

Setup: The Office of the Refugee Commissioner

2.1 Background

The first asylum-related legislation that has been ratified in Malta was the Refugees Act 2000. This legislation provided for the establishment of the Office of the Refugee Commissioner and the Refugee Appeals Board.

The Office of the Refugee Commissioner started to operate on a trial basis from 18 June 2001 until the end of 2001. During this trial period cases were referred to UNHCR for final determination. On 13 December 2001, Malta lifted its geographical reservation to the 1951 Geneva Convention. To this effect, the Office of the Refugee Commissioner became fully operational on 1st January 2002 and subsequently started to operate and examine asylum applications autonomously. Mr Charles Buttigieg has served diligently as a Refugee Commissioner from 2002 until 28 July 2007.

The Office of the Refugee Commissioner's main responsibility is to receive process and determine applications for asylum, as stipulated by the Refugees Act, amended in July 2008, and Legal Notice 243 of 2008 (Procedural Standards in Examining Applications for Refugee Status Regulations). This Office is also bound by the obligations assumed by Malta under the 1951 Geneva Convention relating to the status of Refugees and the 1967 Protocol, as well as its obligations under Council Directive 2004/83/EC¹, Council Directive 2005/85/EC² and the Dublin Regulation³.

The Office's fundamental objective is to ensure a totally independent, fair and efficient eligibility determination process while, at the same time, guaranteeing the best quality possible regarding the hearing, analysis and determination of applications.

2.2. The Asylum Procedure

Every person, whether he/she entered Malta regularly or irregularly has the right to seek asylum. Statistical information shows that most of the persons who seek asylum in Malta are irregular immigrants. Potential asylum seekers may register themselves as such with the Refugee Commissioner by filling a form known as 'Preliminary Questionnaire'. This form is given to potential asylum seekers as soon as possible in view of their right to apply for international protection. The Preliminary Questionnaire has been translated in a number of languages, aiming to accommodate potential asylum seekers to fill in this form accurately. As from June 2009, the Office of the Refugee Commissioner has been

¹ 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.

² 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.

³ On establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third country national or a stateless person.

coordinating an ERF project through which irregular immigrants are given adequate information about the asylum procedure, including their rights and obligations during the asylum procedure. Immigrants are also assisted by interpreters and officials to fill in the Preliminary Questionnaire.

As soon as such a duly-filled form reaches the Office of the Refugee Commissioner, this Office begins the necessary preparations to list the applicant for an interview. All information that given on Preliminary Questionnaire is confidential and the Office of the Refugee Commissioner will never contact or request information from the authorities of the applicant's country.

Once the Office of the Refugee Commissioner receives the Preliminary Questionnaire, this Office will inform the immigration authorities that the person is an asylum seeker and until his/her case is decided he/she cannot be returned to his/her country of origin, unless the person constitute a danger to the security of the country or he/she have been convicted of serious harm which constitutes a serious danger to the community.

As stipulated by the Refugees Act, the Office of the Refugee Commissioner, would then receive the formal application form for recognition of refugee status and subsequently, this Office holds interviews with applicants. Interviews are conducted by fully trained asylum determination officers with the assistance, where necessary, of freelance interpreters. Interpreters are also bound by confidentiality throughout the entire asylum procedure.

This process invariably starts with the asylum seeker being reminded of an applicant's rights and duties according to law, including the right to consult the United Nations High Commissioner for Refugees (UNHCR). Applicants are always provided with all necessary facilities and opportunity to present their case fully, support it with available testimonies and/or documentation, and give adequate explanations for all the reasons submitted in their application.

The Office of the Refugee Commissioner adopts a single asylum procedure. This means that this Office would first examine whether the applicant fulfils the criteria to be recognised as a refugee according to law. In the case of those who are not found eligible for refugee protection, the Office proceeds immediately to a further examination of whether the applicant fulfils the criteria for Subsidiary Protection according to law.

The Refugee Commissioner's eligibility recommendation in each and every case goes to the Minister for Justice and Home Affairs as required by law. Applicants are given a copy of the recommendation, together with a confidential memo with the motivation supporting the recommendation. In the case of a negative recommendation, applicants are also informed of their right to enter an appeal against the recommendation to the Refugee Appeals Board, and the relevant procedure in this regard.

2.3 Levels of Protection

The Office of the Refugee Commissioner as stipulated by law, may recommend two types of protection: (a) Refugee Status; and (b) Subsidiary Protection.

Refugee Protection⁴ is derived from Malta's accession to the 1951 Geneva Convention the 1967 Protocol relating to the Status of Refugees. It should be noted that reservations made by Malta upon accession to those instruments were all withdrawn by 24 February 2004 (most had already been withdrawn on 13 December 2001).

According to Act 14 of Legal Notice 243 of 2008 a refugee is entitled (a) to remain in Malta with freedom of movement, (b) to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable; (c) to be given a Convention Travel Document entitling him to leave and return to Malta without the need of a visa (unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment); (d) to have access to employment, social welfare, appropriate accommodation, integration programs, state education and training, and (e) to receive state medical care especially in the case of vulnerable groups of persons. 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.

Should the Refugee Commissioner decide that the conditions to declare an asylum seeker a refugee are not satisfied, he may recommend to the Minister to grant the applicant, subsidiary protection. This applies to failed asylum seekers, who if returned to their country of origin would face a real risk of suffering serious harm. According to the Refugees Act (Article 17 (1)) the Commissioner shall continue to make this recommendation even in cases where the real risk of suffering serious harm arises after a decision not to grant subsidiary protection has been taken.

The subsidiary protection status was introduced in 2008 after EU Council Directive 2004/83 EC⁵ has been transposed into Maltese Legislation. Previously the Refugees Act provided for temporary humanitarian protection, defined as special leave to remain in Malta for those persons who could not have returned safely to their country of origin.

According to Article 14 (1) (b) of Legal Notice 243 of 2008, a person enjoying subsidiary protection shall be entitled (a) to remain in Malta with freedom of movement and to be

⁴ A refugee is defined as 'a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it'.

⁵ 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.

granted personal documents, including a residence permit for a period of one year, which shall be renewable; (b) 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); (c) to have access to employment, subject to labour market considerations, core social welfare benefits, appropriate accommodation, integration programs, State education and training, and to receive core state medical care, especially in the case of vulnerable groups of persons. 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.

The Office of the Refugee Commissioner has also recommended to the Ministry of Justice and Home Affairs, another regime of protection i.e. Temporary Humanitarian Protection an administrative procedure which is to be granted in special and extraordinary cases where applicants are found not to be eligible for recognition as refugees or beneficiaries of subsidiary protection, but who are nonetheless considered to be in need of protection due to special humanitarian reasons.

2.4 Staff Compliment and Procedural Improvements

One of the Government's highest priorities is to address the complex illegal immigration problem, a task which has proved to be even more difficult with the increase of asylum applications throughout 2008. Aiming to fulfil this priority steps have been and continue to be taken to increase the staff complement according to the needs of this Office and to ensure continuous training to deal effectively with the refugee status determination process while, at the same time, ensuring high quality standards. Indeed in 2002 the staff compliment was composed of just five persons including the Refugee Commissioner. In 2007 the staff compliment consisted of the Refugee Commissioner, Head of Administration, two senior asylum determination officers, five case workers, one full time clerk, one part time clerk and one auxiliary. As of today, the staff complement at the Office of the Refugee Commissioner consists of the Refugee Commissioner, the Assistant Refugee Commissioner, three asylum determination officers, 16 asylum determination officers (ten of which are currently vacant posts), one head of administration, four full-time clerks, and one auxiliary.

Throughout these last years, there have been significant procedural improvements in relation to the processing of asylum applications. Such improvements included, operational changes, logistical improvements, investment in human resources and material resources.

Figures illustrate that these improvements have proven to be valid and effective. Indeed, the number of cases concluded in 2008 reached the figure of 2715 i.e. an increase of 277% when compared to the cases concluded in 2007 (979 cases). This means that

throughout 2008, an average of 226 cases were closed per month as compared to the average of 62 cases that were closed per month between 2002 and 2007.

2.5 Projects by the Office of the Refugee Commissioner

The Office of the Refugee Commissioner is currently implementing an ERF project 2008-2012 entitled “*Post Application client preparation and asylum determination interviewing centre for asylum seekers which aims to adequately prepare TCNs for their asylum determination process*”. This project aims to provide adequate information to TCNs about the asylum procedure and to inform asylum seekers of their rights and obligations during the asylum procedure.

Through this project, the Office of the Refugee Commissioner will be also able to provide continuous training to interpreters. This training will focus on both the technical and the linguistic competencies. In this regard, training seminars and English language classes will be organized for the interpreters.

Asylum determination officers will be also benefiting from training seminars, which will be organized after a “training need analysis” will be carried out. This will ensure that the training seminars will not be based on basic skills but on a more advanced competencies, since most of the asylum determination officers at the Office of the Refugee Commissioner have already acquired high levels of expertise.

The Office of the Refugee Commissioner will be also involved in the GDISC project and its purposes are mainly to strengthen the decision making procedure by having a number of experts who offer consultation to this Office.

The Office of the Refugee Commissioner will be also benefiting from an interpreter’s pool project.

2.6 Statistical Information

Table 1: Percentage of irregular immigrants who have applied for asylum from 2002-2009

Year	2002	2003	2004	2005	2006	2007	2008
Number of arrivals	1686	502	1388	1822	1780	1702	2775
Percentage of Asylum Applications	35.6%	43.9%	68.3%	76.2%	72.8%	72%	98%

Table 2: Number of asylum seekers who were recognized as refugees or granted another

REFUGEE STATUS BY NATIONALITY PER YEAR					
NATIONALITY	2004	2005	2006	2007	2008
EGYPT	6				
ERITREA	3	2	8		10
ETHIOPIA	3	2	4	2	6
IRAN	5				
IRAQ	5	5			
MOROCCO	8				
PALESTINE		15			
SIERRA LEONE	3				
SOMALIA		1	9	4	3
SRI LANKA	15	2			
SUDAN		1	2	1	
SYRIA	1	3	4		
Others		3	1		
TOTALS	48	34	28	7	19
HUMANITARIAN/ SUBSIDIARY PROTECTION BY NATIONALITY					
NATIONALITY	2004	2005	2006	2007	2008
CHAD	2				
CONGO DRC		2			
EGYPT	3				
ERITREA	51	228	251	210	251
ETHIOPIA	2	2	1	5	3
IRAQ	7	6	2	4	
IVORY COAST			2	2	1
MOROCCO	2				
NIGERIA					2
PALESTINE					
SERBIA					
SIERRA LEONE					
SOMALIA	465	223	130	368	1117
SRI LANKA					5
SUDAN	16	21	136	31	14
Others	1	2			1
TOTALS	549	484	522	620	1394

Figure 1: Total number of asylum applications processed per year 2002-2008

