, they might refrain from full disclosure during their interviews. Furthermore, lawyers assisting asylum-seekers noted that, in some cases, the transcripts omitted some components from the interview as these were deemed not relevant by the interviewing case worker.

The law provides for the possibility of audio or audio-visual recording of the personal interview and interviews are generally digitally recorded.<sup>123</sup> The applicant is informed of such at the beginning of the interview; however their consent is not requested as the law does not require it. The IPA will only provide the audio recording for cases at the appeals stage in accordance with the Procedural Regulations.<sup>124</sup> 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. 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 2023.<sup>125</sup>

Asylum-seekers receive the assessment report explaining in detail the motivation of the decision along with the decision and the interview notes. Practitioners noted an improvement in the format and structure of the assessment, seemingly thanks to the structural guidance co-produced by IPA and the EUAA.

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<sup>122</sup> Regulation 11(5) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>123</sup> Regulation 11(2) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>124</sup> Regulation 11(9) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>125</sup> Request for Information 315240434264 issued by the International Protection Agency

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

  - ❖ If yes, is it
  - ❖ If yes, is it suspensive
2. Average processing time for the appeal body to make a decision:<sup>126</sup> Over 6 months.

### 1.4.1. Appeal before the International Protection Appeals Tribunal

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.<sup>127</sup> Members of the Tribunal are appointed for a period of three years and are eligible for reappointment.<sup>128</sup>

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.<sup>129</sup>

Since 2020<sup>130</sup>, the Tribunal is composed of only one chamber appointed until 22 August 2023. There is no publicly available information on the appointment of Tribunal members following this date, although the IPAT was indeed operational throughout 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.<sup>131</sup> 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.<sup>132</sup>

<sup>126</sup> Article 5(1) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>127</sup> Art 5 International Protection Act.

<sup>128</sup> Article 5(3) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>129</sup> Art 5.5 International Protection Act.

<sup>130</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>131</sup> Art 5 International Protection Act, Chapter 420 of the Laws of Malta.

<sup>132</sup> aditus foundation, JRS Malta, Comments on Bill No.133 Refugees (Amendment) Bill, July 2020, available at: <https://bit.ly/2P2xUr6>.

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 were not in line with 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."*<sup>133</sup>

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, for which attendance 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.

The NAO's follow-up report noted that, together with a full-time Chairperson, the Ministry had also appointed a full-time coordinator and two administrative staff.

Stakeholders, including the Chamber of Advocates, have expressed concerns regarding specialised tribunals such as the IPAT.<sup>134</sup> 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

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<sup>133</sup> National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum-seekers, 7 July 2021, pp. 73-83, available at <http://bit.ly/3CT0VeK>

<sup>134</sup> 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.



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.

- Despite the procedural rules laid down in S.L. 420.01, the manner in which the IPAT conducts its proceedings in practice is not publicly available through published guidelines. Lawyers commented that timelines are not uniformly stipulated or enforced, and the hearings' excessive informality leads to inconsistent procedures in relation to oral submissions, witnesses, experts, etc. Lawyers 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.<sup>135</sup>

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.<sup>136</sup>

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).<sup>137</sup>

The 2023 Rule of Law Report reiterated its 2022 concerns, underlining that IPAT members are appointed by the executive authorities, also flagging the S.H. judgement of the ECtHR. The EU Commission also underlined that IPAT decisions, as those by. Most similar tribunals, are only subject to review on points of law but not on points of fact.<sup>138</sup>

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<sup>135</sup> 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.

<sup>136</sup> EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 13 July 2022, 5-6, available at: <https://bit.ly/3XRYS2D>.

<sup>137</sup> Information provided by aditus foundation and Daphne Caruana Galizia Foundation, January 2023.

<sup>138</sup> EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 5 July 2023, available at: <https://tinyurl.com/2rx6mvuu>.

## 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.<sup>139</sup> 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](#)).<sup>140</sup>

This is generally understood as referring to an appeal application, being a confirmation in writing that the applicant wishes to appeal a negative decision and also whether the applicant wishes to request the appointment of a legal aid lawyer. 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. 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.

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 Valletta. 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.<sup>141</sup>

Following submission of the appeal application, the IPAT notifies the appellant of the deadline for submission of written pleadings. Where the appellant had requested a legal aid lawyer, the Ministry will appoint a lawyer from the pool of available legal aid lawyers who will then set an appointment with the appellant. The timeline for submitting written pleadings is provided for in Article 7(6) of the Act, set at a maximum of fifteen days following the filing of the appeal application.

Whereas in the past, lawyers were required to request access to the applicant's asylum file during this timeframe, the new procedure providing rejected applicants with a full assessment, decision and transcript has dramatically improved the system's efficiency. Nonetheless, practitioners noted the difficulty of meeting a 2-week deadline to make written submissions, particularly in situations where the appellant was detained or where individual circumstances required the procurement of further documents, such as vulnerability assessments, original documents from countries of origin, etc.

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.

In 2023, the number of appeals lodged against negative first instance decisions was 649: 382 for regular appeals and 267 in the context of the accelerated procedure.<sup>142</sup> 595 cases were decided on appeal.

There are no established or publicly available rules or procedures for appeals filed by asylum-seekers who are detained or in prison. At the outset, they do not have access to any advice, information or clarification on their IPA decision. 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. 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

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<sup>139</sup> 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.

<sup>140</sup> 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.

<sup>141</sup> Request for Information 315240434264 issued by the International Protection Agency.

<sup>142</sup> Information provided by IPAT following a Freedom of Information request.

them of their rejection. This is particularly serious for applicants channelled in the accelerated procedure in view of the extremely tight timeframes and, overall, their impossibility of appealing or attempting to challenge the legality of IPA's decision to channel in the accelerated procedure.

Interpreters are not available in the detention centres 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.

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 damage is however contained, to a certain degree, 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.<sup>143</sup> 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*".<sup>144</sup>

However, the regulations remain superficial in nature and do not formalise the decision process of the Tribunal. In 2021, 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.<sup>145</sup> The NAO's follow-up report, in 2023, welcomed the introduction of Act XL of 2020 amending Section 7 of the Act, yet lawyers noted that these amendments did not resolve the problem relating to the IPAT's lack of written rules of procedure.

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.<sup>146</sup> The IPAT does not accept late submissions.

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<sup>143</sup> Article 7(9) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>144</sup> Regulation 4 of the IPAT (Procedure) Regulations, Subsidiary Legislation 420.01 of the Laws of Malta.

<sup>145</sup> National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum-seekers, 7 July 2021, pp. 73-83, available at <http://bit.ly/3CT0VeK>

<sup>146</sup> Art 7.6 International Protection Act.

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 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 only submits written observations on selected cases, often 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 note 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.<sup>147</sup> 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*".<sup>148</sup> 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.<sup>149</sup> 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. The Government further explained that, in the absence of specific and uniform provisions or procedural rules governing the reopening of appeals, the IPAT has on certain instances made reference to the general law of procedure relating to new trials following a judgement of Malta's superior civil courts.

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.<sup>150</sup> As a result, asylum-seekers can be heard in practice at the appeal stage, but only on a discretionary basis.<sup>151</sup> 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.<sup>152</sup>

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".<sup>153</sup>

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<sup>147</sup> Article 7(6) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>148</sup> Information reported by aditus foundation, January 2022.

<sup>149</sup> Information provided by the Secretary of the IPAT, January 2021.

<sup>150</sup> Regulation 5(1)(h) RAB Procedures Regulations.

<sup>151</sup> Regulation 5(1)(n) RAB Procedures Regulations.

<sup>152</sup> Art 7.5 International Protection Act.

<sup>153</sup> National Audit Office, Performance Audit: Fulfilling obligations in relation to asylum-seekers, 7 July 2021, p. 77, available at: <http://bit.ly/3CT0VeK>

The data provided is limited to cases that were heard from November 2021, with 16 hearings held so far. In 2023, the IPAT ordered 23 appeals under oral hearings and 587 cases were decided with no oral hearings (4%).

The hearings held by the Tribunal do not follow clear steps or set procedures. They rarely last more 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. Despite requiring a full and *ex nunc* examination, the law also 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 been produced earlier.<sup>154</sup>

The hearing is generally held in the presence of the Chairperson and the Secretary, 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*".<sup>155</sup> Hearings are always attended by a representative of the IPA.

The UNHCR is entitled by law to attend the hearings held by the Tribunal.<sup>156</sup> 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.<sup>157</sup>

In 2022, UNHCR agreed to examine the negative decisions of a group of Sudanese applicants and attended a number of asylum interviews. In 2023, UNHCR attended a number of IPAT hearings, largely following the appellant's request where these were represented by NGO lawyers. It is not clear whether rejected applicants or legal aid lawyers are informed of the possibility of requesting UNHCR's presence or intervention during their IPAT process, or whether UNHCR attended any hearings of its own initiative.

### **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.<sup>158</sup>

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.

For 2023, IPAT reports that the average duration of the appeal procedure is of 452 days.

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. According to the Government, "*when reviewing the decision taken at first instance, the IPAT is in possession of the applicant's asylum file which includes the application form filled when lodging the application, the transcript of the interview(s), the assessment report and decision of the IPA, as well as any documentary evidence submitted by the applicant throughout the course of the asylum procedure.*"<sup>159</sup>

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<sup>154</sup> Regulation 5(1)(h) of the IPAT Procedures Regulations, Subsidiary Legislation 420.01 of the Laws of Malta.

<sup>155</sup> Information provided by JRS and aditus, January 2022.

<sup>156</sup> Article 7(8) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>157</sup> Information provided by aditus foundation, November 2021.

<sup>158</sup> Art 7.7 International Protection Act, Chapter 420 of the Laws of Malta.

<sup>159</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

No data is available for 2022 as this was not provided by the IPAT. For 2023, IPAT ‘received’ 267 appeals in accelerated cases, essentially referring to the number of reviews it was required to conduct under the accelerated procedure. A total of 595 decisions were taken by IPAT: 4 recognising refugee status, 2 positive outcome Dublin appeals, 6 cases referred back to IPA, 5 where subsidiary protection was granted, 59 dismissed as inadmissible, 487 rejected and 32 declared explicitly withdrawn.

It should be noted that, although IPAT confirmed that 487 cases were rejected “*on the merits*”, 205 of them were declared to be manifestly unfounded. It should further be mentioned that the Act does not envisage IPAT referring cases back to IPA.

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. The improved recognition rate, from 0% in 2021 to 1.5% in 2023 is however a welcome development.

The Tribunal is under the obligation to carry out a full and *ex nunc* examination of both facts and points of law,<sup>160</sup> the expression “*full and ex nunc*” being introduced by amendment XIX of 2022. The Act further specifies that such an examination shall also lie against decisions finding an application to be unfounded, inadmissible. It seems incongruent, and possibly in breach of EU primary law, that the Act also specifies that the previously-described 3-day accelerated procedure – with no access to legal assistance and no possibility of the appellant to present any written or oral submissions – is deemed to constitute an appeal.

The Act is clear in stating that the Tribunal’s decisions are final and conclusive and cannot be challenged and no appeal may lie before any Court of Law.<sup>161</sup> Nonetheless, a human rights complaint before the First Hall Civil Court (FHCC)<sup>162</sup> may be brought on Constitutional or European Convention grounds. Furthermore, jurisprudence from the Courts confirms that they will readily ignore legal provisions attempting to exclude their jurisdiction, yet it is not clear which standards or procedures would apply to a challenge against an IPAT 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.<sup>163</sup> 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.

During 2023, the average duration of the appeal procedure was of almost 15 months (452 days).

The decisions of the Tribunal are not published or publicly available, although they are all transmitted to UNHCR.

### 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 before the Civil Courts in order to review decisions that allegedly breach principles

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<sup>160</sup> Article 7(1A) of the International Protection Act, Chapter 420 of the Laws of Malta as amended by Act XIX of 2022.

<sup>161</sup> Article 7(10) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>162</sup> Article 46 of the Constitution of Malta.

<sup>163</sup> ECtHR, S.H. v. Malta, no 37241/21, 20 December 2022, § 53.

of natural justice or that are manifestly contrary to the law. Almost identical to a formal judicial review process under Article 469A of Malta’s Code of Organisation and Civil Procedure (COCP), this recourse of action is not formally described as such since the IPAT, being or at least purporting to be a quasi-judicial body - is not an administrative body and therefore not subject to judicial review procedures. The self-assumed jurisdiction by the Courts, often named ‘residual jurisdiction’ has been reiterated in several cases and is based on clear principles. In fact, in several cases, within asylum but also in other areas, Maltese Courts have rejected the plea presented by the Government that the IPAT’s decisions are final and that therefore the Courts should decline from taking cognisance of the case.<sup>164</sup>

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.<sup>165</sup>

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.*”<sup>166</sup>

As with the more regular judicial review, this 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. It is not excluded that the relevant provisions of the EU Charter could be relevant for such cases.

Nonetheless, this procedure does not deal with the merits of the asylum claim, but only with the manner in which the concerned 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*”.<sup>167</sup> However, Regulation 12(1) provides that

<sup>164</sup> See for instance, Paul Washimba v Refugee Appeals Board, the Attorney General and the Commissioner for Refugees, 65/2008/1, 28 September 2012, available at: <https://tinyurl.com/Symbey5t>; 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, available at: <https://tinyurl.com/33x586cu>; Abrehet Beyene Gebremariam v Refugee Appeals Board and the Attorney General, 133/2012, 12 January 2016, available at: <https://tinyurl.com/3cez8wsn>.

<sup>165</sup> Anthony Cassar pro et noe vs Accountant General, 667/1992/1, 29 May 1998, available at: <https://tinyurl.com/mpbxbx2em>; Dr. Anthony Farrugia vs Electoral Commissioner, 18 October 1996.

<sup>166</sup> 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.

<sup>167</sup> Regulation 10(4) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

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.<sup>168</sup>

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.

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 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.

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

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 contract is a fee-based service contract where lawyers are paid per completed appeals and upon presentation of an attendance sheet. 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;
- Age Assessment: 80 euro (inc. VAT) for every appeal submission;
- Detention: 40 euro (inc. VAT) per case;
- Removal: 80 euro (inc. VAT) per case;
- Other legal services: 40 euro (inc. VAT) per session.

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.

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<sup>168</sup> Regulation 12(1) Procedural Regulations.



Furthermore, the mere fact that legal aid lawyers are subcontracted by the Ministry for Home Affairs, under which IPA and the IPAT also fall, raises concerns with regard to the level of independence enjoyed by legal lawyers assisting applicants. The 2023 call for applicants to be part of the legal aid pool only referred to “*administrative and technical*” criteria, yet no indication was given as to any specific knowledge or expertise in national or EU asylum and immigration law. On-going training is mentioned as a possibility, with no attached participation requirement.<sup>169</sup>

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 NGOs<sup>170</sup> and the Legal Clinic of the Faculty of Laws of the University of Malta.<sup>171</sup>

Legal assistance and counselling provided by the NGOs as part of their on-going services, which 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. They further provide 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.<sup>172</sup> These rules were drafted in 2021 and cover the presence of any third parties at the interview, including the UNHCR.<sup>173</sup>

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.<sup>174</sup>

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 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-day deadline from the interview to submit a supplementary statement.<sup>175</sup>

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<sup>169</sup> MHAS, Call for Legal Aid Service, available at: <https://tinyurl.com/zbn7vdd7>.

<sup>170</sup> These are aditus foundation, JRS Malta, the Migrants Commission, and the Women’s Rights Foundation.

<sup>171</sup> See <https://bit.ly/41JSugE>

<sup>172</sup> Regulation 12(2) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>173</sup> EUAA, Annual Asylum Report (2022), p. 194, available at: <https://bit.ly/3EU7fUn>.

<sup>174</sup> Regulation 21 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>175</sup> The guidelines are not publicly available, this information was provided by the IPA upon request on 20 January 2022.

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.<sup>176</sup>

In 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*”.<sup>177</sup>

Furthermore, as described in further detail in the relevant section below, meetings with appellants who are in detention can be particularly problematic for practical and logistical reasons that can be of detriment to both the appellants and the lawyers, for example: interpreters are not always available; only one boardroom is shared with all actors is available for visits at the Safi Detention Centre; lawyers are generally not permitted to take phones or any electronic devices to these meetings; all meetings need prior authorisation from the Detention Services; the meeting request procedure is cumbersome, the Detention Services decides on the day and time of the meetings. (see [Access to Detention](#)). Coupled with the extremely strict and tight deadlines within which to file asylum appeals, these logistical hurdles are challenging for lawyers assisting asylum applicants.

The law states that access to information in the applicants’ files may be precluded when disclosure may jeopardise national security, the security of the entities providing the information, and the security of the person to whom the information relates.<sup>178</sup> 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.<sup>179</sup> In practice, however, these restrictions are rarely, if ever, implemented.

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<sup>176</sup> See, *Aden Ahmed v. Malta*, no. 55352/12, § 66, 23 July 2013, available at: <https://hudoc.echr.coe.int/?i=001-122894>; *Mahamed Jama v. Malta*, no. 10290/13, § 65, 26 November 2015, available at: <https://hudoc.echr.coe.int/?i=001-158877>; *Abdi Mahamud v. Malta*, no. 56796/13, § 46, 3 May 2016, available at: <https://hudoc.echr.coe.int/?i=001-162424>; *Feilazoo v. Malta*, no. 6865/19, § 58, 11 March 2021, available at: <https://hudoc.echr.coe.int/?i=001-208447>; *S.H. v. Malta*, no 37241/21, § 82, 20 December 2022 available at: <https://hudoc.echr.coe.int/?i=001-221838> in the immigration context and *Yanez Pinon and Others v. Malta*, nos. 71645/13 and 2 others, § 6, 19 December 2017 available at: <https://hudoc.echr.coe.int/?i=001-179568> in the prison context.

<sup>177</sup> ECtHR, *S.H. v. Malta*, no 37241/21, § 82, 20 December 2022.

<sup>178</sup> Regulation 7(2) Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>179</sup> Regulation 7(3) Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta

## 2. Dublin

### 2.1. General

#### Dublin statistics: 1 January – 31 December of 2023

The Dublin Unit, within IPA, provided the following information:

Outgoing 'take charge' procedure			Outgoing 'take back' procedure		
	Requests	Accepted		Requests	Accepted
<b>Total</b>	228	170	<b>Total</b>	46	10
BG	1	-	AT	5	1
CH	1	-	BG	7	3
CZ	1	-	CH	2	-
DE	1	-	DE	8	2
DK	1	1	EL	3	-
FI	25	25	FR	4	2
FR	173	126	HU	1	-
HR	1	1	IT	13	2
HU	1	1	NO	1	-
IT	14	11	RO	1	-
NL	2	-	SE	1	-
PL	3	3			
PT	4	2			

Outgoing transfer procedure	
	Implemented
<b>Total</b>	159
AT	1
BG	1
DE	2
ES	1
FI	22
FR	121
NL	3
PL	3
PT	1
RO	3
SI	1

NB: Transfers refers to the number of transfers actually implemented, not to the number of transfer decisions. If only the number of transfer decisions are available add these numbers and specify that it only concerns transfers decisions, and that the number of actual transfers is not available

Incoming 'take charge' procedure			Incoming 'take back' procedure		
	Requests	Accepted		Requests	Accepted
<b>Total</b>	274	230	<b>Total</b>	412	270
AT	4	4	AT	6	4
BE	16	12	CH	9	8
BG	6	4	CY	1	-
CH	5	4	DE	86	56
CY	5	3	ES	3	2
DE	120	110	FI	1	1
DK	2	2	IT	27	18
FI	5	4	BE	40	24
FR	30	17	FR	172	108
EL	1	-	HR	1	-
IS	8	4	IE	4	3
IT	6	5	IS	4	3
LU	1	1	LU	6	4
NL	51	47	NL	41	30
NO	3	3	NO	1	1
PT	5	4	PT	7	6
SE	5	5	SE	2	2
LI	1	1	SI	1	-

Incoming transfer procedure	
	Implemented
<b>Total</b>	51
BE	2
BG	3
CH	1
CY	8
DE	22
DK	3
EL	2
FR	6
NO	1
SE	3

NB: Transfers refers to the number of transfers actually implemented, not to the number of transfer decisions. If only the number of transfer decisions are available add these numbers and specify that it only concerns transfers decisions, and that the number of actual transfers is not available.

Country Codes

European Union (EU)

Belgium	(BE)	Greece	(EL)	Lithuania	(LT)	Portugal	(PT)
Bulgaria	(BG)	Spain	(ES)	Luxembou rg	(LU)	Romania	(RO)
Czechia	(CZ)	France	(FR)	Hungary	(HU)	Slovenia	(SI)
Denmark	(DK)	Croatia	(HR)	Malta	(MT)	Slovakia	(SK)
Germany	(DE)	Italy	(IT)	Netherlan ds	(NL)	Finland	(FI)
Estonia	(EE)	Cyprus	(CY)	Austria	(AT)	Sweden	(SE)
Ireland	(IE)	Latvia	(LV)	Poland	(PL)		

European Free Trade Association (EFTA)

Iceland	(IS)	Norway	(NO)
Liechtenstein	(LI)	Switzerland	(CH)

Outgoing Dublin requests by criterion: year		
Dublin III Regulation criterion	Requests sent	Requests accepted
<b>“Take charge”: Articles 8-15:</b>	<b>26</b>	<b>19</b>
Article 8 (minors)	2	0
Article 9 (family members granted protection)	2	0
Article 10 (family members pending determination)	1	0
Article 11 (family procedure)	0	0
Article 12 (visas and residence permits)	9	9
Article 13 (entry and/or remain)	12	10
Article 14 (visa free entry)	0	0
“Take charge”: Article 16	0	0
“Take charge” humanitarian clause: Article 17(2)	201	150
Article 18 (1) (a)	1	0
<b>“Take back”: Articles 18 and 20(5)</b>	<b>46</b>	<b>10</b>
Article 18 (1) (b)	44	4
Article 18 (1) (c)	2	1
Article 18 (1) (d)	0	5
Article 20(5)	0	0

Incoming Dublin requests by criterion: year		
Dublin III Regulation criterion	Requests received	Requests accepted
<b>“Take charge”: Articles 8-15</b>	<b>269</b>	<b>226</b>
Article 8 (minors)	6	3
Article 9 (family members granted protection)	3	2
Article 10 (family members pending determination)	1	0
Article 11 (family procedure)	11	1
Article 12 (visas and residence permits)	210	188
Article 13 (entry and/or remain)	38	32
Article 14 (visa free entry)	0	0
“Take charge”: Article 16	0	0
“Take charge” humanitarian clause: Article 17(2)	3	2
Article 18 (1) (a)	2	0
<b>“Take back”: Articles 18 and 20(5)</b>	<b>412</b>	<b>270</b>
Article 18 (1) (b)	362	235
Article 18 (1) (c)	3	1
Article 18 (1) (d)	47	34
Article 20(5)	0	0

Average duration from the moment an outgoing request is issued until the effective transfer to the Member State responsible		
6 months	12 months	4 years
154	4	1

There is no specific legislative instrument that incorporates 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.<sup>180</sup>

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.<sup>181</sup> The end of 2023 marked the beginning of EUAA’s phasing out of its Malta operational support.

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.<sup>182</sup>

<sup>180</sup> Information provided by the Dublin Unit, February 2021.

<sup>181</sup> EUAA, 2022-2024 Operational plan agreed by EUAA and Malta, Amendment 1, April 2022, available at: <https://bit.ly/3ZqIEiX>, p. 4.

<sup>182</sup> Information provided by the Dublin Unit, January 2022.

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.<sup>183</sup>

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. NGOs report a 2023 case where IPA rejected the asylum application of a child who had earlier been transferred to Malta through Dublin's family reunification procedures.

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. Where the Police considers that the applicant ought to be detained on the basis of their identity not being confirmed as, for example, due to use of false documents, they will detain the applicant.

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*<sup>184</sup>, yet Malta rests on EU Commission Communications to rebut the presumption of compatibility of other MS with the Reception Conditions Directive.<sup>185</sup> 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.

<sup>183</sup> Information provided by the Dublin Unit, January 2022.

<sup>184</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>185</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

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.<sup>186</sup>

## 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.<sup>187</sup> 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, 2022 and 2023.

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.<sup>188</sup>

According to the Dublin unit of IPA, there were 4 cases where the discretionary clause pursuant to Article 17(1) Regulation 604/2013 ("sovereignty clause") was applied.<sup>189</sup>

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

Same as regular procedure

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

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

<sup>186</sup> Civil Court First Hall, Enas Mhana 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>.

<sup>187</sup> Information provided by the Dublin Unit, January 2022.

<sup>188</sup> Information provided by the IPA Legal Unit, November 2020.

<sup>189</sup> Request 315240564265 for Information Form for Dublin Unit (under IPA)



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

## 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?
- |                            |   |  |
|----------------------------|---|--|
|                            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ❖ If yes, is it            | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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.<sup>190</sup>

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](#)). Appellants are invited to submit written pleadings substantiating their appeal, followed by IPA's opportunity to also submit written observations. An oral hearing may be held on the party's request, and in 2023 lawyers confirmed that they did attend a number of Dublin appeal hearings.

## 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?
- |                                     |  |  |  |
|-------------------------------------|--|--|--|
|                                     | <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 a Dublin decision in practice?
- |                                    |  |  |                             |
|------------------------------------|--|--|-----------------------------|
|                                    | <input checked="" type="checkbox"/> Yes                      | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input checked="" type="checkbox"/> Representation in courts |  |                             |
|                                    | <input checked="" type="checkbox"/> 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?
- |  |                              |  |
|--|------------------------------|--|
|  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ If yes, to which country or countries? |                              |  |

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

<sup>190</sup> Article 7(1) of the International Protection Act, Chapter 420 of the Laws of Malta, as amended by Act XX of 2017.

However, Government also confirmed that “(I)n practice, transfers to Greece rarely take place since the Greek authorities do not provide assurances pertaining to reception conditions.”<sup>191</sup>

## 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.

Asylum-seekers leaving Malta pending the procedure run the risk of having their applications closed as ‘implicitly withdrawn’, in terms of Regulation 13 of the Procedural Regulations. In 2023, IPA considered 271 cases as being implicitly withdrawn, although the available data does not clarify the specific factual basis for this conclusion.

In 2023, cases were reported where the IPAT closed as implicitly withdrawn asylum applications where the applicants had – subsequent to their applications in Malta – made further applications in other EU MS. The IPAT considered that the appellants had failed to inform the Tribunal of this detail – being the application in another EU MS – and proceeded to close the appeal. The statistics provided by the IPAT do not make any reference to these cases.

Furthermore, persons stopped at the airport with forged documents run the risk of facing criminal charges (see [Access to Territory](#)).

As of 2023, there seems to be 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. Whilst a number of returnees were in fact detained following their return to Malta, authorities also confirmed that there is no blanket policy of detaining Dublin returnees.

Practitioners also report that returning applicants were granted accommodation in the open centres, particularly where AWAS was alerted to the return by NGOs. In view of Malta’s strict policy of cutting off reception conditions after six months, including accommodation in the open centres, it is unclear whether time spent benefitting from reception conditions prior to the departure from Malta is counted as part of this six-month limit.

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 safe<sup>192</sup> will be automatically channelled through the accelerated procedure and barred from filing an appeal against their negative decision. Furthermore, observations made in relation to applications deemed ‘manifestly unfounded’ – consequently not rejected on the merits and denied an appeal – are also relevant for applications by Dublin returnees. (see [Accelerated Procedure](#)).

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 immigration authorities wish to proceed with Dublin transfers to Malta, they are required to prove that the

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<sup>191</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>192</sup> Article 24 of the International Protection Act, Chapter 420 of the Laws of Malta.

transfer will not result in a breach of article 3 ECHR. The court specifically mentioned the structural detention of Dublin ‘returnees’ and found these detention conditions to be a breach of article 3 ECHR and article 4 of the EU Charter. The court also specifically mentioned 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.<sup>193</sup>

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.<sup>194</sup>

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.<sup>195</sup>

### 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:<sup>196</sup>

- (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](#)). Practitioners observe that the number of applications deemed ‘inadmissible’ is increased, due to (a) being presented by applicants having family members, often spouses, enjoying international protection in Malta. This is particularly noted in respect of beneficiaries of subsidiary protection – granted by Malta – since they are not entitled to family reunification, often resulting in families based in Malta yet with a member – usually a spouse – not enjoying protection in Malta.

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<sup>193</sup> Dutch Council of State, 15 December 2021, available in Dutch at: <https://bit.ly/3JPAFUz>.

<sup>194</sup> Italy, Civil Court [Tribunali], Applicant v Dublin Unit of the Ministry of the Interior (Unita di Dublino, Ministero dell’Interno), R.G. 4597/2022, 07 April 2022, available at <https://bit.ly/3kKXOzy>.

<sup>195</sup> Austrian Constitutional Court, Decision Number E622/2022, 14 November 2022, available at: <https://bit.ly/3MDkU73>

<sup>196</sup> Article 24, International Protection Act.

Practitioners also noted a practice adopted by IPA in relation to paragraph (a), meaning where an applicant in Malta had been recognised protection in another EU Member State. A number of situations arose there such applicants had been indeed granted international protection in other EU Member States, yet this protection was no longer valid, either due to expiration, revocation or other situations. The IPA automatically considered these applications inadmissible, without granting an Asylum-Seeker Document to the applicants.

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

In 2023 the IPA issued 70 inadmissibility decisions, of which 18 applications were considered inadmissible on the basis of article 33(2)(a) of the Asylum Procedures Directive and 52 were closed inadmissible on the basis of article 33(2)(d) of the Asylum Procedures Directive.

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 protection. Malta also 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 fact that Maltese is an easier language to learn 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. The application is immediately channelled through the accelerated procedure 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.<sup>197</sup>

### 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?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> 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.<sup>198</sup> In practice, an interview is held in the vast majority of cases. 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,<sup>199</sup>

<sup>197</sup> Information provided by the Daphne Caruana Galizia Foundation, January 2023.

<sup>198</sup> Article 24 (3) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>199</sup> Ibid.

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

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
- |                            |   |  |
|----------------------------|---|--|
|                            | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No             |
| ❖ If yes, is it            | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | <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](#)).<sup>200</sup> In short, this means that applications deemed inadmissible are immediately transmitted to the IPAT, the latter having 3 days to decide on the application. The applicant has no role in this accelerated procedure and has no legal or practical possibility to challenge the inadmissibility decision. The IPAT’s decision is final.

Although comprehensive data for 2023 is not available, the statistics provided by the IPAT show that the Tribunal considered 59 cases inadmissible and rejected 205 as manifestly unfounded.

### 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 |
|--|------------------------------|--|--|

Norms and practice for legal assistance during the admissibility procedure are identical to those applicable in the regular procedure. Summarily, there is no right to free legal assistance, and this is not provided by the State. NGOs are the only entities providing free legal services, including interview preparation, for this procedure.

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](#)).

In relation to applications deemed inadmissible due to protection granted in another EU MS or Associated Country, Malta has not formally suspended returns to any of these countries. Regular police raids on residences occupied by migrants, including protection beneficiaries are conducted. Following these raids and arrests, persons were detained and subsequently removed, largely to Italy.

<sup>200</sup> Art. 24(2) of the International Protection Act, Chapter 420 of the Laws of Malta.

#### 4. Border procedure (border and transit zones)

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 *shall* be examined under accelerated procedures in accordance with this article when his application appears to be manifestly unfounded. The Article also states that applications may only be so considered if IPA establishes that the applicants does not qualify for international protection, implying that a substantive assessment of the application should occur prior to determining that an application is manifestly unfounded.

Furthermore, as previously stated, Article 24(2) of Act provides that most provisions of the accelerated procedure *shall* apply to applications decided as inadmissible (see [Admissibility Procedure](#)).<sup>201</sup>

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:<sup>202</sup>

- (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.

Children travelling alone are not exempt from accelerated procedures. In terms of Article 23A, unaccompanied minors may be subjected to these procedures when they originate from a ‘safe country of origin’, they submitted an inadmissible subsequent application or, for serious reasons, they are considered a danger to national security.

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<sup>201</sup> Article 23(1) and 24 (2) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>202</sup> Article 2 of the International Protection Act, Chapter 420 of the Laws of Malta.

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 and other vulnerable persons 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 were not channelled through the accelerated procedure (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 serious consequences, depriving the applicant of the possibility of challenging the decision before a competent court.

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.<sup>203</sup>

For 2023, the IPA processed 166 applications in the accelerated procedure, reaching decisions in 191 applications<sup>204</sup>. Of these 191 decisions, 2 resulted in refugee status, 1 in subsidiary protection and 188 in rejections. The 166 applications processed in the accelerated procedure were largely applications from Bangladeshi nationals (109), Egypt (8), Libya (7), Ghana (7) and Pakistan (6). The figure also includes one application from an unaccompanied male minor.

For 2023, IPA breaks down the average duration of the accelerated asylum procedure. The first type was the first application, meaning an application when someone applies for international protection in Malta for the first time, with a duration of 65.48 days. The second type refers to a new application, meaning those instances where a previous application was discontinued as explicitly or implicitly withdrawn, with a duration of 87 days. Last type is the subsequent application, meaning subsequently requesting the application to be re-opened but the legal time limit for re-opening has lapsed, with a duration of 77.9 days.

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), almost invariably 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 LGBTIQ+, 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

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<sup>203</sup> Information provided by the IPAT, February 2022.

<sup>204</sup> The difference reflects accelerated applications that were processed in 2022 but which were decided upon in 2023.

made by individuals claiming to be LGBTIQ+. 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 through the accelerated procedure and their application is automatically decided as manifestly unfounded if rejected. This is the case despite the proviso to Article 23(1) 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 and 2023, 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 noted that they flagged this to EUAA, in view of the fact that EUAA case-workers had often carried out assessments resulting in ‘manifestly unfounded’ decisions, fully aware that such a decision would have serious procedural implications in violation of the EU acquis. EUAA’s confirmed that the Agency operates within a national context and a national procedure, without assessing the compatibility of that procedure with the EU acquis.

In November 2022, aditus foundation launched the #Safe4All legal initiative<sup>205</sup> 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 campaign featured heavily during Malta’s 2023 hosting of EuroPride, during which the plight of LGBTIQ+ asylum-seekers was also featured in the human rights conference<sup>206</sup>.

Practitioners report that in 2023 a number of appeal applications from decisions of inadmissibility were actually accepted by the IPAT, despite the above-mentioned legal obstacles. It is not clear which criteria the IPAT relies upon in order to grant or deny access to appeal procedures for similar cases.

## 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?  Yes  No
  - ❖ If so, are questions limited to nationality, identity, 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

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 entitled to protection and this may affect the way the interview is carried out.

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 “(F)rom 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

<sup>205</sup> The campaign is endorsed by over 25 European and Maltese human rights NGOs, including ILGA-Europe, PICUM and ECRE. aditus foundation, Safe4All legal initiative – practice in other EU Member States, November 2022, available at: <https://tinyurl.com/bdxx77tx>.

<sup>206</sup> EuroPride Valletta 2023, <https://tinyurl.com/3ystd9u>.



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."<sup>207</sup>

The Court also 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" It also commented 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."<sup>208</sup>

As was the case for S.H., practitioners observe that almost all applicants they engaged with and channelled through the accelerated procedure saw their applications 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, so that their original detention ground is then converted to a removal-based detention. In 2023, applicants from Bangladeshi nationals were mostly affected by this approach. (See [Fast Tracking](#)). Practitioners observed how in recent years, the IPA seemed to prioritise these applications, often finalising the entire procedure within weeks from the arrival. Due to the swiftness of the accelerated procedure, this often meant that applicants were channelled to the removal track in a very short period of time. It is noted that throughout 2023 NGOs providing information and legal services and UNHCR faced serious difficulties accessing detention centres and engaging with applicants. This effectively meant that Malta returned significant numbers of applicants without them ever having received independent information and advice on their claims. (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.

<sup>207</sup> ECtHR, *S.H. v. Malta*, application no 37241/21, 20 December 2022, § 84.

<sup>208</sup> *Ibid.*, § 86.

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.<sup>209</sup>

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*”, referring to IPA’s forwarding of the application to IPAT, 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. According to IPA, in 2023 the average duration of the accelerated procedure was 66 days (first applications), 87 days (new applications) and 78 days (subsequent applications).

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.<sup>210</sup> Nevertheless, the International Protection Act specifies that “*the review conducted by the Chairperson of the IPAT shall be deemed to constitute an appeal.*”<sup>211</sup>

Notably, 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 never implemented.<sup>212</sup>

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 three 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.<sup>213</sup>

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 2023, the IPAT received 649 appeal applications, of which 267 related to accelerated cases (41%). Of the 595 decisions taken by the IPAT in 2023, 205 were deemed manifestly unfounded and 59 were dismissed as inadmissible. Due to lack of clarity in the available data, it cannot be established whether the 205 and 59 decisions were taken within the accelerated procedure or within the regular procedure.

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<sup>209</sup> Article 23(4) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>210</sup> Information provided by UNHCR, January 2019.

<sup>211</sup> Article 7(1A) (a)(ii) International Protection Act, Chapter 420 of the Laws of Malta.

<sup>212</sup> Regulation 22(1) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>213</sup> 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>

IPAT decisions on manifestly unfounded or inadmissible ‘appeals’ are generally not motivated and only contain a simple statement confirming the IPA decision. It is argued by commentators<sup>214</sup> 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.<sup>215</sup>

The UNHCR observed in 2019 that the Tribunal tends to automatically confirm the IPA's recommendation.<sup>216</sup>

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.<sup>217</sup> 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 review 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 against this decision and on 9 May 2024 Malta's Court of Appeal decided that the First Court was wrong in determining that this case in a judicial review case. The Appeal Court reiterated that judicial review may not be relied upon against decisions of quasi-judicial tribunals, as there are other legal avenues to question the validity of these decisions. Consequently, the case was referred back to the First Court for it to hear and decide the case on its substance<sup>218</sup>.

In *Parsons Mariama Ngady vs L-Aġenzija Għal Protezzjoni Internazzjonali et*,<sup>219</sup> filed on 28 December 2020 and decided on 1 March 2022 by the Civil Court (First Hall), Ms. Parsons was issued 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*”.<sup>220</sup> 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

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

<sup>215</sup> Article 7(1A) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>216</sup> Information provided by UNHCR, January 2019.

<sup>217</sup> Civil Court (First Hall), *Chehade Mahmoud vs L-Avukat Ġenerali et.*, 909/2018, 28 January 2020, available at: <https://bit.ly/2Vqn2CT>.

<sup>218</sup> Court of Appeal, *Chehade Mahmoud vs L-Avukat Ġenerali et.*, 9 May 2024, available at: <https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=146147>.

<sup>219</sup> Civil Court (first Hall), *Parsons Mariama Ngady vs L-Aġenzija Għal Protezzjoni Internazzjonali et*, 318/2020, 1 March 2022.

<sup>220</sup> Carla Camileri, Accelerated procedures in Maltese asylum law: Making Violations of Fundamental Rights the order of the day, Id-Dritt XXXII (2022), cited above.

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.<sup>221</sup>

In *S.H. v. Malta*,<sup>222</sup> 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 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 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 as far as they had no suspensive effect.

On 20 December 2022, the ECtHR found in favour 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*

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<sup>221</sup> Constitutional Court, *Parsons Mariama Ngady vs L-Aġenzija Għal Protezzjoni Internazzjonali et*, No. 18, 5 January 2023, available at: <https://bit.ly/3ApAL11>

<sup>222</sup> ECtHR, *S.H v. Malta*, application no. 37241/21, 20 December 2022.

offer effective guarantees protecting him from an arbitrary removal.” and found a violation of Article 3 taken in conjunction with Article 13.<sup>223</sup>

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.”<sup>224</sup>

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.<sup>225</sup> 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.

The number of appeals lodged against negative first instance decisions were 649 in total. For cases examined in the accelerated procedure in 2023 the number was 267, according to the IPAT.

#### 5.4. Legal assistance

##### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

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

Article 7(3) of the International Protection Act provides for the right to free legal aid for all appeals submitted to the IPAT. However, as decisions on manifestly unfounded and inadmissible applications are automatically referred to and reviewed by the Tribunal without an opportunity to submit any pleas, in accordance with the rules on the accelerated procedure, the appellant is not able to participate in the review or to be represented.

<sup>223</sup> ECtHR, S.H v. Malta, application no. 37241/21, § 90-93.

<sup>224</sup> ECtHR, S.H v. Malta, application no. 37241/21, § 108.

<sup>225</sup> ECtHR, S.H v. Malta, application no. 37241/2, § 53.

Practitioners confirm that in 2023, there was a small number of cases where the IPAT accepted appeals in the context of the accelerate procedure. Some of these appeals were filed within the three days envisaged in the procedure whilst others were filed within the regular procedure timeframe attempting to rely on the Directive’s provisions regarding the right to an effective remedy.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum-seekers?  Yes  For certain categories  No
  - ❖ If for certain categories, specify which: 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 subjected to torture, rape or other serious forms or psychological, physical or sexual violence, such as victims of female genital mutilation
2. Does the law provide for an identification mechanism for unaccompanied children?  Yes  No

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 subjected to torture, rape or other serious forms or psychological, physical or sexual violence, such as victims of female genital mutilation.<sup>226</sup>

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.<sup>227</sup> AWAS’ assessment of vulnerability does not occur in the context of the asylum procedure but rather for the purpose of identifying suitable reception conditions, particularly in relation to detention and provision of psycho-social support.

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](#)).

According to information provided by the IPA, in 2023 it identified three applicants as being vulnerable: 1 male and 2 females but their ground of vulnerability is unknown since such data are not collected for statistical purposes. The Government indicated that *“the IPA carries out an initial vulnerability screening on all asylum seekers. This screening is done during the lodging of the application by non-medical practitioners and is based on readily apparent signs or the applicant’s oral declarations.”*<sup>228</sup>

#### 1.1. Screening of vulnerability

<sup>226</sup> Regulation 14(1) (a) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>227</sup> Ibid.

<sup>228</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

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 rescued at sea are automatically and systematically detained for at least a number of days without any form of assessment, the AT is likely to intervene at a later stage. This usually happens after clearance from the health authorities. Applicants who are manifestly vulnerable and clearly unaccompanied minors are generally detained in the Marsa Initial Reception Centre (MIRC) during these early stages. AWAS representatives are also present at the moment of disembarkation and are able to immediately identify evidently vulnerable persons, yet in all cases every person is detained immediately upon arrival.

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.<sup>229</sup> As of January 2023, the AT is only composed of AWAS staff as the EUAA support in that area ended in December 2022, mainly due to the commencement of the Agency's exit process from Malta. Throughout 2023, EUAA worked closely with AWAS to further develop structural elements such as Standard Operating Procedures, Guidelines, reception assessments and other internal mechanisms. (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 jointly with the EUAA.

Vulnerability is assessed on 4 levels:

- being a very urgent support need, L1: Urgent (immediate follow up/on the spot) – Risk of self-harm, Risk of harm to others, Suicidal Ideations, Life-threatening issues;
- being in need of medical support, L2: high priority (within 0-3 days) – Severe Trauma, Victims of THB, Urgent medical attention;
- being in need of medical but not urgent, L3: medium priority (within 2 weeks from the date of assessment) – Important medical appointments and other medical issues, counselling, psychologist;
- being a need in terms of housing and education, L4: low priority (within a month from the date of referral) – Issues of employment, education and housing.

Following the assessment, a report is produced, and recommendations are made in relation to the need or otherwise of special reception conditions or procedural guarantees in the asylum procedure. It is noted that the AWAS assessments and recommendations are not binding for the PIO and the IPA.

Lawyers and NGOs reported that throughout 2023 they faced serious challenges to obtain the vulnerability assessments from AWAS, despite these being shared with other Government entities such as the Immigration Police and the IPA. As such, NGOs and lawyers are unable to monitor or assess the

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<sup>229</sup> Information provided by EUAA, 28 February 2022.

effectiveness of the authorities in implementing the recommendations of the reports and are unable to effectively refer to relevant vulnerability issues in the context of the asylum procedure.

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).

In 2023, AWAS received a total of 91 referrals out of which 35 were female and 56 were male. Such referrals were received either internally or by DSA, NGOs, IPA or by other stakeholders. The agency assessed a total of 77 referrals as 14 did not attend the assessment. The assessments were carried out in Reception Centres, Closed centres and/or in their community. From these referrals 1 was deemed “urgent” (L1), 13 as high priority (L2), 35 as medium priority (L3) and 28 as low priority (L4).<sup>230</sup>

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. In terms of Regulation 16 of the Reception Regulations, an appeal against a vulnerability assessment procedure should be available to applicants, yet in the absence of the Agency’s reports and conclusions this is difficult to implement. According to the Home Affairs Ministry, there is indeed no positive or negative decision following a vulnerability screening, but migrants are asked if they would like to receive further support, and, if they agree, they are referred to the psychosocial unit within AWAS.

The length of time taken to conclude assessment procedures varies.

As previously mentioned, throughout 2023 all applicants rescued at sea and disembarked in Malta were automatically detained on public health grounds. Therefore, vulnerable applicants, including minors, were *de facto* detained for a number of days or weeks following their arrival. Once medical clearance is provided by the public health authorities, an applicant’s detention – including that of vulnerable persons – may be prolonged if the PIO decides to issue a Detention Order to the applicant. In 2023, it was noted that an applicant’s country of origin often over-rode their vulnerability, resulting in their continued detention. Whilst these applicants might have been provided with psycho-social care by either AWAS or the medical team established in the detention centres, NGOs commented that this treatment was undignified and inhumane. They also noted that attempts to have an applicant’s disability confirmed by the Commission for the Rights of Persons with Disability (CRPD)<sup>231</sup> did not have any significant impact on the applicant’s situation, formally due to a conflicting vulnerability report prepared by AWAS or the detention medical team yet probably due to the applicant’s nationality.

NGOs confirmed that in 2023, the PIO was more reluctant to release vulnerable applicants from detention, seemingly due their increased efforts at promoting voluntary return or at implement forced returns to specific countries, particularly Bangladesh. They also noted that 2023 saw a revision of AWAS’ remit to exclude rejected asylum-seekers, effectively leaving this group of persons without the possibility to have their needs assessed and, if vulnerable, to receive any form of support or care.

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

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<sup>230</sup> Information provided by AWAS on the 11<sup>th</sup> of April 2023.

<sup>231</sup> See: <https://tinyurl.com/2pvkc28v>.



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.<sup>232</sup> This case was still pending before the ECtHR at the end of 2023.

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 requests to be provided with it.<sup>233</sup> 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.<sup>234</sup>

Asylum-seekers arriving regularly, and therefore not accommodated in the IRC, may never be assessed and their vulnerability may never be identified unless referred by NGOs.<sup>235</sup>

## 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) Act<sup>236</sup> provides that persons claiming to be unaccompanied minors should be immediately referred to the PIO for onward referral to the Director of the Child Protection Services.

The Director is responsible for filing a request for a provisional Care Order to the Maltese Courts, which should be issued within 72 hours. The Care Order stipulates that the Head of AWAS is responsible for the care and custody of the minors. The Unit Leader of the Unaccompanied Minors Services within AWAS assigns the representative, who in turn delegates the responsibility to the social workers within the same unit. The Act further specifies that the Director should refer the applicants to age assessment procedures and other investigations in order to ascertain whether they really are unaccompanied children. Throughout 2023, NGOs received several queries from the Director's office enquiring about individual applicants, in particular inviting the sharing of information of possible family members and other elements relevant in the assessment as to whether the applicant is indeed an unaccompanied minor.

If, following these procedures, it transpires that the child is indeed found to be an unaccompanied minor, the Director will file applications before the Court for the issuance of the Care Order and for the appointment of a legal guardian.

After years in which practitioners and NGOs lamented the fact that AWAS lacked independence in the way it simultaneously conducted age assessments, provided legal guardianship and secured accommodation for UAMs, it can be observed that currently there is a higher degree of separation of these responsibilities amongst the Agency's various units.

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<sup>232</sup> aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 January 2022, available at <http://bit.ly/3j3aVeM>

<sup>233</sup> See ECtHR, A.D. v. Malta, no 12427/22 (Communicated Case), 24 May 2022, available at: <https://bit.ly/3mjiOOB>

<sup>234</sup> Immigration Appeals Board (Div. II) in Reagan Jagri v. the Principal Immigration Officer, 7 April 2022 (unpublished).

<sup>235</sup> A.D. v. Malta, No. 12427/22, communicated on 24 May 2022, available at: <https://bit.ly/3mjiOOB>

<sup>236</sup> Minor Protection (Alternative Care) Act, Chapter 602 of the Laws of Malta.

Age Assessments are conducted by the AWAS' Assessment Team (AT), also responsible for vulnerability assessments. AWAS' 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 at 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 worker of the team. NGOs remain concerned at the lack of independence of the legal guardian, being a public offer engaged by AWAS.

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 and appointment or confirmation of the legal guardian.

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.<sup>237</sup>

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.

Whilst NGOs acknowledge the significant improvements in the age assessment system, they flagged the following shortcomings:

- Conflict of interest of the legal guardian, who remains a Government employee engaged by AWAS;
- No best interest assessment is carried out before the age assessment procedure;
- No sufficient information is provided to those undergoing age assessments;
- Lack of legal representation and legal assistance during the age assessment process;
- The age assessment process is generally undertaken while minors are detained, and no consideration is given to such for the purpose of the assessment;

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<sup>237</sup> 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>.

Essentially, NGOs pointed out that the UMAS Protection Team and the Assessment Team still report to the same Senior Managers and that, since ultimately AWAS 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](#)). NGOs report that, in such cases, vulnerable persons face difficulties in having their vulnerability recognised and their specific needs met.

In 2023, AWAS stated that 80 persons underwent age assessment procedures, and it issued 79 decisions: 43 applicants were declared to be adults, 34 as minors, 2 declared to be adults and 1 was still in the procedure at the end of the year. In the case of the 34 minors, 21 are unaccompanied minors and 12 are separated children.

### **Age Assessment Appeals before the Immigration Appeals Board**

Regulation 17 of The Reception Regulations provides that applicants who feel aggrieved by a decision in relation to age assessment are entitled to appeal before the Immigration Appeals Board in accordance with the provisions laid down in the Immigration Act.<sup>238</sup>

The Immigration Appeals Act provides that appeals must be filed within 3 days of the notification of the decision<sup>239</sup> and this stringent deadline is strictly adhered to by the Board. Age assessment 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.<sup>240</sup>

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 Orders issued under the Reception Regulations (see [Judicial review of the detention order](#)). Division II recognised that a conflict of interest may arise 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.<sup>241</sup> At the end of 2023 a new IAB Division was established, yet it is still premature to assess how cases will be internally allocated amongst the three Divisions.

No clear procedure is established for these appeals: 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.<sup>242</sup>

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. In 2023 AWAS amended its notification procedures and now delivers the decision to the applicants, together with an interpreter. The decision is explained in detail and information is provided about the possibility of file an appeal. The 3-day time limit to file an appeal remains a serious challenge, particular for children in detention at the time of the negative decision. If they would have had a lawyer, generally an NGO lawyer, during the age assessment procedure, it would be easier for them to file the appeal, yet this would require them to contact the lawyer before the lapse of the mandatory time limit. Applicants without a lawyer during the procedure would need to identify one in order to file the appeal in time (See [Access to detention facilities](#)). NGOs

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<sup>238</sup> Article 16(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>239</sup> Article 25A(7) of the Immigration Act, Chapter 217 of the Laws of Malta.

<sup>240</sup> See <https://bit.ly/3KXft28>

<sup>241</sup> Immigration Appeals Board (Div. II), R.M v. the Principal Immigration Officer, 24 March 2022, available at <https://bit.ly/3KVf136>

<sup>242</sup> Information provided by the Immigration Appeals Board, January 2022.

confirmed that in the vast majority of cases, applicants provided with negative decisions inform AWAS right away of their decision to appeal, and a legal aid lawyer is appointed to handle the case.

For 2023, lawyers continued to report 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 and these 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. Legal aid lawyers have also not attempted to do this as such activities seem to fall outside their remit.<sup>243</sup> According to both aditus and JRS, the Board either waits until the person comes of age in order to then close the case or, when a decision cannot be avoided, systematically rejects the appeal after several months of procedure. Both NGOs criticised the Board for issuing stereotyped two-page 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 little 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*", declaring "*we remit ourselves to the wise and superior judgement of this Board*".

Additionally, concerns have been expressed in relation to the independence of specialised tribunals such as the Board<sup>244</sup>, 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 by the Board and not publicly available. aditus foundation at times publishes significant decisions relating to its clients.<sup>245</sup>

For 2023, aditus and JRS (representing children appealing negative age assessment decisions) confirmed that no positive decisions were given by the IAB. They also reported that the appeals stage of this procedure often lasted longer than two years.

## Legal Assistance

Following the referral by AWAS to the Child Protection Directorate, provisional case orders are issued, and representatives – AWAS social workers - are appointed for each person. This representative is also present during the age assessment process. Furthermore, according to the Home Affairs Ministry, before starting the process of assessing an applicant's age, relevant information on the process is provided to the applicant in a language they understand, with the support of interpreters where necessary.

Nonetheless, lawyers representing unaccompanied minors observed that they 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 itself.

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](#)

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<sup>243</sup> Information provided by the Immigration Appeals Board, January 2022.

<sup>244</sup> EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 13 July 2022, 5-6, available at <https://bit.ly/3XRYS2D>.

<sup>245</sup> Under 'Our Cases', <https://tinyurl.com/yc8jeb82>.

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.<sup>246</sup>

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.

Since 2022 and throughout 2023, minors have full access to the legal aid lawyers provided by the Ministry for Home Affairs.

According to the Ministry for Home Affairs,<sup>247</sup> 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.

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<sup>246</sup> Article 16(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.  
<sup>247</sup> See <https://bit.ly/3mn9zx0>

## 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.<sup>248</sup>

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 procedure<sup>249</sup> 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.<sup>250</sup>

The early stages of the asylum procedure, meaning the period of time before the formal lodging of the application, do not incorporate a vulnerability screening process, and vulnerable applicants are generally referred to IPA by NGOs, AWAS and other entities. The Government underlined that IPA does indeed conduct an initial vulnerability screening during the lodging stage.

According to the IPA, AWAS' vulnerability assessments are not binding on IPA as it is the latter entity that is responsible to decide whether an applicant is in need of special procedural guarantees.<sup>251</sup>

#### 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.<sup>252</sup>

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.

<sup>248</sup> Regulation 7(1) of the Procedural Regulations, Subsidiary Legislation 420.07 of the laws of Malta.

<sup>249</sup> Regulation 7(2) of the Procedural Regulation, Subsidiary Legislation 420.07 of the laws of Malta.

<sup>250</sup> Regulation 7(4) of the Procedural Regulation, Subsidiary Legislation 420.07 of the laws of Malta.

<sup>251</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>252</sup> IPA, Guidance Note on the Fast-tracking of Applications Submitted by Vulnerable Persons, 2 September 2020 (unpublished).

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.

According to the protocol, 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.

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

IPA indicated that, for 2023, three applications were fast-tracked.

### **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 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.

In January 2023, the National Commission for the Promotion of Equality published an interview with a Senior Nurse at the national health department. The interview, conducted to commemorate the International Day for Zero Tolerance of FGM, touched upon the issue of FGM in the context of asylum and underlined the absence of data regarding the FGM cases in Malta<sup>253</sup>.

### **Victims of Human Trafficking**

The IPA also has a referral mechanism with Aġenzija Appoġġ<sup>254</sup> for applicants who are identified as potential victims of human trafficking. However, various stakeholders, including Appoġġ reported that the IPA rarely makes use of this referral mechanism.

Victims of human trafficking are generally referred to the PIO for their status as trafficking victims to be determined and, if so, to Identitá (formerly Identity Malta) for issuing the relevant residence permit.

### **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.<sup>255</sup>

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;<sup>256</sup>

- 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

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<sup>253</sup> National Commissioner for The Promotion of Equality, “FGM nowadays is no longer a problem of 3rd world countries but a worldwide problem” – Maali Boukadi, 31 January 2023, available at: <https://tinyurl.com/58fcfzdh>.

<sup>254</sup> See <https://bit.ly/3SPm2FB>

<sup>255</sup> 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.

<sup>256</sup> Regulation 18(1) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta as amended by Legal Notice 273 of 2022.



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.<sup>257</sup> In many cases, AWAS works hand in hand with NGO lawyers in order to assist the child during the asylum procedure.

Furthermore, all UAMs whose asylum applications have been rejected are automatically granted Temporary Humanitarian Protection until they reach the age of eighteen, at which point their asylum decision is revived.

## 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.<sup>258</sup>

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.<sup>259</sup>

In 2023, of the applications conducted under an accelerated procedure, one was made by a male UAM.

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 exist<sup>260</sup> but it is unknown whether the PIO will take such risk.

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<sup>257</sup> aditus foundation, Technical Comments on Bill No. 2 of 2022, June 2022, p.11, available at: <https://bit.ly/3IHYZBy>

<sup>258</sup> Regulation 7(3) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>259</sup> Article 23A of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>260</sup> Regulation 8 of the Return Regulations, Subsidiary Legislation 217.12 of the Laws of Malta.

### 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 as far 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.

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

It is further noted that most applicants spend a number of weeks or months in detention, in a context where communication with lawyers or with other entities that could assist in the procurement of medical reports is extremely challenging.

### 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 (FSWS), Malta's welfare entity, who is responsible for protecting minors. It introduces the duty for all persons to report any minor who is at risk of suffering or being exposed to significant harm and establishes various forms of protection orders the Juvenile Court may impose, including care orders.

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

The Act provides that immediately after the registration of the minor and the issuing of appropriate identification documents, the Director (of Child Protection) shall request the Court to provide any provisional measure relating 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*”.<sup>261</sup>

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.<sup>262</sup> 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.

2023 saw major improvements in the procedures relating to UAMs. The referrals to Child Protection Services were conducted within days of arrival, promptly followed by the necessary applications to the Courts for the issuing of Care Orders. The above-mentioned division within AWAS now ensure that children are indeed provided with a legal guardian.

Yet structural problems that are now almost endemic to the Maltese system remained throughout 2023. Upon disembarkation, a visual assessment is made by AWAS of all persons. Persons deemed by AWAS, following this scan, to be UAMs are immediately channelled to the above procedure involving Child Protection Services. They are nonetheless detained for public health reasons for, as a minimum, a number of days. UAMs who AWAS believe are not UAMS or in respect of whom AWAS has doubts as to their UAM status are referred to the age assessment procedure and kept in detention throughout the procedure, including the appeal stage.

In 2023, NGOs visiting detention centres met UAMs appealing their negative age assessment decision who had been in detention for several months.

The ECtHR ruled against Malta in a significant case involving the illegal detention of a UAM.<sup>263</sup> AD was a minor who had reached Malta by boat in 2021. He was immediately detained with adults and, throughout his detention and pending his age assessment procedure, treated as an adult. Overall, he was detained by Malta for 225 days. The Court found violations of Articles 3, 5 and 13. In relation to his situation as a child in Malta’s asylum system, the Court consolidated its jurisprudence on the rights of children, noting the following:

- the presumption of minor age must be applied to persons claiming to be children, stressing that they should therefore be treated as children in all procedures;

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<sup>261</sup> Regulation 14(1)(b) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>262</sup> Regulation 18 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>263</sup> European Court of Human Rights, A.D. v. Malta, 12427/22, 17 January 2024, <https://hudoc.echr.coe.int/eng?i=001-228153>.

- the Juvenile Court’s decision had not been communicated to the applicant, he had not known that he had a guardian, nor was the guardian present during his age assessment;
- it expressed “*serious doubts as to the compatibility with Article 3 of a situation where a presumed minor, even if close to adulthood, was left to spend more than a month alone (in total isolation since neither the guards nor the doctors could speak French) in such premises within the confines of a detention centre. Those concerns are exacerbated in the situation of the applicant where no measures appear to have been taken by the authorities to ensure that the applicant’s physical and psychological condition allowed him to remain in isolation – quite the contrary... – nor does it appear that in the specific circumstances of this case, any other alternatives to this isolation had been envisaged*”;
- “*age determination is a prerequisite for the assessment of an asylum claim and that the applicant’s appeal against his age assessment decision was still pending four and a half months after his detention was ordered. The Court, however, reiterates that the necessity of detaining children in an immigration context must be very carefully considered by the national authorities. An issue may arise, inter alia, in respect of a State’s good faith, in so far as the determination of age may take an unreasonable length of time – indeed, a lapse of various months may also result in an individual reaching his or her majority pending an official determination*”;

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.<sup>264</sup>

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 assessment, despite the lawyers numerous requests to be provided with it.<sup>265</sup> 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.<sup>266</sup>

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.<sup>267</sup>

<sup>264</sup> aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 January 2022, available at <http://bit.ly/3j3aVeM>

<sup>265</sup> See A.D. v. Malta, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3ZCq86j>.

<sup>266</sup> Immigration Appeals Board (Div. II), Reagan Jagri v. the Principal Immigration Officer, 7 April 2022 (unpublished).

<sup>267</sup> aditus foundation, Technical Comments on Bill No. 2 of 2022, June 2022, available at: <https://bit.ly/3EVTSTM>, 11.

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.<sup>268</sup>

## 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	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ At the appeal stage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

3. Is a removal order suspended during the examination of a second, third, subsequent application?

❖ At first instance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

An asylum-seeker whose claim has been rejected may submit a subsequent application to the International Protection Agency.<sup>269</sup> 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*.<sup>270</sup>

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 to present an appeal.

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.

<sup>268</sup> 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>.

<sup>269</sup> Articles 7A of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>270</sup> 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.

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, this rarely happens in practice.<sup>271</sup> 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.

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. Furthermore, when a subsequent application is deemed inadmissible, the rejected applicant is barred from accessing the labour market. In practice, this has led to a situation where rejected persons in employment refrain from submitting a subsequent application due to fear of losing their employment status.

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.<sup>272</sup>

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, it is automatically rejected as manifestly unfounded. In these cases, the applicant would not have the right to appeal.<sup>273</sup>

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<sup>271</sup> Article 24 (3) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>272</sup> Article 16(3) of the international Protection Act, Chapter 420 of the Laws of Malta.

<sup>273</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

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](#)).

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 that the applicant did not have access to an effective remedy under Article 13 for the purposes of his claim under Article 3.<sup>274</sup>

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 their 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. The Government reiterated that all cases were handled in line with the rules on subsequent applications.<sup>275</sup>

Lawyers and NGOs now refrain from filing new applications since according to a new policy, applicants who see their subsequent applications rejected as inadmissible are barred from accessing legal employment.<sup>276</sup>

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.

IPA confirmed that in 2023, 76 subsequent applications were lodged: 6 of which were from Ukrainian nationals 45 from Sudanese nationals, 6 by Bangladeshis, 5 by Nigerians and 2 from Togolese.

## F. The safe country concepts

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<sup>274</sup> ECtHR, *S.H. v. Malta*, application no 37241/21, 20 December 2022, § 92-97.

<sup>275</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>276</sup> Information provided by Jobsplus, September 2022.

### 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. However, the IPA remarks that all procedural guarantees apply to such applicants.<sup>277</sup>

The Act also provides, by way of a Schedule,<sup>278</sup> 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, 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.<sup>279</sup>

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.*”<sup>280</sup> The Agency has not made any Declaration so far and it remains to be seen how this amendment will be implemented in practice.

Legal Notice 488 creates a legal anomaly whereby it seemingly conflicts with the provision of the Act designating the Minister as the entity responsible for the list of safe countries of origin. The Act does not authorise the Minister to delegate this power, and Legal Notice 488 does not speak of IPA’s decision to remove a country from the list of safe countries of origin. Considering the primacy of the Act over the Regulations and also considering the obligatory nature of an inadmissibility decision in relation to persons originating from safe countries designated safe, the only reasonable reading of the present legal situation is that applicants originating from countries of origin deemed safe by the Minister and included in the Schedule should have their applications automatically declared inadmissible.

<sup>277</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>278</sup> Schedule (Article 24) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>279</sup> Article 24(4) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>280</sup> Regulation 23(2) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.



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.<sup>281</sup>

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).

In 2023, 149 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 Bangladesh (111), Egypt (11), Algeria (7), Morocco (6), Senegal (4), Brazil (3), Ghana (3), India (3) and Tunisia (1).

## 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 inadmissible, and therefore to be processed within the accelerated procedure as inadmissible.<sup>282</sup>

According to IPA, depending on the particular circumstances of the case, it could be determined that the concept of safe third country could apply.<sup>283</sup> 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 since 2020. NGOs and lawyers confirmed that, in their experience, the principle is never used.

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<sup>281</sup> ECtHR, *S.H. v. Malta*, no 37241, 20 December 2022, § 62 and 91.

<sup>282</sup> Articles 8(1)(g), 23 and 24(1)(c) of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>283</sup> Information provided by the Refugee Commission, 12 January 2018.

### 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.<sup>284</sup>

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, 2022 and 2023.

## 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.<sup>285</sup>

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.<sup>286</sup>

Newly arrived applicants are detained on health grounds and the Public Health authorities provide them with a short document called ‘Restriction of Movement Notice’, available in English, French, Arabic and Bangladeshi. The Notice informs the person that their freedom of movement is being restricted on public health grounds. Lawyers visiting persons detained under this regime often noted that the document did not contain the person’s own particulars, or that the person was provided with a document in the wrong language and that the document was never actually explained to the person receiving it. Furthermore, lawyers also noted that the Notice does not impose detention but, rather, a mere restriction of free movement (see [Detention](#)).

Due to their limited access to detention, NGO are not able to inform all newly arrived asylum-seekers and most of them never get the chance to access a lawyer before they lodge their applications or – at times – their asylum interviews. 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 and 5 visits in 2023, reaching 103 asylum-seekers.<sup>287</sup>

<sup>284</sup> Article 24(1)(b) Refugees Act.

<sup>285</sup> Regulations 4 and 5 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>286</sup> Regulation 14 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>287</sup> Information provided by the UNHCR, March 2024.

NGOs reported they received consistent testimonies of asylum-seekers who arrived in 2022 and 2023 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. The situation was exacerbated in 2023 with Malta's decision to limit UNHCR's access to persons who had lodged their asylum applications, instead than allowing access to all newly-arrived individuals.

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 visited by the UNHCR or NGOs, in 2023 detained applicants were not provided with information on the asylum procedure prior to the lodging of their application. At the lodging stage, they received information about the asylum procedure and were given a leaflet on the Dublin procedure. They were also provided information on the possibility of being relocated to another EU Member State. The lodging of the application can happen several weeks or months after the arrival.

According to information provided by the Maltese authorities, *“upon arrival, migrants are given the medical attention required by national authorities. Once irregular migrants are medically cleared, they are spoken to by the Returns Unit, IPA officials and Immigration Police. Prior to any other discussions, migrants are informed that it is their legal right to apply for asylum. Immigration Police and the Returns Unit inform migrants on their rights and return prospects. The Ministry believes that it is important for migrants to know all options and services offered to them by the Government of Malta. No physical or non-physical coercion has ever been used.”*<sup>288</sup>

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”*.<sup>289</sup> 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”*.<sup>290</sup> It seems this material was finalised towards the end of 2023 or the beginning of 2024, as practitioners and NGOs confirmed first seeing these documents in March 2024.

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, some positive improvements were registered in recent years, 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

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<sup>288</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>289</sup> Regulation 5A of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>290</sup> EUAA Operating Plan 2020, December 2019, available at: <https://bit.ly/2XxYx9K>.

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.

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. This cooperation continued throughout 2023.

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

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

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

National legislation provides that UNHCR shall have access to asylum applicants, including those in detention and in airport or port transit zones.<sup>291</sup> Moreover, the law also states that a person seeking asylum in Malta shall be informed of his right to contact UNHCR.<sup>292</sup> 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.<sup>293</sup> Thus, NGOs have indirect access to asylum applicants through lawyers who work for them

Applicants detained in the IRC facilities in the early days of their arrival have almost no access to UNHCR or NGOs, allegedly for public health reasons. Otherwise, applicants in other detention centres face the challenges identified below (See [Access to Detention](#)), whilst applicants in open centres are free to visit NGOs in their offices and NGOs are able to request access from AWAS and this is generally granted.

<sup>291</sup> Regulation 16(a) Procedural Regulations.

<sup>292</sup> Regulation 3(3)(c) Declaration Regulations.

<sup>293</sup> Regulation 7(3) Procedural Regulations.

## 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, , Eritrea, Somalia
2. Are applications from specific nationalities considered manifestly unfounded?<sup>294</sup>  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, Eritrea and Somalia

Applicants confirmed to be Syrian are granted, as a minimum, subsidiary protection. This also applies to applicants confirmed as being Eritrean and Somali. Whereas pre-2023 this also applied to Libyan applicants, 2023 saw IPA rejecting applications from Libyan nationals: a total of 76 Libyan applications were rejected.

In 2023, IPA recognised refugee status for 8 Syrian nationals and granted subsidiary protection to 161 Syrians. Refugee status was also recognised for 1 Bangladeshi national – despite this being indicated as a safe country of origin, 1 Sudanese, 2 Pakistani and 1 Somali. 28 Somalis and 51 Eritreans were granted subsidiary protection.

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

NGOs reported that applications from individuals from Bangladesh, Ivory Coast, Ghana, Egypt, Morocco, Nigeria, and Algeria 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 weeks or months after arrival (see [accelerated procedure](#)). This despite the fact that Ivory Coast and Nigeria are not designated as 'safe countries of origin'. No 2023 data is available on the percentage of applications from applicants of these nationalities that were determined to be manifestly unfounded.

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 and voluntary 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.<sup>295</sup> In 2023, the number of forced returns on Bangladeshis decreased, primarily due to challenges in securing diplomatic channels. The Home Affairs Ministry's Voluntary Return Unit was extremely proactive in promoting voluntary return to this group of applicants, oftentimes even before they were informed of asylum or before they had the opportunity to meet with NGOs, lawyers or UNHCR. NGOs received reports of applicants being coerced to apply for voluntary return, being told that an asylum application would be automatically rejected due to Bangladesh being deemed safe and that pending the asylum procedure they would remain locked up in detention. Similar reports were also received from Bangladeshi UAMs.

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,

<sup>294</sup> Whether under the 'safe country of origin' concept or otherwise.

<sup>295</sup> See EC, Migration and Home Affairs, Return and readmission, <http://bit.ly/3QM5Bcj>

the Prime Minister of Malta issued a statement announcing that Bangladeshi nationals shall face an expedient return, after due process.<sup>296</sup> 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”*.<sup>297</sup>

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.<sup>298</sup>

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<sup>296</sup> 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>.

<sup>297</sup> The Times of Malta, ‘Migrants returned to their country after asylum applications are rejected’, 12 January 2021, available at: <https://bit.ly/30R11mu>.

<sup>298</sup> 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). AWAS is also responsible for providing support services to detained asylum-seekers.

Officially, the reception system in Malta is still regulated by the 2015 Strategy for the Reception of Asylum-seekers and Irregular Migrants.<sup>299</sup> 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 (IRC) where checks and assessments (age assessment, vulnerability assessment, need to detain) are conducted before being referred to detention or reception centres.

This policy was informally 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.

Despite the drastic decrease in arrivals since 2021, including throughout 2023, and a low rate of occupancy in the open centres, the Government still automatically detains all asylum-seekers arriving by boat on health grounds, and the Immigration Police still generally detains all individuals where a likelihood of realising a return is high: Bangladesh, Egypt, Morocco, 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. Upon disembarkation they are all detained.

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 non-vulnerable adults are given a six-month contract which can be extended if the applicant is considered to be vulnerable or facing significant challenges. People are asked to leave at the end of their contract irrespective of their status, including when their application for international protection is still pending. It is at this point that material reception conditions are formally withdrawn, although in 2023 AWAS exceptionally agreed to continue providing the *per diem* to applicants living in the community.

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

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<sup>299</sup> AWAS, Migration Policy, Strategy for the reception of asylum-seekers and irregular migrants, available at: <https://bit.ly/3f4YE5s>.

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 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.<sup>300</sup>

Measure MT2 of the EUAA Operation Plan 2022-2024 (Draft 2) outlines measures to enhance the capacity of Maltese authorities regarding reception quality. Actions include supporting the AWAS Quality Assurance Framework’s design and implementation, organizing online meetings or study visits with EU Member States’ reception authorities, harmonizing workflows, conducting self-assessment surveys, updating guidelines, and providing interpretation services. Inputs consist of Asylum Support Teams deployment, Quality Assurance personnel, flow management support officer, and interpreters. Additional support may include deployments, equipment, training costs, infrastructure, and communication materials. Outputs entail designing quality assurance measures, updating SOPs, guidelines, and tools, and enhancing personnel capacity through training. For 2023, an 80% reduction in resources for EUAA Malta-Operations was registered, with a 25% decrease in interpretation support.<sup>301</sup>

## 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 allow access to material reception conditions for 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
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<sup>300</sup> 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/3INNSF1W>

<sup>301</sup> EUAA, *Operational Plan 2022-2024 Agreed by the European Union Agency for Asylum and Malta Amendment 2*, April 2023, available at: <https://tinyurl.com/yptyrurr>.



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.<sup>302</sup>

Despite this, NGOs report that in 2023 challenges were faced by some applicants in being defined as such by IPA and, therefore, in securing access to reception conditions. Examples include applicants in the Dublin out-going procedure pending their departure from Malta, applicants filing an application following a revocation or withdrawal of their international protection status in Malta or in another EU MS.

No reference is made to the duration of entitlement to reception conditions, the six-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*”.<sup>303</sup> 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.

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. Reception conditions are similarly available to Dublin returnees

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 Act.<sup>304</sup> 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 is generally the case for 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 them being excluded from reception conditions. However, AWAS has indicated that some individuals may be authorised to return to reception centres through the Agency’s intake system, 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.<sup>305</sup> It is not clear whether persons receive formal decisions on their application for re-entry.

A limited number of NGOs also provide accommodation to applicants, together with beneficiaries of international protection and possibly other migrants. These NGO services are incorporated within the reception system and coordinated by AWAS.

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<sup>302</sup> Regulation 2 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>303</sup> Regulation 11(4) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>304</sup> Regulation 16 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>305</sup> Information provided by AWAS, January 2019.

## 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 2023 (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*”.<sup>306</sup>

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. No educational activities are organised for detained children or adults.

Asylum-seekers living in open centres experience difficulties in securing an adequate standard of living. The daily allowance provided is barely sufficient to provide for the most basic of needs, and the lack of access to social welfare support exacerbates these difficulties. Social security policy and legislation precludes asylum-seekers from social welfare benefits, except those benefits which are defined as “*contributory*”. With contributory benefits, entitlement is based on payment of a set number of contributions and on meeting the qualifying conditions, which effectively implies that only a 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 income. As such, applicants who are employed full-time will generally 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 and NGOs confirmed that throughout 2023 AWAS did in fact provide financial support to community-based applicants.

AWAS confirmed that, at the end of 2023, 214 applicants residing in the community were registering with AWAS and receiving financial assistance.

However, since no information is provided to applicants about the possibility of receiving financial support whilst living in the community, 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.

<sup>306</sup> Article 2 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

According to AWAS, at the end of 2023 it was accommodating 358 asylum-seekers, 11 rejected asylum-seekers, 4 refugees, 35 appealing asylum-seekers, 9 beneficiaries of subsidiary protection and 11 beneficiaries of Temporary Humanitarian Protection.

### 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.<sup>307</sup>

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. asylum-seeker

According to AWAS, if a resident has not signed at the ‘designated’ open centre for 3 weeks, their place is reclaimed at the centre.<sup>308</sup> 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.<sup>309</sup> However, this remedy is considered to be inaccessible in practice due to the lack of information and the extremely stringent deadlines to file the appeal: 3 days. This was highlighted by the ECtHR several cases against Malta.<sup>310</sup>

According to AWAS, during 2023 the total number of decisions reducing or withdrawing reception conditions was solely attributed to the end of contracts. There were no instances where conditions were withdrawn or reduced other than this ground.

#### Evictions

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

<sup>307</sup> Regulation 13 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>308</sup> Information provided by AWAS, January 2021.

<sup>309</sup> 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.

<sup>310</sup> 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.

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 social workers and the psychosocial team.

People are entitled to challenge that eviction with AWAS, and the decision is internally reviewed by a care team and management, although no guidelines or documents on this procedure are publicly available. According to NGOs, AWAS might reconsider such decisions on a case-by-case basis depending on the vulnerability of the applicant.<sup>311</sup>

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. According to the Ministry, their contract with AWAS could also be extended.<sup>312</sup>

Upon arrival, applicants are briefed about the reception rules and the length of their stay in the reception centre. They are also made to sign an Agreement with AWAS covering their stay.

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. Thus, these evictions often result in homelessness.<sup>313</sup> This continued in 2021, 2022 And 2023. 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.

According to official data published by the Social Affairs Ministry, homelessness further increased in 2023 with non-Maltese nationals particularly affected by the problem. The data shows that, in the first six months of 2023 the social welfare agency APPOĠĠ handled 667 cases of homelessness, of which 369 were non-Maltese nationals<sup>314</sup>.

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 €130.48 (covering 28 days) 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.

In 2020, authorities constantly and publicly stated that Malta had 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.<sup>315</sup> To date, the new centre has not yet been built and it remains unclear what has happened to the EU funds that had been allocated to this project.

According to information provided by AWAS in early 2024, at the end of 2023 the Agency was accommodating the following number of persons:

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<sup>311</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>312</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>313</sup> Times of Malta, 'Migrants end up homeless as centres overflow', 2 July 2020, available at: <https://bit.ly/3tDzPkS>.

<sup>314</sup> Newsbook, Social cases double between 2012 and 2022, 12 March 2024, available at: <https://tinyurl.com/343sa8hm>.

<sup>315</sup> 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>.

Centre	Capacity	Residents
Dar il-Liedna	56	18
Hal Far Open Centre (families)	128	45
Hangar Open Centre (single women and families)	532	13
Hal Far Tent Village (single men)	1232	114
Initial Reception Centre (Marsa)	251	21
<b>TOTAL</b>	<b>2,199</b>	<b>211</b>

Essentially, throughout 2023 Malta's open centres were virtually empty with a residency of a mere 10% of available capacity. This was mainly due to the extremely low number of arrivals, as explained above, related to Malta's harsh policy on preventing access to the territory. Contrary to what would be expected in such a situation, 2023 did not see the Government increasing investment in community-based schemes or integration measures.

Both aditus and JRS indicated that, for 2023, they did not file appeals against withdrawal or reduction of reception conditions, due to lack of capacity and the decision to prioritise more pressing concerns.<sup>316</sup>

#### 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.

Malta does not operate any dispersal scheme, since residence in open centres remains voluntary. Nonetheless, placement in a particular open centre generally implies a limited possibility to change centre, although such decisions could be taken on a case-by-case basis. Moreover, legislation foresees that transfers of applicants from one accommodation facility to another shall take place only when necessary, and applicants shall be provided with the possibility of informing their legal advisers of the transfer and of their new address.<sup>317</sup> 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](#)).

According to AWAS, it is not vested with the authority to issue decisions restricting movement.

<sup>316</sup> Information provided by JRS Malta in June 2024.

<sup>317</sup> Regulation 13 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

## B. Housing

### 1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: <sup>318</sup>	7
2. Total number of places in the reception centres:	around 2,199
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 6 reception centres in Malta (down from eight in 2017). Of these, 5 are run by AWAS and the other by an NGO. This latter centre falls within AWAS' overall reception system.

- Hal Far Tent Village: UMAS between the ages of 16 years to 18 years and single male adults
- Hangar Open Centre: families and single female adults
- Hal Far Open Centre: Families
- Dar il-Liedna: UMAS under 16 years old
- Initial Reception Centre Marsa: Everyone, at arrival
- Balzan Open Centre (NGO-run): Families and single women

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.

AWAS confirmed that, at the end of 2023, the total number of residents by legal status was the following:

- Asylum-seekers: 358
- Rejected asylum-seekers: 11
- Refugees: 4
- Asylum-seekers at appellate stage: 35
- Beneficiaries of Subsidiary Protection: 9
- Beneficiaries of Temporary Humanitarian Protection: 11

Notably no beneficiaries of Temporary Protection were residing in the open centres during this period.

Additionally, the number of residents breakdown by gender was:

- Male: 197
- Female: 88
- Male minor: 83
- Female minor: 60

According to an AWAS statement, no data is available regarding the total number of places for applicants for international protection in private accommodation at the end of 2023. Nevertheless, there was data referring to applicants for international protection residing in private accommodation. More specifically, the number of applicants residing in the community who register for financial assistance at the AWAS Head Office was 214.

<sup>318</sup> Both permanent and for first arrivals.

**Hal Far Tent Village**, the largest reception centre, is divided into various sections, with the larger part dedicated to adult men and the smaller separate sections reserved for single women (when accommodated there) and UAMs. The latter section is not accessible to adults who are not authorised to enter and includes a zone for UMAS confirmed as minors and another called “Buffer zone” for those that are in the AAT procedure.

The Centre retains its original name when it was, in fact, a series of rows of military tents. It is now a series of rows of metal containers on elevated platforms, generally unbearably hot in the summer months and extremely cold in winter due to Malta’s high humidity levels. Residents lack any form of privacy as they often share containers and have little or no space to store their belongings. A reception area is used to provide information to new residents, but the Centre has little else in terms of activities or services. Hal Far Tent Village is clearly intended to be temporary living space. Yet since residents reach here after weeks or months of detention and they are usually only permitted a stay of six months, the imposition of such a temporary accommodation structure and system is almost inhumane. It expects residents to overcome any personal issues they might have and set on the path of self-reliance in far too short a period. In most cases, applicants would not yet have received a decision on their procedure, further underlining their precarity and mental state of anxiety.

According to the Home Affairs Ministry, different activities are organised by the Migrants Advice Unit and Activity Team (AWAS) including football sessions, information sessions about various topics and English classes.<sup>319</sup>

**Hal Far Open Centre** has two sections, one for families 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. This Centre is able to provide better living conditions than HTV, mainly because it is an actual physical structure and because AWAS’ presence there is more significant. Families enjoy privacy and the space is generally safe.

Hal Far is Malta’s largest industrial estate close to Malta’s airport. It is cut off from other towns and has no amenities since it is, in fact, not a town but an industrial zone. There are no residential areas and public transport connections are extremely sporadic. The closest town, so therefore the closest grocery stores, bars, cafes and other basic and social amenities is around a half hour’s walk from the Hal Far.

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**. According to the Government, in 2023 no minors were accommodated in HTV.<sup>320</sup> Liedna is an apartment block in a central town in Malta (Fgura). Living conditions are comfortable, with various bedrooms and activity rooms for the children. The place is safe and is staffed 24/7. Since Liedna is located in a central town, residents are more well-connected with the public transport system and are able to have a more active social life. JRS reported that in 2023 the organisation collaborated on several activities within Dar il-Liedna, including language classes, access to education and information provision.<sup>321</sup>

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.

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<sup>319</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>320</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>321</sup> Information provided by JRS Malta in June 2024.

## 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? Maximum 6 months, the time of actual stay varies on a case-by-case basis.
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No<sup>322</sup>
4. Are single women and men accommodated separately?  Yes  No

Conditions in the open centres vary greatly from one centre to another. In general, the centres provide sleeping quarters either in the form of rooms housing between four (the centres for unaccompanied children) to 24 people (**Initial Reception Centre**), or mobile metal containers sleeping up to eight persons per container (**Hal-Far Hangar Open Centre** [HOC], and **Hal Far Tent Village** [HTV]). Small common cooking areas are provided in the family centre, the IRC and DIL. Otherwise, ready-made meals are provided three times a day to all residents and attempts are made to observe dietary requirements.

AWAS staff are currently working in several reception centres, which represents a significant increase compared to past years.<sup>323</sup>

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. The Ministry further confirmed that the number of coordinators per centre varies according to the number of residents and vulnerable individuals.<sup>324</sup> In the first quarter of 2021, four 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.<sup>325</sup> 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. Actors in the field confirmed that each centre disposes of an information point, with a welfare officer and interpreters regularly present. Furthermore, NGOs also reported having regular discussions with the Units in order to share updates and referrals.

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

AWAS reported having improved the conditions in AWAS centres throughout 2020,<sup>326</sup> by increasing its capacity and setting up a quality assurance department, introducing Internet access in all AWAS centres, and initiating two pilot community projects.<sup>327</sup> Furthermore, the Home Affairs Ministry also reported that AWAS has since then implemented several projects including measures to mitigate rats and cockroach

<sup>322</sup> This reply refers to accommodation in open reception centres, as unaccompanied children are detained with adults for a period of time. As mentioned above, children between 16 and 18 years of age are accommodated in an enclosure within Hal Far Tent Village.

<sup>323</sup> Information provided by AWAS, January 2021.

<sup>324</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>325</sup> Information provided by EUAA, September 2021.

<sup>326</sup> FRA, Migration: key fundamental rights concerns, Quarterly bulletin, 2020, available at: <https://bit.ly/3tIH6jt>.

<sup>327</sup> Ibid.



infestation in every centre, including the refurbishment of an aviation hangar that is capable of holding 500 beds. The hangar has had new electricity installed with LED lighting, mobile charging stations and bathroom facilities. A fire detection and water sprinkler system are yet to be installed. The Ministry also stated that the agency was in the process of improving China House.<sup>328</sup>

According to NGOs regularly visiting the centres, the situation has not improved in recent years and the living conditions in the reception centres remained very difficult. Sanitary facilities are often 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.<sup>329</sup> 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 2023, yet information provided by the Home Affairs Ministry indicates plans to improve living conditions throughout 2024, including: provision of adequate supply of drinking water, a new learning centre established by the NGO MOAS, and attempts to provide food that is culturally- and dietary-sensitive.<sup>330</sup>

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 JobsPlus 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 HTV and HOC, 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 Ħal 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.<sup>331</sup> Throughout 2023, the latter situation regarding guardians saw dramatic improvement thanks to speedier judicial and administrative procedures.

Despite a series of measures in place, such as vulnerability head-counts, regular check-ins and accommodating vulnerable persons close to AWAS offices in the centres, physical security is a challenge. LGBTIQ+ applicants and persons presenting other vulnerabilities faced challenges in securing safe and specialised accommodation. NGOs report that, despite AWAS' interventions, structural limitations led to vulnerable persons being exposed to situations of violence, harassment and lack of targeted attention. This is exacerbated by the fact that most specialised shelters would either not have sufficient space or would rely on AWAS being the mainstream service-provider for anyone in the asylum system. The Home

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<sup>328</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>329</sup> Information provided by JRS Malta 2021.

<sup>330</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>331</sup> Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3InhWhS>.

Affairs Ministry reported that, at the end of 2023, a Vulnerability Area was set up in HTV, regularly monitored by a nurse when necessary.<sup>332</sup>

## 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? ❖ If yes, when do asylum-seekers have access the labour market?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Variable
2. Does the law allow access to employment only following a labour market test?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Does the law only allow asylum-seekers to work in specific sectors? ❖ If yes, specify which sectors:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Does the law limit asylum-seekers' employment to a maximum working time?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5. Are there restrictions to accessing employment in practice?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Asylum-seekers are entitled to access the labour market, with the main limitation being positions with the public service and jobs requiring a Maltese driving licence, as they are barred from applying for one. 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 unless they originate from a country listed as a 'safe country of origin'.

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). Application forms are available online.<sup>333</sup>

In May 2021, the Maltese Ministry of Home Affairs introduced a new policy that impedes access to the labour market for asylum-seekers from countries included in the list of safe countries of origin 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.<sup>334</sup>

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.

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

<sup>332</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>333</sup> Jobsplus, <https://tinyurl.com/6jtp73rr>.

<sup>334</sup> Malta Refugee Council, A New Policy to Drive People Into Poverty and Marginalisation, 11 June 2021, available at: <https://bit.ly/3KkYC6y>.

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 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.<sup>335</sup>

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-seeker Issues highlighted include low wages, unpaid wages, long working hours, irregular work, unsafe working conditions, and employment in the shadow economy.<sup>336</sup> 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 JRS Malta, Blue Door Education, Integra Foundation, KOPIN or Hal Far Outreach try to offer support with CV Writing and Job Search support.<sup>337</sup> 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.<sup>338</sup>

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.

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<sup>335</sup> 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>.

<sup>336</sup> Ibid.

<sup>337</sup> See Hal Far Outreach, available at: <https://bit.ly/3cadCFp>.

<sup>338</sup> 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/3ZCicS>. The report 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.*"

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.

## 2. Access to education

### Indicators: Access to Education

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

Article 13(2) of the 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*”.<sup>339</sup> 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.

Access to education for unaccompanied children is a longstanding issue, mainly due to the children’s preferences to work, difficulties settling within the national educational system and, in a worrying number of cases, their eventual disappearance.

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

NGOs observed that, in recent years, 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.

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<sup>339</sup> Regulation 9(2) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

Furthermore, in 2019 (revised in 2022) the Ministry for Education, Sport, Youth, Research and Innovation adopted 'A Policy on Inclusive Education in Schools: Route to Quality Inclusion'<sup>340</sup>. The report specifically mentions asylum-seekers in its section on 'Multiculturalism and Language Diversity', with focus placed on the need for educators to be adequately trained on inclusive education in order to deal with increasingly diverse classrooms.

In recent years, NGOs noticed an increase in the number of children not granted free access to State education, as a result of a stricter approach by the relevant authorities towards this entitlement. The majority of cases seen involved children granted protection in other EU MS, in Malta as part of attempts to reunite with family or community members.

Where such children are not formally entitled to free State education, they are required to pay the relevant fees being a total of €465.88 for Primary School, €559.05 for Secondary School and €652.22 for High Secondary School.

## D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum-seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum-seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. 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
4. 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.<sup>341</sup>

Asylum-seekers outside of detention centres may access the state health services, with the main obstacles being linked to language difficulties.

Limited 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.

<sup>340</sup> Ministry for Education, Sport, Youth, Research and Innovation, A Policy on Inclusive Education in Schools: Route to Quality Inclusion, 2019, available at: <https://tinyurl.com/yj5jea2r>.

<sup>341</sup> Regulation 11(2) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

## 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”*.<sup>342</sup>

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”*.<sup>343</sup>

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;<sup>344</sup> and particular, yet undefined, attention to ensure that material reception conditions are such to ensure an adequate standard of living.<sup>345</sup>

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 positive improvements in 2022 and 2023, NGOs report on-going difficulties for vulnerable people to receive appropriate care and support. The increasing reliance on detention as the primary reception model and its further entrenchment through the establishment of support services within the centres, has often led to persons identified as vulnerable being left in detention since it was deemed – by AWAS and/or the Immigration authorities – appropriate for them to receive support in the detention centres (see [Identification](#)).

In practice, 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](#)).

In Malta in 2022, EUAA personnel identified 273 persons presenting vulnerability indicators through vulnerability assessment for residents of reception facilities.<sup>346</sup>

<sup>342</sup> Regulation 14 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>343</sup> Regulation 14 (b) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>344</sup> Regulation 7 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>345</sup> Regulation 11(2) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>346</sup> Information provided by the EUAA, 28 February 2023.

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](#)). Lawyers noted that, throughout 2023, they faced considerable challenges obtaining access to the clients' files. They also noted inconsistencies in the reports and their conclusions.

Aside from the regular open reception facilities, 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.

Regarding dedicated reception centres for persons with special reception needs, AWAS confirms the observations made above, stating that they are housed at the Initial Reception Centre, Hal Far Tent Village and Hangar Open Centre. They are provided with accommodation in cabins or rooms located near the administrative buildings of each respective reception centre to ensure continuous monitoring and support from centre staff. Furthermore, LGBTIQ+ applicants are allocated to a designated area within one particular centre, namely the Hal Far Open Centre-Families.

## 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.<sup>347</sup>

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. Information is also contained in the agreement signed between applicants and AWAS on the day of their entry into the reception system.

According to AWAS, information is provided regarding asylum procedures (based on material prepared with EUAA's support) but also education, employment, health, and housing.

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, either by appointment or drop in. The Migrant's Advice Unit (MAU) has an office in each centre and AWAS staff is present on site on a daily basis. As highlighted by the Ministry for Home Affairs, Security, Reforms and Equality "*Additionally, the MAU established a private Facebook group in 2022, which currently comprises of 51 members. The MAU actively manages the group, uploading new content three times a week on various topics. This Facebook group serves as an additional means for the Migrant Advice Unit to communicate with beneficiaries, fostering a dynamic and interactive channel for information dissemination.*"<sup>348</sup>

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.

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<sup>347</sup> Regulation 4 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>348</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

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.

NGOs commenting positively on the cooperation with MAU and this cooperation continued throughout 2023. JRS confirmed that the organisation held a number of meetings with the MAU, mainly discussing organisational updates and specific referrals.<sup>349</sup>

## 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. JRS reported that in 2023 the organisation did not experience any issues regarding access to reception centres.

Access to open centres is also regulated by AWAS and permission is 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, etc.

## 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](#)).

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<sup>349</sup> Information provided by JRS Malta in June 2024.



## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

- |  |                                  |
|--|----------------------------------|
| 1. Total number of asylum-seekers detained in 2023:          | See below                        |
| 2. Number of asylum-seekers in detention at the end of 2023: | See below                        |
| 3. Number of detention centres:                              | 2 designated as such, and 2 IRCs |
| 4. Total capacity of detention centres:                      | Not available                    |

Official data regarding the number of detained applicants throughout 2023 is elusive, due to the lack of available disaggregated data and to the instances in which measures that can be considered as amounting to detention are implemented without being registered as cases of detention by the authorities.

According to the Principal Immigration Officer, 376 persons were detained during 2023 for migration-related purposes. However, no data is publicly available, and the authorities are unable to say how many of these were asylum applicants and also on what grounds they were detained. Furthermore, on the basis of the policy whereby all applicants reaching Malta by sea are automatically detained for at least two weeks on public health grounds, it can be said that 380 persons were detained upon disembarkation this being the total number of sea arrivals for 2023.

The total number is however likely higher, as this figure does not include applicants who did not reach Malta by sea and who were nonetheless detained, and Dublin returnees who were detained upon their return to the country. Although these cases are relatively uncommon, NGOs noticed an increased use of these practices in 2023.

This is confirmed by the 2023 Annual Report of the Monitoring Board for Detained Persons, which states that 1,705 persons spent time at the detention centres throughout the year<sup>350</sup>.

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 Ordinance<sup>351</sup> and detention under the Reception Regulations.<sup>352</sup>

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 and 2023, all applicants arriving by sea were held for at least two weeks in the Ħal 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. Persons identified upon disembarkation by AWAS as being vulnerable were detained at the Marsa Initial Reception Centre.

According to the Ordinance, the Superintendent for Public Health may issue a Restriction of Movement Order to any person whom they believe may carry a contagious disease. 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.<sup>353</sup> The 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

<sup>350</sup> The Monitoring Board for Detained Persons, Annual Report 2023, available at: <https://tinyurl.com/r5ux6ysr>.

<sup>351</sup> Prevention of Disease Ordinance, Chapter 36 of the laws of Malta, 10 August 1908.

<sup>352</sup> Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>353</sup> Article 13 of the Prevention of Disease Ordinance, Chapter 36 of the Laws of Malta.

in a single paragraph with the immigration number of the applicant and the date of issuance at the top of it. No individual assessments are 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, including if from the same country of origin or from the same country of departure.

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.<sup>354</sup> Nevertheless, all applicants reaching Malta by sea are systematically detained, either in the Hal Far Initial Reception Centre or at the Marsa IRC, the former being a designated detention facility in national legislation.<sup>355</sup> 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 ECHR<sup>356</sup>, 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.<sup>357</sup> Finally, the ECtHR confirmed that the situation of persons kept in China House under the Ordinance does in fact amount to deprivation of liberty.<sup>358</sup>

The Home Affairs Ministry shared information on these procedures, stating that the health screening process has been speeded up to a one-week duration. According to the Ministry, each person is individually notified about this process through an individualised form in a language they understand on the day of arrival. In cases where an infectious disease is diagnosed, the issued decision is also individualised.

The Ministry also underlined that health screening applies to all third country nationals seeking a job in Malta and, if found to have an infectious disease, they are also be issued with a restriction of movement order.<sup>359</sup> Lawyers working with third-country nationals seeking employment in Malta confirmed that their clients were never detained during the health screening process.

Once applicants are “*medically cleared*”, the Public Health authorities inform the Principal Immigration Officer (PIO) who carries out an assessment as to whether grounds exist to detain under the Reception Regulations.<sup>360</sup> Legal practitioners and NGOs noted that, according to their assessment, despite detention being ordered on one of the grounds set out in the Reception Regulations throughout 2023, in practice one of the underlying reasons for the detention of many persons was the fact that the person comes from a country for which returns are systematically carried out.

2022 and 2023 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. This positive improvement is likely to be linked 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. According to the PIO, the average detention duration in 2023 was of 47 days. However, as explained above, this does not include any period detained under health grounds and refers to all detained persons.

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<sup>354</sup> ECtHR, A.D. v. Malta, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3SP3I4Y>  
<sup>355</sup> Places of Detention Regulations, Subsidiary Legislation 217.03 of the Laws of Malta, available at: <https://tinyurl.com/3jewzxf4>.  
<sup>356</sup> 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>.  
<sup>357</sup> Cases are not published online but several cases filed by aditus foundations are available at <https://bit.ly/3ybWXLx>  
<sup>358</sup> ECtHR, A.D. v. Malta, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3SP3I4Y>.  
<sup>359</sup> Information provided by JRS Malta in June 2024.  
<sup>360</sup> Regulation 6(1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

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.

For the purposes of immigration detention, Malta operates three official and one unofficial detention centres: Safi Barracks, (which include several blocks), Lyster Barracks (Hermes Block), and the HIRC - commonly referred to as 'China House' – are officially designated as such, while the Marsa Initial Reception Centre constitutes a *de facto* detention centre. Furthermore, persons may also be detained in Police custody at the Malta International Airport, particularly for those situations where a person is immediately returned on the same flight used to reach Malta.

The Lyster Barracks have been closed for refurbishment since 2021 and the current progress of the renovations is unknown. The Detention Centres are managed by the Detention Services (DS), until 2023 a public entity established and regulated by the Detention Services Regulations<sup>361</sup> and formalised into a public Agency in 2023.<sup>362</sup>

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. In 2023, it was used for health clearance before accommodation in the open reception centres. This was for new arrivals deemed vulnerable, asylum-seekers in the community that needed accommodation and Dublin returnees.

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.

Throughout 2023, access to the centres and to asylum-seekers remained the most pressing concern for NGOs, culminating in a boycott of access requirements by all entities, including IOM and UNHCR. This meant that, for the second half of the year, only few visits were made to the detention centres, and detained asylum-seekers were only able to contact UNHCR, lawyers or NGOs via telephone. Visits resumed with the adoption of the new visitors policy, in 2024.

In March 2021, the CPT published a report following its visit to Malta in September 2020.<sup>363</sup> The report highlighted the serious failures of the Maltese detention system in 2020, stressing that migrants were deprived of their liberty without any legal basis for arbitrarily long periods in conditions, which appeared *“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 visited Malta again from 26 September to 5 October 2023. The report on the visit was not yet published by the time of publication of the 2023 Update of the AIDA Country Report.

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<sup>361</sup> Detention Services Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>362</sup> Detention Services Agency (Establishment) Order, S.L. 595.45, 2023, available at: <https://tinyurl.com/3t4txnu7>.

<sup>363</sup> 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>.

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 need to ensure independent monitoring of places of detention as well as unhindered access for NGOs to provide support and assistance to those detained.<sup>364</sup>

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.<sup>365</sup> This was again underlined in her report published in January 2022.<sup>366</sup> The Government nonetheless noted that by December 2023 refurbishment works of the centres was well under-way.<sup>367</sup>

Access to effective remedies to challenge detention is reported to be limited and, at times, inexistent due serious concerns by legal practitioners and NGOs over independence and impartiality of the Immigration Appeals Board (IAB). State sponsored legal assistance is provided for the initial review of detention under the Reception Regulations before the IAB. For the second review, legal practitioners noted that these are not regularly held but, if and when held, legal aid is provided. Applicants generally rely on NGOs to provide legal assistance to challenge their detention under the Prevention of Disease Ordinance, although the Ordinance contains no procedural safeguards for applicants placed under a Restriction of Movement Order.

In April 2023, the Detention Services Agency (DSA) was established by law,<sup>368</sup> giving it a distinct legal personality. The DSA is a body corporate with the capacity to execute contracts, engage personnel, manage property, and litigate. In terms of formal structure, the DSA is established under the authority of the Home Affairs Ministry and, although it operates autonomously, it remains subject to directives issued by the Ministry. The Order states that the Agency has the obligation to submit an annual report to the Minister within six weeks following the conclusion of each financial year. This report is expected to encompass a comprehensive overview of the Agency's activities throughout the year, accompanied by an audited statement of accounts. Additionally, the report should include pertinent information regarding the Agency's proceedings, operations, and future plans aimed at fulfilling its functions. Furthermore, it stipulates that the Minister is responsible for presenting this report to Parliament, within six weeks of receiving it.

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<sup>364</sup> Council of Europe, 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>.

<sup>365</sup> Ibid.

<sup>366</sup> Commissioner's report following her visit to Malta from 11 to 16 October 2021, available at: <https://bit.ly/3lnhWhS>.

<sup>367</sup> Information provided by JRS Malta in June 2024.

<sup>368</sup> Detention Services Agency (Establishment) Order, S.L. 594.45, 8 April 2023, available at: <https://tinyurl.com/3t4txnu7>.

## B. Legal framework of detention

### 1. Grounds for detention

**Indicators: Grounds for Detention**

1. In practice, are most asylum-seekers detained:

❖ on the territory:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ at the border:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

2. Are asylum-seekers detained in practice during the Dublin procedure?

<input checked="" type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never
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3. Are asylum-seekers detained during a regular procedure in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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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 Ordinance<sup>369</sup> and detention under the Reception Regulations<sup>370</sup> 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.

#### Detention under the Immigration Act

Immigration legislation authorises the detention of any person who, arriving by plane, is not granted permission to land in Malta. In such situation, Article 10 of the Immigration Act specifies that the purpose of detention is to ensure the person's removal either on the same flight on which they arrived, or on the next available flight. The same article specifies that persons arriving by any other means and not granted leave to land may also be detained by the PIO. Article 10 states that all persons detained under this article are in legal custody and are deemed not to have landed. No appeal or review is mentioned in Article 10, and it is not clear whether the provisions regulating challenges and reviews of detention under other provisions apply to Article 10. Given the speed with which these proceedings are carried out, including the possible immediate return, it is not clear what information is given to detained persons in terms of their right to seek asylum and other related rights.

NGOs confirm that, in the cases known to them, persons requesting asylum at the airport are immediately referred to the IPA. The PIO was unable to provide data on the number of persons kept in custody under these provisions.

In 2023, amendments to the Immigration Regulations introduced new detention possibilities. The amendments allow border officers to detain any person whilst conducting border checks. In such cases, the detention must be for the purpose of taking the person before a police officer or until the police officer arrives. Furthermore, anyone may be also detained if they refuse to stop in order to provide information requested or in order to prevent their entry to Malta where they do not meet entry requirements.

#### 'De Facto' Detention under the Prevention of Disease Ordinance

Article 13 of the Prevention of Disease Ordinance<sup>371</sup> 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

<sup>369</sup> Prevention of Disease Ordinance, Chapter 36 of the laws of Malta.

<sup>370</sup> Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>371</sup> Prevention of Disease Ordinance, Chapter 36 of the Laws of Malta.

*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 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 ECtHR, 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.<sup>372</sup>

In *Frank Kouadioané v. the Detention Services*,<sup>373</sup> 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.<sup>374</sup> 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 emphasised 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 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.<sup>375</sup>

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<sup>372</sup> 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>.

<sup>373</sup> Court of Magistrates of Malta, *Frank Kouadioané (Ivory Coast) v Detention Services*, 29 October 2020 available at: <https://bit.ly/3Jckpii>

<sup>374</sup> 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.

<sup>375</sup> 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>.

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.<sup>376</sup>

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.

On 17 October 2023, the Second Section of the European Court of Human Rights (ECtHR) delivered its judgment in the case of *A.D. v. Malta*, no. 12427/22.<sup>377</sup> The case concerns an Ivorian national (then a minor) who arrived irregularly to Malta from Libya by boat in late 2021. Although he claimed to be seventeen on arrival, an age assessment conducted by the Maltese authorities in the absence of legal assistance and his legal guardian deemed him to be nineteen years old. He was immediately detained and held in various detention facilities, with the authorities citing “*health reasons*”.

The applicant was held in detention for 225 days, during which he had limited access to water, medical care, and psychological support, and absence of any communication in his native (and only) language – French. He complained of gruelling conditions in the winter months, extremely limited clothing and hygiene possibilities, and no outdoor or prayer spaces. He was also placed in a 120-day isolation in a cargo container, during which his mental health plummeted and thought frequently of suicide. The applicant complained of a violation of Article 3 ECHR in respect of his treatment in Malta, of Article 5(1) ECHR in that his stay amounted to a *de facto* deprivation of liberty, and of Article 13 ECHR, due to the lack of an effective remedy to challenge the former.

The Court noted the “*incredible state of affairs*” by way of which the Maltese authorities consistently failed to keep accurate records of who was being detained and by whom, as well as the vulnerable, underage status of the applicant at the time. It criticized his detention in isolation, as well as with unrelated adults, and the living conditions in Malta’s detention centres in general.

The Court held that the detention of individuals at centres such as ‘China House’ for health reasons is not in conformity with human rights standards and must cease. Followingly, the Court upheld the complaints of the applicant, finding that Malta had violated Article 3 ECHR, Article 13 and Article 5(1) ECHR on two occasions.

Importantly, the Court also recommended that Malta takes the necessary general measures to ensure that the relevant law is effectively applied in practice and that vulnerable individuals are not detained, as well as to limit any necessary detention periods so that they remain connected to the ground of detention applicable in an immigration context, and that they are undertaken in places and conditions which are appropriate.

Following this judgement, detention practice changed slightly towards the end of 2023, as the duration of health-based detention reduced to a couple of days. It also led to a new practice whereby the vast majority of applicants were automatically detained under the Detention Order for a minimum period of around two months.

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

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<sup>376</sup> The Times of Malta, 1400 migrants detained illegally at Marsa and Safi – UNHCR, January 2020, available at: <https://bit.ly/2JbWIXp>.

<sup>377</sup> ECtHR, *A.D. v. Malta*, no 12427/22, 17 January 2024, available at: <https://hudoc.echr.coe.int/eng?i=001-228153>.

in detention for 58 days, with a substantial amount of time spent with adults in the HIRC.<sup>378</sup> At the time of writing, the case is pending.

### Detention under the Reception Regulations

According to the Reception Regulations,<sup>379</sup> 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*,<sup>380</sup> 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 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.”*<sup>381</sup>

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.<sup>382</sup> After a period of nine months, any person detained, if they are still an applicant for international protection, shall be released.<sup>383</sup>

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<sup>378</sup> Civil Court (First Hall), Ayoubah Fona vs. L-Avukat tal-Istat, 375/2022.

<sup>379</sup> Regulation 6 of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta  
<sup>380</sup> Court of Magistrates of Malta, Rana Ghulam Akbar v Kummissarju tal-Pulizija, 26 February 2018.

<sup>381</sup> Constitutional Court, Jovica Kolakovic v. Avukat Generali, 26/2010/1, 14 February 2011.

<sup>382</sup> Regulation 6(3) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>383</sup> Regulation 6(7) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.



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.<sup>384</sup> 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.

Despite the requirement for individual assessments, the vast majority of applicants were in practice detained following their detention on public health grounds with detention duration largely depending on the person's nationality. Practitioners noted that applicants from countries of origin with generally low protection rates and high return rates, such as Bangladesh, Egypt, Morocco, Ghana, Ivory Coast and Nigeria were automatically detained under the Reception Regulations for the entirety of their asylum procedures or for the maximum duration whilst others - particularly from Syria and Libya - were either not detained at all or detained for a very short period of time.

This changed at the end of 2023 when, following the A.D. vs. Malta judgement, persons who previously were not being automatically detained, started being detained for a minimum of around two months. Although no formal change in policy was announced by the authorities, NGOs and practitioners report a change in detention practice just after the A.D. judgement. Whereas before the judgement the initial detention period was generally limited to the two weeks 'required' for public health reasons, following the judgement this initial period was extended to two months for almost all newly-arrived persons. This new period also applied to persons who, under the pre-judgement regime, would have been released following the public health detention such as Syrians and Libyans.

Practitioners also confirmed that challenges before the IAB proved to have limited impact. The creation of a third Chamber in 2023 did not affect the overall approach of the IAB towards detention challenges, with the Board almost invariably confirming legality. Furthermore, in 2023 the IAB developed a practice whereby persons detained under the first above-mentioned ground – relating to identity – were only released if they were able to present an official document with their personal details, such as a passport. Despite the fact that lawyers challenge this approach on the basis of CJEU jurisprudence, the practice continued and is now a consolidated procedure. Lawyers also noted that applicants reaching Malta with personal documents were effectively being penalised by the PIO since further detention was deemed necessary to verify the authenticity of the documents.

It was reported further by NGOs that applicants are not always provided with a copy of their Detention Order, which is moreover only available in English and often issued as a standard template to all persons.

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 remained severely limited throughout 2023 (see [Access to detention](#)). UNHCR visits the detention centres to also provide information, but in 2023 these visits were limited due to challenges accessing the detention centres and due to a new access rule restricting UNHCR's access to persons who had actually lodged an asylum application. UNHCR visited detention centres five times in 2023, providing information to 103 applicants.

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.<sup>385</sup> No such demonstrations occurred in 2023, although NGOs also commented that due to the impossibility to regularly access detention centres, it was difficult for them to keep updated on goings-on within the centres.

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<sup>384</sup> Regulation 6 (1) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>385</sup> ECRE, Malta Charges Five Rescued Migrants with 'Terrorist Activities' while Facts Remain Unclear, 5 April 2019, available at: <https://bit.ly/33HDTVd>.

## 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.<sup>386</sup> 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.<sup>387</sup>

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.<sup>388</sup> 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 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.

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 practice that alternatives to detention are often seen by the authorities not as actual alternatives, but as a natural continuation of the status post-detention, including where the detention itself has no 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.

<sup>386</sup> Strategy Document, November 2015, 26.

<sup>387</sup> Regulation 6(8) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>388</sup> 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>.

At the end of its 2023 visit to Malta, the UN Working Group on discrimination against women and girls underlined the limited possibility of detained women to successfully challenge their detention and urged Malta to actively consider alternatives to detention for asylum-seeking women.<sup>389</sup>

According to information provided by the PIO, during 2023 alternatives to detention were applied in the cases of 83 applicants. To further clarify, a table provided below will demonstrate by type of alternative to detention:

Released with alternative to detention	Condition A: To report at regular intervals	Condition B: To reside at a specific address/ Place	Condition C: Notify the PIO of change of address
33	X	X	X
12	X	X	
1	X		
36		X	X
1		X	
<b>Total: 83</b>			

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

- 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
- 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*”.<sup>390</sup> However, in practice, detention of vulnerable persons continues.

Upon arrival at disembarkation, all persons are detained under public health grounds. This includes vulnerable persons. Families, single women and children whose age is undisputed are detained at the IRC whilst adult men are detained at China House. No vulnerability screening is conducted at disembarkation other than what is readily visible to the AWAS representatives. This often results in vulnerable adults being detained for prolonged periods due to lack of identification.

After this initial detention period, allegedly on public health grounds and considered a human rights violation by the ECtHR, persons who are visibly vulnerable are accommodated in open reception centres, whilst others are generally detained under the Reception Regulations.

Unless visibly children, 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

<sup>389</sup> UN Working Group on discrimination and against women and girls, End of mission statement (Malta), 7 July 2023, available at: <https://bit.ly/3UPBrr2>.

<sup>390</sup> Regulation 14(3) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

“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.<sup>391</sup> These practices continued throughout 2021, as the CoE Commissioner for Human Rights noted in October 2021.<sup>392</sup> The UNHCR also reiterated concerns in February 2021, stating that “children are (still) being held in closed centres”.<sup>393</sup>

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 remained prohibited throughout 2023.

In 2023, a dedicated Female Section was opened in the Safi Detention Centre. However, it was never accessed or seen by NGOs or lawyers visiting the Centre. NGOs visiting detention noted that they were mostly unaware of the presence of women in detention. Newly-arrived single women were hardly ever detained in Safi Barracks, the detained women generally being those arrested on the territory with a view to their removal. No information of their presence in Safi was formally provided to NGOs, and they were not referred to NGOs for the provision of services.

In the case *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.<sup>394</sup>

In *A.D. v. Malta*, the applicant complained 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 claimed that he had no effective remedies in this respect. The applicant had arrived in Malta in November 2021 and had claimed to be a minor upon arrival. He was later diagnosed with Tuberculosis. He had been detained for 16 days under the Period of Quarantine Order and 62 days under the Prevention of Disease Ordinance. He had then been issued a Detention Order and remained in detention in complete isolation in a container in the Safi Detention Centre for 147 days.<sup>395</sup>

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 China House. The case remains pending at the time of writing.<sup>396</sup>

In *J.B. and Others v. Malta* filed in February 2023, the six minor applicants complain that they were detained with adults in China House since their arrival on 18 November 2022. AWAS was not aware of

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<sup>391</sup> 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>.

<sup>392</sup> 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>.

<sup>393</sup> The Times of Malta, Migrant detention numbers shrink, fears about child detainees remain, 7 February 2021, available at: <https://bit.ly/3cP8Mwj>.

<sup>394</sup> aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

<sup>395</sup> ECtHR, *A.D. v. Malta*, no 12427/22, 17 January 2024, available at: <https://hudoc.echr.coe.int/eng?i=001-228153>.

<sup>396</sup> *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022.

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 minors but ordering the PIO to refer these applicants to AWAS<sup>397</sup>. 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 Reception Regulations.<sup>398</sup>

In 2022 and 2023, the Immigration Appeals Board has ordered the release of several minor applicants pending their age assessment procedure.<sup>399</sup> Full statistics are however not available. (see [Judicial review of detention](#)).

PIO provided information stating that in 2023 seven persons claiming to be unaccompanied minors were detained, but no accompanied minors and that no vulnerable migrants are put into detention. However, as with the above figures relating to the total number of detained applicants, these figures do not appear accurate, as they fail to take into account the children – accompanied and unaccompanied – detained immediately upon arrival, and also underline that Malta fails to implement the presumption of minor age as also highlighted by the ECtHR in *A.D. vs. Malta*. Furthermore, those appealing a negative age assessment decision are kept in detention pending the appeal procedure, often for months.

The figures also seem to indicate that other vulnerable persons are not detained, yet NGOs note a different scenario. Vulnerable adults are also immediately detained upon arrival. If visibly vulnerable, they could be accommodated in the open reception centres at the end of their public health detention whilst if not visibly vulnerable or if not noticed by the AWAS representatives at disembarkation, they will be subsequently detained in Safi Detention Centre. They will remain here until they are referred to the AWAS assessment team, which could take days or weeks. JRS reported a case where a man with chronic health issues was detained and subsequently removed, supposedly voluntarily.<sup>400</sup>

Limitations on UNHCR and NGO access have exacerbated this situation, further preventing vulnerable persons from being identified, assessed and provided for. In order for them to be released, AWAS would need to confirm their vulnerability and confirm that this conclusion has an implication on reception conditions. NGOs note meeting several applicants who, despite being deemed vulnerable, remained in detention since the authorities felt that appropriate care could be adequately provided in detention. These included persons with serious mental health issues, LGBTIQ+ applicants and persons who faced harassment and/or violence in detention. NGOs also noted that, since 2023, the AWAS vulnerability assessments and conclusions were not necessarily conclusive with further reports and inquiries being sought for by the PIO.

NGOs also commented on the fact that, due to their lack of regular access and contact with detained persons, they were effectively kept in the dark about the presence of particular persons in the detention centres. Specifically, they noted how they would only be made aware of women being detained by sheer chance or if family members contacted them for assistance. In 2023, women detained in Safi Barracks were detained in single containers with little or no access to the outside world. With no information on

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<sup>397</sup> aditus foundation, European Human Rights Court orders Malta to release children from detention, 12 January 2022, available at <http://bit.ly/3j3aVeM>.

<sup>398</sup> ECtHR, *J.B. and Others v. Malta*, no. 1766/23.

<sup>399</sup> 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>.

<sup>400</sup> Information provided by JRS Malta in June 2024.

their detention being made available by the authorities or by the detained men – as they were generally unaware of the women’s presence – NGOs are unable to say how many women were detained at Safi throughout 2023 and how they were treated whilst being detained.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |                        |
|--|------------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 9 months               |
| 2. In practice, how long in average are asylum-seekers detained?           | 47 days <sup>401</sup> |

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*”.<sup>402</sup>

The PIO indicated that the average duration of detention was 47 days in 2023.<sup>403</sup> As previously mentioned, this figure does not portray a comprehensive picture of detention duration. It 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, therefore excluding up to four weeks’ detention under this regime. It is also noted that the 47 days figure does not distinguish the reasons for a person’s detention, meaning it also includes persons detained for pre-removal purposes.

NGOs estimate that the average duration of detention for asylum applicants in 2023 was between one to four months.

### 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)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| 2. If so, are asylum-seekers ever detained in practice in prisons for the purpose of the asylum procedure?   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

The Places of Detention Regulations<sup>404</sup> 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.<sup>405</sup> 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 Ħal Far Immigration Reception Centre (HIRC) and the Safi Barracks. Notably, the Marsa IRC is not included in this list, despite being used as a detention centre.

At the time of writing Malta operates three detention centres. Despite the very low number of arrivals the three centres were kept open in 2023, and it remains unclear how people are allocated between China House and Safi Barracks.

<sup>401</sup> Information provided by the Immigration Office of the Malta Police Force.

<sup>402</sup> Regulation 6(7) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta

<sup>403</sup> Information provided by the Immigration Office of the Malta Police Force.

<sup>404</sup> Places of Detention Regulations, Subsidiary Legislation 217.03 of the Laws of Malta, 1995 available at: <https://tinyurl.com/3jewzxf4>.

<sup>405</sup> Article 34 (1) of the Immigration Act, Chapter 217 of the Laws of Malta.

- Safi Barracks, where the detained population is mainly composed of men (including unaccompanied minors pending their age assessment procedure). In 2023, NGOs encountered single women also detained here, usually detained alone in small metal containers with little to no contact at all to the outside world. Migrants pending removal are also detained at Safi.
- Marsa Initial Reception Centre (IRC), based in an old public school, where the detained population is largely composed of family units and children. 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.
- The Hal Far Initial Reception Centre (HIRC), commonly referred to as 'China House', reopened 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 until they are medically cleared by the Health Authorities. In 2023, applicants were kept at China House despite having been medically cleared.

No official data is available, but the capacity of detention has been increased regularly since 2018 to accommodate the new policy of systematic and automatic detention. The Home Affairs Ministry noted that in the last three years detention capacity decreased due to the introduction of new Day Rooms in most of the accommodation blocks and detainees are housed according to their specific needs. In order to cater for this need, more sections were built in the centres.<sup>406</sup>

## 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 2015<sup>407</sup> 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,<sup>408</sup> 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 public Agency 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.<sup>409</sup> The DS is made up of personnel civilians specifically recruited for the purpose. DS staff receive some in-service training, however people recruited for the post of DS officer are not required to have particular skills or competencies.

<sup>406</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>407</sup> Ministry for Home Affairs and National Security, Strategy for the Reception of Asylum-seekers and Irregular Immigrants, 2015, available at <https://goo.gl/FFz7qJ>

<sup>408</sup> Regulation 6A of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

<sup>409</sup> For more information see Ministry for Home Affairs, Detention services, available at: <http://bit.ly/1M7HMkS>.

The Detention Services Regulations of 2016 provide the necessary framework for adequate reception 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.*”<sup>410</sup> Accordingly, female detained persons shall be provided with sleeping accommodation separate from male detained persons.<sup>411</sup>

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.<sup>412</sup>

The Regulations provide that a personal record for each detained person shall be prepared and maintained<sup>413</sup> 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.<sup>414</sup>

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.<sup>415</sup> 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.<sup>416</sup>

With respect to the food provided to detainees, the Regulations establish 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.<sup>417</sup>

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,

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<sup>410</sup> Regulation 10 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>411</sup> Regulation 17 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>412</sup> Regulation 11 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>413</sup> Regulation 12 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>414</sup> Regulation 16 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>415</sup> Regulation 13 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>416</sup> Regulation 19 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.

<sup>417</sup> Regulation 20 of the Detention Regulations, Subsidiary Legislation 217. 19 of the Laws of Malta.



including toilet articles, separate facilities for females and males, access to facilities to shave and have their hair cut.<sup>418</sup>

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.<sup>419</sup>

All detained persons shall have access to public telephones at the detention centres.<sup>420</sup>

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.<sup>421</sup>

## 2.2. Overall living conditions

Despite the commitments made in the 2015 Strategy Document and the Detention Regulations, the Maltese detention centres have for several years been reported to offer substandard living conditions likely to amount to inhuman and degrading treatment contrary to Article 3 ECHR.

Upon entering a detention centre, all applicants have their personal property confiscated by the PIO. This includes documentation, items of clothing, money, jewellery and mobile phones. A receipt is given, and the items may be retrieved when the applicant is eventually released. Throughout their detention period, applicants are prohibited from using their personal items and are required to wear the clothing provided by the DS, contrary to the Detention Regulations. All items are kept in the store-room of the detention centre. The legal basis for this confiscation is unclear.

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 other than that information relayed by their clients and by those monitoring bodies permitted access. 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.

The Monitoring Board for Detained Persons is currently the only entity monitoring detention conditions, established as Malta's National Preventive Mechanism under OPCAT. It is established by the Monitoring Board for Detained Persons Regulations<sup>422</sup> 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. The Board's activities cover China House, Lyster Barracks and Safi Detention Centre yet not the Marsa Initial Reception Centre as the latter is not formally designated as a detention centre.

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<sup>418</sup> Regulations 22 and 23 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>419</sup> Regulations 24, 25 and 27 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>420</sup> Regulation 34 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>421</sup> Regulations 38 and 39 of the Detention Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>422</sup> Monitoring Board for Detained Persons Regulations, Subsidiary Legislation 217.08 of the Laws of Malta.

The Monitoring Board's Annual Reports 2021 and 2022, published following a Parliamentary Question, provide information on the Board's operations for the two years and also conclude with a series of recommendations to the Home Affairs Ministry. The 2021 report's main recommendations include:

- Immediately and urgently refurbish Block A and the Hal Far Initial Reception Centre;
- Take effective steps to ensure access to a lawyer by all detained persons, including a list of all NGOs and their services;
- Maintain records of requests to visit lawyers and decisions on these requests;
- Improve access to psycho-social support;
- Provide training to all personnel working in detention centres on social health, including clear messages against use of excessive force and verbal abuse;
- Ensure that all detained persons are granted access to open spaces in order for them to engage in "*purposeful activities*";
- Make available a list of available interpreters;
- Improve contact with the outside world, including through setting up a computer room and educational activities;
- Provide facilities for sports and training;
- Improver information-provision activities to ensure humane and individual communication of sensitive information, particularly on asylum applications.

The 2022 report, based on 23 visits to Safi Detention Centre and meetings with stakeholders, repeats many of the above recommendations, and adds the following:

- Urgently refurbish Block A Zone 1, and the room used for distribution of food is described as "*not adequate and totally unhygienic*";
- Provide space for persons returned to detention from hospital, particularly when they require further intensive nursing;
- Ensure sufficient personnel to manage the centre and meet the needs of detained persons;
- Introduce an effective complaint system in all blocks at Safi Detention Centre.

According to the Board's 2023 Annual Report<sup>423</sup>, on 1 January 2023 there were 239 persons in detention whilst at the end of December there were 195 persons. It also states that, throughout 2023, a total of 1,705 persons spent time in a detention centre. Whilst the report mentions that the Board found no cases of ill-treatment, it makes the following recommendations:

- Create an emergency plan in the case of a sudden large arrival of persons;
- Increase the number of on-site officers as the recent reductions are having a negative impact on staff and detained persons. The Board also underlines the need to employ professionally-trained staff;
- Strengthen training on prevention of use of excessive force, verbal abuse and disrespectful/provocative behaviour;
- Establish a computer room;
- Provide facilities for sports and training;
- Improve conditions for persons under medical isolation.

NGOs active in detention centres reported that dialogue with the Board was on-going, including through meetings and referral of complaints by detained persons.

In *Feilazoo v. Malta*, decided in March 2021,<sup>424</sup> 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

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<sup>423</sup> The Monitoring Board for Detained Persons, Annual Report 2023, available at: <https://tinyurl.com/r5ux6ysr>.

<sup>424</sup> ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, Judgment 11 March 2021.

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. The findings in this case were also referred to in the more recent case AD v. Malta, summarised above.<sup>425</sup>

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.*"<sup>426</sup> The CPT visited Malta in 2023 but, at the time of writing, the visit report was not yet published.

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*.<sup>427</sup> 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. It should be noted that, at the time of these refurbishments, AD was being detained in China House and Safi Barracks.

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, deal with any complaints or issues they may have, and focusing on providing support and assistance to detainees, objectives that have been met according to the Government.<sup>428</sup> However, in relation to 2023, NGOs visiting detention received several reports from applicants regarding the conduct of the Welfare Officer. According to the reports, the Officer was involved in incidents of harassment and threats in particular against applicants appealing negative age assessment decisions or challenging their detention orders. He was also mentioned in relation to applying undue pressure on applicants to apply for voluntary return procedures, in a context where detained applicants were having extremely limited access to UNHCR and NGOs and therefore receiving limited independent information and advice regarding their cases. NGOs welcomed that in 2024, the Welfare Officer adopted a more cooperative and supportive stance vis-à-vis detained persons, especially vulnerable people. Noted a change in conduct in 2024.

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<sup>425</sup> ECtHR, A.D. v. Malta, no 12427/22, 17 January 2024, available at: <https://hudoc.echr.coe.int/eng?i=001-228153>.

<sup>426</sup> 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>.

<sup>427</sup> 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/3SSjaI0>

<sup>428</sup> Information provided by Home Affairs Ministry in January 2024.

A complaints system was reportedly put in place from 2021, and complaint forms and envelopes were disseminated in every compound.

Furthermore, Government also report carrying out refurbishment works in various parts of the detention centres yet, due to lack of access to these parts of the centres, these statements are impossible to verify. According to the Maltese Government, works were carried out in Safi as follows:

- Block A Zone 4, Total Renovation
- Block A Zone 5, Total Renovation
- Block A Zone 2, Total Renovation
- Block A Close Monitoring Unit, Total Renovation
- Block B House 1, Facelift
- Block B House 2, Total Renovation
- Block C Zone 1, New Building
- Block D Zone A, Facelift + New Ablutions
- Block D Zone B, Facelift
- Block D Zone C, Facelift + New Ablutions
- Block F Zones 3 & 6, New Building

New meeting facilities were built. These have been equipped with an open phone line system for lawyers, NGO representatives, interpreters, family members and other visitors.<sup>429</sup>

In September 2022, the Committee of Ministers of the European Council took the Government's observations under consideration.<sup>430</sup> 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*".

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.<sup>431</sup>

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.<sup>432</sup>

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<sup>429</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>430</sup> Council of Europe, 1443rd meeting, 20-22 September 2022 (DH), available at <https://bit.ly/3kWjb17>

<sup>431</sup> Politico, In pictures: Inside Malta's crowded migrant detention centres, 18 May 2022, available at: <https://tinyurl.com/4ya85r9j>.

<sup>432</sup> aditus foundation, Detained Narratives, July 2022, available at <https://bit.ly/3ygs3BK>

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 ECtHR<sup>433</sup> and the Civil Court of Malta (First Hall),<sup>434</sup> 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.

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.

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.

In May 2023 the Public Interest Litigation Network, representing a child, filed a case against the authorities alleging a violation of the right to life when the child's father died in detention in 2012. Mamadou Kamara died in 2021 whilst in DS and AFM custody, whilst in the back of a DS van "*after being repeatedly kicked in the groin.*" Following the incident, an independent inquiry established that the AFM had used excessive force.<sup>435</sup>

### 2.3. Health care in detention

The creation of the Primary Health Care Migrant Health Service in 2021 and a new clinic, operating in Safi Detention Centre, saw some positive improvements in the provision of health care to detained persons. This also includes a more organised approach to medical files, documentation and medical handover following release.

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 had 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 2023, asylum-seekers appeared to be systematically screened upon arrival and referred to the appropriate services as part of a generic triage conducted upon disembarkation.

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).

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<sup>433</sup> ECtHR, *A.D. v. Malta*, no 12427/22 (Communicated Case), 24 May 2022, available at <https://bit.ly/3yfjqc6>

<sup>434</sup> Civil Court (First Hall), *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022

<sup>435</sup> The Shift, Claim filed against the Maltese State over detained migrant's brutal death, 22 May 2023, at: <https://bit.ly/3wH3Lnz>.

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.

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).

According to Government figures, in 2023 five persons were referred from detention to mental health institutions.<sup>436</sup> Whereas this figure, lower than the 93 referrals in 2020, may be interpreted as a positive sign reflecting improvements in the detention centres, it is also reflective of the overall lower number of persons reaching Malta and the new approach towards attempting to provide specialised health services within the detention centres themselves.

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.<sup>437</sup> Such a statement shocked NGOs due to its 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.<sup>438</sup>

## 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 and 2023.

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.<sup>439</sup> 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*

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<sup>436</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>437</sup> Times of Malta, Union claims migrants are "purposely self-harming" to enter Mount Carmel, 29 January 2021, available at: <https://bit.ly/3scNOOQ>.

<sup>438</sup> 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>.

<sup>439</sup> Lovin Malta, 19 People Arrested in Late Night Protest At Hal Safi Detention Centre, 7 January 2020, available at: <https://bit.ly/3rjYYjf>.

*crime, voluntary damage, disturbing the peace, disobeying lawful orders, threatening public officers and throwing stones at private property*".<sup>440</sup>

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.<sup>441</sup>

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.<sup>442</sup>

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.<sup>443</sup>

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.<sup>444</sup> 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*".<sup>445</sup> The Magisterial inquiry remained open throughout 2022 and 2023.

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 having been subjected to 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.<sup>446</sup>

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<sup>440</sup> The Independent, Safi detention centre, available at: <https://bit.ly/2Jes67C>.

<sup>441</sup> Press Statement available at: <https://bit.ly/2UfVpx7>.

<sup>442</sup> Lovin Malta, Five Migrants Sentenced to Jail for Rioting At Safi Detention Centre, 19 February 2021, available at: <https://bit.ly/2QwVvkV>.

<sup>443</sup> Malta Today, Safi detention centre riot: Private security guard shot migrant who tried to escape, 18 September 2020, available at: <https://bit.ly/3c7fNtc>.

<sup>444</sup> Times of Malta, Man dies after trying to escape migrant detention centre, 2 September 2020, available at: <https://bit.ly/31av9a5>.

<sup>445</sup> 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>.

<sup>446</sup> 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.<sup>447</sup>

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.<sup>448</sup>

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”.<sup>449</sup>

No such incidents were reported in 2023, yet NGOs received reports from detained persons that they or their co-nationals had been placed in isolation containers in Safi Barracks. The location or basis for this isolation are not clear, yet aditus confirmed difficulties when trying to reach their clients who were in isolation either because they had no idea of their whereabouts or because they had no means of communicating with them.

### 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.<sup>450</sup>

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.<sup>451</sup> 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.<sup>452</sup>

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.<sup>453</sup>

<sup>447</sup> Ibid.

<sup>448</sup> The Times of Malta, Migrant detention numbers shrink, fears about child detainees remain, 7 February 2021, available at: <https://bit.ly/3vPfwD4>.

<sup>449</sup> The Times of Malta, Detained migrants have reported being tortured in Malta, 31 January 2021, available at: <https://bit.ly/3f5rZMX>.

<sup>450</sup> Regulation 6A Reception Regulations.

<sup>451</sup> Regulation 30 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>452</sup> Regulation 49(2) of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>453</sup> Regulation 34 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.



Religious organisations 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.<sup>454</sup>

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.<sup>455</sup>

### **The 2023 Visitors Policy**

NGOs and other entities' limitations in accessing detention centres was one of the major issues throughout 2023, after several obstacles to access being introduced in previous years.

In August 2023, the Detention Services Agency published a new Visit Policy, essentially incorporating what had been until then standard practice. The new policy limited access to centres – and therefore to applicants – to qualified and warranted lawyers and required applicants to sign their consent to be visited. Visits were limited to no more than 6 persons at a time, to be held in a designated area, and all visitors were required to leave all belongings – including phones – in locked cabinets. Frisk searches were made compulsory. Control over the visit, including the visit, was entirely at the discretion of the Detention Services. This new policy was shared with entities usually visiting detention centres and was immediately not well-received.

NGOs complained about the excessive burdens imposed on practitioners trying to access detention centres, finally impinging on the right of all detained persons to receive impartial information. In particular, they expressed disagreement with the DS' self-imposed role of approving individual lawyers for applicants, a practice that had seen DS refuse NGO access to applicants on the basis that the applicant was being provided services by other legal practitioners. This practice reinforced informal information received by NGOs that government officials were being barred from referring applicants to NGO legal services.

The new policy was rejected by aditus, JRS, UNHCR, Malta Red Cross and IOM, albeit for different reasons. Effectively this meant that, from the date of introduction of this new visitors' policy, only a few visits were organised to detention, and this situation continued until January 2024.

Following months of disagreement on the policy, difficult negotiations between NGOs and the Ministry led to the publication of a revised policy in December 2023. NGOs agreed to sign the new policy, with reservations, whilst UNHCR continued its discussion with the Government towards the signing of an MoU. As of January 2024, NGO lawyers started visiting the detention centres once again, under the conditions of the new policy.

In terms of the new Detention Services Agency Visitors Policy,<sup>456</sup> all visits must be requested in advance indicating the details of the applicants to be visited and each visit will only permit a maximum of 6 persons. Applicants detained under public health grounds are only permitted video-conference meetings. All meetings with detained persons are to be conducted in a room equipped with a CCTV camera and no personal equipment is permitted inside the room. These must be left in cabinets, and all visitors are to be frisked before entry.

The policy does not make any distinction between legal visits and other visits, possibly implying that other organisations and persons should also abide by the policy's rules in order to visit any detained person.

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<sup>454</sup> Regulation 29 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>455</sup> Regulation 35 of the Detention Service Regulations, Subsidiary Legislation 217.19 of the Laws of Malta.

<sup>456</sup> Detention Services Agency, Detention Services Agency Visitors Policy, December 2023, available at: <https://bit.ly/3WZAu2c>.

## Access to Journalists

Up until 2021, Times of Malta and independent journalists reported that its journalists were repeatedly denied access to the Safi detention centre.<sup>457</sup>

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. Judgement was delivered in 2023, when Malta's Civil Court (Constitutional Jurisdiction) upheld the journalist claims that the ban had violated his right to freedom of expression. The judgment, later appealed by the Government, ordered the head of the Detention Services "to grant the applicant access in order for him to visit the above-mentioned facilities and to allow him to take necessary photos, always in respect of the detainees' privacy."<sup>458</sup> The case is currently pending at the appeal stage.

In 2021, a journalist went on a controlled visit for the tour of a detention centre, for the first time in 8 years.<sup>459</sup> 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.<sup>460</sup> 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.

In 2023, as part of its reform of the detention regime, the Detention Services Agency published a protocol on media access.<sup>461</sup> Written requests for a visit to a detention centre should be made to the CEO of the Detention Services Agency. If approved, a date will be set for the visit, during which the following rules are to be respected:

- No recording, filming, photography or voice recordings;
- Interviews with the DS CEO are permitted, subject to prior approval;
- Mobile phones and all means of communication will be temporarily confiscated;
- Security screening will be implemented, including personal searches;
- All visits will be along a set route and accompanied by DS officials;
- Random access to areas not related to the visit's purpose are prohibited;
- Visits may be suspended at any time.

## Access to the UNHCR

UNHCR's access to detention centres and to applicants has also been affected by the recent move towards stringent rules. On the one hand, according to the Government, the UNHCR's presence in detention is sufficient to ensure that relevant information on asylum is provided, and that NGO access is not required. Regarding the need for legal assistance, the Government considers 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

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<sup>457</sup> 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>.

<sup>458</sup> Emanuel Delia vs. Hon. Byron Camilleri et, Civil Court First Hall (Constitutional Jurisdiction), 201/2020, 11 December 2023, at: <https://bit.ly/4awOjs1>.

<sup>459</sup> Times of Malta, Inside the Safi migrant detention centre, 5 July 2021, available at: <https://bit.ly/3qdeCPk>.

<sup>460</sup> Information provided by aditus foundation and JRS Malta, January 2022.

<sup>461</sup> Detention Services Agency, Media Protocol, 2023 at: <https://bit.ly/3ViXcRD>.

due to limited staffing capacity. It only resumed its visits in August and September where it carried out 3 visits. Overall, in 2022 UNHCR met approximately 91 persons for information counselling sessions in detention centres.

In 2023, UNHCR conducted five visits to detention facilities and provided information and counselling to 103 asylum-seekers. According to UNHCR, the visits focused on information-provision to ensure newly arrived persons make an informed decision on exercising the right to seek asylum. The visits were also intended to provide information on access to asylum procedures, rights and obligations. People with specific needs were identified and referred to state available services. UNHCR Malta also reported the development of a Memorandum of Understanding on access to detention facilities, an information leaflet with the Ministry for Home Affairs to strengthen information provision to new arrivals, improved reception conditions, enhanced capacity to process asylum applications and a decreased backlog. Furthermore, UNHCR facilitated several capacity building activities and has been discussing with the authorities through various bilateral channels to offer its expertise and technical assistance on areas that require further improvements.<sup>462</sup>

However, in 2023 a new rule was introduced barring UNHCR from accessing persons unless they had formally lodged an asylum application.

aditus and JRS Malta commented that, coupled with a more aggressive approach urging voluntary return on persons from particular countries of origin and the effective impossibility of newly-arrived persons from accessing independent and impartial information, this has at times resulted in persons returning to their countries of origin without ever having received any information on the right to seek asylum.

UNHCR Malta was also affected by the 2023 DSA visitors policy. When this was published and notified to entities wishing to access detention centres, UNHCR was one of the organisations that refused to accept and sign the new policy. This meant that for the second half of 2023, UNHCR enjoyed limited access to detention centres.

### **Access to NGOs and Lawyers**

Throughout 2022 and 2023, only persons providing legal services were granted access to applicants, and with several practical obstacles. 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 were generally not provided to the detainees, who in any case are likely to be unable to access a working phone.

Before and also after the new visitors policy, lawyers are only allowed to visit named clients. They are not able to access newly-arrived groups of persons or lists of names they could use 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, also since personal phones are confiscated upon entering the detention centre, police numbers, exact names, detention grounds, and countries of origins have to be continuously registered and updated for the lawyers to be able to specify which individual applicants they would like to visit as clients.

With this information, often lacking detail and clarity since only obtained over the phone, 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

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<sup>462</sup> Information provided by UNHCR Malta on 8 March 2024.

interpreter, as needed) are able to talk to a maximum of six persons. There are weeks when NGOs visit a detention centre twice, whilst there are times when weeks pass without any slot being allocated. NGOs also noted that they received informal information that Government officials were instructed not to refer applicants to their services, including vulnerable persons, further distancing them from impartial information and services.

NGOs flagged that, throughout 2023, each block of the Detention Centres was equipped with a phone and detainees were provided with telephone vouchers to use with these phones. According to the Home Affairs Ministry, in 2023 the DSA distributed 4,510 vouchers.<sup>463</sup> NGOs commented that the available credit on these phones was merely sufficient to call family members, and that since no contact details were distributed regarding NGOs or other service-providers, detainees had no way of reaching out to them. Some blocks allowed applicants to ask the guards to access a mobile phone, but this required the ability and capacity to communicate with the guards. NGOs noted that language difficulties and also individual vulnerabilities often prevented detained persons from relying on this method of communication, commenting that they rarely received calls through this means. NGOs also noted difficulties – at times the impossibility – of reaching new arrivals by phone for the first days or weeks following their arrivals.

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 regularly 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.

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.

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<sup>463</sup> Information provided by Home Affairs Ministry in January 2024.

## 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.<sup>464</sup> 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”.<sup>465</sup>

The UNGDAW report noted the challenges faced by detained women in securing access to judicial review of their detention, urging Malta to consider use of alternatives, to ensure that detention-related decisions are adopted on the basis of judicial decisions and that judicial review is guaranteed.

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 executive<sup>466</sup> and cumulatively sit on a dozen other specialised tribunals, including the Chair who sits on at least others.<sup>467</sup> 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.<sup>468</sup> 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

<sup>464</sup> Regulation 6(3) Reception Regulations.

<sup>465</sup> Article 25A of the Immigration Act, Chapter 217 of the Laws of Malta.

<sup>466</sup> The Shift News, Foreign Minister Evarist Bartolo picks individuals from his district to serve as ambassadors, 6 December 2021, available at: <https://bit.ly/41OTbFK>; The Shift News, Labour-linked lawyer Maria Cardona chairs four government boards at the same time, 20 November 2021, available at: <https://bit.ly/3KZPVkW>; Lovin Malta, Prison lawyer defending wardens in inmate's negligent death is an army officer, Magistrate's brother, and represents controversial blogger, 21 September 2021, available at: <https://bit.ly/3yakT29>; Manuel Delia, UPDATED: More iced buns, 3 November 2017, available at: <https://bit.ly/3kJZZDZ>; The Rule of Law in Malta: An overview of rule of law failings in Malta, 4 February 2018, available at: <https://bit.ly/3BWci4v>; Manuel Delia, What she would have written, 3 November 2017, available at: <https://bit.ly/3IVOQb0>.

<sup>467</sup> 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>.

<sup>468</sup> 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.

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 affecting the efficiency 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. Furthermore, the Board has consistently refused to accept request for filing Preliminary References to the CJEU, despite it being the Court of last resort and being faced with issues for which References would be warranted.
- In 2023, two additional Board Members were made ambassadors, further highlighting their close ties with the party in Government as well as the potential for conflicts of interest.<sup>469</sup>

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.<sup>470</sup>

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.<sup>471</sup>

In its 2023 Rule of Law Report, the European Commission repeated the statement made in 2022 regarding Malta’s commitment to review the independence of its specialised tribunals, including the IPAT and the IAB. The Report also made reference to input submitted by aditus foundation and the Daphne Caruana Galizia Foundation as well as the ECtHR judgement in S.H. The Report flags that decisions of these “*tribunals are at times only subject to judicial review on points of law, but not on points of fact.*”<sup>472</sup>

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<sup>469</sup> The Shift News, More ambassadorial appointments for the chosen few, 29 May 2023, available at: <https://bit.ly/4bWyxYf>.

<sup>470</sup> Ibid.

<sup>471</sup> EC, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 13 July 2022, available at: <https://bit.ly/3XRYS2D>, 5-6.

<sup>472</sup> European Commission, Rule of Law Report, Country Chapter on the rule of law situation in Malta, 5 July 2023, at: <https://bit.ly/4aDvuU7>.

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. asylum-seeker

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.<sup>473</sup>

In *R.M. (Bangladesh) vs. the PIO*,<sup>474</sup> 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*<sup>475</sup>, 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 II-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.

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<sup>473</sup> 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>.

<sup>474</sup> Immigration Appeals Board (Division II), *R.M. (Bangladesh) v. The PIO* (DO/35/2022), 24 March 2022, available at: <http://bit.ly/3V5vPHU>

<sup>475</sup> 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>.

In *A.D. (Ivory Coast) vs. the PIO*,<sup>476</sup> 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. A.D. took his case to the ECtHR, where the Court found that his rights had indeed been violated by Malta.

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.<sup>477</sup> J.B. and others took their case to the ECtHR and is awaiting judgement.

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 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.<sup>478</sup>

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<sup>476</sup> Immigration Appeals Board (Division II), *A.D. v. the Principal Immigration Officer (DO/37/2022)*, 17 February 2022, available at: <https://bit.ly/3kS5d0n>.

<sup>477</sup> 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 2022, available at: <http://bit.ly/3j3aVeM>.

<sup>478</sup> EUAA Case Law Database, <https://bit.ly/3XQZJ4c>; CADRE Database, <http://bit.ly/3HaA932>; aditus foundation, Our Cases, <https://tinyurl.com/yc8jeb82>.



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 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 asylum-seekers often being detained without appropriate judicial oversight.

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 Detention Order.<sup>479</sup> In practice, it is nearly 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 (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

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.<sup>480</sup>

### **Human rights complaints before the Civil Court (First Hall) in its Constitutional Jurisdiction**

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 for detained persons 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.

This remedy is deemed to be an effective one for persons who, at the time of the Court application, are no longer detained and wish to obtain a judicial pronouncement on their detention experience.

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 China House.<sup>481</sup> At the time of writing, the case was on-going.

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<sup>479</sup> 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

<sup>480</sup> 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.

<sup>481</sup> Civil Court (First Hall), *Ayoubah Fona vs. L-Avukat tal-Istat*, 375/2022.

## 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 on whether a legal basis for the detention exists, or otherwise. 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.<sup>482</sup>

In this case, A.D. v. the Superintendent for Public Health<sup>483</sup> 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 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.<sup>484</sup> A.D. proceeded to file his case before the ECtHR, for which the Court ruled in his favour.

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.<sup>485</sup>

An on-going legal discussion in *Habeas Corpus* applications relates to the nature of Court’s assessment in determining whether a legal basis for the detention exists or otherwise, and Court practice has not been too clear on this. Most Magistrates refrain from engaging in a discussion as to the quality of a detention legal basis, including whether this conforms to EU or ECtHR provisions, insisting that the Criminal Code provision does not demand that assessment.

### 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.<sup>486</sup> However, lawyers and NGOs reported that the PIO reviews do not follow any formal procedures.

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<sup>482</sup> See aditus foundation, our cases, <https://bit.ly/3kP38Ch>

<sup>483</sup> Court of Magistrates of Malta, A.D. v. the Superintendent for Public Health, 21 January 2022, summary available at <https://bit.ly/3yxemyN>

<sup>484</sup> aditus foundation, Three Children Released from Illegal Detention Following Court Action, 25 January 2022, available at <https://bit.ly/3wCsuXr>.

<sup>485</sup> Times of Malta, Six asylum-seekers successfully challenge unlawful detention, 8 June 2021, available at: <https://bit.ly/33ZQacp>.

<sup>486</sup> Regulation 11(8) of the Return Regulations, Subsidiary Legislation 217.12 of the Laws of Malta.

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 order, the IAB rarely 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 generally 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.

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 order. Their cumulative detention experience could reach and at times exceed two years.

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).<sup>487</sup> 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.<sup>488</sup> 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

<sup>487</sup> ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, 11 March 2021.

<sup>488</sup> Regulation 6(5) of the Reception Regulations, Subsidiary Legislation 420.06 of the Laws of Malta.

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.<sup>489</sup>

NGOs report that throughout 2023, legal aid lawyers were indeed generally appointed for the first detention review, when this happened. In most cases, NGO lawyers took over applicants' issues after this first review, also due to their impossibility of actually meeting newly-arrived applicants during these initial days. Legal aid is not provided for the second or subsequent reviews.

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.

In 2023, detained applicants were not provided with information and contact details about NGOs providing legal services with the Ministry arguing that the legal aid service sufficiently meets applicants' demands. Furthermore, NGOs reported that they are aware of instructions given to public officers to refrain from referring to NGOs applicants requiring or requesting legal information and services, including vulnerable persons, but to limit referrals to the Ministry's legal aid system.

## 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*".<sup>490</sup>

Throughout 2023, NGOs received reports indicating that Bangladeshi nationals were specifically targeted by the authorities, urging them to refrain from seeking international protection and to apply for voluntary return. Reports received include incidents where they were told that their applications would be rejected and that, as a consequence, they would never leave detention. Some applicants also complained that they were effectively punished for challenging their negative age assessment decisions and for filing applications before the ECtHR. Persons appealing their age assessment decisions informed NGOs that they were particularly targeted: their TV sets were put onto cartoons, and they were told: "*You say you are children so you should enjoy these.*" This is confirmed in the 2023 Annual Report of the Monitoring Board for Detained Persons.<sup>491</sup>

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<sup>489</sup> See <https://bit.ly/3mtaWKw>

<sup>490</sup> Information provided by Detention Service, January 2021.

<sup>491</sup> The Monitoring Board for Detained Persons, Annual Report 2023, available at: <https://tinyurl.com/r5ux6ysr>.

## 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.<sup>492</sup>

Once international protection is granted by the IPA, the beneficiary is issued a residence permit by Identitá, the public agency responsible for matters relating to passports, identity documents, and work and residence permits for expatriates.

Usually, applicants are required to wait for a couple of months for their documentation (see below) to be provided. Although a receipt of their application form for residence is provided, this has no real legal value, resulting in persons being unable to access their basic rights due to a lack of possession of their residence papers.

Residence permit applicants are required to present evidence of their protection status, together with evidence of their current address. This latter requirement is particularly burdensome for protection beneficiaries as it is interpreted as requiring them to present a copy of their rent agreement together with a copy of the identification document of their landlords. In the majority of cases, Maltese landlords refuse to provide either rent agreements or personal documentation due to a fear of imposition of income tax on the income deriving for the rent.

Many protection beneficiaries report strong negative attitudes, comments, and behaviour towards them by public officials receiving and handling their residence permit applications. Many persons are ignored, rebuked, dismissed, or otherwise not handled respectfully.

The renewal of residence permits is automatic upon request.

In 2023, Identitá introduced a 'credit card only' payment policy that caused serious problems for protection beneficiaries to apply for and obtain their documentation as most still struggle to open even a basic bank account.

Throughout 2020, the Agency Identitá (ID) issued a total of 269 first-time residence permits to refugee holders and beneficiaries of subsidiary protection. No data was provided 2023.

#### 2. Civil registration

Individuals can register childbirth and marriage at the Public Registry office. 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. NGOs reported that Identitá, the documentation Agency, makes efforts to contact parents of newly-born babies to ensure their registration and that a registration office has been opened at the hospital.

<sup>492</sup> Regulation 20 of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

Registration of births does not record the baby's or the parents' nationalities, giving rise to potential unresolved questions of statelessness.

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. Refugees are generally exempted from producing documents from their countries of origin, yet this unwritten policy is not comprehensively adhered to.

NGOs report that registration of all civic status changes is largely unproblematic, yet some challenges do remain. At times, clerks or front-office personnel at Identitá are not aware of the particular status of international protection beneficiaries requiring documentation from countries of origin. Complicated situations occur when there is a conflict between a person's declarations about their civic status provided at disembarkation and at any later stage.

NGOs observe that the authorities hold a person's first declarations as official, often provided right after an arduous sea voyage and in most cases without interpreters, cultural mediators or other forms of information and support. Whereas requests for minor changes, such as spelling, can be acceded to either directly by IPA or following a data protection complaint, changes in civic status generally require documentary evidence.

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2023:	Not available
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National legislation provides for the possibility for third-country nationals residing regularly in Malta to access long-term residence.<sup>493</sup> The criteria are the same for all migrants: no special conditions are foreseen for beneficiaries of international protection, except for the inclusion of half the time spent as an applicant for fulfilment of the duration requirement.

To be able to apply for such permit, applicants must have to fulfil a list of requirements:<sup>494</sup>

- They first need to have resided legally and continuously in Malta for five years immediately prior to the submission of the application;
- 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*".<sup>495</sup> 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;
- 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;
- 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

<sup>493</sup> Status of Long-Term Residents (Third Country Nationals) Regulations, Subsidiary Legislation 217.05.

<sup>494</sup> Also explained in this checklist, provided by Identitá, available at: <https://bit.ly/3YhL6GA>

<sup>495</sup> Regulation 5 of the Long-Term Residence Regulations, Subsidiary Legislation 217.05 of the Laws of Malta

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<sup>496</sup> for long-term residence has to be submitted in writing to the Director for Citizenship and Expatriate Affairs, via Identitá. The law provides for a time limit of six months after an application is lodged to receive an answer. If the Director fails to give a decision within this period specified, the application shall automatically be passed on for appeal to the Immigration Appeals Board.<sup>497</sup>

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.

Identitá 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.<sup>498</sup> No data was provided for 2023.

#### 4. Other forms of regularisation

With the closure of fresh applications for the Specific Residence Authorisation<sup>499</sup>, introduced in 2018 for specific groups of rejected yet well-integrated asylum-seekers, Malta's only route for alternative forms of regularisation for rejected asylum-seekers remains Temporary Humanitarian Protection, describe above. In recent years, various communities of rejected asylum-seekers organised demonstrations demanding legal recognition for their social and financial integration efforts, yet the Government has repeatedly underlined that it will not reintroduce any form of regularisation for rejected asylum-seekers.

#### 5. Naturalisation

##### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	10 years, 20 years
2. Number of citizenship grants to beneficiaries in 2023:	10

The Maltese Citizenship Act foresees that foreigners or stateless persons may apply for citizenship in Malta, making no specific mention of beneficiaries of international protection.<sup>500</sup> 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 subsidiary protection beneficiaries. 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.<sup>501</sup>

Prior to submitting an application, the person has to present a residence certificate issued by the Principal Immigration Office to the Komunitá Agency. Once the Office confirms the eligibility of the applicant, additional documents have to be produced, including a birth certificate, passport, and police conduct. Refugees are generally exempted from producing documents from their countries of origin.

<sup>496</sup> Available at: <https://bit.ly/3KgHvE4>.

<sup>497</sup> Regulation 7 of the Long-Term Residence Regulations, Subsidiary Legislation 217.05 of the Laws of Malta

<sup>498</sup> Information provided by Identitá, April 2022.

<sup>499</sup> Ministry for Home Affairs, Law Enforcement and National Security, Policy regarding Specific Residence Authorisation, 2020, available at: <https://bit.ly/4aw3xNO>.

<sup>500</sup> Maltese Citizenship Act, Chapter 188 of the Laws of Malta, September 1964, available at: <http://bit.ly/2lz5z8H>

<sup>501</sup> Article 10(1) Citizenship Act, Chapter 188 of the Laws of Malta.

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.

Malta does not grant citizenship entitlements to children born or raised in Malta, which could lead to some refugee children being at risk of statelessness.

As an additional obstacle, a new amendment to the Citizenship Regulations increased the fee from €34.94 to an exorbitant €450 for naturalisation applications.<sup>502</sup>

Identitá indicated that in 2021, Komunitá 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.<sup>503</sup>

Komunitá Malta (the agency responsible for citizenship) responded that in 2023 it successfully processed the applications of 10 refugee status holders and that no beneficiaries of subsidiary protection obtained Maltese citizenship. More specifically, Komunitá Malta has provided a breakdown of the nationalities of the naturalised refugees: 2 Libyans, 1 Palestinian, 3 Egyptians, 3 Syrians and 1 Nepalese.<sup>504</sup>

## 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

According to the IPA, the cessation procedure is generally done through written submissions alone, and interviews are only held when deemed necessary.<sup>505</sup>

The International Protection Act provides for the possibility of cessation of refugee status.<sup>506</sup> 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;

<sup>502</sup> Citizenship Regulations, S.L. 188.01 <https://bit.ly/3Jc90il>

<sup>503</sup> Information provided by Identitá, April 2022.

<sup>504</sup> Information provided by Komunitá Malta, April 2023

<sup>505</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>506</sup> Article 9 International Protection Act, Chapter 420 of the Laws of Malta



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.<sup>507</sup> 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*”.<sup>508</sup>

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.<sup>509</sup>

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.

According to IPA, in 2023 there were no international protection cessation decisions.<sup>510</sup>

## 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

<sup>507</sup> Article 9(2) International Protection Act, Chapter 420 of the Laws of Malta.

<sup>508</sup> Article 21 International Protection Act, Chapter 420 of the Laws of Malta.

<sup>509</sup> Article 22 International Protection Act, Chapter 420 of the Laws of Malta.

<sup>510</sup> Request for Information 315240434264 issued by the International Protection Agency

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.<sup>511</sup>

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. According to the IPA, the withdrawal procedure is mainly conducted in writing and personal interviews are no longer held unless deemed necessary.<sup>512</sup>

Act XIX of December 2022 amended the International Protection Act and reduced the deadlines to appeal to one 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 week from when the notification of the decision has been served to them and the appeal will be heard according to the regular procedure.<sup>513</sup>

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, if after being granted temporary humanitarian protection, the beneficiary should have been or is excluded from being eligible or if the beneficiary did not originally meet the eligibility criteria.<sup>514</sup>

The provisions applicable to the withdrawal of subsidiary protection apply *mutatis mutandis* to the for beneficiaries of THP. In practice, the IPA will inform the beneficiary that his protection is being reconsidered and given a couple of days to submit a written statement explaining the reasons to why his or her status should not be withdrawn. However, no appeal lies against the decision of the Agency.

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.

According to information provided by the IPA, in 2023 there were no international protection withdrawal decisions.

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<sup>511</sup> Article 10 of the International Protection Act, Chapter 420 of the Laws of Malta.

<sup>512</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>513</sup> Articles 10(6) and 22(6) of the International Protection Act as amended by Act XIX of 20 December 2022.

<sup>514</sup> Article 17A(2) of the International Protection Act, Chapter 420 of the Laws of Malta.

## 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. The Government has indicated to interpret the Directive's term "*unequivocally renounced*" as being that situation where a protection beneficiary does not renew their protection certificate within a period of one year from the document's expiry. NGOs have expressed their concerns regarding this interpretation, since whereas the Directive clearly requires an intentional action on behalf of protection beneficiary, such as a written statement or declaration, the IPA attributes such intentionality to a situation of inaction that might in fact lack intentionality.

Article 13A further provides that beneficiaries who have unequivocally renounced their protection must subsequently make 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. According to the Government, a dedicated form is now available for this procedure and the assessment is generally desk-based.<sup>515</sup>

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.<sup>516</sup>

NGOs reported that the IPA started to use the provision on the lapse of protection status 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.

Although no data is available on the number of protection beneficiaries whose protection has lapsed in 2023, IPA confirmed that 111 cases of 'administrative closure'. This type of decision is not envisaged in the law and includes those cases where IPA is requested to revise or revisit a case file. NGOs expressed their concerns at the procedure adopted by IPA in such cases. Whilst the IPA does attempt to contact the beneficiary to inform them of the lapsed status, protection is anyway withdrawn also in situations where the beneficiary may not be traced.

Once the protection is deemed to have lapsed, no appeal is possible, requiring beneficiaries to request a reinstatement of their international protection. Submitting a reinstatement request does not grant the status of an applicant and no documentation or reception conditions are provided. As mentioned above, it is not clear whether the 'reinstatement' assessment is another form of admissibility, looking the reasons for the lapse, or a full substantive process. Decisions not to reinstate international protection are not subject to appeal and defined as 'administrative closures'.

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<sup>515</sup> Ministry for Home Affairs, Security, Reforms and Equality, Feedback on the 2022 AIDA Country Report on Malta, shared with ECRE in January 2024.

<sup>516</sup> Article 7(1A)(c) of the International Protection Act, Chapter 420 of the Laws of Malta.

This provision also applies to beneficiaries of Temporary Humanitarian Protection.

## B. Family reunification

### 1. Criteria and conditions

Indicators: Family Reunification	
1. Is there a waiting period before a beneficiary can apply for family reunification?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If yes, what is the waiting period?	12 months
2. Does the law set a maximum time limit for submitting a family reunification application? To be exempt from material conditions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If yes, what is the time limit?	3 months
3. Does the law set a minimum income requirement?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Recognised refugees may apply for family reunification in Malta according to national legislation.<sup>517</sup> “*Family members*” include the refugee’s spouse and their unmarried minor children, and the parents or responsible adult in the case of minors. In the Government’s ‘LGBTIQ+ Equality Strategy and Action Plan 2023-2027’ there is a commitment to “*initiate discussions with relevant authorities to ensure better family reunification practices extending to all couples in stable relationships.*”<sup>518</sup>

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...*”<sup>519</sup> The exclusion of subsidiary protection beneficiaries from family reunification was raised as a major concern by the Council of Europe Commissioner for Human Rights.<sup>520</sup>

In November 2018, JRS Malta, aditus foundation, and Integra foundation published a report entitled ‘Family Unity: a fundamental right’.<sup>521</sup> 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. As of 2023, the situation remained unchanged.

Applications must be addressed to Identitá, 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

<sup>517</sup> Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

<sup>518</sup> Human Rights Directorate, LGBTIQ+ Equality Strategy and Action Plan 2023-2027, available here: <https://tinyurl.com/f4t9hv5x>.

<sup>519</sup> Regulation 3 of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

<sup>520</sup> 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>.

<sup>521</sup> JRS Malta, aditus foundation, Integra Foundation, Family unity: a fundamental right, November 2018, available at: <https://bit.ly/3dtBlyX>.

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.<sup>522</sup>

In practice, refugees are not requested to fulfil the material conditions if they apply within three months of obtaining their status. Refugees who are applying to be joined by family members in Malta are only required to present the refugee status certificate; official documents attesting the family relationship; full copies of the passports of the family members; and the lease agreement.

Refugees whose family relationship post-dates the grant of their status, or whose application for family reunification has not been submitted within a period of three months after the grant of said status, are required to present additional documents such as an attestation by an architect confirming that the applicant's accommodation is regarded as normal for a comparable family in Malta and which meets the general health and safety standards of the country and a confirmation of stable and regular resources which have not been obtained by virtue of recourse to the social assistance of Malta and which shall be deemed to be sufficient if they are equivalent to the national minimum wage in Malta.<sup>523</sup>

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 immigration 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,<sup>524</sup> this does not translate in any actual right to residence and the only way for family members to enjoy such rights and benefits 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.

In 2021, Identitá accepted 10 applications for a total number of 12 people.<sup>525</sup> Data for 2023 was not provided.

## 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 representations. 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.

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<sup>522</sup> Regulation 12 of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

<sup>523</sup> Information provided by Identitá, 2017.

<sup>524</sup> Regulation 20(2)(a) of the Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>525</sup> Information provided by Identitá, April 2022.

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.<sup>526</sup> Since 2016, reunited family members are, in practice, granted a residence permit of three years, indicating '*Dependant family member*'.<sup>527</sup>

The family members of the sponsor have access, in the same way as the sponsor, to education, employment, and self-employed activity. While a refugee has access to employment and self-employment without the need for an assessment of the situation of the labour market, said family members are subject to such assessment for the first 12 months following their arrival. They also have access to vocational guidance, initial and further training, and retraining.<sup>528</sup> NGOs report that, in practice, they are very often required to engage with Maltese public authorities regarding cases in which they treat refugee family members as other third-country nationals.

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, based on the argument that a person's eligibility for international protection does not automatically mean that the children are also so entitled. NGOs commented that, whilst this is not in direct contract with EU law, it does have harmful consequences particularly on children and family unity.

This situation 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 in Malta as family members of a protection beneficiary, lose that protection upon 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.<sup>529</sup> Furthermore, family members who, regardless of the reason, sever the family tie with the refugee sponsor will also automatically lose their right to remain in Malta as such and would then need to either seek protection in their own names or apply for a residence permit on another ground, such as Temporary Humanitarian Protection or as a Victim of Human Trafficking.

## 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

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<sup>526</sup> Regulation 14(2) of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.  
<sup>527</sup> Information provided by Identitá, 29 September 2016.

<sup>528</sup> Regulation 15 of the Family Reunification Regulations, Subsidiary Legislation 217.06 of the Laws of Malta.

<sup>529</sup> Aditus foundation, Documentation = Employability: Support Services for the Documentation of Various Communities, August 2022, available at <https://bit.ly/3JhqJfK>

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.<sup>530</sup>

Travel documents for beneficiaries of international protection in Malta are issued by the Malta Passport Office, within the agency Identitá, 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.<sup>531</sup>

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 recognised travel document. There are no known obstacles to the recognition of these travel documents in other countries, yet some refugees have been returned to Malta after attempting to enter some countries without a valid entry visa.

The travel documents issued to beneficiaries do not restrict the holder from travelling to the country of origin or any other country.

According to Identitá, in 2023 a total of 338 travel documents were issued to beneficiaries of international protection.<sup>532</sup>

## D. Housing

### Indicators: Housing

- |  |                   |
|--|-------------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?<br>general rule | Not entitled as a |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2023:          | 24                |

The main form of accommodation provided is access to reception centres, which are the Initial Reception Centre in Marsa, Ħal Far Tent Village, Ħal Far Open Centre, Ħal Far Hangar. Two centres are especially dedicated to host minors, families and women, and provide for smaller types of accommodation, namely Dar il-Liedna and Balzan Open Centre (run by an NGO). However, beneficiaries of international protection are generally 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 2023, a total of 13 beneficiaries were accommodated in open reception centre, and 11 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.<sup>533</sup> Refugees and beneficiaries of subsidiary protection may also apply for a housing benefit if they are renting from private owners.<sup>534</sup>

A report published by JRS Malta and aditus foundation in December 2021 flags 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

<sup>530</sup> Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>531</sup> Information provided by the Passport Office, September 2016.

<sup>532</sup> Information provided by Identitá, January 2024.

<sup>533</sup> Housing Authority, available at <https://bit.ly/3F0ntvo>

<sup>534</sup> Housing Authority, available at <https://bit.ly/41OW1uo>

no alternatives and largely unable to rely on a private rental regime with little monitoring or regulation.<sup>535</sup> Although there is no updated research for 2023, the situation remains generally similar.

According to AWAS, during 2023 the total numbers of beneficiaries staying at reception centres was the following:

- Refugee status: 4
- Subsidiary Protection: 9
- Temporary Humanitarian Protection: 11

JRS reported that in February and March 2023, all vulnerable people were transferred out of MIRC and into HOC or HTV. The organisation expressed concern that, whilst accommodation in the Marsa Initial Reception Centre did not necessarily cater for the specific needs of vulnerable persons, HTV and HOC are not appropriate accommodation settings for vulnerable individuals.<sup>536</sup>

## 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.<sup>537</sup> 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 licence in their own name. Obstacles in this area include the application costs. A new application costs €58, while annual renewal costs €34.<sup>538</sup>

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.

In its input to a national integration consultation, the MRC urged the authorities to grant access to the public service for beneficiaries of international protection.<sup>539</sup>

The report published by UNGDAW following its visit to Malta commented that a number of labour requirements tend to penalise migrant women<sup>540</sup>.

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*

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<sup>535</sup> 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>

<sup>536</sup> Information provided by JRS Malta in June 2024.

<sup>537</sup> Regulation 20(c), Procedural Regulations, Subsidiary Legislation 420.7 of the Laws of Malta

<sup>538</sup> Jobsplus, <https://tinyurl.com/bd2ahv92>.

<sup>539</sup> Malta Refugee Council, Input on the National Integration Policy and Action Plan Consultation, June 2023, at: <https://tinyurl.com/3u6km49p>.

<sup>540</sup> OHCHR, UN Working Group on discrimination against women and girls, End of Mission Statement, July 2023, at: <https://bit.ly/3UPBrr2>.



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."<sup>541</sup>

A report on employment of third-country nationals, published in the context of the 2020-2022 project 'Turning The Tables', implemented by the Government's Human Rights Directorate in cooperation with the NGO African Media Association (Malta), echoed these challenges and underlined how the changing landscape of Malta's employment sector has negatively affected third-country nationals. It summarised the employment sector for migrants and refugees as being "marked by hardship, including: discriminatory wages; rampant exploitation and abuse; precarity and lack of security; racism and xenophobia; and also high job mobility (compromising skill building and training). For a substantial number, especially asylum-seekers and refugees, chronic unemployment is also a solid reality."<sup>542</sup>

A June 2023 report by the Daphne Caruana Galizia Foundation, the relatively high number of non-Maltese fatalities on construction site was flagged.<sup>543</sup> In the same vein, in January 2024 a report was published looking into various issues relating to the construction industry.<sup>544</sup> Commenting on the racialised labour market and the extensive exploitation of migrant workers, the report generally concluded that, "Disempowered by the various economic, legal, and wider socio-cultural factors, migrant workers' effective capacity to take simple steps to protect their safety, such as reporting unsafe work practices to the Occupational Health & Safety Authority (OHSA), approaching a union, or even changing jobs when feeling unsafe, is severely limited. What may seem like normal channels of redress for individuals with citizenship rights, good social and economic capital, knowledge of formal and informal institutional setups, access to the right people, and sufficient language skills, are far from normal and straightforward for those lacking these attributes."

For 2023, JobsPlus provided the following data:

Persons in employment	Males	Females	Grand Total
Refugees	311	64	375
Beneficiaries of subsidiary protection	1,358	89	1,447
<b>Employed as at end of August</b>	<b>1,669</b>	<b>153</b>	<b>1,822</b>

Employment licences	
Licence type	Total
Refugees	258
Beneficiaries of subsidiary protection	897
<b>Total</b>	<b>1,155</b>

JobsPlus does not keep information on unemployment rates.

<sup>541</sup> 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>

<sup>542</sup> Ministry for Equality, Research and Innovation, Turning the Tables Report on Employment, 2021, available at: <https://bit.ly/3WS4IE9>.

<sup>543</sup> Daphne Caruana Galizia Foundation, Victims of Malta's Construction Boom: The Fatal Wait for Accountability, June 2023, available at: <https://bit.ly/3wNxxaf>.

<sup>544</sup> Justice and Peace Commission, The 'Ejja Ejja' Culture: An Analysis of socio-economic, political and legal factors with impact the health and safety of workers in the construction industry, January 2024, available at: <https://tinyurl.com/snmycnne>.

## 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.<sup>545</sup> The entitlements to stipends or other forms of support (e.g. exemption from fees) for beneficiaries of subsidiary protection remain unclear, although the relevant Regulations stipulate that any third-country national may apply with the Ministry to be exempted from fees and to be granted a student stipend.<sup>546</sup>

The Migrant Learners Unit<sup>547</sup> 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. Students are given induction lessons in English and Maltese to prepare them to access public education.

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. The programme is run by the Human Rights Directorate, within the Home Affairs Ministry.

JobsPlus, the national employment agency, offers several free courses covering a vast range of subjects, including: Maltese, English, job-searching techniques, digital marketing, tile-laying, health and safety, air-conditioning, etc.<sup>548</sup>

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.<sup>549</sup>

In 2020, 3,456 people applied for the 'I Belong Programme', among them, 364 were beneficiaries of international protection and 191 were asylum-seekers.<sup>550</sup> In 2021, 1,909 individuals followed the course,

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<sup>545</sup> Ministry for Education, Sport, Youth, Research and Innovation, Malta Government Undergraduate Scheme, 2022-2023, available at: <https://bit.ly/3WWLuOf>.

<sup>546</sup> Student Maintenance Grants Regulations, S.L. 605.06, 2016, available at: <https://bit.ly/3R26kYb>.

<sup>547</sup> Info on Migrant Learners' Unit available here: <https://bit.ly/3L8bwr7>

<sup>548</sup> Full list available at: <https://tinyurl.com/5n8zvmur>.

<sup>549</sup> 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/3kPtI80>

<sup>550</sup> Information provided by the Human Rights Directorate, January 2021.

including 102 asylum-seeker, 95 failed asylum-seeker, 85 beneficiaries of temporary humanitarian Protection, 75 beneficiaries of subsidiary protection and 51 refugees.<sup>551</sup>

The Human Rights Directorate confirmed that, for 2023, the following numbers of international protection beneficiaries participated in the programme:

- Foundation courses: 50
- Stage 1: 257
- Stage 2: 20

## F. Social welfare

The Procedural Regulations provide for access to social welfare for beneficiaries of international protection.<sup>552</sup> However, the law makes a difference between refugees and subsidiary protection beneficiaries since social welfare benefits granted to the latter “*may be limited to core social welfare benefits*”.

Refugees are entitled to the same benefits as Maltese nationals, under the same conditions. They are namely entitled to Children’s Allowance, Social Benefits, Pension Benefits, Rent Subsidy, Social Housing and Unemployment Assistance. However, like Maltese citizens, refugees must satisfy the established criteria for each benefit or assistance they apply for. In practice, refugees are rarely able to benefit for Malta’s Contributory Scheme since they are not present in Malta for a sufficient number of years to be able to pay the minimum number of social security contributions required for some benefits, but they are automatically entitled to the non-contributory benefits and schemes.

Subsidiary protection beneficiaries are, for their part, only entitled to “*core welfare benefits*”, which is interpreted as being limited to social assistance.<sup>553</sup> 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 conditional on residence in a specific place in Malta.

Benefits entitlements fall within the remit of the Ministry for Social Policy and Children’s Rights, whilst social protection and care services are provided by various agencies within the Foundation for Social Welfare Services.<sup>554</sup> 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.<sup>555</sup>

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<sup>551</sup> Information provided by the Human Rights Directorate, March 2022.

<sup>552</sup> Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>553</sup> 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>.

<sup>554</sup> See <https://bit.ly/3EYCuxU>.

<sup>555</sup> 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.

Recent law changes stipulate that THP holders should have access to non-contributory benefits similarly to beneficiaries of subsidiary protection.

## 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,<sup>556</sup> as defined in the Procedural Regulations.<sup>557</sup> 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 and THP have access to state medical services too, according to national legislation and guidelines provided by the Healthcare Entitlement Unit<sup>558</sup>. 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.

Although the Home Affairs Ministry reports that public officials working on migration are trained to effectively identify and assist migrants victims of torture<sup>559</sup>, in practice, specialised treatment for victims of torture or traumatised beneficiaries is generally 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 often 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.<sup>560</sup>

No such incidents were reported for 2023.

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<sup>556</sup> Social Security (U.N. Convention Relating to the Status of Refugees) Order, Subsidiary Legislation 318.16, 2001, available at: <http://bit.ly/2kv0laz>.

<sup>557</sup> Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta.

<sup>558</sup> Regulation 20 Procedural Regulations, Subsidiary Legislation 420.07 of the Laws of Malta; Entitlement Unit Malta, available at: <https://bit.ly/4eaeDeD>. The guidelines are available here: <https://tinyurl.com/4dsr6n3j>.

<sup>559</sup> Information provided by Home Affairs Ministry in January 2024.

<sup>560</sup> FRA, Migration: Key fundamental rights concerns, quarterly bulletin October – December 2021, available at: <https://bit.ly/3ENks1k>, 30.

JRS reported that in 2023, despite the improvements made, a significant number of the individuals followed by the organisation, or members of their immediate family, have had trouble accessing healthcare on one or more occasions. The cause of these difficulties was not always clear, however they seemed rooted in questions regarding individual entitlement to free healthcare, lack of knowledge of the rights of the different categories of migrants living and working in Malta, lack of understanding of information among migrants about how the system works and the services offered, limited available information, language barriers, and cultural issues such as obstacles relating to shame and stigma.<sup>561</sup>

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<sup>561</sup> Information provided by JRS Malta in June 2024.

## ANNEX I - Transposition of the CEAS in national legislation

**Directives and other CEAS measures transposed into national legislation.** The table indicates the main texts incorporating into Maltese law the provisions of the indicated EU laws, yet it is underlined that some elements have been transposed in the other non-corresponding national texts, or that other elements have not been transposed.

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link	Commentaries/Analyses
<b>Directive 2011/95/EU</b> 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	<a href="http://bit.ly/1LQjEov">http://bit.ly/1LQjEov</a> . (EN)  <a href="https://bit.ly/2ORQang">https://bit.ly/2ORQang</a> . (EN)	aditus and JRS Malta, Comments on the exercise transposing the EU recast qualification directive, available at: <a href="https://tinyurl.com/423zfe6m">https://tinyurl.com/423zfe6m</a> .
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015	11 December 2015	Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	<a href="https://bit.ly/3ecdAwX">https://bit.ly/3ecdAwX</a> . (EN)	
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	11 December 2015	Reception of Asylum-seekers Regulations, Legal Notice 417 of 2015	<a href="https://bit.ly/3x2SoRW">https://bit.ly/3x2SoRW</a> . (EN)	aditus and JRS Malta, Submissions to the Ministry of Home Affairs & National Security on the transposition of the recast reception conditions directive, & to changes to immigration legislation, available at: <a href="https://tinyurl.com/2p9dn94d">https://tinyurl.com/2p9dn94d</a> .
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013		N/A		