

# Law 1/2004

## Regime of recognition and loss of refugee status

The Legislative Council decrees, pursuant to **Article 71, paragraph 1) of the Basic Law of the Macao Special Administrative Region**, to act as law, the following:

### CHAPTER I

#### General Provisions

##### Article 1

###### Object

The present law establishes the legal framework regarding the recognition and loss of refugee status, to put into force in the Macao Special Administrative Region (MSAR) the **Convention relating to the Status of Refugees**, signed on 28th July 1951, and the **Protocol relating to the Status of Refugees**, adopted on 31st January 1967, hereinafter referred to as Convention and as Protocol.

##### Article 2

###### Interpretation and expressions used

1. The Convention, the Protocol and the present law are considered and interpreted jointly.
2. Without prejudice to that established in the preceding paragraph:
  - 1) «Commission», shall refer to the Commission for Refugees;
  - 2) «UNHCR's Statute», shall refer to the mandate conferred to the United Nations High Commissioner for Refugees by the General Assembly of the United Nations, by its Resolution 428 (V), of 14 December 1950, or an international Act replacing it;
3. «Applicant», shall refer to the person who applies to the MSAR the recognition of the status of refugee;
4. «Migration Service», shall refer to the Service for Migration of the Police of Public Security.

##### Article 3

###### Refugee

Those who may be recognized as a refugee in the MSAR are those who are:

- 1) A refugee under the terms of the Convention and Protocol;
- 2) Under the mandate of UNHCR, pursuant to Articles 6 and 7 of its Statute.

## **Article 4**

### **Co-operation with the UNHCR**

1. In accordance with the provisions of the Convention, Protocol and the Statute of UNHCR, the authorities of the MSAR shall provide the broadest co-operation to UNHCR, namely:
  - 1) Unrestricted contact with the applicant or refugee;
  - 2) Provision of any assistance for the applicants or refugees, including legal counselling at all stages of the procedure for the recognition or the loss of refugee status;
  - 3) Intervention at any stage of the procedure for the recognition or the loss of refugee status, to be present in interviews with the applicant or refugee, as well as to add any relevant documents to ascertain the facts and to examine the petition for the recognition or the loss of refugee status.
2. The representative of UNHCR shall be notified of the decisions with external effects taken within the procedure for the recognition or the loss of refugee status.

## **CHAPTER II**

### **Commission for Refugees**

## **Article 5**

### **Composition and functioning**

1. A Commission for Refugees shall be created, composed of a President and four members.
2. The position of President is held by a magistrate either judicial or from the Public Prosecutions Office.
3. The members nominated shall be:
  - 1) Two members by the Secretary for Security, one of them from the Migration Service;
  - 2) One member by the Secretary for Administration and Justice, fully licensed in law;
  - 3) One member by the Secretary for Social Affairs and Culture, from the Social Action Institute (IAS).
4. The President and the members are appointed by dispatch of the Chief Executive, to be published in the Official Gazette of the Macao Special Administrative Region.
5. The Commission shall prepare its internal rules of procedure.
6. Technical and administrative assistance necessary for the smooth functioning of the Commission is ensured by the Migration Service.

## **Article 6**

### **Powers**

1. The Commission is entitled to:
  - 1) Conduct the fact-finding phase of the proceedings for recognition or the loss of refugee status;
  - 2) Prepare proposal projects of decision about the aforementioned;
  - 3) Ensure the necessary co-operation with the UNHCR.
2. The Commission, when exercising its powers and performing its functions and in so far as necessary to fulfil its functions, may collect, process and subsequently examine all the information gathered, including personal information which will identify individuals.

## **Article 7**

### **General duty of co-operation with the Commission**

Every person or entity must cooperate with the Commission, being obliged to immediately communicate to it any information, which emerges concerning an asylum-seeker or refugee.

## **CHAPTER III**

### **Procedure**

#### **SECTION I**

#### **General Provisions**

### **Article 8**

#### **Duty to furnish information**

The applicant shall be informed, at the submission of the petition, of his or her rights and duties, including:

- 1) The opportunity to contact the UNHCR;
- 2) The need to keep the Migration Service informed of his or her address;
- 3) The need to appear on the appointed day, at the appointed time and place.

## **Article 9**

### **Appointment of an interpreter and legal protection**

1. When the applicant does not know or is not fluent in any official language of the MSAR a competent interpreter shall be appointed, regardless of whether the other participants in the proceeding know the language used by the applicant.
2. The applicant shall benefit from legal protection in accordance with the provisions of general law.

## **Article 10**

### **Suspension and archiving of other proceedings and processes**

1. The submission of the petition for recognition of the status of refugee shall suspend any administrative proceedings or criminal process against the applicant or dependant relatives based upon their entry into the MSAR territory.
2. The proceedings or process shall be archived should refugee status be recognised.
3. For the purposes of paragraph 1, the petition for recognition of refugee status shall be attached to the administrative proceeding and communicated to the competent judicial entity, by the Migration Service.
4. For the purposes of paragraph 2, the recognition of the status of refugee shall be communicated by the Commission to the administrative or judicial entity responsible, depending on the case.

## **SECTION II**

### **Preliminary Phase**

## **Article 11**

### **Submission of the petition**

1. The application for the recognition of refugee status shall be submitted when entering the territory of the MSAR or, when the facts based on which the request is made occurred or came to the applicant's knowledge after entering the territory of the MSAR.
2. The application for recognition of refugee status may, however, be submitted at a later date if there are valid reasons for its non submission as established in the preceding paragraph.

## **Article 12**

### **Reception and dispatch of the petition**

1. The application for recognition of refugee status shall be formulated on a specific form, similar to the specimen annexed to the present law, and lodged at Migration Service.
2. An improperly completed form or not using the aforementioned form to apply for refugee status is not in itself a reason to reject the claim.
3. A duplicate of the application form shall be given to the applicant, that certifies his or her status of asylum seeker and it is a provisional identification card.
4. The petition shall be immediately remitted to the Commission.

## **Article 13**

### **Search and retention of documents**

1. At the time of submission of the petition, the applicant is obliged to present to Migration Service his or her travel and identification documents, which shall be kept and attached to the file.
2. The Migration Service may demand from the applicant some other documents in his or her possession regarding his or her identity.
3. For the purposes of the preceding paragraphs, the Migration Service may undertake a search of the individual applicant or his or her possessions.
4. The search must be conducted with regard to the applicant's dignity and, as far as possible, respects the modesty of the individual, and must to be carried out solely by a person of the same sex.
5. The Migration Service shall retain false, forged or altered documents as well as authentic documents when there is a suspicion of unlawful usage.
6. The retained documents by virtue of the preceding paragraph shall be immediately remitted to the Public Prosecutions Office under the terms of and in accordance with Articles 225 e 226 of the **Code of Penal Procedure** and a copy of the whole text shall be sent to the Commission.

## **Article 14**

### **Refusal of the petition**

The petition shall not be admitted and the person requesting the recognition of refugee status cannot be considered a refugee should any of the following items be manifestly evident:

- 1) He or she has committed any of the acts mentioned in Article 1-F of the Geneva Convention;
- 2) His or her entry into the territory of the People's Republic of China has been prohibited pursuant to a decision of the Security Council of the United Nations.

- 3) He or she is already receiving protection or assistance from the organs or agencies of the United Nations other than the UNHCR;
- 4) His or her refugee status has already been recognized;
- 5) It is obvious he or she does not meet any criteria defined by the Convention, because his or her claims are groundless or clearly fraudulent, or because this constitutes an abusive usage of the procedure for recognition of refugee status.

## **Article 15**

### **Decision on refusal of petition**

1. The non-admission of the petition shall be decided by the Chief Executive, under proposal of the Commission, within 48 hours of its reception.
2. Within the time limit referred to in the preceding paragraph:
  - 1) The applicant shall be subject to interrogation as matter of urgency, by the President of the Commission, of which an official report shall be drawn up, in order to ascertain the facts or elements of law sufficient to justify the immediate non-admission of the petition;
  - 2) The person in question shall not be allowed to enter into the MSAR, remaining in the transit zone of the migration office and being guaranteed conditions consistent with human dignity;
  - 3) If the person in question is already staying in the MSAR:
    - (1) he or she shall be under detention of the Migration Service if paragraph 1) or 2) of the preceding Article applies; or
    - (2) the obligation to declare his or her address shall be imposed as well as the obligation to appear at the Migration Service on the appointed date.
3. The decision of refusal of the petition shall be immediately notified to the applicant.
4. An appeal against the refusal of the petition by decision of the Chief Executive can be lodged, without suspensive effect, before the Court of Second Instance.
5. The time limit to request the reappraisal of the decision shall be 15 days from the notification of the decision.
6. After the final decision of non-admission, the process shall be sent to the Commission to archive.

## **SECTION III**

### **Proceedings**

#### **Article 16**

##### **Appointing the first interview**

1. Should the petition be admissible, the Commission, through the Migration Service, shall notify the applicant for the first interview which shall take place within 5 days after the submission of the petition mentioning the date, time and place.
2. A copy of the notification of appointment of the first interview issued by the Commission shall be simultaneously sent to the UNHCR.

#### **Article 17**

##### **First interview**

1. The President of the Commission shall be responsible for conducting the interview.
2. The UNHCR, if one exists, or a representative of the applicant can attend and participate during the interview and directly question the applicant.
3. An official report of the interview shall be drawn up including information regarding the date, place, time, who conducted the interview and those who were present, as well as details of presented facts by the applicant in support of his or her petition for refugee status.
4. An electronic recording of the interview shall be also made, unless impossible to do so.

#### **Article 18**

##### **Fact-finding phase**

1. The fact-finding phase shall start with the interview referred to in the preceding Article.
2. The Commission shall proceed taking all necessary measures to establish all the relevant facts for examining the claim and for this purpose may request investigations or take other actions necessary to the fact-finding phase of the proceedings.
3. If more interviews besides the first one shall be deemed necessary, they shall comply with the provisions of the preceding Article.
4. The Commission may request the opinion of experts on some relevant questions for examining the claim, namely of a medical or cultural nature, as well as to contact any entities or to have access to files, whether automated or manual, particularly external sources in order to obtain the necessary information, including personal identification.

5. The fact-finding phase shall take place within 30 days; it shall be extended for an equal period until the maximum time limit of one year, in cases where there are difficulties in obtaining the information necessary to the fact-finding phase of the proceedings.

6. Any information relevant to the proceeding obtained after the end of the fact-finding phase but before it has been forwarded to the Chief Executive can be used.

## **Article 19**

### **Proposal of decision**

Within 10 days after the end of the fact-finding phase, the Commission shall prepare a grounded proposal project of recognition or refusal of refugee status.

## **SECÇÃO IV**

### **Decision and appeal**

## **Article 20**

### **Decision**

The complete file accompanied with the corresponding proposal shall be immediately forwarded by the Commission to the Chief Executive who shall take a final decision.

## **Article 21**

### **Notification of the decision**

1. The decision of recognition or refusal of refugee status shall be notified to the applicant.

2. The notification referred to in the preceding paragraph shall mention the identification of the file, including its author and date.

3. Should the decision reject the request for recognizing refugee status, the notification must include:

1) Information on the possibility of appealing against the decision, mentioning the competent entity and the time limit to lodge an appeal;

2) Notification must be given that, should the applicant not appeal pursuant with the above paragraph, he or she must voluntarily abandon the MSAR within the same time limit, otherwise he or she shall be expelled.



## **Article 22**

### **Appeal**

1. The decision that rejects the refugee status taken by the Chief Executive can be appealed before the Court of Second Instance.
2. The appeal shall be lodged within 15 days from the notification of the decision.
3. The appeal has suspensive effect.

## **CHAPTER IV**

### **Status of refugee**

#### **Article 23**

##### **Travel and identification documents**

1. The refugee is allowed to stay in the MSAR while holding refugee status.
2. The Identification Department of MSAR (DSI) shall issue to the refugee:
  - 1) A definitive identity card attesting his or her status of refugee;
  - 2) A travel document of the MSAR and upon obtaining this document the refugee should deliver to the DSI his or her national passport or any other travel document he or she is in possession of, which shall be forwarded to the Commission.

#### **Article 24**

##### **Causes of the loss of refugee status**

Besides the reasons referred to in Section C Article 1 of the Convention, causes for the loss of refugee status are:

- 1) The express waiver;
- 2) The falsely alleged grounds for the recognition of the status of refugee;
- 3) The existence of facts which, had they been known at the time of recognition of refugee status, would have implied a negative decision;
- 4) The reasons which justified the recognition of refugee status have ceased to exist;
- 5) A conviction from a trial court in the MSAR of a felonious crime punishable with three years or more of imprisonment;
- 6) The abandonment of MSAR, the applicant has already settled outside the territory.

## **Article 25**

### **Competence**

Whenever any of the reasons to in the above Article are referred to, the Chief Executive shall be competent under proposal of the Commission to decide on the loss of refugee status and the proceedings for recognition of refugee status shall be applied, with the necessary modifications.

## **Article 26**

### **Notification of the decision**

The decision referred to in the preceding Article shall be notified to the refugee, in accordance with the provisions of Article 21, with the necessary modifications.

## **Article 27**

### **Appeal**

1. The decision referred to in Article 25 can be appealed before the Court of Second Instance within 10 days from the notification.
2. The appellant is allowed to stay within the MSAR until the final decision, but must appear on the appointed day, at the appointed time and place.

## **Article 28**

### **Consequences of the loss of refugee status**

1. The loss of refugee status shall determine the subjection of the appellant to the provisions of general law concerning the stay of non-residents within the MSAR.
2. The following exceptions shall be made to the provisions of the preceding paragraph:
  - 1) The loss of refugee status for the reasons mentioned in Article 24 paragraph 3, determines the expulsion from the MSAR when the facts in question had been concealed by the applicant;
  - 2) The loss of refugee status pursuant to Article 24 paragraphs 2) and 5, also determines the expulsion from the MSAR.
3. The execution of the expulsion order shall be communicated to the Commission, containing a copy of all relating documents to add the file.

## **CHAPTER V**

### **Special situations**

#### **Article 29**

#### **Exceptional cases**

In cases where public order in the MSAR may be affected, namely in a situation of mass influx of refugees, the Chief Executive shall determine the measures to be taken, after a hearing with the Commission, the Security Council of the MSAR and the representative of UNHCR and obtaining, if necessary, the support and authorization of the Central People's Government.

#### **Article 30**

#### **Incapacitated people**

1. Unaccompanied minors and mentally disturbed applicants shall be guaranteed a special safeguard of their interests by the competent authorities.
2. With regard to the applicants with mental disabilities a detailed medical report shall be made in order to assess the applicant's abilities.
3. Persons referred to in the preceding paragraphs shall be the responsibility of the Social Action Institute.

#### **Article 31**

#### **Family dependants**

1. Dependant members of the applicant's family are considered to be his or her spouse and children who are minors.
2. The status of refugee shall be granted to the dependant members of the applicant's family, except if any of the situations in Article 14 apply.
3. Non-recognition of refugee status to the applicant shall not prevent his or her dependant family members from submitting a separate petition for refugee status.
4. After the recognition of refugee status each one of the dependant's family members shall be considered on an independent basis, be it the refugee or the remaining members of the household, namely for purposes of loss of the refugee status.

## **CHAPTER VI**

### **Social Support**

#### **Article 32**

##### **Guarantee of reception**

The MSAR shall guarantee conditions consistent to human dignity until the final decision of the petition.

#### **Article 33**

##### **Social Support**

Applicants in a situation of economic and social insufficiency and the members of their households under the provisions of the present law shall benefit from social support provided by the IAS.

#### **Article 34**

##### **Vulnerable persons**

Incapacitated people or applicants who have been victims of torture, rape, or other physical or sexual abuse shall benefit from special attention and care on the part of the IAS or humanitarian entities which have signed protocols with the former.

#### **Article 35**

##### **Termination of social support**

1. Social support shall cease with the final decision on the petition for recognition of refugee status regardless of the lodging of an appropriate judicial appeal.
2. The termination of the support in accordance with the previous paragraph shall not occur once the applicant's economic and social situation is appraised, should it emerge that it shall be necessary to maintain it.
3. The support granted to the applicants who, without justification, fail to appear before the authorities concerned when called, are absent and the whereabouts are unknown or who have changed their residence without previously informing the Migration Service shall cease.

## **CHAPTER VII**

### **Final and transitory provisions**

#### **Article 36**

##### **Urgent notifications**

1. In cases of justifiable urgency, the decisions shall be notified verbally, then registered and signed by both the person giving the notice and the person who receives the notification, whose extract shall be added to the process and a copy delivered to the interested party.
2. When the provisions of the previous paragraph apply, the time limits from the notification shall be calculated from one day after verbal notice.
3. When the measures referred to in paragraph 1 are not possible, the notification shall be mailed to the applicant or refugee's last known address, and shall be deemed effective on the third day after sending the registered letter or on the weekday immediately following it, and a warning of this should be mentioned in the notification.
4. For the purposes of the preceding paragraph, the applicant or refugee's last known address shall be the address previously provided by him or herself.

#### **Article 37**

##### **Gratuitousness and urgency of proceedings**

The proceedings for recognition or loss of refugee status are gratuitous and urgent, both at the administrative and at the judicial phases.

#### **Article 38**

##### **Registry and confidentiality**

1. The Commission shall create and keep up-to-date a registry containing the facts relating to the processes of recognition and loss of refugee status.
2. Personal information regarding the identity of individuals related to the process of recognition or loss of refugee status is confidential.
3. The registry shall be organized in files, either automatic or manual.

#### **Article 39**

##### **Subsidiary Legislation**

1. Everything not provided for in the present law shall apply subsidiarily the **Code of Administrative Procedure**, the **Code of Litigious Procedure** and **Judicial Organization Law**.
2. Without prejudice to that established in the preceding paragraph, the decisions referred to in Articles 15, 20 e 25 cannot be contested.

## Article 40

### Entry into force

The present law shall enter into force on the 30th day after its publication.

Approved on 17th February 2004.

The President of the Legislative Council, Susana Chou.

Signed on 20th February 2004.

To be published.

The Chief Executive, Ho Hau Wah.

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## MACAO SPECIAL ADMINISTRATIVE REGION

OFFICIAL GAZETTE - I SERIE	
Diploma: <b>Law n.º 1/2004</b> OG No: <b>8/2004</b> Published on: <b>2004.2.23</b> Page: <b>127-153</b>	<ul style="list-style-type: none"><li>• Regime of recognition and loss of refugee status.</li></ul>

### *Related*

### *Diplomas :*

- Decree-Law n.º 43201** - Approves, for accession, the Convention Relating to the Status of Refugees, signed at Geneva on 28th July 1951.
- Decree n.º 207/75** - Approves, for accession, the Additional Protocol to the Convention Relating to the Status of Refugees.
- Resolution n.º 8/98/M** – Reports in favour of extending the application of the 1967 Additional Protocol to the Convention Relating to the Status of Refugees to Macao.
- Decree of the President of Republic no 27/98** – Extension to the territory of Macao of the Additional Protocol to the Convention Relating to the Status of Refugees, approved by Decree of the Government n.º 207/75. The text was published in Serie 1 n.º 90 of the *Diário da República*, of 17th April 1975.
- Notification n.º 83/99** – Announces that the General Secretary of the Organization, in its capacity as the depositary of the Convention Relating to the Status of Refugees, signed at Geneva on 28th July 1951, has been notified, through the Permanent Mission of Portugal to the United Nations, that the aforementioned Convention shall extend its application to the territory of Macao, under the same terms as the Portuguese Republic.
- Notification n.º 88/99** – Announces that the General Secretary of the Organization, in its capacity as the depositary of the Additional Protocol to the Convention Relating to the Status of Refugees, adopted in New York on 31 January 1967, has been notified, through the Permanent Mission of Portugal to the United Nations, that the aforementioned Protocol shall extend its application to the territory of Macao, under the same terms as the Portuguese Republic.
- Notification of the Chief Executive n.º 1/2001** – The Protocol to the Convention Relating to the Status of Refugees, adopted in New York on 31 January 1967 shall apply to the Macao Special Administrative Region.
- Notification of the Chief Executive n.º 2/2001** - The Convention Relating to the Status of Refugees, signed at Geneva on 28 July 1951 shall apply to the Macao Special Administrative Region.
- Notice of the Chief Executive n.º 29/2002** – Orders the publication of the Chinese translation of the Convention Relating to the Status of Refugees, of 28 July 1951.
- Administrative Regulation n.º 5/2003** – Approves the regulations on entry,

***Related  
entities :***

permanence and residence permit.

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