

**SUBSIDIARY LEGISLATION 420.07**

**PROCEDURAL STANDARDS IN EXAMINING  
APPLICATIONS FOR REFUGEE STATUS  
REGULATIONS**

3rd October, 2008

*LEGAL NOTICE 243 of 2008.*

1. The title of these regulations is the Procedural Standards in Examining Applications for Refugee Status Regulations. Citation.

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

3. In these regulations, unless the context otherwise requires:  
"Act" means the Refugees Act;  
"applicant" means applicant for asylum;  
"competent authorities" means the Refugee Commissioner or his representatives; Interpretation.  
Cap. 420.

"Convention" means the 1951 Convention relating to the Status of Refugees done at Geneva on 28th July, 1951, to which Malta acceded on 17th June, 1971, and the 1967 Protocol relating to the Status of Refugees of 31st January, 1967 to which Malta acceded on 15th September, 1971, subject to the declarations and reservations made by Malta;

"international protection" means refugee status or subsidiary protection;

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

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

(2) The applicant shall be:

(a) informed:

(i) in a language which he may reasonably be supposed to understand of the procedure to be

followed and of his rights and obligations during the procedure;

- (ii) about the possible consequences of not complying with his obligations and not cooperating with the authorities;
- (iii) of the timeframe as well as the means at his disposal for fulfilling the obligation to submit the elements required;
- (iv) of his right to consult the High Commissioner and to have legal assistance during all the phases of the asylum procedure:

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

- (b) advised on how and where he may make such application as well as assistance, where necessary, in the forwarding of the application to the Commissioner;
- (c) granted the services of an interpreter for submitting his case to the competent authorities whenever necessary;
- (d) given notice, in a reasonable time, of the decision on his application for asylum and such notice shall be served on the applicant or his legal advisor;
- (e) informed of the result of the decision, in a language that he may reasonably be supposed to understand, when he is not assisted or represented by a legal adviser and when free legal assistance is not available.

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

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

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

Examination of  
application and the  
interview.

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

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

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

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

(5) The personal interview referred to in subregulation (3) may

be omitted where:

- (a) the Commissioner is able to make a positive recommendation on the basis of evidence available; or
- (b) the Commissioner has already had a meeting with the applicant for the purpose of assisting him with completing his application and submitting the essential information regarding the application; or
- (c) the Commissioner, on the basis of an examination of the information provided, considers the application to be unfounded where:
  - (i) the applicant, in submitting his application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he qualifies as a refugee; or
  - (ii) the application for asylum is considered to be unfounded due to the notion of safe country of origin or safe third country; or
  - (iii) where applicant has made inconsistent, contradictory, improbable or insufficient representations which made his claim clearly unconvincing in relation to his having been the object of persecution; or
  - (iv) the person has submitted a subsequent application which does not raise any relevant new elements with respect to his particular circumstances or to the situation in his country of origin; or
  - (v) where the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal; or
- (d) where it is not reasonably practicable, in particular, where the Commissioner is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control; provided that when in doubt, the Commissioner may require a medical or psychological certificate.

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

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

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

(8) A personal interview shall be conducted under conditions which allow the applicant to present the grounds for his application

in a comprehensive manner and must:

- (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application including the applicant's cultural origin or vulnerability, in so far as it is possible to do so; and
- (b) ensure the presence of an interpreter who is able to give appropriate communication between the applicant and the person who conducts the interview, but communication need not necessarily take place in the language preferred by the applicant if there is another language which he may reasonably be supposed to understand and communicate in.

Written report.

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

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

Legal assistance.

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

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

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

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

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

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

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

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

Time limit for the decision.

- (a) be informed of the delay; or
- (b) receive, upon his request, information on the time frame within which the decision on his application is to be expected:

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

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

Decision to be made in writing.

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

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

Confidentiality.

(2) Any information concerning an application shall, under no circumstances, be disclosed to the authorities of the country of origin of the applicant nor shall any information be requested from such authorities regarding the applicant.

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

Information relating to status.

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

Treatment of applicants for asylum.

(2) An applicant for asylum shall -

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

- (d) hand over all documents in his possession;
- (e) be subject to search and his oral statements may be recorded subject to the applicant being previously informed thereof;
- (f) be photographed and have his fingerprints taken:

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

Withdrawal of the application.

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

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

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

- (a) he has refused notification of any document relating to the asylum procedure; or
- (b) he has failed to provide information essential to his application or has not appeared for a personal interview unless the applicant demonstrates, within a reasonable time, that his failure was due to circumstances beyond his control; or
- (c) he has absconded or left without authorisation the place where he lived or was held, without contacting the competent authorities within a reasonable time or he has not, within thirty days, complied with reporting duties or other obligations to communicate.

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

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

Rights of refugees and persons granted subsidiary protection status.

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

- (i) without prejudice to the provisions of articles 9 and 10 of the Act, to remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable:  
Provided that a residence permit to be granted to a family member may be valid for less than three years and shall be renewable;
  - (ii) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a Convention Travel Document entitling him to leave and return to Malta without the need of a visa;
  - (iii) to have access to employment, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care especially in the case of vulnerable groups of persons;
- (b) A person enjoying subsidiary protection shall be entitled -
- (i) without prejudice to the provisions of articles 21 and 22 of the Act, to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of one year, which shall be renewable;
  - (ii) to be provided with documents which enable him to travel especially when serious humanitarian reasons arise that require his presence in another State, unless compelling reasons of national security or public order otherwise require;
  - (iii) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programmes, State education and training, and to receive core State medical care, especially in the case of vulnerable groups of persons.
- (2) (a) Dependant members of the family of a person granted refugee status, if they are in Malta at the time of the decision or if they join him in Malta, enjoy the same rights and benefits as the refugee so that family unity may be maintained.
- (b) Dependant members of the family of a person granted subsidiary protection, if they are in Malta at the time of decision, enjoy the same rights and benefits as the person enjoying subsidiary protection status so that family unity may be maintained.

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

Unaccompanied  
minors.

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

- (a) it shall be ensured that the appointed representative of the unaccompanied minor is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself for the personal interview. The representative shall be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview;
- (b) where an unaccompanied minor has a personal interview on his application for asylum, that interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.

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

Provided that:

- (a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination which may include the rejection of his claim that he is a minor;
- (b) unaccompanied minors and their representatives consent to carry out the determination of the age of the minors concerned;
- (c) the decision to reject an application from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal:

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



**16. The High Commissioner -**

The High  
Commissioner.

- (a) shall have access to applicants for asylum, including those in detention and in airport or port transit zones;
- (b) shall have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, when the applicant for asylum agrees thereto;
- (c) may be present during any interview and, to present his views in writing, in the exercise of his responsibilities under Article 35 of the Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure as determined by the Commissioner:

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

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

Assessing a third  
country as safe.

- (a) ensure that there is a connection between the applicant and the third country so that the applicant can reasonably be considered as able to go to that country;
- (b) ensure that the safety of the third country is assessed on an individual basis, taking into account any analysis made by reputable international organizations that may be available from time to time, including the office of the United Nations High Commissioner for Refugees:

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

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

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

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

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

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

- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a particular social group where in particular:
  - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
  - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society; and
  - (iii) depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic or sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in Malta; gender related aspects might be considered without by themselves alone creating a presumption for the applicability of this subparagraph;
- (e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution which include the State, parties or organizations controlling the State or a substantial part of the territory of the State and non-State actors if it can be demonstrated that the other actors are unable or unwilling to provide protection against persecution or serious harm, and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

(2) When assessing if an applicant has a well-founded fear of

being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

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